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Friday
May 18, 1984

Selected Subjects

Administrative Practice and Procedure
Federal Deposit Insurance Corporation

Air Carriers
Labor-Management Relations, Office of Assistant Secretary

Animal Biologics
Animal and Plant Health Inspection Service

Animal Diseases
Animal and Plant Health Inspection Service

Aviation Safety
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Community Development Block Grants
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Electric Power
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Endangered and Threatened Species
Fish and Wildlife Service

Fisheries
National Oceanic and Atmospheric Administration

Income Taxes
Internal Revenue Service

Labeling
Alcohol, Tobacco and Firearms Bureau

Marketing Agreements
Agricultural Marketing Service

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

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Agricultural Marketing Service

Motor Carriers
Federal Highway Administration

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Presidential Documents

Title 3—

The President

Proclamation 5194 of May 15, 1984

Missing Children Day, 1984

By the President of the United States of America

A Proclamation

Each year hundreds of thousands of American families face the stark terror of a unique tragedy—that of a missing child. Our children are our most precious resource—they are the bond that binds our past with the future. It is for them that we struggle to build a better world. They are the embodiment of our hopes and dreams. To have a child simply disappear strikes an incalculable blow against the spirit and soul of any family so afflicted.

In our efforts to address the nightmare of missing children, 1984 marks the year of a significant step forward. The Department of Justice has awarded a $3.3 million grant to establish a National Center for Missing and Exploited Children. Its purpose is to aid parents and law enforcement agencies in locating missing youngsters and preventing the exploitation of children. By collecting and disseminating information regarding missing young people, the Center will lend major support to those searching for their children.

As a Nation committed to the worth of every individual, there can be no more imperative goal for our society than the protection and safety of our young people. It is hoped that these new efforts combined with the increasing awareness of the seriousness of this problem will encourage greater vigilance by the agencies that work to solve this singular type of crime.

As a Nation and as individuals, we all have a responsibility to direct our resources and our efforts to this worthy goal.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 25, 1984, as Missing Children Day. I urge officials at all levels of government to take decisive action to ensure the safety and protection of the children in their respective jurisdictions, and I urge all our law enforcement agencies to take particular notice of the danger that threatens any child who has lost his or her home. I urge every American family to take the proper precautions to protect their children.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of May, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-13549
Filed 5-16-84; 10:55 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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Friday, May 18, 1984

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 464; Lemon Reg. 463, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to fresh market to 315,000 cartons during the period May 20–26, 1984, and increases the quantity of lemons that may be shipped to 355,000 cartons during the period May 13–19, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

DATES: This regulation becomes effective May 20, 1984, and the amendment is effective for the period May 13–19, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Wasington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate are declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on May 15, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports that lemon demand is strong.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Agricultural Marketing Service, Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.764 is added as follows:

§ 910.764 Lemon Regulation 464.

The quantity of lemons grown in California and Arizona which may be handled during the period May 20, 1984, through May 26, 1984, is established at 315,000 cartons.

2. Section 910.763 Lemon Regulation 463 is revised to read as follows:

§ 910.763 Lemon Regulation 463.

The quantity of lemons grown in California and Arizona which may be handled during the period May 13, 1984, through May 19, 1984, is established at 355,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: May 16, 1984.

Thomas R. Clark,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84–13602 Filed 5–17–84; 8:45 am]
BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 83–146]

Animals Destroyed Because of Brucellosis

Correction

In FR Doc. 84–12909 beginning on page 20267 in the issue of Monday, May 14, 1984, make the following correction on page 20269:

In the first column, the second line from the end of § 51.1(cc), "White Part Cattle" should read "White Park Cattle".

BILLING CODE 1505–01–M

9 CFR Part 94

[Docket No. 84–034]

Change in Disease Status of the Dominican Republic Because of African Swine Fever and Hog Cholera

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations concerning the importation into the United States of swine, pork, and pork products by removing the Dominican Republic from the list of countries regulated because of African swine fever and by adding the Dominican Republic to the list of countries in which hog cholera is not known to exist. It has been determined that neither African swine fever nor hog

cholera exists in the Dominican Republic. This rule will allow the importation of swine from the Dominican Republic and will relieve restrictions on the importation of pork and pork products from the Dominican Republic.

EFFECTIVE DATE: June 18, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. M. R. Crane, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 94 (the regulations) regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including African swine fever (ASF) and hog cholera.

A document published in the **Federal Register** on March 12, 1984 (49 FR 9214–9215) proposed (1) to amend § 94.8 of the regulations by removing the Dominican Republic from the list of countries in which ASF exists or is reasonably believed to exist and (2) to amend §§ 94.9 and 94.10 of the regulations by adding the Dominican Republic to the list of countries in which hog cholera is not known to exist. Comments were solicited for 30 days after publication. No comments were received. The rationale set forth in the proposal still provides a basis for the amendments. Therefore, the regulations are amended as proposed.

The effect of this action is to allow the importation of swine from the Dominican Republic and to relieve restrictions on the importation of pork and pork products from the Dominican Republic.

Executive Order 12291 and Regulatory Flexibility Act

This final rule has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will have no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A review of the pork production and pork consumption data for the Dominican Republic for 1960–1980 does not indicate any international trade in swine, pork, or pork products. The pork and pork products produced in the Dominican Republic during that time were for local consumption. Further, the entire swine population of the Dominican Republic was eradicated during 1979 and 1980. Repopulation of swine began in 1980. By 1983 the swine population of the Dominican Republic had reached 26 percent of the population during the 1977–78 period. The repopulation effort will continue by natural additions to the herd. It will take several years for the swine population to reach the pre-eradication level. Even when the swine population reaches the pre-eradication level it is anticipated that any imports into the United States of swine, pork, or pork products from the Dominican Republic will be negligible.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Under the circumstances explained above, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

Alternatives

The only alternative to these amendments is not to amend the regulations to indicate that neither ASF nor hog cholera exists in the Dominican Republic. However, this alternative is not adopted because, as indicated above, it has been determined that neither ASF nor hog cholera exists in the Dominican Republic.

List of Subjects in 9 CFR Part 94

Animal diseases, Import, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African swine fever, Exotic Newcastle Disease. Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Rinderpest, Swine vesicular disease.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEW CASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, 9 CFR Part 94 is amended as follows:

§ 94.8 [Amended]

1. In § 94.8, the introductory text is amended by removing "Dominican Republic".

§ 94.9 [Amended]

2. In § 94.9, paragraph (a) is amended by inserting "Dominican Republic," between "Denmark," and "Finland" both times they appear.

§ 94.10 [Amended]

3. Section 94.10 is amended by inserting "Dominican Republic," between "Denmark," and "Finland".

Authority: Sec. 2, 32, Stat. 792, as amended; secs. 2, 3, 4, and 11, 76 Stat. 129, 130, 132; 21 U.S.C. 111, 134a, 134b, 134c, 134f; 7 CFR 2.17, 2.51, and 371.2(d)

Done at Washington, D.C., this 14th day of May 1984.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 84–13486 Filed 5–17–84; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 83–095]

9 CFR Parts 102, 104, and 112

Viruses, Serums, Toxins, and Analogous Products; Licenses, Permits, and Labeling

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The regulations in 9 CFR Parts 102 and 104 governing licenses and permits for veterinary biological products were reviewed in accordance with the Agency's plan to periodically review existing regulations. As a result of that review, the Agency proposed certain changes. Other changes were also proposed regarding labeling and diluents. This action changes the number of documents required to be submitted by licensees and applicants, deletes obsolete and incorrect information, and provides for inclusion of additional components in combination package products. The purpose of this revision is to update and simplify regulatory requirements applicable to veterinary biological products.

EFFECTIVE DATE: This amendment becomes effective May 18, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Senior Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8245.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This final rule contains no new or amended recordkeeping, reporting, or application requirement or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Executive Order 12291

This final rule has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

The amendments will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. They will also not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises, in domestic or export markets. These revisions will reduce regulatory requirements.

Certification Under the Regulatory Flexibility Act

Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not result in an adverse economic impact on a substantial number of small entities. Small entities are defined as independently owned businesses not dominant in the field of veterinary biologics manufacturing.

Background

This rulemaking amends 9 CFR 102.3 by deleting the numerical requirements with reference to the number of copies of plot plans, blueprints, legends, labels, and sketches. These are unnecessary because other 9 CFR references cited in Part 102 specify the number of required copies of such documents, as well as the distribution of copies after processing by Veterinary Services.

Changes in Department assignments of responsibility, revised filing procedures, and field office relocations have resulted in an overall reduction in copies of documents needed by Veterinary Services. Consequently, 9 CFR 112.5 is amended to reduce the number of copies of labels which are required to be submitted for approval from five to three and sketches from three to two. One additional copy of each Outline of Production for each product imported for sale and distribution will be required.

In an October 6, 1976, revision of this subchapter, provisions for special licenses were deleted. Reference to these obsolete documents remains in the labeling regulations. This revision deletes this reference.

An error in publishing a July 28, 1975, docket resulted in failure to delete certain requirements in 9 CFR 112.7 for labeling Rabies Vaccines. These requirements were made obsolete by establishment of new Standard Requirements for those products. This revision deletes the superfluous and conflicting requirements.

Combination package products consist of a desiccated component and a liquid component in the same box. The liquid product is used as a diluent for rehydrating the desiccated component for administration. Current requirements in 9 CFR 112.7(h) only apply to products where desiccated live virus vaccines are combined with specified bacterin diluents. This revision provides for other combination package products that may be produced, such as desiccated live bacterial and chlamydial vaccines, with other liquid product diluents in addition to bacterins.

Comments Received

On May 22, 1983, a notice of rulemaking was published in the **Federal Register** at 48 FR 22928 stating that APHIS proposed to amend 9 CFR 102.3(a)(4) by deleting reference to the number of facilities documents required. Amendment of 9 CFR 102.39(b)(2) (iii) and (iv) to delete reference to numbers of copies of legends, labels, and sketches was also proposed.

Proposed amendment of 9 CFR 104.5(a)(4) to increase the number of copies of Outlines of Production for products imported for sale and distribution from three to four was also included.

The number of sketches prescribed in 9 CFR 112.5(d)(1)(i) was proposed to be reduced from three to two and the number of labels prescribed in 9 CFR 112.5(d)(1)(ii) was to be reduced from at least five to at least three. Extra copies of enclosures to be used for more than one product were proposed to be reduced from two to one.

The obsolete reference to special outlines was proposed to be deleted from 9 CFR 112.5(d)(3)(i)(a). Obsolete information in 9 CFR 112.7 (d)(4)(i) through (d)(4)(iv) concerning labeling for Rabies Vaccines was also proposed to be deleted.

Revision of 9 CFR 112.7(h) was proposed in order to provide for liquid products other than bacterins as diluents and desiccated products other than live virus vaccines in combination packages.

Five comments were received from licensed manufacturers. All gave unreserved support to all the proposed revisions except for one comment concerning proposed revision of 9 CFR 112.7(h). This comment requested that current labels be permitted to be used until current stocks were exhausted. This is considered unnecessary because no new labeling requirements are involved for existing labels. One other licensee commented on the proposal in 9 CFR 112.7(h) by requesting standard test criteria be established to determine bactericidal activity for liquid product diluents when combined with live bacterial vaccines. Test methods for this purpose have been under study for several years, but none have been found suitable for inclusion in the Standard Requirements. In the meantime, Outlines of Production for bacterial vaccines used in combination packages are required to include appropriate tests for this factor. This revision does not result in the imposition of new test requirements.

List of Subjects

9 CFR Part 102

Animal biologics.

9 CFR Part 104

Animal biologics, Imports, Transportation.

9 CFR Part 112

Animal biologics, Exports, Imports, Labeling, Packaging and containers, Transportation.

PART 102—LICENSES FOR BIOLOGICAL PRODUCTS

Section 102.3 is amended by revising paragraphs (a)(4), and (b)(2) (iii) and (iv) to read:

§ 102.3 License applications.

(a) * * *

(4) Facilities documents, prepared as prescribed in Part 108 of this subchapter, shall accompany the application for license unless previously filed with Veterinary Services.

* * * * *

(b) * * *

(2) * * *

(iii) Legends prepared as prescribed in § 108.5 of this subchapter designating which facilities are to be used in the preparation of each fraction; and

(iv) Labels in finished form or sketches prepared as prescribed in § 112.5 of this subchapter, together with information regarding all claims to be

made on labels and in advertising matter to be used in connection with or related to the biological product.

* * * * *

PART 104—PERMITS FOR BIOLOGICAL PRODUCTS

Section 104.5 is amended by revising paragraph (a)(4) to read:

§ 104.5 Products for distribution and sale.

* * * * *

(a) * * *

(4) The methods to be used in the preparation of each biological product shall be written into an approved Outline of Production prepared in accordance with the applicable provisions of Part 114 of this subchapter. Four copies of such Outlines of Production shall be submitted to Veterinary Services and be approved before the permit is issued.

* * * * *

PART 112—PACKAGING AND LABELING

Section 112.5 is amended by revising paragraphs (d)(1) (i), (iii) and (d)(3)(i)(*a*)to read:

§ 112.5 Review and approval of labeling.

* * * * *

(d) * * *

(1) * * *

(i) Two copies of each sketch shall be submitted. One copy shall be returned with applicable comments. One copy shall be held on file by Veterinary Services until replaced by a finished label but not for more than 1 year after processing: *Provided,* That sketches submitted in support of a license or permit shall be held as long as the application is considered active.

(ii) At least three copies of a label shall be submitted: *Provided,* That, when an enclosure is to be used with more than one biological product, one extra copy shall be required for each additional product. Two copies of each label will be retained by Veterinary Services. All remaining copies shall be stamped and returned. Labels to which exceptions are taken shall be marked as sketches and handled according to § 112.5(d)(1)(i).

* * * * *

(3) To appear on the top of each page:

(i)(*a*) Name and product code number of the biological product as it appears on the product license or permit.

* * * * *

Section 112.7 is amended by removing paragraphs (d)(4) (i)–(iv) and by revising paragraph (h) to read:

§ 112.7 Special additional requirements.

* * * * *

(h) In the case of a liquid product authorized in a filed Outline of Production to be used as a diluent in a combination package, the carton labels and enclosures used for serials which are either not tested for bactericidal or viricidal activity or have been found unsatisfactory by such test shall contain the statement: "CAUTION: DO NOT USE A DILUENT FOR LIVE VACCINES."

(37 Stat. 832–833 (21 U.S.C. 151–158))

Done at Washington, D.C., this 15th day of May 1984.

K. R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc 84-13488 Filed 5-17-84; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations delegating authority to the Director of the Division of Bank Supervision ("Director") to act on certain branch, main office or branch relocation, and remote service facility applications as well as the regulations limiting the Director's subdelegation of that authority to FDIC's regional directors. The amendments, which expand the delegated authority of the Director and the regional directors to act on branch, main office or branch relocation, and remote service facility applications, are expected to reduce the time necessary to process such applications and thereby benefit insured nonmember banks.

EFFECTIVE DATE: May 7, 1984.

FOR FURTHER INFORMATION CONTACT: Carmen J. Sullivan, Assistant Director, Corporate Applications and Special Activities Section, Division of Bank Supervision, (202) 389–4545, or Charles R. Denesia, Chief, Applications Section, Division of Bank Supervision, (202) 389–4345, 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: Section 303.11(a) of FDIC's regulations (12 CFR 303.11(a)) sets forth delegations of authority by the Board of Directors of FDIC to act on certain applications to the Director of the Division of Bank Supervision and, where confirmed in writing by the Director, delegations to the appropriate FDIC regional director. Section 303.11(a)(7) delegates the authority to grant but not deny the prior approval of the FDIC to establish and operate any new branch (including a remote service facility), and § 303.11(a)(1) delegates the authority to act on, among other things, branch and main office relocation applications. These delegations are limited by § 303.12(c) which sets out certain conditions that must be met in order for the delegations to be operative. Subparagraph (c)(3) requires that the applicant's income before securities gains or losses and net income minus cash dividends have been positive during the most recent calendar year for which information is available and for the year-to-date through the most recent quarter for which information is available. Subparagraph (c)(4) requires that the applicant's rating under certain uniform rating systems be 3 or better. Subparagraph (c)(7) further limits the regional director's ability to act under subdelegated authority to instances where not only all the conditions set out in (c)(1) through (c)(6) are met, but where, in addition, the applicant meets certain minimum Uniform Financial Institutions Rating System (composite CAMEL), Community Reinvestment Act (CRA), and Uniform Interagency Consumer Compliance Rating System (Compliance) ratings, where no CRA protest has been filed by any organization (excluding a competing institution), and where any issues raised by other comments have been favorably resolved.

The FDIC is amending its regulations to expand the Director of the Division of Bank Supervision's delegated authority to act on branch and relocation applications in the following three ways: (1) To remove the existing blanket limitation on the Director of the Division Bank Supervision's delegated authority to act on branch applications, i.e., the amendment allows the Director to deny as well as approve such applications subject to certain limitations as set forth below. The current overall limitation that the authority to approve branch applications is only delegated where each of the six factors set forth in section 6 of the Federal Deposit Insurance Act (12 U.S.C. 1816) has been considered and favorably resolved is eliminated in order to make the delegation of authority to deny such applications effective. The six factors would, of course, be the substantive

bases of actions taken under delegated authority; (2) § 303.12(c)(4), which limits the Director's delegated authority to act on branch and relocation applications to instances where the applicant has a composite CAMEL rating of 3 or better, the applicant's management is rated 3 or better under that rating system, the applicant has a 3 or better Compliance rating, and the applicant has a 3 or better CRA rating, is being eliminated; and (3) § 303.12(c)(3), which limits the Director's delegated authority to instances where the applicant's income is positive over a certain time period, is being eliminated. The Director's delegated authority to act on branch and relocation applications will remain limited by the conditions set forth in § 303.12(c) which are not being amended (as previously denominated, paragraphs (c) (1), (2), (5), (6)).

In addition to the above, the Director's authority to act on branch and relocation applications will be limited by the following new provisions. Under the amended delegation, the Director may grant or deny branch and relocation applications only as follows: (1) The Director may approve but not deny applications where the applicant's composite CAMEL, Compliance, and CRA ratings are 1 or 2; (2) the Director may approve or deny where any one of the applicant's composite CAMEL, Compliance, or CRA ratings is 3 but none of the ratings are 4 or 5; and (3) The Director may deny but not approve where any one of the applicant's composite CAMEL, Compliance, or CRA ratings is 4 or 5.

The above limitations on the Director's delegated authority to act operate, for example, as follows: If an applicant seeks to relocate a branch and its composite CAMEL, Compliance, and CRA ratings are respectively 2–3–3, the Director may approve or deny the application (assuming of course that the other conditions to delegated authority have been met), but if the applicant's composite CAMEL, Compliance, and CRA ratings are respectively 3–3–4, the Director may deny but not approve the application. If the Director should determine that the latter application should be approved, the application would have to be acted on by the Board of Directors as the Director's delegated authority does not extend to approval in such an instance.

Where confirmed in writing by the Director, the appropriate regional director may act on branch and relocation applications under delegated authority pursuant to the same requisites and limitations applicable to the Director as described above. In addition, however, the regional director may only act if there is no comment protesting the application on CRA grounds by an organization other than a competing institution and any issues raised by any other comments are favorably resolved.

Lastly, two sections of Part 303 which presently refer to authority to approve are being amended to refer to authority to act. These amendments are necessary because of the change to the delegations of authority as discussed above.

The above changes to the delegations are being made in an effort to reduce the processing time involved in branch and relocation applications. The changes do not affect insured nonmember bank publication requirements or the public's right to protest any application. An applicant continues to have the same rights of reconsideration and appeal as prior to this amendment.

The amendments to the regulations are procedural in nature, i.e., the conditions set out in subparagraph (c) are not standards or criteria against which an application is to be measured to determine substantively whether the request is to be granted or denied. The restrictions on delegated authority are merely guideposts by which the Director of the Division of Bank Supervision and/or the regional director can determine who has the authority to act as to the application. The changes do not alter any of the rights or obligations of any applicant bank.

The amendments are being accomplished in final without opportunity for public comment on the basis of the above under authority of section 553(b)(A) of the Administrative Procedure Act which exempts from required publication for comment interperative rules, general statements of policy, and rules of agency practice and procedure. The amendments, which constitute nonsubstantive changes to FDIC's rules of practice and procedure, are being made immediately effective inasmuch as the requirement found in section 553(d) of the Administrative Procedure Act that substantive rules be published not less than 30 days prior to their effective date is inapplicable. As these amendments neither alter any existing nor create any new recordkeeping or reporting requirements, the Paperwork Reduction Act is inapplicable. Finally, the requirements of the Regulatory Flexibility Act are inapplicable.

List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Authority delegations, Bank deposit insurance, Banks, Banking.

For the reasons set out above, Part 303 of Title 12 of the Code of Federal Regulations is amended as set forth below.

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

1. The authority citation for Part 303 reads as follows:

Authority: Secs. 2(5), 2(6), 2(7)(j), 2(8), 2(9 "Seventh" and "Tenth"), 2(18), 2(19), Pub. L. No. 797, 64 Stat. 876, 881, 891, 893 as amended by Pub. L. No. 86–463, 74 Stat. 129; sec. 2, Pub. L. No. 87–827, 76 Stat. 953; Pub. L. No. 88–593, 78 Stat. 940; Pub. L. No. 89–79, 79 Stat. 244; sec. 1, Pub. L. No. 89–356, 80 Stat. 7; sec. 12(c), Pub. L. No. 89–485, 80 Stat. 242; sec. 3, Pub. L. No. 89–597, 80 Stat. 824; title II, secs. 201, 205, Pub. L. No. 89–695, 80 Stat. 1055; sec. 2(b), Pub. L. No. 90–505, 82 Stat. 856; secs. 6(c)(7), (12), (13), Pub. L. No. 95–369, 92 Stat. 616–620; title III, secs. 306, 309 and title VI, sec. 602, Pub. L. No. 95–630, 92 Stat. 3677, 3683 (12 U.S.C. 1815, 1816, 1817(j), 1818, 1819 "Seventh" and "Tenth", 1828, 1829); title I, sec. 108, Pub. L. No. 90–321, 82 Stat. 150 as amended by title IV, sec. 403, Pub. L. No. 93–495, 88 Stat. 1517 and title VI, sec. 608, Pub. L. No. 96–221, 94 Stat. 171 (15 U.S.C. 1607).

§ 303.11 [Amended]

2. Section 303.11(a)(7) is amended by striking "*Provided, however*" and everything following thereafter, striking the colon after the word "branch" and inserting a period.

§ 303.10. [Amended]

3. Section 303.10(a) is amended by striking the word "approved" and inserting in lieu thereof the words "acted upon."

4. Section 303.12(c) is amended by revising the introductory paragraph, removing paragraph (c)(7), reserving footnotes 4 and 10, and by revising paragraphs (c)(3) through (c)(6) to read as follows:

[4] [Reserved.]
[10] [Reserved.]

§ 303.12. Applications where authority is not delegated.

* * * * *

(c) *Conditions precedent to delegation to act on branch applications and relocations.* (Important: The requirements set forth in this paragraph (c) are procedural in nature only and should not be construed as standards or criteria which will be used in determining whether a specific application will be approved or denied.) Authority to act on branch applications (including initial or additional remote service facilities and foreign branches of

insured State nonmember banks) pursuant to § 303.11(a)(7) is delegated only where all the following requisites have been satisfied:

(1) * * *

(2) * * *

(3) Any financial arrangements which have been made in connection with the proposed branch [8] and which involve the applicant's directors, officers, major shareholders,[9] or their interests, are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties.

(4) The requirements of the National Historic Preservation Act, the National Environmental Policy Act, and the Community Reinvestment Act have been considered and favorably resolved, except that this requisite does not apply to applications to establish foreign branches.

(5) The authority of the Director of the Division of Bank Supervision is limited in accordance with the following: (i) the Director may approve but not deny any application if the applicant's Uniform Financial Institutions Rating System rating (composite CAMEL), *see* 1 FED. DEPOSIT INS. CORP. LAW, REG., RELATED ACTS (FDIC) 5079, Uniform Interagency Consumer Compliance Rating System rating (Compliance), *see* FED. DEPOSIT INS. CORP. LAW, REG., RELATED ACTS (FDIC) 5213, and Community Reinvestment Act ("CRA") rating are 1 or 2; (ii) the Director may approve or deny an application if any one of the applicant's composite CAMEL, Compliance, or CRA ratings is 3 but none of the ratings are 4 or 5; and (iii) the Director may deny, but not approve an application if any one of the applicant's composite CAMEL, Compliance, or CRA ratings is 4 or 5.

(6) Whenever the delegation by the Board of Directors to the appropriate regional director to act on branch and relocation applications as set forth in § 303.11(a) is confirmed in writing by the Director of the Division of Bank Supervision, the delegation is valid only if, in addition to the preceding requirements and limitations of this paragraph, there is no comment protesting the application on CRA grounds by an organization other than a competing institution and any issues raised by any other comments are favorably resolved.

* * * * *

[8] Including arrangements relating to fees, the acquisition of property, rentals, and construction contracts.

[9] The term "major shareholder" means any shareholder who directly or indirectly controls 5 percent or more of any class of the applicant's outstanding voting stock.

By Order of the Board of Directors, this 7th day of May, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-13473 Filed 5-17-84; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-CE-78-AD; Amdt. No. 39-4868]

Airworthiness Directives; Gulfstream Aerospace Corporation, Commander Division, Models 680T, 680V, 680W, and 681 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Gulfstream Aerospace Corporation (Aero Commander) Models 680T, 680V, 680W, and 681 airplanes. This AD requires modification of the landing gear emergency extension system by installing a larger blowdown bottle, installation of a stronger nose gear bungee spring, and changing the nose gear restrictor orifice. A gear-up landing occurred because the emergency system was incapable of lowering the landing gear after the hydraulic system failed. This action will preclude aircraft damage and possible occupant injury from this condition.

EFFECTIVE DATE: June 23, 1984.

Compliance: Required within next 100 hours' time-in-service.

ADDRESSES: Gulfstream Aerospace Service Bulletin (SB) 102A, dated September 1, 1983, applicable to this AD may be obtained from Gulfstream Aerospace Corporation, Wiley Post Airport, P.O. Box 22500, Oklahoma City, Oklahoma 73123. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Attention: Rules Docket No. 83-CE-78-AD.

FOR FURTHER INFORMATION CONTACT: Garry Sills, Airplane Certification Branch, ASW-150, FAA, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101; Telephone 817-877-2073 (FTS 734-2073).

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring modification of the landing gear emergency extension system on all Gulfstream Models 680T, 680V, 680W, and 681 airplanes not previously having incorporated Service Bulletin 102 or Service Bulletin 102A was published in the **Federal Register** on December 27, 1983 (48 FR 56960 and 56961). Investigation of a recent gear-up landing incident disclosed that the airplane had not been modified per the manufacturer's Service Bulletin No. 102 issued March 1, 1971. This bulletin and the modification recommended therein was developed by the manufacturer as a result of its findings during an investigation of an earlier incident of a failure of the emergency system to extend the landing gear. These findings indicated that the system should be modified by incorporation of a larger blowdown bottle, installation of a stronger nose gear bungee spring and changing the nost gear restrictor orifice. Accordingly, it issued Service Bulletin No. 102, dated March 1, 1971, containing instructions and recommendations that these modifications be incorporated on all in-service airplanes. The manufacturer has revised Service Bulletin 102, dated March 1, 1971, by issuing Service Bulletin 102A, dated September 1, 1983, which updated instructions to reflect the current part numbers and kit configuration required for the modification. The FAA found that Service Bulletin 102A should be made mandatory on those airplanes not having complied with Service Bulletin 102.

Since the condition described is likely to exist or develop in other Gulfstream Aerospace (Aero Commander) Models 680T, 680V, 680W, and 681 airplanes of the same design, the AD requires compliance with Service Bulletin 102A on those airplanes that have not been modified in accordance with Service Bulletin 102.

Interested persons have been afforded an opportunity to comment on the proposal. Three commenters submitted comments regarding the proposed AD. One commenter indicated that he had accomplished Service Bulletin 102 in 1971; however, he did not think that the service bulletin should be made mandatory by AD.

FAA's position: The FAA maintains that significant evidence supports the finding that the unmodified emergency extension system may not extend the landing gear if hydraulic power fails. Gulfstream Aerospace found this to be the case and published Service Bulletin 102 on March 1, 1971. Over the years, since the emergency extension system was originally approved, approach and

V_{MC} speeds of follow-on models have gradually increased. Also there is a possibility that the bungee assisting the gear extension may be decreasing in strength with time. Accordingly, an incident occurred wherein total hydraulic pressure was lost and the emergency system would not lower the gear, necessitating a gear up landing. In this case, the pump on one engine had failed and it then became necessary to feather the engine with the good pump.

The POH/AFM recommends start and shut down procedures and system checks which will detect a failed pump at engine shut down or start. If followed, the risk of the above occurrence is minimized. However, should the pilot not do this and lose the remaining good pump or should both pumps fail during one flight, the emergency system is required to lower the gear. Accordingly, a properly functioning emergency system is required by regulation and issuance of an AD to assure this is appropriate.

The second commenter is aware that the original emergency gear extension system is not adequate for the models specified in Service Bulletin 102 and supports issuance of the AD making Service Bulletins 102 or 102A mandatory.

FAA's position: FAA is in agreement.

The third commenter was aware of the gear-up incident caused by a failed hydraulic system and inadequate emergency extension system. The commenter strongly supported incorporating Service Bulletins 102/102A into an AD.

FAA's comments: FAA is in agreement.

No comments were received regarding the FAA determination of the related cost to the public.

Accordingly, this rule will be adopted as proposed without change.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Gulfstream Aerospace Corporation (Aero Commander): Applies to Models 680T, 680V, and 680W (S/N's 1473 through 1850) and Model 681 (S/N's 6001 through 6017, 6020 through 6038, 6040 through 6042, and 6048) airplanes certificated in any category unless Service Bulletin 102 dated March 1, 1971, or Service Bulletin 102A dated September 1, 1983, has previously been accomplished.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD unless already accomplished.

To assure proper operation of the emergency landing gear extension system, accomplish the following:

(a) Modify the emergency landing gear extension system in accordance with Gulfstream Aerospace Corporation, Commander Division, Service Bulletin 102A, dated September 1, 1983.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent method of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, ASW-150, FAA, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101.

This amendment becomes effective on June 23, 1984.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958 as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and § 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

Note.—The FAA has determined that this regulation only involves 181 airplanes at an approximate one-time cost of $673 for each aircraft or a total fleet cost of $121,813. Few, if any, small entities under the definition of the Regulatory Flexibility Act, will operate more than one of the affected airplanes and the cost thereof to anyone will not be a significant amount. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket.

Issued in Kansas City, Missouri, on May 9, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84-13409 Filed 5-17-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ASW-14]

Revocation of Transition Area; Columbus, TX

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment will revoke the transition area at Columbus, TX. The intended effect of the amendment is to cancel controlled airspace for aircraft executing a standard instrument approach procedure (SIAP) to Columbus Airport. This amendment is necessary since the Columbus Airport has been closed and a requirement no longer exists for a 700-foot transition area to provide protection for aircraft operating to/from this airport.

EFFECTIVE DATE: August 30, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877-2630.

SUPPLEMENTARY INFORMATION:

History

On March 29, 1984, a notice of proposed rulemaking was published in the **Federal Register** (49 FR 12280) stating that the Federal Aviation Administration proposed to revoke the Columbus, TX, transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes, this amendment is that proposed in the notice.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator, Subpart G of Part 71, § 71.181, of the Federal Aviation Regulations (14 CFR Part 71) as republished in FAA Order 7400.6, Compilation of Regulations, dated January 3, 1984, is amended, effective 0901 GMT, August 30, 1984, as follows:

Columbus, TX—[Revoked]

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); sec. 6(c), 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.61(c))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on May 10, 1984.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-13408 Filed 5-17-84; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 4

Organization, Procedures, and Rules of Practice; Correction

AGENCY: Federal Trade Commission.

ACTION: Correction.

SUMMARY: This document corrects an amendment to the Commission's Rules of Practice published in the Federal Register on Monday, May 14, 1984. The amendatory language incorrectly replaced all of § 4.11(c), instead of just the first three sentences.

DATE: This correction is effective May 18, 1984.

FOR FURTHER INFORMATION CONTACT: Alexandra Buek, Office of General Counsel, Federal Trade Commission, 6th St. and Pa. Ave., NW., Washington, D.C. 20580. (202) 523-3906.

SUPPLEMENTARY INFORMATION: In FR Doc. 84-12785, appearing in the Federal Register issue for Monday, May 14, 1984, 49 FR 20278, the first paragraph after the "List of Subjects in 16 CFR Part 4" is corrected to read as follows:

Accordingly, the Commission amends 16 CFR 4.11(c) by revising the first three sentences, with the remainder of § 4.11(c) to remain unchanged, to read as follows:

Emily H. Rock,

Secretary.

[FR Doc. 84-13460 Filed 5-17-84; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Application and Closing Out of Offsetting Long and Short Positions

Correction

In FR Doc. 84-12387 beginning on page 19969 in the issue of Friday, May 11, 1984, make the following corrections:

1. On the same page, column one, **EFFECTIVE DATE** should read June 11, 1984.

2. On the same page, column two, footnote 1, line two, "2589-90" should read "35289-90".

3. On the same page, column three, paragraph two, line fourteen, "rebound" should read "redound".

4. On the same page, column three, footnote 4, line three, "§ 1046" should read "§ 1.46".

5. On page 19970, column one, second complete paragraph, line seven, "carrier" should read "carried".

6. On page 19971, column two, line one, "advisory" should read "advisor".

7. On the same page, column three, the first indented paragraph, line five, "of" should read "or".

8. On the same page, column three, footnote 19, line one, "19 CFR 17.00(b)" should read "17 CFR 17.00(b)".

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM81-20-000]

Delegations of the Commission's Authority to the Director of Electric Power Commission

May 4, 1984.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document inserts a phrase which was unintentionally omitted from the final regulatory text of 18 CFR 375.308 (pp), delegating to the Office of Electric Power Regulation (OEPR) the authority to pass upon uncontested applications for certification of the qualifying status of cogeneration facilities. This regulation is being corrected to include OEPR's authority regarding the qualifying status of small power production facilities. This document also corrects the misdesignation of several paragraphs in § 375.308.

EFFECTIVE DATE: May 4, 1984.

FOR FURTHER INFORMATION CONTACT: James Hoecker, Deputy Assistant General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION: The preamble to Order No. 147, issued May 22, 1981 (46 FR 29700, June 3, 1981), indicates the Commission's intention to delegate to the Director of OEPR the authority to pass upon uncontested applications for certifications of the qualifying status of both cogeneration facilities and small power production facilities. The rule, as issued and printed at 18 CFR 375.308 (pp) (46 FR 29703), omits reference to small power production facilities among those facilities for which the Director may grant qualifying status. This document, therefore, corrects the omission by inserting the words "and for small power production facilities" between the words "facilities" and "under" in 18 CFR 375.308 (pp).

PART 375—[AMENDED]

§ 375.308 [Corrected]

Order No. 147 created paragraphs (ll) through (pp) of § 375.308. This designation was incorrect and resulted in two paragraphs (ll) in 18 CFR 375.308. The Commission therefore redesignates paragraphs (ll) through (pp) of § 375.308, established in Order No. 147, as (mm) through (rr) respectively, including revised paragraph (pp). It should be noted that the unofficial reporter of the Commission's Regulations, *Federal Energy Guidelines* published by the Commerce Clearing House, made this correction in their publication. *Federal Energy Guidelines: FERC Statutes and Regulations* ¶ 28,538.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-12688 Filed 5-17-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Government National Mortgage Association

24 CFR Part 221

[Docket No. N-84-1388; FR-1961]

Low-Cost and Moderate Income Mortgage Insurance; Agreement Between the Government National Mortgage Association and the Assistant Secretary for Housing—Federal Housing Commissioner

AGENCY: Assistant Secretary for Housing-Federal Housing Commissioner, HUD; Government National Mortgage Association, HUD.

ACTION: Rule-related notice.

SUMMARY: On February 10, 1984, the President of the Government National Mortgage Association and the Assistant Secretary for Housing-Federal Housing Commissioner entered into an agreement to amend the contracts of insurance for mortgages which are insured under section 221 of the

National Housing Act under a commitment to insure issued on or before November 30, 1983 and held or acquired by GNMA as mortgagee on or after April 1, 1984. The agreement terminates GNMA's section 221(g)(4) option of assigning current mortgages to HUD after twenty years. On or after April 1, 1984 neither GNMA, nor its successors or assigns, may assign any such mortgage to the Secretary of HUD under section 221(g)(4). The Department is publishing this document as a general notice, because the amended contracts will affect future purchasers of GNMA-held mortgages.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Robert P. Kalish, GNMA, Office of Mortgage Finance, Room 6204, (202) 755-5593; Conrad Egan, Office of Multifamily Housing Management, Room 6164, (202) 755-5216; Alan Kappeler, Office of Single Family Housing, Room 9278, (202) 755-3046; Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 221(g)(4) of the National Housing Act (the Act), as originally enacted, provided that any mortgage which is insured under section 221 and which is not in default at the end of twenty years from the date the mortgage was finally endorsed for insurance may be assigned to HUD. Section 221(g)(4) was implemented by regulations in 24 CFR 221.255 for low cost homes and in 24 CFR 221.770-221.790 for multifamily housing projects. The regulations provide that the original credit instrument and the mortgage securing it must be assigned, transferred and delivered to HUD within one year following the twentieth anniversary of final endorsement in order for the Section 221(g)(4) assignment to be valid. The Act and HUD's regulations provide further that upon assignment, HUD will issue to the mortgagee ten year debentures at the Federal interest rate and in an amount equal to the unpaid principal balance of the mortgage plus accrued interest as of the date of the assignment.

Section 409 of the Housing and Urban-Rural Recovery Act of 1983 removed the authority of the Department to accept an assignment of mortgage under Section 221(g)(4) of the Act unless a commitment to insure the mortgage had been issued on or before November 30, 1983. For a notice explaining this change, *see*, 48 FR 54571. (December 5, 1983). For a rule implementing the change, *see*, 49 FR 12693, 12697 (March 30, 1984).

The language of 24 CFR 221.251 states that, with certain exceptions, the provisions of the contract of insurance which appear in 24 CFR Part 203, Subpart B apply to single family mortgages insured under section 221 of the Act. These provisions of Subpart B and the applicable sections of the Act are made binding by 24 CFR 203.257 to the same extent as if HUD and the mortgagees had executed a contract including these provisions and sections. Similarly, 24 CFR 221.751 states that, with certain exceptions, the provisions of the contract of insurance which appear in 24 CFR Part 207, Subpart B apply to multifamily mortgages insured under section 221 of the Act. These provisions of Subpart B and the applicable sections of the Act are made binding by 24 CFR 207.254(c) to the same extent as if HUD and the mortgagees had executed a contract including these provisions and sections. Therefore, the extinguishment of the Section 221(g)(4) assignment option for mortgages for which the commitment to insure was issued after November 30, 1983, is contractually binding on HUD and the mortgagees of such mortgages.

Under sections 305(h) and (j) of the act (12 U.S.C. 1720(h) and (j)), GNMA as mortgagee has purchased and for a time will continue to acquire mortgages insured under section 221 under FHA commitments to insure issued on or before November 30, 1983. To enable GNMA to sell its portfolio of current section 221 mortgages without causing the payment of claims under the insurance contract under section 221(g)(4), GNMA has agreed that neither GNMA, nor its successors or assigns, will exercise the mortgagee's section 221(g)(4) twentieth anniversary assignment option on or after April 1, 1984. To implement a Secretarial directive, the President of GNMA and the Assistant Secretary for Housing-Federal Housing Commissioner entered into an Agreement effective on February 10, 1984 which terminates the mortgagee's section 221(g)(4) twentieth anniversary assignment option for GNMA and its successors and assigns. In the event GNMA elects on or after April 1, 1984 to sell section 221 mortgages for which this assignment option has never been exercised, the mortgages will be sold without the section 221(g)(4) assignment option.

Thus, for all section 221 low cost home mortgages which are sold by GNMA on or after April 1, 1984, the following language shall be included in the assignment by GNMA to a mortgage purchaser:

An Agreement effective on February 10, 1984 between the President of the Government National Mortgage Association and the Department of Housing and Urban Development's Assistant Secretary for Housing-Federal Housing Commissioner amends the contract of insurance for mortgages insured under section 221 of the National Housing Act (12 U.S.C. 1715*l*) pursuant to a commitment to insure issued on or before November 30, 1983, and held or acquired by GNMA as mortgagee on or after April 1, 1984, so as to delete therefrom and extinguish therein the mortgagee's section 221(g)(4) twentieth anniversary assignment option as recited in 24 CFR 211.255. Pursuant to said Agreement this mortgage is not, at any time on or after April 1, 1984, assignable to the Secretary of Housing and Urban Development under section 221(g)(4). The assignee agrees by its acceptance of this assignment to the deletion and extinguishment of said twentieth anniversary assignment option and irrevocably waives, for itself and its successors or assigns, any right that it may have to contest such deletions and extinguishment.

For all section 221 multifamily housing project mortgages which are sold by GNMA on or after April 1, 1984, the following language shall be included in the assignment by GNMA to a mortgage purchaser:

An Agreement effective on February 10, 1984 between the President of the Government National Mortgage Association and the Department of Housing and Urban Development's Assistant Secretary for Housing—Federal Housing Commissioner amends the contract of insurance for each mortgage insured under section 221 of the National Housing Act (12 U.S.C. 1715*l*) pursuant to a commitment to insure issued on or before November 30, 1983, and held or acquired by GNMA as mortgagee on or after April 1, 1984, so as to delete therefrom and extinguish therein the mortgagee's section 221(g)(4) twentieth anniversary assignment option as recited in 24 CFR 221.770, 221.775, 221.780, 221.785 and 221.790. Pursuant to this Agreement this mortgage is not, at any time on or after April 1, 1984, assignable to the Secretary of Housing and Urban Development under section 221(g)(4). The assignee agrees by its acceptance of this assignment to the deletion and extinguishment of said twentieth anniversary assignment option and irrevocably waives, for itself and its successors or assigns, any right that it may have to contest such deletions and extinguishment.

Dated: May 9, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

Warren Lasko,

Executive Vice President, Government National Mortgage Association.

[FR Doc. 84-13412 Filed 5-17-84; 8:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-84-1167; FR-1983]

Community Development Block Grants; Eligible Activities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements recent statutory amendments respecting Community Development Block Grants eligible activities under title I of the Housing and Community Development Act of 1974. The amendments add the rehabilitation or development of housing assisted under section 17 of the United States Housing Act of 1937 as an eligible activity under title I.

EFFECTIVE DATE: June 26, 1984.

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Entitlement Cities Division, Office of Block Grant Assistance, Room 7282, telephone number (202) 755-9267 (This is not a toll-free number.) Written communications to Mr. Broughman should be sent to the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The final rule implements section 302(a) of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. No. 98-181 (the 1983 Act). This section adds an additional category of eligible activities to section 105(a) of the Housing and Community Development Act of 1974. That category of activities is "the rehabilitation or development of housing assisted under section 17 of the United States Housing Act of 1937" (the 1937 Act). Section 17 was enacted into law in section 301 of the 1983 Act.

The final rule adds this category to the statement of eligible activities for the Community Development Block Grant (CDBG) program at 24 CFR 570.201 (for development activities), 24 CFR 570.202 (for rehabilitation activities), and 24 CFR 570.206 (for general administrative costs).

The amendment would permit the use of CDBG funds for the construction or rehabilitation of housing assisted under section 17 of the 1937 Act. Those construction and rehabilitation costs that may be financed with CDBG funds under § 570.201(m) and § 570.202 include all costs eligible to be paid with funds provided under section 17 (i.e., those hard and soft costs for rehabilitation that may be financed with rental rehabilitation grant funds under 24 CFR 511.10(g); and those eligible uses of grant funds such as acquisition, construction, and related soft costs that may be financed with housing development grant funds under that program). In addition, staff and related activity delivery costs incurred by a grantee or a recipient of State CDBG funds in the direct implementation of section 17 assisted construction or rehabilitation, while not eligible costs under section 17, may be paid with CDBG funds under 24 CFR 570.201(m) or 570.202. General administrative expenses, such as overall management, preparing a section 17 application, and the costs of public consultation, while not eligible costs under section 17, may be paid with CDBG funds under 24 CFR 570.206 whether or not the grantee or recipient of State funds also uses CDBG funds for section 17 assisted activities under 24 CFR 570.201(m) or 570.202. This represents an exception to the general provision of 24 CFR 570.206, that general administrative costs with respect to activities are only eligible where the activities are assisted in whole or in part with Title I funds. As with other uses of CDBG funds under 24 CFR 570.206, however, general administrative costs for section 17 programs are costs subject to the 20 percent limit on CDBG planning and administrative expenditures.

The amendment, for the first time, permits the use of CDBG funds by units of general local government directly for the construction of new housing. Previously such activities could be conducted only be neighborhood-based nonprofit organizations, section 301(d) Small Business Investment Companies, and local development corporations under section 105(a)(15) of the Housing and Community Development Act of 1974, or under the provisions of 24 CFR Part 42, Subpart I.

As a matter of policy, the Department submits most of its rulemakings to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that good cause exists for publishing this document as a final rule. Public procedure is believed to be unnecessary because each of the revisions to existing HUD regulations included in this document is being made solely for the purpose of implementing new statutory direction from Congress where the revised law is self-executing.

This rule does not constitute a major rule as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

In accordance with 5 U.S.C. 605(b)(the Regulatory Flexibility Act), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule merely implements statutory amendments and conforms regulatory provisions to statute, without imposing any new administrative or economic burdens on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (49 FR 15902) under Executive Order 12291 and the Regulatory Flexibility Act.

The catalog of Federal Domestic Assistance program numbers are:

14.218, Community Development Block Grants/Entitlement Grants;

14.219, Community Development Block Grants/Small Cities Program;

14.228, Community Development Block Grants/State's Program;

14.229, Community Development Block Grants/Secretary's Discretionary Fund

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: Housing and community development, Loan programs: Housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

PART 570—[AMENDED]

Accordingly, the Department amends 24 CFR Part 570 as follows:

1. § 570.201 is amended to add a new paragraph (m) to read as follows:

§ 570.201 Basic eligible activities.

* * * * *

(m) *Construction housing.* CDBG funds may be used for the construction of housing assisted under section 17 of the United States Housing Act of 1937.

2. § 570.202(b) is amended to revise paragraph (b)(9) and add a new paragraph (b)(10) to read as follows:

§570 202 Eligible rehabilitation and preservation activities.

* * * * *

(b) * * *

(9) Rehabilitation services, such as rehabilitation counseling, energy auditing, preparation of work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in rehabilitation activities authorized under this section, under section 312 of the Housing Act of 1964, as amended, under section 819 of the Act, or under section 17 of the United States Housing Act of 1937;

(10) Assistance for the rehabilitation of housing under section 17 of the United States Housing Act of 1937.

3. § 570.206 is amended to add a new paragraph (h) to read as follows:

§ 570.206 Eligible administrative costs.

* * * * *

(h) *Section 17 of the United States Housing Act of 1937.* Reasonable costs equivalent to those described in paragraphs (a), (b), (d), (e), and (f) of this section for overall program development, management, coordination, monitoring, and evaluation, and similar costs associated with management of the Rental Rehabilitation and Housing Development programs authorized under section 17 of the United States Housing Act of 1937, whether or not such activities are otherwise financed in whole or in part with funds provided under this part.

Authority: Sec. 302(a), Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5305); Sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

Dated: May 14, 1984.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. Filed 84-13413 Filed 5-17-84; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 79-58]

Effectively Connected Income of Foreign Corporations—Stock or Securities Attributable to U.S. Office

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulation.

SUMMARY: This document provides a final regulation under section 864(c)(2) of the Internal Revenue Code of 1954, relating to the definition of U.S. source periodical income effectively connected with the conduct of a banking, financing, or similar business within the United States by a foreign corporation or nonresident alien individual. The regulation provides guidance to foreign banks with U.S. branch offices and to officers and employees of the Internal Revenue Service with respect to taxation of U.S. source interest and dividend income of foreign banks.

EFFECTIVE DATE: This regulation is effective for income includible in taxable years beginning on or after June 18, 1984, except that income received or accrued under a loan made by the taxpayer on or before May 18, 1984, or pursuant to a written binding commitment entered into on or before May 18, 1984, shall be governed by prior regulations.

FOR FURTHER INFORMATION CONTACT: Mary Frances Pearson of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3289, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 1982, the **Federal Register** published a proposed amendment to the Income Tax Regulations (26 CFR Part 1) under section 864(c)(2) of the Internal Revenue Code of 1954 (47 FR 49981). The amendment was proposed to conform the regulations to the legislative history of section 864(c)(2) and to prevent foreign banks from avoiding all U.S. tax on interest income generated by their U.S. branches. After consideration of all comments regarding the proposed amendment, that amendment is adopted as revised by this Treasury decision.

Discussion

Nonresident alien individuals and foreign corporations are subject to U.S. tax under section 1 or section 11 on net income effectively connected with the conduct of a trade or business in the United States. Section 864(c) provides two tests for determining whether U.S. source fixed or determinable income and capital gains are effectively connected with the conduct of a U.S. trade or business. One test is whether the income is derived from assets used or held for use in the U.S. trade or business. The second test is whether the activities of the U.S. trade or business are a material factor in the realization of the income.

Section 1.864-4(c)(5) of existing regulations provides special rules for determining whether U.S. source fixed or determinable income and capital gains are effectively connected with a U.S. banking, financing, or similar business. Under § 1.864-4(c)(5)(ii), if the stock or security giving rise to the U.S. source income, gain, or loss is attributable to the U.S. office and the stock or security meets the criteria set forth in § 1.864(c)(5)(ii) (*a*) or (*b*), the income, gain, or loss is effectively connected with the U.S. banking, financing, or similar business. Currently, a stock or security (including a note and other evidences of indebtedness) is attributable to a U.S. office only if (1) the U.S. office actively participates in the activities required to arrange the acquisition of the stock or security, and (2) the stock or security is held by or for the U.S. office and is recorded on its books and records.

The requirement that the stock or security be "booked" in the U.S. office in order for the income, gain, or loss arising from it to be effectively connected with the U.S. trade or business could be considered to be contrary to the legislative history of section 864(c)(2). H.R. Rep. No. 1450, 89th Cong., 2d Sess. 15 (1966); S. Rep. No. 1707, 89th Cong., 2d Sess. 19 (1966). This "booking" rule also provides a method for avoiding all U.S. tax on income generated solely by the efforts of the U.S. office in some circumstances.

The proposed amendment to § 1.864-4(c)(5)(iii) published on November 4, 1982, would continue to require the U.S. office to be an active participant in soliciting, negotiating, or performing other activities necessary to acquire the stock or security in order for the resulting income, gain, or loss to be effectively connected with the U.S. banking business. However, whether the stock or security is "booked" in the U.S.

office would no longer be a determinative factor, but would be one factor to be considered in determining if the U.S. office was an active participant.

The amendment to the regulations has been modified in response to comments. One comment asked what importance would be placed on "booking" as a factor in determining whether a stock or security was attributable to a U.S. office. To clarify that the office in which a stock or security is "booked" is not controlling, that factor has been added to those of limited importance listed in §1.864–4(c)(5)(iii)(*b*).

Other comments suggested that the standard for attribution of stock or securities to a U.S. office had been changed by the deletion of the word "only" before the active participation test. No such change was intended and the active participation of the U.S. office continues to be required in order for the stock or security to be attributed to the U.S. office. To avoid confusion, the word "only" has been reinserted in the final regulation.

Several comments also requested guidance on the level of activities of the U.S. office that would constitute "active participation". To clarify that incidental activities would not result in attribution of the stock or security to the U.S. office, the final regulations require active and material participation in the activities necessary to acquire the stock or security.

In response to comments requesting guidance through an example and asking if the conclusion of Revenue Ruling 75–253, 1975–1 C.B. 203, would be applied to similar facts involving U.S. source income, an example has been added to § 1.864–4(c)(5)(vii) based generally on the fact situation in Rev. Rul. 75–253.

Two comments were critical of the proposed effective date to the extent the amendment would be applied to income arising from loans made by the taxpayer prior to publication of the notice of proposed rulemaking, as the terms of such loans were negotiated on the basis of the regulation then in effect. The effective date of the final regulation has been modified so that the amendment will not apply to income from loans made by the taxpayer on or before May 18, 1984, or pursuant to a written binding commitment entered into on or before May 18, 1984. The amendment is effective for other income includible by the taxpayer in taxable years beginning on or after June 18, 1984.

Two comments requested that the regulation adopt a rule that if stock or securities are booked in the U.S. office, they will be attributed to the U.S. office. This suggestion was not adopted, as the rationale for the active and material participation test is that a sufficient nexus must exist between the income and the activities of the U.S. office in order for the income to be effectively connected with a U.S trade or business and to be taxed on a net basis.

One comment requested assurance that the amendment would not affect the tax treatment of U.S. source income of foreign banks that have U.S. representative offices but do not have a banking, financing, or similar business in the United States. As § 1.864–4(c)(5) only applies to U.S. source income of a nonresident alien individual or foreign corporation engaged in a banking, financing, or similar business in the United States, no modification of the amendment is necessary.

Comments relating to other regulation provisions were also received. These suggested changes were outside the scope of the notice of proposed rulemaking and, therefore, were not adopted in this Treasury decision.

Regulatory Flexibility Act and Executive Order 12291

The amendment to the regulations proposed by the notice of proposed rulemaking published on November 4, 1982, and adopted by this Treasury decision is interpretative. Therefore, the Regulatory Flexibility Act (5 U.S.C. chapter 6) did not apply to the notice of proposed rulemaking. The Commissioner of Internal Revenue has determined that this final regulation is not subject to Executive Order 12291.

Drafting Information

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

List of Subjects in 26 CFR §§ 1.861–1 Through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, Sources of income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Section 1.864–4 is amended by revising paragraph (c)(5)(iii) and by adding Example (5) immediately after Example (4) of paragraph (c)(5)(vii), the revised and added provisions to read as follows:

§ 1.864–4 U.S. source income effectively connected with U.S. business.

* * * * *

(c) *Fixed or determinable income and capital gains*— * * *

(5) *Special rules relating to banking, financing, or similar business activity*— * * *

(iii) *Stocks or securities attributable to U.S. office*—(*a*) *In general.* For purposes of paragraph (c)(5)(ii) of this section, a stock or security shall be deemed to be attributable to a U.S. office only if such office actively and materially participated in soliciting, negotiating, or performing other activities required to arrange the acquisition of the stock or security. The U.S. office need not have been the only active participant in arranging the acquisition of the stock or security.

(*b*) *Exceptions.* A stock or security shall not be deemed to be attributable to a U.S. office merely because such office conducts one or more of the following activities:

(*1*) Collects or accounts for the dividends, interest, gain, or loss from such stock or security,

(*2*) Exercises general supervision over the activities of the persons directly responsible for carrying on the activities described in paragraph (c)(5)(iii)(*a*) of this section,

(*3*) Performs merely clerical functions incident to the acquisition of such stock or security,

(*4*) Exercises final approval over the execution of the acquisition of such stock or security, or

(*5*) Holds such stock or security in the United States or records such stock or security on its books or records as having been acquired by such office or for its account.

(*c*) *Effective date.* This paragrpah (c)(5)(iii) shall be effective for income includible in taxable years beginning on or after June 18, 1984, except that 26 CFR 1.864–4 (c)(5)(iii) as it appeared in the Code of Federal Regulations revised as of April 1, 1983, shall apply to income received or accured under a loan made by the taxpayer on or before May 18, 1984, or pursuant to a written binding

commitment entered into on or before May 18, 1984.

* * * * *

(vii) *Illustrations.* * * *

Example (5). Foreign corporation *Y*, which is created under the laws of foreign country X and is engaged in the active conduct of a banking business in country X and other foreign countries, has a branch, *C*, in the United States that is engaged in the active conduct of a banking business in the United States, within the meaning of paragraph (c)(5)(i) of this section, during the taxable year. *C* handles the negotiation and acquisition of securities involved in loans made by *Y* to U.S. persons. *C* also presents interest coupons with respect to such securities for payment, presents all such securities for payment at maturity, and maintains compete photocopy files with respect to such securities. The activities of the office of *Y* in country X with respect to these securities consist of giving pro forma approval of the loans, storing the original securities, and recording the securities on the books of the country X office. Pursuant to paragraphs (c)(5)(ii) and (c)(5)(iii) of this section, the U.S. source interest income received by *Y* during the taxable year on these securities is effectively connected for such year with the active conduct by *Y* of a banking business in the United States.

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

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 18, 1983.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84-13485 Filed 5-17-84; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Labor-Management Relations

29 CFR Part 220

Airline Employee Protection Program; Rehire Program; Display of Office of Management and Budget Control Numbers Assigned to Collection of Information Contained in the Regulations

AGENCY: Office of Labor-Management Relations Services, Labor.

ACTION: Technical amendment.

SUMMARY: This amendment sets forth the information collection control numbers assigned by the Director of the Office of Management and Budget (OMB) for regulations to implement the first-right-of-hire provisions of the Airline Deregulation Act of 1978 (ADA), the Rehire Program. The Paperwork Reduction Act requires display of an OMB control number on all information collection provisions.

DATE: This technical amendment is effective May 17, 1984.

FOR FURTHER INFORMATION CONTACT: Jeffrey Salzman, Airline Employee Protection Program, Division of Employee Protections, Room N5633, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION: Part 220 of Title 29 of the Code of Federal Regulations provides for the collection of certain information by the Office of Labor-Management Relations Services of the Department of Labor.

Under the provisions of the Paperwork Reduction Act of 1980 [Pub. L. 96-5111], OMB has assigned the following control number to the information collection requirements in 29 CFR Part 220 listed below.

Text of Amendment

PART 220—[AMENDED]

Following the text of each section cited in the following table, add parenthetically the OMB number listed:

Regulatory citation	OMB No.
29 CFR 220.23, 220.25(a), 220.27(a), and 220.28(a)	1214-0002

Signed at Washington, D.C. this 14th day of May 1984.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 84-13393 Filed 5-17-84; 8:45 am]

BILLING CODE 4510-29-M

29 CFR Part 220

Airline Employee Protection Program Rehire Program; Effective Date of the Rehire Program

AGENCY: Office of Labor-Management Relations Services, Labor.

ACTION: Notice of effective date of the rehire program.

SUMMARY: This notice sets forth the effective date for regulations to implement the first-right-of-hire provisions of the Airline Deregulation Act of 1978 (ADA), the Rehire Program. Final regulations for the Rehire Program were submitted to Congress on November 17, 1984, pursuant to section 43(f)(3) of the ADA, which provided that the regulations would become effective 60 legislative days after submission to Congress. Section 43(f)(4) of the ADA defines a legislative day as a day when both House of Congress are in session. The regulations were published in the **Federal Register**, vol. 48, No. 226 (November 22, 1984), pp. 52854-52865.

EFFECTIVE DATE: May 17, 1984.

FOR FURTHER INFORMATION CONTACT: Jeffrey Salzman, Airline Employee Protection Program, Division of Employee Protections, Room N5633, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION: Final regulations for the Rehire Program were submitted to Congress on November 17, 1984, pursuant to section 43(f)(3) of the ADA, which provided that the regulations would become effective 60 legislative days after submission to Congress. Section 43(f)(4) of the ADA defines a legislative day as a day when both Houses of Congress are in session.

The regulations were published in the **Federal Register**, vol. 48, No. 226 (November 22, 1984), pp. 52854-52865.

Signed at Washington, D.C. this 14th day of May 1984.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 84-13394 Filed 5-17-84; 8:45 am]

BILLING CODE 4510-29-M

29 CFR Part 220

Airline Employee Protection Program

AGENCY: Office of Labor-Management Relations Services, Labor.

ACTION: Technical amendment.

SUMMARY: This document amends the Rehire Program regulations to change references from the Assistant Secretary for Labor-Management Relations and the Labor-Management Services Administration (LMSA) to the Deputy Under Secretary for Labor-Management Relations and Cooperative Programs and Office of Labor-Management Relations Services. This technical amendment is made to conform the regulations to an organizational change within the Department of Labor in which the Airline Employee Protection Program and its parent organizations, the Division of Employee Protections and the Office of Labor-Management Relations Services, are moved from LMSA to the Office of the Secretary under the Deputy Under Secretary for Labor-Management Relations and Cooperative Programs. This reorganization is being carried out pursuant to Secretary's Order 3-84.

EFFECTIVE DATE: This amendment is incorporated into the Rehire Program regulations, 29 CFR Part 220, and becomes effective when that part

becomes effective, on May 17, 1984. The effective date of 29 CFR Part 220 is 60 legislative days from the date of submission of the rules to Congress, which occurred on November 17, 1984. The Department is simultaneously publishing a notice of the actual effective date.

FOR FURTHER INFORMATION CONTACT: Jeffrey Salzman, Airline Employee Protection Program, Division of Employee Protections, Room N5633, U.S. Division of Employee Protections, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION: This document amends the Rehire Program regulations to change references from the Assistant Secretary for Labor-Management Relations and the Labor-Management Services Administration (LMSA) to the Deputy Under Secretary for Labor-Management Relations and Cooperative Programs and Office of Labor-Management Relations Services. This technical amendment is made to conform the regulations to an organizational change within the Department of Labor in which the Airline Employee Protection Program and its parent organizations, the Division of Employee Protections and the Office of Labor-Management Relations Services, are moved from LMSA to the Office of the Secretary under the Deputy Under Secretary for Labor-Management Relations and Cooperative Program. This reorganization is being carried out pursuant to Secretary's Order 3–84.

Publication in Final

Since these revisions involve only procedural changes necessitated by agency reorganization and internal procedures and practices, notice of proposed rulemaking and public comment on this rule is found to be unnecessary. Furthermore, the Secretary has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. Therefore this amendment to 29 CFR 220.26 is adopted as a final rule without notice and comment shall be effective at the same time that the rest of 29 CFR Part 220 becomes effective. See 5 U.S.C. 553(b) and 553(d).

Classification

This rule is not classified as a "rule" under Executive Order 12291 because it is a rule relating to agency organization, management, or personnel. See section 1(a)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1165, 5 U.S.C. 601 et. seq., pertaining to regulatory flexibility analysis do not apply to this rule. See 5 U.S.C. 601(2).

Paperwork Reduction Act

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h), since it does not itself require the collection of information.

List of Subjects in 29 CFR Part 220

Administrative practice and procedure, Air carriers, Employment.

Accordingly, 29 CFR Part 220 is amended as set forth below.

Signed at Washington, D.C. on this 14th day of May 1984.

Raymond J. Donovan,

Secretary of Labor.

PART 220—AIRLINE EMPLOYEE PROTECTION PROGRAM; REHIRE PROGRAM

1. The authority citation for Part 220 reads as follows:

Authority: Sec. 43(f) of the Airline Deregulation Act of 1978, Pub. L. 95–504, 92 Stat. 1750–1753 [49 U.S.C. 1552], Secretary's Order No. 1–79, 44 FR 13093, March 9, 1979; Secretary's Order No. 3–84, 49 FR 20578.

§ 220.04 [Amended]

2. 29 CFR Part 220 is amended by removing the words "Assistant Secretary for Labor-Management Relations" and "Labor-Management Services Adminstration," inserting in their place, respectively, "Deputy Under Secretary for Labor-Management Relations and Cooperative Programs" and "Office of Labor-Management Relations Services" in the following place: 29 CFR 220.04.

[FR Doc. 84–13384 Filed 5–17–84; 8:45 am]

BILLING CODE 4510–29–M

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29 CFR Part 220

Airline Employee Protection Program; Technical Amendments

AGENCY: Office of Labor-Management Relations Services, Labor.

ACTION: Technical amendments.

SUMMARY: This document amends one section of the Rehire Program regulations to change the office where appeals from airline employees concerning their protected status are filed. This amendment is made in order to conform the regulations to reflect a reorganization within the Department of Labor. Under Secretary's Order 3–84, the Airline Employee Protection Program, along with its parent unit, the Office of Labor-Management Relations Services, was transferred from the Labor-Management Relations Services Administration to the Office of the Under Secretary. The new organization is headed by the Deputy Under Secretary for Labor-Management Relations and Cooperative Programs. Because of this organizational change, the Department has determined that appeals from airline employees of carrier decisions on protected status shall be filed directly with the Airline Employee Protection Program within the Office of Labor-Management Relations Services; and all activity in connection with processing such appeals will be carried out within that office. In addition, this document updates the annotations to Appendix I—U.S. Carriers Certificated as of October 23, 1978. Appendix II of Part 220 is removed.

EFFECTIVE DATE: This amendment is incorporated into the Rehire Program regulations, 29 CFR Part 220, and becomes effective when that part becomes effective, on May 17, 1984. The effective date of 29 CFR Part 220 is 60 legislative days from the date of submission of the rules to Congress, which occurred on November 17, 1984. The Department is simultaneously publishing a notice of the actual effective date.

FOR FURTHER INFORMATION CONTACT: Jeffrey Salzman, Airline Employee Protection Program, Division of Employee Protections, Room N5633, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION: A reorganization of the Labor-Management Services Administration (LMSA), pursuant to Secretary's Order 3–84, has moved the Airline Employee Protection Program and its parent organizations, the Divison of Employee Protections and the Office of Labor-Management Relations Services, from LMSA to the Office of the Under Secretary. The Office of Labor-Management Relations Services will be under the Deputy Under Secretary for Labor-Management Relations and Cooperative Programs. This reorganization requires that the Department change the offices for receipt and processing of protected status appeals from airline employees. The Department has determined that appeals from airline employees of carrier decisions on protected status

shall be filed directly with the Airline Employee Protection Program within the Office of Labor-Management Relations Services; and all activity in connection with processing such appeals will be carried out within that office. The Airline Employee Protection Program has been the principal office for carrying out the Secretary's responsibilities for the Rehire Program. There is no substantive change in the appeal procedure.

The annotations to the Appendix I list of carriers certificated as of October 23, 1978, serve to indicate the current operating status of such carriers. This amendment adds one omitted item and updates several other entries.

Appendix II—Area Offices of the Labor-Management Services Administration is deleted as a result of the organizational changes referred to above.

Publication in Final

Since these revisions involve only procedural changes necessitated by agency reorganization and internal procedures and practices, notice of proposed rulemaking and public comment on this rule is found to be unnecessary. Furthermore, the Secretary has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. Therefore this amendment to 29 CFR 220.26 is adopted as a final rule without notice and comment shall be effective at the same time that the rest of 29 CFR Part 220 becomes effective. See 5 U.S.C. 553(b) and 553(d).

Classification

This rule is not classified as a "rule" under Executive Order 12291 because it is a rule relating to agency organization, management, or personnel. See section 1(a)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1165, 5 U.S.C. 601 et. seq., pertaining to regulatory flexibility analysis do not apply to this rule. See 5 U.S.C. 601(2).

Paperwork Reduction Act

This rule is not subject to Section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h), since it does not itself require the collection of information.

List of Subjects in 29 CFR Part 220

Area offices of the Labor-Management Services Administration, Administrative practice and procedure, Air carriers, Employment.

Accordingly, 29 CFR Part 220 is amended as set forth below.

Signed at Washington, D.C. on this 14th day of May 1984.

Raymond J. Donovan,

Secretary of Labor.

PART 220—AIRLINE EMPLOYEE PROTECTION PROGRAM; REHIRE PROGRAM

1. The authority citation for Part 220 reads as follows:

Authority: Sec. 43(f) of the Airline Deregulation Act of 1978, Pub. L. 95–504, 92 Stat. 1750–1753 (49 U.S.C. 1552), Secretary's Order No. 1–79, 44 FR 13093 March 9, 1979; Secretary's Order No. 3–84, 49 FR 20578 (May 15, 1984).

2. In 29 CFR Part 220, Subpart C, § 220.26 is revised to read as follows:

§ 220.26 Appeals to the Secretary.

(a) If the employee disagrees with the carrier's final determination under § 220.25 that he or she is not a protected employee within the meaning of this part, the employee (or his or her designated representative with express authorization) may appeal such determination to the Secretary within 60 calendar days of the carrier's final decision under § 220.25(c)(3) or the date when such decision was required.

(b) An appeal must be written, dated, and signed by the employee. It must set forth:

(1) The full name, address, and telephone number of the employee;

(2) The full name and address of the carrier making the determination; the full name of the individual(s) who made the determination for the carrier and the date of that determination;

(3) A summary of the pertinent events and circumstances concerning the employee's status and the basis of the disagreement, including the original date of hire, date of all periods of furlough, leave, or termination, and copies of relevant documents; and

(4) Such other information as may be required by the Secretary.

(c) Any appeal shall be filed with the Airline Employee Protection Program, Division of Employee Protections, Room N5633, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(d)(1) Upon receipt of an appeal, the Secretary will request information from the parties or conduct such other investigation as may be required.

(2) Upon review of the entire record, the Secretary shall determine *either* that

(i) The employee qualifies for protected status, and the Secretary shall add the employee's name to the list of protected employees and so notify the parties; or

(ii) The employee does not qualify for protected status and so notify the parties.

2. Appendix I of Part 220 is amended by substituting the following entries in place of the corresponding existing entries:

[Annotations reflect operating status as of May 7, 1984.]

* * * * *

11. Braniff Airways

* * * * *

13. Chicago Helicopter Airways, Inc.

* * * * *

43. Texas International Airlines, Inc.[9]

4. Appendix II of Part 220 is hereby removed.

[FR Doc. 84–13392 Filed 5–1–84; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine Agave Arizonica (Arizona Agave) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Agave arizonica* H. S. Gentry and J. H. Weber (Arizona agave), to be an endangered species under the authority contained in the Endangered Species Act of 1973, as amended. Critical habitat is not designated. The species is a native plant of Arizona and occurs in the Tonto National Forest. Less than 100 plants total are known to exist and they are threatened by collectors for horticultural use, by cattle and deer browsing, and by a lack of protection planning. This action implements protection provided by the Endangered Species Act of 1973, as amended.

DATE: The effective date of this rule is June 18, 1984.

ADDRESS: The complete file for this rule is available for inspection during normal business hours, by appointment, at the U.S. Fish and Wildlife Service, Region 2, 421 Gold Avenue, SW., Albuquerque, New Mexico 87103, (505/766–3972).

[9] Merged into Continental Air Lines, Inc.

FOR FURTHER INFORMATION CONTACT:
Dr. Russell Kologiski, U.S. Fish and Wildlife Service, Office of Endangered Species, P.O. Box 1306, Albuquerque, New Mexico 87103, (505/766–3972).

SUPPLEMENTARY INFORMATION: .

Background

Agave arizonica was first discovered by J. H. Houzenga, M. J. Hazlett, and J. H. Weber in the New River Mountains of Arizona. Drs. H. S. Gentry and J. H. Weber described this species in the Cactus and Succulent Journal in 1970 (Gentry, 1970). This member of the Agave family has leaves growing from the base in a somewhat flattened globular form, about 30.7 centimeters high and 41 centimeters broad. The slender, branching flowering stalk is 2.7–3.6 meters tall. The flowers are small, pale yellow, and jar-shaped.

This species is endemic to a very small area in the creek bottoms and granite hills near the summit of the New River Mountains in central Arizona at an elevation of 915 to 1,830 meters. The surrounding vegetation is a chaparral association that is transitional between oak-juniper woodland and mountain mahogany-oak scrub. The soil is mixed gravelly loam from Mazatzal quartzite. The continued existence of this plant is threatened by cattle and deer browsing, insect damage, and potential collecting for commercial trade. Originally, 19 populations of *Agave arizonica* were known; now only 13 populations are known to be extant.

On July 1, 1975, the Service published a notice of review in the **Federal Register** (40 FR 27823) indicating its acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act (Section 4(b)(3)(A) now), and of its intention thereby to review the status of the plant taxa included therein. The Arizona agave was included in the 1975 notice of review. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) which included *Agave arizonica* as an endangered species. On December 10, 1979, the Service withdrew all outstanding proposals not finalized within 2 years of their first publication, as required by the 1978 Amendments to the Act. On August 26, 1980, the Service received a status report prepared by four researchers at the Museum of Northern Arizona. This report documented the status of, and threats to, the species. On December 15, 1980, the Service published a reised notice for plants (45 FR 82479 and included *Agave arizonica* in category 1. Category 1 is comprised of taxa for which the Service presently has sufficient biological information to support their being listed as endangered or threatened species. The Service published a proposed rule to list *Agave arizonica* as an endangered species in the May 20, 1983, **Federal Register** (48 FR 22757).

Summary of Comments and Recommendations

In the May 20, 1983, proposed rule (48 FR 22757) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Arizona Republic*, Phoenix, Arizona, on June 15, 1983, which invited general public comment. A total of 13 written comments received on the proposal, together with responses, are summarized and discussed below. No public hearing was requested or held.

Comments were received supporting the listing of the Arizona agave from the Arizona Game and Fish Department; Northern Arizona Council of Governments; Dr. H. S. Gentry, Arizona Desert Botanical Garden; Dr. C. T. Mason, Jr., Curator, University of Arizona Herbarium; Dr. T. R. Van Devender, Arizona Sonora Desert Museum; the Cactus and Succulent Society of America; and two private individuals. The International Union for the Conservation of Nature and Natural Resources (IUCN) commented that they have included *Agave arizonica* in "The IUCN Plant Red Data Book."

The Arizona Natural Heritage Program supported the listing of *Agave arizonica;* however, they noted ambiguity in the proposal concerning which historically known populations were still extant. This discrepancy has been clarified in this final rule.

The Arizona Commission of Agriculture and Horticulture assured the Service of the adequacy of the Arizona Native Plant Law (ARS 901.B) for protection of the Arizona agave; however, they indicated manpower problems associated with the enforcement of the law.

The Forest Service expressed doubt that *Agave arizonica* is a good species, indicating that it appears in some respects to be intermediate between two other species in the genus, apparently sets seed infrequently, and may be of recent hybrid origin. The Service agrees that the taxonomic status of *Agave arizonica* remains somewhat unclear. However, it is accepted as a species by specialists in the group and appears to have maintained itself as a distinct entity since its discovery and description. It should be noted that many plant species are known or believed to be of hybrid origin. Such species are to be distinguished from the sporadic hybrid individuals or introgressive "hybrid swarms" that may occur in areas of overlap between the ranges of related species. *Agave arizonica* appears to occur as a series of very localized, isolated populations scattered over an area some 65 miles in its greatest extent. Although it may have originated through hybridization, it appears to now be a distinct and recognizable species. If further research indicates otherwise, the Service will consider removing the species from the list of endangered and threatened plants.

The Forest Service also commented that the populations with low numbers of individuals have never been adequately surveyed or counted. Dr. H. S. Gentry and associates at the Desert Botanical Garden have seen 13 of the 19 historical populations and they have found 1 to 7 plants per population. The type locality was among those reconfirmed and contained new individuals (6 subadult plants and 6 suckering or adjacent seedlings). The Desert Botanical Garden staff confirmed that 4 of the 19 populations have disappeared (Gentry, pers. comm., 1983). the two remaining historical populations have not been recently reconfirmed or proven extirpated.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Agave arizonica* should be classified as an endangered species. Procedures found at Section 4(a) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments—see August 8, 1983, **Federal Register**, 48 FR 36062) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. These factors and their application to *Agave arizonica* H. S. Gentry and J. H. Weber (Arizona agave) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Nineteen populations were historically known in

an area in the Tonto National Forest. Thirteen populations are now known to exist, with one to seven plants per population (Gentry, pers. comm., 1983). Fewer than 100 plants total are known to exist, and any loss of habitat would greatly endanger this species. Land use in this area consists of permitted cattle grazing. Grazing may have a negative impact upon the species' habitat as well as direct impacts upon the species. Proper protection and management plans for the plants are needed. Grazing and over-collection along with other factors may have contributed to the loss of populations and individuals.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization of this succulent (similar to cacti) species for the purpose of cultivation in private rock gardens and for commercial trade threatens this species. The botanist for the Forest Service Southwest Region identified the collecting threat to this species and has suggested that the Forest Service prohibit the taking of all agaves in the west central portion of the Tonto National Forest in the range of *Agave arizonica*. However, taking prohibitions on plants are difficult to enforce in the extremely rugged backcountry of the Tonto National Forest. Adequate personnel are not available to patrol the area and to stop all unauthorized taking. Thus, the populations like many other cacti and agaves remain threatened by desert succulent collectors. The road into the main habitat area has been closed to limit access, which has afforded it some protection; however, *Agave arizonica* is a slowly reproducing plant which could not readily repopulate an area from which individuals were removed (Fletcher, 1978; Phillips *et al.*, 1980). These threats make the species especially vulnerable since the total number of plants is so low (less than 100 plants total).

C. *Disease or predation.* Grazing occurs in the habitat of *Agave arizonica*. Cattle and deer browse this species and may play a role in its poor reproductive success by eating the flower stalks before the capsules ripen. Rabbits, squirrels, and insects also have damaged these plants. Studies should be undertaken to determine possible additional grazing impacts, appropriate stocking rates, and any necessary protective measures for *Agave arizonica* to ensure the species' continued survival (Fletcher, 1978; Phillips *et al.*, 1980).

D. *The inadequacy of existing regulatory mechanisms. Agave arizonica* is protected by the Arizona Native Plant Law, A.R.S., Chapter 7, Section 3–901, which specifically prohibits collection of *Agave arizonica*, except for scientific or educational purposes under permit. This provision bars only collection, however, and not incidental destruction or habitat modification. It does not affect Federal actions directly. Violation constitutes only a class-three misdemeanor, the lowest grade of misdemeanor recognized under State law. This law is difficult to enforce, especially in the rugged mountainous habitat of this plant. There is some Federal protection from taking of *Agave arizonica* by Forest Service regulations (36 CFR 261.9(b)). The Endangered Species Act would complement the existing protection and offer additional protection for the species by restricting interstate and international commerce, by substantially increasing penalties for violations, and by providing the protection of Section 7 of the Act.

E. *Other natural or manmade factors affecting its continued existence.* Any human pressure on this species may increase the possibility of its small populations going extinct through natural fluctuations. Disturbances are likely to have a severe impact on this species as the distribution is restricted, the populations are very small, the reproductive potential is low, and few young plants have been observed in the wild. Less than 100 plants are known to exist, total.

The careful assessment of the best scientific information available, as well as the best assessment of the past, present, and future threats faced by this species were considered in preparing this rule. Based on this evaluation, the decision has been made to list *Agave arizonica* as endangered without critical habitat. Endangered status seems appropriate because of the past decline and the current threats to the species.

Because only 13 populations of the agave with 1 to 7 individual plants are currently known, and because of the threat of collecting, threatened status would not be adequate.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act of 1973, as amended, requires that, to the maximum extent prudent and determinable the Secretary should designate critical habitat at the time a species is determined to be endangered or threatened. Critical habitat is not being designated for *Agave arizonica* at this time since it would not be prudent due to the potential for illegal taking. The Arizona agave is a highly desirable plant for desert rock gardens because of its attractive globular rosette (basally attached leaves) and 2.7–3.5 meter tall inflorescence (flowering stalk). Publishing detailed location maps (i.e., critical habitat maps published in the **Federal Register**) of the *Agave arizonica* populations would make the species more vulnerable to taking by collectors. Although the removal and reduction to possession of listed plants from Federal lands is prohibited by the Act, this prohibition would be difficult to enforce, especially in backcountry areas, where *Agave arizonica* occurs. therefore, it would not be prudent to designate critical habitat for *Agave arizonica*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practice. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for land acquisition and cooperation with the States and requires that recovery actions, which are initiated by the Service following listing, be carried out for all listed species. The protection required by Federal agencies, and the taking prohibitions, are discussed, in part, below.

Section 7(a) of the Act, as amended, required Fedeal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29989; June 29, 1983). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species. When a species is finally listed, Section 7(a)(2) requires federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species. If a proposed action may affect a listed species, the Federal agency must enter into consultation with the Service.

All populations of *Agave arizonica* occur on Forest Service land. The Forest Service's present regulations prohibit removing, destroying, or damaging any plant that is classified as a threatened, endangered, rare, or unique species (36 CFR 261.9), and are consistent with the purposes of the Act.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62,

and 17.63 set forth a series of general trade prohibitions and exceptions which apply to all endangered plant species. With respect to *Agave arizonica*, all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving listed species under certain circumstances. It is anticipated that few permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to possession endangered plant species from areas under Federal jurisdiction. The new prohibition now applies to *Agave arizonica*. Permits for exceptions to this prohibition are available through Section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417) and these will be finalized following public comment. *Agave arizonica* occurs only on Forest Service lands. It is anticipated that few taking permits for the species will ever be requested.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235–1903).

On July 29, 1983, *Agave arizonica* was placed on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Permits are required from both the importing and exporting countries before international shipment of such species may occur. Only scientific trade which will benefit the species' survival in the wild is allowed. International trade of this species is minimal. The Service will review this species to determine whether it should be placed upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through Section 8(A)(e) of the Act, and whether it should be considered for other appropriate international agreements.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References

Fletcher, Reggie. 1978. Status report: *Agave arizonica* Gentry and J.H. Weber. U.S. Forest Service, Region 3, Albuquerque, NM. 3 pp.

Gentry, H.S. 1970. Two New Agaves in Arizona. Cactus and Succulent Journal 42(5):223–225.

Kearney, T.H. and R.H. Peebles. 1951. *Arizona Flora*. University of California Press, Berkeley, California.

Phillips, B.G., A.M. Phillips, J. Mazzoni, and E.M. Peterson. 1980. Status Report on *Agave arizonica*. U.S. Fish and Wildlife Service, Office of Endangered Species, Albuquerque, NM.

Authors

The authors of this final rule are Sandra Limerick and Margaret Olwell, Endangered Species Staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103. The editor is E. LaVerne Smith, Office of Endangered Species, Washington, D.C. 20240. Status information and a preliminary package were provided under contract to the Service by Dr. Barbara G. Phillips, Dr. Arthur M. Phillips III, Jill Mazzoni, and Elaine M. Peterson, Museum of Northern Arizona, Route 4, Box 720, Flagstaff, Arizona.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the Arizona agave in alphabetical order under Agavaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
•	•	•	•	•	•	
AGAVACEAE—Agave family						
Agave arizonica	Arizona agave	U.S.A. (AZ).	E	NA	NA	

Dated: May 2, 1984.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-13451 Filed 5-17-84 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 31222-246]

Atlantic Sea Scallop Fishery; Inseason Adjustment

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of continuation of inseason adjustment.

SUMMARY: NOAA continues the temporary adjustment of its meat count and shell height standards for the Atlantic sea scallop fishery. The present meat count standard of 35 meats per pound (minimum shell height of 3⅜ inches), is continued through September 30, 1984. Continuation of this standard will eliminate inconsistencies in management measures imposed on Canadian and U.S. sea scallop fishermen that would adversely affect the U.S. domestic fishery if the standard reverted to a 30 meat count. The adjustment allows U.S. fishermen to harvest sea scallops at sizes smaller than would be allowed in the absence of the continued adjustment.

EFFECTIVE DATES: May 15, 1984, through September 30, 1984.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, Scallop Management Coordinator, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930. Telephone (617) 281–3600.

SUPPLEMENTARY INFORMATION: The regulations (50 CFR Part 650) implementing the Fishery Management Plan for Atlantic Sea Scallops (FMP) (47 FR 35990, August 18, 1982) require the Director, Northeast Region, National Marine Fisheries Service (Regional Director), to review the status of the Atlantic sea scallop resource on a continuing basis. The regulations specify management standards (maximum meat count and shell heights) but provide procedures and criteria for temporarily adjusting these standards.

In the spring of 1983, the Regional Director, following consultation with the New England Fishery Management Council (Council), implemented the findings of his first annual report by temporarily adjusting the management standards to allow harvest of sea scallops at a 35 meat count (3⅜ inch shell height) through December 31, 1983 (48 FR 23434, May 25, 1983).

The fishery regulations at 50 CFR 650.22(b)(5) require the Regional Director to review adjustments of the standards and permit the regional Director to renew a temporary adjustment upon making a finding consistent with the criteria for initial adjustment specified in 50 CFR 650.22(c). The criteria are: (1) The objective of the scallop FMP would be achieved more readily and be better served through an adjustment of the prevailing standards; (2) the recommended alteration in the standards would not reduce expected catch over the following year by more than 5% from that which would have been expected under the prevailing standard; (3) the recommended standards for meat count and shell height are consistent with each other; and (4) inconsistencies exist in the management measures applied to sea scallop stocks in areas harvested by both domestic and foreign fishermen, and those inconsistencies provide foreign fishermen with an advantage over domestic fishermen which can be demonstrated to affect adversely the domestic fishery. These criteria were met in December 1983, and the 35 meat count adjustment was therefore continued through May 15, 1984 (48 FR 57496, December 30, 1983). The December 1983 adjustment was issued with the expectation that the Council would produce an amendment modifying the meat count management measure in the FMP to provide more protection for small sea scallops, and that agreement with Canada to impose regulations consistent with that amendment would occur before May 15, 1984. The Council has prepared an amendment which should provide greater conservation benefits, through a minimum meat weight of 11.3 grams, than would the 30 meat count (averaged meat count for the group sampled) scheduled to take effect under the FMP. However, full public review for some potentially controversial aspects of the amendment, and negotiations thereafter with Canada to implement consistent measures, will require at least four months.

The Regional Director has found that the criteria specified in 50 CFR 650.22(c) continue to be met and has therefore determined to renew the management standards adjustment to permit the harvest of sea scallops at a 35 meat count (3⅜ inch shell height) during the period from May 15, 1984, through September 30, 1984.

Other Matters

This action is taken under the authority of 50 CFR Part 650, and is taken in compliance with Executive Order 12291.

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

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: May 15, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84–13521 Filed 5–15–84; 4:50 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 49, No. 98
Friday, May 18, 1984

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1004, 1036, 1049, 1062, 1064, and 1065

[Docket No. AO-160-A63 et al.]

Milk in the Middle Atlantic and Certain Other Marketing Areas; Emergency Decision on Proposed Amendments to Marketing Agreements and to Orders

7 CFR Part	Marketing area	AO-Numbers
1004	Middle Atlantic	AO-160-A63.
1036	Eastern Ohio-Western Pennsylvania.	AO-179-A47
1049	Indiana	AO-319-A32.
1062	St. Louis-Ozarks	AO-10-A55.
1064	Greater Kansas City	AO-23-A54.
1065	Nebraska-Western Iowa	AO-86-A41.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts on an emergency basis amendments to the provisions constituting the Advertising and Promotion Programs in the Middle Atlantic, Eastern Ohio-Western Pennsylvania, Indiana, St. Louis-Ozarks, Greater Kansas City, and Nebraska-Western Iowa milk orders. One of the changes would provide a fixed advertising and promotion assessment rate of 10 cents per hundredweight in each of the orders. Another change would provide that requests for refunds of the advertising and promotion assessment paid by producers would be honored by having the market administrator send such refunds to the National Board operating under the Dairy Research and Promotion Order (a new national mandatory program to promote sales of dairy products), or to a "qualified" state or regional promotion, research, or nutrition education program designated by the producer. These two changes would remain in effect for the duration of the Dairy Research and Promotion Order.

A third change in each of the orders, except the Middle Atlantic order, would change the manner in which the advertising and promotion assessments are collected under the order. Rather than having the market administrator deduct the monies from the pool, handlers would be required to withhold such assessments from payments to producers and remit those monies to the market administrator for use in the order's advertising and promotion program. Thus, the uniform prices to producers announced in the five orders would not be reduced by the advertising and promotion assessment rate. This would be a permanent change in these orders.

These changes are based on evidence presented at a public hearing held on April 18, 1984, in Alexandria, Virginia. The hearing was requested by cooperative associations representing a majority of the producers who supply milk to these markets.

The adopted order changes are necessary to reflect current marketing conditions and to assure orderly marketing. The changes will align certain advertising and promotion provisions of the orders with the provisions of the Dairy Research and Promotion Order, which became fully effective on May 1, 1984. Because of the limited time available to complete the rulemaking procedures, a recommended decision and the opportunity to file exceptions thereto have been omitted. For each market, the proposed amended advertising and promotion program must be approved by at least two-thirds of the producers in the market before the proposed amended program can become effective.

The hearing in this proceeding reopened an earlier proceeding on proposed amendments to add advertising and promotion provisions to the Ohio Valley order. A separate document will deal with the Ohio Valley order and the issues related thereto.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-4829.

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

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended orders will promote more orderly marketing of milk by producers and regulated handlers by providing that certain provisions of the advertising and promotion programs in the orders will not be in conflict with the provisions of the Dairy Research and Promotion Order, a national program for dairy product promotion, research, and nutrition education as provided for in Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983.

Prior documents in this proceeding:

Notice of Hearing: Issued April 3, 1984; published April 5, 1984 (49 FR 13541).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Alexandria, Virginia, on April 18, 1984. Notice of such hearing was issued on April 3, 1984, and published April 5, 1984 (49 FR 13541).

Interested parties were given until April 26, 1984, to file post-hearing briefs on the proposals as published in the notice of hearing and on whether these proposals should be considered on an expedited basis.

The material issues on the record of the hearing relate to:

1. Assessment rates for advertising and promotion programs.
2. Collection of advertising and promotion program assessments by market administrators.
3. Treatment of requests for refunds of advertising and promotion assessments.
4. Conforming changes.
5. Omission of a recommended decision and the opportunity to file exceptions thereto.

Findings and Conclusions

The following findings and conclusions on the material issues are

based on evidence presented at the hearing and the record thereof:

1. Assessment Rates for Advertising and Promotion Programs

The advertising and promotion (A and P) programs under the orders being considered should be amended to provide a uniform assessment rate of 10 cents per hundredweight of producer milk. The uniform rate in the six orders (Middle Atlantic (Order 4); Eastern Ohio-Western Pennsylvania (Order 36); Indiana (Order 49); St. Louis-Ozarks (Order 62); Greater Kansas City (Order 64); and Nebraska-Western Iowa (Order 65)) should remain in effect as long as the National Dairy Research and Promotion Order (hereafter the "National Program") remains operative. If the National Program is terminated, the current order provisions should again become operative. The order provisions currently result in a 10-cent assessment in five of the orders, and a 14-cent assessment in the Middle Atlantic order. The current assessment rate in each order is based on a formula that fixes the assessment at a specific percentage of the simple average of the "weighted average prices" (used in computing producer blend prices) for a fixed period of previous months. The resulting assessment rate is appicable for a 12-month period.

The change to a uniform assessment rate of 10 cents per hundredweight was proposed by Pennmarva Dairymen's Federation, Inc. (comprised of Inter-State Milk Producers' Cooperative; Capitol Milk Producers Cooperative, Inc.; Maryland and Virginia Milk Producers Association, Inc.; Dairymen, Inc.—Middle Atlantic Division; and The Valley of Virginia Cooperative Milk Producers Association), for Order 4, by Milk Marketing Inc., for Orders 36 and 49, and by Mid-America Dairymen, Inc., for Orders 62, 64, and 65. Representatives for the proponents testified that a 10-cent assessment rate is needed to assure that the Federal Order A and P programs have an assessment rate equal to the maximum credit allowable under the National Program for a producer's contributions to a "qualified" state or regional dairy product promotion, research, or nutrition education program. Supporting testimony by a spokesman for the National Milk Producers Federation, an organization of dairy farmer cooperatives, indicated that a uniform rate would simplify the accounting procedures for market administrators, handlers and producers, and also the National Board that will administer the National Program. There was no opposition to the proposals.

The proposed changes should be adopted. At current price levels, this change would affect only the assessment rate in the Middle Atlantic order. If the change is not made in that order, producers in the Middle Atlantic market would be subject to a withholding rate of 14 cents per hundredweight under the Federal order and 15 cents per hundredweight under the National Program. However, they could receive a maximum credit under the National Program for contributions to the order program of only 10 cents per hundredweight for milk marketed on and after June 1, 1984, if the Order 4 A and P program is recognized by the Secretary as a "qualified" program. The end result would be a total contribution for advertising and promotion support of 19 cents per hundredweight for the Middle Atlantic order producers who choose to participate in the order program. Producers for other nearby orders would be contributing a mandatory total of only 15 cents per hundredweight to advertising and promotion activities.

An advertising and promotion assessment rate of 10 cents per hundredweight will provide assurance in the future that producer support of the Federal order A and P programs will be at the maximum level recognized under the National Program. Under the formulas currently provided in the orders, the assessment rate could increase or decrease if future blend price levels for milk change. If the assessment levels decreased due to a decline in order blend prices, producers would not be supporting their local A and P programs at the maximum level that the National Program recognizes. On the other hand, blend price increases in the future could increase the assessment rate above the maximum contribution recognized in the National Program.

The record is clear that producers wish to have an assessment rate equal to the maximum level of participation recognized in the National Program. Support for this approach was unanimous. The proposals to provide a fixed 10-cent per hundredweight assessment for advertising and promotion programs under the six orders are adopted.

Except for the Middle Atlantic order, the proposed rate changes should become effective with respect to milk marketed on and after May 1, 1984. For the Middle Atlantic order, the changes should become effective with respect to milk marketed on and after June 1, 1984. This is because for May 1984 the National Program will recognize participation in a qualified state or regional program at up to 15 cents per hundredweight. Thus, the current Middle Atlantic assessment of 14 cents per hundredweight does not exceed the maximum level of participation recognized by the National Program for May 1984.

2. Collection of Advertising and Promotion Program Assessments by Market Administrators

The Eastern Ohio-Western Pennsylvania, Indiana, St. Louis-Ozarks, Greater Kansas City, and Nebraska-Western Iowa orders should be amended to provide that handlers deduct the advertising and promotion assessment from payments to producers and remit those monies to the market administrator for use in the order's A and P program. If a mandatory state advertising and promotion program requires the handler to deduct an assessment from payments to producers and remit those monies directly to the state, the handler would reduce (up to the assessment level provided in the Federal order) the amount due the market administrator for the A and P program accordingly. This change in the method of obtaining A and P funds was not proposed for the Middle Atlantic order.

Currently, the orders provide that the market administrator each month will deduct from the total pooled value of producer milk the amount of money determined by multiplying the A and P assessment rate by the total hundredweights of producer milk in the pool. This occurs in the computation of the uniform prices for each order. Thus, the uniform prices announced each month are lower (by the A and P assessment rate) than they otherwise would be.

Cooperative associations representing a majority of the producers supplying the markets involved in this issue proposed the change being adopted. This change for Orders 36 and 49 was proposed by Milk Marketing Inc. (MMI), and for Orders 62, 64, and 65 by Mid-America Dairymen, Inc., (Mid-Am).

The Mid-Am spokesman urged that the St. Louis-Ozarks, Greater Kansas City, and Nebraska-Western Iowa orders be changed so that handlers paying producers would deduct the A and P assessment and forward the money to the market administrator by the 15th day of the month. He expressed the view that in practice the market administrator would merely deduct the producer monies due him from the handler when computing the handler's settlement with the producer-settlement

fund. However, in its brief, Mid-Am proposed a due date of the 20th of the month, rather than the 15th, in order to accommodate computation of amounts to be remitted to mandatory State programs. This change to the 20th was supported by AMPI in its post-hearing brief.

Mid-Am's witness stated that adoption of the proposal would result in the announced blend price being 10 cents higher in the three orders. He maintained that the higher blend price would have a desirable effect on those producers under A and P programs who are intermingled with producers shipping to Federal order markets that do not have an A and P program under the order. He noted for the record several other nearby orders that do not include A and P programs.

The spokesman claimed that announced blend prices are very important in such areas because producers compared prices between the orders involved. He held the view that adoption of their proposal would result in a 10-cent per hundredweight improvement in intermarket price alignment from the point of view of producers under the A and P programs.

A representative of Associated Milk Producers, Inc. (AMPI) supported adoption of the proposals by Mid-Am, although he indicated a preference for simply suspending the deduction for funding the local advertising and promotion programs. A suspension, he suggested, should be effective for the duration of the National dairy research and promotion program. The AMPI spokesman also urged that the market administrator "observe and enforce payment to the local agency of the 10 cents" with respect to Grade B milk or manufacturing grade milk. It was acknowledged that the Federal milk order neither prices nor pools such milk.

A spokesman for MMI testified that the cooperative also wished to have the A and P assessment under Orders 36 and 49 deducted from producer paychecks by handlers paying producers. The money so withheld would be remitted by the handlers to the market administrator for use under the A and P program. The proposal by the witness would provide that the total dollar value fo the A and P assessments be sent to the market administrator, who in turn would make any required payments, up to 10 cents per hundredweight, to states to cover mandatory state advertising and promotion programs. Dairymen, Inc., supported the proposal with respect to Order 49. Specific dates for remitting the A and P assessment to the market administrator were not proposed for Orders 36 and 49.

Also, a representative of the National Milk Producers Federation expressed support for requiring handlers that pay producers to remit the A and P assessment to the market administrator as opposed to having the market administrator deduct the assessment in computing the uniform price. He claimed that such a modification of the Federal order programs would provide the same collection mechanism used for most other "qualified" promotion programs under the National Program. He held that this would prevent confusion within market order areas and would simplify the interaction of the Federal order programs and the National Program.

The five orders involved in this issue should be amended so that the A and P funds are not deducted when making the uniform price computation. The real concern of producers in this regard was that the announced uniform prices should not reflect the A and P rates. The principal concern relates to the comparability of announced uniform prices between adjacent or nearby Federal order markets where producers for those order markets are intermingled. The record indicates that producers tend to view the announced uniform prices in orders that have A and P programs as being lower than the announced uniform prices in orders that do not have A and P programs. This is so, apparently, in spite of the fact that the Federal order A and P programs are voluntary; i.e., producers not desiring to participate may request a refund of the A and P deduction. Adopting the proposed change would address these concerns expressed by producers. It also is noted that there was no opposition to the proposals.

A suggestion made at the hearing to suspend the current order provisions that provide for the market administrator to deduct the A and P monies when computing the uniform price should not be adopted. Since other amendments to the orders are required, it is more appropriate to also amend them in this regard.

Another suggestion that the market administrator observe and enforce payment of the A and P rate to the local agency with respect to Grade B or manufacturing grade milk is not adopted. Since orders do not price and pool such milk, the suggested requirement is outside the scope of the order program.

Providing for handlers to deduct the A and P monies from payments to producers will change the mechanics involved in collecting those funds. Currently, the market administrator collects from the pool an amount of money equal to the A and P rate multiplied by the total hundredweights of producer milk. He then refunds the withheld monies to those producers who request it and disburses the remaining funds as the order requires. This would no longer be the case under the provisions adopted herein.

As provided, the handler who pays producers will be required to deduct from such payments to each producer an amount equal to that producer's hundredweights of producer milk multiplied by the effective rate for funding the A and P program. However, it also is provided that in making the deduction, a handler will credit the amount so computed for each producer by any amount remitted by the handler on behalf of the producer to a mandatory A and P program authorized by State law is a "qualified" program under the National Program. Such credit would be limited to the amount computed as each producer's contribution to the Federal order A and P program. This is reasonable, since such payments on behalf of producers in support of a qualified mandatory State program would be credited up to 10 cents per hundredweight against the 15-cent per hundredweight deduction from payments to producers required by the National Program.

Only those assessments paid by a handler on behalf of producers to a qualified mandatory state program should be recognized as a credit against the order's A and P assessment. Any payments to other programs should be handled in the provisions of the order that deal with requests by producers to have their assessments to the order's A and P program refunded.

If assessments for qualified mandatory State programs are not handled as described above, multiple assessments against payments to producers would result. For example, if a handler were required to remit the total A and P assessment to the market administrator without such credits, the mandatory State program participation would have to be treated as a refund request also. In fact, that is the why it has been handled under these orders. Now, with the advent of the National Program, an additional deduction by handlers is required, which will further complicate the mechanics involved. Thus, it is more straightforward to recognize assessments to qualified mandatory State programs through a credit against the Federal order A and P assessment.

In this regard, there is a conflict between the Agricultural Marketing Agreement Act of 1937, as amended (AMAA), and the provisions of the Dairy Research and Promotion Order. The AMAA provides that credits may be granted where a mandatory checkoff is required under the authority of any State law. However, if a mandatory State program is not a qualified program, then any assessments paid to such a program would not be creditable against the 15-cent deduction for research and promotion required by the National Program. The National Program recognizes participation in *qualified* mandatory State programs only, while the AMAA is not so restrictive. In view of this difference, the Federal order A and P provisions should follow the approach taken in the National Program. This is consistent with the basic purpose of this proceeding, which is to align the Federal order A and P provisions with the National Program. Also, with regard to this issue, it is the handler who pays the producers that should remit State-mandated assessments for qualified programs to the states. To require the handler to remit those monies to the market administrator could be contrary to the law in the State or States involved.

It is necessary to establish a date by which handlers must remit the A and P assessments to the market administrators. The record is silent in this regard concerning the Eastern Ohio-Western Pennsylvania and Indiana orders. Thus, it is concluded that in those two orders the due date should be the date that payments to producers are due, which is the 18th day of the month following the month in which the milk was marketed.

In the other three orders, the proponent cooperative proposed initially that the A and P assessments be remitted by the handlers to the market administrators by the 15th day of the month. In its brief, however, as noted earlier, the cooperative proposed the 20th day of the month as the due date.

This latter date was proposed in order to accommodate some State A and P programs where mandatory checkoffs are computed on a percentage of the producer's value of milk. In such cases, the checkoff cannot be computed until the producer's milk value is determined. Thus, the 20th should accommodate that situation and it is adopted.

3. Treatment of Requests for Refunds of Advertising and Promotion Assessments

The six orders should be amended to provide that a producer's requests for refunds will be honored by sending that producer's assessment to either the National Program or to any State or regional promotion, research or nutrition education program "qualified" under the National Program that the producer designates to receive the assessment. There would be no change in any of the orders concerning the frequency of such refund requests or their duration. However, the market administrators would pay the monies for requested refunds to the designated qualified program by the last day of the month following the month in which the milk was marketed.

Under the current orders, each producer may request a refund of the A and P assessment equal to the amount of such producer's contribution. This provision is consistent with the AMAA, which requires that refunds be available. The frequency of requests and refunds varies, depending on the provisions of the particular order. Some are paid monthly; some are paid quarterly.

Each of the proponents of amendments considered in this proceeding proposed changes to make the A and P refund provisions of the Federal orders conform to the provisions of the National Program. The general testimony of the proponents' representatives pointed to the National Program's mandatory A and P participation aspects and its provision for credits for contributions to other qualified programs. In this regard, they concluded that refunds of the Federal order A and P assessments should no longer be made. Instead, they proposed that for those producers who do not want to participate in the Federal order A and P program such refunds be sent by the market administrator to the National Program. The proponents of amendments to the Middle Atlantic order also proposed that a producer could designate other qualified programs to receive their requested refunds. The proponents of amendments to the other five orders proposed that refund requests be honored only by sending such funds to the National Program.

Those proponents who favored having the market administrators send refund monies only to the National Program maintained that their approach would be most consistent with the development of an effective promotion and research program on a national basis. They held the view that any other arrangement could undermine or be contrary to that national effort. Moreover, it was argued that to allow the payment of refunds to other qualified programs could place an unnecessary burden on the market administrator because it could require him to send refund monies to numerous programs, perhaps even to programs in several different parts of the country. Advocates of this approach to the refund issue stated clearly that this was the way the vast majority of producers viewed this issue.

On the other hand, the proponents of amendments to the Middle Atlantic order want producers to have the option of designating either the National Program or some other qualified program to receive their requested refunds. This would provide individual producers a choice of programs to support in meeting their financial obligations under the National Program. The spokesman for Pennmarva maintained that such an option to choose which program to support also is consistent with the provisions of the National Program. That program, he noted, provides a credit of up to 10 cents (15 cents for May 1984) per hundredweight for participation in other qualified programs.

With respect to the Middle Atlantic order, Pennmarva also proposed that if if a producer did not designated a qualified program to receive the refund he was requesting, such refund would be paid to the Order 4 Advertising and Promotion Agency. This was a modification of the proposals by Pennmarva that were noticed for the hearing. Pennmarva also proposed specific language that would accommodate the higher credit allowed under the National Program for May 1984 for participation in other qualified programs, and further proposed that the market administrator be specifically precluded in the order language from actually paying any refunds to producers. Another proposed change would modify the procedure for requesting refunds. Still another proposal would require "persons paying Order 4 producers to remit to the "National Board" 5 cents per hundredweight of such producer milk" (1 cent per hundredweight prior to May 31, 1984).

A spokesman for Diarymen, Inc. (DI), testified with respect to the proposed amendments to Order 4 (Middle Atlantic) and Order 49 (Indiana).

He supported the positions stated by the Pennmarva spokesman. However, he also proposed that cooperatives be allowed, with approval of member producers, to request on behalf of those producers a refund, and to designate qualified programs to receive the funds. DI's witness expressed the view that this would reduce the level of

paperwork required from producers to process refund requests.

The post-hearing brief filed by DI urged adoption of this suggested provision. The brief also specified that in the event conflicting refund requests were filed by a producer and the cooperative that represents that producer, the cooperative's request should prevail.

Pennmarva, in its brief, stated that after reviewing the record, it supports the position of DI on this issue.

The DI spokesman opposed not permitting Order 49 producers to designate another qualified program to receive a requested refund, as proposed by Milk Marketing Inc. (MMI). In this regard the DI witness held that the proposed approach would destroy qualified programs. He also expressed the view that adoption of the proposal would be contrary to the provisions of the AMAA that provides for refunds. He also maintained that producers should be able to designate that their advertising money could follow their milk. The spokesman pointed out that DI's producers now request refunds and send the money to a program other than the Federal order A and P program.

A spokesman for Associated Milk Producers, Inc. (AMPI), offered testimony supporting MMI's proposals for amending the refund procedures in Order 49.

The National Milk Producers Federation (NMPF), also presented testimony. The NMPF witness presented background information concerning the National Program and general support for the proposals being considered at the hearing.

A brief was filed on behalf of the American Dairy Association of Nebraska (ADAN), which challenges the proposal to allow refunds requested under the Nebraska-Western Iowa order's A and P provisions to be sent only to the National Program. The ADAN brief contends that the proposal is contrary to the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501 *et seq.*); the secretary's decision to implement that Act (49 Fr 11806); and the intent of Congress and sound policy. The brief further contends that adoption of Mid-Am's proposal would be out of step with the way that producers under most Federal orders will be able to support qualified programs.

This issue concerning the treatment of refund requests presents a dilemma. First, there is a clear conflict between the Federal order A and P program's provisions wherein participation is voluntary and the National Program's mandatory participation requirement. Thus, one of the issues is whether producers should be able to receive a direct refund of their Federal order A and P assessments.

As noted, the National Program mandates participation in that program but recognizes contributions to other qualified programs of up to 10 cents per hundredweight. Thus, persons who pay producers are required to deduct 15 cents per hundredweight from the payments to producers and remit those monies to the National Board. However, the funds sent to the National Board may be reduced to a minimum of 5 cents per hundredweight if producers are participating in other qualified programs. If producers wish to have the Federal order A and P programs recognized under the National Program as qualified programs, it is apparent that any refunds requested by producers under the Federal order programs should not be channeled back to such producers in view of the mandatory nature of the National Program.

The only way that actual refunds to producers could be retained would be for the producer to have a total of 25 cents per hundredweight withheld from payments for milk. That way, 15 cents could go to the National Program, or to the National Program and to another qualified program (up to 10 cents per hundredweight), and the producer could obtain a refund of the 10-cent per hundredweight Federal order assessment. But such an arrangement would serve no real purpose. Therefore, it is concluded that in order to provide coordination between the Federal order A and P programs and the National Program, assessments under the Federal order A and P programs should not be refunded to producers thermselves as long as the National Program is in effect.

The next issue to be resolved is whether producers' requests for refunds should be honored by sending the funds only to the National Program, or to any qualified program, or to vary the refund provision from order to order and thus accommodate producers' desires for whichever preference they have stated.

The basic purpose of this proceeding is to provide alignment of the Federal order A and P provisions with the National Program. In this regard, it is clear that producers in orders not having A and P programs, and dairy farmers not marketing their milk under any Federal order, will have the option of choosing to participate in the National Program, or in any other qualified program they choose. It would be most consistent in that regard to provide the same choice for producers who market their milk under a Federal order that has an A and P program.

In the past, producers under the orders involved in this proceeding have had the freedom to support any program they wanted to through the refund procedure. This voluntary participation aspect of the orders' A and P programs is required by the authorizing statute, the Agricultural Marketing Agreement Act. Accordingly, it would be inconsistent with the intent of the Act to require producers not wishing to participate in an order's A and P program to support only the National Program.

Other aspects of the refund procedure remain to be addressed. One issue concerns when refund requests should be made. It is concluded that no changes should be made in current order provisions in this regard. However, instead of paying refunds quarterly as now is provided in some orders, the market administrators will be required to send requested refunds to the designated qualified recipients each month. Such payments should be transmitted on or before the last day of the month following the month in which the milk was marketed. No other changes are made in the orders concerning disbursement of A and P funds by the market administrators.

One specific change to Order 4 is required to make its provisions consistent with the other orders where A and P assessments will be remitted by handlers who pay producers. That change involves specifying that the Order 4 market administrator will send (on the basis of refund requests) funds to only those mandatory State programs that are "qualified programs." This change is necessary because in Order 4, the market administrator will continue to deduct the A and P assessments from the uniform price computation.

Moreover, although provisions for actual refunds to producers have been eliminated, there is one exception, which is in the Middle Atlantic order. In that order, there will continue to be a need for the market administrator to make refunds to producers under one specific situation. That situation could arise where a mandatory qualified State program required a handler to remit to the State the assessments for that program. In that event, since the market administrator deducts the A and P monies before announcing the uniform prices, producers subject to such checkoffs would have withheld from them more than the 15-cent deduction required under the National Program. Accordingly, it is necessary to allow the market administrator to refund to such producers an amount equal to their mandatory checkoff that was remitted

by their paying handler. Of course, the refund should not exceed an amount equal to the rate of assessment for the Federal order program times the hundredweights of milk pooled by the producer.

The proposal made at the hearing to allow cooperatives on behalf of member producers to request refunds and designate qualified programs to receive those funds is not adopted. While adoption of this proposal could reduce somewhat the paperwork involved in requesting refunds, it is concluded that the confidentiality of refund requests should be preserved. To do so maintains the individual producer's freedom to support whatever program(s) that he or she chooses to support.

Also, if a producer requests a refund and does not designate another qualified program to receive the refund monies, such request should be honored by sending the funds to the National Program. The proposal to send monies to the advertising and promotion agency in Order 4 is not adopted. To so provide would be contrary to the intent of the producer who requested the refund. If the producer had wanted to participate in the order's program, a refund would not have been requested. Therefore, each order provides that undesignated refunds will be sent to the National Program.

Some proposed provisions for the Middle Atlantic order do not appear to be necessary. One would specify that the market administrator not pay refunds directly to producers. This has been taken care of in the order language adopted without a separate provision, with the one exception noted above. Similarly, there is no need to have order language requiring persons that pay producers to remit 5 cents to the National Board. That requirement is provided in the provisions of the Dairy Research and Promotion Order.

4. Conforming Changes

In order to ensure that amendments to the order provide a "complete" regulation, it is often necessary to make changes other than the major changes that are discussed at a hearing. Thus, the Department gives notice that certain non-substantive conforming changes may be required. The purpose of this discussion is to note some, but not necessarily each one, of those changes.

In those orders where the uniform price computation provisions are being revised to delete the A and P deduction, the final price in that computation is designated as both the "weighted average price" and the "uniform price for producer milk." This approach minimizes the number of changes necesary to achieve the major objective of the amendment.

Two new definitions are added under the center heading "Advertising and Promotion Program." These define the "Dairy Research and Promotion Order", and "Qualified Program", which are used elsewhere in the amendatory language being adopted.

The order language adopted herein has been designed to facilitate reverting to current provisions, where appropriate, at any such time that the National Program may be terminated. Should such a termination occur, the obsolete provisions of the Federal order A and P programs could be eliminated through a termination proceeding. This will eliminate any need for another emergency amendatory proceeding to deal with termination of the National Program.

5. Omission of a Recommended Decision and the Opportunity To File Exceptions Thereto

Testimony was presented at the hearing on the need to expedite this proceeding. Most witnesses testified that this proceeding should be treated in an expedited fashion in order to amend the order as soon as possible. The reason cited for expedited action is that the Dairy Research and Promotion Order became fully effective on May 1, 1984. It was stated that the orders should be amended to insure that A and P provisions do not conflict with the National Program provisions, and to thus maintain orderly marketing conditions.

Emergency conditions exist that warrant omission of a recommended decision and the opportunity to file exceptions thereto. The National Program, which became fully effective on May 1, 1984, is applicable to milk marketed during May. It has been noted elsewhere in this decision that certain of the Federal order A and P provisions conflict with provisions of the National Program. Unless these conflicts are resolved as soon as possible, disorderly marketing conditions could result. This situation should be avoided. Moreover, expedited action was widely favored. There was no opposition to expedite action expressed at the hearing. For the above reasons, a recommended decision and the opportunity to file exceptions are omitted on the basis that due and timely execution of the Secretary's functions is imperative and unavoidable.

Ruling on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings

The findings and determinations hereinafter set forth supplement those that were made when the Middle Atlantic, Eastern Ohio-Western Pennsylvania, Indiana, St. Louis-Ozarks, Greater Kansas City, and Nebraska-Western Iowa orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the pubic interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a MARKETING AGREEMENT regulating the handling of milk, and an ORDER amending the orders regulating the handling of milk in the aforesaid specified marketing areas, which have been decided upon as the detailed and

appropriate means of effectuating the foregoing conclusions.

It is hereby ordered. That this entire decision, except the attached marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the orders as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval of the Advertising and Promotion Program and Determination of Representative Period

February 1984 is hereby determined to be the representative period for the purpose of ascertaining whether the order provisions constituting the Advertising and Promotion Program, as amended and as hereby proposed to be amended, in the orders regulating the handling of milk in the Middle Atlantic, Indiana, St. Louis-Ozarks, Greater Kansas City, and Nebraska-Western Iowa marketing areas are separately approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the respective marketing areas.

Referendum Order To Determine Producer Approval of the Advertising and Promotion Program; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date of this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*), to determine whether the order provisions constituting the Advertising and Promotion Program, as amended and as hereby proposed to be amended, in the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area are separately approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during the representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be February, 1984.

The agent of the Secretary to conduct such referendum is hereby designated to be C. Mack Endsley.

List of Subjects in 7 CFR Parts 1004, 1036, 1049, 1062, 1064, and 1065

Milk marketing orders, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C., on May 14, 1984.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

Order [1] Amending the Orders, Regulating the Handling of Milk in Certain Specified Marketing Areas

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when each of the aforesaid orders was first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid orders:

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the aforesaid marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders, as amended, and as hereby amended, as follows:

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. New §§ 1004.105 and 1004.106 are added under the centered heading of Advertising and Promotion Program to read as follows:

§ 1004.105 Dairy research and promotion order.

"Dairy Research and Promotion Order" means the order (7 CFR Part 1150) established by the Secretary pursuant of Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98–180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto.

§ 1004.106 Qualified program.

"Qualified program" means a State or regional dairy product promotion, research or nutrition education program certified by the Secretary as a qualified program pursuant to Section 1150.153 of the Dairy Research and Promotion Order.

2. Section 1004.120 is amended by revising paragraphs (a) and (d) to read as follows:

§ 1004.120 Procedure for requesting refunds.

* * * * *

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer. As long as the Dairy Research and Promotion Order is in effect, any producer who files a request for refund in accordance with this section may designate a qualified program to receive such refund.

* * * * *

(d) A producer, located in a State which as a State advertising and promotion program in which producers are required to participate unless they are participating in an advertising and promotion program under a Federal

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practices and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

order, may (in lieu of a refund request) authorize the market administrator to pay to the State the amount of his required participation not in excess of the rate computed pursuant to § 1004.121(e): *Provided,* That such payments are payments to a qualified program.

3. Section 1004.121 is amended by revising paragraphs (b)(1), (b)(2), and (b)(4) and (e)(2), and adding a new paragraph (b)(5) to read as follows:

§ 1004.121 Duties of the market administrator.

* * * * *

(b) * * *

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraphs (b)(4) and (5) of this section; payments, if any, to producers or states pursuant to paragraphs (b)(2) and (3) of this section; and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) To producers, a refund of the amounts of mandatory checkoff for adverstising and promotion programs which are qualified programs and are required under authority of State law law applicable to such producers, but not in amounts that exceed the rate per hundredweight determined pursuant to paragraph (e) of this section on the volume of milk pooled by any such producer for which deductions were made pursuant to this paragraph.

* * * * *

(4) As long as the Dairy Research and Promotion Order is in effect, paragraph (b)(5) of this section shall apply in lieu of this paragaph. After the end of each month, make a refund to each producer who made application for such refund pursuant to § 1004.120. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made to, or on behalf of, the producer pursuant to paragraph (b)(2) and (3) of this section.

(5) As long as the Dairy Research and Promotion Order is in effect, remit to any qualified programs any refund designated by producers to be paid to such programs. If a refund request does not designate a qualified program to receive such money, the refund shall be remitted to the National Dairy Promotion and Research Board, which is defined in the Dairy Research and Promotion Order. Such refund shall be computed by multiplying the rate specified in paragraph (e) of this section times the hundredweight of such producer's milk pooled for which deductions were made pursuant to this paragraph for such month, less the amount of any refund otherwise made to, or on behalf of, the producer pursuant to paragraph (b)(2) or (3) of this section.

* * * * *

(e) * * *

(2) Multiply the price computed pursuant to paragraph (e)(1) of this section by one percent and round to the nearest full cent. This rate shall apply during the following calendar year: *Provided,* That as long as the National Promotion and Research Order is in effect, the rate of withholding shall be 10 cents per hundredweight, except that for milk marketed during the month of May 1984, the rate of withholding shall be 14 cents per hundredweight.

* * * * *

4. In paragraph (c) of section 1004.121, the number "1004.110" is revised to read "1004.105".

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. Section 1036.61 is amended by removing paragraph (f) and revising paragraph (e) to read as follows:

§ 1036.61. Computation of uniform price (including weighted average price).

* * * * *

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price" and the "uniform price" for milk received from producers.

2. Section 1036.73 is amended by redesignating paragraph (a)(2)(iv) to be (a)(2)(v), revising paragragh (a)(2)(iii) and adding a new (a)(2)(iv) to read as follows:

§ 1036.73. Payments to producers and to cooperative associations.

* * * * *

(a) * * *

(2) * * *

(iii) Any marketing service deduction pursuant to § 1036.86;

(iv) Deductions for advertising and promotion made pursuant to § 1036.107; and

* * * * *

3. New §§ 1036.105, 1036.106 and 1036.107 are added under the centered heading of Advertising and Promotion Program to read as follows:

§ 1036.105. Dairy research and promotion order.

"Dairy Research and Promotion Order" means the order (7 CFR Part 1150) established by the Secretary pursuant to Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98–180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto.

§ 1036.106. Qualified program.

"Qualified program" means a State or regional dairy product promotion, research or nutrition education program certified by the Secretary as a qualified program pursuant to § 1150.153 of the Dairy Research and Promotion Order.

§ 1036.107 Deduction for advertising and promotion programs.

On or before the 18th day after the end of the month, each handler described in § 1036.9(a), (b), or (c) shall remit to the market administrator as a deduction from payments to producers an amount equal to the rate per hundredweight specified in § 1036.121(e) times the volume of milk pooled by each such producer for such month. When making such deductions from payments to producers, the handler shall credit any payments required under authority of State law applicable to such producers for an advertising and promotion program that is a qualified program. Such credit shall not exceed the amount of each producer's deduction computed pursuant to this section.

4. Section 1036.120 is amended by revising paragraph (a) to read as follows:

§ 1036.120 Procedure for requesting refunds.

* * * * *

(a) Refund shall be accomplished only through application filed with and in the manner prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records releveant to the refund may be required of such producer. As long as the Dairy Research and Promotion Order is in effect, any producer who files a request for refund in accordance with this section may designate a qualified program to receive such refund.

* * * * *

5. In section 1036.121, revise the introductory text of paragraph (b) and paragraph (b)(1); remove and reserve paragraph (b)(2); revise paragraph (b)(3) and add a new paragraph (b)(4) to read as follows:

§ 1036.121 Duties of the market administrator.

* * * * *

(b) Each month deposit into an advertising and promotion fund, separately accounted for, an amount equal to the funds received from handlers pursuant to § 1036.107. The amount deposited shall be disbursed as follows:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds in paragraphs (b) (3) or (4) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) [Reserved]

(3) As long as the Dairy Research and Promotion Order is in effect, paragraph (b)(4) of this section shall apply in lieu of this paragraph. After the end of each calendar month make a refund to each producer who has made application for such refund pursuant to § 1036.120. Such refund shall be the amount paid to the market administrator pursuant to § 1036.107 for such producer.

(4) As long as the Dairy Research and Promotion Order is in effect, remit to any qulalified programs any refunds designated by producers to be paid to such programs no later than the last day of the month following the month in which the milk was marketed. If a refund request does not designate a qualified program to receive such money, the refund shall be remitted to the National Dairy Promotion and Research Board, which is defined in the Dairy Research and Promotion Order.

* * * * *

6. In paragraph (c) of § 1036.121, the number "1036.110" is revised to read "1036.105".

7. In § 1036.121, paragraph (e) is revised to read as follows:

§ 1036.121 Duties of the market administrator.

* * * * *

(e) As soon as possible after April of each year, compute the rate of withholding by multiplying the simple average of the uniform prices for the 12-month period ending April 30 by 0.0075 and rounding to the nearest whole cent. This rate shall aplly during the 12-month period beginning with July of the current year: *Provided,* That the rate shall be 10 cents per hundredweight as long as the Dairy Research and Promotion Order is in effect.

* * * * *

PART 1049—MILK IN THE INDIANA MARKETING AREA

1. Section 1049.61 is amended by removing paragraph (f) and revising paragraph (e) to read as follows:

§ 1049.61 Computation of uniform price (including weighted average price).

* * * * *

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price" and the "uniform price" for milk received from producers.

§ 1049.73 [Amended]

2. In § 1049.73, paragraph (a)(2) is amended by adding at the end of the first sentence the following: ", and less the deduction for advertising and promotion made pursuant to § 1049.107."

3. New §§ 1049.105, 1049.106 and 1049.107 are added under the centered heading of Advertising and Promotion Program to read as follows:

§ 1049.105 Dairy research and promotion order.

"Dairy Research and Promotion Order" means the order (7 CFR Part 1150) established by the Secretary pursuant to Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98–180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto.

§ 1049.106 Qualified program.

"Qualified program" means a State or regional dairy product promotion, research or nutrition education program certified by the Secretary as a qualified program pursuant to § 1150.153 of the Dairy Research and Promotion Order.

§ 1049.107 Deduction for advertising and promotion program.

On or before the 18th day after the end of each month, each handler described in § 1049.9 (a), (b), or (c) shall remit to the market administrator as a deduction from payments to producers an amount equal to the rate per hundredweight specified in § 1049.121(e) times the volume of milk pooled by each such producer for such month. When making such deductions from payments to producers, the handler shall credit any payments required under authority of State law applicable to such producers for an advertising and promotion program that is a qualified program. Such credit shall not exceed the amount of each producer's deduction computed pursuant to this section.

4. Section 1049.120 is amended by revising paragraph (a) to read as follows:

§ 1049.120 Procedure for requesting refunds.

* * * * *

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer. As long as the Dairy Research and Promotion Order is in effect, any producer who files a request for refund in accordance with this section may designate a qualified program to receive such refund.

* * * * *

5. In § 1049.121, revise the introductory text of paragraph (b) and paragraph (b)(1); remove and reserve paragraph (b)(2); revise paragraph (b)(3); add a new paragraph (b)(4); and revise paragraph (c) and (e) to read as follows:

§ 1049.121 Duties of the market administrator.

* * * * *

(b) Each month deposit into an advertising and promotion fund, separately accounted for, an amount equal to the funds received from handlers pursuant to § 1049.107. The amount deposited shall be disbursed as follows:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraphs (b) (3) or (4) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) [Reserved]

(3) As long as the Dairy Research and Promotion Order is in effect, paragraph (b)(4) of this section shall apply in lieu of this paragraph. After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1049.120. Such refund shall be that amount which was obtained pursuant to § 1049.107 for each calendar quarter.

(4) As long as the Dairy Research and Promotion Order is in effect, remit to any qualified programs any refunds designated by producers to be paid to such programs no later than the last day of the month following the month in which the milk was marketed. If a refund request does not designate a qualified program to receive such money, the refund shall be remitted to the National Dairy Promotion and Research Board, which is defined in the Dairy Research and Promotion Order.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1049.105 through 1049.122).

* * * * *

(e) As soon as possible after the beginning of each year, compute the rate of withholding by multiplying the simple average of the monthly uniform prices for the last quarter of the preceding year by 0.75 percent and rounding to the nearest whole cent. This rate shall apply during the 12-month period beginning with April of the current year: *Provided*, That the rate shall be 10 cents per hundredweight as long as the Dairy Research and Promotion Order is in effect.

* * * * *

PART 1062—MILK IN THE ST. LOUIS-OZARKS MARKETING AREA

1. Section 1062.61 is amended by removing paragraphs (f) through (l) and revising paragraph (e) to read as follows:

§ 1062.61 Computation of uniform price (including weighted average price).

* * * * *

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price" and the "uniform price" for milk received from producers.

§ 1062.73 [Amended]

2. In § 1062.73, paragraph (a) is amended by adding at the end of the first sentence the following: ", and less the deduction for advertising and promotion made pursuant to § 1062.107."

3. New sections 1062.105, 1062.106 and 1062.107 are added under the centered heading of Advertising and Promotion Program to read as follows:

§ 1062.105 Dairy research and promotion order.

"Dairy Research and Promotion Order" means the order (7 CFR Part 1150) established by the Secretary pursuant to Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98–180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto.

§ 1062.106 Qualified program.

"Qualified program" means a State or regional dairy product promotion, research or nutrition education program certified by the Secretary as a qualified program pursuant to § 1150.153 of the Dairy Research and Promotion Order.

§ 1062.107 Deduction for advertising and promotion program.

On or before the 20th day after the end of each month, each handler described in § 1062.9 (a), (b), or (c) shall remit to the market administrator as a deduction from payments to producers an amount equal to the rate per hundredweight specified in § 1062.121(e) times the volume of milk pooled by each such producer for such month. When making such deductions from payments to producers, the handler shall credit any payments required under authority of State law applicable to such producers for an advertising and promotion program that is a qualified program. Such credit shall not exceed the amount of each producer's deduction computed pursuant to this section.

4. Section 1062.120 is amended by revising paragraph (a) to read as follows:

§ 1062.120 Procedure for requesting refunds.

* * * * *

(a) Refund shall be accomplished only through application filed with, and in the manner prescribed by, the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer. As long as the Dairy Research and Promotion Order is in effect, any producer who files a request for refund in accordance with this section may designate a qualified program to receive such refund.

* * * * *

5. In Section 1062.121, revise the introductory text of paragraph (b) and paragraph (b)(1); remove and reserve paragraph (b)(2); revise paragraph (b)(3); add a new paragraph (b)(4); and revise paragraphs (c) and (e) to read as follows:

§ 1062.121 Duties of the market administrator.

* * * * *

(b) Each month deposit into an advertising and promotion fund, separately accounted for, an amount equal to the funds received from handlers pursuant to § 1062.107. The amount deposited shall be disbursed as follows:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraphs (b)(3) or (4) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) [Reserved]

(3) As long as the Dairy Research and Promotion Order is in effect, paragraph (b)(4) of this section shall apply in lieu of this paragraph. After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1062.120. Such refund shall be that amount which was obtained pursuant to § 1062.107 for each calendar quarter.

(4) As long as the Dairy Research and Promotion Order is in effect, remit to any qualified programs any refunds designated by producers to be paid to such programs no later than the last day of the month following the month in which the milk was marketed. If a refund request does not designate a qualified program to receive such money, the refund shall be remitted to the National Dairy Promotion and Research Board, which is defined in the Dairy Research and Promotion Order.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1062.105 through 1062.122).

* * * * *

(e) As soon as possible after the beginning of each year, compute the rate of withholding by multiplying the simple average of the monthly "weighted average prices" for the last quarter of the preceding year by 0.75 percent and rounding to the nearest whole cent. This rate shall apply during the 12-month period beginning with April of the current year: *Provided*, That the rate shall be 10 cents per hundredweight as long as the Dairy Research and Promotion Order is in effect.

* * * * *

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

1. Section 1064.61 is amended by removing paragraph (f) and revising paragraph (e) to read as follows:

§ 1064.61 Computation of uniform price (including weighted average price).

* * * * *

(e) Substract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and the "uniform price" for milk received from producers.

2. Section 1064.73 is amended by revising paragraph (a) to read as follows:

§ 1064.73 Payments to producers and to cooperative associations.

* * * * *

(a) On or before the 15th day after the end of each month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) or (d) of this section, at not less than the applicable uniform price pursuant to § 1064.61, adjusted by the butterfat differential computed pursuant to § 1064.74 and the location adjustment to producers pursuant to § 1064.75, and less the following amounts: (1) The payments made pursuant to paragraph (b) of this section, (2) deductions for marketing services made pursuant to § 1064.86, (3) any deductions authorized by the producer, and (4) deductions for advertising and promotion made pursuant to § 1064.107: *Provided*, That if by such date such handler has not received full payment for such month pursuant to § 1064.72 he may reduce his total payment to all producers uniformly by not less than the amount of reduction in payment from the market administrator; the handler shall, however, complete such payments not later than the date for making such payments pursuant to this paragraph next following receipt of the balance from the market administrator.

* * * * *

3. Section 1064.105, 1064.106 and 1064.107 are added under the centered heading of Advertising and Promotion Program to read as follows:

§ 1064.105 Dairy research and promotion order.

"Dairy Research and Promotion Order" means the order (7 CFR Part 1150) established by the Secretary pursuant to Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98–180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto.

§ 1064.106 Qualified program.

"Qualified program" means a State or regional dairy product promotion, research or nutrition education program certified by the Secretary as a qualified program pursuant to § 1150.153 of the Dairy Research and Promotion Order.

§ 1064.107 Deduction for advertising and promotion program.

On or before the 20th day after the end of the month, each handler described in § 1064.9 (a), (b), or (c) shall remit to the market administrator as a deduction from payments to producers an amount equal to the rate per hundredweight specified in § 1064.121(e) times the volume of milk pooled by each such producer for such month. When making such deductions from payments to producers, the handler shall credit any payments required under authority of State law applicable to such producers for an advertising and promotion program that is a qualified program. Such credit shall not exceed the amount of each producer's deduction computed pursuant to this section.

4. Section 1064.120 is amended by revising paragraph (a) to read as follows:

§ 1064.120 Procedure for requesting refunds.

* * * * *

(a) Refunds shall be accomplished only through application filed with, and in the manner prescribed by, the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer. As long as the Dairy Research and Promotion Order is in effect, any producer who files a request for refund in accordance with this section may designate a qualified program to receive such refund.

* * * * *

5. In Section 1064.121, revise the introductory text of paragraph (b) and paragraph (b)(1); remove and reserve paragraph (b)(2); revise paragraph (b)(3); add a new paragraph (b)(4); and revise paragraphs (c) ands (e) to read as follows:

§ 1064.121 Duties of the market administrator.

* * * * *

(b) Each month deposit into an advertising and promotion fund, separately accounted for, an amount equal to the funds received from handlers pusuant to § 1064.107. The amount deposited shall be disbursed as follows:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraphs (b)(3) or (4) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) [Reserved]

(3) As long as the Dairy Research and Promotion Order is in effect, paragraph (b)(4) of this section shall apply in lieu of this paragraph. After the end of each calendar quarter, make a refund to each producer who has made application for such refund purusant to § 1064.120. Such refund shall be that amount which was obtained pursuant to § 1064.107 for each calendar quarter.

(4) As long as the Dairy Research and Promotion Order is in effect, remit to any qualified programs any refunds designated by producers to be paid to such programs no later than the last day of the month following the month in which the milk was marketed. If a refund request does not designate a qualified program to receive such money, the refund shall be remitted to the National Dairy Promotion and Research Board, which is defined in the Diary Research and Promotion Order.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1064.105 through 1064.122).

* * * * *

(e) As soon as possible after the beginning of each year, compute the rate of withholding by multiplying the simple average of the monthly "uniform prices" for the last quarter of the preceding year by 0.75 percent and rounding the result to the nearest whole cent. This rate shall apply during the 12-month period beginning with April of the current year: *Provided*, That the rate shall be 10 cents per hundredweight as long as the Dairy Research and Promotion Order is in effect.

* * * * *

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. Section 1065.61 is amended by removing paragraph (g) and revising paragraph (f) to read as follows:

§ 1065.61 Computation of uniform price (including weighted average price).

* * * * *

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and the "uniform price" for milk received from producers.

2. Section 1065.73 is amended by redesignating paragraph (a)(2)(iii) as paragraph (a)(2)(iv), revising paragraph (a)(2)(ii), and adding a new paragraph (a)(2)(iii) to read as follows:

§ 1065.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) Deductions for marketing services pursuant to § 1065.86;

(iii) Deductions for advertisting and promotion made pursuant to § 1065.107; and

* * * * *

3. New sections 1065.105, 1065.106 and 1065.107 are added under the centered heading of Advertising and Promotion Program to read as follows:

§ 1065.105 Dairy research and promotion order.

"Dairy Research and Promotion Order" means the order (7 Part 1150) established by the Secretary pursuant to Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98–180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto.

§ 1065.106 Qualified program.

"Qualified program" means a State or regional dairy product promotion, research or nutrition education program certified by the Secretary as a qualified program pursuant to § 1150.153 of the Dairy Research and Promotion Order.

§ 1065.107 Deduction for advertising and promotion programs.

On or before the 20th day after the end of the month, each handler described in § 1065.9 (a), (b), or (c) shall remit to the market administrator as a deduction from payments to producers an amount equal to the rate per hundredweight specified in § 1065.121(e) times the volume of milk pooled by each such producer for such month. When making such deductions from payments to producers, the handler shall credit any payments required under authority of State law applciable to such producers for an advertising and promotion program that is a qualified program. Such credit shall not exceed the amount of each producer's deduction computed pursuant to this section.

4. Section 1065.120 is amended by revising paragraph (a) to read as follows:

§ 1065.120 Procedure for requesting refunds.

* * * * *

(a) Refund shall be accomplished only through application filed with, and in the manner prescribed by, the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer. As long as the Dairy Research and Promotion Order is in effect, any producer who files a request for refund in accordance with this section may designate a qualified program to receive such refund.

* * * * *

5. In Section 1065.121, revise the introductory text of paragraph (b) and paragraph (b)(1); remove and reserve paragraph (b)(2); revise paragraph (b)(3); add a new paragrpah (b)(4); and revise paragraphs (c) and (e) to read as follows:

§ 1065.121 Duties of the market administrator.

* * * * *

(b) Each month deposit into an advertising and promotion fund, separately accounted for, an amount equal to the funds received from handlers pursuant to § 1065.107. The amount deposited shall be disbursed as follows:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refund pursuant to paragraphs (b)(3) or (4) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) [Reserved]

(3) As long as the Dairy Research and Promotion Order is in effect, paragraph (b)(4) of this section shall apply in lieu of this paragraph. After the end of calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1065.120. Such refund shall be that amount which was obtained pursuant to § 1065.107 for each calendar quarter.

(4) As long as the Dairy Research and Promotion Order is in effect, remit to any qualified programs any refunds designated by producers to be paid to such programs no later than the last day of the month following the month in which the milk was marketed. If a refund request does not designate a qualified program to receive such money, the refund shall be remitted to the National Dairy Promotion and Research Board, which is defined in the Dairy Research and Promotion Order.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1065.105 through 1065.122).

* * * * *

(e) As soon as possible after the beginning of each year, compute the rate of withholding by multiplying the simple average of the monthly "uniformed prices" for the last quarter of the preceding year by 0.75 percent and rounding the result to the nearest whole cent. This rate shall apply during the 12-month period beginning with April of the current year: *Provided*, That the rate shall be 10 cents per hundredweight as long as the Dairy Research and Promotion Order is in effect.

* * * * *

[FR Doc. 84–13420 Filed 5–17–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No.84–ANE–4]

Airworthiness Directives; Pratt & Whitney Aircraft Model JT8D–15, –17, and –17R Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) which would require tightening of the diametral fit between the second stage turbine disk snap diameter and third stage turbine rotor airseal to prevent relative motion between these parts on Pratt & Whitney Aircraft model JT8D–15, –17, and –17R turbofan engines. The proposed AD is needed to prevent excessive movement between disk/airseal surfaces which could result in high amplitude stresses in the operating range and ultimately, failure of the second stage turbine disk.

DATE: Comments must be received on or before June 30, 1984. Proposed effective date is July 30, 1984.

ADDRESSES: Comments on the proposal may be mailed in duplicate to:

Federal Aviation Administration, New England Region, Office of the Regional Counsel Attention: Rules Docket No. 84–ANE–4 12 New England Executive Park, Burlington, Massachusetts 01803

or delivered in duplicate to Room No. 311 at the above address.

Comments delivered must be marked: Docket No. 84–AME–4.

Comments may be inspected in the New England Region, Office of the Regional Counsel, Room No. 311 between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, except on Federal holidays.

The applicable service bulletins may be obtained from: Pratt & Whitney Aircraft Commerical Products Division, 400 Main Street, East Hartford, Connecticut 06108.

Copies of the service bulletins are contained in the Rules Docket in the Office of the Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: W. Locke Easton, Transport Engine Branch, ANE–141, Engine Certification Office, New England, Region, Federal Aviation Administration, 12 New

England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 273–7347.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 84–ANE–4". The post card will be date/time stamped and returned to the commenter.

The FAA has determined that second stage turbine disks and third stage turbine inner airseals that are assembled with a diametrical fit at the low end of the tolerance band can become loose during certain engine operating conditions, resulting in relative motion between the disk and airseal. This movement can cause the mating surfaces to wear after extended operation. Wear at the bottom of the disk airseal groove can reduce fatigue strength and that relative motion between the disk and the airseal can allow a high amplitude disk stress to occur within the engine operating range. The combination of reduced disk strength and increased vibratory stress can result in disk cracking and eventual failure. Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require inspections of the second stage turbine disk assemblies which will detect wear of the snap diameter and the bottom of the disk airseal groove. The proposed AD would also provide repair instructions for the disk and modification instructions for the mating third stage airseal which will increase the disk to airseal diametrical fit and will prevent future wear, in accordance with Pratt & Whitney Aircraft Alert Service Bulletin Number 5541, Revision 1, dated May 4, 1984.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety Incorporation by reference.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations [14 CFR 39.13) by adding the following new airworthiness directive:

Pratt & Whitney Aircraft: Applies to Pratt & Whitney Aircraft model JT8D–15, –17, and –17R turbofan engines.

Compliance is required as indicated unless already accomplished, in accordance with Pratt & Whitney Aircraft Service Bulletin No. 5510, Revision 1, dated February 13, 1984, or Pratt & Whitney Aircraft Alert Service Bulletin No. 5541, Revision 1, dated May 4, 1984, or equivalent means approved by the Manager, Engine Certification Office, New England Region.

To prevent possible failure of the second stage turbine disk, inspect second stage turbine disk, Part Numbers 676802, 770602, 780502, 786802, and 787302 details, and Part Numbers 676822, 769722, 769832, 86822, and 787232 assemblies for wear of the snap diameter and at the bottom of the disk airseal groove, repair the disk, and modify the mating third stage turbine inner airseal in accordance with Pratt & Whitney Aircraft Alert Service Bulletin Number 5541, Revision 1, dated May 4, 1984, per the following schedule:

(a) For disks not previously inspected:

(1) With over 17,000 hours time since new—inspect within 1,000 hours.

(2) With 17,000 hours or less time since new—inspect at next shop visit over 5,000 hours time since new or prior to reaching 18,000 hours, whichever occur first.

(b) For disks previously inspected in accordance with JT8D engine manual, P/N 481672:

(1) With over 17,000 hours time since last inspection—inspect within 1,000 hours.

(2) With 17,000 hours or less time since last inspection—inspect at next shop visit over 5,000 hours time since last inspection, or prior to reaching 18,000 hours time since last inspection, whichever occur first.

Note.—Time(s) since last inspection and time(s) since new are effective as of April 20, 1984.

Note.—Shop Visit (as defined in the World Airlines Technical Operations Glossary) is defined as the input of an engine to a repair shop where the subsequent engine maintenance entails:

(a) Separation of a major engine flange (lettered or numbered) other than flanges mating with major sections of the nacelle or reverser. Note: Separation of flanges purely for purposes of shipment, without subsequent internal maintenance, is not a "Shop Visit".

(b) Removal of a disk or hub or spool.

(c) Removal of the main or angle gearbox.

(d) Removal of the fuel nozzles.

For purpose of this airworthiness directive (AD) the term "repair shop" refers to a maintenance station where low pressure turbine overhaul facilities exist.

The FAA will request the permission of the Federal Register to incorporate by reference the manufacturer's Service Bulletins identified and described in this document.

(Sec. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.85)

Note.—The FAA has determined that this proposed regulation involves 2,000 engines and will require 99 revenue plane days lost and 293,000 manhours. At $20,000/revenue plane day and at $40/manhour labor the total cost of the program would be approximately $14,000,000. Less than 11 small entities will be affected by this proposed AD. Therefore, I certify that this section (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this document is contained in the regulatory docket. A copy of it may be contacting the person identified under caption "FOR FURTHER INFORMATION CONTACT".

Issued in Burlington, Massachusetts, on May 9, 1984.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 84–13410 Filed 5–17–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 84–ACE–04]

Transition Area; Fairfield, Iowa; Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the 700-foot transition area at Fairfield, Iowa, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Fairfield Municipal Airport, Fairfield, Iowa, utilizing the Ottumwa, Iowa VORTAC as a navigational aid.

DATES: Comments must be received on or before June 22, 1984.

ADDRESSES: Send comments on the proposal to: Federal Aviation

Administration, Manager, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE–530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dwaine Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE–532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374–3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to subpart G, Section 71.181, of the Federal Aviation Regulations (14 CFR 71.181) by altering the 700-foot transition area at Fairfield, Iowa. To enhance airport usage, an additional instrument approach procedure to the Fairfield Municipal Airport is being established utilizing the Ottumwa, Iowa VORTAC as a navigational aid. The establishment of this new instrument approach procedure, based on this navigational aid, entails alteration of the transition area at Fairfield, Iowa, at and above 700 feet above ground level (AGL), within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71), by altering the following transition area:

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Fairfield Municipal Airport (Latitude: 41°03'15"N, Longitude: 91°58÷40"W); and within 3 miles each side of the 188° bearing from Fairfield Municipal Airport, extending from the 6-mile radius area to 11 miles south of the airport.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65)

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on May 9, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84–13407 Filed 5–17–84; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 821 0129]

Multiple Listing Service of the Greater Michigan City Area, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require a Michigan, Ind. firm, which provides a multiple listing service for member real estate brokers doing business in LaPorte, Indiana, among other things, to cease establishing or maintaining any rate, commission, or fee for real estate brokerage services; requiring its members to adhere to such rates or fees; threatening or taking any action that penalizes or discriminates against nonconformers; or otherwise acts to restrain price competition in the real estate market. The company would be prohibited from interfering with any statement in a generally disseminated advertisement by a broker that truthfully refers or relates to the business practice of another real estate broker; and barred from improperly denying or unduly delaying membership, or otherwise discriminating against any membership applicant. For ten years from entry of a final order, rejected applicants would have to be provided with written notice of the denial, together with reasons for the rejection. Additionally, the company would be precluded from prohibiting any broker from entering into exclusive agency or open listings; and from participating in any competitive organization or service. Following entry of a final order, MLS would be required to timely provide area real estate brokers with a prescribed statement setting forth the terms of the order; and amend its by-laws, code of ethics and rules and regulations to conform with those terms; provide copies of the order as required; and maintain prescribed records for a period of five years.

DATE: Comments must be received on or before July 17, 1984.

ADDRESS: Comments should be directed to: Federal Trade Commission, Office of the Secretary, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/P–852, Alan J. Friedman, Washington, D.C. 20580. (202) 724–1213.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60)) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Real estate, Trade practices.

Before Federal Trade Commission

[File No. 821 0129]

Agreement Containing Consent Order to Cease and Desist

In the matter of Multiple Listing Service of the Greater Michigan City Area, Inc., a corporation, also trading and doing business as Multiple Listing Service of Laporte County, Inc.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Multiple Listing Service Of The Greater Michigan City Area, Inc., and it now appearing that Multiple Listing Service Of The Greater Michigan City Area, Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Multiple Listing Service Of The Greater Michigan City Area, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent is organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 5450 North Johnson Road, in the City of Michigan City, State of Indiana.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft complaint contemplated thereby and related material pursuant to Rule 2.34, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to case and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statue for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

1. "Multiple listing service" shall mean a clearinghouse through which member real estate brokerage firms regularly and systematically exchange information on listings of real estate properties and share commissions when other members locate purchasers.

2. "Person" shall mean any individual, partnership, association, corporation or other business or legal entity.

3. "Member" shall mean any firm that is entitled to receive the services offered by respondent Multiple Listing Service Of The Greater Michigan City Area, Inc.

4. "Applicant" shall mean any owner or co-owner of a real estate brokerage firm who is duly licensed by the Indiana Real Estate Commission as a real estate broker within the State of Indiana and who has applied on behalf of his or her firm for membership in respondent's multiple listing service.

5. "Market" shall mean the provision of real estate brokerage services for residential properties located in LaPorte County, Indiana.

6. "Listing" shall mean any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

7. "Exclusive right to sell listing" shall mean any real estate brokerage agreement under which the property owner agrees to pay the broker a commission if the property is sold, regardless of who locates the purchaser.

8. "Reserve clause" shall mean a provision that may be included in an exclusive right to sell listing wherein the property owner reserves the right to sell the property to one or more particular persons individually named in the listing agreement without owing a commission to the broker.

9. "Exclusive agency listing" shall mean any real estate brokerage agreement under which the property owner agrees to pay the broker a commission if the property is sold through any real estate broker, but, if

the owner locates the purchaser independently of any real estate broker, the owner owes no commission to the broker.

10. "Open listing" shall mean any real estate brokerage agreement under which the property owner grants the broker a nonexclusive agency to locate a purchaser for the property, such that the owner is free to enter into other open listings with other real estate brokers and owes a commission only to the broker who locates the purchaser.

I

It is ordered that respondent Multiple Listing Service Of The Greater Michigan City Area, Inc., and its directors, officers, committees, representatives, agents, employees, subsidiaries, successors, and assigns, directly or indirectly, in or in connection with respondent's activities as a multiple listing service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Fixing, establishing, or maintaining any rate, range or amount of commission or fee for real estate brokerage services, or otherwise restraining price competition among real estate brokers, including but not limited to:

1. Requiring, urging, recommending, or suggesting that any broker charge for brokerage services only such fees as are in accordance with local practice in similar transactions;

2. Requiring, urging, recommending, or suggesting that any listing filed with respondent's multiple listing service provide for payment of a commission in accordance with the customary practices within the market;

3. Requiring, urging, recommending, or suggesting that any broker refrain from charging or advertising any commission, fee, or rate below what is customarily charged or prevailing in the market; or

4. Taking or threatening any action that has the purpose or affect of penalizing, discriminating against, or interfering with any broker's charging or advertising any commission, fee, or rate below what is customarily charged or prevailing in the market.

B. Declaring to be unethical or otherwise restricting or interfering with any statement in a generally disseminated advertisement by a broker that truthfully refers or relates to the business practice of any other real estate broker, such as truthful comparisons of rates, commissions, fees, operating costs, services, methods of operation, or brokerage terms or conditions. Generally disseminated advertisements shall include any advertisement through the media, through printed distributions covering a particular geographic area or a particular association of persons, or through other general means.

C. Adopting any policy or taking any other action that has the purpose or effect of:

1. Requiring that any applicant or prospective applicant must have been engaged to any degree or in any manner or capacity in real estate brokerage for any period of time before becoming eligible for membership in respondent's multiple listing service;

2. Requiring that any prospective applicant, applicant, or member must:

a. Engage in real estate brokerage full time;

b. Derive any particular amount or portion of income from real estate brokerage; or

c. Operate from an established place of business at a nonresidential location;

3. Restricting the acceptance of any membership application for processing to unreasonably infrequent or limited periods of time during the year;

4. Unreasonably delaying action on any membership application or the induction of any new member; or

5. Discriminating against any prospective applicant, applicant, or member that is a new entrant in the market or new to respondent's multiple listing service;

Provided, however, that nothing contained in this subpart shall prohibit respondent from adopting or enforcing any reasonable and nondiscriminatory policy to assure that its members are actively engaged in real estate brokerage and that listings published on respondent's multiple listing service are adequately serviced.

D. Restricting or interfering with:

1. Any broker's inclusion or acceptance of a reserve clause in any exclusive right to sell listing; or

2. The publishing of any exclusive right to sell listing of a member that includes a reserve clause;

Provided, however, that nothing contained in this subpart shall prohibit respondent from: (a) Including notice of the existence of a reserve clause in publishing the listing on its multiple listing service; and (b) charging a reasonable and nondiscriminatory fee based on costs for any service it provides.

E. Prohibiting any broker from entering into an exclusive agency listing or an open listing.

F. Restricting or interfering with any broker's development of, or participation or involvement in, any organization, service, or venture that competes in any way with respondent's multiple listing service.

G. Restricting or interfering with any member and property owner cancelling a listing befor the listing's expiration date; provided, however, that nothing contained in this subpart shall prohibit respondent from: (1) Requiring reasonable advance notice of the cancellation, including a copy of the cancellation agreement; and (2) charging a reasonable and nondiscriminatory fee for any service it provides if the property subject to the cancelled listing is sold before the original expiration date of the listing and said fee is not otherwise owed to respondent by another member.

II

It is further ordered that respondent Mulitple Listing Service of the Greater Michigan City Area, Inc., shall:

A. Within sixty (60) days after this Order becomes final, amend its by-laws, code of ethics, and rules and regulations in accordance with the provisions of this Order.

B. Within thirty (30) days after this Order becomes final, make its best efforts to distribute an announcement in the form shown in Appendix A to the principal(s) of each real estate brokerage firm doing business in LaPorte County, Indiana (including each member and including any other brokerage firm listed in the most current telephone yellow page directories for Michigan City and the city of LaPorte), including a sufficient number of copies to permit each real estate broker and salesperson associated with any such firm to receive the announcement.

C. For a period of five (5) years after this Order becomes final, furnish promptly a copy of this Order to:

1. any person who inquires about membership or who submits an application for membership; and

2. any other person upon request.

III

It is further ordered that respondent Multiple Listing Service Of The Greater Michigan City Area, Inc., shall:

A. Within sixty (60) days after this Order becomes final, submit a written report to the Federal Trade Commission setting forth in detail the manner and form in which respondent has complied and is complying with this Order.

B. For a period of ten (10) years after this Order becomes final:

1. Provide to any applicant who has been denied membership prompt and clear written notice of the denial, specifying the membership requirements

not met and explaining in what manner the requirements are not met; and

2. Keep all documents that discuss, refer, or relate to any denied or approved application for a period of five (5) years from the final decision on such application, maintaining all such documents in one separate file segregated by the names of the applicants.

C. For a period of ten (10) years after this Order becomes final, make available to the Federal trade Commission staff for inspection and copying, upon reasonable notice, all documents that relate to determining whether respondent has been and is complying with this Order, including but not limited to the documents required to be kept by subpart III. B. of this Order.

D. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation of dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

E. Require as a condition of sale or transfer of all, or a substantial part, of respondent's business or assets to any other person seeking to perform essentially the same services as respondent in LaPorte County, Indiana that such successor or transferee file promptly with the Federal trade Commission a written agreement to be bound by the terms of this Order; provided, however, that if respondent wishes to present to the Commission any reasons why this Order should not apply in its present form to said successor or transferee, it shall submit to the Commission a written statement setting forth such reasons prior to the consummation of the succession or transfer.

IV

It is further ordered that nothing in this Order shall be construed to exempt respondent from compliance with the antitrust laws or the Federal Trade Commission Act, and the fact that any activity is not prohibited by this Order shall not bar a challenge to it under such laws and statute.

[Date]

Appendix A

[Respondent's Regular Letterhead]

Announcement

As you may be aware, the Multiple Listing Service Of The Greater Michigan City Area, Inc., has entered into a consent agreement with the Federal Trade Commission that has now become final. The following is a brief summary of the provisions of the order issued pursuant to the consent agreement:

1. *Commission rates and advertising:* The MLS will not maintain any rate or amount of commission or fee for real estate brokerage services or restrain competition among member firms in any manner. Any member will be free to charge any commission rate and to engage in general truthful advertising of any type, including comparative advertising of rates or of other terms and services.

2. *Eligibility for membership:* The MLS will not require as a prerequisite for membership that a broker have owned and operated a business for a one year period or any other time period. In addition, the MLS will not require any applicant or member to be engaged full time in a real estate brokerage, to operate from an office outside of the home, or to avoid participating in any other organization that competes with the MLS. Applications will be accepted and acted upon without unreasonable delay. If any membership application is denied, the MLS will promptly provide to the applicant a written explanation of the specific reasons for the denial.

3. *Property listings that limit or differ from an exclusive right to sell arrangement:* Members will be free to enter into any exclusive right to sell listing in which the homeowner reserves the right to sell to certain designated persons, and the MLS will publish all listings of this type with published notice of the reservation.[1] Members also will be free to enter into any exclusive agency listing [2] or any open listing with a homeowner so long as multiple listing is not involved.

4. *Cancellation of listings:* The MLS will not prohibit the cancellation of a listing before its expiration date. However, the MLS may require reasonable advance notice of the cancellation and, in certain situations, may still charge the member a service fee if the property subject to a cancelled listing is sold before the original expiration date of the listing.

The FTC is not endorsing any practice of the MLS that has not been challenged. For more specific information, you should refer to the FTC order itself. A copy of the order will be furnished to any person upon request.

President, Multiple Listing Service of the Greater Michigan City Area, Inc.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Multiple Listing Service Of The Greater Michigan City Area, Inc. ("MLS").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

A complaint prepared for issuance by the Commission along with the proposed order alleges that the MLS and its members have engaged in various acts and practices that have unreasonably restrained price and service competition among residential real estate brokers in LaPorte County, Indiana. The complaint alleges that MLS members have conspired through the Secretary to unlawfully:

(1) Raise brokerage commission rates in Michigan City, LaPorte County's principal city, form six percent to seven percent of the sales price of the property;

(2) Stabilize brokerage commission rates countywide;

(3) Obstruct truthful comparative advertising by members, including the advertising of low commission rates;

(4) Deny or delay MLS membership to new entrants, part-time firms, and firms operating out of the home, with the intent to deter new entry and to restrain price competition;

(5) Prohibit members from using, and from publishing on the MLS's multiple listing service, any "exclusive right to sell" brokerage service contract involving an individual home seller that includes a provision reserving the home seller's right to sell (without owing a commission) to specific persons individually named in the contract;

(6) Prohibit members from entering into any brokerage service contract that the MLS does not allow to be published on its multiple listing service (*i.e.*, the MLS, which only allows "exclusive right to sell" contracts to be published, prohibits member use of "exclusive agency" contracts or "open" contracts for brokering apart from the multiple listing service);

(7) Restrict member participation in ventures and services that compete with the MLS's multiple listing service; and

(8) Restrict the ability of members and home sellers to cancel a brokerage service contract before its expiration date.

The complaint alleges that these acts and practices violate section 5 of the Federal Trade Commission Act.

According to the complaint, the MLS provides a multiple listing service for member real estate brokerage firms doing business in LaPorte County. As

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[1] The MLS may charge the listing member a fee to cover the cost of publishing the listing if a person named in the reserve clause purchases the property.

[2] Under this type of listing, the owner owes no commission to the broker if the owner locates the purchaser independently of any real estate broker.

described in the complaint, the multiple listing service is a clearinghouse through which competing firms exchange information on "listings" (*i.e.*, brokerage service contracts) of residential real estate for sale and share commissions when other members locate purchasers. The complaint explains that the MLS charges a service fee to members for publishing listings only if the property is sold before the listing's expiration date; the fee is based on a percentage of the earned brokerage commission.

According to the complaint, access to MLS services provides a valuable competitive advantage to member firms, as it signficantly reduces the costs of obtaining current, comprehensive information on listings and sales that is important to compete effectively. The complaint states that the MLS provides the only multiple listing service serving LaPorte County and that about 65 percent of the full-time brokerage firms in the County are MLS members. The complaint also states that, for 1982, sales of MLS-published listings accounted for about 65 percent of the dollar volume of all sales of LaPorte County residences involving a broker.

The complaint states that real estate brokers doing business in the State of Indiana must be licensed pursuant to state law and that the licensing requirements include completion of prescribed courses of study, one year of experience as a licensed salesperson for a licensed real estate broker (or equivalent experience), and passing a written examination.

The complaint alleges that the MLS and its members have engaged in a number of unlawful acts and practices. The complaint first states that the MLS has maintained regulations since 1970 requiring that members charge brokerage service fees and commissions in accord with "local practice in similar transactions" and "customary practices" within LaPorte County. According to the complaint, almost all MLS members, as well as almost all nonmember competitors, have been customarily charging commission rates of six or seven percent of the sales price of residential property.

The complaint further alleges that, at some point in the early 1970's, at one or more MLS meetings and elsewhere, most or all of the Michigan City brokerage firms, including most or all of the MLS members at that time, jointly determined to raise the customary commission rate in Michigan City from six to seven precent. The complaint states that, within about six months after this joint determination was reached, the predominant commission rate in Michigan City increased six to seven percent and that seven percent continues to be the predominant rate charged in Michigan City.

The complaint alleges that the MLS has obstructed truthful comparative advertising by its members, including truthful advertising of low commission rates. As described in the complaint, an MLS code of ethics requirement in effect since the MLS's formation in 1970 states that a member "shall never publicly criticize a competitor * * *." According to the complaint, in 1978, an MLS member became the first LaPorte County brokerage firm since at least 1970 to attempt to advertise a commission rate below six percent in a comparative fashion. The MLS president and other MLS members, through the MLS, jointly coerced the advertising member to stop this conduct. Since this incident, no MLS member has attempted to advertise in a similar fashion.

The complaint alleges that the MLS, pursuant to its membership criteria, has unreasonably denied membership to duly licensed brokers (1) that have been in business for less than one year; (2) that do not derive the major or principal portion of their earned income from full-time practice of real estate brokerage; or (3) that operate from a business office located in the home. These standards are unrelated to, and in excess of, state law licensing requirements. According to the complaint, the purposes of these practices have been to deter the entry of new competitors and to impede price competition. In addition, the complaint alleges that the MLS has also unreasonably refused to process applications of some firms that had been in business full-time from a non-residential location for more than one year. It is further alleged that, through the above-described acts and practices, and since 1978, the MLS has unreasonably denied or delayed the membership of at least eight firms, including six new entrants and three firms that had been regularly or frequently charging commission rates below six percent.

As explained in the complaint, the MLS permits members to enter into, and to publish on its multiple listing service, only "exclusive right to sell" listings, *i.e.*, brokerage service contracts where the property owner agrees to pay a commission if the property is sold, regardless of who locates the purchaser. The complaint challenges the MLS's practice of prohibiting members from accepting a "reserve clause" in any exclusive right to sell listing with an individual homeowner and of refusing to allow such a listing to be published on its multiple listing service. As described in the complaint, a "reserve clause" reserves to the property owner the right to sell the property to one or more persons individually named in the brokerage service contract without owing a commission.

According to the complaint, the MLS prohibits any member from entering into an "exclusive agency" listing or an "open" listing with a residential property owner. As described in the complaint, an "exclusive agency" listing is a brokerage service contract where the property owner agrees to pay a commission if the property is sold through a broker, but not if the owner locates the purchaser independently of any broker. An "open" listing is a nonexclusive brokerage service contract; under such a listing, the owner is free to enter into other open listings with other real estate brokers and owes a commission only to the broker who locates the purchaser. The complaint alleges that the MLS is unreasonably prohibiting members from entering into such listings for brokering through means other than the MLS's multiple listing service. The complaint does not challenge the MLS's refusal to publish such listings on its multiple listing service. The consent agreement simply does not address that conduct.

The complaint alleges that the MLS is unreasonably prohibiting members from participating, without the approval of the MLS, in any organization that competes with the MLS's multiple listing service.

According to the complaint, the MLS has also been unreasonably restricting the ability of members and property owners to cancel residential listings before the listing's expiration date. The complaint states that, while the MLS permits a member to enter into a cancellation agreement with a property owner that releases the member from further obligation to provide brokerage services, it does not permit a partial or full release of the owner's obligation to pay a commission if the property is sold before the listing's original expiration date. Such a release would be important to owners who are dissatisfied with their broker's performance and wish, with the agreement of their broker, to cancel the listing in order to market the property through alternative means. It is also alleged that the MLS has prohibited members from entering into cancellation agreements with owners that are designed to permit transfer of the listing from a member to one of the member's former associates who has recently started his or her own firm. Such a transfer would permit the broker who had been servicing the listing to assume control when desired by the seller.

The complaint alleges that the purposes or effects of the challenged acts and practices have been to unreasonably:

(1) Stabilize, fix, maintain, or interfere with prices of real estate brokerage services;

(2) Restrain price competition among brokerage firms;

(3) Restrain the entry of new brokerage firms and of new joint ventures or services in competition with the MLS's multiple listing service;

(4) Restrain competition among brokerage firms based on willingness to accept different contract terms that may be attractive and beneficial to consumers;

(5) Limit consumers' ability to choose among a variety of brokerage firms competing on the basis of price, contract terms, and services; and

(6) Deprive consumers of information pertinent to selecting a brokerage firm, and of the benefits of competition.

The Proposed Order

The proposed order would prohibit the MLS from fixing, establishing or maintaining any rate, range or amount of commission or fee for real estate brokerage services, or from otherwise restraining price competition among brokers. According to the proposed order, the acts and practices that would be prohibited would include but not be limited to:

(1) Requiring or suggesting that brokerage service charges conform to "local practice in similar transactions" or "the customary practices" within LaPorte County;

(2) Requiring or suggesting that any broker refrain from charging or advertising any commission, fee or rate below what is customarily charged or prevailing in the market; or

(3) Taking or threatening any action that has the purpose or effect of penalizing, discriminating against, or interfering with any broker's charging or advertising any commission, fee or rate below what is customarily charged or prevailing in LaPorte County.

The proposed order would prohibit the MLS from restricting or interfering with any truthful comparative advertising by a broker that is "generally disseminated." "Generally disseminated advertisements" are described in the proposed order as any advertisement through the media, through printed distributions covering a particular geographic area or a particular association of persons, or through other general means. The intent is to exclude from the scope of the proposed order any restraints that the MLS may place on members' distributing advertisements solely to property owners with listings published on the multiple listing service. Public comment is specifically invited on the appropriateness of this exclusion. The proposed order is also not intended to restrict the MLS's ability to prohibit advertising by members that it reasonably believes to be false or deceptive.

Under the proposed order, the MLS could not require that any applicant or prospective applicant must have been engaged in real estate brokerage for any period of time in excess of state law licensing requirements before becoming eligible for membership. Also, the MLS could not require that any applicant, prospective applicant or member must operate a full-time business, derive any particular amount or portion of income from real estate brokerage, or operate from an office in a non-residential location. In addition, the proposed order would prohibit the MLS from restricting acceptance of applications to unreasonably infrequent or limited periods of time or unreasonably delaying action on any application or induction of any new member. Also, the MLS would be prohibited from discriminating against any applicant, prospective applicant or member that is a new entrant in the LaPorte County market or otherwise new to the MLS's multiple listing service—the intent is to prevent the MLS from discriminating against such new firms either in the membership application process or in the providing of services. It is expressly provided, however, that the MLS may maintain reasonable and non-discriminatory policies to assure that its members are actively engaged in real estate brokerage and that published listings are adequately serviced. The proposed order is also not intended to prohibit the MLS from maintaining reasonable policies that assure the competence and professionalism of its membership.

The proposed order would prohibit the MLS from restricting or interfering with any broker's inclusion or acceptance of a reserve clause in any exclusive right to sell listing. The MLS would also be prohibited in the proposed order from restricting or interfering with the publishing of any exclusive right to sell listing of a member that includes a reserve clause. It is expressly provided, though, that the MLS may include notice of the existence of a reserve clause in publishing the listing. It is also expressly provided that the MLS may charge a reasonable, non-discriminatory publication fee based on costs for any service provided. Since the MLS charges a publication fee only if a commission is earned, this proviso assures that the MLS can recover its costs if a reserved prospect purchases the property and no commission is owed.

Under the proposed order, the MLS may not prohibit any broker from entering into an exclusive agency listing or an open listing. However, the proposed order is not intended to require the MLS to publish exclusive agency listings or open listings. Instead, if the MLS retains its policy of not publishing such listings, it must allow their use apart from the MLS's multiple listing service. Public comment is specifically invited on the appropriateness of limiting the proposed order in this fashion. The proposed order is also not intended to prevent mandatory submission of all listings for inspection to assure that every listing of a member that is required to be published has been presented to the MLS.

The proposed order would prohibit the MLS from restricting or interfering with any broker's involvement in any service or venture that competes with the MLS's multiple listing service.

The MLS would also be prohibited under the proposed order from restricting or interfering with any member and property owner cancelling a listing before its expiration date. For example, it is intended by the proposed order that the MLS may not restrict or interfere with a member's promoting or otherwise offering to home sellers an unconditional right of cancellation as means of obtaining a listing. However, it is expressly provided that the MLS may require reasonable advance notice of any cancellation, including a copy of the cancellation agreement. This proviso is intended to assure that members can be apprised of cancellations before they take effect so that they may have the opportunity to finalize and present any imminent purchase offers. The MLS is also expressly permitted to charge a reasonable, non-discriminatory fee for its services if the withdrawn property has not been re-published by another member and is sold before the listing's original expiration date.

The proposed order would require that the MLS amend its bylaws, code of ethics, and rules and regulations to conform to the order's provisions within sixty days after the order becomes final. The MLS would also be required, for five years, to furnish a copy of the order to any person who inquires about or applies for MLS membership, and to any other person upon request. In addition, the MLS would be required to make its best efforts to distribute an

announcement, in the form appended to the consent agreement, to the principals of each LaPorte County brokerage firm, including a sufficient number of copies to permit each associate of the firm to receive the announcement. This announcement would briefly summarize the salient provisions of the proposed order and explain that, if more specific information is desired, the MLS will furnish a copy of the order to any person upon request.

Accordingly to the proposed order, within sixty days after the order becomes final, the MLS would be required to file a written report with the Federal Trade Commission setting forth the manner and form of ts compliance. The MLS would also be required for ten years to: (1) Promptly notify applicants who have been denied MLS membership of the specific reasons for the denial; (2) keep in an appropriate file all documents that relate to any denied or approved application for a period of five years from the final decision on the application; and (3) make available to the Federal Trade Commission staff all documents that relate to compliance with the order, including the documents required to be kept on membership applications.

The proposed order would require the MLS to give the Commission thirty days advance notice of any change in the MLS, such as dissolution or sale, that may affect its compliance obligations under the order. Also, pursuant to the proposed order, the MLS must require, as a condition of any sale or transfer of its compliance obligations under the order. Also, pursuant to the proposed order, the MLS must require, as a condition of any sale or transfer of its business to any other person seeking to perform essentially the same services, that such successor or transferee agree to be bound by the terms of the order. However, it is expressly provided that, prior to the sale or transfer, the MLS may petition the Commission if the MLS believes that the order should not apply to the successor or transferee in its present form.

The proposed order would also state that the order shall not be construed to bar a challenge under the antitrust laws or the Federal Trade Commission Act of any activity not prohibited by the order. Thus, for example, the proposed order should not be construed as granting Commission approval of any MLS prohibition on publishing listings that are other than exclusive right to sell listings.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

This proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in the compliant.

Emily H. Rock,

Secretary.

[FR Doc. 84-13462 Filed 5-17-84; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 213, 222, and 234

[Docket No. R-84-0722; FR-1028]

Mutual Mortgage Insurance and Rehabilitation Loans; Prepayment Privileges and Application of Monthly Payments Toward Late Charges

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

ACTION: Proposed rule.

SUMMARY: Prepayments are initiated, for the most part, in connection with the sale of property and involve new financing. This rule would: (1) Eliminate the 30-day written notice requirement for prepayment of single-family mortgages and the requirement that prepayments be made on an interest payment date; (2) require that payments in full be credited as of the date received; and (3) permit partial prepayments, other than those received on an installment due date, to be credited on the next following installment due date. This rule would also permit mortgagees to apply a portion of a mortgagor's total monthly payment to a late charge.

DATE: Comments must be submitted on or before June 18, 1984.

ADDRESS: Comments may be submitted to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, and should refer to the docket number indicated by the heading. Copies of the comments will be available for examination and copying during regular business hours (8:45 A.M. to 5:15 P.M.) in the Office of the Rules Docket Clerk, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Richard B. Buchheit, Director, Single Family Servicing Division, Office of Single Family Housing, Department of Housing and Urban Development, Room 9180, Washington, D.C. 20410, Telephone: (202) 755-6672. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 31, 1979 (at 44 FR 62531), the Department published a proposed rule to amend 24 CFR 203.558 to provide that, with respect to mortgages insured on or after the effective date of the rule, a mortgagee: (1) Could not require a 30-day written notice of the mortgagor's intention to prepay the mortgage; (2) must credit a prepayment in full as of the date the payment was received, and (3) need not credit a partial prepayment, other than one received on an installment due date, until the next following installment due date. The rule also proposed to amend § 203.608 to require the mortgagee to permit reinstatement of a mortgage under certain circumstances, including after institution of foreclosure proceedings.

The Department has decided to proceed with the proposed amendment of § 203.558, dealing with prepayment privileges. Because of the considerable time lapse since the initial publication of the proposed rule, and to provide a reasonable time for additional comment, the Department has decided that it would be appropriate to publish the rule again as a proposed rule with a 30-day comment period.

The proposed rule would also amend §§ 203.22, 203.513 and 234.37 to conform them to the new provisions relating to prepayment privileges. Additionally, the proposed rule would amend §§ 203.24, 213.515, and 222.6 to permit mortgagees to apply a portion of the mortgagor's total monthly payment to a late charge.

In view of commenters who objected on the ground that the proposed amendment would only serve to protect the "chronic delinquent" mortgagor, HUD has decided to withdraw, for the present, the proposed amendment of 24 CFR 2033.608. The amendment would have deleted the provision that permits a mortgagee to deny reinstatement of a mortgage if the mortgagee has accepted resinstatement after the institution of foreclosure proceedings within the two years immediately preceding the commencement of the current foreclosure activity. The withdrawal of the proposed amendment shall not preclude HUD from proposing similar amendments in the future nor does it commit HUD to any particular course of action.

Prepayment Privileges

Current Rule

For years, HUD's rules on prepayment of single-family mortgages have generated more complaints from mortgagors, members of Congress, and consumer interest groups than has any other mortgage servicing policy. Under current regulations, a mortgagor must: (1) Give the mortgagee a 30-day written notice of intention to prepay the mortgage in whole or in part, and (2) make any such payment on the installment/interest due date (established as the first of the month by § 203.17) unless the mortgagee chooses to waive such requirements. If a mortgagor fails to meet both conditions for prepayment, the mortgagee, at the mortgagee's option, may refuse to accept prepayment until the first day of the month following expiration of the notice period, unless the mortgagor agrees to pay interest to that later date. For example, if a mortgagor gives a 30-day notice on March 8, the mortgagee may refuse to accept the prepayment until May 1, unless the mortgagor agrees to pay interest to May 1. The effect is a notice period much longer than 30 days and significantly increased costs for the mortgagor.

Changing Needs

When the rule was originally adopted, the requirement for a 30-day notice period was justified in order to give lenders adequate time to anticipate prepayments, develop close-out balances, and arrange for reinvestment of prepayment funds. The advent of computers and other advanced equipment, combined with the greater degree of sophistication among money managers and immediate access to numerous short- and long-term investment alternatives, negates, in our view, the need for a 30-day notice.

Prepayments are initiated, for the most part, in connection with the sale of the property and involve new financing. Most mortgagors and many real estate brokers are unfamiliar with the FHA rule on prepayment privileges, and schedule the closing to take place as early as possible after financing is secured. The pressure for an early closing and the lack of familiarity with the rule generally override serious consideration by the mortgagor of the prepayment penalty and, in effect, deny the mortgagor a reasonable opportunity to postpone the date of closing or of prepayment to coincide with the date required by the mortgagee. Instead, the mortgagor pays the extra interest in order to complete the sale as scheduled.

Discussion of Comments

The majority of comments submitted in response to the October 1979 proposed rule reflected agreement that the 30-day notice was no longer necessary for the purpose of developing close-out balances or as an aid to reinvestment of prepayment funds. However, the commenters were virtually unanimous in opposing the proposed change that would require lenders to credit prepayments in full as of the date payment was received. Their argument was that the change would impose serious burdens on mortgagees who place many of their FHA mortgages in the Government National Mortgage Association (GNMA) mortgage-backed securities (MBS) program.

GNMA requires issuers/servicers participating in the mortgage-backed securities program to pass-through interest to certificate holders until the first day of the month following the date of the prepayment in full, regardless of the date of the prepayment. Therefore, under the proposed rule, the issuers/servicers would be forced to absorb the difference between the amount of interest collected and the amount of interest due GNMA.

The comments failed to address, however, the significant amount of unearned interest that the current rule permits mortgagees to charge prepaying mortgagors. Data developed from HUD's Management Information System (MIS) statistics indicate that an average of 9,000 mortgages were prepaid monthly in 1981 and 1982, for an annual average of 108,000 prepaid mortgagees. Analysis of HUD prepayment data provides a basis for a better understanding of why the current rule should be amended.

I. General Characteristics of HUD Single Family Mortgage Prepayment Activity

"Average" number of prepayments per year.	108,000.
Percentage of FHA mortgages placed in GNMA MBS pool.	70 percent.
Incidence of extra interest charge on prepayments.	75 percent.
"Average" annual number of mortgagors paying extra interest (75 percent of 108,000).	81,000.
"Average" mortgage balance ...	$55,000.
Year of highest incidence of prepayments in 30-year mortgages.	6th.
Average length of extra interest period (HUD has no specific data pinpointing when, during a month, the majority of prepayment are made; and, thus, has chosen the 15th day to represent the norm, while recognizing that prepayments may occur both before and after that date).	1½ months.
Average rate of interest on prepaid mortgages.	12 percent.
Monthly interest charge on $55,000 mortgage, with 12 percent interest rate, in the 6th year of a 30-year term.	$536.
Average amount of extra interest paid by each mortgagor (1½ months interest).	$804.

II. Apportionment of Costs and Savings Under Current Rules for Mortgages Prepaid in Sixth Year of Mortgage Term

Average number of all prepaid FHA mortgages annually.	108,000.
Average number of prepaid mortgages in GNMA MBS pool (70 percent of 108,000).	75,600.
Average number of prepaid mortgages annually where mortgagor pays extra interest:	
—All prepaid FHA mortgages (75 percent of 108,000).	81,000.
—GNMA MBS mortgages (75 percent of 75,600).	56,700.
Average per mortgage interest cost to MBS issuer (½ month).	$268.
Total estimated annual costs of prepayments for MBS issuers due to GNMA requirements (75,600 times $268).	$20,260,800*.
Total estimated extra interest paid by all prepaying FHA mortgagors (81,000 times $804) (average amount).	$65,124,000.
Total estimated amount of net *unearned interest* retained annually by mortgagees.	$44,863,000*.

*Assumes that mortgagees absorb cost of "pass-throughs" to GNMA for those mortgagors who are *not* charged extra interest at time of prepayment.

III. Apportionment of Costs and Savings Under Proposed Rule for Mortgages Prepaid in Sixth Year of Mortgage Term

Total estimated annual cost to MBS issuer for interest pass-through to GNMA (75,600 times $268 (½ months interest)).	$20,260,800.
Total estimated annual savings of extra interest costs for all prepaying FHA mortgagors (81,000×$804).	$65,124,000

Simply stated, under the current rule, mortgagees collect an estimated $65 million annually in unearned interest from all prepaying FHA mortgagors. To the extent that mortgagees currently absorb the cost of "pass-through" interset due GNMA (in those instances where mortgagors are permitted to prepay in full without paying extra

interest), net unearned income would still approximate, *at a minimum*, $45 million annually. It seems more likely, however, that mortgagees require such mortgagors to cover all actual costs incident to the full prepayment of mortgages, and, thus, that mortgagees realize annual unearned income in an amount close to the $65 million level.

Effect of the Rule

The rule would apply prospectively, and mortgages insured before the effective date of the rule would be exempt from the new provisions. The projected costs for MBS-issuers and savings for mortgagors prepaying in full would not be entirely realized until the rule is adopted and in effect for six years. Accordingly, the annual cost to the MBS-issuers, if the number of prepayments in full increase in an even amount every year, would be about $3.4 million the first year, with a $3.4 million increase every year until the $20.3 million level is reached in the sixth year. Based on the same assumptions, the net savings to mortgagors would approximate $10.8 million the first year and increase by a like amount annually until the projected $65 million level is reached in the sixth year. Since these projections assume that *all* prepayments in full occur by the end of the sixth year of the mortgage term, the projected cost/savings would probably be at a lower annual rate and extend over a longer period of time, since many prepayments in full do not occur until after the sixth year of the mortgage term.

We believe that interest costs that GNMA issuers appear to bear under this proposal will be passed on to new mortgagors through points, fees, or similar devices. Because most prepayments occur in connection with the purchase of another home, it is likely that a sizable portion of such interest cost will be borne by mortgagors who have accomplished a "savings" in prepaying their FHA-insured mortgages, and, thus, are better prepared to assume the extra costs in financing new mortgages going into a GNMA MBS pool.

More importantly, we note that for many years MBS pools have included about 50 percent of all VA-guaranteed mortgages. Such VA mortgages include the prepayment rule that HUD is seeking to adopt. MBS participant-issuers have borne any interest penalty risks attendant upon the prepayment of VA mortgages in MBS pools without any serious effort to change the VA rule or to remedy any VA prepayment interest problems. Consequently, it would seem that there is little basis on which to object to HUD's efforts to adopt the same rule.

Therefore, after careful consideration of all of the comments and analysis of the impact of the current prepayment policy on mortgagors and mortgagees, HUB proposes to implement the rule change to eliminate the inequitable and unjustifiable interest burden currently placed on mortgagors who prepay their mortgages in full.

Collection of interest only to the date of prepayment would be limited to prepayment in full of mortgages insured after adoption of the rule. Thus, mortgagees could continue to exercise the option permitted by 24 CFR 203.558 and collect interest until the first of the month following prepayment on those mortgages that were insured before adoption of the rule. Additionally, mortgagees would be permitted to defer crediting of partial prepayments, other than those received on an installment due date, until the next following installment due date.

Adoption of the rule will conform HUD policy to the existing policy in Veterans Administration mortgages and will facilitate the adoption of uniform mortgage instruments, as required by section 905 of the Housing and Community Development Amendments of 1978.

Application of Part of Total Monthly Payment to a Late Charge

The proposed amendments to §§ 203.24, 213.515 and 222.6 permitting mortgagees to apply a portion of a total monthly payment to a late charge, will codify late charge collection procedures already permitted in HUD Handbook 4330.1, Chapter 4, paragraph 63. The proposed amendment will continue safeguards relative to late charges by: (1) Requiring the mortgagee to give notice to the mortgagor of its intention to impose a late charge, (2) prohibiting a mortgagee from adding previously uncollected late charges to the monthly payment for purposes of calculating the present late charge, (3) subjecting the collection of late charges to the law of the State in which the mortgage is serviced and to the terms of the mortgage, and (4) prohibiting initiation of foreclosure proceedings when the only delinquency under the mortgage is a late charge which is due but unpaid. The provisions of these amendments will be reflected in HUD's new security instruments to further the objective of section 905 of the Housing and Community Development Amendments of 1978—that HUD, the Department of Agriculture and the Veterans' Administration use, to the extent possible, uniform forms.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations. Analysis of the rule indicates that it does not (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. It is estimated that an average of 9,000 mortgages are prepaid each month, and that 75 percent of all prepaid

mortgages are subjected to 1½ months of extra interest. A typical 30-year mortgage having a principal balance of $55,000, an interest rate of 12% and in the sixth year, assuming that 1½ month's interest is saved, would yield a savings of $804 per mortgage. In a 12-month period the total savings on such prepaid mortgages would be $65,124,000, which is well below the $100 million threshold.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular hours in the office of the Rules Docket Clerk, Office of the General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, D.C. 20410.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This rule was listed as item H–9–79 in the Department's Semiannual Agenda of Regulations published on October 17, 1983 (48 FR 47433), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The following numbers identify the programs, as listed in the Catalog of Federal Domestic Assistance, affected by the regulation changes: 14.105, 14.108, 14.117, 14.118, 14.119, 14.120, 14.121, 14.122, 14.123, 14.133, 14.140, 14.152, 14.157, 14.161, and 14.165.

List of Subjects

24 CFR Part 203

Home improvement, Loan programs: housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 222

Condominiums, Military personnel, Mortgage insurance.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

Accordingly, 24 CFR Parts 203, 213, 222 and 234 are amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. By revising § 203.22, paragraph (b), to read as follows:

§ 203.22 Payment of insurance premiums or charges; prepayment privilege.

* * * * *

(b) *Prepayment privilege.* The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part under such conditions as the Commissioner may prescribe, but shall not provide for the payment of any charge on account of such prepayment.

2. By revising § 203.24, paragraphs (a)(1) throught (a)(4), to read as follows:

§ 203.24 Application of payments.

(a) * * *

(1) Premium charges under the contract of insurance (other than a one-time mortgage insurance premium paid in accordance with § 203.280), and charges for open-end advances, ground rents, taxes, special assessments, flood insurance premiums, if required, and fire and other hazards insurance premiums;

(2) Interest on the mortgage;

(3) Amortization of the principal of the mortgage; and

(4) Late charges, if permitted under the terms of the mortgage and subject to such conditions as the Commissioner may prescribe.

* * * * *

3. By revising § 203.558 to read as follows:

§ 203.558 Handling prepayments.

(a) Notwithstanding the terms of the mortgage, the mortgagee may accept a prepayment at any time and in any amount so long as monthly interest on the debt is calculated on the actual unpaid principal balance of the loan.

(b) With respect to mortgages insured before (*insert effective date of this rule*), if the mortgagee will not accept a prepayment until the first day of the month following expiration of the 30-day notice period, unless interest is paid to that date, the mortgagee's response to the mortgagor's inquiry, request for payoff figures, or tender must clearly advise the mortgagor of this fact. If the mortgagor's notice of intent to prepay or actual prepayment is required to be delivered on a nonworking day, the notice of prepayment shall be timely if delivered on the next working day.

(c) With respect to mortgages insured on or after (*insert effective date of this rule*), the mortgagee shall not require 30 days advance notice of prepayment or payment upon an interest payment date. Payment in full shall be credited as of the date received. Partial prepayment, other than on an installment due date, need not be credited until the next following installment.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

4. By revising § 213.513, paragraph (b), to read as follows:

§ 213.513 Payment of insurance premiums or charges; prepayment privilege.

* * * * *

(b) *Prepayment privilege*; The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part under such conditions as the Commissioner may prescribe, but shall not provide for the payment of any charge on account of such prepayment.

5. By revising § 213.515 to read as follows:

§ 213.515 Payments, how applied.

(a) Premium charges under the contract of insurance (including insurance charges for open-end advances), ground rents, taxes, special assessments, flood insurance premiums, if required, and fire and other hazard insurance premiums,

(b) Interest on the mortgage;

(c) Amortization of the principal of the mortgage; and

(d) Late charges, if permitted under the terms of the mortgage and subject to such conditions as the Commissioner may prescribe.

PART 222—SERVICEMEN'S MORTGAGE INSURANCE

6. By revising § 222.6, paragraphs (a)(1) through (a)(4), and by adding a new paragraph (a)(5), to read as follows:

§ 222.6 Application of payments.

(a) * * *

(1) Ground rents, taxes, special assessments, flood insurance premiums, if required, and fire and other hazard insurance premiums;

(2) Service charge, if any;

(3) Interest on the mortgage;

(4) Amortization of the principal of the mortgage; and

(5) Late charges, if permitted under the terms of the mortgage and subject to such conditions as the Commissioner may prescribe.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

7. By revising § 234.37, paragraph (b), to read as follows:

§ 234.37 Prepayment of insurance premium or charges; prepayment privilege.

* * * * *

(b) *Prepayment privilege.* The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part under such conditions as the Commissioner may prescribe, but shall not provide for the payment of any charge on account of such prepayment.

(Sec. 211 of the National Housing Act (12 U.S.C. 1709, 1715))

Dated: April 5, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-12866 Filed 5-17-84; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 529; Ref: Notice Nos. 357 and 378]

Withdrawal of Multivintage Wine Labeling Proposals

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of withdrawal.

SUMMARY: ATF is withdrawing the proposed regulations on multivintage labeling. This action concludes the regulatory process. ATF is withdrawing the notice based on the comments received pursuant to two notices of proposed rulemaking. Although the notice of proposed rulemaking is being withdrawn, ATF is considering action in the form of a ruling on this issue.

EFFECTIVE DATE: June 18, 1984.

FOR FURTHER INFORMATION CONTACT: Roger Bowling, Bureau of Alcohol, Tobacco and Firearms, FAA, Wine and Beer Branch, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

ATF has not allowed the labeling of distinct vintages and the percentages of each on labels of blended wine. This policy is clearly stated in Rev. Rul. 54-250, 1954-1 CB 342, and ATF Rul. 78-4, 1978 ATF CB 61. ATF held that by allowing multivintage dates on labels, consumers could be misled into believing that the wine was a vintage wine, when in fact, it would not so qualify. A vintage wine, under 27 CFR 4.27(a), is a wine in which at least 95 percent of the volume is derived from grapes harvested in a single calander year.

In 1980, Veedercrest Vineyards, Emeryville, California, submitted a petition to ATF to amend the regulations to allow more than one vintage date to appear on labels of wine. After considering the petition, ATF decided to air the issue through the rulemaking process and published an advance notice of proposed rulemaking (Notice No. 357; November 13, 1980; 45 FR 74942).

Notice No. 357

During the comment period, ATF received 34 comments which were basically divided equally for and against multivintage labeling; 18 opposed and 16 favored the concept.

The 18 commenters opposing stated that to allow such labeling would be misleading and confusing; no need existed for multivintage labeling, and that "vintage" would lose some of the mystique that consumers have applied to the term.

The 16 commenters in favor of multivintage labeling stated that such dates would be no more misleading than a single date, and that a vintage date on a label is simply the calendar year of harvest in which the grapes were harvested and is not a quality statement as there are both good and bad vintages. Furthermore, these commenters stated that since blending was such a prevalent practice, information concerning the blend's components should be labeled. Some commenters believed that multivintage dates would provide specific information that consumers wanted or needed concerning blended wines.

Since the commenters were basically equally divided and persuasive arguments were presented from both sides, ATF decided to gather comments on specific regulatory proposals. This was accomplished in Notice No. 378 (August 5, 1981; 46 FR 39850).

Notice No. 378

In response to this notice, ATF received 16 comments. Of the total comments, 11 were opposed to multivintage labeling, while only five supported it. The arguments were basically the same as those received pursuant to the advance notice.

Decision

Since most commenters were opposed to the proposed regulation and because of the small number of comments received, ATF is withdrawing the notice of proposed rulemaking.

Drafting Information

The principal author of the document is Roger Bowling, FAA, Wine and Beer Branch.

List of Subjects in 27 CFR Part 4

Advertising, consumer protection, customs duties and inspection, imports, labeling, packaging and containers, wine.

Authority and Issuance

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act, 49 Stat. 981, as amended; 27 U.S.C. 205, the Director has issued this notice.

Signed: April 12, 1984.

Stephen E. Higgins,

Director.

Approved: May 9, 1984.

Edward T. Stevenson,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 84-13477 Filed 5-17-84; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

Land Uses; Special Uses

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Forest Service proposes to amend 36 CFR 251.54 to require only consultation with the Secretary of Energy on applications for permits for electric power transmission lines of 66 KV or more. In addition, the agency proposes to remove the regulations at § 251.56(g)(3) requiring these permit applicants to agree to stipulations and terms allowing the surplus capacity of the transmission facility to be used by federal power marketing authorities. The proposed rule seeks to eliminate burdensome and outdated procedures and to conform the Forest Service electric power transmission facility permitting procedures to those used by the U.S. Fish and Wildlife Service (F&WLS) and Bureau of Land Management (BLM).

DATE: Comments must be received by July 17, 1984.

ADDRESS: Comments should be sent to: R. Max Peterson, Chief (2720), Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013. Comments will be available for review in the offices of the Forest Service Lands Staff, Room

1010, 1621 North Kent Street, Rosslyn, Virginia during regular working hours (8:00 a.m. to 4:30 p.m.) on regular working days.

FOR FURTHER INFORMATION CONTACT: Paul M. Stockinger, Lands Staff, (703) 235–2410.

SUPPLEMENTARY INFORMATION: The current Forest Service regulations require that applicants for special use permits for electric transmission lines in excess of 66 KV agree to wheeling stipulations. Wheeling is the transmission of power from one generating facility across the lines of another utility to reach a specific destination. These particular wheeling stipulations allow federal power marketing authorities to use the surplus capacity of a permittee's line to transmit federal power. Surplus capacity is defined as the amount of electric load a line may safely carry over its current level of operation.

The requirement to have wheeling stipulations in power transmission line permits for facilities 66 KV or greater was first regulated by the Department of the Interior in 1948. The requirement was removed in 1954, but reinstated in 1962, when the BLM regulations were changed to require a wheeling provision in their permits. At that time, the Forest Service regulations were also changed to require a similar stipulation. The enactment of the Public Regulatory Policies Act of 1978 (92 Stat. 3137) provides the Federal Energy Regulatory Commission with authority to impose wheeling provisions on electric utilities. The wheeling stipulation requirement in land management agency permits is no longer needed. The stipulation was removed from the Department of the Interior regulations in 1982 for the BLM by final rulemaking published March 23, 1982 for 43 CFR 2800, and in 1983 for the F&WLS by final rulemaking published July 11, 1983 for 50 CFR Part 29. To be consistent with the Department of the Interior, and to reduce needless duplication of requirements, this proposed rulemaking would revise the USDA Forest Service regulations to eliminate the provision.

The special application procedures at 36 CFR 251.54 would be revised to provide only for consultation with the Department of Energy (DOE) over the location of proposed electric power transmission lines of 66 kilovolts or higher. The other requirements would be deleted.

The special terms and conditions for special use authorizations in § 251.56 would be revised to delete the requirement for applicats to agree to wheeling stipulations for electric transmission lines of 66 KV or more. This revision would delete § 251.56(f)(3)(i)–(ii), (A)–(L).

This proposed rule has been reviewed under USDA procedures and Executive Order 12291 and it has been determined that this revised regulation is not a major rule. The revised regulation is not expected to increase costs to consumers served by power marketing agencies. The revision should decrease costs to the applicants and the Forest Service by reducing the reporting burden on the applicants, by reducing the administrative workload on the Forest Service in processing applications, and by eliminating delays caused by the referral of applications to the Department of Energy for review. The change will not increase costs to States or local governments.

In addition, the Assistant Secretary of Agriculture for Natural Resources and Environment has determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) and therefore does not require a regulatory flexibility analysis.

This rule does not contain information collection requirements subject to Office of Management and Budget review under 44 U.S.C. Chapter 35.

List of Subjects in 36 CFR Part 251

Electric power, Mineral resources, Rights-of-way, Water.

PART 251—[AMENDED]

Therefore, for the reasons set forth above, it is proposed to amend Part 251 of Title 36 of the Code of Federal Regulations as set forth below:

1. The authority citation for Part 251 is as follows:

Authority: Sec. 1, 30 Stat. 35, as amended, 62 Stat. 100, sec. 1, 33 Stat. 628 (16 U.S.C. 551, 472), 90 Stat. 2776 (43 U.S.C. 1761–1771); (44 U.S.C. 3506).

2. In § 251.54, Special use applications, revise paragraph (g)(2) to read as follows:

§ 251.54 Special use applications.

* * * * *

(g) *Special application procedures.*

(1) * * *

(2) *Electric power transmission lines 66 KV or over.*

Each application for authority to construct and maintain a facility for the generation of electric power and energy or for the transmission or distribution of electric power and energy of 66 kilovolts or higher under this section shall be referred to the Secretary of Energy for consultation.

§ 251.56 [Amended]

3. In § 251.56, revise paragraph (f) by removing paragraphs (3)(i)–(ii), (A)–(L).

Dated: April 30, 1984.

John B. Crowell, Jr.,

Assistant Secretary for Natural Resources & Environment.

[FR Doc. 84–13491 Filed 5–17–84; 8:45 am]

BILLING CODE 3410–11–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. 6599]

Proposed Flood Elevation Determinations; California et al.

Correction

In FR Doc. 84–12053 beginning on page 19343 in the issue of Monday, May 7, 1984, make the following corrections:

On page 19349, third column, first entry "Ruth Creek" should read "Rush Creek".

In the fourth column, line 2 "Ruth Creek should read "Rush Creek".

On page 19351, in the second entry for North Carolina, in the fourth column, the first location for Deep Creek should read "Mouth at Tuckasegee River"; and the second location for Deep Creek should read "About 0.36 mile upstream of Deep Creek Road".

BILLING CODE 1505–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[BMCS Docket MC–103; Notice No. 84–3]

Exemption; Driver Qualification Files

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The FHWA is withdrawing an April 4, 1983 notice of proposed rulemaking that would have granted, in part, a petition for exemption from certain driver qualification requirements. This decision is based on data and information received during this rulemaking which indicates that the proposal was not in the best interest of safety for the motoring public.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 426–9767; or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 426–0346, Federal

Highway Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t. Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The American Bakers Association (ABA) has petitioned the FHWA to grant an exemption from the driver qualification rules regarding certain paperwork and administrative requirements for drivers operating vehicles having a gross vehicle weight rating (GVWR) between 10,001 and 15,000 pounds. There is an exemption for drivers of lightweight vehicles currently in effect (49 CFR 391.62(a)). A lightweight vehicle is a vehicle having a GVWR of 10,000 pounds or less, provided that the vehicle is not used in the for-hire carriage of passengers or used to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded (49 CFR 390.17).

The current exemption (49 CFR 391.62(a)), applicable to drivers who operate only lightweight vehicles, provides relief by excluding them from the requirements for:

1. The disclosure of, investigation into, and inquiries about, the background and driving record of drivers (49 CFR Part 391, Subpart C).
2. The road test and written examination (49 CFR Part 391, Subpart D).
3. The medical examination, certificate of medical examination, and possession of a medical certificate, (49 CFR Part 391, Subpart E (§§ 391.41, 391.43, and 391.45)).
4. The maintenance of driver files and records (49 CFR Part 391, Subpart F).

The intent of the current exemptions was to relieve motor carriers of detailed recordkeeping medical examinations, and other administrative obligations which were believed to be unduly burdensome given the nature of the operations involved. On the other hand, drivers of lightweight vehicles were not exempted from the requirements of the driver qualification rules: e.g., the requirement to hold a driver's license or permit, the requirement for minimum physical qualifications, and the requirement for knowledge and ability to operate motor vehicles safely upon the public highways.

In its petition, the ABA seeks to apply these exemptions to drivers of additional vehicles, specifically those between 10,001 and 15,000 pounds GVWR. It proposes that this be achieved in the most limited way possible by expanding the definition of "lightweight vehicle", only in its application to the qualification of drivers (49 CFR 391.62(a)), to include vehicles having a GVWR between 10,001 and 15,000 pounds.

The ABA asserts that today's vehicles rated at between 10,001 and 15,000 pounds GVWR have size and handling characteristics similar to older vehicles rated at 10,000 or less and are similar in terms of chassis, engine, power train, brake system, and tires. As a result, they say, vehicles between 10,001 and 15,000 pounds GVWR have the same operational characteristics as the lighter rated vehicles and require no additional driver training.

Bakery trucks, like most trucks under 15,000 pounds GVWR, says the ABA, are used almost exclusively in local pick-up and delivery service, and not in long distance over-the-road movements. Thus, even when used beyond exempt intracity zones (49 CFR 390.16, 391.2), these trucks are used in the same type of local delivery service as vehicles operating within exempt zones. The ABA concludes that given the present exemption for local delivery operations, which includes certain exemptions from Part 391, even for drivers of the heaviest trucks on the road, the relief sought should be granted to ensure that vehicles which are used similarly—in local delivery service—are treated similarly.

Responding to the ABA petition, the FHWA published an advance notice of proposed rulemaking (ANPRM) (47 FR 39698) on September 9, 1982 to solicit comments and data concerning the information the ABA used to support its petition.

Based on the comments received in response to the ANPRM, the FHWA published a notice of proposed rulemaking (NPRM) (48 FR 14413) on April 4, 1983. The NPRM proposed to grant the petitioner's request, in part, by offering relief from all of the requested items except those concerning the medical examination and certificate requirements. The decision to retain the medical requirements was based on convincing data provided by the United Parcel Service (UPS) which showed that the requirement for documenting compliance with the medical criteria is critical.

The proposal to grant an exemption from the other three requirements was, as stated in the NPRM, based on the opinion that the operations in question are generally conducted at low speeds in local pick-up and delivery service and because the comments of those supporting the petition were more convincing than those opposed. It was noted, however, that neither the commenters opposing nor the commenters supporting the proposal offered substantive data concerning operational characteristics or, more importantly, stability. For this reason, it was explained, the FHWA would research the issue of the stability of these vehicles during the comment period. The FHWA did research the issue. The results will be discussed in detail later in this document.

Assessment of Comments

A total of 14 comments were received in response to the NPRM. Of that total, 10 commenters supported the proposal and 4 opposed it. The following is a summary of the comments received.

Supportive

The majority of comments which support the proposal address the economic benefits which would be enjoyed should the exemption be granted. The ABA comments, for example, stress the belief that "both the relief proposed in the NPRM and the additional relief requested by the ABA in its petition would reduce regulatory burdens and costs, allow the redeployment of scarce financial resources from regulatory compliance to job creation, capital formation, and other vital economic functions, and not have any adverse affect on safety." Likewise, the Mallet Co. commented in support of the ABA and stated that the exemption will promote cost control without any sacrifice in safety.

The W. E. Long Co. offered a similar view. It states, "in order to absorb energy, capital, and labor cost increases as well as providing necessary services for the consumer, we anticipate greater volume deliveries on 'curb-side' or 'walk-in' vehicles will be a vital part of the delivery system." It explained that by adding no more than four feet to a unit, they can realize increased delivery efficiency up to twenty-five percent. The Flower Industries, Inc., also commented, "the increasing cost of transportation makes it imperative to increase driver productivity. The only way to do that is to increase the size of the truck." The Pepperidge Farm Co. states that companies increase the size of their trucks to increase productivity and argues that "the change in size does not warrant having to maintain more paperwork which works against the expected productivity gains."

The Center for Commercial Floriculture which refers to its members as small businesses in the purest sense asserts "excessive government reports are not only time-consuming, but costly

in terms of personnel who could be used more valuably in other duties."

Economic considerations are always an important part of any rulemaking within the FHWA, and the comments reviewed above are given full attention. However, while the ABA accused the FHWA of using questionable data in assessing the estimated costs actually involved in economic considerations, it is important to note that not one commenter offered substantive data to assist the FHWA in it's reevaluation of costs. The ABA charges that the FHWA estimates are low by as much as several hundred percent in some instances, yet offers no cost data in return.

Other comments offered in support of the proposal focused on handling and operational characteristics. The ITT Continental Baking Company, Inc. (CBC) took exception to the NPRM because it failed to address the fact that there are diminishing loads in delivery situations for fresh bread and cake operations and that returns are minimal. It also points out that increase in GVWR does not necessarily mean an increase in length or width.

Both the CBC and the ABA makes reference to a recent FHWA research effort which indicated that the rollover threshold for vehicles of between 10,001 and 15,000 pounds GVWR is no greater than the rollover threshold for vehicles under 10,000 pounds GVWR. The research effort was conducted in response to this rulemaking through a contract with the University of Michigan's Transportation Research Institute. The results of the research will be discussed in further detail below.

The ABA also iterated its belief that the FHWA itself does not believe that the requirements for which ABA seeks exemption are essential to safe trucking operations since the current commercial zone and lightweight vehicle exemptions already exempt a large number of these vehicles.

Further, the ABA strongly objects to the NPRM insofar as medical qualifications are concerned. It expresses its belief that the exemption it requests would in no way exempt the vehicles in question from any of the substantive requirements of Part 391.

Finally, one commenter, the Private Truck Council of America (PTCA), offered partial support of the proposal based on the recommendations of the membership of its Safety Committee. The PTCA supports the elimination of the written examination because, it says, "such an 'open book' type exam holds little benefit for a potential truck driving employee and is certainly no gauge of driver competence." It continues, "PTCA further supports the elimination of the driver files and records. . . . We believe that all truly concerned safety-conscious companies will retain certain basic driver files. However, any reduction of the mountain of paperwork will certainly be of assistance in streamlining the costly filing process."

Opposed

All of the comments received in opposition to the NRPRM focused on the belief that the driver should be the focal point in this rulemaking rather than the handling characteristics of the vehicles in question or the economic benefit.

The Liberty Mutual Insurance Co. commented that, in its opinion, "the FHWA has completely overlooked the important issue—the driver." It states, "By removing certain restrictions on background checks you will be diluting the selection process thereby leaving the door open for companies to relax their selection criteria and put drivers in vehicles that are not qualified."

To document is comments, Liberty Mutual cited several studies showing that drivers with a history of moving violations and accidents will likely continue these patterns in the future. One study, entitled "Prior Violation Records of 1,447 Drivers Involved in Fatal Crashes" by Leon S. Robertson and Susan P. Baker, showed that drivers with 4 or more convictions or violations prior to the fatal crash were more than 9 times as likely to be involved in fatal crashes as those with no such violations. Another study quoted by Liberty Mutual, entitled "The Statistical Association Between Past and Future Accidents and Violations," prepared by J. Richard Stewart and B. J. Campbell, reveals that drivers with no violations had an average accident frequency of .10 while drivers with 6 violations had an average frequency of .42.

Liberty Mutual stresses its belief that "Its the operator, not the vehicle, that causes accidents. Studies by several organizations bear this out." It offers statistics which indicate that between 73% to 95% of all accidents are attributable to human factor causes.

The American Insurance Association (AIA) submitted a similar argument. It "strongly objects to the proposal to eliminate what should be *minimum* (emphasis supplied) qualifications for all commercial drivers." AIA states "When one considers that more than 80% of accidents involve driver error, in that action by the driver could have prevented the accident, it would be poor business practice to entrust a vehicle and cargo to a driver without ascertaining the driver's background and verifying that the driver will be capable of handling the company's vehicle in a responsible manner." AIA continues, "These regulations were not promulgated to create paperwork, but to assure that drivers of commercial vehicles have the necessary qualifications to safely operate commercial vehicles, which pose a substantially different risk to the general public."

The American Trucking Associations, Inc. (ATA) also offered comments opposing the proposal. In an effort to demonstrate its position that the requirements in question are more than just paperwork, the ATA conducted a survey to assess the effectiveness of the provisions. In the survey of the steering Committee of the ATA Council of Safety Supervisors, information was requested on the total number of drivers screened in 1982 and the number of applicants rejected by reason of either (1) unsatisfactory employment history; (2) adverse traffic record; (3) failure to pass the road test; or (4) failure to pass the medical examination.

The ATA offered these results: "Responding carriers reported the in-depth screening of 973 driver applicants, 448 of whom (46%) were rejected for failure to meet requirements of the FMCSR. Of those rejections, 229 (51%) were because of unsatisfactory previous employment history; 97 (22%) because of an adverse traffic record; 75 (17%) because of inability to pass the road test; and 47 (10%) because they failed the medical examination." The ATA continues, "The relatively low rejection rate for the medical examination must not be misconstrued as indicating that the medical qualifications and the examination are not of value. To control costs, most fleets send an applicant for a medical examination at, or near, the final stages of the hiring process. For this reason, the rate of rejection for medical reasons has been low."

The ATA survey also looked at in-service drivers and found "of that population, 40% were terminated because they no longer met the medical requirements because of a single serious injury or illness. An additional 13% were found unqualified in the course of the required periodic medical examination."

The United Parcel Service (UPS) also offered data concerning the turnover rate for in-service drivers. The UPS disclosed that of half of its 43,000 drivers examined annually, approximately 5% of those drivers were removed from driver status due to physical deterioration.

The UPS reports that of the thousands of applicants last year given the preplacement medical examination, 12%

were disqualified from driving for medical reasons.

Further, of 1,499 drivers subject to the annual review in 2 UPS districts, 1.5% required remedial assistance or were subject to disciplinary action as a consequence of driving violations.

In addition to voicing concerns regarding the driver, both the ATA and the UPS took exception to rationale used by the ABA in its petition. The ATA stated that contrary to the comments of ABA, "Ordinary observation reveals that many vehicles in this class are operated on high-speed highways well beyond the geographical limits of established commercial zones." Because of these high-speed operations between stops, say ATA, The FHWA "should be just as concerned with these vehicles at higher speeds."

The UPS iterated the argument it offered in response to the NPRM concerning what they consider the "folly" of the original justification for the present lightweight vehicle exemption." The UPS stressed, "The fact that exemptions have been granted to many vehicles in this weight category does not justify further weakening of the safety regulations . . ."

Finally, and in response to the economic considerations offered by the ABA, the American Insurance Association alleges, "The significant economic impact indicated in the ABA analysis also seems questionable as the majority of requirements apply only to initial hiring of a new driver and thus expenses should be allocated over the time the driver is employed by the company."

Discussion

In light of the comments and data provided the FHWA in this rulemaking, it is apparent that there are three major considerations which must be taken into account. They are (1) economic benefits, (2) driver qualifications, and (3) operational characteristics.

Economic Benefits

Some businesses would enjoy increased productivity by using larger vehicles for local pick-up and delivery operations and, it is assumed, that increased productivity results in economic gains. The ABA contends in its petitions however, than many companies chose not to use vehicles having a GVWR of between 10,001 and 15,000 pounds, regardless of the increased productivity they would enjoy, because of the increased costs involved in compliance with the regulations. The FHWA believes this is a weak argument since the cost of compliance is miniscule compared to the increase in productivity that would be realized by converting to larger trucks. Further, it should be noted that 28 States and 5 Canadian Provinces require a driving examination in the type of vehicle a driver will normally drive during the driver's term of employment. Section 391.33 allows a motor carrier to accept, in lieu of the required road test, "A valid operator's license which has been issued to him by a State that licenses drivers to operate specific categories of motor vehicles and which under the laws of that State, licenses him after successful completion of a road test in a motor vehicle of the type the motor carrier intends to assign to him." Section 391.33 also allows a motor carrier to accept "A copy of a valid certificate of driver's road test issued to him pursuant to § 391.31 within the preceding 3 years." As more States adopt the FMCSR as their own, these benefits will expand to allow more of the petitioner's members to utilize the allowed substitutes and thereby reduce their costs of doing business. Finally, the FHWA has a current rulemaking action pending (Written Examinations of Driver's, BMCS Docket No. MC–100; Notice No. 82–3, 47 FR 9256, March 4, 1982) in which it is considering, among other things, the recission of the requirement for the written examination.

The claim made by the ABA in its comments that the relief requested would allow redeployment of scarce financial resources from regulatory compliance to job creation is also questionable. If the conversion to larger vehicles reduces the number of trips required, it seems possible, if not likely, that the number of drivers needed to deliver the goods would be reduced as well.

Further, the regulatory evaluation/flexibility analysis prepared for this rulemaking indicates that motor carriers who comply with the FMCSR may enjoy economic benefits as a result of their compliance. These benefits are in the form of lower insurance premiums, equipment saved, lives saved, and property damage reduced, to name a few.

The FHWA does not take lightly the economic impact created by regulatory compliance. In this rulemaking, the critical factors which must be examined are driver qualifications and operational characteristics of the vehicle.

Driver Qualifications

Upwards of 75% of all accidents of record are a direct result of human factor causes. Data presented by the commenters to this rulemaking indicate that the driver qualification standards, from which the petitioner requests exemption, addess several crucial areas in that human factors equation.

As indicated in the NPRM, the FHWA is very concerned about relaxing the driver qualification standards for the vehicles included in the petition. This concern was heightened upon review of several considerations which surfaced during this rulemaking. One such consideration is that drivers of commercial vehicles such as the vehicles included in the petition are often hired for their sales ability rather than their driving ability. This hypothesis is supported by the following quotes taken from the March 1983 issue of *Fleet Owner* magazine, "In most step-van fleets, drivers are salemen first and drivers second. And, although some delivery fleets encourage driver training for safety and mpg improvement, it's usually not given as high priority as in most linehaul fleets." The article goes on to quote an executive for a bakery cooperative who says "Driving is the least important part of their (salesmen's) jobs.[1]"

The petitioner reflected the FHWA's original belief that the current exemption was from detailed administrative work and not an exemption from the substantive requirements. This was the justification used by the FHWA during the rulemaking for the current lightweight vehicle exemption. At the time of the original rulemaking, this was believed to be true. The FHWA now, having had this opportunity to review the existing regulation, believes that the justification used may no longer be valid. In addition to the data which clearly demonstrate the effectiveness of the qualification standards in question, the FHWA has had the opportunity to scientifically examine the handling characteristics of lightweight vehicles and passengers.

Operational Characteristics

As mentioned earlier in this document the FHWA sponsored a research effort to investigate the contention of the petitioner that vehicles having a GVWR of 10,001 to 15,000 pounds have handling and operational characteristics similar to vehicles having a GVWR of 10,000 pounds or less. The need for this study became apparent after the FHWA reviewed the comments submitted to the ANPRM. Those comments were comprised of strong opinions, but no substantive data upon which a responsible decision could be made. The general concerns of the commenters opposed to the proposal, however,

[1] Hamilton, Gregory. "When a Gasoline Shop Goes Diesel." *Fleet Owner Magazine*, March, 1983.

focused primarily on the belief that the vehicles included in the petition have a greater propensity for rollover due to a higher center of gravity.

The FHWA agreed that the most recognized stability-related problem of commercial vans and trucks is rollover. Vehicle roll instability (rollover) can be attained whenever the lateral forces which are being generated by the tires, and which are reflected in an inertial reaction force acting at the prevailing height of the vehicle's center of gravity, provide a roll moment, or torque, exceeding that of the vehicle weight acting at half-truck width dimension. It is those conditions that are present in cornering maneuvers which tend to produce vehicle rollover. Accordingly, the FHWA embarked upon a research effort with the University of Michigan's Transportation Research Institute (UMTRI) [2] to investigate the issue. The objective of the research was to determine reasonable estimates of the rollover thresholds of various vehicles as a basis for comparing vehicles and predicting safety implications.

As part of the FHWA research effort, reasonable estimates of rollover threshold values for various vehicle types were determined. A vehicle's rollover threshold is the peak value of lateral acceleration that is needed to bring the vehicle to the point of initiating roll instability, on the assumption that lateral acceleration levels do not change rapidly enough to prevent the roll process from proceeding to its conclusion. To determine the rollover threshold values of the various vehicle types, a static rollover computer simulation model was used. This measure of vehicle performance with respect to rollover resistance does not include dynamic phenomena. However, it appears to be the best fundamental measure of rollover resistance for comparing vehicles. The threshold is expressed in terms of lateral acceleration measure in units of g's (acceleration of gravity) at which rollover begins. The higher the g value, the more stable the vehicle.

In general, the results indicate that passenger cars have the most favorable rollover threshold, in the range of 1.0 to 1.2 g's of lateral acceleration necessary to produce rollover. The 10,000 lb. GVW stake truck (.67 g) and the two utility vans (.62 g) fit into the same general range of rollover threshold. It should be noted that the two utility vans had the same rollover threshold. Although the sprung mass on the larger 15,000 lb. van is higher than is that of the 10,000 lb. van, the heavier vehicle is built on a chassis that provides a notably wider track at both the front and rear wheels. These two factors tend to compensate for one another, thus accounting for the same rollover threshold for the two vehicles. In general, the size and track of the chassis on light-to-medium trucks increases with the load rating, although there is no guarantee that vehicles in excess of 10,000 lb. will not be built on the narrower chassis, as was seen on the 10,000 lb. GVW vehicle. It may be anticipated that in such cases the rollover threshold will be decreased at least in proportion to the reducton of track width used. For example, the rollover threshold of the 15,000 lb. GVW vehicle would be expected to reduce from .62 to about .55 g if its track width were reduced to the values appearing on 10,000 lb. GVW chassis.

Moreover, these results pertaining to the stake truck and utility vans are of interest since vehicles having rollover thresholds in the range of .6 to .7 g can certainly be rolled over simply due to the impetus of tire traction forces on smooth pavement.

The findings also show that the rollover threshold values for selected combination vehicles (tractor-trailers) ranged from .24 to .44 g. These data indicate that the rollover threshold of the utility vans is actually close to that of some combination vehicles than it is to passenger cars.

Because the roll stability of vehicles under 15,000 lbs. GVWR is better than that of heavier vehicles, one might assume that the frequency of rollover in lightweight vehicle accidents would be lower. However, BMCS 50–T accident data suggest that such an assumption would be false. Even though the roll stability of the lighter vehicles (15,000 lbs. and under) is superior to that of heavy vehicles (over 26,0000 lbs.), both experienced approximately the same incidence of rollover in non-collision accidents. BMCS data for the years 1977 through 1981 indicate that 34 percent of the lightweight vehicle (under 15,000 lbs.) non-collision accidents and 35 percent of the heavy vehicle non-collision accidents involved rollover.

It is also stated in the National Highway Traffic Safety Administration's (NHTSA) "Report on Traffic Accidents and Injuries 1981" that, " * * * in signle vehicle accidents, rollovers were more than three times as likely for accident-involved light trucks and vans as for accident-involved passenger cars." The NHTSA further concludes that, "These differences reflect vehicle use and vehicle design." It should be noted that the NHTSA accident data include private use vehicles as well as commercial vehicles. Nevertheless, it was concluded by UMTRI that knowledge does not exist whereby specific inferences can be made about the rollover accident rate to be expected with the utility vans evaluated in the study.

Discussion of Research Findings

The ABA, in its petition and comments, has repeatedly asserted its belief that the vehicles included in the petition have handling and operational characteristics similar to those vehicles under 10,000 pounds GVWR. Because of those similarities, the ABA contends, the vehicles in question should be granted the exemption for which it petitioned since the FHWA is on record as having stated the belief that the vehicles currently exempt have handling characteristics similar to passenger cars.

The research confirms the assertion of the ABA in that the handling characteristics of vehicles in these two weight classes are indeed similar, at least in terms of rollover stability. However, and more importantly, the research also shows that the vehicles in these weight classes have apparent characteristics more like larger vehicles than passenger cars.

At the time of the original lightweight vehicle exemption, the average passenger car was larger and heavier than it is at the present time. Therefore, the weight differential between cars and lightweight trucks was less and there were similar handling characteristics. Over the past decade, however, the trend has been toward much smaller, lighter passenger cars thus broadening the weight differential. This trend in itself has caused concerned within the FHWA. The ABA now petitions to broaden this differential even more.

Conclusion

In light of all of the new information which has surfaced during this ruelmaking; the necessity for driver qualification files, and the greater differentials between passenger cars and lightweight trucks, the FHWA has determined that the exemption for which the ABA has petitioned is not in the best interest of the public safety.

The FHWA appreciates having had the opportunity to investigate the issues at hand and is grateful to the ABA for its assistance in supplying some of the vehicles used in the research.

Based on the above findings and conclusions, the petition is hereby denied and the notice of proposed

[2] Gillespie, T. D.; Ervin, R. D., "Comparative Study of Vehicle Roll Stability," FH-11-9577, University of Michigan Transportation Research Institute, Ann Arbor, Michigan, January, 1980.

rulemaking published in the **Federal Register** on April 4, 1983 (48 FR 14413) is hereby withdrawn.

The FHWA recognizes that the "state of the art" in the manufacture of delivery van equipment is in a state of flux and that technological advances may be introduced at any time that may enhance the operational safety of this type of motor vehicle equipment. Should such advances be made and introduced, the FHWA would be amenable to the filing of another petition for rulemaking on this issue.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation.

A regulatory evaluation has been prepared and is available for review in the public docket. A copy may be obtained by contacting Mr. Neill L. Thomas at the address provided above under the heading **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 49 CFR Part 391

Highways and roads, Motor carriers—driver qualifications, Reporting and recordkeeping requirements.

(49 U.S.C. 3102; 49 CFR 1.48(b) and 301.60)

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued: May 10, 1984.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

[FR Doc. 84-13439 Filed 5-17-84; 8:45 am]

BILLNG CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Findings on Petitions Involving the Yacare Caiman and Harter's Water Snake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Petition Findings.

SUMMARY: In this notice, the Service reports the initial finding on the substantiality of information presented in petitions to delist the yacare caiman, *Caiman crocodylus yacare*, and to list Harter's water snake, *Nerodia harteri*, under provisions of the Endangered Species Act of 1973, as amended. The yacare has been listed as endangered since 1970, and is native to Argentina, Brazil, Bolivia, and Paraguay. Harter's water snake is confined to the Brazos and Colorado River drainages in central Texas.

DATE: Comments may be submitted until further notice.

ADDRESSES: Interested persons or organizations are requested to submit comments to the Associate Director—Federal Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials relating to this notice are available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Johy L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION::

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (ESA) as amended in 1982, requires that the Service make a finding whether a petition to list, reclassify, or delist a species presents substantial scientific or commercial information that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register.** Similarly, section 4(b)(3)(D)(i) of the Act requires a similar finding within 90 days on a petition to revise critical habitat, with promt publication of the finding. When a positive finding is made on a petition to list, reclassify, or delist a species, the Service is required to promptly commence a review of the status of the species.

A petition to delist the yacare, *Caiman crocodylus yacare*, dated December 21, 1983, was received by the Service on December 27, 1983. It was submitted by Steven H. Mosenson of Baden Kramer and Huffman on behalf on the Reptile Skin Industry Trade Association, and requested the Service to delist the yacare under Section 4 of the Act. Included with the petition was a review of the status of the yacare submitted by Mr. Mosenson, a bibliography of literature references, and a statement on the status of the yacare in Bolivia by Sr. Gaston Bejarano. The Service has carefully reviewed this material, and has concluded that it does not present credible, substantial biological or commercial data to indicate that a delisting action may be warranted. This finding is based on a review of the petition by staff of the Office of Endangered Species, the Federal Wildlife Permit Office, and the Office of the Scientific Authority.

The Service is aware of the controversy involving the assessment of the status of this species. To assist in clarification of the yacare's status, the Fish and Wildlife Service is cooperating with the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in the development of a 2-year survey to be conducted under the auspices of CITES, the International Union for the Conservation of Nature and Natural Resources (IUCN) Crocodile Specialist Group, and the Governments of Brazil, Bolivia, and Paraguay. This survey should provide data on which the Service will be able to determine the present status of *C. c. yacare*. If these data show the species to be more numerous and widely distributed than presently believed, the yacare could be reclassified to threatened, or delisted from provisions of the Act. Until these data become available, the Service does not believe that delisting is warranted by the best available biological information.

The petition to list Harter's water snake, *Nerodia harteri*, dated February 14, 1984, was received by the Service on February 28, 1984. It was submitted by Ted L. Brown of the New Mexico Herpetological Society, and requested the Service to list both subspecies of this snake as threatened with critical habitat. Mr. Brown based the petition on two reports on this species' status which had been submitted to the Service under contract to Dr. Terry Maxwell of Angelo State University. The Service finds that this petition does contain substantial biological data to indicate that a listing may be warranted under provisions of the Act.

The required status review for this species, known only from central Texas, began with the December 30, 1982, vertebrate notice of review (47 FR 58454-58460). The Service hereby solicits data concerning this species now under review for listing. Especially sought is information regarding taxonomy, distribution, any recommended critical habitat for the species, and threats. Comments received will be considered in any future listing actions for this snake.

If a petition is found to present substantial information indicating that an action may be warranted, the Service must decide within 12 months of its receipt whether the requested action is warranted in accordance with Sections

4(b)(3)(B) and 4(b)(3)(D)(ii) of the Act, as amended.

The administrative decision for these findings was made and documented on March 14, 1984; to the extent they are consistent with the 1982 ESA Amendments, the criteria in 50 CFR 424.14 were used to define and evaluate these petitions.

This notice was prepared by Dr. Kenneth Dodd, Jr. of the Service's Office of Endangered Species in Washington (703/235–1975), with evaluations by appropriate staff biologists in the Endangered Species Program of the Service's Regional Office in Albuquerque, and other Fish and Wildlife Service offices as noted above.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

(Endangered Species Act of 1973, as amended; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*))

Dated: May 10, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–13452 Filed 5–17–84; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 49, No. 98
Friday, May 18, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Cooperative Forestry Research Advisory Council; Meeting, Correction

In Federal Register, Vol. 49, No. 86, published at page 18765, on Wednesday, May 2, 1984, the announced dates of a meeting of the Cooperative Forestry Research Advisory Council were June 4–6, 1984. The dates of the meeting have been changed to September 18–20, 1984.

All other information in the announcement remains the same.

Contract person for more information: Dr. Gary R. Evans, Coordinator for Natural Resources, Cooperative State Research Service, U.S. Department of Agriculture, Room 121 West Auditors Building, Washington, D.C. 20251; telephone (202) 447–7417.

Dated: May 9, 1984.

McKinley Mayes,

Acting Deputy Administrator.

[FR Doc. 84–13487 Filed 5–17–84; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Determination Not To Designate Certain Study Rivers as Wild and Scenic Rivers

AGENCY: Forest Service, USDA.

ACTION: Notice of Determination Not to Designate Certain Study Rivers as Wild and Scenic Rivers.

SUMMARY: As provided for in the Wild and Scenic Rivers Act, Section 7(b)(i), 16 U.S.C. 1278(b)(i), the Secretary of Agriculture has determined that the following congressionally designated study rivers should not be included in the National Wild and Scenic Rivers System:

Moyie, Idaho
Salt, Arizona
San Francisco, Arizona.

This determination and the detailed study reports upon which the recommendation for these rivers are based were filed with the appropriate Committees of the United States Congress and the Environmental Protection Agency on September 13, 1982. These three rivers are no longer subject to the provisions of section 7(b) of the Act relating to the construction of water resource projects.

Dated: May 10, 1984.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 84–13490 Filed 5–17–84; 8:45 am]

BILLING CODE 3410–11–M

Northeastern Area, State and Private Forestry; Decision Notice and Finding of No Significant Impact; Gypsy Moth Suppression Projects—1984

An Environmental Assessment (EA) was prepared that documents the site-specific environmental analysis conducted by the USDA Forest Service and State agencies requesting Federal assistance for 1984 cooperative gypsy moth suppression projects. The EA discusses the purpose and need for action in 1984, treatment areas, insecticides, application methods, public involvement notification procedures, monitoring and associated environmental effects.

Cooperative suppression projects are proposed in:

Delaware—29,500 acres in the counties of New Castle and Kent;

Maryland—110,000 acres in the counties of Allegany, Anne Arundel, Baltimore, Caroline, Carroll, Cecil, Frederick, Hartford, Howard, Kent, Montgomery, Prince Georges, Queen Annes, and Washington; and the city of Baltimore;

Michigan—1,540 acres in the counties of Livingston, Oakland, and Oceana;

New Jersey, Department of Agriculture—43,850 acres in the counties of Atlantic, Burlington, Camden, Cumberland, Gloucester, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Sussex, and Warren;

New Jersey, Department of Environmental Protection—13,788 acres in seven State forests and parks in the counties of Burlington, Monmouth, and Salem;

Pennsylvania—300,000 acres in the counties of Adams, Bedford, Berks, Blair, Bradford, Cambria, Cameron, Carbon, Centre, Chester, Clearfield, Clinton, Cumberland, Dauphin, Elk, Franklin, Fulton, Huntingdon, Indiana, Jefferson, Juniata, Lancaster, Lebanon, Lycoming, Mifflin, Monroe, Northumberland, Perry, Potter, Schuylkill, Snyder, Somerset, Tioga, Union, Wayne, Westmoreland, and York;

West Virginia—51,325 acres in the counties of Berkeley, Jefferson, and Morgan.

Alternative actions for gypsy moth suppression projects were previously discussed in the Final Environmental Impact Statement (FEIS) for Gypsy Moth Suppression and Eradication Projects issued March 16, 1984. The alternative selected by the USDA Forest Service in the FEIS was to provide financial and technical assistance to support an integrated pest management approach to suppress gypsy moth populations. The selected alternative guides USDA Forest Service consideration of annual State requests for financial assistance.

Decision Notice

The 1984 suppression projects proposed by State cooperators meet USDA Forest Service environmental, biological, and economic criteria for financial assistance. Therefore, I have determined that a Federal role exists.

It is my decision to provide Federal financial assistance and technical support for gypsy moth suppression projects as proposed by cooperating State agencies and discussed in the EA, to the extent that current Federal funds will permit.

This decision recognizes that gypsy moth populations remain at damaging levels within many areas of the generally infested Northeast and Michigan, and that natural spread of the insect will continue into adjacent uninfested area.

Finding of No Significant Impact

Based on the analysis described in the EA, I have determined that the proposed 1984 cooperative suppression projects will not cause significant environmental impacts or adverse effects which have not already been addressed in the FEIS. Therefore, a revised or amended environmental impact statement is not needed. This decision was made

considering the following factors: (a) All chemical and biological insecticides are approved by the EPA; (b) applications of chemical and biological insecticides will comply with applicable EPA labels and State and Federal law; and (c) public involvement, public notification, treatment area selection, insecticide selection, performance standards, and monitoring procedures that are implemented in gypsy moth suppression projects will reduce the potential for adverse environmental effects on the areas treated, and will minimize the risk of exposure to individuals residing in or visiting areas treated.

Copies of the EA are available for public review at the following offices:

Delaware Department of Agriculture, Division of Production and Promotion, Forestry Section, Drawer D, Dover, DE 19901
Maryland Department of Agriculture, Offices of Plant Industries & Pest Management, 50 Harry S. Truman Parkway, Annapolis, MD 21401
Michigan Department of Agriculture, Plant Industry Division, 4th Floor Ottawa Building, North, P.O. Box 30017, Lansing, MI 48909
New Jersey Department of Agriculture, Division of Plant Industries, CN–330, Trenton, NJ 08625
New Jersey Department of Environmental Protection, Division of Parks and Forestry, Forestry Services, CN–401, Trenton, NJ 08625
Pennsylvania Department of Environmental Resources, Bureau of Forestry 100 Evangelical Press Building, Third and Reily Streets, Harrisburg, PA 17120
West Virginia Department of Agriculture, Division of Plant Pest Control, State Capitol, Charleston, WV 25305
USDA Forest Service, Northeastern Area State and Private Forestry, 370 Reed Road, Broomall, PA 19008
USDA Forest Service, Northeastern Area State and Private Forestry, Louis C. Wyman Forestry Sciences Laboratory, Concord-Mast, P.O. Box 640, Durham, NH 03824
USDA Forest Service, Northeastern Area State and Private Forestry, 180 Canfield Street, Morgantown, WV 26505
USDA Forest Service, Northeastern Area State and Private Forestry, 1992 Folwell Avenue, St. Paul, MN 55108.

This decision is not subject to administrative review pursuant to 36 CFR 211.19. Implementation may take place immediately after the date of this decision.

Dated: May 9, 1984.

Thomas N. Schenarts,

Area Director, Northeastern Area State and Private Forestry.

[FR Doc. 84–12132 Filed 5–17–84; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Haskell County (Kanima Road) CAT RC&D Measure, Oklahoma

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Haskell County (Kanima Road) Critical Area Treatment RC&D Measure, Haskell County, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Roland R. Willis, State Conservationist, Soil Conservation Service, USDA Agricultural Center Building, Stillwater, Oklahoma, 74074, telephone (405) 624–4360.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Roland R. Willis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure will reduce the amount of sediment flowing into area streams and will stabilize the eroding banks and ditches along the roadway. The structural measures will consist of concrete channel liners and a diversion terrace. Vegetative measures will consist of topsoiling, bermudagrass sod mulching, and bermudagrass solid sod.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy request at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Roland R. Willis.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: May 10, 1984.

Donald R. Vandersypen,

Assistant State Conservationist (WR).

[FR Doc. 84–13440 Filed 5–17–84; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

Report of Financial and Operating Statistics for Certificated Air Carriers; Proposed Information Collection Requirement

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval of the extension of CAB Form 41, "Report of Financial and Operating Statistics for Certificated Air Carriers," filed pursuant to Part 241 of the Board's Economic Regulations. OMB approval is required under the Paperwork Reduction Act of 1980.

DATED: May 14, 1984.

FOR FURTHER INFORMATION CONTACT: M. Clay Moritz, Jr., Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, (202) 673–6042.

SUPPLEMENTARY INFORMATION:

Agency Clearance Office from Whom a Copy of the Collection of Information and Supporting Documents is Available: Robin A. Caldwell (202) 673–5922
How Often the Collection of Information Must Be Filed: Monthly, Quarterly Semiannually and Annually
Who is Asked or Required to Report: U.S. Certificated Air Carriers
Estimate of Number of Annual Responses: 10,840
Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 43,257.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–13478 Filed 5–17–84; 8:45 am]

BILLING CODE 6320–01–M

Application of Pride Air, Inc., for Certificate Authority Under Subpart Q

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting the *Pride Air Fitness Investigation*, Docket 42139.

SUMMARY: The Board is instituting an investigation to determine the fitness of Pride Air, Inc. to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

DATE: Persons wishing to intervene and/or proposing to request additional evidence in the *Pride Air Fitness Investigation* shall file their petitions in Docket 42139 by May 25, 1984.

ADDRESS: Requests for additional evidence and petitions to intervene should be filed in Docket 42139 and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Joseph W. Bolognesi, Bureau of Domestic Aviation, Civil Aeronatics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, (202) 673–5333.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–5–37 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84–5–37 to that address.

By the Bureau of Domestic Aviation: May 11, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–13482 Filed 5–17–84; 8:45 am]

BILLING CODE 6320–01–M

[Docket 42028]

Alfonso Airways & Export, Inc. Fitness Investigation; Hearing

Notice is hereby given that a hearing in the above-titled matter will commence on June 6, 1984, at 10:00 a.m. (local time) in Room 1012, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., May 14, 1984.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 84–13479 Filed 5–17–84; 8:45 am]

BILLING CODE 6320–01–M

[Docket 42155]

Premiere Airlines, Inc. Continuing Fitness Investigation; Notice to all Parties

On May 9, 1984, by letter, Premiere Airlines requested that the hearing in this matter be held immediately after the prehearing conference scheduled for May 21. On May 10, Bureau Counsel objected, in essence, to the request.

Premiere's request is denied. The prehearing conference will take place as scheduled on May 21.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 84–13480 Filed 5–17–84; 8:45 am]

BILLING CODE 6320–01–M

[Docket 41988]

Texas-Alberta-Alaska Service Case; Hearing

Notice is hereby given that the hearing in the above-entitled matter will be held on June 25, 1984, at 10:00 a.m. (local time) in Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

The hearing date has been rescheduled from the date (June 19, 1984) set at the prehearing conference held on March 15, 1984. A hearing site could not be located for that date.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 84–13481 Filed 5–17–84; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Quarterly Apparel Surveys
Form Nos.: Agency—MQ23E, MQ23G, MQ23F, OMB—None
Type of Request: New Collection
Burden: 2,000 respondents; 4,000 reporting hours
Needs and Uses: The U.S. Government has a clear and immediate need for better production data to monitor the effect of imports on the domestic apparel industry. These surveys will collect fiber-specific production data compatible with the Multifiber Arrangement (MFA) textile categories. The quarterly collection of fiber-specific apparel production data will provide the Office of Textiles and Apparel (OTEXA) and the Committee for the Implementation of Textile Agreements (CITA) with the information needed to monitor the effect of imports on this sector of the economy. Other users of this data include business firms, trade associations, and research and consulting organizations
Affected Public: Business or other for-profit institutions
Frequency: Quarterly
Respondent's Obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395–4818.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Ave. NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to the respective OMB Desk Office, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: May 9, 1984.

Edward Michals,

Department Clearance Officer.

[FR Doc. 84–13418 Filed 5–17–84; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Survey of Income and Program Participation—Wave 5 Pretest (SIPP)
Form Nos.: Agency—4500(X), 4505(X), OMB—0607–0425
Type of Request: Revision of a currently approved collection
Burden: 600 respondents; 300 reporting hours
Needs and Uses: Information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution is extremely important for the formulation of Government domestic policy. Data collected from this survey will provide the executive and legislative branches with improved statistics on income distribution and data not previously available on eligibility for and participation in Government programs. This data will support Government policy and program planning. The main purpose of the pretest is to test new questions

which will be added to the Wave 5 questionnaire.
Affected Public: Individuals or households
Frequency: Other—Pretest
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395–4814.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Ave NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to the respective OMB Desk Office, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: May 14, 1984.

Edward Michals,

Department Clearance Officer.

[FR Doc. 84–13419 Filed 5–17–84; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

Decision on Application for Duty-Free Entry of Scientific Instrument; Johns Hopkins University

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 84–57. Applicant: The Johns Hopkins University, Baltimore, MD 21218. Instrument: Cryo Transfer System. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 49 FR 7841.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. National Institutes of Health advises in its memorandum dated April 23, 1984 that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the instrument.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Material.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–13431 Filed 5–17–84; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Thomas Jefferson University Hospital, et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 84–179. Applicant: Thomas Jefferson University Hospital, Clinical Laboratory, 11th & Walnut Street, Philadelphia, PA 19107. Instrument: Electron Microscope, Model JEM–100CX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: Diagnosis of Surgical Pathology biopsy material where ultrastructural studies are required. The materials to be examined will include human biopsy material such as kidney biopsies, tumors, viral diseases, peripheral blood, bone marrow, lungs and any other biopsy tissue where ultrastructural studies might be helpful in the understanding of the disease process. The instrument will also be used for educational purposes in a resident program of classes and instruction in electron microscopy as part of the Pathology training of residents. Application received by Commissioner of Customs: April 12, 1984.

Docket No. 84–180. Applicant: Oregon Graduate Center, 19600 N.W. Walker Road, Beaverton, OR 97006. Instrument: Electron Microscope, Model H–800–1 with Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use: Examination of metals, alloys, semiconductors, other inorganic and organic (polymer) thin films. The microstructural and microchemical compositions of such samples will be investigated. The objectives of these investigations involve the fundamental study of material microstructure and microchemistry and the role of these phenomena in the way the material behaves (structure-property relationships will be explored). Educational purposes—Graduate students will learn theory and methods of electron microscopy, develop knowledge of applications, and solve practical and research problems. Application received by Commissioner of Customs: April 12, 1984.

Docket No. 84–181. Applicant: Brown University, Department of Chemistry, 324 Brook Street, Providence, RI 02912. Instrument: Gas Chromatograph Mass Spectrometer System, Model MS 80. Manufacturer: Kratos Analytical Instruments, United Kingdom. Intended use: Research—(1) Studies of the biosynthesis of natural products such as terpenoids, alkaloids, and macrolide and polyether antibiotics; (2) studies of the kinetics of glucose metabolism using stable isotopes in pregnant women and their newborns; (3) routine characterization of synthetic intermediates and products by both nominal and accurate mass; (4) organometallic chemistry and studies of DNA-ligand interactions and (5) studies of inorganic and organometallic substrates. Application received by Commissioner of Customs: April 12, 1984.

Docket No. 84–182. Applicant: Cornell University, New York State Agricultural Expt. Station, Box 462, Food Research Laboratory, Geneva, NY 14456. Instrument: Kjel-Foss Automatic Protein-nitrogen Analyzer with Accessories. Manufacturer: A/S N. Foss Electric, Denmark. Intended use: Analysis of samples in support of research on plant and animal nutrition. Application received by Commissioner of Customs: April 12, 1984.

Docket No. 84–183. Applicant: State University of New York at Buffalo, Department of Biophysical Sciences, 118 Cary Hall, Buffalo, NY 14214. Instrument: Microforge for Pipette Processing, Model MF 79. Manufacturer: Narishige, Japan. Intended use: Research on vertebrate photoreceptor function. Experiments will involve patch clamping and interacellular recording with glass microelectrodes. The instrument will also be used for educational purposes in courses #655–656 Neuroscience Research. Application received by Commissioner of Customs: April 12, 1984.

Docket No. 84–69R. Applicant: Lahey Clinic Foundation, 41 Mall Road, Burlington, MA 01805. Instrument:

Electron Microscope, Model EM–410LS. Manufacturer: N. V. Philips, The Netherlands. Intended use: Ultrastructural studies of human and animal tumors, myocardial disease and abnormal respiratory function of patients. Educational purposes—Resident training in electron microscopy. The original of this resumbitted application was received by Commissioner of Customs: January 26, 1984.

Docket No. 84–156. Applicant: University of Utah, Salt Lake City, UT 84112. Instrument: Components for a Mass Spectrometer. Manufacturer: VG Analytical, Ltd., United Kingdom. Intended use: The instruments are components to be used to upgrade an existing mass spectrometer for use in research projects in three main areas of chemical interest: organometallic chemistry, protein chemistry and natural products chemistry. In addition the mass spectrometer is used in several formal courses with the Department of Chemistry's educational programs, particularly Chemistry 797 Thesis Research. Application received by Commissioner of Customs: March 22, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–13428 Filed 5–17–84; 8:45 am]

BILLING CODE 3510–DS–M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles; University of California et al.

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Decision: Denied: Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket No. 82–00298. Applicant: University of California, Los Alamos, New Mexico 87545. Instrument: High Resolution Gas Mass Spectrometer System, MM3001. Date of denial without prejudice to resubmission: January 25, 1984.

Docket No. 82–00330. Applicant: North Carolina State University, Raleigh, NC 27650. Instrument: Multiple-Gas Laser, TE–861S–3. Date of denial without prejudice to resubmission: January 27, 1984.

Docket No. 82–00359. Applicant: Department of Health & Human Services, Bethesda, MD 20205. Instrument: High Resolution Mass Spectrometer & Dual Processor Data System, Model MM7070–F/2350. Date of denial without prejudice to resubmission: January 26, 1984.

Docket No. 83–7. Applicant: University of Chicago, Argonne, IL 60439. Instrument: Excimer Multi-Gas Laser, Model EMG 102E with Accessories. Date of denial without prejudice to resubmission: January 25, 1984.

Docket No. 83–191. Applicant: Lenox Hill Hospital, New York, NY 10021. Instrument: Endoscopic Ultra-Sonic Lithotrite. Date of denial without prejudice to resubmission: January 26, 1984.

Docket No. 83–282. Applicant: Louisiana State University, Baton Rouge, LA 70803. Instrument: MS80 Gas Chromatograph Mass Spectrometer System and Accessories. Date of denial without prejudice to resubmission: January 23, 1984.

Docket No. 83–293. Applicant: Texas Tech University, Lubbock, TX 79417–5217. Instrument: Tensorapid Automatic Strength Tester System. Date of denial without prejudice to resubmission: January 23, 1984.

Docket No. 83–323. Applicant: Harvard University, Cambridge, MA. 02138 Instrument: Infrared Laser and Components. Date of denial without prejudice to resubmission: January 27, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–13430 Filed 5–17–84; 8:45 am]

BILLING CODE 3510–DS–M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles; University of Illinois et al.

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket No. 82–00181R. Applicant: University of Illinois, Urbana, IL 61801. Instrument: Dye Laser-Excimer Laser Pumped, FL 2000E. Date of denial without prejudice to resubmission: February 13, 1984.

Docket No. 83–13. Applicant: Washington University, St. Louis, MO 63130. Instrument: Mass Spectrometer (thermal ionization), Model 354. Date of denial without prejudice to resubmission: February 13, 1984.

Docket No. 83–278. Applicant: Arizona State University, Tempe, AZ 85287. Instrument: Gammacell 220 Co–60 Irradiator. Date of denial without prejudice to resubmission: February 13, 1984.

Docket No. 83–281. Applicant: University of California, Los Angeles, CA 90024. Instrument: Excimer Pump Laser, Model EMG 102 and Dye Laser, Model FL 2001. Date of denial without prejudice to resubmission: February 13, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84–13429 Filed 5–17–84; 8:45 am]

BILLING CODE 3510–DS–M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Southwestern Louisiana

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 84-99. Applicant: University of Southwestern Louisiana, Lafayette, LA 70504. Instrument: Electrophoresis Apparatus, Rotating Prism & 3mW Laser, Model Mk II. Manufacturer: Rank Brothers, United Kingdom. Intended use: See notice at 49 FR 10323.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides: (1) accurate temperature control up to about 80 degrees centigrade, (2) laser illumination by a 3mW (milliwatt) Helium Neon continuous leaser and (3) detection of particle sizes down to 0.09 microns (μm). The National Bureau of Standards advises in its memorandum dated April 18, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Material)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-13432 Filed 5-17-84; 8:45 am]

BILLING CODE 3510-DS-M

Subcommittee on Export Administration of the President's Export Council; Closed Meeting

A closed meeting of the President's Export Council Subcommittee on Export Administration will be held May 23, 1984, 9:30 a.m.-3:00 p.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. This meeting is being called on short notice to obtain the Subcommittee's view on findings of the ad hoc groups. The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act of 1979 that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

Agenda

Discussion of matters properly classified under Executive Order 12356, dealing with matters pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Act. A Notice of Determination to close meetings or portions of meetings of the Subcommittee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 2, 1983, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

For further information, contact Debbie Kappler (202) 377-1455.

Dated: May 14, 1984.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-13522 Filed 5-17-84; 8:45 am]

BILLING CODE 3510-DT-M

Minority Business Development Agency

Financial Assistance Application Announcement

Summary

The Minority Business Development Agency (MBDA) annouces that it is soliciting applications under its Minority Business Development Center Program to operate a Center for a period of 8 months beginning September 1, 1984, in the Richmond/Virginia SMSA. Federal funds are estimated at 139,081. The project number is 03-10-84010-01. Catalog of Federal Domestic Assistance—11.800 Minority Business Development

Closing Date

May 31, 1984.

Funding Instrument

It is anticipated that the funding instrument will be a cooperative agreement, as defined by the Federal Grant and Cooperative Agreement Act of 1977.

Program Description

Provide management and technical assistance to qualified minority firms and individuals which are already in business or interested in starting a business.

In requesting an application kit, the applicant must specify its profit status; i.e., state of local government, Federally recognized Indian tribal units, education institutions, or other type of profit or nonprofit institution. This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

Stanley W. Tate,

Regional Director.

[FR Doc. 84-13434 Filed 5-17-84; 8:45 am]

BILLING CODE 3510-21-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limits for Certain Cotton and Man-Made Fiber Apparel Products Produced or Manufactured in the People's Republic of China

May 14, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 18, 1984. For further information contact Diana Bass, International Trade Specialist (202) 377-4212.

Background

A CITA directive dated December 19, 1983 (48 FR 56626) established respective restraint limits of 83,200 dozen and 937,474 dozen for cotton sweaters in Category 345 and women's, girls' and infants' man-made fiber trousers in Category 648, produced or manufactured in the People's Republic of China, exported during the twelve-month period which began on January 1, 1984 and which may be entered into the United States for consumption. These levels are being reduced by 1983 overshipments amounting to 31,000 dozen in Category 345 and 258,000 dozen in Category 648. The effect will be to decrease the 1984 limit for Category 345 to 52,200 dozen and for Category 648, to 679,474 dozen, for goods exported in 1984. These actions are taken in accordance with the terms of the Bilateral Cotton, Wool and Man-made Fiber Textile Agreement of August 19, 1983 between the Governments of the United States and the People's Republic of China.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30,

1983 (48 FR 57584), and April 4, 1984 (49 FR 13397).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

May 14, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 19, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China.

Effective on May 18, 1984, you are directed to reduce the restraint limits established for cotton and man-made fiber textile products in Categories 345 and 648 to the following:

Category	Adjusted 12-mo limit [1]
345	52,200 dozen.
648	679,474 dozen.

[1] The levels have not been adjusted to account for any imports exported after December 31, 1983.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-13421 Filed 5-17-84; 8:45 am]

BILLING CODE 3510-DR-M

Announcing New Tariff Schedule Numbers To Provide for the Proper Category Placement of Parts of Certain Garments

May 14, 1984.

On April 2, 1984 a notice was published in the **Federal Register** (49 FR 13064) announcing implementation of the new Tariff Schedule numbers for parts of certain garments for goods entered into the United States for consumption, withdrawn from warehouse for consumption, or entered into warehouse on and after July 1, 1984. Following publication of that notice certain products were renumbered by the United States International Trade Commission as follows:

T.S.U.S.A.	Description	Textile category
Cotton, Men's and Boys', Ornamented		
379.0831	Parts of shirts, not knit	340
379.0832	Parts of trousers, slacks and shorts, not knit.	347
379.0834	Parts of other garments, not knit	359
Man-Made, Women's, Girls', Infants', Not Ornamented		
383.9263	Parts of trousers, slacks, and shorts, not knit.	648
383.9264	Parts of blouses and shirts, not knit.	641
383.9266	Parts of other garments, not knit	659

In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements amends the directive of March 28, 1984 which implemented these changes.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

May 14, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This letter amends, but does not cancel, the letter of March 28, 1984 concerning implementation of new TSUSA numbers for parts of certain garments for imports entered into the United States for consumption, withdrawn from warehouse for consumption, or entered into warehouse on and after July 1, 1984.

This is to advise you that the following products have been renumbered:

T.S.U.S.A.	Description	Textile category
Cotton, Men's and Boys', Ornamented		
379.0831	Parts of shirts, not knit	340
379.0832	Parts of trousers, slacks and shorts, not knit.	347
379.0834	Parts of other garments, not knit	359
Man-Made, Women's, Girls', Infants', Not Ornamented		
383.9263	Parts of trousers, slacks, and shorts, not knit.	648
383.9264	Parts of blouses and shirts, not knit.	641
383.9266	Parts of other garments, not knit	659

This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-13422 Filed 5-17-84; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Review Schedule for Government Commercial or Industrial Type Activities

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that pursuant to OMB Circular No. A-76 and Consumer Product Safety Commission Order 1500.1, Policies and Procedures for Performance of Commercial Activities, the Commission is publishing its schedule for the review of its government commercial or industrial type activities. Each of the activities listed utilizes less than 10 full time equivalent employees and is located in the Commission's Bethesda, Maryland offices.

Activity	Estimated start date	Estimated completion date
1. Library/Records	5/84	4/85
2. Mail/Transportation/Communications Support	5/84	4/85
3. Injury Information Clearinghouse	5/85	4/86
4. Automated Data Processing Operations	5/86	4/87
5. Automated Data Processing Programming/Systems Analysis	5/86	4/87

A contract or contracts may or may not result from the review of each activity. Results of the review of an activity will be made available to responding bidders or offerors, and other interested parties.

FOR FURTHER INFORMATION CONTACT: Thomas W. Murr, Jr., Office of Budget, Program Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207, telephone: 301-492-6529.

Dated: May 15, 1984

Sadye Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-13469 Filed 5-17-84; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Discharge Review Board; Hearing Location

In November 1975, the Naval Discharge Review Board commenced to convene and conduct prescheduled discharge review hearings for a number of days each quarter in locations outside of the Washington, D.C. area. The cities in which these hearings are scheduled are determined in part by the concentration of applicants in a geographical area.

The following NDRB hearing itinerary for May 1984 through September 1984 has been approved, but remains subject to modification if required:

20 August through 24 August—San Francisco, CA
17 September through 21 September—Chicago, IL

Hearings are scheduled to be held in Arlington, Virginia during each month of the year.

Any former member of the Navy or Marine Corps who desires a discharge review, either in Washington, D.C., or in a city nearer to their residence, should file an application with the Naval Discharge Review Board using DD Form 293. If a personal appearance is requested, the petitioner should enter on the application the hearing location which is preferred. Applicant forms (DD 293) may be obtained from, and the completed application should be mailed to, the following address: Naval Discharge Review Board, Suite 910, 801 North Randolph Street, Arlington, Virginia 22203.

Notice is hereby given, that since the foregoing itinerary is subject to modification and since, following receipt of a new application, the Naval Discharge Review Board must obtain the applicant's military records before a hearing may be scheduled, the submission of an application to the Naval Discharge Review Board is not tantamount to scheduling a hearing. Applicants and representatives will be mailed a notification of the date and place of their hearing when personal appearance has been requested.

For further information concerning the NDRB, contact: Captain Raymond A. Ways, U.S. Navy, Executive Secretary, Naval Discharge Review Board, Suite 910, 801 North Randolph Street, Arlington, Virginia 22203, 202–696–4881.

Dated: May 15, 1984.

Willian F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84–13453 Filed 5–17–84; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Air Development Center (NADC) Review Team of the Naval Research Advisory Committee (NRAC) Panel on Laboratory Oversight will meet on June 5 and 6, 1984, at the Naval Air Development Center, Warminster, Pennsylvania. The first session of the meeting will commence at 8:30 a.m. and terminate at 4:00 p.m. on June 5, 1984. The second session will commence at 8:30 a.m. and terminate at 10:00 a.m. on June 6, 1984. The third session will commence at 10:00 a.m. and terminate at 4:00 p.m. on June 6, 1984. The second session from 8:30 a.m. to 10:00 a.m. on June 6, 1984 will be open to the public. The remaining two sessions will be closed to the public.

The purpose of the meeting is to examine the scientific, technical and engineering health of NADC. The open session will consist of presentations on the NADC work force. The remaining sessions of the meeting will consist of classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The Secretary of the Navy therefore has determined in writing that the public interest requires that the first, and third sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696–4870.

Dated: May 15, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84–13454 Filed 5–17–84; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee will meet on July 9–13, 1984 and July 16–20, 1984, at the Naval Postgraduate School, Monterey, California. Sessions of the meeting will commence at 8:00 a.m and terminate at 5:00 p.m. on all days. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to discuss basic and advanced research that pertains to Evaluation of Operational Test and Evaluation Requirements and Facilities; Establishing Specific Long-Term Goals for Department of the Navy RDT&E, N Community; Environmental Support to Naval and Marine Forces; Concealed/Reduced Observables; and other research currently being conducted by the Navy. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696–4870.

Dated: March 15, 1984.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 84–13455 Filed 5–17–84; 8:45 am]

BILLING CODE 3810–AE–M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Application for Commissionor or Warrant Rank, USN or USNR 0703–0029.

Information is required to determine if applicants are qualified for commission in the U.S. Navy or U.S. Naval Reserve. Individuals applying for commission in the U.S. Navy or U.S. Naval Reserve are affected.

Individuals, 20,000, 10,000.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel J. Vitiello, DoD Clearance

Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, D.C. 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Cheryl Emerson, Navy Recruiting Command, Ballston Tower #3, 4015 Wilson Blvd., Arlington, Virginia 22203, telephone (202) 696–4775.

M. S. Healy,

OSD Federal Register Liaison Officer Department of Defense.

May 15, 1984.

[FR Doc. 84–13467 Filed 5–17–84; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Drug Statement for NROTC Application 0703–0024.

An assessment of applicant's history of drug usage continues to be necessary to determine the need and eligibility for a drug waiver.

Individual, 12,000, 2,400.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, D.C. 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Cheryl Emerson, Navy Recruiting Command, Ballston Tower #3, 4015 Wilson Blvd., Arlington, Virginia 22203, telephone (202) 696–4775.

Dated: May 15, 1984.

M.S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–13466 Filed 5–17–84; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

College Housing Program; Application Notice for New Awards for Fiscal Year 1984

Applications are invited for new projects under the College Housing Program for fiscal year 1984.

This program is authorized under Title IV of the Housing Act of 1950, 12 U.S.C. 1749–1749d, and administered by the Secretary of Education under section 306 of the Department of Education Organization Act (20 U.S.C. 3446).

Under this program, the Secretary is authorized to award low-interest loans to assist eligible institutions (1) in providing housing and other educational facilities for student and faculty members, and (2) in conserving energy, and reducing related operating costs.

Closing date for transmittal of applications: Applications for awards must be mailed or hand delivered by June 29, 1984.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Attention: 84.142, Division of Higher Education Incentive Programs, 400 Maryland Avenue, SW. (ROB–3, Room 3717), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

Applications delivered by hand: An application that is hand-delivered must be taken to the U.S. Department of Education, Division of Higher Education Incentive Programs, Room 3717, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C. between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily except Saturdays, Sundays, or Federal holidays. Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program information: The College Housing Program provides low-interest three percent long-term loans to postsecondary educational institutions for the construction, rehabilitation, or acquisition of student and faculty housing and related facilities and for conserving energy and reducing related operating costs. The maximum loan amount under this program is $3,500,000 and the minimum loan amount is $100,000 (34 CFR 614.41).

The program regulations specify selection criteria for the two types of loans available under this program. All applications are ranked according to the criteria contained in 34 CFR 614.31 and 614.32.

Available funds: Under this program, the Secretary is authorized to make available, for new College Housing Loan commitments in fiscal year 1984, the amount of income from repayments, less expenses, up to a ceiling of $40,000,000. Twenty-five percent of the available funds will be apportioned for energy conservation loans and seventy-five percent of the available funds will be apportioned for housing loans. However, the Administration has proposed to withdraw authority to make new loans for fiscal year 1984. Applicants should prepare and submit applications pending further notice.

Section 614.34 of the program regulations provides that the Secretary, as necessary, may deviate from rank order of applications to ensure that not less than ten percent of the total funds available and not less than ten percent of the number of loans made are reserved for applications from Historically Black Colleges.

Application forms: Application packages will not automatically be mailed to all institutions of higher education. Copies may be obtained by writing to the Division of Higher Education Incentive Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (ROB–3, Room 3717), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms

included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or performance requirements beyond those imposed under the statute and regulations.

Applicable regulations: The regulations applicable to this program are—

(a) The Education Department General Administrative Regulation (EDGAR) in 34 CFR Part 74, Subpart P; Part 75, §§ 75.600–75.615 (Construction); Part 77, § 77.1 (Definitions); and Part 79.

(b) The regulations governing the College Housing Program (34 CFR Part 614).

Intergovernmental review: On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*), implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Implements Section 401 of the Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6506) and Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334);
- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A–95

For programs subject to section 204 of the Demonstration Cities and Metropolitan Development Act, State review and comment is obtained in accordance with the procedures set forth in that Act.

This program is listed in the Department's regulations as subject to section 204. Accordingly, any applicant whose project comes within the criteria of section 204 should immediately contact the State Single Point of Contact establishment under the Executive Order and follow the procedures established in that state to meet requirements of section 204.

Section 204 requires that—

1. Each application be accompanied by comments and recommendations from the areawide agency;

2. Each application contain a statement by the applicant that such comments and recommendations have been considered prior to formal submission of the application; and

3. In the absence of comments and recommendations, the applicant certifies that the areawide agency was provided at least 60 days to comment on the application and did not do so.

Any applicant subject to section 204 must submit its application by the June 29 closing date and shall supplement its application with the comments or assurance required by section 204 by August 28, 1984.

Special procedures: On or before the deadline for submitting its application to the Secretary, the applicant shall submit a copy of its application to the appropriate State agency for postsecondary education for review. Comments of the State agency, if any, are to be addressed to the Division of Higher Education Incentive Programs, U.S. Department of Education, 400 Maryland Avenue, S.W., (ROB–3, 3717), Washington, D.C. 20202. Comments must be received within 20 days after the June 29 closing date if they are to be considered.

Technical assistance workshops: Applicants are invited to participate in technical assistance workshops to be held in regional locations to assist applicants in application preparation, program procedures, regulations, etc. The workshops will take place in Washington, D.C. (May 23); Atlanta, Georgia, (June 5); Dallas, Texas, (June 12); and San Francisco, California, (June 14). For specific information on these workshops, please contact the Division of Higher Education Incentive Programs. Telephone (202) 245–3253.

Further information: For further information contact Charles I. Griffith, Director, Division of Higher Education Incentive Programs, Department of Education, 400 Maryland Avenue, SW., (ROB–3, Room 3717), Washington, D.C. 20202. Telephone: (202) 245–3253.

(12 U.S.C. 1749–1749d)

[(Catalog of Federal Domestic Assistance No. 84.142, College Housing Program)

Dated: May 15, 1984.

T.H. Bell,

Secretary of Education.

[FR Doc. 84–3597 Filed 5–17–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Agency Information Collection Under Review by OMB

AGENCY: U.S. Department of Energy.

ACTION: Agency Information Collections Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Department of Energy (DOE) plans to request the Office of Management and Budget (OMB) to review and approve the information collection packages listed below. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), DOE will consider comments on information collections that affect the public.

DATES: Comments on these information collections must be submitted on or before May 28, 1984.

ADDRESSES: Comments should be submitted to the person listed with each collection package and to: Mr. Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget (OIRA), Room 3001, NEOB, Washington, D.C. 20503, (202) 395–7313.

FOR FURTHER INFORMATION CONTACT: Howard H. Raiken, Director, Management Systems Analysis Division (MA–213), U.S. Department of Energy, Washington, D.C. 20585, (202) 252–9383.

SUPPLEMENTARY INFORMATION: The following information is furnished for each information collection package: (1) Title; (2) Purpose; (3) Type of respondents; (4) Estimated number of responses; (5) Estimated total hours to provide the information (burden hours); and (6) Name, address and telephone number of the DOE package manager.

A. (1) Financial Assistance & Incentives, (2) This information is required by Departmental Management to assure that the Department's financial assistance & incentives resources and requirements are managed efficiently and effectively, (3) DOE operating and management (GOCO) contractors and offsite contractors, (4) 37,675 responses, (5) 321,308 hours, (6) Ellen Feinsilber, Chief of Business & Financial Policy (MA–421.1), Directorate of Procurement & Assistance Management, Department of Energy, Washington, D.C. 20585, (202) 252–8176.

B. (1) Nuclear Materials, (2) This information is required by Departmental Management to assure that the Department's nuclear material resources and requirements are managed efficiently and effectively, (3) DOE operating and management (GOCO) contractors and offsite contractors, (4)

12,113 responses, (5) 568,307 hours, (6a) For Defense Programs related information collections: Robert J. Galbo, Director of Projects & Resource Management, Office of Assistant Secretary for Defense Programs (DP-133), Department of Energy, Washington, D.C. 20585, (301) 353-3982. (6b) For Nuclear Energy related information collections: William W. Wendell, Director of Resource Management, Office, Assistant Secretary for Nuclear Energy (NE-73), Department of Energy, Washington, D.C. 20585, (301) 353-5161. (6c) For Radioactive Waste related information collections: George Chaconis, Program Analyst, Office of Civilian Radioactive Management (RW-13), Department of Energy, Washington, D.C. 20585, (202) 252-5722.

C. (1) Power Marketing Administrations, (2) This information is required by Departmental Management to assure that the Department's power marketing administrations resources and requirements are managed efficiently and effectively, (3) DOE operating and management (GOCO) contractors and offsite contractors, (4) 108,449 responses, (5) 709,988 hours, (6a) For Alaska Power Administration information collections: Robert J. Cross, Administrator, Alaska Power Administration, P.O. Box 50, Juneau, AK 99802, (AC907) 586-7405. (6b) For Bonneville Power Administration information collections: Charles R. Gadd, Chief, Records & Office Services Branch, Administration Division, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208, (503) 230-4072. (6c) For Southeastern Power Marketing Administration information collections: Mary George Bond, Chief, Administrative Management Division, Southeastern Power Administration, Samuel Elbert Building, Elberton, GA 30635, (AC404) 283-3261. (6d) For Southwestern Power Marketing Administration information collections: Elizabeth Mohr, Chief, Administrative Services Branch, Southwestern Power Administration, P.O. Box 1619, Tulsa, OK 74101, (AC918) 581-7432. (6e) For Western Area Power Administration information collections: Arthur Ford, Program Analyst, Office of Budget, Finance & Program Planning, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (AC303) 231-1686.

D. (1) Program Management, (2) This information is required by Departmental Management to assure that the Department's program management resources and requirements are managed efficiently and effectively, (3) DOE operating and management (GOCO) contractors and offsite contractors, (4) 123,116 responses, (5) 1,339,420 hours, (6) Frank M. Newman Jr., Policy Analyst, Office of Project & Facilities Management (MA-223), Department of Energy, Washington, D.C. 20585, (202) 252-4551.

E. (1) Safeguards & Security, (2) This information is required by Departmental Management to assure that the Department's safeguards & security resources and requirements are managed efficiently and effectively, (3) DOE operating and management (GOCO) contractors and offsite contractors, (4) 78,973 responses, (5) 441,778 hours, (6) Nelson C. Marsh, Chief of Program Analysis and Resource Management (DP-341.3), Office of Assistant Secretary for Defense Programs, Department of Energy, Washington, D.C. 20585, (301) 353-5690.

Obtaining Copies of Information Collection Proposals

A copy of these collection proposals may be obtained from William Hambley, Office of Management Systems Development and Evaluation (MA-213.2), Department of Energy, Washington, D.C. 20585, (202) 252-6812.

Issued in Washington, DC, May 14, 1984.

William S. Heffelfinger,

Director of Administration.

[FR Doc. 84-13504 Filed 5-15-84; 5:15 pm]

BILLING CODE 6450-01-M

Procurement and Assistance Management Directorate; Grant Award Restriction on Colorado School of Mines

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(b), it intends to award on a restricted eligibility basis a grant to the Colorado School of Mines (CSM), Energy and Minerals Field Institute (EMFI). The CSM EMFI has budgeted approximately $225,000 to support the EMFI activity for the summer of 1984. The DOE support under this proposed grant will not exceed $25,000.

Project Scope: The Seventh Summer Field Institute is to be held over a 6-day period in August during the congressional recess for an estimated 40 participants. The Institute will address the topic of Western Energy and Minerals Opportunities, Problems, and Policy Issues.

PR Number: 01-84FE60535.

FOR FURTHER INFORMATION CONTACT:

James P. Beiriger, MA-452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Issued in Washington, D.C., on May 15, 1984.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

[FR Doc. 84-13503 Filed 5-17-84; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket PP-81]

Application for a Presidential Permit by Maine Public Service Co.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of application by Maine Public Service Compay for a Presidental Permit to Construct an International Interconnection (Docket PP-81).

SUMMARY: On April 25, 1984, the Maine Public Service Company (MPS) filed an application with the Economic Regulatory Administration (ERA) for a Presidential permit to construct, operate, maintain, and connect a 7.2 kilovolt (kV) electric distribution line which will cross the international border between the United States and Canada. The line will extend approximately 436 feet within the United States and connect with facilities of the New Brunswick Electric Power Commission (NBEPC) at the U.S.-Canadian border in the Town of Easton, Maine.

FOR FURTHER INFORMATION CONTACT:

Garet Bornstein, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, Forrestal Building, Room GA-033, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-5935

Lise Courtney M. Howe, Office of Assistant General Counsel for International Trade and Emergency Preparedness, Department of Energy, Forrestal Building, Room 6A-141, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-2900.

SUPPLEMENTARY INFORMATION: On April 25, 1984, the Maine Public Service Company filed an application with the Economic Regulatory Administration for a Presidential permit, pursuant to Executive Order 10485, as amended by Executive Order 12038, to construct, operate, maintain and connect a 7.2 kV

electric distribution line which will cross the U.S.-Canadian border in the Town of Easton, Aroostook County, Maine.

The line is required to provide electric service to a residential customer in the United States. The nearest distribution facilities owned by MPS are approximately 10,000 feet from this customer. MPS is seeking permission to construct this line from the customer to the U.S.-Canadian border where it will connect with distribution facilities of the NBEPC. Electric service will be provided by the NBEPC but no electrical connection will exist between NBEPC and MPS.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, D.C., 20585, in accordance with §§ 1.8 or 1.10 of the Rules of Practice and Procedure (18 CFR 1.8, 1.10).

Any such petitions and protests should be filed within 30 days of the publication of this Notice. Protests will be considered by the ERA in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the ERA and will, upon request, be made available for public inspection and copying at the Coal and Electricity Division, Room GA-033, 1000 Independence Avenue SW., Washington, D.C.

Issued in Washington, D.C., May 14, 1984.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-13444 Filed 5-17-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER84-423-000]

Commonwealth Edison Co. of Indiana, Inc.; Filing

May 14, 1984.

The filing Company submits the following:

Take notice that on May 4, 1984, Commonwealth Edison Company of Indiana, Inc. (CECI) tendered for filing proposed changes in its FERC Electric Service Tariffs, FERC Nos. 7 and 8. The proposed changes would increase revenues from jurisdictional sales and services by $901,970 based on the 12-month period ending December 31, 1984.

CECI requests an effective date of July 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon CECI's jurisdictional customer, the Illinois Commerce Commission and the Indiana Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-13494 Filed 5-12-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-81-000]

Great Lakes Transmission Co.; Petition of Great Lakes Gas Transmission Company To Permit Waiver of Tariff Provisions

May 14, 1984.

Take notice that on May 8, 1984, Great Lakes Gas Transmission Company (Great Lakes) filed a petition, pursuant to section 4 the Natural Gas Act, 15 U.S.C. 717c, § 154.21 of the Federal Energy Regulatory Commission's (Commission) Regulations under the Act, 18 CFR 154.21 and § 385.207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, requesting that for the contract year ended October 31, 1983, the Commission authorize it to waive, to the limited extent set forth in its petition, the minimum annual bill provision contained in section 4A.2(b) of Rate Schedule CQ to Great Lakes' FERC Gas Tariff, First Revised Volume No. 1.

During the contract year ended October 31, 1983, one of Great Lakes' customers, ANR, incurred an obligation under Section 4A.2(b) to pay for gas it did not take (1,936,898 Mcf). ANR has requested, and Great Lakes has agreed, to waive payment of this obligation amounting to $5,114,322, subject to the terms and conditions of a letter agreement dated January 20, 1984, between ANR and Great Lakes. This letter agreement provides, *inter alia*, that ANR will make up the deficiency of 1,936,898 Mcf during the remaining term of its service agreement with Great Lakes which extends to October 31, 1991.

Great Lakes states that it has contacted its customers and it believes there are no objections to this waiver.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before May 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-13495 Filed 5-17-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-322-000]

Pacific Gas and Electric Co.; Order Accepting for Filing and Suspending Rates, Granting Intervention, Granting Waiver of Notice Requirements, Disposing of Motions, and Establishing Hearing Procedures

Issued: May 14, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, J. David Hughes, A. G. Sousa and Oliver G. Richard III.

On March 15, 1984, Pacific Gas and Electric Company (PG&E) submitted for filing proposed changes in rates for firm power, interchange, and transmission service to the Northern California Power Agency (NCPA), the City and County of San Francisco, California (San Francisco), the City of Santa Clara, California (Santa Clara), CP National Corporation (CP National), Sierra Pacific Power Company (Sierra), and the Shasta Dam Area Public Utility District (Shasta).[1] Overall, the proposed changes would result in increased revenues to PG&E of approximately $5.4 million (7.9%), based on the calendar year 1984 test period. PG&E states that the

[1] *See* Attachment for rate schedule designations.

proposed rates are based on formulas contained in rate settlements previously reached in Docket Nos. ER83–683–000, ER84–6–000, and ER84–186–000.[2]

The agreements between PG&E and the affected customers provide for rate adjustment formulas intended to maintain parity between PG&E's retail and wholesale rates by capping wholesale rates at the percentage increase allowed by the California Public Utilities Commission (CPUC) for retail base rates. The agreements also commit the affected customers to limit any request for suspension of rates developed under the formula mechanisms to one day. Consistent with the agreed-upon terms, PG&E requests waiver of the notice requirements and a January 1, 1984 effective date, to coincide with the date established by the CPUC for PG&E's retail rate increase.

Notice of PG&E's filing was published in the **Federal Register** with comments or motions to intervene due on or before April 9, 1984. 49 Fed Reg. 11707. Santa Clara filed a timely motion to intervene but has raised no substantive issues.[3]

Turlock Irrigation District (Turlock), which receives PG&E power through San Francisco, filed a timely motion to intervene and a request for a one day suspension. Turlock stated that it did not contest the previously settled rate principles, formulas, procedures, or mechanisms. However, Turlock indicated that it disagrees with PG&E's calculations, contending that there is a substantial discrepancy between PG&E's wholesale rate increase and the recent retail rate increase. Turlock specifically objected to the base revenue amounts used by PG&E to calculate the proposed rates. In addition, Turlock alleged that San Francisco had not provided written consent to PG&E's filing because of Turlock's objection to PG&E's calculations.

In an untimely motion to intervene filed on April 17, 1984, San Francisco refuted Turlock's allegation, stating that while San Francisco did not sign a support letter provided to it by PG&E, it had indicated to its customers and to PG&E that it supported PG&E's filing and found it to be consistent with the settlement provisions. San Francisco further stated that, upon request by PG&E, it provided PG&E with written verification of its support in a letter dated March 20, 1984. San Francisco stated that it filed its motion to intervene late, because it was unaware of Turlock's intention to litigate any issues in this proceeding, and because San Francisco is PG&E's only customer under Rate Schedule No. 53.

On April 24, 1984, Turlock answered San Francisco's pleading, stating that it was not informed of San Francisco's March 20 letter in support of PG&E's filing until two days after Turlock had filed its motion to intervene. Turlock asserted that it had not intended to represent San Francisco's views or to imply that San Francisco agreed with its protest.[4] Turlock contended, however, that its protest nonetheless warrants consideration, since San Francisco resells almost all of PG&E's Rate Schedule No. 53 power to Turlock and two other customers [5] at the rate charged by PG&E. According to Turlock, San Francisco itself has little, if any, direct financial interest in the outcome of this proceeding.

On April 27, 1984, PG&E filed a response to Turlock's protest and intervention, urging acceptance of the filing. Alternatively, PG&E has moved to sever Rate Schedule No. 53 from the balance of PG&E's filing so that the rates applicable to other customers may be accepted without investigation. If Rate Schedule No. 53 is not accepted, PG&E requests that a settlement judge be appointed to address Turlock's protest. According to PG&E, its adjustments to its wholesale rates are to be based on the percentage change in retail base rate revenues rather than the percentage change in retail base rates. PG&E contends that Turlock accepted the formula proposed by PG&E when it signed the earlier settlement agreement between PG&E and San Francisco.

On May 2, 1984, Turlock responded to PG&E's pleading, stating that Turlock and PG&E's interpret the operative sections of the settlement agreement differently. Turlock opposes PG&E's motion for appointment of a settlement judge, but does not object to PG&E's motion for severance.

Discussion

Pursuant to Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motions to intervene of Santa Clara and Turlock serve to make them parties to this proceeding. Furthermore, given San Francisco's interest as an affected wholesale customer, the stated reasons for its delay in filing, and the early stage of this proceeding, we find that good cause exists to grant San Francisco's motion to intervene out of time.

Our rules do not permit answers to protests unless otherwise ordered by the decisional authority (18 CFR 385.213(a)(2)). The Commission sometimes does order answers to contractual challenges in order to resolve non-factual interpretation matters which can be determined on the basis of the pleadings. We have therefore considered PG&E's answer. Having done so, it appears that PG&E's interpretation of the settlement methodology is correct. However, there remain factual questions that are not susceptible to resolution on the basis of the pleadings. PG&E has submitted workpapers and retail tariff sheets in support of its view of how the settlement figures were intended to be derived. We cannot, however, determine whether these are the only relevent retail tariff sheets or whether the calculations in the workpapers are consistent with the settlement provisions.

Our preliminary review of PG&E's submittal indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. As noted, under the prior agreements, PG&E is subject to a revenue limitation and cannot implement rates higher than those permitted under the specified rate adjustment mechanisms. Turlock has alleged that PG&E has used inappropriate base revenue amounts in its calculations to commute the proposed rates and, as a result, the proposed revenues exceed those permitted under the rate adjustment formulas. Because we are unable to conclude that PG&E's filing comports with the terms of it agreement, further procedures will be necessary in order to resolve this dispute. Accordingly, we shall accept the rates of filing and suspend them as ordered below.

While we shall initiate hearing procedures in this docket, given the narrow scope of the controversy, we do not anticipate that a full evidentiary hearing should ultimately be required. Nonetheless, we are not inclined to appoint a settlement judge at this time, as requested by PG&E, since the questions appear to be factual ones

[2] The Commission, by orders issued on September 14, 1983, and October 27, 1983, accepted for filing and made effective Interconnection Agreements between PG&E and NCPA (24 FERC ¶61,286) and between PG&E and Santa Clara (25 FERC ¶61,142) in Docket Nos. ER83–683–000 and ER84–6–000, respectively. In Docket No. ER84–186–000, the Director, Division of Electric Rate Regulation, by a letter dated February 6, 1984, accepted for filing and made effective executed settlement agreements between PG&E and the other four customers.

[3] In its motion to intervene, Santa Clara requested a one day suspension. However, Santa Clara subsequently amended its pleading to delete its request for suspension.

[4] Turlock asserts that it made its representations in good faith and on the basis of communications with San Francisco before filing its motion.

[5] The Modesto Irrigation District and Norris Industries.

susceptible of prompt determination. We shall leave that decision to the discretion of the presiding administrative law judge. Regarding PG&E's motion to sever Rate Schedule No. 53 for separate investigation, we note that the proposed changed under that rate schedule are based, in part, on the same ratio of 1984 base revenue amounts to 1983 base revenue amounts as that established in all of PG&E's rate settlements. Because all of the rates are similarly derived based on common contractual provisions, any revisions found to be appropriate in the case of San Francisco would presumably be warranted with respect to other customers as well. Consequently, we believe that it is necessary to suspend each of the rates proposed by PG&E in order to afford refund protection to all potentially affected customers.

In *West Texas Utilities Company*, Docket No. ER82-23-000, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary review indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our preliminary examination indicates that the proposed rates may not be excessive. Furthermore, Turlock has requested only a one day suspension and the underlying agreements contemplate a nominal suspension if the rates are challenged. Inasmuch as the parties to the agreements with PG&E also contemplated that the wholesale rate adjustments would coincide with retail rate changes, we find that good cause exists to waive the notice requirements and we shall suspend PG&E's rates to take effect, subject to refund, on January 1, 1984.

The Commission orders:

(A) San Francisco's motion to intervene out of time is hereby granted subject to the Commission's Rules of Practice and Procedure.

(B) PG&E's motion for leave to respond to Turlock's protest is hereby granted.

(C) PG&E's motion for severance is hereby denied.

(D) PG&E's motion for appointment of a settlement judge is hereby denied without prejudice, as discussed above.

(E) Waiver of the notice requirements is hereby granted.

(F) PG&E's proposed rates are hereby accepted for filing and suspended, to become effective on January 1, 1984, subject to refund.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of PG&E's rates.

(H) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within fifteen (15) days from the date of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426. Such conference shall be held for purposed of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rule of Practice and Procedure.

(I) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A

Pacific Gas & Electric Company rate Schedule Designation, Docket No. ER84-322-000

Other Party: City of Santa Clara, California.

Designation	Description
(1) Supplement No. 13 to Rate Schedule FERC No. 85 (Supersedes Supplement No. 1).	Service Schedule A, Partial Requirements Service.
(2) Supplement No. 14 to Rate Schedule No. 85 (Supersedes Supplement No. 2).	Service Schedule B, Emergency Power.
(3) Supplement No. 15 to Rate Schedule No. 85 (Supersedes Supplement No. 3).	Service Schedule C, Maintenance Power.
(4) Supplement No. 16 to Rate Schedule No. 85 (Supersedes Supplement No. 4).	Service Schedule D, Short-Term Firm Power.
(5) Supplement No. 17 to Rate Schedule No. 85 (Supersedes Supplement No. 5).	Service Schedule E, Geysers Curtailment Power.
(6) Supplement No. 18 to Rate Schedule No. 85 (Supersedes Supplement No. 6).	Service Schedule F, Curtailment Power.
(7) Supplement No. 19 to Rate Schedule No. 85 (Supersedes Supplement No. 7).	Service Schedule G, Firm Transmission Service.
(8) Supplement No. 20 to Rate Schedule No. 85 (Supersedes Supplement No. 8).	Service Schedule H, Interruptable. Transmission Service.
(9) Supplement No. 21 to Rate Schedule No. 85 (Supersedes Supplement No. 9).	Service Schedule I, Reserves Service.
(10) Supplement No. 22 to Rate Schedule No. 85 (Supersedes Supplement No. 10).	Service Schedule J, Station Use Power.
(11) Supplement No. 23 to Rate Schedule No. 85 (Supersedes Supplement No. 11).	Service Schedule K, Power Factor Correction Service.
(12) Supplement No. 24 to Rate Schedule No. 85 (Supersedes Supplement No. 12).	Service Schedule L, Transmission Lease Back.
Other Party: Northern California Power Agency	
(13) Supplement No. 12 to Rate Schedule FERC No. 84 (Supersedes Supplement No. 1).	Service Schedule A, Partial Requirements Service.
(14) Supplement No. 13 to Rate Schedule No. 84 (Supersedes Supplement No. 2).	Service Schedule B, Emergency Power.
(15) Supplement No. 14 to Rate Schedule No. 84 (Supersedes Supplement No. 3).	Service Schedule C, Maintenance Power.
(16) Supplement No. 15 to Rate Schedule No. 84 (Supersedes Supplement No. 4).	Service Schedule D, Short-Term Firm Power.
(17) Supplement No. 16 to Rate Schedule No. 84 (Supersedes Supplement No. 5).	Service Schedule E, Geysers Curtailment Power.
(18) Supplement No. 17 to Rate Schedule No. 84 (Supersedes Supplement No. 6).	Service Schedule F, Curtailment Power.
(19) Supplement No. 18 to Rate Schedule No. 84 (Supersedes Supplement No. 7).	Service Schedule G, Firm Transmission Service.
(20) Supplement No. 19 to Rate Schedule No. 84 (Supersedes Supplement No. 8).	Service Schedule H, Interruptible Transmission Service.
(21) Supplement No. 20 to Rate Schedule No. 84 (Supersedes Supplement No. 9).	Service Schedule I, Reserves Service.
(22) Supplement No. 21 to Rate Schedule No. 84 (Supersedes Supplement No. 10).	Service Schedule J, Station Use Power.
(23) Supplement No. 22 to Rate Schedule No. 84 (Supersedes Supplement No. 11).	Service Schedule K, Power Factor Correction Service.
(24) Supplement No. 16 to Rate Schedule FPC No. 53 (Supersedes Supplement No. 14).	City and County of San Francisco.
(25) Supplement No. 12 to Rate Schedule FERC No. 72 (Supersedes Supplement No. 2).	Sierra Pacific Power Company.
(26) Supplement No. 13 to Rate Schedule FERC No. 72 (Supersedes Supplement No. 3).	Do.
(27) 7th Revised Sheet No. 5A Under FPC Electric Tariff, Original Volume No. 2 (Supersedes 6th Revised Sheet No. 5A).	R-2 rate for CP National Corporation.
(28) Rate Schedule FERC No. 88 (Redesignation of Service Agreement Under FPC Electric Tariff, Original Volume No. 2).	Rate to Shasta Dam Area P.U.D.
(29) Supplement No. 1 to Rate Schedule FERC No. 88.	Do.

[FR Doc. 84-13496 Filed 5-17-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-422-000]

Puget Sound Power & Light Co.; Filing

May 14, 1984.

The filing Company submits the following:

Take notice that on May 4, 1984, Puget Sound Power & Light Company (Puget) tendered for filing an Amendment to an exchange agreement with the Washington Water Power Company (Washington) which provides for the exchange of steam-electric generation which, because of plant locations and load area locations, results in substantial savings in both transmission cost and in transfer losses.

Washington is a 15% owner of the Centralia Steam-Electric Plant in western Washington near Puget's

system load area. Puget is a 50% owner of Colstrip Units #1 and #2and a 25 % owner of Colstrip Units #3 and #4 in eastern Montana. The subject agreement provides for the exchange of Washington's Centralia capacity and energy for like amount of Puget's Colstrip capacity and energy, which, because of the shortening of the transfer distances involved results in substantial savings in both transmission service costs and transfer losses. The savings resulting therefrom both in transmission costs and transfer losses are shared equally by Washington and Puget under the terms of this agreement.

Puget requests an effective date of January 10, 1984, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-13497 Filed 5-17-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER79-150-009]

Southern California Edison Co.; Revised Compliance Filing

May 14, 1984.

Take notice that on April 20, 1984 Southern California Edison Company (Edison) submitted for filing its revised compliance filing in compliance with the Commission's order issued November 30, 1983.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before May 24, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-13498 Filed 5-17-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-419-000]

Southern California Edison Co.; Filing

May 14, 1984.

The filing Company submits the following:

Take notice that on May 3, 1984, Southern California Edison Company (Edison) tendered for filing an agreement entitled "Edison-Burbank Firm Transmission Service Agreement (Vincent-Sylmar)", which has been executed by Edison and the City of Burbank, California ("Burbank").

Edison states that under the terms and conditions of the Agreement, Edison will made available to Burbank firm transmission service between the Point of Receipt and the Point of Delivery as specified in the Agreement.

Edison requests an effective date of May 25, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Burbank, California.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-13499 Filed 5-17-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2026-001]

Thomas A. Folchi, Jr.; Application

May 14, 1984.

The filing individual submits the following:

Take notice that on May 7, 1984 Thomas A. Folchi, Jr. filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Vice President and Controller—Orange and Rockland Utilities, Inc.
Vice President and Controller—Rockland Electric Company
Vice President and Controller—Pike County Light & Power Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before May 29, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-13500 Filed 5-17-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7719-000, et al.]

Hydroelectric Applications (O. J. Power Co.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: 5 MW Exemption.

b. Project No: 7719-000.

c. Date Filed: October 13, 1983.

d. Applicant O. J. Power Company.

e. Name of Project: O. J. Power Company Hydro Project.

f. Location: Mill Creek, Bannock and Oneida Counties, Idaho.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, (16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: Myron Jones, 311 North 300 West, Malad, Idaho 83252.

i. Comment Date: July 13, 1984.

j. Description of Project: The proposed project would be located partially on U.S. Forest Service lands, partially on Oneida County, Idaho lands, and partially on the Applicant's land. The

proposed project would consist of: (1) A 6-foot-high, 40-foot-long diversion structure; (2) a proposed 7,000-foot-long, 16-inch-diameter penstock; (3) a proposed powerhouse with the installation of 2 turbine/generator units, operating at a head of 375 feet, for a total installed capacity of 260 kW; (4) a proposed ½-mile-long transmission line; and (5) appurtenant facilities. Applicant estimates the average annual energy production to be 1.4 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed project to the Utah Power and Light Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

2a. Type of Application: Exemption (5 MW or Less).

b. Project No: 5768–001.

c. Date Filed: November 1, 1983.

d. Applicant: Pennsylvania Department of Environmental Resources.

e. Name of Project: Little Pine Creek Project.

f. Location: On the Little Pine Creek in Cummings Township, Lycoming County, Pennsylvania.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Person: R. Timothy Weston, Associate Deputy Director, P.O. Box 1467, Harrisburg, PA 17120.

i. Comment Date: June 18, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 113-foot-high rolled earth and rockfill dam 1,123 feet long; (2) a reservoir having a surface area of 93.7 acres, a storage capacity of 1,100 acre-feet, and a normal water surface elevation of 710 feet MSL; (3) a new 9.5-foot-diameter drop inlet structure; (4) a new 8.5-foot-diameter steel conduit 618 feet long; (5) a powerhouse containing 5 new generating units having a total installed capacity of 960 kW; (6) either a new 12-kV transmission line 1.34 miles long to the Tri County Rural Electric Corporation's Carsontown Substation, or a new 6-kV transmission line, 16 miles long to the West Penn Power Company's Lobo Substation; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 3,999,400 kW. The dam and project facilities are owned by the State of Pennsylvania.

k. Purpose of Project: All project power would be sold to either the Tri-County Rural Electric Cooperative or the West Penn Power Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, D3A.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

3a. Type of Application: 5 MW Exemption.

b. Project No: 7832–000.

c. Date Filed: November 14, 1983.

d. Applicant: Pocono Lake Preserve.

e. Name of Project: Pocono Lake.

f. Location: On Tobyhanna Creek, in Monroe County, near Blakeslee, Pennsylvania.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408, 16 U.S.C. 2705 and 2708 *as amended.*

h. Contact Person: Wesley H. Shirk, Jr., Pocono Lake Preserve, Monroe, Pennsylvania 18348.

i. Comment Date: June 18, 1984.

j. Competing Application: Project No. P–7071–000, Date Filed: February 10, 1983.

k. Description of Project: The project would consist of: (1) An existing concrete gravity dam, approximately 33 feet high and 336 feet long; (2) a reservoir with an estimated water surface area of 550 acres and storage capacity of 5500 acre-feet at normal maximum water surface elevation of 1633 m.s.l.; (3) a proposed siphon intake structure with connecting penstock; (4) two proposed submersible type turbine-generators with total installed capacity of 269 kW; (5) a proposed, 6,600-foot-long 12-kV transmission line; and (6) appurtenant facilities.

l. Purpose of Project: The Applicant estimates that the average annual energy generation will be 1.213 GWh and will be sold to PP&L.

m. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

4a. Type of Application: Major Relicense.

b. Project No.: 2520–000.

c. Date Filed: February 29, 1984.

d. Applicant: Great Northern Paper Company.

e. Name of Project: Mattaceunk.

f. Location: Penobscot River, Towns of Medway and Mattawamkeag, Aroostook and Penobscot Counties, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Thomas E. Mark, LeBoeuf, Lamb, Leiby and MacRae, 520 Madison Avenue, New York, New York 10022.

i. Comment Date: July 6, 1984.

j. Description of Project: The project consists of: (1) An existing 1,060-foot-long, 45-foot-high concrete gravity dam including a 657.5-foot-long spillway section with 4-foot-high flashboards, a 90-foot-long, 19-foot-high rollergate section, a 37-foot-long log sluice and fishway section, a 142-foot-long integral powerhouse wall and a 110-foot-long earthfill section; (2) an existing 2.6-square-mile reservoir with a usable storage capacity of approximately 2,000 acre-feet with 2 feet of draw-down from elevation 240.0 feet U.S.G.S.; (3) an existing powerhouse located at the east dam abutment containing turbine-generators with a total rated capacity of 19.2 MW; (4) an existing outdoor substation located adjacent to the powerhouse; (5) an existing 9-mile-long, 34.5-kV, 40 Hertz transmission line; and (6) appurtenant facilities. The project generates up to 105,141,000 kWh annually.

l. Purpose of Project: Energy produced at the project is fed into the Licensee's paper mill electric power system at Millinocket.

m. This notice also consists of the following standard paragraphs: B, C.

5a. Type of Application: Preliminary Permit.

b. Project No.: 8184–000.

c. Date Filed: March 20, 1984.

d. Applicant: Iowa Hydropower Development Corporation.

e. Name of Project: Quaker Mills Dam.

f. Location: On the Maquoketa River, in Delaware County, Iowa.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Jean-Pierre Bourgeacq, Iowa Hydropower Development Corporation, 228 Melrose Court, Iowa City, Iowa 52240.

i. Comment Date: July 5, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing, 20-foot-high concrete dam; (2) an existing reservoir; (3) an existing powerhouse that will contain 1 proposed generating unit rated at 160 kW; (4) a proposed transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project is 700,000 kWh.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36

months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $10,000.

l. This notice also consist of the following standard paragraphs: A5, A7, A9, B, C and D2.

6a. Type of Application: Exemption (5 MW or Less).

b. Project No: 7815–000.

c. Date Filed: November 7, 1983.

d. Applicant: Dan L. Smith.

e. Name of Project: Henrietta Mills.

f. Location: On the Second Broad River, in Rutherford County, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Dan L. Smith, 104 Main Street, Forest City, North Carolina 28043.

i. Comment Date: June 18, 1984.

j. Competing Application: Project No. 7177–000; Date Filed: March 28, 1983.

k. Description of Project: The proposed project consists of: (1) An existing concrete dam that is approximately 363 feet long and 22 feet high; (2) an existing reservoir that has negligible storage and a surface area between 8 and 10 acres at powerpool elevation of 782 feet m.s.l.; (3) two existing powerhouses; Powerhouser No. 1 contains two generating units rated at 150 kW each, Powerhouse No. 2 co..'ains one generating unit rated at 375 kW, for a total installed capacity of 675 kW. The generating units would be rehabilitated to produce power; (4) two existing, 8-foot-diameter and 180 foot long penstocks; (5) a proposed transmission line; and (6) appurtenant facilities. The estimated average annual energy output for the project is 3,250,000 kWh.

l. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

m. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

7a. Type of Application: Minor license.

b. Project No: 5989–001

c. Date Filed: January 3, 1984.

d. Applicant: City of Jersey City, New Jersey

e. Name of Project: Boonton Reservoir.

f. Location: On the Rockaway River in Norris County, New Jersey.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Patrick J. Lawler, Lawler, Matusky & Skelly Engineers, One Blue Hill Plaza, Pearl River, New York 10965.

i. Comment Date: July 5, 1984.

j. Description of Project: The proposed project would be located at the existing Boonton Dam which is owned by the Applicant and would consist of: (1) The existing 2,150-foot-long, 115-foot-high masonry dam; (2) the existing reservoir having a surface area of 825-acres at an elevation of 307 feet m.s.l.; (3) modification of two 190-foot-long, 4-foot-diameter mud pipes; (4) a proposed 80-foot-long, 6-foot-diameter penstock; (5) a proposed powerhouse containing three turbine/generator units, two with a capacity of 550 kW each, and one with a capacity of 50 kW, for a total installed capacity of 1,150 kW; (6) a proposed 0.5-mile-long transmission line; and (7) appurtenant facilities. This license application was filed pursuant to a preliminary permit, Project No. 5989–000, held by the Applicant.

k. Purpose of Project: Project energy would be sold to Jersey Central Power and Light Company and/or N.J. Board of Public Utilities.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

8a. Type of Application: Minor License.

b. Project No: 7707–001.

c. Date Filed: December 15, 1983.

d. Applicant: Souhegan Hydropower Company.

e. Name of Project: Merrimack Village Project.

f. Location: On the Souhegan River, in the Town of Merrimack, in Hillsborough County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mathew Yakovakis, 39 Juniper Drive, Milford, New Hampshire 03055.

i. Comment Date: July 13, 1984.

j. Description of Project: The proposed run-of-river project would consist of: (1) The existing 13.5-foot-high and 180-foot-long dam; (2) a reservoir having a surface area of 12 acres, a storage capacity of 170 acre-feet, and normal water surface elevation of 131 feet USGS; (3) an existing 120-foot-long, 20-foot-wide power canal plus a new 40-foot-long, 20-foot-wide extension; (4) an existing 10-foot-diameter penstock 145 feet long; (5) two turbine-generating units (located within the end of the penstock) with a total installed capacity of 900 kW; (6) two new tailraces 10 feet long and 5 feet wide; (7) a new 12.47kV transmission line, 75 long; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 3,250,000 kWh. The existing dam and project facilities are owned by Pennichuck Water Works Company.

k. Purpose of Project: All project power would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

9a. Type of Application: Preliminary Permit.

b. Project No: 8149–000.

c. Date Filed: March 2, 1984.

d. Applicant: Weather Watt Company.

e. Name of Project: Weather Watt.

f. Location: On the Black River, in Windsor County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16, U.S.C. 791(a)–825(r).

h. Contact Person: Robinson D., Bullard, Cady Hill Road, RR #1, Box 216, Perkinsville, Vermont 05151.

i. Comment Date: July 16, 1984.

j. Description of Project: The proposed run-of-river project would utilize an existing U.S. Army Corps of Engineers' small ruble-stone and masonry dam and reservoir and would consist of: (1) New 3-foot-high flashboards on top of the dam increasing the reservoir surface elevation from 530 to 533 feet mean sea level; (2) a new intake structure at the east side of the dam; (3) a new 7-foot-diameter and 200-foot-long steel penstock; (4) a new powerhouse with 2 turbine-generator units with a total installed capacity of 400 kW; (5) a short tailrace; (6) a new 0.5-mile-long transmission line; and (7) other appurtenances. Applicant estimates an average annual generation of 1,800,000 kWh.

k. Purpose of Project: Project energy would be sold to the Central Vermont Public Service Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects on project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license.

Applicant estimates that the cost of the studies under permit would be $10,000.

10a. Type of Application: Exemption (Conduit Facilities).

b. Project No: 7579–000.

c. Date Filed: September 6, 1983.

d. Applicant: North Logan City, Utah.

e. Name of Project: Green Canyon Hydroelectric Project.

f. Location: Culinary water springs in Water Canyon, Cache County, Utah.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Mayor Bruce King, City of North Logan, 2053 North 1200 East, North Logan, Utah 84321.

i. Comment Date: June 21, 1984.

j. Description of Project: The proposed project would utilize a proposed municipal water supply conduit which will convey water from a culinary water supply springs in Water Canyon to the City of North Logan (City). The proposed project would be located on the Applicant's land, approximately 1 mile from the City and just outside the boundary to U.S. Forest Service lands, and would consist of: (1) A proposed powerhouse connected to the proposed water supply conduit; (2) the proposed installation of one turbine/generator unit operating at a head of 1,200 feet for a total installed capacity of 450 kW; and (3) appurtenant facilities. The Applicant estimates the average annual energy production to be 3.5 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Utah Power and Light Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

11a. Type of Application: Preliminary Permit.

b. Project No: 8157–000.

c. Date Filed: March 6, 1984.

d. Applicant: Warren Osborne.

e. Name of Project: Six Mile Creek Hydropower.

f. Location: Six Mile Creek, tributary of the Little Salmon River, in Payette National Forest near the Town of New Meadows, in Adams County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Carl L. Myers, 750 Warm Springs Avenue, Boise, Idaho 83712.

i. Comment Date: July 16, 1984.

j. Description of Project: The proposed project would consist of: (1) A 2-foot-high check dam at elevation 5400 feet; (2) a 11,500-foot-long, 20-inch-diameter buried steel penstock; (3) a concrete powerhouse with a single generating unit and an average annual generation of 5,000 MWh with a capacity of 2400 kW; and (4) a 0.5-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $10,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to the Idaho Power Co.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

12a. Type of Application: License (Over 5MW).

b. Project No: 7263–000.

c. Date Filed: May 6, 1983.

d. Applicant: City of Vernon, California.

e. Name of Project: Lee Vining Creek Power Project.

f. Location: On Lee Vining Creek, near the town of Lee Vining, in Mono County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Bruce V. Malkenhorst, Administrator, City of Vernon, 4305 Santa Fe Avenue, Vernon, California 90058.

i. Comment Date: June 25, 1984.

j. Competing Application: Project No. 1388–001 Date Filed: 12/1/81.

k. Description of Project: The Project would consist of: (1) The existing 45-foot-high, 600-foot-long rockfill Saddlebag Dam, impounding a 317-acre reservoir; (2) the existing 27-foot-high, 270-foot-long rockfill Tioga Dam, impounding a 73-acre reservoir; (3) the existing 19-foot-high, 50-foot-long concrete Tioga Auxiliary Dam; (4) the existing 17-foot-high, 437-foot-long rockfill Rhinedollar Dam, impounding a 66-acre reservoir; (5) the existing concrete intake structure at the Rhinedollar Dam, (6) the existing 2,448-foot-long, 48-inch-diameter pipeline; (7) the existing 3,740-foot-long, 44-inch to 26-inch-diameter penstock; (8) the existing Poole Powerhouse containing a single turbine-operator unit with a rated capacity of 10.0 MW and an average annual generation of 29.0 GWh. The existing 21.7-mile-long, 115–kV transmission line from the Poole Powerhouse to the Rush Creek Powerhouse would remain under Southern California Edison Company ownership. Project power would be used to meet the Applicant's energy needs. The project is located on Inyo National Forest lands.

l. This notice also consists of the following standard paragraphs: A4, B, and D1.

m. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title "Comments", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of this application. Any of the aboved named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Deputy Director, Project Management, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon the representative of the Applicant specified herein.

n. The Lee Vining Creek Power Project is designated as FERC Project No. 1388 pursuant to a license issued by the Commission effective on December 1, 1936, to the Southern California Edison Company. The original license expires on November 30, 1986.

13a. Type of Application: License (Over 5 MW).

b. Project No: 4204–002.

c. Date Filed: August 31, 1983, and supplemented January 25, 1984.

d. Applicant: City of Batesville, Arkansas.

e. Name of Project: White River Lock and Dam No. 1.

f. Location: On the White River near Batesville, Independence County, Arkansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Honorable Mayor James Shirrell, City of Batesville, 170 S. Fourth Street, Batesville, Arkansas 72501.

i. Comment Date: July 16, 1984.

j. Description of Project: The proposed run-of-river project would be located at the White River Lock and Dam No. 1, owned by the City of Batesville, Arkansas, and would consist of: (1) The existing White River Lock and Dam No. 1, approximately 660 feet long and 27.6 feet high; (2) a reservoir with a surface area of approximately 773 acres and storage capacity of approximately 12,500 acre-feet; (3) a new powerhouse

containing three generators rated at 2,275 kW each for a total installed capacity of 6,825 kW; (4) a concrete, open-flume tailrace structure approximately 280 feet long; (5) a new 13.8–kV transmission line approximately 10,000 feet long; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 31.1 GWh. Project energy would be sold to the Arkansas Light and Power Company. The Applicant is the Permittee for Project No. 4204.

k. This notice also consists of the following standard paragraphs: A3, A9, B and C.

14a. Type of Application: License.

b. Project No: 5058–001.

c. Date Filed: October 31, 1983

d. Applicant: Glen-Colusa Irrigation District (GCID).

e. Name of Project: Tehama-Colusa/Glen-Colusa Intertie.

f. Location: Tehama-Colusa/Glen-Colusa Intertie, near Maxwell, in Colusa County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert Clark, Manager-Secretary, Glen-Colusa. Irrigation District, 344 East Laurel Street, Willows, California 95988.

i. Comment Date: July 16, 1984.

j. Description of Project: The proposed project would utilize the U.S. Bureau of Reclamation's (Bureau) Tehama-Colusa/Glen Colusa Intertie No. 1 which receives flow from the Tehama-Colusa Canal. The proposed project would consist of: (1) A 500-foot-long, 8-foot-diameter pipeline/penstock serving the upper powerhouse; (2) a 1400 to 1800-foot-long, 8-foot-diameter pipeline/penstock serving the lower powerhouse; (3) an upper powerhouse at Station 15+00 containing four tubine-generator units with a total installed capacity of 1180–kW and a lower powerhouse at Station 64+50 containing five turbine-generator units with a total installed capacity of 1772–kW, both with a combined average annual generation of 10.0 GWh; and (4) a 1.5-mile long, 60–kV tap line to connect to a proposed Pacific Gas and Electric Company line. Project power would be sold to Pacific Gas and Electric Company. Applicant estimates construction cost at $3.5 million.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

15a. Type of Application: License (Under 5MW).

b. Project No.: 3657–001.

c. Date Filed: June 24, 1983.

d. Applicant: City of Nashville, Arkansas and City of Broken Bow, Oklahoma.

e. Name of Project: Pine Creek Water Power Project.

f. Location: On Little River in McCurtain County, Oklahoma.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Richard H. Davis, Jr., President, Route 5, Box 48–B, Nashville, Arkansas 71852.

i. Comment Date: July 13, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Pine Creek Dam and Reservoir and would consist of: (1) A new 12.5-foot-diameter steel penstock, approximately 600 feet long, grouted inside the existing 13-foot-diameter outlet works conduit; (2) a new powerhouse containing a turbine-generator unit having 4,000 kW rated capacity; (3) a tailrace returning flow to the river approximately 200 feet downstream from dam; (4) a new 69 kV transmission line, approximately 6 miles long; and (5) appurtenant facilities. The Applicant estimates that he average annual energy output would be 14,200,000 kWh. Project energy would be sold to the Public Service Company of Oklahoma. The Applicant is permittee for Project No. 3657.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

15a. Type of Application: Preliminary Permit.

b. Project No.: 7551–000.

c. Date Filed: August 23, 1983.

d. Applicant: Muscatine Associates.

e. Name of Project: Muscatine Lock and Dam No. 16

f. Location: Rock Island County, Illinois, and Muscatine County, Iowa, on the Mississippi River.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Tom Forbes, P.O. Box 421, Mercer Island, Washington 98040.

i. Comment Date: July 13, 1984.

j. Description of Project: The proposed project would utilize an existing U.S. Army Corps of Engineers' dam and reservoir. Project No. 7551 would consist of: (1) Replacement of a section of the existing, non-overflow embankment portion of the dam with a powerhouse; (2) a proposed powerhouse with the installation of 35 turbine/generator units, operating at a hydraulic head of 6 feet, for a total installed capacity of 14.0 MW; (3) proposed dredging of a pilot channel from the turbine discharges to the main channel; (4) a proposed 2-mile-long, 69-kV transmission line; and (5) appurtenant facilities. The Applicant estimates the average annual energy to be 74.0 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to Eastern Iowa Light and Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months. During this time the significant legal, institutional, engineering environmental, marketing, economic and financial aspects of the project will be defined, investigated, and assessed to support an investment decision. The report of the proposed study will address whether or not a commitment to implementation is warranted, and, if findings are positive, the Applicant intends to submit a license application. The Applicant's estimated total cost for performing these studies is $150,000.

17a. Type of Application: Preliminary Permit.

b. Project No.: 7886–000.

c. Date Filed: November 29, 1983.

d. Applicant: Hamilton Associates.

e. Name of Project: Jay Snelgrove Hydropower Project.

f. Location: On the South Fork Nooksack River, near Hamilton, in Skagit County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Joel Kirk Rector, Hamilton Associates, 4832 Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: July 23, 1984.

j. Description of Project: The proposed project would consist of: (1) A 25-foot-high, 60-foot-long concrete gravity dam at elevation 1,550 feet; (2) a concrete intake structure; (3) a 10-foot-diameter, 2,500-foot-long unlined rock tunnel; (4) an 8-foot-diameter, 2,000-foot-long steel penstock; (5) a powerhouse containing a single generator having a rated capacity of 8,100 kW and an annual power generation of 37.0 GWh, at elevation 1,315 feet; (6) gravel surfaced access roads; and (7) a 6-mile-long, 55-kV transmission line to an existing line.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary. The estimated cost of permit activities is $125,000.

k. Purpose of Project: Power will be marketed to local municipalities.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

18a. Type of Application: Preliminary Permit.

b. Project No.: P–8174–000.

c. Date Filed: March 14, 1984.

d. Applicant: YZ Cattle Company.

e. Name of Project: Stillwater.

f. Location: On the South Fork of the White River, in the Rio Blanco County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Scott M. Balcomb, P.O. Drawer 790, Glenwood Springs, Colorado 81602.

i. Comment Date: July 23, 1984.

j. Description of Project: The following alternate proposals are going to be studied: (a) 4,200 feet of conduit, 1,000-feet of penstock, an installed capacity of 2,370 kW, an average annual energy of 11,100,000 kWh, and a transmission length of 300 feet; (b) 6,000-feet of conduit, 850-feet of penstock, an installed capacity of 3,660 kW, an average annual energy of 17,200,000 kWh, and a transmission length of 700-feet; and (c) 10,500-feet of conduit, 850-feet of penstock, an installed capacity of 4,750 kW, an average annual energy of 22,300,000 kWh, and a transmission length of 1,200 feet. In all three alternatives proposed the conduit diameter is 7-feet, the penstock diameter is 5-feet, and the transmission voltage is 7,200 volts. All the proposals will have the following additions consisting of: (1) a proposed diversion dam, approximately 75-feet wide by 4-feet high; (2) a proposed gate hoist and trashrack; (3) a proposed reservoir with approximately 1.5 acres of water surface area and 3 acre-feet of storage capacity, with a normal maximum water surface elevation at approximately 7,490-feet MSL; (4) a proposed powerplant, approximately 50-feet by 30-feet; (5) a proposed 15-feet diameter surge tank; and (6) appurtenant facilities. All features of the project are located entirely upon private lands owned by the Applicant.

k. Purpose of Project: The Applicant anticipates that the primary market for the project energy would be Colorado-Ute Electric Association.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies Under Permit: A preliminary permit if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies under the permit would be $200,000.

19a. Type of Application: License (Over 5 MW).

b. Project No.: 3944–002.

c. Dated Filed: August 30, 1983.

d. Applicant: Village of Rockdale.

e. Name of Project: Brandon Road Lock and Dam Power Project.

f. Location: Des Plaines River on the Illinois Waterway, Will County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Donald Gould, Village President, Village of Rockdale, 1013 Otis Avenue, Rockdale, Illinois 60436.

i. Comment Date: July 16, 1984.

j. Description of Project: The Applicant states that the existing dam for the proposed project is owned by the U.S. Army Corps of Engineers, and that the land upon which the dam is built and upon which the proposed project would be built belongs to the State of Illinois. The existing dam and impoundment are operated and maintained by the Army Corps of Engineers. The proposed project would consist of: (1) A proposed 200-foot-long intake channel to be excavated on the upstream side of the headgate section of the dam; (2) the proposed utilization of the last four of sixteen existing headgate bays at the right side of the headgate section of the dam where the existing headgates will be used as the upstream shutoff gates to the powerhouse; (3) a proposed powerhouse to be located against the downstream face of the headgate section with the proposed installation of two turbine/generator units operating at a rated head of 28.3 feet for a total installed capacity of 7,320 kW; (4) a proposed 50-foot-wide, 125-foot-long tailrace; (5) a proposed 150-foot-wide, 400-foot-long outlet channel; (6) a proposed 2,000-foot-long, 34.5-kV transmission line; and (7) appurtenant facilities. The Applicant estimates the average annual energy production to be 51.0 GWh.

k. Purpose of Project: The Applicant anticipates entering into a power purchase agreement for the sale of project power with Commonwealth Edison Company or other possible power purchasers in the area.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroeletric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary

permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from

the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statues. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 15, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–13501 Filed 5–17–84; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–59157; T5H–TSH–FRL–FRL 2590–4]

Certain Chemicals; Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of three applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: June 4, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS–59157]" and the specific TME number should be sent to: Document Control Officer (TS–793), Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wendly Cleland-Hamnett, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

TME 84–49

Close of Review Period. June 21, 1984.
Manufacturer. Confidential.
Chemical. (G) Modified, maleated metal resinate.
Use/Production. (S) Industrial publication gravure printing inks. Prod. Range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 2 day/yr.
Environmental Release/Disposal. Less than 0.2 kg/batch released to water with 20 Kg/batch to land. Disposal by approved landfill.

TME 84–50

Close of Review Period. June 22, 1984.
Manufacturer. Confidential.
Chemical. (G) Dithiocarbamate salt.
Use/Production. (G) Water treatment chemical. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

TME 84–51

Close of Review Period. June 23, 1984.
Manufacturer. Hercules Incorporated.
Chemical. (G) Organometallic polymer.
Use/Production. (S) Liquid or gas purifier for use in the manufacturer of silicon and microelectronic components for the electronics industry, in the

purification of feedstreams for polyolefin manufacture, and as a carrier gas purifier for analytical instrumentation. Prod. range: 1,000, 1 year.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential Disposal by a contract waste disposal service.

Dated: May 14, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84-13289 Filed 5-17-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51519; TSH-FRL 2590-5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of fifteen PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 84-678—August 1, 1984.

PMN 84-679 and 84-680—August 4, 1984.

PMN 84-681, 84-682, 84-683, 84-684, 84-685, 84-686, 84-687 and 84-688—August 5, 1984.

PMN 84-689 and 84-690—August 6, 1984.

PMN 84-691 and 84-692—August 7, 1984.

Written comments by:

PMN 84-678—July 2, 1984.

PMN 84-679 and 84-680—July 5, 1984.

PMN 84-681, 84-682, 84-683, 84-684, 84-685, 84-686, 84-687 and 84-688—July 6, 1984.

PMN 84-689 and 84-690—July 7, 1984.

PMN 84-691 and 84-692—July 8, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS-51519]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

PMN 84-678

Manufacturer. The Minnesota Mining and Manufacturing Company.

Chemical. (G) Halogenated vinyl monomer.

Use/Production. (G) Polymer modifier, closed use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 3 workers, up to 1 hr/da, up to 10 da/yr.

Environmental Release/Disposal. Less than .023 to less than .011 kg/batch and less than .51 lbs/batch released to air with less than .5 lbs/batch to water. Disposal by incineration and navigable waterway.

PMN 84-679

Manufacturer. Confidential.

Chemical. (G) Salt of dialkylphosphorodithioic acid.

Use/Production. (G) Contained use. Prod. range: Confidential.

Toxicity Data. Acute oral: >2.0 g/kg but <5.0 g/kg; Irritation: Skin—Primary irritant, Eye—Primary irritant.

Exposure. Manufacture: dermal, a total of 30 workers, up to 8 hrs/da, up to 150 da/yr.

Environmental Release/Disposal. Release to air or land. Disposal by landfill and Resource Conservation and Recovery Act (RCRA).

PMN 84-680

Manufacturer. Confidential.

Chemical. (G) Mixed salt of dialkylphosphorodithioic acid.

Use/Production. (G) Contained use. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Primary irritant.

Exposure. Manufacture: dermal, a total of 30 workers, up to 8 hrs/da, up to 150 da/yr.

Environmental Release/Disposal. Release to air or land. Disposal by landfill and RCRA.

PMN 84-681

Importer. Confidential.

Chemical. (G) Unsaturated and saturated alkanoic acids.

Use/Import. (G) Highly dispersive use. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

PMN 84-682

Manufacturer. Confidential.

Chemical. (G) Modified, fatty amidoamine.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 6 workers.

Environmental Release/Disposal. Release to air with less than 0.1 kg/batch to water and less than 0.5 kg/batch to land. Disposal by POTW and sanitary landfill.

PMN 84-683

Manufacturer. Confidential.

Chemical. (G) Substituted succinic anhydride.

Use/Production. (G) Polymer monomer. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84-684

Manufacturer. Confidential.

Chemical. (G) Polymer of formaldehde and substituted phenols.

Use/Production. (G) Tackifier for natural and synthetic elastomers. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84-685

Manufacturer. Confidential.

Chemical. (S) 1,3-isobenzofurandione,5,5'-carbonylbis, reaction products with methanol.

Use/Production. (S) Monomer to make polyimide resin used in a prepreg. Prod. range: 1,800-80,000 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Moderate/Slight, Eye—Minimal.

Exposure. Manufacture and processing: dermal, a total of 12 workers, up to 4 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. 0.5 kg/batch released. Disposal by certified waste disposal service.

PMN 84–686

Manufacturer. Confidential.

Chemical. (S) Bicyclo [2.2.1]HEPT-5-ENE-2,3-dicarboxylic acid, monomethyl ester, (Endo, Endo)-.

Use/Production. (S) Industrial monomer to endcap polyimide resin used in prepreg. Prod. range: 1,200–53,000 kg/yr.

Toxicity Data. Acute oral: >2,500 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Minimal, Eye—Slight/minimal.

Exposure. Manufacture and processing: dermal and inhalation, a total of 16 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. 0.05–0.5 kg/batch released to air. Disposal by certified waste disposal service.

PMN 84–687

Manufacturer. Confidential.

Chemical. (G) Substituted benzyl amino polyol.

Use/Production. (S) Sprayable urethane and pout-in-place foam for industrial and commercial use. Prod. range: Confidential.

Toxicity Data. Acute oral: 3.2 g/kg; Acute dermal: 2.0 g/kg; Irritation: Skin—Non-irritant, Eye—Irritant; Inhalation: 206 mg/l; Ames Test: Non-mutagenic..

Exposure. Manufacture: dermal, a total of 3 workers, up to 2 hrs/da, up to 365 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air with less than 2,000 kg/yr to water. Disposal by plant waste treatment facility..

PMN 84–688

Manufacturer. Minnesota Mining and Manufacturing Company.

Chemical. (S) 2-Thiazolium, 2,2'-[(2-carboxy-p-phenylene) bis (iminovinylene)] bis [3-ethyl] diiodide triethylamine salt..

Use/Production. (S) Sensitizing dye in a photographic emulsion for commercial use. Prod. range: 4–8 kg/yr.

Toxicity Data. No data

Exposure. Manufacture and processing: dermal, a total of 12 workers, up to 8 hrs/da, up to 8 da/yr.

Environmental Release/Disposal. 0.01 to 0.1 kg/batch released to water with 0.5 kg/batch to land. Disposal by POTW, incineration and landfill.

PMN 84–689

Manufacturer. Witco Chemical Corporation.

Chemical. (G) Sulfurized reaction products of animal oil and vegetable fatty ester.

Use/Production. (G) Extreme pressure oil additive. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 4 hrs/da.

Environmental Release/Disposal. No release. Disposal by landfill.

PMN 84–690

Manufacturer. Ralston Purina Company.

Chemical. (G) Carboxymethylated soy fiber.

Use/Production. (S) Soil suspending agent for laundry detergents for industrial, commercial, and consumer use. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Not a primary irritant, Eye—Slight.

Exposure. Manufacture: dermal and inhalation, a total of 5 workers, up to 3 hrs/da, up to 360 da/yr.

Environmental Release/Disposal. No release. Disposal by incineration and landfill.

PMN 84–691

Manufacturer. Hach Company.

Chemical. (S) 1-(1-hydroxy-4-methyl-2-phenylazo)-2-naphthol-4-sulfonic acid triethanolammonium salt.

Use/Production. (S) Hardness indicator for CA^{2+} and Mg^{2+}. Prod. range: <5 Kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 3 workers, up to 2 hrs/da, up to 5 da/yr.

Environmental Release/Disposal. Release to water. Disposal by POTW.

PMN 84–692

Manufacturer. Lilly Industrial Coatings, Inc.

Chemical. (G) Polymer of carbomonocyclic acid carbomonocyclic anhydride, alkanediols and alkane dioic acid.

Use/Production. (G) For use in industrial liquid paints. Prod. range: 40,000–80,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 28 workers up to 12 hrs/da up to 30 da/yr.

Environmental Release/Disposal. Less than 1 to 15 kg/batch released to air. Disposal by incineration.

Dated: May 14, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84–13288 Filed 5–17–84; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2589–8]

Availability of Environmental Impact Statements Filed May 7 Through May 11, 1984 Pursuant to 40 CFR 1506.9

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

EIS No. 840192, DSuppl, USA, VA, Fort Story, Ongoing Mission, Virginia Beach, Due: July 2, 1984, Contact: Kenneth Halleran (202) 694–4269

EIS No. 840193, Final, FHW, CA, Telegraph Road/CA–126 Improvements, Hall Road to Castaic Junction, Ventura and Los Angeles Counties, Due: June 18, 1984, Contact: Glenn Clinton (916) 440–3578

EIS No. 840194, Draft, FHW, MD, MD–43/Whitemarsh Boulevard Extension, I–95 to I–695/Baltimore Beltway and US 1 Improvements, I–695 to Silver Spring Road, Baltimore County, Due: July 9, 1984, Contact: Edward Terry (301) 952–4011

EIS No. 840195, Draft, FWS, AK, Becharof National Wildlife Refuge Comprehensive Conservative Plan, Due: July 2, 1984, Contact: William Knauer (907) 786–3399

EIS No. 840196, Draft, AFS, CA, Peppermint Mountain Resort Development, Sequoia National Forest, Tulare County, Due: August 2, 1984, Contact: Julie Allen (209) 784–1500

EIS No. 840197, Draft, MMS, AK, 1985 St. George Basin OCS Oil and Gas Sale No. 89, Leasing, Due: July 2, 1984, Contact: Bruce Blanchard (202) 343–3891

EIS No. 840198, Draft, UMT, NY, Queens Subway Options Study, Improvement, 63rd Street Subway to Archer Avenue Subway, Due: July 3, 1984, Contact: Brian Sterman (212) 264–8162

EIS No. 840199, Final, AFS, CO, Arapaho and Roosevelt National Forests and Pawnee National Grassland, Land and Resource Management Plan, Due: August 15, 1984, Contact: Raymond Benton (303) 482–5155

EIS No. 840200, Draft, COE, VA, Beaverdam Swamp Water Supply Dam and Reservoir Construction, Permit, Gloucester County, Due: July 2, 1984, Contact: Bob Hume (804) 441–3857

EIS No. 840201, Final, COE, AR, LA Tensas River Basin Flood Control (Excluding Bayou Macon), East Carroll, Tensas, Madison, and Franklin Parishes, Due: June 18, 1984, Contact: Richard Makinen, (202) 272–0121

EIS No. 840202, Draft, FHW, OK, OK–74 Expressway Construction, NW 63rd

Street to NW 178th Street, Oklahoma County, Due: July 2, 1984, Contact: Frank Cunningham (405) 231–4624

EIS No. 840203, Final, COE, CA, Cullinan Ranch Residential Community and Recreational Development, Permit, Solano County, Due: June 18, 1984, Contact: (415) 974–0444.

Amended Notices:

EIS No. 820260, Draft, HUD, MD, Foxcroft, Farmbrook and Timberline Subdivisions, Mortgage Insurance, Fredrick County, Published FR 5–14–82. Withdrawn.

Dated: May 15, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84–13456 Filed 5–17–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

AmSouth Bancorporation; Applications To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed aplications under § 225.23(a)(3) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794), to engage *de novo* through national bank subsidiaries in the making of commercial loans, and other activities specified below. The proposed subsidiaries will not engage in demand deposit transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of these applications, under established Board policy the record of the applications will not be regarded as complete and the Board will not act on the applications unless and until a preliminary charter for each proposed national bank subsidiary has been submitted to the Board.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question of whether consummation of the proposal can "reasonably be expected to produce benfits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presenation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than June 8, 1984.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *AmSouth Bancorporation,* Birmingham, Alabama; to engage through the following national bank subsidiaries in providing consumer and commercial loans of various kinds, trust, investment advisory and other banking services; and providing depository services, except that the banks will not provide deposit services where the depositor has legal right to withdraw on demand: AmSouth Bank New Orleans, N.A., New Orleans, Louisiana—serving the state of Louisiana; AmSouth Bank Nashville, N.A., Nashville, Tennessee—serving the state of Tennessee; and AmSouth Bank Pensacola, N.A., Pensacola, Florida and AmSouth Bank Tampa, N.A., Tampa, Florida—both serving the state of Florida.

Board of Governors of the Federal Reserve System, May 14, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84–13387 Filed 5–17–84; 8:45 am]

BILLING CODE 6210–01–M

Amsterdam-Rotterdam Bank, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governor not later than June 8, 1984.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Amsterdam-Rottendam Bank,* N.V., Amsterdam, The Netherlands ("AMRO"); to engage indirectly through a 50-percent-owned *de novo* subsidiary, Delfi Asset Management, Inc., Wilmington, Delaware ("DAM"), in permissible investment advisory activities. (Shares of DAM will be held in equal proportions by (1) a non-U.S. subsidiary of AMRO and (2) Delfi American Corporation, also of Wilmington, Delaware ("DELFI")). DAM would acquire the entire non-mutual fund investment advisory business of an existing subsidiary of DELFI, Delfi Management, Inc. ("DSUB"). DSUB would then no longer be engaged in providing investment advice to non-mutual fund clients; it will continue to provide investment advice to mutual fund clients. AMRO intends that DAM's service area be worldwide.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *The Union of Arkansas Corporation,* Little Rock, Arkansas; to engage *de novo* through its subsidiary, Union Investments, Inc., Little Rock, Arkansas, in providing securities brokerage services to customers of Union National Bank of Little Rock, solely as agent for the account of such

customers. These activities would be conducted in the State of Arkansas.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Franciso, California 94105:

1. *Security Pacific Corporation*, Los Angles, California; to expand the activities of its subsidiary, Security Pacific Financial Strategies Group, Inc., Denver, Colorado, to now include underwriting and dealing in government obligations and money market instruments.

Board of Governors of the Federal Reserve System, May 14, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-13388 Filed 5-17-84; 8:45 am]

BILLING CODE 6210-01-M

First Atlanta Corp.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794), to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than June 8, 1984.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Atlanta Corporation*, Atlanta, Georgia; to engage through a national bank subsidiary, First Atlanta (FL), N.A., Orlando, Florida in providing deposit-taking, consumer and mortgage lending (1–4 family dwellings only), trust, investment advisory, and other banking services. These activities will be performed in the state of Forida.

Board of Governors of the Federal Reserve System, May 14, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-13385 Filed 5-17-84; 8:45 am]

BILLING CODE 6210-01-M

First Fayette Bancshares, Inc., et al.; Formations of; Acquisitions by: and Mergers of Bank Holding Companies

The companies listed in the notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 8, 1984.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Fayette Banchares, Inc.*, Fayette, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of the First National Bank of Fayette, Fayette, Alabama.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago Illionis 60690:

1. *Stephenson National Bancorp, Inc.*, Marinette, Wisconsin; to become a bank holding company by acquiring 90 percent of the voting shares of the Stephenson National Bank and Trust, Marinette, Wisconsin.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Heonig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Hallam Bancorp, Inc.*, Hallam, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Hallam Bank, Hallam, Nebraska.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice Persident) 400 South Akard Street, Dallas, Texas 75222:

1. *Atlanta Bancorp, Inc.* Atlanta, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of the Atlanta National Bank, Atlanta, Texas.

2. *San Pedro Bancshares, Inc.*, San Antonio, Texas; to acquire 100 percent of the voting shares of Commercial National Bank, San Antonio, Texas, a *de novo* bank.

3. *Texas Gulf Coast Bancorp, Inc.*, Houston, Texas; to acquire 67 percent of the voting shares of First National Bank of Pearland, Pearland, Texas.

Board of Governors of the Federal Reserve System, May 14, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-13389 Filed 5-17-84; 8:45 am]

BILLING CODE 6210-01-M

Peoples Investment Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) (2) or (f) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (49 FR 794) to acquire or

control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 1, 1984.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Peoples Investment Corporation,* Cuba, Missouri; to acquire Dorf Insurance Agency, Inc., Cuba, Missouri and thereby engage in the sale of general insurance. This activity will be conducted at its existing offices and at any future offices Applicant may have serving towns with populations not exceeding 5,000.

Applicants also proposes to engage in the sale of credit life, credit accident and credit health insurance, data processing activities and the leasing of personal property. These activities will be conducted *de novo,* directly, at the existing and any future offices of Applicant's banking subsidiar(ies).

Board of Governors of the Federal Reserve System, May 14, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-13390 Filed 5-17-84; 8:45 am]

BILLING CODE 6210-01-M

Rainier Bancorporation Applications To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed applications under § 225.23(a)(3) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794), to engage *de novo* through national bank subsidies in the making of commercial loans, and other activities specified below. The proposed subsidiaries will not engage in demand deposit transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Compnay* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of these applications, under established Board policy the record of the applications will not be regarded as complete and the Board will not act on the applications unless and until a preliminary charter for each proposed national bank subsidiary has been submitted to the Board.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications have been accepted for processing, they will also be available for inspecton at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the applications must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than June 8, 1984.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Rainier Bancorporation,* Seattle, Washington; to engage through the following national bank subsidiaries in consumer and mortgage lending, commercial and industrial lending, and the acceptance of time deposits, except that the subsidiaries will not accept any deposits that the Board has stated are demand deposits, or deposits that a depositor has the legal right to withdraw on demand: Rainier Bank Idaho, N.A., Boise, Idaho—serving Ada County, Idaho; Rainier Bank Arizona, N.A., Phoenix, Arizona—serving Maricopa, Multnomah, Washington, and Clackamas Counties in Oregon (certain of the proposed subsidiary's credit card activities may be conducted nationwide); Rainier Bank Hawaii, N.A., Honolulu, Hawaii—serving Honolulu County, Hawaii; Rainier Bank New Mexico, N.A., Albuquerque, New Mexico—serving Bernalillo and Sandoval Counties, New Mexico; Rainier Bank Colorado, N.A., Denver, Colorado—serving Adams, Arapahoe, Boulder, Denver, Douglas, Gilpin, and Jefferson Counties in Colorado; Rainier Bank Houston, N.A., Houston, Texas—serving Brazonia, Fort Bend, Harris, Liberty, Montgomery, and Waller Counties in Texas; and Rainier Bank Austin, N.A., Austin, Texas—serving Travis County, Texas.

Board of Governors of the Federal Reserve System, May 14, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-13386 Filed 5-17-84; 8:45 am]

BILLING CODE 6210-01-M

Suburban Bancorp; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794), to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than June 8, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Suburban Bancorp,* Bethesda, Maryland; to engage through a national Bank subsidiary, Suburban Bank/Washington, N.A., Washington, D.C., in deposit-taking, consumer and mortgage lending (1–4 family dwellings only), and other banking services; in Washington, D.C. and surrounding area.

Board of Governors of the Federal Reserve System, May 14, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc 84-13391 Filed 5-17-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 11.

Public Health Service

Office of Assistant Secretary for Health

Subject: Laboratory-Based Research on the Cognitive Aspects of Survey Methodology—Concept Clearance—New

Respondents: Individuals

Health Resources Services Administration

Subject: Comparative Evaluation of National Health Service Corps Alumni Retained in Health Manpower Shortage Areas—New

Respondents: Physicians

Centers for Disease Control

Subject: National Venereal Disease Epidemiology Program (0920–0001)—Extension/No Change

Respondents: State and local health departments

Subject: National Disease Surveillance Program—I. Case Reports (0920–0009)—Revision

Respondents: State and Territorial health officials

OMB Desk Officer: Fay S. Iudicello

Office of the Secretary

Subject: Follow-Up Evaluation of the Effects of Mainstreaming Handicapped Children in Head Start—New

Respondents: Individuals

OMB Desk Officer: Milo Sunderhauf

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503; ATTN: (name of OMB Desk Officer).

Dated: May 11, 1984.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84-13272 Filed 5-17-84; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No.84F-0137]

Bernard Food Industries, Inc.; Shaklee Corp.; Thomas J. Lipton, Inc.; Filing of Food Additive Petitions

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing that Bernard Food Industries, Inc.; Shaklee Corp.; and Thomas J. Lipton, Inc., have each filed food additive petitions proposing that the food additive regulations be amended to provide for the safe use of aspartame as a sweetener in ready-to-serve gelatin desserts, breath mints, and refrigerated tea beverages, respectively.

FOR FURTHER INFORMATION CONTACT: Anthony P. Brunetti, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that three petitions have been filed proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the following safe uses of aspartame (1-methyl *N*-*L*-α-aspartyl-*L*-phenylalanine):

(1) Shaklee Corp., Shaklee Terraces, 444 Market St., San Francisco, CA 94111, has filed a petition (FAP 4A3766) proposing to provide for the safe use of aspartame as a sweetener in natural flavor breath mints.

(2) Thomas J. Lipton, Inc., 800 Sylvan Ave., Englewood Cliffs, NJ 07632, has filed a petition (FAP 4A3769) proposing to provide for the safe use of aspartame as a sweetener in noncarbonated, chilled, ready-to-drink iced tea beverages.

(3) Bernard Food Industries, Inc., 1125 Hartrey Ave., Evanston, IL 60204, has filed a petition (FAP 4A3775) proposing to provide for the safe use of aspartame as a sweetener in ready-to-serve gelatin desserts.

The potential environmental impact of these actions is being reviewed. If the agency finds that environmental impact statements are not required and these petitions result in regulations, the notices of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulations in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: May 8, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84-13403 Filed 5-17-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83F-0234]

Shell Oil Co.; Withdrawal of Petition for Food Additive

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the withdrawal without prejudice of the petition (FAP 3B3732) proposing that the food additive regulations be amended to provide for the safe use of styrene block polymers in food-contact articles.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 Stat. 1786 (21 U.S.C. 348(b))), the following notice is issued:

In accordance with § 171.7 *Withdrawal of petition without prejudice* of the procedural food additive regulations (21 CFR 171.7), Shell Oil Co., Suite 200, 1025 Connecticut Ave. NW., Washington, DC 20036, has withdrawn its petition (FAP 3B3732) notice of which was published in the **Federal Register** of July 29, 1983 (48 FR 34513), proposing that the food additive regulations be amended to allow for an increased maximum extractable fraction in distilled water and 50 percent ethanol from styrene block polymers with 1,3-butadiene listed under 21 CFR 177.1810, intended for use in food-contact articles.

Dated: May 8, 1984.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84–1883 Filed 5–17–84; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Ear, Nose, and Throat Devices Panel

Date, time, and place. June 7 and 8, 9 a.m., Rm 503–529A, 200 Independence Ave. SW., Washington, D.C.

Type of meeting and contact person. Open public hearing, June 7, a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed committee deliberations, 1 p.m. to 2 p.m.; open committee discussion, 2 p.m. to 4:30 p.m.; open committee discussion, June 8, 9 a.m. to 4:30 p.m.; Dr. Lillian Yin, Center for Devices and Radiological Health (formerly National Center for Devices and Radiological Health) (HFZ–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 31, and submit a brief statement of the general nature of the evidence of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for a cochlear implant system.

Closed committee deliberations. The committee will discuss trade secret or confidential commercial information pertaining to the cochlear implant system. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. June 7 and 8, 8:30 a.m., Wilson Hall, Bldg. 1, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD, June 7; and 8:30 a.m. to 12 m., Bldg. 29, Rm. 121, 8800 Rockville Pike, Bethesda, MD, June 8.

Type of meeting and contact person. Open committee discussion, June 7, 8:30 a.m. to 2 p.m.; open public hearing, 2 p.m. to 3 p.m., unless public participation does not last that long; closed committee deliberations, 3:30 a.m. to 5 p.m.; closed committee deliberations, June 8, 8:30 a.m. to 12 m.; Jack Gertzog, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics) (HFN–31), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines and related biological products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss new Hepatitis B vaccines and clinical studies needed for licensure.

Closed committee discussion. The committee will discuss trade secret or confidential commercial information relevant to pending investigational new drugs (IND's), and license applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Pulmonary-Allergy Drugs Advisory Committee

Date, time, and place. June 14 and 15, 8:30 a.m., Wilson Hall, Bldg. 1, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, June 14, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 2 p.m.; closed committee deliberations, 2:30 p.m. to 4 p.m.; closed committee deliberations, June 15, 8 a.m. to 12 m.; Conrad J. Ledet, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics) (HFN–160), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md 20857, 301–443–3500.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in pulmonary disease and in diseases with allergic and/or immunologic mechanisms.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should notify the contact person.

Open committee discussion. The committee will discuss antihistamine testing guidelines, side effects of $beta_2$ agonists and use of antiasthma drugs in pregnancy.

Closed committee deliberations. The committee will review trade secret or confidential commercial information relevant to IND's 3718, 22,739, and 23,401. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 522b(c)(4)).

Immunology Devices Panel

Date, time, and place. June 28 and 29, 9 a.m., Rm. 1207, 8757 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, June 28, 9 a.m. to 10 a.m.; open committee discussion, 10

a.m. to 12 p.m.; closed presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 5 p.m.; open committee discussion, June 29, 9 a.m. to 10 a.m.; closed presentation of data, 10 a.m. to 12 p.m.; closed committee deliberations, 1 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; Dr. Srikrishna Vadlamudi, Center for Devices and Radiological Health (formerly National Center for Devices and Radiological Health) (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 18, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for tumor markers for the monitoring of cancer and alpha-fetoprotein for the detection of neural tube defects.

Closed presentation of data. The committee will review and discuss trade secret or confidential commercial information relevant to premarket approval applications for tumor markers for the monitoring of cancer and alpha-fetoprotein for the detection of neural tube defects. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will review and discuss trade secret or confidential commercial information relevant to premarket approval applications for tumor markers for the monitoring of cancer and alpha-fetoprotein for the detection of neural tube defects. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA's public proceedings, including hearings before a public advisory committee conducted pursuant to Part 14 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the presentation of participants at a public hearing. Accordingly, all interested persons are directed to the guideline, as well as the **Federal Register** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on public hearings.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational

or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: May 10, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 84-13404 Filed 5-17-84; 8:45 am]

BILLING CODE 4160-01-M

Social Security Administration

Statement of Organization, Functions and Delegation of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA).

Notice is given that Chapter S, as published in the **Federal Register** on March 21, 1979 (44 FR 17218-19) and amended by 44 FR 46350 of August 7, 1979, 46 FR 41215 of August 14, 1981 and 48 FR 337-343 of January 4, 1983 and Chapters SU and SQ, as published in the **Federal Register** on January 4, 1983 (48 FR 337-343) are amended to retitle the Systems Management Support Staff, delete existing subcomponents and functions, and add new subcomponents and functions.

The new material and changes are as follows:

Sec. S.10 *The Social Security Administration (Organization)*—Delete "R. The Systems Management Support Staff (SQ)" and add: (U) Office of Systems Management (SQ).

Sec. SQ.00 Delete all existing material and add the following material:

Office of Systems Management—(Mission)

The Office of Systems Management directs resource management, project control and configuration management and designs, operates and maintains automated management systems to support these functions. It develops SSA's Information Technology System (ITS) budget and controls ITS procurement activity. The Office is responsible for directing project review and analyses for overall effectiveness of Systems processes and operations, to ensure that the strategies for implementing the SSA Systems Modernization Plan (SMP) and other major Systems initiatives are carried out. It directs the design, development and maintenance of all automated systems and processes for the SSA Systems Management Center (SMC). It is responsible for software and hardware configuration management, as well as data quality and data integrity for all projects and systems configuration information residing in the SMC.

Sec. SQ.10 *Office of Systems Management—(Organization).* The Office of Systems Management, under the leadership of the Director, includes:

A. Office of the Director for Systems Management (SQ)

B. Division of Resource Management (SQE)

C. Division of Configuration and Information Management (SQG)

Sec. SQ.20 *Office of Systems Management—(Function).*

A. *Office of the Director for Systems Management* (SQ)—is responsible to the Deputy Commissioner for Systems for resource management, project control, configuration management and management information in support of the Office of System Integration, Office of System Operations, Office of System Requirements and the Deputy Commissioner for Systems.

B. *Division of Resource Management* (SQE)—plans and controls the effective utilization of all SSA systems resources. Develops SSA's ITS budget strategy and prepares the detailed budget/plan submission; directs the planning, development and executon of the total SSA Systems budget. Responsible for review and analysis activities in the areas of SSA Systems project planning, control and status evaluation. Evaluates the execution of the annual SSA ADP plan, and all projects contained therein (SMP and other). Responsible for the quality and integrity of projects and resource data contained in the SMC. Prepares special management reports and conducts briefings for the Deputy Commissioner for Systems.

C. *Division of Configuration and Information Management* (SQG)—Develops, implements and maintains automated systems that support the management information needs of SSA Systems managers. Administers the SSA hardware and software configuration management processes and systems, develops baseline configurations, maintains status accounting information and reviews and controls all systems changes. Ensures data quality and data integrity of all systems configuration information. Monitors and evaluates the activities of systems engineering contractors who provide technical expertise and support for the SMC systems.

Notice is also given that Chapter SU, as published in the **Federal Register** on January 4, 1983 (48 FR 341), is amended to delete the organizational and functional references to the Configuration Management and Project Control Staff (Sec. SU.10 D) and (Sec. SU.20D). These functions were absorbed by the Office of Systems Management (SQ) as established above.

Dated: May 9, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 84-13483 Filed 5-17-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Designation of an Area of Critical Environmental Concern; Bakersfield District, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of 60 day public comment period on designation of public lands within the Mono Lake Ecological Area as an area of critical environmental concern (ACEC).

SUMMARY: On March 1, 1984, notice of the designation of 15,200 acres of public lands located in Mono County, California as The Mono Lake Ecological Area of Critical Environmental Concern (ACEC) was published in the Federal Register. Since publication of the designation of the ACEC the Bureau has received input suggesting that additional opportunity for public comment on alternatives as addressed in the environmental assessment would be appropriate. Accordingly, I hereby establish a 60 day public comment period to consider additional comments on the EA and alternatives.

SUPPLEMENTARY INFORMATION: The designation of public lands surrounding Mono Lake was one of many alternatives considered during the land use process for Benton-Owens Valley and Bodie-Coleville planning efforts. While not all these specific alternatives were subject to public review, the decision to designate was reached after considerable public involvement.

The Environmental Assessment of the Designation of Public Lands surrounding

Mono Lake as an Area of Critical Environmental Concern (ACEC) analyzes the effects of proposed action and six alternatives on public land resources in the basin. None of the alternatives will address or be affected by the water rights/water level issue. These issues will ultimately be decided in the courts. The alternatives were designed to address actions that the Bureau can implement regardless of the outcome of pending litigation.

Alternatives (considered)

Alternative 1. Proposed Action—Designate the relicted lands, islands, islets, tufa groves, Black Point and Panum Crater as an ACEC. This action would protect gull nesting habitat, visual resources, and shoreline springs. Some springs would not be available as a watering source for livestock, and some opportunities for OHV use and potential for mineral development would be lost.

Alternative 2. ACEC Designation with different boundaries—Alternative 2 would result in the same types of impacts as the Proposed Action, but to varying degrees. Designation of the entire 168,000 acre hydrologic basin would provide the most protection. The least protection would be provided through designation of only the non-relicted portions of the islands and islets.

Alternative 3. No Action—The MFP contains the same management guidelines as the ACEC Plan Element. Impacts would be identical to the proposed action except that priority for funding and outside support would be absent.

Alternative 4. No Action until resolution of lawsuits—Under this alternative, impacts to the resources at Mono Lake would continue at the present rate. Initiation of protective management actions would be deferred until an unknown, future date when pending lawsuits are finally resolved.

Alternative 5. Economic Resource Development—Biological resources, recreation, and air and water resources would be negatively affected, by this alternative. Livestock grazing and mineral development potential would increase.

Alternative 6. Removal of the Mono Basin from BLM administration—Impacts of this alternative would vary depending on who obtained management responsibilities. Some values would be emphasized at the expense of others, depending on the management mandates and philosophies of the agency managing the area.

Alternative 7. Interagency Management Plan—Impacts under this alternative are largely unknown. Two previous attempts at interagency planning for Mono Lake have resulted in no action due to the lack of a group consensus.

For additional background, summary of the special management provisions and legal description of public lands designated refer to March 1, 1984 Federal Register page 7664.

At the close of the 60 day public comment period any additional comments will be considered and the designation reviewed. In the interim, the existing ACEC designation and all special management provisions will remain in effect.

The Environmental Assessment of the Alternatives is available for review at the following locations:

Bakersfield District Office, 800 Truxtun Avenue, Rm. 311, Bakersfield, CA
Bishop Resource Area Office, 873 N. Main St., Rm. 201, Bishop, CA
California State Office, 2800 Cottage Way, Rm. E-2841, Sacramento, CA
Mono County Library, P.O. Box 120, Mammoth Lakes, CA
Lee Vining High School Library, P.O. Box 268, Lee Vining, CA
Los Angeles County Library, 7400 E. Imperial, Downey, CA
San Francisco Public Library, Civic Center, San Francisco, CA.

DATES: The public comment period will run for 60 days from the date of this notice. Comments should be sent to: District Manager, 800 Truxtun Avenue, Room. 311, Bakersfield, CA 93301.

FOR FURTHER INFORMATION CONTACT: Tim Salt, Assistant District Manager for Lands and Renewable Resources, Bureau of Land Management, Bakersfield District, 800 Truxtun Avenue, Rm. 311, Bakersfield, California 93301, (805) 861-4191, or Jim Morrison, Area Manager, Bishop Resource Area, 873 N. Main St., Suite 201, Bishop, California, 93514, (619) 872-4881.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 84-13329 Filed 5-17-84; 8:45 am]

BILLING CODE 4310-40-M

[A 18606]

Arizona; Exchange of Mineral Estate

1. In an exchange made under the provisions of Section 206 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2756; 43 U.S.C. 1716, the Federal mineral estate in the following described State-owned land has been transferred to the State of Arizona:

T. 19 N., R. 11 W.,
Sec. 6, Lots 1-7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 8, All;
Sec. 10, All;
Sec. 12, All;
Sec. 18, Lots 1-4, incl., E½W½, E½;
Sec. 20, W½;
Sec. 22, All;
Sec. 24, All;
Sec. 26, All;
Sec. 28, NW¼, S½;
Sec. 30, Lots 1-4, incl., E½W½, E½;
Sec. 34, S½.
T. 20 N., R. 11 W.,
Sec. 4, Lots 1-4, incl., S½N½, S½;
Sec. 7, Lots 13, 14, 18, 19;
Sec. 8, N½, N½SW¼;
Sec. 10, All;
Sec. 18, Lots 11, 12, 15-20, incl., SE¼;
Sec. 20, All;
Sec. 22, All;
Sec. 26, All;
Sec. 28, All;
Sec. 30, Lots 1-10, incl., and 13-18, incl.;
Sec. 34, All.
T. 20 N., R. 12 W.,
Sec. 1, Lots 1-4, incl., S½N½.
Sec. 4, Lots 1-4, incl., S½N½, SW¼, N½SE¼, SE¼SE¼;
Sec. 6, Lots 1-7, incl., S½NE¼, SE¼NW¼, E½ SW¼, SE¼.
T. 21 N., R. 11 W.,
Sec. 4, Lots 1-7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 6, Lots 1-7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 8, Lots 1-4, incl., W½E½, W½;
Sec. 18, Lots 1-4, incl., E½W½, E½;
Sec. 22, SW¼;
Sec. 26, All;
Sec. 30, Lots 1-4, incl., E½W½, E½;
Sec. 34, All;
T. 21 N., R. 12 W.,
Sec. 4, SW¼;
Sec. 6, Lots 1-18, incl., S½NE¼, SE¼;
Sec. 8, All;
Sec. 10, All;
Sec. 12, All;
Sec. 14, All;
Sec. 18, Lots 1-16, incl., E½;
Sec. 20, All;
Sec. 22, All;
Sec. 24, All;
Sec. 26, N½;
Sec. 28, All;
Sec. 30, Lots 1-16, incl., E½;
Sec. 34, All.
T. 21 N., R. 13 W.,
Sec. 4, Lots 1-4, incl., S½N½, S½;
Sec. 6, Lots 1-7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 8, All;
Sec. 10, N½, N½SW¼,SE¼SW¼,SE¼;
Sec. 12, All;
Sec. 14, All;
Sec. 18, Lots 1-4, incl., E½W½, E½;
Sec. 20, All;
Sec. 22, All;
Sec. 24, All;
Sec. 26, All;
Sec. 28, All;
Sec. 30, Lots 1-4, incl., NE¼, E½NW¼, E½SE¼, N½NW¼SE¼, SE¼NW¼SE¼, NE¼SW¼SE¼, S½SW¼SE¼, N½NE¼SW¼, SW¼NE¼SW¼, NW¼SE¼SW¼, S½SE¼SW¼,
Sec. 34, N½NE¼, SW¼NE¼, NW¼, S½.

T. 21 N., R. 14 W.,
Sec. 4, Lots 1–4, incl., S½N½, S½;
Sec. 6, Lots 1–7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 8, All;
Sec. 10, All;
Sec. 12, All;
Sec. 14, N½N½, SW¼NW¼;
Sec. 30, Lots 1–4, incl., E½W½.
T. 21 N., R. 15 W.,
Sec. 4, Lots 1–4, incl., S½N½, S½;
Sec. 6, Lots 1–7, incl., S½NE¼,SE¼NW¼, E½SW¼,SE¼;
Sec. 8, All;
Sec. 10, All;
Sec. 12, All;
Sec. 14, All;
Sec. 18, Lots 1–4, incl., E½W½, E½;
Sec. 20, SW¼NE¼;
Sec. 24, All;
Sec. 29, NW¼NE¼, N½NW¼, SW¼NW¼;
Sec. 30, Lots 3, 4, E½SW¼, SE¼;
Sec. 34, All.
T. 22 N., R. 12 W.,
Sec. 6, Lots 1–31, incl., SE¼.
T. 22 N., R. 13 W.,
Sec. 20, All;
Sec. 22, All;
Sec. 24, All;
Sec. 26, All;
Sec. 28, All;
Sec. 30, Lots 1–4, incl., E½W½, W½;
Sec. 34, NE¼, S½NW¼, S½.
T. 22 N., R. 14 W.,
Sec. 18, Lots 1–4, incl., E½W½, W½;
Sec. 20, All;
Sec. 21, NE¼NE¼, S½NE¼, NW¼;
Sec. 22, All;
Sec. 24, All;
Sec. 26, All;
Sec. 28, All;
Sec. 32, All;
Sec. 34, All.
T. 22 N., R. 15 W.,
Sec. 6, Lots 1–7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 10, All;
Sec. 12, All;
Sec. 14, All;
Sec. 20, All;
Sec. 22, All;
Sec. 24, All;
Sec. 34, N½NE¼, S½.
T. 23 N., R. 15 W.,
Sec. 34, All.
T. 23 N., R. 18 W.,
Sec. 18, All.
T. 27 N., R. 19 W.,
Sec. 14, All;
Sec. 30, Lots 1–4, incl., E½W½, E½,

Comprising 65,317.91 acres in Mohave County.

2. The State-owned mineral estate in the following described land has been reconveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 11 N., R. 11 W.,
Sec. 2, Lots 1–4, incl., S½N½, S½;
Sec. 16, N½N½, S½NE¼.
T. 11 N., R. 12 W.,
Sec. 2, Lots 1–4, incl., S½N½,S½.
T. 12 N., R. 13 W.,
Sec. 16, All.
T. 12 N., R. 15 W.,
Sec. 2, NE¼SW¼, S½SW¼, SE¼;
Sec. 16, All.
T. 13 N., R. 12 W.,
Sec. 32, All.
T. 13 N., R. 15 W.,
Sec. 36, All.
T. 15 N., R. 12 W.,
Sec. 36, All.
T. 16 N., R. 14 W.,
Sec. 2, Lots 1–4, incl., S½N½, S½;
Sec. 16, S½NW¼SE¼, SW¼SE¼, SW¼.
T. 16½ N., R. 13 W.,
Sec. 32, All.
T. 16½ N., R. 14 W.,
Sec. 36, All.
T. 16½ N., R. 19 W.,
Sec. 32, All.
T. 16½ N., R. 20 W.,
Sec. 32, W½SW¼NW¼NW¼, SW¼NW¼, W½SW¼;
Sec. 36, All.
T. 17 N., R. 13 W.,
Sec. 16, All;
Sec. 32, All.
T. 17 N., R. 18 W.,
Sec. 2, Lots 1–4, incl., S½N½, S½;
Sec. 16, All;
Sec. 32, All.
T. 17 N., R. 19 W.,
Sec. 2, Lots 1–4, incl., S½N½, S½;
Sec. 16, All;
Sec. 32, All;
Sec. 36, All.
T. 17 N., R. 20 W.,
Sec. 2, Lots 1–4, incl., S½N½, S½;
Sec. 16, All;
Sec. 32, All;
Sec. 36, All.
T. 17 N., R. 21 W.,
Sec. 2, Lots 1–4, incl., S½N½, S½;
Sec. 36, All.
T. 18 N., R. 16 W.,
Sec. 2, Lots 1–4, incl., S½N½, S½;
Sec. 16, All;
Sec. 32, All;
Sec. 36, All.
T. 18 N., R. 17 W.,
Sec. 2, Lots 1–4, incl., S½N½, S½;
Sec. 36, All.
T. 18 N., R. 18 W.,
Sec. 16, All;
Sec. 32, All.
T. 18 N., R. 19 W.,
Sec. 2, Lots 1–4, incl., S½N½, S½;
Sec. 16, All;
Sec. 32, All;
Sec. 36, All.
T. 18 N., R. 20 W.,
Sec. 32, All;
Sec. 36, All.
T. 18 N., R. 21 W.,
Sec. 2, Lots 1–4, incl., S½N½, S½;
Sec. 16, All;
Sec. 36, All.
T. 19 N., R. 16 W.,
Sec. 2, Lots 1–4, incl., S½N½, S½;
Sec. 8, All;
Sec. 16, All;
Sec. 18, Lots 1–4, incl., E½W½, E½;
Sec. 32, All;
Sec. 36, All.
T. 19 N., R. 17 W.,
Sec. 2, Lots 1–4, incl., S½N½, S½;
Sec. 16, All;
Sec. 32, All;
Sec. 36, All.
T. 19 N., R. 18 W.,
Sec. 32, All.
T. 19 N., R. 19 W.,
Sec. 32, All;
Sec. 36, All.
T. 19 N., R. 21 W.,
Sec. 2, Lots 1–4, incl., S½N½, S½;
Sec. 36, All.
T. 20 N., R. 16 W.,
Sec. 16, All;
Sec. 32, All;
Sec. 36, All.
T. 20 N., R. 17 W.,
Sec. 32, All, excluding 5.59 acres deeded to the Atchinson Topeka and Santa Fe in State Patent No. 618;
Sec. 36, All.
T. 20 N., R. 19 W.,
Sec. 16, All;
Sec. 32, All.
T. 20 N., R. 20 W.,
Sec. 16, All;
Sec. 36, All.
T. 21 N., R. 17 W.,
Sec. 32, Lots 1–7, incl., NE¼, NE¼SE¼.
T. 21 N., R. 19 W.,
Sec. 16, All;
Sec. 32, All.
T. 21 N., R. 20 W.,
Sec. 2, Lots 1, 2, 3, 5–12, incl., S½.
T. 22 N., R. 18 W.,
Sec. 16, All;
Sec. 32, All.
T. 22 N., R. 20 W.,
Sec. 16, NE¼, S½;
Sec. 32, N½, NE¼SW¼, SE¼;
Sec. 36, N½, SW¼, NW¼SE¼.
T. 23 N., R. 19 W.,
Sec. 2, Lots 1–4, incl., S½N¼, S½;
Sec. 16, All;
Sec. 32, All.
T. 23 N., R. 21 W.,
Sec. 2, Lots 1–4, incl., S½N½, S½;
Sec. 36, Lots 1–4, incl, N½, N½S½.
T. 24 N., R. 18 W.,
Sec. 2, Lots 1, 2, 3, S½;
Sec. 16, All.
T. 24 N., R. 20 W.,
Sec. 36, All.
T. 24 N., R. 21 W.,
Sec. 2, Lot 4, incl., S½NW¼, S½;
Sec. 16, All;
Sec. 32, All;
Sec. 36, All.
T. 25 N., R. 17 W.,
Sec. 16, All;
Sec. 32, All.
T. 25 N., R. 18 W.,
Sec. 16, All;
Sec. 32, All;
Sec. 36, All.
T. 25 N., R. 21 W.,
Sec. 2, Lots 1, 2, S½NE¼, S½;
Sec. 16, All;
Sec. 36, E½, SW¼.
T. 26 N., R. 17 W.,
Sec. 32, All.
T. 26 N., R. 18 W.,
Sec. 32, All;
Sec. 36, All.
T. 26 N., R. 20 W.,
Sec. 32, All.
T. 26 N., R. 21 W.,

Sec. 2, Lots 1–4, incl., S½N½, SW¼, NW¼SE¼;
Sec. 32, N½, SW¼, N½SE¼, SW¼, NW¼SE¼SE¼;
Comprising 65,318.29 acres.

3. At 10 a.m. on June 22, 1984 the mineral estate reconveyed to the United States will be open to location and entry under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unathorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict between rival locators over possessory rights since Congress has provided for such determination in local courts.

4. At 10 a.m. on June 22, 1984 the areas described above will be open to applications and offers under the mineral leasing laws, subject to existing State-issued leases and permits for the terms of said leases and permits. All applications and offers filed for Federal mineral leases prior to 10 a.m. on June 22, 1984 will be considered as simultaneously filed as of that time and date, and a drawing will be held in accordance with 43 CFR 1821.2–3, if necessary. Those applications and offers received thereafter shall be considered in the order of filing.

Inquiries should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-13437 Filed 5-17-84; 8:45 am]

BILLING CODE 4310-32-M

Realty Action; Exchange of Public and Private Lands in Elko County, Nevada

The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Mount Diablo Meridian, Nevada

T. 36 N., R. 58 E.,
Sec. 10, All;
Sec. 16, Lots 1–4, W½, SE¼;
Sec. 28, W½NE¼, W½.

Comprising approximately 1,692.42 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from Harvey A. Dahl:

Mount Diablo Meridian, Nevada

T. 37 N., R. 58 E.,
Sec. 5, Lots 1–4, S½N½, SW¼;
Sec. 7, NE¼;
Sec. 9, N½, SE¼;
Sec. 15, E½W½;
Sec. 19, Lots 1, 2, S½NE¼, E½NW¼;
Sec. 21, S½NE¼, NW¼.
T. 38 N., R. 58 E.,
Sec. 33, SW¼.
Comprising 1,923.26 acres of private land.

The purpose of the exchange is to acquire the non-Federal lands which have high public value for range management, wildlife and recreation. No minerals will be exchanged. The exchange is consistent with the Bureau's land use planning and the public interest will be served by completing the exchange.

The above described lands will be subject to an appraisal to determine the value of the lands to be exchanged. The listed lands may be changed to reflect equal value following completion of the appraisal.

Patent, when issued will contain the following reservations to the United States.

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

3. An easement 33 feet in width along the north, south, east and west boundaries for road and public utility purposes to insure continued ingress and egress to adjacent lands

And will be subject to;

1. All valid existing rights.

2. Those rights for highway purposes which have been granted to the Nevada State Highway Department, its successors or assigns by Permit No. CC–022746, under the Act of November 9, 1921, 42 Stat. 212 and Permit No. Nev–058998, under Section 317 of the Act of August 27, 1958, 1958, 72 Stat. 885; 23 U.S.C.

3. Those rights for powerline purposes which have been granted to Wells Rural Electric Company, its successors or assigns, by Permit No. N-11194, under the Act of March 4, 1911, 36 Stat. 1253; 43 U.S.C. 961, as amended.

4. Those rights for telephone line purposes which have been granted to Nevada Bell, its successors or assigns, by Permit Nos. Elko-01655 and CC-021089, under the Act of March 4, 1911, 36 Stat. 1253, 43 U.S.C. 961, as amended.

5. Those rights for railroad line purposes which have been granted to Southern Pacific Railroad Company, its successors or assigns, by Permit No. Elko–04086, under the Act of July 1, 1862, (12 Stat. 489).

6. Those rights granted by oil and gas leases, N–18737 and N–18763, made under Section 29 of the Act of February 25, 1920, 41 Stat. 437 and the Act of March 4, 1933, 4 Stat. 1570. This patent is issued subject to the rights of the prior permittee or lessee to use so much of the surface of said land as is required for oil and gas exploration and development operations, without compensation to the patentee for damages resulting from proper oil and gas operations, for the duration of oil and gas leases, N–18737 and N–18763, and any authorized extension of these leases. Upon termination or relinquishment of said oil and gas leases, this reservation shall terminate.

7. A restriction which constitutes a covenant running with the land, that the land south and east of Interstate 80's present location within Section 28, Township 36 North, Range 58 East, Mount Diablo Meridian, may be used only for (1) agricultural purposes, but not for dwellings or buildings or (2) for park and non-intensive open space recreation purposes, pursuant to the Authority contained in Section 3(d) of Executive Order 11988 of May 25, 1977 (42 FR 26955) and the Act of October 21, 1976, (90 Stat. 2743, 43 U.S.C. 1716).

8. McCormick Brothers Ranch, the owner of record of authorized range improvement 0567 (White Horse Well), being compensated for its investment in the range improvement.

Publication of this notice in the **Federal Register** will segregate the subject lands from all appropriations under the public land laws including the mining and mineral leasing laws. This segregation will terminate upon the issuance of patent or two years from the date of this notice or upon publication of a Notice of Termination of Segregation.

Further information concerning the exchange, including the environmental assessment, is available for review at the Bureau of Land Management, Elko District Office, 2002 Idaho Street, Elko, Nevada 89801.

For a period of 45 days from this date of publication, interested parties may submit comments to the District Manager, Elko District Office, P.O. Box 831, Elko, Nevada 89801. Any adverse comments will be evaluated by the State director, who may vacate or modify this Realty Action, and issue a final determination. In the absence of any action by the State Director, this Realty

Action will become the final determination of the Department of the Interior.

Rodney Harris,

District Manager.

[FR Doc. 84-13441 Filed 5-17-84; 8:45 am]

BILLING CODE 4310-HC-M

[W-74453]

Wyoming; Order Providing for Opening of Public Lands

The following described lands, surface estate only, were reconveyed to the United States in an exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (1976):

Sixth Principal Meridian, Wyoming

T. 31 N., R. 78 W.,
Sec. 7, lot 4, SE¼SW¼, and W½SE¼ NE¼,
Sec. 18, lot 1 and NW¼NE¼.

The lands are located on Muddy Mountain approximately thirteen miles south of Casper, Natrona County, Wyoming.

The Federal mineral estate underlying the above lands, excepting the W½SE¼NE¼ of section 7, was segregated from appropriation under the United States mining laws by Notice of Realty Action W-74453 published June 10, 1982, in the **Federal Register** (Vol. 47, pages 25214-5).

In accordance with 43 CFR 2200.3(a) and 43 CFR 2310.2-1(d) and subject to valid existing rights and the requirements of applicable law, the lands described above, including the Federal mineral interests therein, are hereby open to operation of the public land laws, including the mining laws, effective June 10, 1984. The Federal mineral estate in the above lands has been, and shall continue to be, open to operation of the mineral leasing laws. All valid applications received prior to 10:00 a.m. on June 10, 1984, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Inquiries concerning the lands should be addressed to the Chief, Branch of Land Resources, P.O. Box 1828, Cheyenne, Wyoming 82003.

P. D. Leonard,

Associate State Director, Wyoming.

[FR Doc. 84-13433 Filed 5-17-84; 8:45 am]

BILLING CODE 4310-22-M

Minnesota; Filings of Plats of Survey of Islands

May 11, 1984.

1. The plats of survey of islands described and accepted on the dates shown below, will be officially filed in the Eastern States Office in Alexandria, Virginia at 7:30 a.m., on June 25, 1984.

Fifth Principal Meridian, Minnesota

Township 114 North, Range 21 West (2 plats) ES 32755, Group 502, Accepted July 6, 1983: Tract 37, 0.80 acres, Island in Murphy Lake; Tract 38, 0.30 acres, Island in Murphy Lake; Tract 39, 1.10 acres, Island in Cleary Lake; Tract 40, 1.70 acres, Island in Cleary Lake.

Township 115 North, Range 22 West (1 plat) ES 33440, Group 506, Accepted July 6, 1983: Tract 37, 1.50 acres, Island in O'Dowd Lake; Tract 38, 0.50 acres, Island in O'Dowd Lake; Tract 39, 1.30 acres, Island in O'Dowd Lake; Tract 40, 3.40 acres, Island in O'Dowd Lake; Tract 41, 0.40 acres, Island in O'Dowd Lake.

Township 105 North, Range 27 West (1 plat) ES 33442, Group 505, Accepted July 8, 1983: Tract 37, 16.6 acres, Island in Lura Lake.

Township 122 North, Range 35 West (1 plat) ES 33441, Group 514, Accepted March 13, 1984: Tract 37, 1.70 acres, Island in Swan Lake.

Fourth Principal Meridian, Minnesota

Township 54 North, Range 12 West (2 plats) ES 33436, Group 507, Accepted March 7, 1984: Tract 37, 0.20 acres, Island in Ruth Lake; Tract 38, 0.20 acres, Island in King Lake; Tract 39, 0.10 acres, Island in King Lake; Tract 40, 0.40 acres, Island in King Lake; Tract 41, 1.70 acres, Island in King Lake; Tract 42, 0.10 acres, Island in King Lake; Tract 43, 0.30 acres, Island in King Lake.

Township 53 North, Range 13 West (2 plats) ES 33444, Group 509, Accepted April 3, 1984: Tract 37, 3.50 acres, Island in Spring Lake; Tract 38, 1.88 acres, Island in Alden Lake; Tract 39, 1.73 acres, Island in Alden Lake; Tract 40, 0.11 acres, Island in Cloquet River; Tract 41, 0.10 acres, Island in Cloquet River; Tract 42, 0.10 acres, Island in Cloquet River; Tract 43, 0.30 acres, Island in Cloquet River; Tract 44, 0.10 acres, Island in Cloquet River; Tract 45, 0.20 acres, Island in Cloquet River.

Township 53 North, Range 13 West (1 plat) ES 33445, Group 516, Accepted March 23, 1984: Tract 46, 0.13 acres, Island in Cloquet River; Tract 47, 0.11 acres, Island in Cloquet River; Tract 48, 0.14 acres, Island in Cloquet River.

Township 54 North, Range 13 West (1 plat) ES 33437, Group 511, Accepted March 16, 1984: Tract 37, 0.20 acres, Island in Cloquet River.

Township 62 North, Range 14 West (5 plats) ES 33447, Group 508, Accepted April 9, 1984: Tract 37, 0.40 acres, Island in Eagle's Nest Lake No. 2; Tract 38, 0.30 acres, Island in Eagle's Nest Lake No. 3; Tract 39, 0.10 acres, Island in Eagle's Nest Lake No. 3; Tract 40, 5.20 acres, Island in Eagle's Nest Lake No. 4; Tract 41, 0.10 acres, Island in Eagle's Nest Lake No. 1; Tract 42, 0.50 acres, Island in Eagle's Nest Lake No. 1; Tract 43, 0.10 acres, Island in Eagle's Nest Lake No. 1; Tract 44, 0.40 acres, Island in Eagle's Nest Lake No. 2; Tract 45, 0.10 acres, Island in Eagle's Nest Lake No. 3; Tract 46, 0.15 acres, Island in Needle Boy Lake.

Township 55 North, Range 16 West (1 plat) ES 33446, Group 523, Accepted April 20, 1984: Tract 37, 0.61 acres, Island in Berg Lake.

Township 52 North, Range 17 West (1 plat) ES 33443, Group 522, Accepted April 12, 1984: Tract 37, 0.38 acres, Island in Schelin Lake.

Township 52 North, Range 18 West (1 plat) ES 33435, Group 510, Accepted March 16, 1984: Tract 37, 0.15 acres, Island in Crooked Lake; Tract 38, 0.60 acres, Island in Crooked Lake.

Township 60 North, Range 25 West (1 plat) ES 33438, Group 512, Accepted March 13, 1984: Tract 37, 0.10 acres, Island in Sandwick Lake.

2. The physical and vegetative characteristics of these islands are generally similar to the adjacent surveyed upland and attests to their existence on the date Minnesota entered the Union, and at the time of the original survey of the township in which they are situated. Accordingly these islands are determined to be public land of the United States.

3. The islands are more than 50% upland in character within the purview of the Act of September 28, 1850.

4. The survey was made upon application by the State of Minnesota, under authority of Section 211 of the Act of October 21, 1976.

5. Interested parties protesting the determination that any one of these islands is public land of the United States, must present valid proof showing that the island did not exist at the time of statehood or that it was attached to the mainland at the time of the original survey. Such protests must be submitted in writting to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., June 25, 1984.

6. Inquiries concerning color-of-title claims should not be filed until further orders are issued.

7. Copies of plats of survey will be furnished on request at the above address, and upon prepayment of the $4.00 reproduction fee.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 84-13435 Filed 5-17-84; 8:45 am]

BILLING CODE 4310-84-M

[A 7315]

Arizona; Partial Termination of Proposed Withdrawal and Reservation of Lands

May 8, 1984.

Notice of Application A 7315 filed by the Bureau of Reclamation, Department of the Interior, for withdrawal and reservation of lands was published as Federal Register Document 73-13009 on Page 17024 of June 28, 1973 issue. The proposed withdrawal was for right-of-way material sites and side drainage control for the Salt-Gila and Tucson Aqueducts of the Central Arizona Project. The applicant agency has cancelled its application as to the lands described as follows:

Gila and Salt River Meridian, Arizona

T. 4 S., R. 9 E.,
Sec. 22, N½NE¼, SW¼NE¼, NE¼SW¼, SW¼SW¼.

The area described contains 200 acres in Pinal County, Arizona.

Therefore, pursuant to the regulations contained in 43 CFR 2310.2-1(c), the land will be at 10 a.m. on June 20, 1984, relieved of the segregative effect of the application and open to location and entry under the mining laws and to mineral leasing other than oil and gas. The land remains open to leasing for oil and gas.

Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

All valid applications received at or prior to 10:00 a.m., on June 20, 1984, shall be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-13436 Filed 5-17-84; 8:45 am]

BILLING CODE 4310-32-M

[N-38780, N-38799, N-38800]

Nevada; Conveyance

Notice is hereby given that, pursuant to the Act of December 23, 1980, 94 Stat. 3381, Donna F. Beam has purchased and received a patent for the following public lands in Clark County, Nevada:

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.,
Sec. 15, SW¼SW¼SW¼SW¼, SE¼SW¼SW¼SW¼;
Sec. 27, SE¼NW¼SW¼SW¼.

Containing 7.5 acres.

The purpose of this notice is to inform the public and interested State and local governmental officals of the conveyance.

Richard G. Morrison,

Chief, Lands & Minerals Operations.

[FR Doc. 84-13461 Filed 5-17-84; 8:45 am]

BILLING CODE 4310-HC-M

[M-59144]

Montana; Realty Action; Exchange

AGENCY: BLM—Butte District Office, Interior.

ACTION: Notice of Realty Action, M-59144, exchange of public and private lands in Missoula and Granite Counties, Montana.

SUMMARY: The following described public lands have been examined and found suitable for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian

T. 12 N., R. 15 W.,
Sec. 8, SW¼, W½SE¼, SE¼SE¼;
Sec. 18, Lots 1 & 4, NE¼NW¼, E½SW¼.

Aggregating 507.28 acres of public land.

In exchange for these lands, the United States Government will acquire the following described private lands:

Principal Meridian

T. 12 N., R. 15 W.,
Sec. 1, E½SW¼, W½SE¼;
Sec. 12, NW¼NE¼, NW¼, W½SW¼, NE¼SW¼;
Sec. 13, W½NW¼.

Aggregating 560 acres of private land.

DATES: For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, Box 3388, Butte, Montana 59702. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this realty action will become the final determination of this Department.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange, including the land report and environmental assessment, is available for review at the Garnet Resource Area Office, 3255 Fort Missoula Road, Missoula, Montana 59801.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

The purpose of the exchange is to facilitate multiple use management programs through a practical consolidation of ownerships. This consolidation will also result in economic benefits to the public with reduced need for surveys, line running, and easements.

This exchange is consistent with the Bureau's planning for the lands involved and has been discussed with state and local officials; no adverse comments have been received. It will be subject to all valid existing rights and certain reservations.

May 11, 1984.

Dave Picket,

Acting District Manager.

[FR Doc. 84-13425 Filed 5-17-84; 8:45 am]

BILLING CODE 4310-DN-M

[W-80207]

Wyoming; Application for Lease of Federal Land

May 9, 1984.

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211-214), the County of Uinta, Wyoming, has applied for an airport lease for the following land for expansion of the Fort Bridger Airport:

Sixth Principal Meridian, Uinta County, Wyoming

T. 16N., R. 115 W.,

Metes and Bounds: Beginning at the Northwest corner of said section 8, said point being the true point of beginning, and monumented with an unmarked limestone 3 inches by 12 inches protruding 8 inches; thence from the true point of beginning South 89 ° 37' East along the North line of said section 8, a distance of 1881.00 feet to a ⅝ inch steel rod with a 1½ inch aluminum cap; thence South a distance of 1239.86 feet to a ⅝ inch steel rod with a 1½ inch aluminum cap; thence North 89°37' West a distance of 1881.00 feet to a ⅝ inch steel rod with a 1½ inch aluminum cap, to the West line of said section, 8; thence North along the West line of said section 8, a distance of 1239.86 feet to the true point of beginning.

Containing 53.54 acres.

The purpose of this notice is to inform the public that the filing of this

application segregates the described land from all other forms of use or disposal under the public land laws.

Interested persons desiring to express their views should promptly send their comments together with their name and address to the District Manager, Bureau of Land Management, P.O. Box 1869, Highway 187 North, Rock Springs, Wyoming 82901.

James L. Edlefsen,

Chief, Branch of Land Resources.

[FR Doc. 84-13424 Filed 5-17-84; 8:45 am]

BILLING CODE 4310-22-M

[4-21460-ILM]

Filing of Plat of Survey; Oregon

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands were officially filed in the Oregon State Office, Portland, Oregon on the dates hereinafter stated:

Willamette Meridian

T. 8 S., R. 22 E., OR

The plat represents a dependent resurvey of a portion of the south boundary (Special Standard Parallel), east, west, and north boundaries and subdivisional lines. Date of acceptance April 6, 1984.

T. 17 S., R. 1 W., OR

The plat represents a dependent resurvey of a portion of the subdivisional lines, and an informative traverse of the present right bank of the McKenzie River. Date of acceptance April 3, 1984.

The above-listed plats were officially filed April 10, 1984.

T. 30 S., R. 9 W., OR
T. 28 S., R. 10 W., OR
T. 29 S., R. 12 W., OR
T. 39 S., R. 13 W., OR
T. 40 S., R. 13 W., OR

The plats for the above-listed townships represent dependent resurveys of a portion of the subdivisional lines. Date of acceptance for all plats is April 20, 1984; officially filed April 24, 1984.

T. 23 S., R. 30 E., OR,
T. 22 S., R. 31 E., OR

The plats for the above-listed townships represent dependent resurveys of a portion of the subdivisional lines. Date of acceptance for the above two plats is April 18, 1984; officially filed April 24, 1984.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE Multnomah Street, P.O. 2965, Portland, Oregon 97208.

Dated: May 10, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-13427 Filed 5-17-84; 8:45 am]

BILLING CODE 4310-33-M

[4-21460-ILM]

Filing of Plat of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described amended Oregon and Washington protraction diagrams will be officially filed in the Oregon State Office, Portland, Oregon on June 18, 1984.

Willamette Meridian

T. 36 S., R. 12 W., OR

Protraction diagram File No. 5, Sheet 1A, approved April 20, 1984 shows the correct placement of H.E.S. No. 161 and H.E.S. No. 214 in Sections 2 and 3, and amends protraction diagram approved November 15, 1965.

T. 31 N., R. 16 E., WA

Protraction diagram File No. 6 Sheet 6A, approved April 20, 1984 corrects the acreage for part A of Section 21, and amends protraction diagram approved January 9, 1964.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE Multnomah Street, P.O. 2965, Portland, Oregon 97208.

Dated: May 10, 1984.

Harold A. Berends,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-13426 Filed 5-17-84; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Availability of Report of the Technology Assessment and Research Program, Minerals Management Service

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of report.

SUMMARY: The Minerals Management Service is announcing the availability without charge of a report entitled "Technology Assessment and Research Program for Offshore Minerals Operations," 1984 Report, OCS Report MMS 84-0001.

SUPPLEMENTARY INFORMATION: The report summarizes the research being pursued by the Minerals Management Service in support of its offshore oil and gas operations. In addition, the report discusses the objectives of the Technology Assessment and Research Program (TA&R) and its method of operation. The TA&R Program consists of contract research at universities, Government laboratories, and private companies in the categories of well-control, structural inspection and monitoring, geotechnical, ice mechanics, materials, and risk assessment.

The following individual projects are summarized in the report which contains 318 pages and 194 illustrations:

- The Dynamic Response of Offshore Structures Due to Waves and Vortex Shedding—Vandiver, Massachusetts Institute of Technology.
- Unmanned, Free-Swimming Underwater Inspection Technology—Heckman, Naval Ocean System Center and Corell, University of New Hamsphire.
- Fluidic Mud Pulser for Measurements While Drilling (MWD) System—Holmes, Harry Diamond Laboratories.
- Effect of Offshore Drilling on Coral Reefs—Shinn, U.S. Geological Survey.
- Acoustic Transmission of Digital Data From Underwater Sensors—Softley, Ocean Electronic Applications, Inc.
- Dynamic Characteristics and Response of Soils and Offshore Structures by the Random Decrement Method—Yang, University of Maryland.
- Control of Blowout Fires With Water Sprays—Evans, National Bureau of Standards.
- Subsea Collection of Oil From a Blowing Well—Milgram, Massachusetts Institute of Technology.
- Flexibility Monitoring Technique for Inspecting Fixed Offshore Platforms—Rubin, The Aerospace Corporation.
- Demonstration of the Capability of A Robot Inspection Vehicle for the Performance of Useful Work—Barber, Naval Surface Weapons Center.
- Applications of Risk Analysis in Offshore Safety and Environmental Management—Hill, Massachusetts Institute of Technology.
- Mechanical Properties of Multiyear Sea Ice—Cox, U.S. Army Cold Regions Research and Engineering Laboratory.
- Early Detection of Damage in Offshore Structures by a Global Ultrasonic Inspection Technique—Rose, Drexel University.

• Ice Forces Against Arctic Offshore Structures—Sackinger, University of Alaska.

• Environmental Effects of Wellhead Removal by Explosives—Hayes, Woods Hole Oceanographic Institutions.

• Behavior of Piles and Pile Groups in Cohesionless Soils—Coyle, Civil Engineering Department, Texas A&M University.

• Foundation Consideration for Tension Leg Platform—Dodd, Sandia National Laboratories.

• Fitness-for-Service Criteria for Assessing the Significance of Fatigue Cracks in Offshore Structures—McHenry, National Bureau of Standards.

• Engineering Properties of Subsea Permafrost—Chamberlain, U.S. Army Cold Regions Research and Engineering Laboratory.

• Assessment of Uncertainties and Risks Associated with the Dynamic Behavior of Compliant Offshore Structures—Simiu, National Bureau of Standards.

• Reliability of Concrete Structures in the Arctic Environment—Carino, National Bureau of Standards.

• Geotechnical Developments for Construction of Pile Foundations in Calcareous Sediments—McCarel, Naval Civil Engineering Laboratory.

• Application of Fracture Mechanics Techniques to Pipeline Analysis—Erdogan, Lehigh University.

• Assessment of Ice Accretion on Offshore Structures—Minsk, U.S. Army Cold Regions Research and Engineering Laboratory.

• Analysis and Validation of Morison-Type Wave-Force-Prediction Models for Ocean Structures—Dummer, Naval Civil Engineering Laboratory and Hudspeth, Oregon State University.

• Foundation Stability of Jack-up Platforms—Kvalstad, Det norske Veritas.

• Development of Improved Blowout Prevention Procedures for Deepwater Drilling Operations—Bourgoyne, Louisiana State University.

• Cyclic Lateral Load Capacity of Piles in Sand—Matlock, The Earth Technology Corporation.

• Response of Piles in Clay Soil Subjected to Repeated Lateral Loading—Reese, University of Texas.

• Fracture Toughness of Steel Weldments for Arctic Structures—McHenry, National Bureau of Standards.

• Environmental Cracking of High-Strength Tension Members in Seawater—Crooker, Naval Research Laboratory.

ADDRESSES: Copies of the report may be obtained from the Technology Assessment and Research Branch, Minerals Management Service, Mail Stop 647, 12203 Sunrise Valley Drive, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Mr. Charles E. Smith, Research Program Manager, at (703) 860-7865.

Dated: May 8, 1984.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 84-13438 Filed 5-17-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Intention To Extend Concession Contract; Best's Studio, Inc

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20 et seq.), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend a concession contract with Best's Studio, Inc., authorizing it to continue to provide general art and photographic facilities and services for the public at Yosemite National Park, California for a period of two (2) years from October 1, 1984 through September 30, 1986.

This contract extension has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on September 30, 1984, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiations of a new contract. This provision, in effect, grants Best's Studio, Inc., the opportunity to meet the terms and conditions of any other proposal submitted in response to this notice which the Secretary may consider better than the proposal submitted by Best's Studio, Inc. If Best's Studio, Inc., amends its proposal, and the amended proposal is substantially equal to the better offer, then the proposed new contract will be negotiated with Best's Studio, Inc.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand-delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, National Park Service, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Dated: May 8, 1984.

John S. Adams,

Acting Regional Director, Western Region.

[FR Doc. 84-13518 Filed 5-17-84; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b):

1. Parent corporation and address of principal office: Paul Barrow Co. Inc. (aka) Barrow Fabrics Inc., 5 Dan Road, Canton, MA 02021.

2. Wholly owned subsidiaries which will participate in the operations, and states of incorporation:

I. Barrow Fabrics Inc. of California, California

II. Barrow Fabrics Inc. Southwest, Texas

III. Barrow Fabrics Inc. Midwest, Delaware

IV. Barrow Fabrics Inc. of Florida, Florida

V. C.E. Briddell Co. Inc., Maryland

VI. Geo. S. Harrington Company, Massachusetts

VII. Merrimac Textile Inc. Massachusetts.

1. Parent corporation and address of principal office: VICORP Restaurants, Inc., a Colorado corporation, 400 West 48th Avenue, Denver, Colorado 80216.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) VICOM Production and Distribution Company, Inc., a Colorado corporation, 16425 South Kilbourn Avenue, Oak Forest, IL 60452

(b) VICORP Bakery Restaurants, Inc., an Iowa corporation, P.O. Box 110, Minneapolis, Minnesota 55426

(c) VICORP Speciality Restaurants, Inc., a Colorado corporation, P.O. Box 121513, San Diego, California 92112

(d) Village Inn Pancake House, Inc., a Colorado corporation, 400 West 48th Avenue, Denver, Colorado 80216.

James H. Bayne,

Secretary.

[FR Doc 84-13465 Filed 5-17-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18 (Sub-51)]

Chesapeake & Ohio Railway Co.; Abandonment in Van Buren County, MI; Findings

The Commission has found that the public convenience and necessity permit the Chesapeake and Ohio Railway Company to abandon its 13.28-mile rail line between milepost 17.27 near Hartford and milepost 30.55 at Paw Paw in Van Buren County, MI.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 84-13463 Filed 5-17-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-15 (Sub-3)A]

Petaluma & Santa Rosa Railroad Co.; Abandonment in Sonoma County, CA.; Findings

The Commission has found that the public convenience and necessity permit the Petaluma and Santa Rosa Railroad Company to abandon its (a) Santa Rosa branch between milepost 22.06 near Santa Rosa and milepost 16.66 near Sebastopol and (b) Old Forrestville branch between milepost 16.66 near Sebastopol and milepost 21.68 near Sagu, a total distance of approximately 10.68 miles in Sonoma County, CA. A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 84-13464 Filed 5-17-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps; Availability of Vocational Research Report

SUMMARY: The Office of Job Corps in the Department of Labor's Employment and Training Administration announces the availability of the final report of a comprehensive vocational review study of its vocational offerings at 107 Job Corps Centers. The study analyzed labor market projections through 1990 to identify potential new occupations suitable for Job Corps and examined current vocational offerings. Current offerings were rated on their *relative* effectiveness to identify the most and least effective. The study is not an evaluation of the overall Job Corps program.

National study results will be used as a departure point for making changes in vocational offerings at local Job Corps Centers. Centers will examine their current offerings and recommend whether offerings rated at the lower end of the national effectiveness rankings should be replaced at that center. Centers will recommend replacement, where appropriate, with highly rated occupations or new occupations identified as having high potential in the study.

No procurement actions are being initiated at this time. Changes will be decided nationally but any necessary procurements to implement changes will take place at the center level unless analysis shows that central, national procurement will be cost effective for equipment, curricula and initial training of center instructors for occupations to be instituted at a large number of centers.

The Job Corps Vocational Review Study contains seven documentation reports, a final report and an executive summary. Copies of each may be purchased from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5282 Port Royal Road, Springfield, VA 22161. Sales desk telephone no. (703) 487-4800.

Dated: May 10, 1984.

Peter E. Rell,

Director, National Office of Job Corps.

[FR Doc 84-13395 Filed 5-17-84; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Ending of Extended Benefit Periods in Puerto Rico and West Virginia

This notice announces the ending of the Extended Benefit Periods in Puerto Rico and West Virginia, effective on May 19, 1984.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when the rate of insured unemployment in the State reaches the State trigger rate set in the Act and the State law. During an Extended Benefit Period individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period begun.

An Extended Benefit Period commenced in the State of Puerto Rico on February 23, 1975, and in the State of West Virginia on February 19, 1984, and has not triggered off in both States.

Determination of "off" Indicator

The head of the employment security agency of each State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on April 28, 1984, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefits Periods in the States terminate with the week ending on May 19, 1984.

Information for Claimants

The State employment security agency of each State will furnish a written notice to each individual who is filing claims for Extended Benefits of the end of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the States named above should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, D.C., on May 15, 1984.

Patrick J. O'Keefe,

Deputy Assistant Secretary for Employment and Training.

[FR Doc. 84-13505 Filed 5-17-84; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-84-104-C]

Bartley & Bartley Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Bartley and Bartley Coal Company, Box 142, Rockhouse, Kentucky 41561 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 6 Mine (I.D. No. 15-12789) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The coal seam ranges from 40 to 65 inches in height, with consistent ascending and descending grades creating dips in the coalbed.

3. Petitioner states that the use of canopies on the mine's electric face equipment would result in a diminution of safety because the canopies can strike and destroy roof support. The canopies also limit the equipment operator's visibility, increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 18, 1984. Copies of the petition are available for inspection at that address.

Dated: May 11, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-13506 Filed 5-17-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-124-C]

BBC Coal Co., Inc., Petition for Modification of Application of Mandatory Safety Standard

BBC Coal Company, Inc., Drawer M, North Fork, West Virginia 24868 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 18 Mine (I.D. No. 46-05700) located in McDowell County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be use, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 18, 1984. Copies of the petition are available for inspection at that address.

Dated: May 11, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-13507 Filed 5-17-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-121-C]

Bull Run Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Bull Run Mining Company, Inc., P.O. Box 235, Reedsville, West Virginia 26547 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its Meredith Mine (I.D. No. 46-04266) located in Preston County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 18, 1984. Copies of the petition are available for inspection at that address.

Dated: May 11, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-13508 Filed 5-17-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-117-C]

Combs & Hurley Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Combs & Hurley Coal Company, Inc., Route 1, Box 215, Vicco, Kentucky 41773 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 8 Mine (I.D. No. 15-12498) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with cooper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 18, 1984. Copies of the petition are available for inspection at that address.

Dated: May 11, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-13509 Filed 5-17-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-96-C]

H.A.T. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

H.A.T. Coal Company, 113 N. Oak Street, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 3 Slope (I.D. No. 36-07663) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if a "makeshift" safety device were installed it would be activated on knuckles and curves, when no emergency existed, and cause a tumbling effect on the conveyance which would increase rather than decrease the hazard to the miners.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, which have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will at all times provide the same degree of safety to the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 18, 1984. Copies of the petition are available for inspection at that address.

Dated: May 11, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-13510 Filed 5-17-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No.M-84-126-C]

L & D, Inc.; Petition for Modification of Application of Mandatory Safety Standard

L & D Inc., P.O. Box 142, Ramage, West Virginia 25166 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its Lory Mine (I.D. No. 46-06097) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d.. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 18, 1984. Copies of the petition are available for inspection at that address.

Dated: May 11, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-13511 Filed 5-17-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-112-C]

Lone Mt. Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Lone Mt. Coal Co., Inc., Box 100, Cawood, Kentucky 40815 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 2 Mine (I.D. No. 15-13447) located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp guage.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long;

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon

release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 18, 1984. Copies of the petition are available for inspection at that address.

Dated: May 11, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-13512 Filed 5-17-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-50-C]

Mettiki Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Mettiki Coal Corporation, Route 3, Box 124A, Deer Park, Maryland 21550 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its A Mine (I.D. No. 18-00621) located in Garrett County, Maryland. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a qualified hoisting engineer be on duty while any person is underground.

2. As an alternate method, petitioner proposes to allow a fireboss and pumper to travel into and out of the mine on diesel powered, rubber tired mine tender vehicles on weekends and holidays without having a hoisting engineer on duty. The mine has a roadway continuous from all sections to the surface which is maintained in a safe condition and is always available for travel. The mine tender vehicles are used to transport support personnel regularly in the day to day operation of the mine. The mine phones provide the fireboss and pumper with continual contact with surface guards who could summon additional help immediately, if necessary.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 18, 1984. Copies of the petition are available for inspection at that address.

Dated: May 11, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-13513 Filed 5-17-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-85-C]

Pyro Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Pyro Mining Company, Box 267, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Pyro No. 9 Slope, William Station (I.D. No. 15-13881) located in Webster County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The coal seam ranges from 48 to 51 inches in height with undulations in the roof and unstable floor conditions, and ascending and descending grades creating dips.

3. Petitioner states that the installation of canopies on the mine's electric face equipment would result in a diminution of safety for the miners affected because the canopies could strike the roof or bolts, possibly destroying the roof support system.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 18, 1984. Copies of the petition are available for inspection at that address.

Dated: May 11, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-13514 Filed 5-17-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-20-C]

Silver Eagle Mining Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Silver Eagle Mining Company, Inc., Route 2, Box 440-A, Coeburn, Virginia 24230 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 1 Mine (I.D. No. 44-05759) located in Dickenson County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 18, 1984. Copies of the petition are available for inspection at that address.

Dated: May 11, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-13515 Filed 5-17-84; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, NSF is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9421.

OMB Officer: Carols Tellez, (202) 395-7313.

Title: Reviewer Background Information.

Affected Public: Individuals.

Number of Responses: 15,000 respondents: total of 1250 burden hours.

Abstract: The National Science Foundation regularly solicits and receives proposals from colleges, universities, and non profit organizations throughout the United States. Whether processing proposals on an individual basis or in large blocks, the staff relies heavily on a peer-review system both in identification or meritorious projects and in providing the sound basis for project restructuring. This background information is maintained for reviewer for appropriate proposals.

Dated: May 14, 1984

Herman G. Fleming,

Agency Clearance Office.

[FR Doc. 84-13396 Filed 5-17-84; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Advanced Scientific Computing; Meeting

In accordance with the Federal Advisory Committee Act, as amended Pub. L. 92-463, the National Science Foundation announced the following meeting:

Name: Advisory Committee for Advanced Scientific Computing.

Date and Time: June 3, 1984; 7:00 p.m. to 10:00 p.m.; June 4, 1984; 8:00 a.m. to 5:00 p.m.; June 5, 1984; 8:00 a.m. to 3:30 p.m.

Place: Rooms 504, 510, 540, and 543; National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Security Notice: Due to security regulations, persons wishing to attend the June 3rd, 1984 meeting must notify the Office of Advanced Scientific Computing by Thursday, May 31st, 1984 (202-357-7558).

Type of Meeting: Part Open—

Closed June 3, 1984; Room 504 (Planning Sub-committee), 7:00-8:00 p.m.
Open June 3, 1984, Room 504 (Planning Sub-committee), 8:00-10:00 p.m.
Closed June 3, 1984; Room 510 (Solicitation Sub-committee), 7:00-8:00 p.m.
Open June 3, 1984, Room 510 (Solicitation Sub-committee), 8:00-10:00 p.m.
Closed June 3, 1984; Room 543 (Networking Sub-committee), 7:00-8:00 p.m.
Open June 3, 1984, Room 543 (Networking Sub-committee), 8:00-10:00 p.m.
Open June 4, 1984, Room 540 (Policy Advisory Committee), 8:00 a.m. to 11:00 p.m.
Closed June 4, 1984, Room 540 (Policy Advisory Committee), 1:00-5:00 p.m.
Open June 5, 1984, Room 540 (Policy Advisory Committee), 8:00 a.m.-1:00 p.m.
Closed June 5, 1984, Room 540 (Policy Advisory Committee), 11:00 a.m.-1:00 p.m.
Open June 5, 1984, Room 540 (Policy Advisory Committee), 1:00 p.m.-3:30 p.m.

Contact Person: Dr. John W. D. Connolly, National Science Foundation, Washington, D.C. 20550, Phone: (202) 357-7558.

Summary of Minutes: May be obtained from Dr. John W. D. Connolly.

Purpose of Committee: To provide advice and recommendations concerning NSF support of advanced scientific computing.

Agenca: The open session will be focused on planning and policy issues. These will include a review of recent actions, budget priorities, future solicitations for super computer centers and networking. The closed sessions will involve review of pending proposals.

Reason for Closing: The closed sessions of the meeting will deal with a review of proposals containing the names of applicant institutions and principal investigators and privileged information from the files pertaining to the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director of NSF on July 6, 1979.

Dated: May 14, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-13398 Filed 5-17-84; 8:45 am]

BILLING CODE 7555-01-M

Oversight Committee of the Advisory Panel for Biotic Systems and Resources; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Oversight Committee of the Advisory Panel for Biotic Systems and Resources.

Date & Time: June 4 and 5, 1984, 8:30 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. John L. Brooks, Division Director, Biotic Systems and Resources, Room 1140, National Science Foundation, Washington, D.C. 20550, (202) 357-7332.

Purpose of Oversight Committee: To provide advice and recommendations concerning support of research in Ecology and Population Biology and Physiological Ecology.

Agenda: Review and comparison of declined proposals (and supporting documentation) with successful awards under the Ecology Program and the Population Biology and Physiological Ecology Program.

Reasons for Closing: The Oversight Committee will be reviewing grants and declinations which contain the names of applicants, institutions and principal investigators and privileged information contained in declined proposals. This session will also include a review of the peer review documentation pertaining to the applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer, in accordance with the provisions of Section 10(d) of Pub. L. 92-463, the Federal Advisory Committee Act. The

Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: May 14, 1984.

M. Rebecca Winkler,

Committee Management coordinator.

[FR Doc. 84-13397 Filed 5-17-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to described and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 5.34, Revision 1, "Nondestructive Assay for Plutonium in Scrap Material by Spontaneous Fission Detection," describes procedures acceptable to the NRC staff for applying the nondestructive technique of spontaneous fission detection to the assay of plutonium in scrap for material accountability.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publications Sales Manager.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 14th day of May 1984.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 84-13518 Filed 5-17-84; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA), Special Committee 156—Potential Interference to Aircraft Electronic Equipment From Devices Carried Aboard; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 156 on Potential Interference to Aircraft Electronic Equipment from Devices Carried Aboard to be held on June 12-13, 1984, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Second Meeting Held on February 28-29 1984; (3) Review Data and Recommendations Concerning Radio Frequency Radiation from Computing and other Electronic Devices Submitted as a Result of Task Assignments from Previous Meeting; (4) Discuss and Develop Future Course of Action; and (5) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on May 11, 1984.

Karl F. Bierach,

Designated Officer.

[FR Doc. 84-13406 Filed 5-17-84; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Lake County, Minnesota

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Amended notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement *will not* be prepared for a proposed highway project in Lake County, Minnesota. A "Notice of Intent" to prepare an EIS was published in the Federal Register on July 31, 1980.

FOR FURTHER INFORMATION CONTACT: Ronald L. Lacy, District Engineer, Federal Highway Administration, Suite 490, Metro Square Building, St. Paul, Minnesota 55101, Telephone: (612) 725-5953; Russ Kauzlaric, Preliminary Design Engineer, Minnesota Department of Transportation, 1123 Mesaba Avenue, Duluth, Minnesota 55811, Telephone: (218) 723-4860.

SUPPLEMENTARY INFORMATION: Trunk Highway 61 (TH 61) in Lake County, Minnesota is part of the Lake Superior Circle Route. It is a scenic highway and is the only major facility serving northeasterm Minnesota and Canada along the Lake Superior Shoreline. The proposed project involves 36.4 miles of TH from Illgen City to one-half mile west of Two Harbors.

Following the Notice of Intent, a Scoping Document was distributed and a Scoping Meeting was held. Four alternatives were discussed in the scoping process; No Build, Bypass, Upgrade and Inland.

The "downscoping" of this project from a single major level project path requiring preparation of an environmental impact statement to a series of moderate level projects is a result of the scoping process. The Inland alternative and the Bypass alternative were found to be impractical or unfeasible leaving the upgrade alternative as the only viable alternative.

An amendment to the Project Development Report describes the Upgrade Alternative as a series of highway projects separated by previously upgraded projects for which no major work is proposed. Each of these proposed upgrade projects has an independent utility and can be developed and constructed independently of the others.

Copies of the Amendment to the Project Development Report are being distributed to all agencies and individuals involved in the scoping process.

Issued on: May 9, 1984.

Roger Borg,

Division Administrator.

[FR Doc. 84-13442 Filed 5-17-84; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Lake and St. Louis Counties, Minnesota

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that participation meetings will be held to provide input to the scoping process for an environmental impact statement regarding a forest highway project in St. Louis and Lake Counties, Minnesota.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Lacy, District Engineer, Federal Highway Administration, Suite 490 Metro Square Building, St. Paul, Minnesota 55101, Telephone (612) 725–5953, or Mr. Richard Hansen, District State Aid Engineer, Minnesota Department of Transportation, 1123 Mesaba Avenue, Duluth, Minnesota 55811, Telephone (218) 723–4948.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation, the St. Louis County Highway Department and Lake County Highway Department will be holding public participation meetings to provide input to the scoping process of the environmental impact statement (EIS) on the proposal to improve Forest Highway 11 in St. Louis and Lake Counties. The proposed improvement would involve construction and reconstruction of Forest Highway 11 between the cities of Aurora-Hoyt Lakes (St. Louis County Road 110) and Silver Bay (Minnesota Trunk Highway 61) with an intermediate termini at Lake County CSAH 2. The proposal length is approximately 45 miles.

The scoping process will examine alignment alternatives currently under consideration in both St. Louis and Lake Counties in addition to the "no-build" alternative. Alternatives under consideration include portions of roadway on new alignment. The proposed project is for a two lane roadway.

Three public participation meetings will be held:

Tuesday, June 12, 1984

7:00 P.M., City Community Center, Hoyt Lakes, Minnesota

Wednesday, June 12, 1984

1:30 P.M., Superior National Forest Headquarters, Conference Room 238, Federal Building, 515 West First Street, Duluth, Minnesota

Wednesday, June 13, 1984

7:00 P.M., Campton Center, Silver Bay, Minnesota

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and this EIS should be directed to the FHWA at the address provided above.

Issued on: May 9, 1984.

Roger Borg,

Division Administrator.

[FR Doc. 84-13443 Filed 5-17-84; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 528]

Appointments of Individuals To Serve as Members of the Performance Review Board; Senior Executive Service

The Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4) requires that the appointment and changes in the membership of performance review boards be published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of the performance review board for the Bureau of Alcohol, Tobacco and Firearms (ATF) for the rating year beginning July 1, 1983, and ending June 30, 1984. This notice effects changes in the membership of the ATF Performance Review Board previously appointed July 27, 1983 (48 FR 35058).

Name and Title

Edward T. Stevenson—Deputy Assistant Secretary (Operations), Department of the Treasury

Robert E. Powis—Deputy Assistant Secretary (Enforcement), Department of the Treasury

John W. Mangels—Director, Office of Operations, Department of the Treasury

Charles C. Hackett, Jr.—Assistant Commissioner, Office of Internal Affairs, U.S. Customs Service

Marvin J. Dessler—Chief Counsel, Bureau of Alcohol, Tobacco and Firearms

Barbara P. Pomeroy—Comptroller, Bureau of Alcohol, Tobacco and Firearms

Phillip C. McGuire—Deputy Director, Bureau of Alcohol, Tobacco and Firearms

Francis S. Kenney—Assistant Director (Internal Affairs), Bureau of Alcohol, Tobacco and Firearms

William T. Drake—Deputy Director, Bureau of Alcohol, Tobacco and Firearms

FOR FURTHER INFORMATION CONTACT: Daniel F. O'Leary, Personnel Division, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226, (202–566–7321).

Signed: May 10, 1984.

Stephen E. Higgins,

Director.

[FR Doc. 84-13475 Filed 5-17-84; 8:45 am]

BILLING CODE 4810-31-M

[Notice No. 527]

Dollar Limitation for Display and Retailer Advertising Specialties

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice sets forth the annually updated dollar limitations prescribed for industry members in 27 CFR Part 6, as established by the use of a "cost adjustment factor" in accordance with 27 CFR 6.82. Industry members who wish to furnish, give, rent, loan, or sell product displays or retailer advertising specialties to retailers are subject to dollar limitations (27 CFR 6.83, 6.85). Industry members making payments for advertisements in programs or brochures issued by retailer associations at a convention or trade show are also subject to dollar limitations (27 CFR 6.100). The cost adjustment factor is defined as a percentage equal to the change in the Bureau of Labor Statistics' consumer price index. Adjusted dollar limitations are established each January using the consumer price index for the preceding December.

Based on the Bureau of Labor Statistics' data, the consumer price index was 3.8 percent higher in December 1983 than in December 1982. Therefore, effective January 1, 1984, the dollar limitation for "Product displays" (27 CFR 6.83(c)) has been increased from

$113 per brand to $117 per brand. Similarly, the former $56 maximum for "Retailer advertising specialties" (27 CFR 6.85(b)) has been increased to $58 per brand. Also the $113 limit for "Participation in retailer association activities" (27 CFR 6.100(e)) has been increased to $117 per year.

EFFECTIVE DATE: This notice shall be effective as of January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Earl Kleckley, Tax and Trade Compliance Branch, 1200 Pennsylvania Ave., NW., Washington, DC 20226, (202) 566–7715.

Signed: May 11, 1984.

Stephen E. Higgins,

Director.

[FR Doc. 84–13476 Filed 5–17–84; 8:45 am]

BILLING CODE 4810–31–M

Comptroller of the Currency

[Docket No. 84–17]

Renewal of Policy Statement Regarding Non-Bank Approvals

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Renewal of Policy Statement Regarding Non-bank Bank Approvals.

SUMMARY: In April of 1983 the Office of the Comptroller of the Currency ("Office") announced a moratorium on the approval of non-bank charter applications. 48 FR 15993 (April 13, 1983). That moratorium expired on March 31, 1984. *See* 48 FR 56301 (December 20, 1983). The purpose of the moratorium was to afford Congress time to consider comprehensive legislation to deal with the major deregulatory issues facing the financial services industry. The Office was concerned that, absent a moratorium, marketplace innovations at the national level might well outpace Congressional deliberations.

The need for a moratorium is clearly as great now as it was when the moratorium was first announced in 1983. In fact, over 200 charter applications for non-bank banks have been filed with the Office since the March 31, 1984, expiration of the moratorium. Virtually all of these applications are from established bank holding companies that wish to establish interstate banking networks. The Office believes that rendering decisions on these applications during the current session of Congress could have a negative impact on the consideration by Congress of much-needed comprehensive banking legislation.

Given the above facts, the Office has decided to renew its moratorium. The types of applications covered in the renewed moratorium will be the same as those covered in the moratorium which expired March 31, 1984. *See* 48 FR 15993–15994. However, the renewed moratorium will apply only to applications accepted for filing after March 31, 1984. The Office has decided all non-bank bank applications accepted for filing prior to that date. The renewed moratorium will expire at the end of the current session of Congress.

EFFECTIVE DATE: May 18, 1984.

FOR FURTHER INFORMATION CONTACT: Alan Priest, Senior Attorney, or Chari Anhouse, Attorney, Legal Advisory Services Division, (202) 447–1880, Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION: Copies of the April 1983 Policy Statement on Non-bank Bank Appovals (BB 83–21) are available from the Office's Communications Division, (202) 447–1800.

Authority: 12 U.S.C. 1 et seq.

Dated: May 14, 1984.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 84–13484 Filed 5–17–84; 8:45 am]

BILLING CODE 4810–33–M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. USIA is requesting approval of a program which provides opportunities for U.S. teachers to exchange positions for an academic year with foreign counterparts or to attend one of a variety of short-term seminars worldwide on a variety of topics.

DATE: Comments must be received by June 22, 1984.

Copies: Copies of the request for clearance (SF–83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Retta Graham-Hall, United States Information Agency, M/M, 301 Fourth Street SW., Washington, D.C. 20547, telephone (202) 485–7480. And OMB Review: Edward Springer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503, telephone (202) 395–4814.

SUPPLEMENTARY INFORMATION: *Title:* "Fulbright Teacher Exchange Program." *Abstract:* This information collection is intended to offer academic-year exchanges and seminar programs to educators in order to broaden the educators' understanding of other countries and cultures. This understanding, in turn, is expected to be shared with students, colleagues, members of civic and professional organizations, and other interested parties in the educators' respective communities here and abroad, thereby promoting mutual understanding and contributing to the academic excellence of participating institutions.

Dated: May 15, 1984.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 84–13502 Filed 5–17–84; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 98
Friday, May 18, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Federal Reserve System	1
National Credit Union Administration	2, 3

1

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday, May 24, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: May 16, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-13596 Filed 5-16-84; 3:45 pm]

BILLING CODE 6210-01-M

2

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Tuesday, May 22, 1984.

PLACE: 1776 G Street, NW., Washington, D.C., Filene Board Room, 7th Floor.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Termination of Outstanding Cease and Desist Order. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Adminstrative Action (termination of share insurance) under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Conservatorship under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)A)(ii).
5. Special Assistance under Section 208(a) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)A)(ii).
6. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 84-13569 Filed 5-16-84; 12:54 pm]

BILLING CODE 7535-01-M

3

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting.

TIME AND DATE: 10:50 a.m., Friday, May 4, 1984.

PLACE: 1776 G Street, NW., Washington, D.C., 6th Floor.

STATUS: Closed.

MATTER CONSIDERED.

1. Administrative Action under Section 206 of the Federal Credit Union Act.

The Board unanimously voted that the Agency business required that a meeting be held with less than the seven days advance notice.

The Board voted to close the meeting under exemption (8), (9)(A)(ii) and (9)(B). The General Counsel certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 84-13570 Filed 5-16-84; 12:54 pm]

BILLING CODE 7535-01-M

federal register

Friday
May 18, 1984

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

Notice of Tennessee Statute and Regulations Pertinent to the Enforcement Program in Tennessee

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

Notice of Tennessee Statute and Regulations Pertinent to the Federal Enforcement Program in Tennessee

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Identification of Tennessee statute and regulations pertinent to federal enforcement of the state regulatory program for surface coal mining and reclamation operations.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) identifies and reprints the Tennessee statute and regulations which are pertinent to the program of substituted federal enforcement prescribed in the April 18, 1984, decision of the Under Secretary of the Interior, 49 FR 15496.

DATE: The statutes and regulations identified in this notice are those that OSM will enforce in Tennessee beginning April 30, 1984.

ADDRESSES: A reprint of his notice may be obtained at the OSM offices listed below. That reprint will also contain the federal enforcement and administrative review regulations from Titles 30 and 43 of the Code of Federal Regulations. The federal regulations are not republished in this issue of the **Federal Register**. The OSM addresses are as follows:

Administrative Record, Room 5315, Office of Surface Mining, 1100 L Street, N.W., Washington, D.C.
Tennessee Field Office, 530 Gay Street, Knoxville, Tennessee 37901

FOR FURTHER INFORMATION CONTACT: James A. Curry, Director, Tennessee Field Office, 530 Gay Street, Knoxville, Tennessee 37901 (telephone 615–673–4505).

SUPPLEMENTARY INFORMATION: OSM commenced federal enforcement of the Tennessee state regulatory program on April 30, 1984, pursuant to the decision of the Under Secretary of the Interior following proceedings to examine the capability and intent of the State of Tennessee to enforce the state program. 49 FR 15496 (April 18, 1984). For the convenience of Tennessee coal operators and interested members of the public, OSM is printing in the **Federal Register** the Tennessee statute and certain provisions of the Tennessee program regulations which will apply during the period of substituted federal enforcement, pursuant to the Under Secretary's decision. The compilation includes the entire Tennessee Coal Surface Mining Law of 1980 and the following Tennessee regulations:

TENN. ADMIN. COMP. 0400–1–1–.03
0400–1–1–.07
Ch. 0400–1–12
Ch. 0400–1–13
Ch. 0400–1–14
Ch. 0400–1–15
Ch. 0400–1–16
Ch. 0400–1–17
Ch. 0400–1–18
Ch. 0400–1–19
Ch. 0400–1–20
Ch. 0400–1–21
Ch. 0400–1–22

Also being made available in the separate reprint by OSM (*See* **ADDRESSES**) are the federal inspection, enforcement and civil penalty regulations in 30 CFR and pertinent administrative review regulations in 43 CFR. Those regulations include 30 CFR Parts 842, 843 and 845 and 43 CFR Part 4, Subparts A, B, F, G, and L. This notice omits certain general regulations which are part of the Tennessee regulatory program, but which have no effect upon federal inspection and enforcement actions. Additionally, this notice omits the Tennessee regulations which pertain to: (1) Application for, and issuance of, permits; (2) the requirement for, and the release or forfeiture of, bonds; (3) public liability insurance, (4) designation of lands unsuitable for mining, (5) restrictions of financial interests, and (6) small operator assistance. These regulations are not published in this notice because Tennessee's implementation of them is not affected by the substitution of federal enforcement. OSM does not intend the omission of the regulations described above to have any effect upon Tennessee's authority to implement them. However, the performance standards of the Tennessee Administrative Compilations, Chapters 0400–1–12—0400–1–2, are included because they have a bearing on inspection and enforcement.

This notice contains a description of the scope of the federal enforcement program in Tennessee which replaces section 0400–1–1–1.04 of the Tennessee regulations for purposes of federal inspection and enforcement actions. However, to the extent that section 0400–1–.04 authorizes Tennessee to inspect and enforce its law at operations which are not affected by the federal enforcement program, this notice does not impair or otherwise affect Tennessee's authority to do so. Specifically, Tennessee retains inspection and enforcement authority over (1) the extraction of coal for commercial purposes where the surface mining operation affects two acres or less, (2) the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him, (3) the extraction of coal as an incidental part of government financed highway or other construction, (4) the removal of more than 25 tons but less than 250 tons of coal in a surface mining and reclamation operation, (5) mine sites on which no surface coal mining and reclamation activities have occurred since the effective date of the interim program, (6) surface mining operations that extract coal incidental to the extraction of other minerals, provided that the coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, and (7) surface coal mining support facilities which do not process coal and do not result from or are not incident to a regulated activity.

Available as a separate reprint from the OSM offices indicated above under **"ADDRESSES"** are the permanent federal regulations concerning inspections, enforcement, civil penalty assessment and administrative review which will be used by OSM in place of the Tennessee regulations concerning those subjects. Although the Tennessee inspection, enforcement, civil penalty assessment and administrative review regulations are not applicable to the federal enforcement program, OSM has not pre-empted the Tennessee regulations, and does not intend to do so. The Tennessee regulations continue to govern administrative review of enforcement actions taken by Tennessee prior to April 30, 1984, and civil penalty assessments made as a result of those actions. Moreover, the Tennessee inspection, enforcement, civil penalty assessment and administrative review regulations will be applicable to future Tennessee actions if Tennessee reassumes primary authority for inspection and enforcement.

Additional Information

1. *Compliance with the National Environmental Policy Act.* The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1282(d), no environmental impact statement need be prepared on this notice compiling the Tennessee laws and regulations pertinent to the federal enforcement by OSM of the Tennessee regulatory program.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act.* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions

directly related to approval or conditional approval of State regulatory programs.

Therefore, this notice is exempt from the requirement to prepare a Regulatory Impact Analysis and regulatory review by OMB.

The Department has determined that this notice will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This notice will not impose any new requirements; rather, it will enable persons affected by the OSM assumption of enforcement the convenience of having the program rules being enforced available.

3. *Paperwork Reduction Act.* This notice does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 942

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, the Tennessee law and rules pertinent to federal enforcement of the Tennessee program are set out below.

Dated: May 8, 1984.

J. Lisle Reed,

Acting Director, Office of Surface Mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Scope of the Federal Enforcement Program

The following activities are exempted from the federal enforcement program in Tennessee because these activities are exempt from either the Tennessee state regulatory program or the jurisdiction of OSM:

(a) The extraction of 250 tons of coal or less by a person conducting a surface coal mining and reclamation operation. A person who intends to remove more than 250 tons is not exempted;

(b) The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her. Noncommercial use does not include the extraction of coal by one unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;

(c) The extraction of coal as an incidental part of federal, state or local government-financed highway or other construction in accordance with 30 CFR Part 707;

(d) The extraction of coal on federal or Indian lands;

(e) The extraction of coal for commercial purposes where the surface coal mining and reclamation operation, together with any related operations, has or will have an affected area of two acres or less. For purposes of this paragraph:

(1) Where a segment of a road is used for access or coal haulage by more than one surface coal mining operation, the entire segment shall be included in the affected area of each of those operations; provided, that two or more operations which are deemed related pursuant to paragraph (b)(2) of this section shall be considered as one operation for purposes of this paragraph.

(2) Except as provided in paragraph (b)(3) of this section, surface coal mining operations shall be deemed related if they occur within twelve months of each other, are physically related, and are under common ownership or control.

(i) Operations shall be deemed physically related if drainage from both operations flows into the same watershed at or before a point within five aerial miles of either operation.

(ii) Operations shall be deemed under common ownership or control if they are owned or controlled, directly or indirectly, by or on behalf of:

(A) The same person;

(B) Two or more persons, one of whom controls, is under common control with, or is controlled by the other; or

(C) Members of the same family and their relatives, unless it is established that there is no direct or indirect business relationship between or among them.

(iii) For purposes of this paragraph, "control" means: ownership of 50 percent or more of the voting shares of, or general partnership in, an entity; any relationship which gives one person the ability in fact or law to direct what the other does; or any relationship which gives one person express or implied authority to determine the manner in which coal at different sites will be mined, handled, sold or disposed of.

(3) Notwithstanding the provisions of paragraph (e)(2) of this section, OSM may determine, in accordance with the procedures applicable to requests for determination of exemption pursuant to paragraph (f) of this section, that two or more surface coal mining operations shall not be deemed related if, considering the history and circumstances relating to the coal, its location, the operations at the sites in question, all related operations and all persons mentioned in paragraph (b)(2)(ii) of this section, OSM concludes in writing that the operations are not of the type which the Act was intended to regulate and that there is no intention on the part of such operations or persons to evade the requirements of the Act or the applicable regulatory program.

(4) The exemption provided by paragraph (e) of this section applies only to operations with an affected area of less than two acres where coal is being extracted for commercial purposes and to surface coal mining operations within that affected area incidental to such operations.

(f) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale.

(g) Surface coal mining support facilities which do not process coal and which do not result from, or are not incident to, a surface coal mining operation.

(h) Mine sites on which no surface coal mining and reclamation operations have occurred since the effective date of the interim regulatory program.

(i) OSM may on its own initiative and shall, within a reasonable time of a request from any person who intends to conduct surface coal mining operations, make a written determination whether an operation is exempt. OSM shall give reasonable notice of the request to interested persons. Prior to the time a determination is made, any person may submit, and OSM shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption. If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption and relied upon the determination, shall not be cited for violations which occurred prior to the date of the reversal.

Footnotes

The activities exempt from federal enforcement of the Tennessee program indicated above are noted by the following footnotes for each of the statutory sections and rule provisions published here at the beginning of each:

1. Suspended except (1) with respect to civil penalty assessments made as a result of enforcement actions taken by Tennessee after April 30, 1984, at the following types of mining operations: (a) Sites where the extraction of coal is for commercial purposes and where the surface mining operation affects two acres or less, (b) mine sites on which no surface coal mining and reclamation activities have occurred since the effective date of the interim regulatory

program, (c) surface mining operations that extract coal incidental to the extraction of other minerals, provided that the coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, (d) surface coal mining support facilities which do not process coal and do not result from or are not incident to a regulated activity, (e) extraction of coal by a landowner for his noncommercial use on land which he owns or leases, (f) extraction of coal incidental to government-financed highway or other construction, and (g) the removal of more than 25 tons but less than 250 tons of coal; and (2) except with respect to civil penalty assessments made as a result of enforcement actions taken by Tennessee at any site prior to April 30, 1984.

2. Suspended except with respect to the following categories of mining: (1) Sites where the extraction of coal is for commercial purposes and where the surface mining operation affects two acres or less, (2) mine sites on which no surface coal mining and reclamation activities have occurred since the effective date of the interim regulatory program, (3) surface mining operations that extract coal incidental to the extraction of other minerals, provided that the coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, (4) surface coal mining support facilities which do not process coal and do not result from or are not incident to a regulated activity, (5) extraction of coal by a landowner for his own noncommercial use from his own or leased land, (6) extraction of coal as an incidental part of government-financed or other construction, and (7) removal of more than 25 tons but less than 250 tons of coal.

3. Effective except 59–8–309, paragraphs (1), (6) and (9) are suspended insofar as these provisions authorize the Commissioner to conduct inspections and take enforcement action on surface mining operations in the State with the following exceptions: (1) Sites where the extraction of coal is for commercial purposes and where the surface mining operations affects two acres or less, (2) mine sites on which no surface coal mining and reclamation activities have occurred since the effective date of the interim regulatory progam, (3) surface mining operations that extract coal incidental to the extraction of other minerals, provided that the coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, (4) surface coal mining support facilities which do not process coal and do not result from or are not incident to a regulated activity, (5) extraction of coal by a landowner for his noncommercial use from land he owns or leases, (6) removal of more than 25 tons but less than 250 tons, and (7) extraction of coal incidental to government-financed or other construction.

4. Suspended except (1) with respect to the following categories of mining: (a) Sites where the extraction of coal is for commercial purposes and where the surface mining operation affects two acres or less, (b) mine sites on which no surface coal mining and reclamation activities have occurred since the effective date of the interim program, (c) surface mining operations that extract coal incidental to the extraction of other minerals, provided that the coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, (d) surface coal mining support facilities which do not process coal and do not result from or are not incident to a regulated activity, (e) extraction of coal by a landowner for his noncommercial use from land he owns or leases, (f) extraction of coal incidental to governmental financed or other construction, and (g) the removal of more than 25 tons but less than 250 tons of coal; and (2) except with respect to those provisions concerning bond forfeiture.

5. Suspended except with respect to matters pertaining to the following categories of mining operations: (1) With respect to civil penalty assessments made as a result of enforcement actions taken by Tennessee after April 30, 1984, at the following types of mining operations: (a) Sites where the extraction of coal is for commercial purposes and where the surface mining operation affects two acres or less, (b) mine sites on which no surface coal mining and reclamation activities have occurred since the effective date of the interim regulatory program, (c) surface mining operations that extract coal incidental to the extraction of other minerals, provided that the coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, (d) surface coal mining support facilities which do not process coal and do not result from or are not incident to a regulated activity, (e) extraction of coal by a landowner for his noncommercial use from land he owns or leases, (f) extraction of coal incidental to government financed or other construction, and (g) removal of more than 25 tons but less than 250 tons of coal; and (2) except with respect to enforcement actions initiated by Tennessee at any site prior to April 30, 1984.

Tennessee Coal Surface Mining Law of 1980

Section		Status
59–8–301	Short title	Effective.
59–8–302	Purpose of part	Effective.
59–8–303	Definitions	Effective.
59–8–304	Powers of the commissioner	Effective.
	except 59–8–304, paragraphs (1), (6) and (9) are suspended insofar as these provisions authorize the commissioner to conduct inspections and take enforcement actions on surface mining operations in the State with the following exceptions: (1) sites where the extraction of coal is for commercial purposes and where the surface mining operation affects two acres or less, (2) mine sites on which no surface coal mining and reclamation activities have occurred since the effective date of the interim program, (3) surface mining operations that extract coal incidental to the extraction of other minerals, provided that the coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, (4) surface coal mining support facilities which do not process coal and do not result from or are not incident to a regulated activity, (5) extraction of coal by a landowner for his non-commercial use on land which he owns or leases, (6) extraction of coal incidental to government-financed highway or other construction, and (7) the removal of more than 25 tons but less than 250 tons of coal.	
59–8–305	Emergency powers	Effective.
59–8–306	Exploration permits	Effective.
59–8–307	Permit requirements and criteria—Amendments—Renewal	Effective.
59–8–308	Fee	Effective.
59–8–309	Performance bond	Effective.
59–8–310	Mining and reclamation plan for surface coal mines	Effective.
59–8–311	Environmental protection performance standards for coal mining	Effective.
59–8–312	Surface effects of underground coal mining operations	Effective.
59–8–313	Permit approval and/or denial	Effective.
59–8–314	Revision of permits	Effective.
59–8–315	Inspection and monitoring	Effective.

Section	Status
except with respect to the following categories of mining: (1) sites where the extraction of coal is for commercial purposes and where the surface mining operation affects two acres or less, (2) mine sites on which no surface coal mining and reclamation activities have occurred since the effective date of the interim program, (3) surface mining operations that extract coal incidental to the extraction of other minerals, provided that the coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, (4) surface coal mining support facilities which do not process coal and do not result from or are not incident to a regulated activity, (5) extraction of coal by a landowner for his non-commercial use on land which he owns or leases, (6) extraction of coal incidental to government-financed highway or other construction, and (7) the removal of more than 25 tons but less than 250 tons of coal.	
59-8-316 Annual report—release of performance bonds or deposits	Effective.
59-8-317 Notice of violation—Suspension—Revocation—Bond forfeiture	Suspended.
except (1) with respect to the following categories of mining: (a) sites where the extraction of coal is for commercial purposes and where the surface mining operation affects two acres or less, (b) mine sites on which no surface coal mining and reclamation activities have occurred since the effective date of the interim program, (c) surface mining operations that extract coal incidental to the extraction of other minerals, provided that the coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, (d) surface coal mining support facilities which do not process coal and do not result from or are not incident to a regulated activity, (e) extraction of coal by a landowner for his non-commercial use on land which he owns or leases, (f) extraction of coal incidental to government-financed highway or other construction, and (g) the removal of more than 25 tons but less than 250 tons of coal; and (2) except with respect to those provisions concerning bond forfeiture.	
59-8-318	Suspended.
except (1) with respect to civil penalty assessments made as a result of enforcement actions taken by Tennessee after April 30, 1984, at the following types of mining operations: (a) sites where the extraction of coal is for commercial purposes and where the surface mining operation affects two acres or less, (b) mine sites on which no surface coal mining and reclamation activities have occurred since the effective date of the interim program, (c) surface mining operations that extract coal incidental to the extraction of other minerals, provided that the coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, (d) surface coal mining support facilities which do not process coal and do not result from or are not incident to a regulated activity, (e) extraction of coal by a landowner for his non-commercial use on land which he owns or leases, (f) extraction of coal incidental to government-financed highway or other construction, and (g) the removal of more than 25 tons but less than 250 tons of coal; and (2) except with respect to civil penalty assessments made as a result of enforcement actions taken by Tennessee at any site prior to April 30, 1984.	
59-8-319 Injunctive relief	Suspended.
except with respect to matters pertaining to the following categories of mining operations: (1) with respect to civil penalty assessments made as a result of enforcement actions taken by Tennessee after April 30, 1984, at the following types of mining operations: (a) sites where the extraction of coal is for commercial purposes and where the surface mining operation affects two acres or less, (b) mine sites on which no surface coal mining and reclamation activities have occurred since the effective date of the interim program, (c) surface mining operations that extract coal incidental to the extraction of other minerals, provided that the coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, (d) surface coal mining support facilities which do not process coal and do not result from or are not incident to a regulated activity, (e) extraction of coal by a landowner for his non-commercial use on land which he owns or leases, (f) extraction of coal incidental to government-financed highway or other construction, and (g) the removal of more than 25 tons but less than 250 tons of coal; and (2) except with respect to civil penalty assessments made as a result of enforcement actions initiated by Tennessee at any site prior to April 30, 1984.	
59-8-320 Citizen suits	Effective.
59-8-321 Board of reclamation review	Effective.
59-8-322 Judicial review	Effective.
59-8-323 Surface mining permit required before sale of coal	Effective.
59-8-324 State's power to acquire and reclaim land by past mining	Effective.
59-8-325 Liens	Effective.
59-8-326 Tennessee surface mine reclamation fund	Effective.
59-8-327 Federal abandoned mine reclamation fund	Effective.
59-8-328 Water rights and replacement	Effective.
59-8-329 Experimental practices	Effective.
59-8-330 Filling voids and sealing tunnels	Effective.
59-8-331 Designating areas unsuitable for surface coal mining	Effective.
59-8-332 Certification and training of blasters	Effective.
59-8-333 Conflict of interest	Effective.
59-8-334 Supplemental to existing law	Effective.
59-8-335 Immediate conformity to statutes or regulations on effective dates	Effective.
59-8-336 Public agencies, public utilities, and public corporations	Effective.
59-8-337 Effect of changes in federal law	Effective.
59-8-338 Effect of imposition of federal program in state	Effective.
59-8-339 Statute concerning severance of mineral estates in coal not affected	Effective.

59-8-301. Short title.—This part shall be known and may be cited as the "Tennessee Coal Surface Mining Law of 1980." [Acts 1980 (Adj. S.), ch. 908, § 1.]

59-8-302. Purpose of part.—(a) The general assembly hereby finds and declares that the unregulated exploration for and surface mining of coal can cause soil erosion and landslides; lake, stream, and air pollution; and accumulation and seepage of contaminated water; can contribute to floods; impairs the value of land for forestry, agricultural, or other purposes; adversely affects fish and wildlife and their habitats; counteracts efforts for the conservation of soil, water, and other natural resources; adversely affects cultural resources; impairs neighboring owner's property rights; creates fire hazards; and in general creates conditions inimical to life, property, and the public welfare, so as to require the exercise of the state's police power in the regulation of exploration and surface mining of coal. The general assembly further finds that there are wide variations in the circumstances and conditions surrounding and arising out of the exploration for and surface mining of coal, due primarily to differences in topographical, geological, and soil conditions, which make it necessary, in order to provide the most effective, beneficial, and equitable solution to the problem, that broad discretion be placed in the authority designated to administer and enforce the regulatory provisions enacted by the general assembly. It is the purpose of this part, therefore, to provide for the regulation and control of exploration for and surface coal mining so as to minimize its injurious effects, provide for quick and adequate reclamation, prohibit surface coal mining where reclamation as required by this part is not feasible, and promote the reclamation of lands and waters affected by orphan mines. It is also the purpose of this part to establish a regulatory program which will allow the state to enforce the provisions of the Federal Surface Mining Control and Reclamation Act of 1977, compiled in 30 U.S.C. 1201–1328.

(b) It is not the purpose of this part to regulate the mining of any mineral other than coal. The surface mining of minerals other than coal shall continue to be regulated by part 2 of this chapter. [Acts 1980 (Adj. S.), ch. 908, § 2.]

59-8-303. Definitions.—As used in this part, unless the context otherwise requires:

(1) "Alluvial valley floors" means the unconsolidated, streamlaid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities, but the term does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and wind blown deposits.

(2) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the affected area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to disturbance and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the commissioner determines that they are in compliance with this part.

(3) "Area affected" or "affected area" means the area of land or water from which overburden is to be or has been removed, or upon which overburden, topsoil, coal, or waste materials, is to be or has been deposited. It also includes land used or to be used for construction, improvement, or use of haul roads or access roads (other than maintained public roads), as well as all activities conducted on the surface of lands in connection with exploration, surface mining or underground coal mining, or land or water which is located above underground mine workings, including but not limited to, exploration disturbances, dams, basins, stockpiles, waste deposition areas, and drill hole disturbances, repair, processing, washing, crushing, shipping, and other areas upon which are sited structures, tipples, office facilities, or other property or materials on the surface resulting from or incident to such activities, and disturbances to the surface resulting from the use of explosives and blasting, in situ distillation or retorting, leaching, or other chemical or physical processing. It shall be further defined as the area which must be covered by a permit and bond.

(4) "Bench" means the ledge, shelf, or terrace formed in the contour method of surface coal mining. "Fill bench" means that portion of the bench which is formed by depositing overburden beyond the cut section. "Solid bench" means the portion of the bench between the highwall and the fill bench, thereby within the region once occupied by the coal or overbuden.

(5) "Board" means the board of reclamation review as created by § 59–8–321.

(6) "Coal" means a black or brownish-black solid combustible mineral substance formed by the partial decomposition of vegetable matter, the substance commonly used as a natural fuel. The term "coal" also includes lignite and noncommercial coal fines or wastes which were mined and discarded in past years.

(7) "Commerce" means trade, traffic, commerce, transportation, transmission, or communication, among the several states, or between a state and any other place outside it, or between points in the same state which directly or indirectly affect interstate commerce.

(8) "Commissioner" means the commissioner of the department of conservation or his designees.

(9) "Cultural resources" means sites, structures, buildings, districts (two (2) or more strtuctures, buildings, or sites) and objects of historic, archaeological, or cultural importance.

(10) "Director" means the director of the division of surface mining and reclamation in the department of conservation.

(11) "Explore for minerals" or "exploration" or "prospecting" means a deliberate, planned search for coal in a manner which substantially disturbs the land surface, in order to ascertain the presence, location, quantity, or quality of coal. It includes, but is not limited to, trial excavation, core drilling, trenching, and road building to gain access to the site.

(12) "Highwall" means the face of exposed unmined overburden and coal in an open cut of a surface mine or for entry to an underground mine.

(13) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or any other requirement of this part, in an exploration, mining, or reclamation operation which could reasonably be expected to cause substantial physical harm to persons or property outside the permit area before such condition, practice, or violation could be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril would not expose himself or herself to the danger during the time necessary for abatement.

(14) "Office" means the federal office of surface mining reclamation and enforcement, established pursuant to the federal Surface Mining Control and Reclamation Act of 1977, compiled in 30 U.S.C. §§ 1201–1328.

(15) "Operation" means all the premises, facilities, and equipment, and the use thereof, in the process of exploring for or removing coal from a designated surface coal mine area or underground coal mine.

(16) "Operator" means any person engaged in surface coal mining operations who removes or intends to remove more than twenty-five (25) tons of coal by surface mining within twelve (12) successive calendar months; or who removes overburden for the purpose of determining the location, quality, or quantity of coal.

(17) "Orphan mine" or "abandoned mine" means land affected by coal surface mining operations prior to enactment of the federal Surface Mining Control and Reclamation Act of 1977.

(18) "Overburden" means all earth and other materials which are moved to gain access to the coal in the process of surface mining or exploration.

(19) "Permit" means a permit to conduct exploration of surface mining and reclamation operations issued by the commissioner.

(20) "Permit applicant" or "applicant" means a person applying for a permit.

(21) "Permit area" means the area of land indicated on the approved map submitted by the operator with his application, which area of land shall be covered by the operator's bond as required by this part, and shall be readily identifiable by appropriate markers on the site.

(22) "Permittee" means a person holding a permit.

(23) "Person" means an individual, partnership, association, society, governmental agency or entity, joint stock company, firm, company, corporation, or other business organization.

(24) "Prime farmland" shall have the same meaning as that previously prescribed by the secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, and erosion characteristics, and which historically have been used for intensive agricultural purposes, as published in the **Federal Register.**

(25) "Reclamation" means the process of backfilling, grading and shaping of the disturbed land in the affected area, constructing water control facilities, the taking of measures to control current or future air, water, or soil pollution, the planting of vegetation, and other measures; all directed toward placing the affected area in a condition whereby it can serve a purpose, at least as useful as that in existence before any coal exploration or mining.

(26) "Reclamation plan" means a plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed exploration or mining operations pursuant to this part.

(27) "Secretary" means the secretary of the interior.

(28) "Shaping" means grading, backfilling, and other earth moving required by the provisions of this part to be done by the operator in connection

with the reclamation of the area affected.

(29) "Spoil bank" means the overburden as it is piled or deposited in the process of mining.

(30) "State program" means a program established by the state to regulate exploration for and surface mining of coal and reclamation operations on land within the state in accordance with the requirements of the federal Surface Mining Control and Reclamation Act of 1977 and regulations issued by the secretary pursuant to that act.

(31) "Steep slopes" means any slopes that exceed twenty degrees (20°), or flatter slopes that require measures to protect the area from disturbance as determined by the Commissioner.

(32) "Surface mining and reclamation operations" means all coal surface mining or coal surface mining related activities and all activities necessary and incident to the reclamation of such operations after August 3, 1977.

(33) "Surface mining operations" means:

(A) Activities conducted on the surface of lands in connection with exploration for coal or a coal surface mine or surface operations and surface impacts incident to an underground coal mine, including but not limited to, facing-up for a deep coal mine. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site.

(B) The areas upon which the activities in subdivision (33)(A) occur or where such activities disturb the natural land surface. Such area shall also include any adjacent land, the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads, except maintained public roads, to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, tipples, facilities, or other property or materials on the surface, resulting from or incident to such activities.

(34) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this part due to indifference, lack of diligence, or lack of reasonable care; or the failure to abate any violation of such permit or this part due to indifference, lack of diligence, or lack of reasonable care.

(35) "Lignite coal" means consolidated lignitic coal having less than eight thousand three hundred (8,300) British Thermal Units per pound, moisture and mineral matter free.

(36) "Wildcat miner" means a person violating this part by willfully and knowingly extracting or exploring for coal without a valid permit, or from an area not covered by valid permit. An operator with a valid permit who inadvertently runs a piece of equipment a short distance beyond a marked permit boundary and returns to the permitted acreage shall not be determined to be a wildcat miner; provided, that the boundary is remarked, fenced, or roped, to prevent a second occurrence, and the area disturbed is reclaimed to meet requirements set by the commissioner. [Acts 1980 (Adj. S.), ch. 908, § 3; 1983, ch. 204, § 1.]

59–8–304. Powers of the commissioner.[3]—In addition to the specific powers and authority granted in other sections of this part, the commissioner shall have and exercise the following authority and powers:

(1) To administer and enforce the provisions of this part and all regulations, permits, and orders promulgated pursuant to it;

(2) To conduct and obtain investigations, research, experiments, training programs and demonstrations, and to collect and disseminate information relating to exploration, surface mining, reclamation of disturbed lands, and control of pollution of water and soil affected by exploration and surface mining for coal;

(3) To publish proposed regulations and afford interested persons and agencies a minimum of thirty (30) days after publication to submit written comments thereon;

(4) To adopt in accordance with Tennessee Code Annotated, Title 4, Chapter 5, after public notice and affording an opportunity to all interested persons to appear and offer evidence at a public hearing in connection therewith, general regulations pursuant to this part. (Such rules and regulations, which shall have the force and effect of law, shall be of uniform application as far as practicable, but they may take proper account of differences in topography, geology, and soil conditions and established use patterns of neighboring lands as recognized by the local or state planning agency);

(5) To adopt, in accordance with §§ 4–5–101—4–5–130, without notice or hearing, regulations with respect to internal procedural aspects of hearings, the filing of reports and orders, and other internal procedural matters;

(6) To issue notices of violations, cease orders, or other orders as are necessary, in the office or on-site, requiring the adoption by an operator of remedial measures necessary for carrying out the provisions of this part or regulations, permits, or orders issued pursuant to this part;

(7) To examine, and approve, modify, or disapprove, applications for permits, maps, bonds, mining and reclamation plans, revegetation plans, and after-use plans submitted by operators;

(8) To establish standards for acceptable mining and reclamation of affected areas, which shall be designed to achieve soil stabilization, control soil erosion, obliterate the scars of the exploration or mining operation, insure quick revegetation, and insure that the operation meets applicable soil and water quality standards;

(9) To make such investigations or inspections as are necessary to insure compliance with any provisions of this part, including the right to enter at any time upon a suspected or affected area for such purposes and the right of ingress and egress across intervening properties;

(10) To employ and commission qualified persons as surface mine reclamation personnel. (When properly qualified and commissioned, such personnel shall be vested with such authority as is necessary to enforce all laws, regulations permits, and orders administered by the Tennessee department of conservation, including the issuance of service of process and they shall have the right to carry firearms or other arms while on duty.);

(11) To appoint, employ and commission qualified persons as task force members and when properly qualified, trained, and commissioned, such investigators shall be vested with such police power and authority as is necessary to enforce all state laws and regulations administered by the Tennessee department of conservation, including: the issuance of service of process and power of arrest in the same manner and with like authority as the sheriffs of the Counties; the right to carry firearms or other arms while on duty as task force members; the power,

without warrant, to arrest any person committing a violation of subsection (g) or (h) of § 59–8–318 in their presence or view and to take such person immediately for examination or trial before an officer or court of competent jurisdiction; the power to execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of said sections; and the authority with a search warrant, to search any place. (The several judges and magistrates of the courts established under the laws of Tennessee may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases.); and

(12) To cooperate with the commissioner of public health, who is also directed to cooperate, in establishing a process whereby a single set of forms and information, submitted in multiple copies to the division of surface mining and reclamation and the division of water quality control under § 59–8–307(a) shall contain sufficient mutually needed information to serve as a basic application for such agencies, evaluation of applications shall be made cooperatively, and decisions to grant or deny these permits shall be made simultaneously. [Acts 1980 (Adj. S.), ch. 908, § 4.]

59–8–305. Emergency powers.—(a) The commissioner is authorized to expend moneys from the Tennessee surface mine reclamation fund for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices, on eligible lands, if the commissioner finds that:

(1) An emergency exists constituting a danger to the public health, safety, or general welfare; and

(2) No other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effect of coal mining practices.

(b) The commissioner, his agents, employees, and contractors, shall have the right to enter upon any land where the emergency exists, and any other land, to have access to the land where the emergency exists, to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices, and to do all things necessary or expedient to protect the public health, safety, or general welfare. Such entry shall be construed as an exercise of the police power, and shall not be construed as an act of condemnation of property nor of trespass thereon. The money expended for such work and the benefits accruing to any such land shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for alleged damages by virtue of such entry; provided, however, that this provision is not intended to create new rights of action or eliminate existing immunities. [Acts 1980 (Adj. S.), ch. 908, § 5.]

59–8–306. Exploration permits.—(a) No person shall explore for coal, until he has obtained an exploration permit from the commissioner, paid the required fee set in § 59–8–308, and posted a performance bond conditioned on satisfactory reclamation of the exploration disturbances of the surface.

(b) The exploration permit application shall contain such information as the commissioner shall, but regulation, require by shall as a minimum include the following:

(1) A map showing the general location of the affected area with respect to nearby towns, streams, county lines, public and mining access roads;

(2) A description of the topography and geology of the area;

(3) The name and elevation of the coal seam or deposit to be explored;

(4) The proposed period of exploration;

(5) A map showing all boundaries of the area affected, the topography and cultural features of the area, and the approximate location of the proposed roads and the drill holes, excavations, and cuts to be made;

(6) A description of the exploration activities to be conducted; and

(7) Plans for the reclamation of all areas disturbed, including excavations, drill holes, and roads, according to the performance standards of this part; and the removal of facilities and equipment.

(c) No person shall remove more than twenty-five (25) tons of coal under the authority of an exploration permit without specific written approval from the commissioner.

(d) Notwithstanding any provision of § 59–8–316 to the contrary, the commissioner, by regulation, shall establish procedures and requirements for releasing performance bonds posted for exploration permits in accordance with this part.

(e) The amount of the exploration bond for each affected acre permitted shall be at least as much as is necessary to reclaim the proposed disturbance.

(f) Information submitted to the commissioner pursuant to this section as confidential concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the person or entity intended to explore the described area shall not be available for public examination.

(g) Permits and the associated applications, headings, and other actions required by this section and part shall be conducted in accordance with the provisions of chapter 18 of title 13 when the permit or action involves a major energy project, as defined in § 13–18–102. [Acts 1980 (Adj. S.), ch. 908, § 6; 1981, ch. 131, § 39.]

59–8–307. Permits, requirements, and criteria—Amendments—Renewal.—(a) No operator shall engage in surface coal mining operations without having first obtained from the commissioner a permit for each surface mine. This permit shall authorize the operator to engage in surface mining operations upon the area of land affected as described in his application for a minimum period of one (1) year, and up to a maximum of five (5) years, from the date of its issuance. Such permits shall be granted by the commissioner only if the requirements and criteria set forth in subsequent subsections of this section and any regulations pertaining to those requirements are satisfied; and only upon the submission by the operator and approval by the commissioner of a bond, permit fee, and acreage fees for all acres permitted, a mining and reclamation plan, and other information as provided in this part and regulations issued pursuant to this part.

A successor in interest to a permittee who applies for a new permit within thirty (30) days of succeeding to such interest and who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's application is granted or denied.

(b) The granting of any permit shall be subject to payment of the fee and the posting of bond as prescribed in this part, and upon submission of the following information:

(1) The name and permanent address of the applicant and the operator if he is a person different from the applicant, as well as any temporary address to be used by the operator in connection with the operation covered by the permit; if the applicant or operator, if the operator is a person different from the applicant, is other than an individual or corporation, the names and permanent addresses of all persons having an interest in the operation shall be listed; if the applicant or the operator, if a person different from the applicant, is a partnership, corporation, association, or other business entity, the following shall be listed where applicable: the names and addresses of every officer, partner,

director, agency, representative, or person performing a function similar to a director, of the applicant; the name and address of any person owning of record ten percent (10%) or more of any class of voting stock of the applicant; a list of all names under which the applicant, partner, or principal shareholder previously operated a surface mining operation within the state of Tennessee within the five (5) year period preceding the date of submission of the application; and a list of all names under which the applicant, operator, partner, principal, shareholder, officers, and directors, previously operated a surface mining operation within any other state of the United States within the five (5) year period preceding the date of submission of the application; and if any subcontractor is to be used in any mining operation, his phone number and information required in subsection (b)(3) and this subdivision shall be listed;

(2) The names and permanent addresses of the owner or owners and any designated representative, of the surface of the area affected by the permit, the identification of the owner or owners of all surface area adjacent to any part of the area; the name and permanent address of the holders of record of any leasehold interest in the property; and the names and permanent addresses of any purchasers of record of the property under a real estate contract;

(3) Identification of any suface mining or exploration permit or permits which the operator or applicant (or any person having an interest in the operation), holds or has previously held, either in this state or any other state, together with a statement of whether or not any surface mine permit, performance bond, or similar security previously held by the applicant or operator or any person, partnership, proposed subcontractor, or corporation now associated with the applicant or operator was suspended, revoked, terminated, or forfeited, along with a brief explanation of the facts involved;

(4) A schedule listing all cease orders and notices of violations of this part and any law, rule or regulation of the state of Tennessee, or of the United States or of any department or agency in the state of Tennessee or in the United States pertaining to air or water environmental protection or any other surface mining permit violation incurred by the applicant, operator or any proposed subcontractor in connection with any surface coal mining operation during the three (3) year period prior to the date of application and the final resolution of any such violation;

(5) Identification of the owner or owners of the coal to be mined;

(6)(A) Identification of the source of the operator's legal right to enter and mine the coal on the land affected by the permit and whether that right is the subject of pending court litigation;

(B) Evidence of the operator's legal right to surface mine the minerals on the land affected by the permit. If the surface estate has been severed from the mineral estate, such evidence may be provided by either:

(i) A deed, lease, or other document which severs the mineral rights and expressly permits the removal of minerals by surface mining or a certified extract of the appropriate provisions of such documents; or

(ii) A deed, lease or conveyance which severs the mineral rights without specific provisions for surface mining and an accompanying affidavit by the current surface estate owner agreeing to the removal of such minerals by surface mining;

(7) A map showing the general location of the affected area with respect to nearby towns, streams, county lines, public and mining access roads;

(8) Accurate maps to an appropriate scale, as specified by regulation, clearly showing: the land to be affected as of the date of the application; all types of information set forth on topographical maps of the United States Geological Survey of a scale of 1:24,000 or larger, including all man made features and significant known archaelogical sites existing on the date of application; all boundaries of the land to be affected, the boundary lines and names of present owners of record of all surface areas abutting the permit area, and the location of all buildings within one thousand (1,000) feet of the permit area; and any other information specified by the commissioner;

(9) A copy of the applicant's advertisement which was published in a newspaper of general circulation in the locality of the proposed site, and which describes the ownership, the exact location, and boundaries of the proposed site specifically enough that the proposed operation can be readily located by local residents, and the location of the place where the application is available for public inspection, such advertisement shall have been published at least once a week for four (4) successive weeks prior to application and shall contain such information in such form as shall be specified by regulation;

(10) The anticipated or actual starting and termination dates of each phase of the mining operation and the number of acres of land to be affected by each;

(11) The name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged;

(12) A determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, the quantity and quality of water in surface and ground water systems, including the dissolved and suspended solids under seasonal flow conditions, and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the commissioner of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability; provided however, that this determination shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency; provided, further, that the permit shall not be approved until such information is available and is incorporated into the application;

(13) The climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges;

(14) Cross-section maps of the land to be affected, including the actual area to be mined, prepared by or under the direction of and certified by a registered engineer, or professional geologist with assistance from experts in related fields such as land surveying and landscape architecture, showing pertinent elevation and location of test borings or core samplings and depicting the following information: the nature and depth of the various strata of overburden; the location of sub-surface water, if encountered, and its quality; the nature and thickness of any coal or rider seam above the coal seam to be mined; the nature of the stratum immediately beneath the coal seam to be mined; all coal crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; existing or previous surface mining limits; the location and extent of known workings of any underground mines, including mine openings to the surface; the location of aquifers; and the estimated elevation of the water table;

(15) A statement of the result of test borings or core samplings from the

permit area, including logs of the drill holes; the location of subsurface water; the thickness of the coal seam found; and analysis of the chemical properties of such coal; the sulphur content of any coal seam; chemical analysis of potentially acid or toxic forming sections of the coal and overburden; chemical analysis of the stratum lying immediately underneath the coal to be mined, except that the provisions of this paragraph may be waived or added to by the commissioner with respect to a specific application by a written determination by the commissioner;

(16) For those lands in the permit application which a reconnaissance inspection suggests may be prime farm lands, a soil survey made or obtained according to standards established by the U.S. secretary of agriculture in order to confirm the exact location of such prime farm lands, if any; and

(17) A description of all cultural resources listed or eligible for listing on the National Register of Historic Places in accordance with procedures prescribed by regulation.

(c) Information pertaining to coal seams, test borings, core samplings, or soil samples required by this section shall be made available to any person with an interest which is or may be adversely affected; provided, that information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding any mineral or elemental content which is potentially toxic in the environment) shall be kept confidential and not made a matter of public record.

(d) Each applicant for a surface coal mining permit shall submit to the commissioner as part of the permit application, a reclamation plan which shall meet the requirements of § 59–8–310.

(e) Each applicant for a coal surface mining permit shall file a complete copy of his application for public inspection with the register of deeds at the courthouse of the county, or an appropriate public office approved by the commissioner where the mining is proposed to occur, except for that information pertaining to the coal itself. The application shall be filed for public review within five (5) days of application submittal to the commissioner.

(f) Each applicant for a coal surface mining and reclamation permit shall submit as part of the permit application, a blasting plan which shall outline the procedures and standards by which the operator will meet the provisions of this part.

(g) Each applicant for a coal surface mining permit shall submit as part of the permit application, a certificate issued by an insurance company authorized to do business in the state of Tennessee, certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operation for which such permit is sought, or evidence that the applicant has satisfied other state or federal self-insurance requirements. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface mining and reclamation operations, including the use of explosives, and entitled to compensation under the applicable provisions of state law. Such policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

(h) An on-the-ground inspection of the proposed affected area shall be made by the commissioner or his representatives before a permit is issued.

(i)(1) If the commissioner finds that the probable total annual production of all locations of any person engaged in coal surface mining will not exceed one hundred thousand (100,000) tons, the determination of probable hydrologic consequences required by this part and the statement of the result of test borings or core samplings required by this section shall, upon the written application request by the operator and review and approval by the commissioner, be performed by a qualified public or private laboratory designated by the commissioner and the cost of the administration of the program will be paid in part by the commissioner with supplemental funding made available through grants under the Federal Surface Mining Control and Reclamation Act of 1977, compiled in 30 U.S.C. 1201–1328. All costs for laboratory fees will be paid by the commissioner from moneys available from federal grants for the operation of this program and such state funds as may be provided.

(2) The commissioner shall set forth guidelines for determining those laboratories which are qualified to provide such services. The evaluation factors for selecting the qualified laboratories shall include technical expertise, availability of manpower, ability to perform within recommended time constraints, past performance in related surface mining work, capability to coordinate with the operator and the department, and proximity of office staff to the mine area and the department.

(3) Upon receipt of application for assistance the commissioner in conjunction with the commissioner of the department of general services shall have ninety (90) days within which to award the contract.

(j) Any holder of a valid coal surface mining or exploration permit issued pursuant to this part who wishes to continue the operation beyond the original permit expiration date, shall make application for renewal at least one hundred twenty (120) days prior to the expiration date of the permit, and the renewal may be granted for a time period as determined by the commissioner, based on past reclamation success and compliance with this part, but in no condition for more than five (5) years.

(k) In cases where the private mineral estate has been severed from the private surface estate, the applicant shall submit:

(1) The written consent of the surface owner to the extraction of coal by surface mining methods;

(2) A copy of a conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(3) If the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with § 66–5–102; provided, that nothing in this part shall be construed to authorize the commissioner to adjudicate property rights disputes.

(l) Any information required by this section which is not on file pursuant to state law shall be held in confidence by the commissioner.

(m) Any operator who has obtained a permit, and otherwise complied with the provisions of this part, may subcontract any part, or all of the mining of such lands covered by the permit to subcontractors, provided that the subcontractors are not in violation on their own operations, or have not previously had a bond forfeited or been convicted of wildcat mining.

(n) Permits and the associated applications, hearings, and other actions required by this section or part shall be conducted in accordance with the provisions of chapter 18 of title 13 when the permit or action involves a major energy project, as defined in § 13–18–102. [Acts 1980 (Adj. S.), ch. 908, § 7; 1981, ch. 131, § 40; 1981, ch. 280, §§ 1, 2, 10; 1983, ch. 121, §1.]

59–8–308. Fees.—(a) Every application for an exploration permit, a surface coal mining permit, or an underground coal mining permit shall be accompanied by

the proper fee. The total fee shall be composed of a basic application fee and an acreage fee.

(1) The basic application fee for a permit to mine coal shall be two hundred fifty dollars ($250) for each year of duration of the permit. The basic application fee for an exploration permit for coal shall be fifty dollars ($50.00) for each year of duration of the permit.

(2) The acreage fee shall be twenty-five dollars ($25.00) per affected acre or fraction thereof for coal mining; and ten dollars ($10.00) per affected acre or fraction thereof for exploration for coal.

(b) The fee for an amendment of a coal mining permit shall be two hundred dollars ($200), and the fee for amendment of an exploration permit for coal shall be twenty-five dollars ($25.00). If the amendment increases the acreage affected, the acreage fee for the increase in acreage shall be paid at the time of application. If the amendment decreases the acreage affected, the refund for the acreage deleted shall be paid by the state to the operator when the amendment is granted.

(c) Local governmental entities and state agencies are exempted from permit and acreage fees. [Acts 1980 (Adj. S.), ch. 908, § 8.]

59-8-309. Performance bond.—(a) The bond filed with the commissioner shall be payable to the state of Tennessee and shall be executed by the operator and a corporate surety who is approved by the commissioner and properly authorized to act as such surety and licensed to do business in the state of Tennessee; provided, however, that the operator may elect to deposit cash or negotiable certificates of deposit assigned irrevocably to the state, or negotiable United States treasury bonds or negotiable general obligation municipal or corporate bonds, which municipal or corporate bonds have the highest rating by Moody's and/or Standard & Poor's rating services, with the treasurer of the state of Tennessee in lieu of a corporate surety. The treasurer shall receive and hold such deposits in the name of the state of Tennessee, in trust, for the purposes for which such deposit is made, and shall at all times be responsible for the custody and safekeeping of such deposits. The operator making the deposit shall be entitled from time to time to demand and receive from the treasurer, on the written order of the commissioner, the whole or any portion of any securities so deposited upon depositing with the treasurer, in lieu thereof, other negotiable securities of the classes herein specified having a market value at least equal to the sum of the bond, and also to demand and recover the interest income from said securities as the same becomes due and payable; provided, however, that the treasurer, at the request of the operator, shall convert such securities into such other negotiable securities of the classes herein specified as may be designated by the operator. However, having a history of financial solvency and continuous operation satisfactory to the commissioner and any operator having outstanding corporate bonds with the highest rating by Moody's and/or Standard & Poor's rating service, may deposit and execute its own bond as surety.

(b) The amount of bond or cash deposit or marketable value of the securities shall be determined by the commissioner and conditioned upon the faithful performance of the provisions of this part, but in no case shall it be less than fifteen hundred dollars ($1,500), for each estimated acre affected or fraction thereof to be permitted by the respective operation. Liability under each bond shall be continuous until the reclamation provisions of this part and regulations have been fulfilled.

The amount of bond for exploration for and surface mining of coal shall be sufficient, as determined by the commissioner, to assure the completion of the reclamation plan if the work had to be performed by the commissioner in the event of bond forfeiture. In no case shall the bond for a mining permit be less than ten thousand dollars ($10,000).

The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the commissioner from time to time as affected land acreages are amended and increased or decreased, plans are changed, or where the cost of future reclamation changes.

The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the state in the event of forfeiture.

Bond amounts shall be determined, based in part, but not limited to, considerations of toxic overburden materials; adequate topsoil materials; steepness of slope; erodability of soils; water concerns; height, length and composition of highwall; how well the mining and reclamation plan relates to the site; time lag of reclamation work; operator's and subcontractors' past performance record, and whether or not they have operated in the state less than three (3) years.

(c) Local governmental entities and state agencies may execute their own bonds as surety. [Acts 1980 (Adj. S.), ch. 908, § 9.]

59-8-310. Mining and reclamation plan for coal surface mines.—(a) Each operator mining for coal shall prepare and carry out a mining and reclamation plan for the area affected by his operation, to be submitted by the operator for the commissioner's approval with the application for a permit. The plan shall include, in the degree of detail necessary to demonstrate that reclamation required by this part can be accomplished, the following information:

(1) The identification of the lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the sub-areas for which it is anticipated that individual permits for mining will be sought;

(2) A description of the condition of the land to be covered by the permit prior to any mining, including:

(A) The uses existing at the time of the application, and if the land has a history of previous mining, the uses which preceded any mining;

(B) The capability of the land, prior to any mining, to support a variety of uses, giving consideration to soil and foundation characteristics, topography, and vegetative cover, and if applicable, a soil survey prepared pursuant to § 59-8-307(b)(16); and

(C) The productivity of the land prior to mining, including appropriate classifications as prime farm lands, as well as the average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management;

(3) A description of the use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such use to existing land use policies and plans, and the comments of any owner of the surface, state and local governments, or agencies thereof, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation;

(4) A detailed description of how the proposed postmining land use is to be achieved and of the necessary support activities which may be needed to achieve the proposed land use;

(5) A list of the engineering techniques proposed to be used in mining and reclamation, and a list of the major equipment to be used;

(6) A statement of the consideration which has been given to maximizing the utilization and conservation of the coal being recovered so that re-affecting the land in the future can be minimized;

(7) A detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(8) A statement of the consideration which has been given to making the surface mining and reclamation operations consistent with surface owner plans, and applicable state and local land use plans and programs;

(9) A list of the steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards;

(10) A statement of the consideration which has been given to developing the reclamation plan in a manner consistent with local physical, environmental and climatological conditions;

(11) A statement identifying all lands, interests in lands, options on such interests, or pending bids on such interests held by the applicant, which lands are contiguous to the area to be covered by the permit;

(12) A detailed description of the measures to be taken during the mining and reclamation process to assure the protection of:

(A) The quantity and quality of surface and ground water systems, both on and off site, from adverse effects of the mining and reclamation process;

(B) The rights of present users to such water; and

(C) Alternative sources of water at least equal in quantity and quality, and how it would be obtained by the permittee for the present users if necessary;

(13) An estimated breakdown on a cost per acre basis of the proposed reclamation involving toxic spoil handling, highwall reduction, topsoil salvage and stockpiling, topsoil redistribution, spoil grading, site preparation, seeding, mulching, and other spoil treatment practices; and

(14) Such other information as the commissioner shall require on any specific application.

(b) A detailed mining plan shall be submitted showing the method of topsoil removal, toxic material handling, and mining; the location and sequence of excavations or cuts; the location and grade of roads; the location of spoil, waste, toxic or refuse material disposal areas, and topsoil storage or preservation areas; the location of all impoundments; the location of any erosion control, settling, or water treatment facility; the location of any constructed or natural drainways; and the location of any discharges to any surface or underground body of water on the area of land to be affected or adjacent to it. The mining plan shall also include a post mining contour map of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan, and cross-sections of any proposed impoundments, silt traps, and drainways.

(c) A detailed revegetation plan shall be submitted describing how the soil will be prepared for revegetation; what types and amounts of fertilizer are needed; what types and amounts of fertilizer will be used; the species to be used for revegetation, along with a map showing what will be planted on each part of the area if the species to be planted will vary from area to area; the seeding, sowing, or seedling planting density on each part of the area; the type and amount of mulch to be used; the equipment and procedures to be used; and the measures planned to be taken to insure vegetation survival.

(d) If the area affected includes prime farmlands identified pursuant to § 59–8–307(b)(16), the operator shall submit a plan for soil reconstruction, replacement, and stabilization for those lands, pursuant to the performance standards in§ 59–8–311(b)(7) (A), (B), (C), and (D).

(e) The plans shall be kept current and shall be carried out concurrently with the surface mining operation. All backfilling, grading shaping, topsoiling, and cover crop sowing, if necessary, shall be completed on a given acre within such time as permitted by the commissioner's regulations, which shall not be more than three (3) months, weather permitting, after completion of the removal of the coal mined from that arce. All of the site preparation and revegetative work shall be carried out with respect to each acre within such time as permitted by the commissioner's regulations, which shall not be more than the first seeding or planting season after conclusion of the backfilling, grading and reshaping with respect to each such acre. Any waiver from the above schedule must be in writing from the commissioner. Each operator shall file periodic reports, within such time and covering such periods as the commissioner shall reasonable require, showing those portions of the affected area for which reclamation in accordance with the approved plan has been completed. The commissioner shall inspect such areas and shall notify the operator whether the reclamation is accepted as being in accordance with the approved plan, or whether there are deficiencies which must be corrected.

(f) The mining and reclamation plan may be changed with the commissioner's approval, at any time upon application of the operator, to take account of changes in conditions or to correct any previous oversight. The commissioner may also order a change in the mining or reclamation plan for the same reasons.

(g) Any plan required by this section or part shall be prepared in accordance with the procedures set out in chapter 18 of title 13 when such plan involves a major energy project, as defined in § 13–18–102. [Acts 1980 (Adj. S.), ch. 908, §10; 1981, ch. 131, § 41.]

59–8–311. Environmental protection performance standards for coal mining.—(a) Any permit issued under this part to conduct surface coal mining operations shall require the operations to meet all applicable performance standards of this part, and any other requirements that the commissioner shall require.

(b) General performance standards shall be applicable to all surface coal mining and reclamation operations, and shall require the operation, as a minimum, to:

(1) Conduct surface coal mining operations so as to maximize the utilization and conservation of the coal being recovered, so that reaffecting the land in the future through surface coal mining can be minimized;

(2) Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood, so long as such uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution; and the permit applicant's declared proposed land use following reclamation is not deemed to be impractical or unreasonable, inconsistent with applicable land use policies and plans, or to involve unreasonable delay in implementation, or violate federal, state, or local law;

(3) Except as provided in subsections (c) and (e) of this section, backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials), and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation, or as otherwise authorized pursuant to this part); adequately cover all acid-forming or toxic materials; shape and grade all overburden or spoil in such a way as to prevent slides, erosion, and water pollution; and revegetate the area in accordance with the requirements of this part, in order to achieve an ecologically sound land use compatible with the surrounding area; provided, however, that in surface coal mining

which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large, and where the operator demonstrates that the overburden and other spoil and waste materials at a particularly point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact (where advisable), using all available overburden, other spoil, and waste materials to attain the lowest practicable grade (but not more than the angle of repose), to provide adequate drainage, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region; and provided further, that in surface coal mining where the volume of overburden is large relative to the thickness of the coal deposit, and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate original contour, backfill, grade, and compact (where advisable) the excess overburden and other spoil and waste materials to attain the lowest practical grade (but not more than the angle of repose);

(4) Stabilize and protect all surface areas, including spoil piles, affected by the surface coal mining and reclamation operation to effectively control erosion and attendant air and water pollution;

(5) Remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil, and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by use of quick-growing plants or by other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic materials, and is in a usable condition for sustaining vegetation when restored during reclamation, except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner, the other strata which is best able to support vegetation;

(6) Restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) For all prime farm lands as identified pursuant to subdivision (16) of this subsection, to be mined and reclaimed, the operator shall, in accordance with specifications for soil removal, storage, replacement, and reconstruction established by the secretary of agriculture as a minimum:

(A) Segregate the A horizon of the natural soil (except where it can be shown that other available soil materials will create a final soil having a greater productive capacity); and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(B) Segregate the B horizon of the natural soil, or underlying C horizons or other strata, or combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equal or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil, a root zone of comparable depth and quality to that which existed in the natural soil; and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(C) Replace and regrade the root zone material described in item (B) above with proper compaction and uniform depth over the regraded spoil material;

(D) Redistribute and grade in a uniform manner the surface soil horizon described in item (A) of this subsection; and

(E) Comply with the additional requirements of the commissioner concerning prime farm land;

(8) Create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that:

(A) The size of the impoundment is adequate for its intended purposes,

(B) The impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Pub. L. 83-566 (16 U.S.C. 1006);

(C) The quality of impounded water will be suitable on a permanent basis for its intended use, and discharges from the impoundment will not degrade the water quality in the receiving stream below water quality standards established pursuant to applicable federal and state law;

(D) The level of water will be reasonably stable;

(E) Final grading will provide adequate safety and access for proposed water users; and

(F) Such water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic purposes;

(9) Conduct any augering operation associated with surface mining in a manner that will maximize recoverability of coal reserves remaining after the operation and reclamation are complete; and seal all auger holes with an impervious and noncombustible material in order to prevent drainage (except where the commissioner determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health or safety); provided, that the commissioner may prohibit augering on any specific area of any size if necessary to maximize the utilization, recoverability or conservation of the coal or to protect against adverse water quality impacts;

(10) Minimize the disturbances to the prevailing hydrologic balance, at the mine-site and in associated off-site areas, and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation by:

(A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(i) Preventing or removing water from contact with toxic-producing deposits;

(ii) Treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; and

(iii) Casing, sealing, or otherwise managing boreholes, shafts, and wells in order to keep acid or other toxic drainage from entering ground and surface waters;

(B)(i) Conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow, or runoff outside the permit area (but in no event shall contributions

be in excess of requirements set by applicable state or federal law); and

(ii) Constructing any siltation structures pursuant to subsection (b)(10)(B)(i) prior to commencement of surface coal mining operations (such structures shall be certified by a registered engineer to be constructed as designed and as approved in the reclamation plan);

(C) Cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized; and depositing the silt and debris at a site and in a manner approved by the commissioner;

(D) Restoring recharge capacity of the mined area to approximate pre-mining conditions;

(E) Avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(F) Refraining from mining or placing spoil within one hundred feet (100') horizontal distance of a stream, except that roads may be constructed to cross a stream where such roads are part of the approved mining and reclamation plan. (In special environmentally accepted circumstances, head-of-hollow fill plans may be approved by the commissioner.); and

(G) Such other actions as prescribed by state or federal agencies with jurisdiction over coal mining operations;

(11) Stabilize all mine wastes, tailings, coal processing wastes, and other wastes which are to be disposed of in areas other than the mine workings or excavations, through construction in compacted layers, including the use of incombustible and impervious materials if necessary, and stabilize and revegetate the site according to the provisions of this part, so that the final contour of the waste pile will be compatible with natural surroundings;

(12) Refrain from surface coal mining within five hundred feet (500') of active and abandoned underground mines, in order to prevent breakthroughs and to protect the health or safety of miners; provided, that the commissioner shall permit an operator to mine near, through or partially through an abandoned underground mine, or closer to an active underground, if:

(A) The nature, timing, and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are jointly approved by the commissioner and the commissioner of labor, and any applicable federal authorities; and

(B) Such operations will result in improved resource recovery, environmental improvements, abatement of water pollution, or elimination of hazards to the health and safety of the public;

(13) Design, locate, construct, operate, maintain, enlarge, modify and remove or abandon, in accordance with the standards and criteria developed in regulations, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments;

(14) Insure that all debris, acid-forming materials, toxic materials, or materials constituting a fire, air, or water pollution hazard are treated or compacted, and buried or otherwise disposed of, in a manner designed to prevent contamination of ground or surface waters, and that contingency plans are developed to prevent sustained combustion;

(15) Insure that explosives are used only in accordance with existing state and federal law and the regulations promulgated by the commissioner, which shall include provisions to:

(A) Provide adequate written notice to local governments and residents who might be affected by the use of such explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half (½) mile of the proposed blasting site, and by providing daily notice to residents/occupiers in such areas prior to any blasting;

(B) Maintain for a period of at least three (3) years and make available for public inspection upon request, a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts;

(C) Limit the type of explosives and detonating equipment, and the size, timing, and frequency of blasts based upon the physical conditions of the site so as to prevent:

(i) Injury to persons;

(ii) Damage to public and private property outside the permit area;

(iii) Adverse impacts on an underground mine; and

(iv) Change in the course, channel, or availability of ground or surface water outside the permit area;

(D) Require that all blasting operations be conducted by trained and competent persons as certified by the commissioner; and

(E) Provide that, upon the request of a resident or owner of a man-made dwelling or structure within one-half (½) mile of any portion of the permitted area, the applicant or permittee shall conduct a pre-blasting survey of such structures and submit the survey to the commissioner with a copy to the resident or owner making the request. (The area of the survey shall be decided by the commissioner, and shall include such provisions as the secretary shall require.);

(16) Insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operation; provided, however, that where the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the coal, the commissioner may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable so as to permit underground mining operations prior to reclamation:

(A) If the commissioner finds in writing that:

(i) The applicant has presented, as part of the permit application, specific feasible plans for the proposed underground mining operations;

(ii) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the coal and will avoid multiple disturbances of the surface;

(iii) The applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the state and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) The areas proposed for the variance have been shown by the applicant to be necessary for the implementation of the proposed underground mining operations;

(v) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this part; and

(vi) Provisions for the off-site storage of spoil will comply with subsection (b)(22);

(B) If the secretary has promulgated specific regulations to govern the granting of such variances in accordance with the provisions of this part, and has imposed such additional requirements as he deems necessary;

(C) If variances granted under the provisions of this subsection are to be reviewed by the commissioner not more

than one (1) year from the date of issuance of the permit; and

(D) If liability under the bond filed by the applicant with the commissioner pursuant to this part, shall be for the duration of the underground mining operations and until the requirements of this part have been fully complied with;

(17) Insure that the construction, maintenance, and postmining conditions of access or haul roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property;

(18) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity so as to seriously cause erosion or alter the normal flow of water;

(19) Establish on the regraded areas, and all other lands affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan, such as to provide food and cover for wildlife;

(20) Assume the responsibility for a successful revegetation, as required by subsection (b)(19), for a period of five (5) full years after the last year of augmented seeding, fertilizing, liming, or other work in order to assure compliance with subsection (b)(19); provided, that when the commissioner approves a long-term intensive agricultural postmining land use, the applicable five (5) year period of responsibility for revegetation and productivity shall commence at the date of initial planting for such long-term intensive agricultural postmining land use; provided further, that when the commissioner issues a written finding approving a long-term, intensive, agricultural postmining land use as part of the mining and reclamation plan, he may grant exception to the provisions of subsection (b)(19);

(21) Protect off-site areas from slides or damage occurring during the surface coal mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area;

(22) Place all excess spoil material resulting from coal surface mining and reclamation activities in such a location and controlled manner that:

(A) Spoil is transported and placed in a controlled manner in position for concurrent compaction to assure mass stability and to prevent mass movement;

(B) The areas of disposal are within the bonded permit areas and all organic matter is removed immediately and properly handled prior to spoil placement;

(C) Appropriate surface and internal drainage systems and diversion ditches are used to prevent spoil erosion and movement;

(D) The disposal area does not contain springs or natural water courses (If wet weather seeps are present, lateral drains shall be constructed from the wet areas to the main underdrain in such manner that filtration of the water into the spoil pile will be prevented.);

(E) If placed on a slope, the spoil is placed upon the most moderate or appropriate slope among those upon which, in the judgment of the commissioner, the spoil could be placed in compliance with all the requirements of this part, and shall be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement;

(F) Where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed;

(G) The final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses;

(H) Design of the spoil disposal area is certified by a registered engineer in conformance with professional standards; and

(I) All other provisons of this part are met.

(23) Meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(24) To the extent possible, using the best technology currently available, minimize disturbances and adverse impacts of the operations on fish, wildlife, and related environmental values, and achieve enhancement of such resources when practicable; and

(25) Provide for an undisturbed natural barrier, beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as the commissioner shall determine, which shall be retained in place as a barrier to slides and erosion.

(c)(1) Where an applicant meets the requirements of subdivisions (2) and (3) of this subsection, a permit without regard to the requirements to restore to approximate original contour set forth in subsection (b)(3) may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill (except as provided in subdivision (3)(A)) by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accordance with the requirements of this subsection.

(2) In cases where an industrial, commercial, agricultural, residential, or public facility (including a recreational facility) use is proposed for the postmining use of the affected land, the commissioner may grant a permit for a surface mining operation of the nature described in subdivision (1) of this subsection if:

(A) After consultation with the appropriate land use planning agencies, if any, the proposed postmining land use is deemed to constitute an equal or better economic or public use of the affected land, as compared with premining use;

(B) The applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be:

(i) Compatible with adjacent land uses;

(ii) Obtainable according to data regarding expected need and market;

(iii) Assured of investment in necessary public facilities;

(iv) Supported by commitments from public agencies, where appropriate;

(v) Practicable with respect to private financial capability for completion of the proposed use;

(vi) Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

(vii) Designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

(C) The proposed use would be consistent with adjacent land uses; and existing state and local use plans and programs;

(D) The commissioner provides the county executive and any state or federal agency which he, in his discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty (60)

days to review and comment on the proposed use; and

(E) All other requirements of this part will be met.

(3) In granting any permit pursuant to this subsection the commissioner shall require that:

(A) The toe of the lowest coal seam and the overburden associated with it are retained in place as a barrier to slides and erosion;

(B) The reclaimed area is stable;

(C) The resulting plateau or rolling contour drains inward from the outslopes except at specified points;

(D) No damage will be done to natural watercourses;

(E) Spoil will be placed on the mountaintop bench as is necessary to achieve the planned postmining land use; provided, that all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of subsection (b)(22); and

(F) The operator insures the stability of the spoil retained on the mountaintop and meets the other requirements of this part.

(4) The commissioner shall promulgate specific regulations to govern the granting of permits in accordance with the provisions of this subsection, and may impose such additional requirements as he deems to be necessary.

(5) All permits granted under the provisions of this subsection shall be reviewed not more than three (3) years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(d) The following performance standards shall be applicable to steep-slope surface coal mining, and shall be in addition to those general performance standards required by this section; provided, however, that the provisions of this subsection shall not apply to those situations in which an operator is mining on flat or gently rolling terrain, and on which an occassional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area, or where an operator is in compliance with provisions of subsection (c):

(1) When performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter shall be placed on the downslope below the bench or mining cut; providced, that spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of this part shall be permanently stored according to the requirements of subsection (b)(22) at an appropriate location approved by the commissioner;

(2) Complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the approximate original contour in a manner designed to maintain stability following mining reclamation; and

(3) The operator may not disturb land above the top of the highwall except for the construction of necessary water diversion ditches as provided in the mining plan, unless the commissioner finds that such disturbances will facilitate compliance with the environmental protection standards of this section; provided, however, that the land disturbed above the highwall shall be limited to that amount necessary to facilitate this compliance.

(e)(1) The commissioner may permit variances for the purposes set forth in subdivision (3) of this subsection, if the watershed control of the area is improved and the highwall is completely covered with material which is designed to maintain stability following mining and reclamation.

(2) Where an applicant meets the requirements of subdivisions (3) and (4) of this subsection a variance from the requirements to restore the area to the approximate original contour set forth in subsection (d)(2), may be granted where the owner of the surface knowingly requests in writing, as a part of the permit application, that such a variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use (including recreational facilities) in accordance with the further provisions of subdivisions (3) and (4) of this subsection.

(3)(A) After consultation with the appropriate land use planning agencies, if any, the potential use of the affected land must be deemed to constitute an equal or better economic or public use;

(B) The backfilling and regrading shall be designed and certified by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site; and

(C) After approval of the appropriate state environmental agencies, the watershed of the affected land shall be deemed to be improved.

(4) In granting a variance pursuant to this subsection, the commissioner shall require that only that amount of spoil is placed off the mine bench as is necessary to achieve the planned postmining land use, that the spoil retained on the bench is designed to be stable, that all spoil placement off the mine bench must comply with subsection (b)(22), and that all other requirements of this part are met.

(5) The commissioner shall promulgate specific regulations to govern the granting of variances in accordance with the provisions of this subsection, and may impose such additional requirements as he deems necessary.

(6) All exceptions granted under the provisions of this subsection shall be reviewed not more than three (3) years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan. [Acts 1980 (Adj. S.), ch. 908, § 11; 1981, ch. 280, § 3.]

59-8-312. Surface effects of underground coal mining operations.—(a) No person shall conduct underground coal mining operations until he has obtained a permit limiting and controlling the surface effects of the mining, paid the required fee as set in § 59-8-308, and posted a performance bond, as set in § 59-8-309, conditioned on satisfactory reclamation of the surface disturbances of the underground coal mining operations.

(b) The commissioner shall promulgate regulations designed to minimize the surface effects of underground coal mining operations, embodying the following requirements and in accordance with the procedures established under this part; provided, however, that in adopting regulations, the commissioner shall consider the distinct difference between surface coal mining and underground coal mining. The regulations shall not conflict with nor supersede any provision of the federal Coal Mine Health and Safety Act of 1969 nor any regulation issued pursuant to that act, and shall not be promulgated until the commissioner has obtained the written concurrence of the head of the department which administers that act.

(c) Each permit issued under this part and relating to underground coal mining shall require the operator to:

(1) Adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of such surface lands, except in those instances where the mining technology used

requires planned subsidence in a predictable and controlled manner; provided, that nothing in subsection (c) of this section shall be construed to prohibit the standard method of room and pillar mining;

(2) Seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine working when no longer needed for the conduct of the mining operations;

(3) Fill or seal exploratory holes no longer necessary for mining, maximizing, to the extent technologically and economically feasible, the return of mine and processing waste, tailings, and any other waste incident to the mining operation, to the mine workings or excavations;

(4) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes, in areas other than the mine workings or excavations, stabilize all waste piles created by the permittee from current operations, through construction in compacted layers, including the use of incombustible and impervious materials, if necessary; assuer that the leachate will not degrade surface or ground waters below water quality standards established pursuant to applicable federal and state law; assure that the final contour of the waste accumulation will be compatible with natural surroundings; and assure that the site is stabilized and revegetated according to the provisions of this section;

(5) Design, locate, construct, maintain, enlarge, modify, and remover or abandon, in accordance with the standards and criteria developed pursuant to this part, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes and used either temporarily or permanently as dams or embankments;

(6) Establish on regraded areas and all other lands affected, a diverse, effective, and primarily native permanent vegetation cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area;

(7) Protect off-site areas from damages which may result from such mining operations;

(8) Eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(9) Minimize the disturbances of the prevailing hydrologic balance at the minesite and in associated off-site areas and to the quantity of water in surface ground water systems both during and after coal mining operations, and during reclamation by:

(A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(i) Preventing or removing water from contact with toxic producing deposits;

(ii) Treating drainage to produce a discharge which does not adversely affect downstream water upon being released to water courses;

(iii) Casing, sealing, or otherwise managing boreholes, shafts, and wells, to keep acid or other toxic drainage from entering ground and surface waters; and

(B) Conducting surface coal mining operations to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area (but in no event shall contributions be in excess of requirements set by applicable state or federal law), and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(10) With respect to other surface impacts not specified in this subsection, including but not limited to, the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under this part for such effects which result from surface coal mining operations; provided, however, that the commissioner shall make such modifications in the requirements imposed by this subdivision as are necessary to accommodate the distinct difference between surface and underground coal mining;

(11) To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable; and

(12) Locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(d) In order to protect the stability of the land, the commissioner shall suspend underground coal mining under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, impoundments, or streams, if he finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

(e) The previsions of this part relating to permits, bonds, inspections and enforcement, public review, and administrative and judicial review, shall be applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to permit requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining. The commissioner shall promulgate such modifications in accordance with the rulemaking procedure established in this part. [Acts 1980 (Adj. S.) ch. 908.§ 12.]

59–8–313. Permit approval or denial.—(a) Upon receipt of a coal mining permit application, the commissioner shall notify applicable local governmental bodies, planning agencies, county tax assessor, and water and waste-water treatment authorities or companies in the locality of the proposed coal surface mine, of the operator's intent to surface mine a specific tract, and inform them where a copy of the proposed mining and reclamation plan may be inspected. They may then submit written comments within a reasonable period of time established by the commissioner, which shall not be less than thirty (30) days, with respect to the effects of the proposed operation on the environment which are within their area of responsiblity. Such comments shall immediately transmitted to the applicant by the commissioner, and shall be made available to the public at the same location as are the mining permit applications.

(b) Any person may have the right to see and review the entire application, except for information for which confidentiality is provided in this part or otherwise by law, and any person having an interest which is or may be adversely affected, or the officer or head of any federal, state, or local governmental agency or authority may file written objections to the application for a permit within thirty (30) days after the last publication of the newspaper notice provided for in § 59–8–307(b)(9), or the receipt of a complete application, whichever is later. Such objections shall immediately be transmitted to the applicant by the commissioner and shall be made available to the public. If written objections are filed and an informal conference requested, the commissioner shall then hold an informal conference in the locality of the proposed coal mining, if requested within a reasonable time of the receipt of such objections or request. The date, time, and location of such informal

conference shall be advertised by the commissioner in a newspaper of general circulation in the locality at least two (2) weeks prior to the scheduled conference date. The commissioner may arrange with the applicant upon request by a party to the administrative proceedings, access to the proposed mining area for the purpose of gathering information relevant to the proceeding. An electronic or stenographic record shall be made of the conference proceedings unless waived by all parties. The record shall be maintained and shall be accessible to the parties until final release of the applicant's performance bond. In the event all parties requesting the informal conference stipulate agreement prior to the requested informal conference and withdraw their request, such informal conference need not be held.

(c) If an informal conference has been held pursuant to this section, the commissioner shall issue and furnish the applicant for a permit, and persons who are parties to the administrative proceedings, with his written findings, granting or denying the permit in whole or in part, and stating the reasons therefor, within sixty (60) days of the informal conference, and within one hundred twenty (120) days of the filing of a complete application.

(d) If there has been no informal conference held pursuant to this section, the commissioner shall notify the applicant for a permit within sixty (60) days after the filing of a complete new, amendment, or renewal application, but not before thirty (30) days, whether the application has been approved or disapproved in whole or in part.

(e) If the application is approved, the permit shall be issued upon the posting of the required bond. Within ten (10) days after the granting of a permit, the commissioner shall notify the local governmental officials in the local political subdivision in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land. If the application is disapproved, specific reasons therefor must be set forth in the notification. Any person with an interest which is or may be adversely affected by any decision of the commissioner in granting, denying, or modifying any permit application, may appeal to the board of reclamation review within thirty (30) days. Such hearing shall be held within thirty (30) days of filing of such appeal and the hearing shall otherwise be conducted as provided in §59–8–321(g).

(f) An applicant may submit a complete application containing a mining and reclamation plan and maps in which the mining and reclamation work is separated into clearly identified and defined increments, and may request incremental permitting and bonding. The newspaper notice shall clearly state the plan, sequence and timetable of mining. The commissioner shall evaluate the entire complete application, and if he approves it, shall issue a written letter of approval of the mining and reclamation plan to the applicant, and, upon the posting of a bond for the first increment, shall issue a permit for the first increment.

When the applicant wishes to begin operations on the second or next increment, he shall notify the commissioner at least sixty (60) days in advance in writing. The commissioner shall then inspect the operation to determine if the operation is in compliance with this part, regulations, orders, permit requirements and the original approved mining and reclamation plan. After inspection approval and the necessary bond has been posted, the commissioner shall adjust the permit to include the second or next increment, without the need for another permit application, newspaper notice, or hearing. The commissioner may not require revision of an approved mining and reclamation plan or withdraw his letter of approval unless he finds that the present plan is not working or is inadequate to protect the public and the environment.

(g) No permit, amendment, or revision application shall be approved unless the application affirmatively demonstrates, and the commissioner finds in writing, on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval and made available to the applicant, that:

(1) The permit application is accurate and complete and that all the requirements of this part and any regulations issued pursuant to this part have been complied with;

(2) The applicant has demonstrated that reclamation as required by this part and any regulations issued pursuant to this part can be accomplished under the reclamation plan contained in the permit application;

(3) The assessment of the probable cumulative impact of all anticipated coal surface mining in the area on the hydrologic balance has been made by the commissioner, and the proposed operation thereof has been designed to prevent material damage to hydrologic balance outside the permit area; and

(4) The area proposed to be mined for coal is not included within an area designated unsuitable for surface coal mining pursuant to § 59–8–331, or is not within an area under study for such designation in an administrative proceeding commenced pursuant to § 59–8–331 (unless the operator demonstrates that prior to January 1, 1977, he has made substantial legal and financial commitments in relation to a mining operation for which he is applying for a permit).

(h) If the commissioner finds that the overburden on any part of the area of land described in the application would not adequately support reclamation vegetation or is such that landslides, deposition of sediment in stream beds or water pollution cannot be strictly controlled, the commissioner shall delete such part of the land from the area for which the permit is granted.

(i) No permit for surface coal mining or exploration shall be granted if:

(1) The applicant has had any Tennessee surface mining or exploration permit suspended or revoked, and the bond forfeited; or

(2) The applicant is or was a partner in a partnership, or was an officer, director, or owner of ten percent (10%) or more of the stock of a corporation which has had a Tennessee surface mining or exploration permit suspended or revoked, and the bond forfeited; or

(3) In the event that the applicant is a corporation, partnership, association, or other business entity, any partner in the partnership, or any officer, director, or owner of ten percent (10%) or more of the stock, or agent or representative, has had a Tennessee surface mining or exploration permit suspended or revoked, and the bond forfeited;

unless the area covered by the previously suspended or revoked permit has been reclaimed or is in the process of being reclaimed by the responsible operator in compliance with the provisions of this part at no cost to the state of Tennessee; or

(4) The applicant has been previously found to have surface mined or conducted exploration without a permit for which a cease order has been issued, unless the area affected has been reclaimed by the responsible operator at no cost or loss of revenue of the state of Tennessee. (The reclamation standards shall be determined by the commissioner, based on appropriate provisions of applicable Tennessee law and regulations at the time the cease order was issued); or

(5) The applicant has continued to conduct exploration or surface mining operation disturbances without a permit, after May 11, 1981, after a cease order has been issued, unless such cease order has been administratively or judicially overruled.

(j) If the commissioner finds at any time, that any part of an operation would constitute or is constituting a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, road, aquifer, stream, lake, reservoir, water wells, officially designated state-owned management or scenic areas, or other private or public property, the commissioner shall deny the application, delete such part of the land from the permit, or suspend or revoke the permit.

(k) Where a schedule of violations or cease orders submitted with a permit application or other information available to the commissioner indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this part or such other laws referred to in § 59–8–307(b)(4), the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the commissioner, department, or agency which has jurisdiction over such violation, and no permit shall be issued to an applicant after a finding by the commissioner, after opportunity for hearing, that the applicant or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this part of such nature and duration or with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this part.

(l)(1) In addition to finding the application in compliance with this section, if an area proposed to be mined for coal contains prime farmland, as defined by the secretary of agriculture, the commissioner shall, after consultation with the U.S. secretary of agriculture, and pursuant to regulations issued hereunder by the commissioner with the concurrence of the U.S. secretary of agriculture, grant a permit to surface mine for coal on prime farmland if the commissioner finds in writing that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in this part.

(2) Nothing in this subsection shall apply to any permit issued prior to August 3, 1977, or to any revisions or renewals thereof, or to any existing surface coal mining operations for which a permit was issued prior to August 3, 1977.

(m) No permit shall be issued to any applicant, operator or subcontractor who is in violation of this part until such violations have been corrected or brought into compliance, or are in the process of being corrected or brought into compliance to the satisfaction of the commissioner, department, or agency which has jurisdiction over such violation, with this part.

(n) No application for a permit shall be approved by the commissioner if there is found, on the basis of the information set forth in the application, or by on-the-ground inspection, that the requirements of this part, or regulations or permits issued pursuant to this part, cannot be observed, or that there is probable cause to believe that the proposed method of operation, road system construction, regrading, or revegetation of the affected area cannot or will not be carried out in a manner consistent with the purpose of this part, regulations, and applicable air, noise, and water standards of this state.

(o) A permit shall expire if the permittee has not commenced the mining or exploration operation covered by such permit within one (1) year of issuance of the permit; provided, that the commissioner may grant an extension for a reasonable amount of time if the permittee shows in writing, and the commissioner approves, that an extension is necessary because of litigation precluding commencement of coal mining or threatening substantial economic loss to the permittee, or because of conditions beyond the control and without the fault or negligence of the permittee. Provided further, that in the case of a coal lease issued under the federal Mineral Leasing Act (compiled in 30 U.S.C. § 181 et seq.), as amended, extensions of time may not extend beyond the period allowed for diligent development in accordance with 30 U.S.C. § 207: provided further, that with respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.

(p)(1) The operator may apply for renewal of a permit for acreage previously permitted, and the renewal shall be issued for a period of time requested by the operator, and approved by the commissioner, subsequent to the public notice requirements of § 59–8–307(b)(9) up to a maximum of five (5) years, but shall not exceed the period of the original permit. A permit renewal shall be issued unless it is established by the commissioner or an opponent of the renewal that:

(A) The coal mining, exploration and/or reclamation operations are not in compliance with the requirement of this part, regulations, orders of the commissioner, and the existing permit, and the approved plans, commitments, or maps in the application for the existing permit;

(B) The renewal requested substantially jeopardizes the operator's continuing responsibility on other existing permit areas;

(C) The performance bond is not sufficient to assure the completion of the reclamation plan if the work had to be performed by the state in the event of forfeiture;

(D) The operator has not provided evidence that the performance bond in effect for said operation will continue in full force and effect; or

(E) Any additional revised or updated information required by the commissioner has not been provided.

Prior to the approval of any permit renewal, the commissioner shall provide notice to the appropriate public authorities.

(2) If an application for renewal of a valid permit includes the addition of new area extending the operation beyond the boundaries authorized in the existing permit, that portion of the application which addresses the new area shall be permitted as an amendment subject to the full standards applicable to new applications under this part.

(3) Application for permit renewal shall be made at least one hundred twenty (120) days prior to the expiration of the valid permit.

(q) No permit shall be granted unless the applicant can show his legal right to enter upon the area affected by the proposed permit. If evidence is presented that a suit questioning the applicant's legal right to enter has been filed, no permit shall be granted until the question is resolved.

(r) After May 2, 1980, and subject to valid existing rights, no surface coal mining operations except those which existed on August 3, 1977, shall be permitted:

(1) On any lands within the boundaries of the national park system, the national wildlife refuge systems, the national system of trails, the national wilderness preservation system, the wild and scenic river system, including study rivers designated under the Wild and Scenic River Act, and national

recreational areas designated by act of congress;

(2) On any federal lands within the boundaries of any national forest; provided, however, that surface coal mining operations may be permitted on such lands if the secretary finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations and the surface operations and impacts are incident to an underground coal mine;

(3) Which will adversely affect any public park, Tennessee wildlife resources agency management areas, unit of the Tennessee outdoor recreation area system; or places included in the National Register of Historic Sites, unless approved jointly by the commissioner and the federal, state, or local agency with jurisdiction over the park, area, or site;

(4) Within one hundred feet (100') of the outside right-of-way line of any public roads, except where mine access roads or haulage roads join such right-of-way line, and except that the commissioner may permit such roads to be relocated, or the area affected to lie within one hundred feet (100') of such road, if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected thereby will be protected; or

(5) Within three hundred feet (300') from any occupied dwelling, unless waived by the owner thereof, nor within three hundred feet (300') of any public building, school, church, community, or institutional building, or public park, or within one hundred feet (100') of a cemetery.

(s) Any action taken in accordance with the provisions of this section shall be conducted in accordance with the provisions of chapter 18 of title 13 when the action involves a major energy project, as defined in § 13–18–102.

(t) No permit shall be issued to any applicant, operator or subcontractor who is in violation of this section until such violations have been corrected or brought into compliance with this part or such applicant, operator or subcontractor deposits cash bond with the commissioner to assure such correction or compliance. However, if such violation is upon appeal this provision shall not apply. [Acts 1980 (Adj. S.), ch. 908, § 13; 1981, ch. 131, § 42; 1981, ch. 169, § 1; 1981, ch. 280, §§ 4, 5; 1983, ch. 204, § 2.]

59–8–314. Revision of permits.—(a)(1) During the term of the permit, the permittee may submit an application for a revision of the surface coal mining permit, together with a revised reclamation plan and other information as necessary or requested by the commissioner. The commissioner may also require revision of a permit or a mining or reclamation plan if the present plan is shown to be inadequate to protect the public and the environment.

(2) An application for a revision of a permit shall not be approved unless the commissioner finds that the revision meets all the standards of this part and regulations issued pursuant thereto. The commissioner shall by regulation establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply. Any revisions which propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements.

(3) Any acreage changes in the area covered by the permit except for incidental boundary revisions shall be made by application for a new permit, except as provided in § 59–8–313(f).

(b) No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this part shall be made without the written approval of the commissioner.

(c) The commissioner shall, within one year after May 2, 1980, review outstanding surface coal mining permits and may require reasonable revision or modification of the permit provisions during the term of the permit. Provided, that such revision or modification shall be based upon a written finding and subject to notice and hearing requirements of this part and any regulations issued pursuant to this part. [Acts 1980 (Adj. S.), ch. 908, § 14.]

59–8–315. Inspection and monitoring.[2]—(a) The commissioner shall cause to be made such inspections of any coal exploration or coal surface mining and reclamation opeations as are necessary to evaluate the administration of the program or to determine whether such operation is in compliance with this part and all regulations and permits issued pursuant to this part, and for such purposes authorized representatives of the commissioner shall have a right of entry to, upon, or through, any exploration or surface coal mining and reclamation operation.

(b) The inspections shall:

(1) Occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter;

(2) Occur without prior notice to the permittee or his agents or employees, except for necessary on-site meetings with the permittee; and

(3) Include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this part.

(c) Each permittee shall conspicuously maintain at the entrances to each surface coal mining and reclamation operation, a clearly visible sign which sets forth the name, business address, and phone number of the permittee, and the permit number of the surface coal mining and reclamation operations.

(d) Each inspector, upon detection of each violation of any requirement of this part or any regulation, permit, or order issued pursuant to this part, shall immediately inform the operator in writing, and shall report in writing any such violation to the commissioner.

(e) The commissioner shall require all permittees to:

(1) Establish and maintain appropriate records;

(2) Make monthly reports to the commissioner;

(3) Install, use, and maintain any necessary monitoring equipment or methods;

(4) Evaluate results in accordance with such methods, at such locations, intervals, and in such manner as he shall prescribe; and

(5) Provide such other information relative to surface coal mining and reclamation operations as he deems reasonable and necessary.

(f) For those surface coal mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure hydrologic balance or water use, either on or off the mining site, the commissioner shall specify:

(1) Monitoring sites to record the quantity and quality of surface drainage above and below the mine site as well as in the potential zone of influence;

(2) Monitoring sites to record level, amount, and samples of ground water and aquifers potentially affected by the mining and also directly below the lowermost (deepest) coal seam to be mined;

(3) Records of well logs and borehole data to be maintained; and

(4) Monitoring sites to record precipitation.

The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth by the commissioner in order to insure their reliability and validity.

(g) The authorized representatives of the commissioner, without advance

notice, and upon presentation of appropriate credentials:

(1) Shall have the right of entry to, upon, or through any coal exploration or surface coal mining and reclamation operation or any premises in which any records required to be maintained under subsections (e) and (f) of this section are located; and

(2) May at reasonable times, and without delay, have access to and copy any records, and inspect any monitoring equipment or method of operation required under this part.

(h) Copies of any records, reports inspection materials, or information obtained under this part by the commissioner shall be made immediately available to the public at convenient locations in the area of the mining.

(i) Whenever on the basis of any information available to him, including receipt of information from any person, the commissioner has reason to believe that any person is in violation of any requirement of this part, regulation issued pursuant to this part, or any permit condition, order, or notice of violation, issued under this part, the commissioner shall investigate, and if the violation is confirmed, take appropriate action within ten (10) days (or immediately, if proof is provided that an imminent danger of significant environmental harm exists). The identity of any person supplying information shall remain confidential, if requested by such person. When an inspection results from information provided to the commissioner by any person, the commissioner shall notify such person when the inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection. Within ten (10) days of the inspection, or fifteen (15) days of the complaint if there is no inspection, the commissioner shall send a complete report to the complainant. Any person dissatisfied with the action of the commissioner may appeal to the board of reclamation review as provided in § 59–8–321. [Acts 1980 (Adj. S.), ch. 908, § 15.]

59–8–316. Annual report—Release of performance bonds or deposits.—(a) The operator shall file with the commissioner an annual report and map for each permit at least thirty (30) days before the yearly anniversary date of the original permit, clearly indicating the location of the area and number of acres affected by the operation, the location of the area and number of acres of grading and revegetation accomplished by him, and such other information as the commissioner may require by orders an regulations, and may request release of the performance bond or deposit for the area which has been reclaimed. If the report and the commissioner's inspection of the area affected show that the operator has complied fully, the commissioner shall approve the report and may release all or any portion of the operator's bond, if appropriate under other provisions of this part. If the commissioner does not approve the report, the bond shall not be released until the operator corrects the deficiencies found by the commissioner. Provided, however, that a bond may be released on a portion of a permitted area if the operator files a report containing the same information as required for an annual report with the bond release request, the commissioner approves such report and an inspection of the area affected shows compliance with reclamation requirements of this part. No bond shall be released on unmined permitted land as along as an operator is in violation of this part, or regulations, permits, or orders issued pursuant to this part, on the mined portion of the area. Subsequent annual reports and maps shall be required until the entire reclamation bond has been released, or until it has been forfeited.

(b) Within thirty (30) days after any application for bond or deposit release has been initiated and filed with the commissioner, the operator shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit number and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the operator's approved plan. In addition, as part of any bond release application, the applicant shall submit copies of letters which he has sent to adjoining owners, local government bodies, planning agencies, and sewage and water treatment authorities or water companies, where applicable in the locality in which the surface coal mining and reclamation activities took place, notifying them of his intention to seek partial or total release from the bond.

(c) Upon receipt of any notification and request, the commissioner shall within thirty (30) days conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the degree of difficulty to complete or evaluate any remaining reclamation, whether pollution or diminution of surface or subsurface water is occurring, the probability of continuation of the pollution or diminution, and the estimated cost of abating or correcting it. The commissioner shall notify the permittee in writing of his decision to release or not to release all or part of the performance bond or deposit within sixty (60) days from the filing of the request, if no public hearing is held pursuant to this part, and if there has been a public hearing held pursuant to this part, within thirty (30) days thereafter. A copy of any notification of a decision not to release all or part of a bond shall be sent to the operator's surety.

(d) The commissioner may release all or part of the bond or deposit when he is satisfied that the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this part. The remaining bond shall be sufficient to satisfy all final reclamation requirements.

(1) When the operator performs the backfilling, regrading, topsoiling, drainage control, site preparation, spoil treatments, mulching, and initial planting of the vegetative cover in accordance with the approved plan as noted on a annual report, the commissioner may issue to the operator and his surety, a partial release of no greater than seventy percent (70%) of the surety bond for each acre of the affected area with respect to which the approved reclamation plan has been carried out. The remaining bond shall be held, at a minimum, five (5) years after the last year of augmented seeding, fertilizing, irrigation, or other work to assure that all reclamation requirements have been successfully met. A portion of such remaining bond may be released prior to such five (5) year period in accordance with regulations of the commissioner.

(2) The commissioner shall retain that amount of bond for the affected area which would be sufficient for a third party to cover the cost of all remaining reclamation work and reestablishing vegetation. The remainder of the bond or deposit shall not be released under this subsection so long as the disturbed lands are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by this part or until soil productivity for prime farmlands has returned to equivalent levels of yield as non-mined lands of the same soil type in the surrounding area under equivalent management practices as determined

from the soil survey performed pursuant to this part. Where a silt dam or impoundment approved as part of the mining or reclamation plan is to be retained as a permanent impoundment pursuant to § 59–8–311(b)(8), the portion of the bond may be released under this subsection so long as it meets the post-mining land use criteria, water quality and quantity concerns, and provisions for sound future maintenance by the operator or the landowner have been made with the commissioner.

(3) The permittee shall not be denied access to the mining site for the purposes of completing or maintaining reclamation work because of the expiration of his lease, until all of his performance bond has been released.

(e) If the commissioner disapproves the application for release of the bond or portion thereof, he shall notify the permittee and his surety, stating the reasons for disapproval and ordering specific corrective actions necessary to secure the release, and allowing him an opportunity for a public hearing. This notice and order shall be handed to the operator in person, or served by certified mail addressed to the permanent address shown on the application for a permit. The notice shall specifiy in what respects the operator has failed to comply with this part, or the regulations or orders of the commissioner.

(f) When any application for total or partial bond release is filed with the commissioner, he shall notify the county executive of the county in which the surface coal mining operation is located by certified mail at least thirty (30) days prior to the release of all or a portion of the bond.

(g) Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or development and enforcement of environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond to the commissioner within thirty (30) days after the last publication of the newspaper notice provided for in subsection (b) of this section. If written objections are filed as provided for above, and a hearing requested, the commissioner shall inform all the interested parties of the time and place of the hearing, and hold a public hearing in the locality of the surface coal mining operation proposed for bond release or in Nashville, at the option of the objector, within thirty (30) days of the request for such hearing. The date, time, and location of such public hearings shall be advertised by the commissioner in a newspaper of general circulation in the locality for two (2) consecutive weeks.

(h) Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the commissioner pursuant to this section, the commissioner may convene an informal conference as provided for in this part to resolve such written objections.

(i) For the purpose of the hearing provided for in subsection (g) of this section, the commissioner shall have the authority to administer oaths, subpoena witnesses, or written or printed material, compel the attendance of witnesses, or production of the materials, and take evidence, including but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing required by this part shall be made, and a transcript made available on the motion of any party or by order of the commissioner. [Acts 1980 (Adj. S.), ch. 908, § 16.]

59–8–317. Notice of violation—Suspension—Revocation—Bond forfeiture [4].—(a) If any operator violates the requirements of this part or regulations adopted pursuant thereto, or the terms of any permit or the terms of any order of the commissioner or his designee, the commissioner or his designee shall issue a written notice of violation to be delivered in accordance with the provisions of this section to the operator fixing a reasonable time, with a maximum of ninety (90) days, for correction. If necessary, the commissioner or his designee shall order suspension or revocation of a permit in accordance with the provisions of this part. The commissioner or his designee shall also issue an immediate cease order to any operator mining or exploring without a valid permit, or mining or exploring an area not covered by a valid permit.

The notice or order shall be handed to the operator and subcontractor in person, or sent by certified mail, return receipt requested, addressed to the operator and subcontractor's permanent address shown on the application for a permit. The notice of violation or cease order shall specify in what respects the operator has failed to comply with this part or the regulations, permit conditions, or orders of the commissioner or his designee, and shall impose whatever affirmative obligations are necessary to correct the violation. If the operator has not reached an agreement with the commissioner or his designee, or has not compljed with the requirements set forth in the notice of violation within the time limits set therein the commissioner or his designee shall issue a cease order. If such order is not complied with, or the operator refuses or fails to correct the violation, the permit may be revoked and the performance bond shall then be forfeited to the commissioner or his designee. When a bond is forfeited pursuant to the provisions of this part, the commissioner or his designee shall give notice to the attorney general, who shall collect the forfeiture. The commissioner or his designee shall also issue cease orders, or suspend or revoke permits for a pattern of violations caused by an unwarranted failure to comply with the provisions of this part, or regulations, or a permit, after issuing a show cause order and offering opportunity for a public hearing of which all interested parties shall be notified. Upon the operator's failure to show cause why the permit should not be suspended or revoked, the commissioner or his designee shall suspend or revoke the permit. Any such hearing shall be of record and shall be subject to 5 U.S.C. § 554. Within sixty (60) days following the public hearing, the commissioner or his designee shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the reasons therefor, concerning suspension or revocation of the permit. If the permit is revoked, the operator shall immediately cease mining and complete reclamation within a period specified by the commissioner or his designee, or the commissioner or his designee shall declare as forfeited the performance bond for the operation.

(b) If the commissioner or his designee determines that there is imminent danger to the health or safety of the public, or the probability of significant, imminent environmental harm, he shall issue an immediate, emergency cease order, directing all operations to cease except those directed toward removing the danger. Provided, however, that such order shall expire within thirty (30) days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of the public hearing.

(c) A copy of all notices of violation, cease orders, suspensions, and revocations shall be sent to the operator's surety.

(d) Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the

commissioner or his authorized representative. [Acts 1980 (Adj. S.), ch. 908, § 17; 1981, ch. 169, §§ 4, 5; 1981, ch. 280, § 6.]

59-8-318. Penalties.[1]—(a) Any person who violates any of the provisions of this part or regulations adopted pursuant thereto, or fails to perform the duties imposed by these provisions, or fails or refuses to obtain a permit as provided herein, or who violates any determination or order or permit promulgated pursuant to the provisions of this part, may be assessed, by the commissioner, a civil penalty of not more than five thousand dollars ($5,000) for each violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In addition, the violator may be enjoined from continuing such violations as hereinafter provided. The commissioner shall assess a penalty in all cases in which a second notice of violation for any singular violation, cease order, suspension, or revocation is issued. Notification of such assessment shall be made by certified mail to the person's last known mailing address. If an appeal from an assessment is not made to the commissioner by the person so assessed within thirty (30) days of notification of such assessment, he shall be deemed to have consented to the assessment, and it shall become final. Whenever any assessment has become final because of a person's failure to appeal within the time provided, such person shall pay the penalty. If he refuses or neglects to pay the penalty, the attorney general, upon request by the commissioner, may apply for a judgment and seek execution on such judgment, and venue and jurisdiction for such action shall be in the Davidson county chancery court or circuit court or the chancery court or circuit court in whose district the surface mining operation is located; the provisions of § 20-4-101, to the contrary notwithstanding. The court, in such proceedings, shall treat the failure to appeal such assessment as a confession of judgment in the amount of the assessment.

(b) A civil penalty shall be assessed by the commissioner only after the person charged with a violation described under subsection (a) of this section has been given an opportunity for a public hearing. Where such a public hearing has been held, the commissioner shall make findings of fact, and he shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the commissioner shall consolidate such hearings with other proceedings under § 59-8-319. Any hearing under this section shall be of record and shall be subject to the provisions of §§ 4-5-101—4-5-121. Where the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the commissioner after he has determined that a violation did occur, and the amount of the penalty which is warranted, and has issued an order requiring that the penalty be paid.

(c) Upon the issuance of a notice or order charging that a violation of this part has occurred, the commissioner shall inform the person within thirty (30) days of the proposed amount of the penalty. In determining the amount of the penalty, consideration shall be given to the person's history of previous violations; the seriousness of the violation, including any irreparable harm to the environment, and any hazard to the health or safety of the public; whether the person was negligent; and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of the violation. The person charged with the penalty shall then have thirty (30) days to pay the proposed penalty in full, or if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the commissioner for placement in an escrow account. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty should be reduced, the commissioner shall within thirty (30) days, remit the appropriate amount to the person, with interest at the rate of six percent (6%), or at the prevailing department of treasury rate, whichever is greater. Failure to forward the money to the commissioner within thirty (30) days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(d) Any person who violates any of the provisions of this part or regulations adopted pursuant thereto, or who fails to perform the duties imposed by these provisions or fails or refuses to obtain a permit as provided herein, or who violates any determination or order or permit promulgated pursuant to the provisions of this part, shall be liable to a civil penalty of not less than one hundred dollars ($100), nor more than five thousand dollars ($5,000) for each day during which such violation continues, and in addition, may be enjoined from continuing such violation as hereinafter provided. Such penalties shall be recoverable in an action brought in the name of the department of conservation by the attorney general, and venue and jurisdiction for such action shall be in the Davidson county chancery court or circuit court or the chancery court or circuit court in whose district the surface mining operation is located: the provisions of § 20-4-101, to the contrary notwithstanding, and all sums recovered shall be placed in the state treasury and credited to the Tennessee surface mining reclamation fund.

(e) It shall be the duty of the district attorney general in the various circuits throughout the state, or the attorney general, upon the request of the commissioner, to bring an action for the recovery of the penalties herein provided for and to bring an action for a restraining order, temporary or permanent injunction, against any person violating or threatening to violate any of the provisions of this part, or violating or threatening to violate any order or determination promulgated pursuant to the provisions of this part.

(f) Any person who willfully violates any of the provisions of this part, or any regulation, determination, permit, or order promulgated pursuant to this part, or who willfully and knowingly falsifies or fails to make any statement, representation, or certification in any records, information, plans, specifications, or other data required by the board or the commissioner, or who willfully fails, neglects, or refuses to comply with any of the provisions of this part, or any regulation, determination, permit, or order promulgated pursuant to this part, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than one thousand dollars ($1,000), and not more than ten thousand dollars ($10,000) or by imprisonment for not more than one (1) year or both. Each day on which a violation occurs shall constitute a separate offense.

(g) Any person who willfully and knowingly engages in surface coal mining without first obtaining a permit for that mine from the commissioner, or any person who willfully and knowingly engages in activities incident to surface coal mining without a permit for that mine, as required by the department, shall be guilty of a felony, and upon conviction, shall be punished by a fine of not less than one thousand dollars ($1,000) and not more than ten thousand dollars ($10,000), or by imprisonment for a term not to exceed three (3) years, or both.

(h) Any person who except as permitted by law, willfully prevents or impedes an employee of the state of Tennessee from performing his duty under this part, or who willfully encourages another to prevent or impede an employee of the state of Tennessee from performing his duty under this part, shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than one thousand dollars ($1,000) and not more than ten thousand dollars ($10,000), or imprisonment not to exceed three (3) years, or both.

(i) Whenever a corporate permittee violates this part, or regulations issued pursuant to this part, or permit, or fails or refuses to comply with any order issued under this part, any director, officer, or agent, of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under this section.

(j) Any operator who fails to correct a violation for which a notice has been issued under § 59–8–317 within the period permitted for its correction (which period shall not end until the entry of a final order by the board, in the case of any review proceedings under § 59–8–321 initiated by the operator wherein the commissioner orders, after an expedited hearing, the suspension of the abatement requirements of the notice after determining that the operator will suffer irreparable loss or damage from the application of those requirements, or until the entry of an order of the court, in the case of any review proceedings under § 59–8–322 initiated by the operator wherein the court orders the suspension of the abatement requirements of the notice), shall be assessed a civil penalty of not less than seven hundred fifty dollars ($750) for each day during which such failure or violation continues.

(k) Anyone who knowingly violates the conflict of interest provisions of § 59–8–333 shall, upon conviction, be punished by a fine of not more than twenty-five hundred dollars ($2,500), or by imprisonment for not more than one (1) year, or both.

(l) All penalties recovered under this section shall be placed in the state treasury and credited to the Tennessee surface mining reclamation fund, provided for in § 59–8–212. Nothing in this part shall abrogate the right of any person who is materially or personally damaged or injured by the operation of a surface mine to seek his remedies against the responsible person in the courts. [Acts 1980 (Adj. S.), ch. 908, § 18; 1981, ch. 100, § 1; 1981, ch 280, § 7.]

59–8–319. Injunctive relief.[5]—(a) The commissioner may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order, and venue and jurisdiction for such action shall be in the Davidson county chancery or circuit court or the chancery court or circuit court in whose district the surface mining operation is located; the provisions of § 20–4–101 to the contrary notwithstanding, whenever such person, operator, or agent:

(1) violates or fails or refuses to comply with any order issued by the commissioner under this part;

(2) interferes with, hinders, or delays the commissioner or his authorized representatives in carrying out the provisions of this part;

(3) refuses to admit such authorized representative to a coal mine;

(4) refuses to permit inspection of a coal mine by such authorized representative;

(5) refuses to furnish any information or report requested by the commissioner in furtherance of the provisions of this part;

(6) refuses to permit access to, and copying of, such records as the commissioner determines necessary in carrying out the provisions of this part; or

(7) violates or threatens to violate any of the provisions of this part, or regulations issued pursuant to this part, or a permit issued pursuant to this part, or violates or threatens to violate any order or determination promulgated pursuant to the provisions of this part. Such court shall have jurisdiction to provide such relief as may be appropriate.

(b) The commissioner may bring suit for injunctive enforcement of any order made by him when any order has become final as a result of any person's failure to appeal to the board of reclamation review, and such person has failed to comply with the order. In such suits, all findings of fact contained in the order and complaint shall be deemed to be final, and not subject to review except as to receipt of notice of the order, but the defendant may proffer evidence showing that he has in fact complied with the commissioner's order. The order made by the commissioner in such cases shall be presumed to be reasonable and valid, and it shall be presumed that the commissioner has complied with all requirements of the law. The board may likewise bring suit for enforcement of any order made by it, which has become final either by the failure of any person to appeal the board's order or by an appellate court's decision against any person who fails to comply with such final order. In such suits, the board's decision shall not be subject to challenge as to matters of fact, but the violator may proffer evidence showing that he has in fact complied with the board's order.

(c) Any suit for a permanent or temporary injunction, restraining order, or any other appropriate order brought by the commissioner shall be filed and venue and jurisdiction for such action shall be in the Davidson county chancery court or circuit court, or the chancery court, or circuit court in whose district the surface mining operation is located, in which all or a part of the violation is or is about to occur; the provisions of § 20–4–101 to the contrary notwithstanding, in the name of the department by the district attorney general or by the attorney general at the direction of the commissioner or the board, and under the supervision of the attorney general. Such proceedings shall not be tried by jury. Appeals from judgments or decrees of the chancery court or circuit court in proceedings brought under the provisions of this part shall be made to the supreme court despite the fact that controverted questions of fact may be involved.

(d) Nothing in this part shall be construed so to eliminate any additional enforcement rights or procedures which are available under any state law to the commissioner but which are not specifically enumerated herein. [Acts 1980 (Adj. S.), ch. 908, § 19.]

59–8–320. Citizen suits.—(a)(1) Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this part:

(A) Against the state or any state or local governmental agency, to the extent permitted by the eleventh amendment to the U.S. Constitution, which is alleged to be in violation of the provisions of this part, or of any regulation, order, or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any regulation, order, or permit issued pursuant to this part; or

(B) Against the commissioner to the extent permitted by the eleventh amendment to the U.S. Constitution, where there is alleged a failure by the commissioner to perform any act or duty under this part which is not discretionary with the commissioner.

(2) Venue and jurisdiction for such actions shall be in the Davidson county

chancery court or the chancery court in whose district the surface coal mining operation is located; the provisions of § 20–4–101 to the contrary notwithstanding.

(b) No action may be commenced:

(1) Under subsection (a)(1)(A) of this section:

(A) Prior to sixty (60) days after the plaintiff has given notice in writing of the violation:

(i) To the secretary;

(ii) To the commissioner; and

(iii) To any alleged violator; or

(B) If the commissioner or the state has commenced and is diligently prosecuting a civil action in a court of the state to require compliance with the provisions of this part, or any regulation, order, or permit issued pursuant to this part, but in any such action any person may intervene as a matter of right; or

(2) Under subsection (a)(1)(B) of this section prior to sixty (60) days after the plaintiff has given notice in writing of such action to the commissioner, in such a manner as the commissioner shall by regulation prescribe, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(c)(1) Any civil action pursuant to this section shall be brought only in the Davidson county chancery court or the chancery court in the county in which the coal mining or exploration operation complained of is located, the provisions of § 20–4–101 to the contrary notwithstanding.

(2) In any such action under this section, the commissioner or the secretary, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Tennessee Rules of Civil Procedure.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any of the provisions of this part and the regulations issued pursuant to it, or to seek any other relief (including relief against the commissioner.)

(f) Any person who is injured in his person or property through the violation by any operator of any regulation, order, or permit issued pursuant to this part may bring an action for damages against the operator (including reasonable attorney and expert witness fees) only in the Davidson county chancery court or the chancery court of the county in which the coal exploration or mining operation complained of is located. Nothing in this subsection shall affect the rights established by or limits imposed under state worker's compensation laws. [Impl. am. Acts 1980 (Adj. S.), ch. 534, § 1; Acts 1980 (Adj. S.), ch. 908, § 20; 1981, ch. 100, § 2.]

59–8–321. Board of reclamation review.—(a)(1) There is hereby created the board of reclamation review to be composed of seven (7) members as follows:

(A) The commissioner of the department of public health, or his designee; the commissioner of the department of agriculture, or his designee; and five (5) citizen members appointed by the governor.

(B) Two (2) of the citizen members shall be from the public at large, neither of whom shall have a financial interest in the mining industry or in any related business; two (2) shall be representatives of the mining industries; and one (1) shall be a representative of an environmental organization. The first appointed citizen members shall hold office for staggered terms. One (1) shall hold office for one (1) year; two (2) shall hold office for two (2) years; and the other two (2) shall hold office for three (3) year terms. All subsequent appointments shall hold office for a full three (3) year term.

(C) All members shall serve until their successors have been appointed and qualified.

(D) Each appointed member shall be a resident and domiciliary of the state of Tennessee.

(E) No appointed member shall be appointed to more than two (2) consecutive full terms.

(F) Any appointed member who is absent from three (3) consecutive called meetings may be removed from the board and replaced by the governor.

(G) Upon the death, resignation, or removal of any appointed member, the governor shall fill the vacancy in the same manner as the original appointment and the successor shall serve the unexpired term of such member. The members of the board of reclamation review shall elect a chairman to serve for one (1) year. No member may serve two (2) successive terms as chairman.

(2) In addition to the members appointed in subsection (a)(1), the commissioner of conservation or his designee shall serve as a member of the board of reclamation review. The commissioner of conservation or his designee shall be a member of the board for the sole purpose of serving as a member of the advisory body to the governor for matters in connection with the Interstate Mining Compact created by § 59–10–101. Nothing in this section shall be construed as allowing the commissioner of conservation, or his designee, to participate in the activities of the board of reclamation review except as a member of the advisory commission to the Governor created by § 59–10–101.

(b) Each citizen member of the board shall be entitled to fifty dollars ($50.00) for each day actually and necessarily employed in the discharge of official duties, and in addition, each member of the board shall be entitled to receive travel and other necessary expenses when so authorized by the board. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general. Other necessary expenses shall be limited by the maximum provided under state law.

(c) The board shall have one (1) regularly scheduled meeting each year. Special meetings may be called by the chairman at any time, or shall be called as soon as possible upon the written request of two (2) members. All members shall be duly notified of the time and place of any regular or special meeting at least five (5) days in advance of such meeting. The majority of the board shall constitute a quorum, and the concurrence of a majority of those present shall be required for a determination of matters within its jurisdiction.

(d) The board shall keep a complete and accurate record of the proceedings of all its meetings, a copy of which shall be kept on file in the office of the director and open to public inspection.

(e) The director, or his designee, shall serve as the technical secretary of the board. In that capacity, he shall report the proceedings of the board and perform such duties as the board may require.

(f) The board shall have and exercise the following powers, duties and responsibilities:

(1) Hear appeals from mineral owners, operators, property owners, or other persons with an interest which is or may be adversely affected by orders,

determinations, regulations, permit terms, or rulings of the commissioner, which in any way affect exploration or surface mining in this state;

(2) Represent the unified interest of government, industry, environmental groups, and private individuals;

(3) Request that such work as is necessary to accomplish the purpose of the board be undertaken; and

(4) Review the Tennessee surface mining laws from time to time and recommend such changes or additions in the law as may be deemed advisable to the governor and the general assembly.

(g) Any hearing or rehearing brought before the board shall be conducted in accordance with the following:

(1) Upon receipt of a written petition for appeal from any person having an interest which is or may be adversely affected by any decision of the commissioner, the commissioner shall give the petitioner and other interested parties thirty (30) days written notice of the time and place of the hearing, except as provided in subsection (g)(8) of this section, but in no case shall such hearing be held later than ninety (90) days from the receipt of the written petition. Appeal shall not result in a stay of the decision of the commissioner. All hearings conducted by the board shall be open to the public. Notice of all hearings shall be given at least thirty (30) days prior to the scheduled date of the hearing, except as provided in subsection (g)(8) of this section, by public advertisement in a newspaper of general circulation in the county of the property affected, giving the date, time, place, and purpose of such hearing.

Provided, however, that the board shall hold hearings requested pursuant to § 59–8–313(e) within thirty (30) days of such request. The commissioner shall provide the applicant with reasonable notice of the hearing and shall provide notification to all interested parties at the time that the applicant is so notified.

(2) The hearing shall be adjudicatory in nature, and conducted according to the provisions of §§ 4–5–101—4–5–121. It may be conducted by the board at a regular or special meeting, or the chairman may designate hearing examiners who shall have the power and authority to conduct such hearings in the name of the board at any place and time within the period established under subsection (g)(1) of this section, but no person who presided at a conference under § 59–8–313(b) shall either preside at the hearing or participate in the decision.

(3) A verbatim record of the proceedings of such hearings shall be taken and filed with the board, together with findings of fact and conclusions of law made pursuant to subsection (g)(6). The transcript so recorded shall be made available to the petitioner or any party to a hearing upon payment of a charge set by the commissioner to cover the costs of preparation.

(4) In connection with the hearing, the chairman shall issue subpoenas in response to any reasonable request by any party to the hearing requiring attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing. In the event a hearing is conducted by a hearing examiner, he shall also issue such subpoenas in response to any reasonable request by any party to the hearing. The chairman or the hearing examiner may administer oaths and examine witnesses. The chairman or hearing examiner may take evidence including but not limited to site inspections of the land to be affected and other surface coal mining operations carried on by a permit applicant in the general vicinity of the proposed operation. Witnesses shall be reimbursed for all travel in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, venue and jurisdiction for such action shall be in the Davidson county chancery court or the chancery court in whose district the surface mining operation is located; the provisions of § 20–4–101 to the contrary notwithstanding, upon application of the board or the commissioner, to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to obey such order of the court may be punished by such court as contempt thereof.

(5) If the hearing is held before a hearing examiner designated by the chairman, the record of the hearing, together with recommendations for findings of fact and conclusions of law, shall be transmitted to the board and the party affected. The parties may submit, within ten (10) days, for the board's consideration, exceptions to the recommended findings or conclusions and supporting reasons for such exceptions.

(6) On the basis of the evidence produced at the hearing under subsection (g)(1), the board shall make findings of fact and conclusions of law, and enter such decisions and orders as in its opinion will best further the purposes of this part, and shall give written notice of such decisions and orders to the alleged violator and person requesting the board hearing. The order issued under this subsection shall be issued no later than thirty (30) days following the close of the hearing.

(7) The decision of the board shall become final and binding to all parties, subject to judicial review as provided in this part.

(8) Any person to whom an order of suspension of a permit or order to cease mining operations is directed pursuant to this part, shall comply with the order immediately, but on petition to the board, he shall within thirty (30) days, have a hearing and decision thereon, unless temporary relief has been granted by the commissioner pursuant to subsection (g)(9), or by a court.

(9) Any person with an interest which is or may be adversely affected by a decision of the commissioner may, after filing an appeal to the board, file with the commissioner a written request that the commissioner grant temporary relief from any notice or order, together with a detailed statement giving reasons for requesting such relief. The commissioner shall issue an order or decision granting or denying such relief within five (5) days of its receipt. The commissioner may grant such relief, under such conditions as he may prescribe, if:

(A) All parties to the proceeding have been notified and a hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;

(B) The person or operator shows that there is substantial likelihood that the final decision of the board in the hearing will be favorable to him; and

(C) Such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(10) Whenever an order or decision is issued, either by the board or as a result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs and expenses, (including attorney fees), as determined by the commissioner to have been reasonably incurred by such person for or in connection with his participation in such proceedings, including any judicial reviews of agency action, may be assessed against either party as the court, resulting from judicial review, or the commissioner, resulting from administrative proceedings, or the board, resulting from hearings, deems proper. [Acts 1980 (Adj. S.), ch. 908, § 21; 1981, ch. 169, §§ 2, 3; 1981, ch. 346, § 1; 1982 (Adj. S.), ch. 779, §§ 2, 3.]

59–8–322. Judicial review.—(a) Any final order or determination by the board shall be subject to judicial review, and venue and jurisdiction for such action shall be in the Davidson county chancery court or the chancery court in whose district the surface mining operation or mineral surface mining operation is located; the provisions of § 20–4–101 to the contrary notwithstanding. Judicial review shall be pursuant to the Uniform Administrative Procedures Act, §§ 4–5–101—4–5–121. No judicial review shall, however, be had of any order which becomes final as a result of failure of the aggrieved party to appear at a hearing requested by him of which he has received adequate notice.

(b) In the case of a proceeding to review any order or decision issued by the board under this part or the provisions of parts 1 and 2 of this chapter, including an order or decision issued pursuant to § 59–8–321(g)(9) pertaining to any order issued under § 59–8–317 for cessation of coal mining and reclamation operations, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

(1) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

(3) Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(c) Any permit applicant or any person with an interest which is or may be adversely affected who has participated in the administrative proceedings as an objector, and who is aggrieved by the failure of the commissioner or the board to act within the time limits specified in this part shall have the right to appeal in accordance with this section. [Acts 1980 (Adj. S.), ch. 908, § 22.]

59–3–323. Surface mining permit required before sale of coal.—(a) It shall be unlawful for any dealer, broker, or other purchaser to purchase coal from an operator without first being shown such operator's valid coal surface mining permit.

(b) Each dealer, broker, or other purchaser shall maintain a record on forms furnished by the commissioner of each purchase of coal, including the date of purchase, the number of tons purchased, the name of the operator, and the operator's permit number, and shall submit such information to the commissioner at intervals of not less than sixty (60) days. [Acts 1980 (Adj. S.), ch. 908, § 23.]

59–8–324. State's power to acquire and reclaim land disturbed by past mining.—(a) The state of Tennessee, acting by and through the department of conservation, may acquire any property, by purchase, donation, or condemnation, which is adversely affected by past coal mining practices if the commissioner determines that acquisition of such land is necessary to successful reclamation and that:

(1) The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes or provide open space benefits; and

(2) Permanent facilities such as treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

(3) Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this part or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of coal mining practices.

(b) Prior to the acquisition of any property pursuant to this section, using exclusively state funds, the commissioner shall extend to the owners of the property an opportunity to regrade the area affected, correct drainage problems, plant vegetative cover, and do other acts of reclamation as required by the commissioner. If the owner or owners agree in writing to perform such reclamation and, weather permitting, start such reclamation within a period of sixty (60) days, and continue to completion, the property shall not be acquired by the state.

(c) The commissioner shall attempt to purchase any property which he has determined should be acquired for the purpose of reclamation using exclusively state funds and which the owners have not agreed to reclaim as provided for in subsection (b) of this section. Where the commissioner and the owners of the property are unable to agree upon the amount to be paid for such property, the commissioner may exercise the power of eminent domain against such property.

(d) The purchase price, in the case of a negotiated acquisition, or the damages as finally determined in the case of acquisition by condemnation, and the necessary expenses incidental thereto, shall be paid from the Tennessee surface mine reclamation fund, the federal abandoned mine reclamation fund with the approval of the secretary, or from appropriations made by the general assembly for such purposes.

(e) The commissioner, or his agents, employees, or contractors, shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare, and shall not be construed as an act of condemnation of property nor trespass thereon.

(f) If the commissioner makes a finding of fact that:

(1) Land or water resources have been adversely affected by past coal mining practices; and

(2) The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(3) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known, or readily available; or

(4) The owners will not give permission for the commissioner, his agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices;

then, upon giving notice by mail to the owners if known, or if not known, by posting notice upon the property and advertising once in a newspaper of general circulation in the county in which the property lies, the state shall have the right to enter upon the property adversely affected by past coal mining practices, and any other property which is necessary for access to such property, to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for such work and the benefits accruing to any such property so entered upon shall be chargeable against such

property and shall mitigate or offset any claim or action brought by any owner of any interest in such property for any alleged damages by virtue of such entry; provided, however, that this provision is not intended to create new rights of action or eliminate existing immunities.

(g) Title to all property acquired pursuant to this section shall be in the name of the state of Tennessee. The price paid for property acquired under this section shall reflect the market value of the property in its unreclaimed condition as adversely affected by past coal mining practices.

(h) After the reclamation of the acquired property, the commissioner may, with the approval of the governor, where property has been reclaimed exclusively with state funds, or with the approval of the secretary, where funds from the federal abandoned mine reclamation fund have been used, transfer jurisdiction of such property, or any portion thereof, to any state or federal agency that can best utilize such property for public purposes. If the retention of any property is determined to be impractical, the commissioner may, with the approval of the governor and attorney general, where property has been reclaimed exclusively with state funds, or with the approval of the secretary, where funds from the federal abandoned mine reclamation fund have been used, sell such property at not less than fair market value to political subdivisions of the state of Tennessee or by public sale under a system of competitive bidding at not less than fair market value and under such other regulations promulgated to insure that such lands are put to proper use consistent with local and state land use plans, if any. Such property shall be sold subject to the condition that no surface mining shall be conducted thereon at any time thereafter. The proceeds of any such sale shall be credited to the Tennessee surface mine reclamation fund provided for in § 59–8–212 if it has been reclaimed exclusively with state funds, or to the federal abandoned mine reclamation fund, if it has been reclaimed with funds from that source.

(i) No property with respect to which a bond conditioned upon the reclamation thereof is in effect shall be acquired pursuant to the provisions of this section, nor shall any provisions of this part be construed to relieve any person from any obligation to regrade, vegetate, or perform other reclamation required by law.

(j) All acquisitions and disposals of property or any interest therein pursuant to the authority granted by this part, shall be governed by the applicable provisions of title 12, chapters 1 and 2, where not inconsistent with the federal Surface Mining Control and Reclamation Act of 1977, compiled in 30 U.S.C. §§ 1201–1328.

(k) The commissioner, when requested after appropriate public notice, shall hold a public hearing in the county or counties in which property acquired pursuant to this section is located. The hearings shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the property after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(l) In addition to the authority to acquire property under the provisions of this section, the state of Tennessee, and its political subdivisions, acting by and through the department of conservation, are authorized to accept property transferred by the secretary if the secretary determines that such transfer is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effect of coal mining practices which constitute an emergency as provided in 30 U.S.C. § 1240, or persons dislocated as the result of natural disasters or catastrophic failures from any cause. Such activities shall be accomplished under such terms and conditions as the secretary shall require, which may include transfers of land with or without monetary consideration: provided, that, to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such persons, firm, association, or corporation. No part of the funds provided under this part may be used to pay the actual construction costs of housing. The secretary may carry out the purposes of this subsection directly or he may make grants and commitments for grants, and may advance money under such terms and conditions as he may require to the state, or any department, agency, or instrumentality of the state, or any public body or nonprofit organization designated by the commissioner.

(m) In the reclamation of property affected by surface coal mining, the commissioner may utilize any services which may be provided by other state or local agencies or by agencies of the federal government, and may compensate them for such services. The commissioner may also receive any federal funds, state funds, or any other funds for the reclamation of property affected by surface coal mining. The commissioner may cause the reclamation and revegetation work to be done by employees of his own department or by employees of other governmental agencies or through contracts with qualified persons. Such contracts shall be awarded to the lowest and best bidder upon competitive bids after reasonable advertisement. The designees of the commissioner and any other agency and any contractor under a contract with the commissioner shall have the right of access to the property affected to carry out such reclamation. Any funds available to the commissioner and any public works program may be used and expended to reclaim any property that has been subjected to surface mining that has not been reclaimed in accordance with standards set by this part or regulations thereunder and which are not covered by bond to guarantee such reclamation. [Acts 1980 (Adj. S.), ch. 908, § 24.]

59–8–325 Liens.—(a) Within six (6) months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on privately owned property under the provisions of § 59–8–324(f), the commissioner shall itemize the moneys so expended and shall file a statement thereof in the office of the register of deeds of the county in which the property lies, together with notarized appraisals by an independent appraiser of the value of the property before and after the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining practices if the moneys so expended shall result in a significant increase in property value. Such statement shall constitute a lien upon such land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the property as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. No lien shall be filed against the property of any person, in accordance with this subsection, who owned the surface prior to May 2, 1977, and who neither consented to nor participated in, nor exercised control over, the mining operation which necessitated the reclamation performed hereunder.

In the year following the year in which the lien is filed in the designated county office and for each year

thereafter until the lien is fully satisfied, the designees of the commissioner shall calculate an annual interest charge of five percent (5%) against the outstanding value of each lien, and shall maintain a record of the charges owing against such lien which shall be made available to the property owner upon request. This interest charge may be allowed to accrue but must be paid in full before the lien shall be considered fully satisfied and shall be released.

(b) The property owner may proceed as provided by law to petition within sixty (60) days of the filing of the lien, to determine the increase in the market value of the property as a result of the restoration, reclamation, abatement control, or prevention of the adverse effects of past coal mining practices. The amount appraised to be the increase in value of the property shall constitute the amount of the lien, and shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal as provided by state law.

(c) The lien provided in this section shall be entered in the records of the register of deeds of the county in which the property lies. Such statements shall constitute a lien upon such property as of the date of the expenditure of the moneys, and shall have priority as a lien, second only to tax liens upon such property as provided by law. A lien on private property, and the accrued interest charges placed thereon, shall be satisfied to the extent of the value of the consideration received at the time of transfer of ownership, any other statute to the contrary notwithstanding. [Acts 1980 (Adj. S.), ch. 908, § 25; Acts 1983, ch. 147, §§ 1, 2.]

59-8-326. Tennessee surface mine reclamation fund.—(a) All sums received through the payment of permit and acreage fees, fines, penalties, or the forfeiture of bonds, shall be placed in the state treasury and credited to a special agency account to be designated as the Tennessee surface mine reclamation fund.

(b) This fund, appropriations for which are also authorized, shall be available to the commissioner for expenditure for reclamation and revegetation of land and water affected by mining and exploration operations both on and off site and related research, including areas so affected prior to May 2, 1980; provided, that the proceeds from the forfeiture of any bond and other necessary amounts shall be used to the extent required in completing reclamation and revegetation of the area with respect to which the bond was posted.

(c) Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not revert to the general fund, but shall be carried forward until expended for the purpose of research, reclamation, and revegetation of land and water affected by mining and exploration operations as provided in this section. [Acts 1980 (Adj. S.), ch. 908, § 26.]

59-8-327. Federal abandoned mine reclamation fund.—(a) Moneys received from the federal government pursuant to 30 U.S.C. § 1231 shall be placed in the state treasury and credited to a special agency account to be designated as the federal abandoned mine reclamation fund. The purpose of this fund is to reclaim property which was affected by surface mining operations for coal prior to enactment of the federal Surface Mining Control and Reclamation Act of 1977, compiled in 30 U.S.C. §§ 1201-1328, on August 3, 1977, which was inadequately reclaimed, and for which there is no continuing reclamation responsibility under any state or federal law.

(b) Expenditures of moneys from this fund on eligible property and water shall reflect the following priorities, in the order stated:

(1) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices;

(2) The protection of public health, safety, and general welfare from adverse effects of coal mining practices;

(3) The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity;

(4) Research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques;

(5) The protection, repair, replacement, construction, or enhancement of public facilities adversely affected by coal mining practices; and

(6) The development of publicly owned property adversely affected by coal mining practices, including property acquired for recreational and historic purposes, conservation and open space benefits.

(c) The commissioner shall develop a plan for reclamation of abandoned mines and submit it to the secretary of the interior. The reclamation plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the property to be reclaimed and the proposed reclamation to surrounding areas, the specific critria for ranking and identifying projects to be funded, and the legal authority and programmatic capability to perform such work in conformance with provisions of this part. On an annual basis, the commissioner shall submit to the secretary of the interior an application for the support of the state program and implementation of specific reclamation projects.

(d) The commissioner shall do all things necessary or expedient to implement and administer the provisions of this section including, but not limited to:

(1) Cooperating in projects with any federal, state, or governmental agency;

(2) Requesting the attorney general, who is hereby authorized to initiate, in addition to any other remedies, in any court of compentent jurisdiction, and action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this section;

(3) Constructing and operating a plant or plants for the control and treatment of water pollution resulting from mine drainage (The construction of a plant or plants may include major interceptors and other facilities appurtenant to the plant. The extent of control and treatment may be dependent upon the ultimate use of the water, but shall not result in standards of control and treatment less than required under the federal Water Pollution Control Act, as amended.);

(4) Submitting such annual or other reports to the secretary as may be necessary; and

(5) Issuing such regulations as are necessary for the implementation of this section. [Acts 1980 (Adj. S.), ch. 908, § 27.]

59-8-328. Water rights and replacement.—(a) Nothing in this part shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his interest in water resources affected by a mining or exploration operation.

(b) An operator shall replace the water supply of an owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately

resulting from such surface or underground exploration or mining operation. [Acts 1980 (Adj. S.), ch. 908, § 28.]

59–8–329. Experimental practices.—In order to encourage advances in coal surface mining and reclamation practices, or to allow post-mining land use for industrial, commercial, residential, or public use (including recreational facilities), the commissioner, with the approval of the secretary, may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under this part. The departures may be authorized if:

(1) The experimental practices are potentially more environmentally protective, or at least as protective, during and after mining operations, as those required by promulgated standards;

(2) The mining operations approved for a particular land use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices;

(3) The experimental practices do not reduce the protection afforded public health and safety below that provided by promulgated standards; and

(4) All other state and federal agencies with jurisdiction over the environmental standards or practices for which departure is desired concur with that departure. [Acts 1980 (Adj. S.), ch. 908, § 29.]

59–8–330. Filling voids and sealing tunnels.—(a) The general assembly declares that voids, and open and abandoned tunnels, shafts, auger holes, and entryways resulting from any previous mining operation, constitute a hazard to the public health or safety, and that surface impacts of any underground or surface coal mining operation may degrade the environment. The commissioner is authorized to fill such voids, seal such abandoned tunnels, shafts, auger holes, and entryways, and reclaim surface impacts of underground or surface coal mines which the commissioner determines could endanger life and property, constitute a hazard to public health and safety, or degrade the environment. The commissioner is authorized to carry out such work as part of an approved abandoned mine reclamation program, as provided for in §§ 59–8–326 and 59–8–327.

(b) Funds available for use in carrying out the purpose of this section may include those funds which must be allocated to the state under 30 U.S.C. § 1232(g).

(c) In those instances where mine piles are being reworked for conservation purposes, the incremental costs of disposing of the wastes from such operations by using them to fill voids and seal tunnels may be eligible for funding, providing that the disposal of these wastes meets the purposes of this section.

(d) The commissioner may acquire by purchase, donation, or otherwise such interest in land as he determines necessary to carry out the provisions of this section. [Acts 1980 (Adj. S.), ch. 908, § 30.]

59–8–331. Designating areas unsuitable for suface coal mining.—(a)(1) The commissioner shall establish a planning process enabling objective decisions to be made based upon competent and scientifically sound data and information as to which, if any, land areas of the state are unsuitable for all or certain types of surface coal mining operations pursuant to the standards set forth in this part, but such designation shall not prevent the mineral exploration of any designated area.

(2) Upon petition pursuant to subsection (b) of this section, the commissioner shall designate an area as unsuitable for all or certain types of surface coal mining operations if he determines that reclamation pursuant to the requirements of this part is not technologically and economically feasible.

(3) Upon petition pursuant to subsection (b) of this section, an area may be designated unsuitable for certain types of surface coal mining operations if such operations will:

(A) Be incompatible with existing state or local land use plans or programs;

(B) Affect fragile or historic lands in such a way that could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems;

(C) Affects renewable resource lands in such a way that could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products (Such lands shall include aquifers and aquifer recharge areas.); or

(D) Affect natural hazard lands in such a way that could substantially endanger life and property. Such lands shall include areas subject to frequent flooding and areas of unstable geology.

(4) The program shall include a process that includes:

(A) A data base and inventory system which will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface coal mining operations;

(B) A method or methods for implementing land use planning decisions concerning surface coal mining operations; and

(C) Proper notice and opportunities for public participation, including a public hearing prior to making any designation or redesignation, pursuant to this section.

(5) Determinations of the unsuitability of land for surface coal mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation process at the federal, state, and local levels.

(6) The requirements of this section shall not apply to lands on which surface coal mining operations are being conducted on August 3, 1977, or under a permit issued pursuant to this part, or where substantial legal and financial commitments in such operation were in existence prior to January 4, 1977.

(b) Any person having an interest which is or may be adversely affected, shall have the right to petition the commissioner to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten (10) months after receipt of the petition, the commissioner shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time, and location of such hearing. After a petition has been filed, but before the hearing on it, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty (60) days after the hearing, the commissioner shall issue and furnish to the petitioner, and any other party to the hearing, a written decision regarding the petition, and the reasons for the decision. In the event that all the petitioners stipulate agreement prior to the requested hearing, and withdraw their request, the hearing need not be held.

(c) Prior to designating any land areas as unsuitable for surface coal mining operations, the commissioner shall prepare a detailed statement on:

(1) The potential coal resources of the area;

(2) The demand for coal resources; and

(3) The impact of such designation on the environment, the economy, and the supply of coal.

(d) In reaching a decision, the commissioner shall use:

(1) The information contained in the data base, records, and inventory system;

(2) Any information which was provided by other governmental agencies or the public; and

(3) The information contained in the detailed statement provided for in subsection (c) of this section.

(e) The commissioner shall issue a final written decision, including a statement of reasons, within sixty (60) days of the completion of the public hearing, or if no public hearing is held, within twelve (12) months of receipt of the complete petition. The commissioner shall simultaneously notify the petitioner, other parties to the hearing, and the regional director of the office of surface mining of the decision by certified mail.

(f) The decision of the commissioner shall be subject to appeal to the board of reclamation review as provided in § 59–8–321, and to judicial review as provided in § 59–8–322. [Acts 1980 (Adj. S.), ch. 908, § 31.]

59–8–332. Certification and training of blasters.—The commissioner shall promulgate regulations requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or use of explosives in coal surface mining or exploration operations. [Acts 1980 (Adj. S.), ch. 908, § 32.]

59–8–333. Conflict of interest.—No employee of the department of conservation or department of public health performing any function or duty under this part shall have a direct or indirect financial interest in any underground or surface coal mining operation. [Acts 1980 (Adj. S.), ch. 908, § 33.]

59–8–334. Supplemental to existing law.—This part shall not operate to repeal or affect any of the laws of the state relating to the pollution of the air or waters, or any conservation or mining laws (with the exception of the Tennessee Surface Mining Law of 1972), but shall be held and construed as ancillary and supplemental thereto so long as these laws are not in conflict with this part or the federal Surface Mining Control and Reclamation Act of 1977, compiled in 30 U.S.C. §§ 1201–1328. [Acts 1980 (Adj. S.), ch. 908, § 34.]

59–8–335. Immediate conformity to statute or regulations on effective dates.—(a) Irrespective of the date of issuance of a permit, all operators, except as provided in subsection (b) of this section, shall immediately conform to any statutes enacted, or regulations adopted pursuant to them, on the effective date of such statute and regulations. This section shall not require the regrading or replanting of any area on which such work was satisfactorily performed prior to the effective date of the statute or regulation.

(b) Not later than two (2) months following the federal approval of the Tennessee program pursuant to 30 U.S.C. § 1253(c), all operators of surface coal mining operations who expect to operate such mines after the expiration of eight (8) months from the date of approval of Tennessee's program, shall file a new complete application for a permit with the commissioner. The application shall cover those lands to be mined or disturbed after the expiration of eight (8) months from the approval of Tennessee's program. The commissioner shall process such application and grant or deny a permit within eight (8) months after the Tennessee program approval date, unless specifically enjoined by a court of competent jurisdiction.

(c) Exploration permits for coal shall expire upon their yearly anniversary date. Operators who expect to explore after expiration of their present permit, should file new complete applications for new exploration permits no later than sixty (60) days prior to the permit expiration date. [Acts 1980 (Adj. S.), ch. 908, § 35; 1981, ch. 280, § 8.]

59–8–336. Public agencies, public utilities, and public corporations.—Any agency, unit, or instrumentality of state, federal, or local government, including any publicly owned utility or publicly owned corporation of state, federal, or local government, which proposes to engage in exploration or mining operations which are subject to the requirements of this part, shall comply with the provisions of this part. Provided, however, that local governmental entities and state agencies shall not be subject to fees or bonds except as otherwise required by this part. [Acts 1980 (Adj. S.), ch. 908, § 36.]

59–8–337. Effect of changes in federal law.—(a) If any provision of the federal Surface Mining Control and Reclamation Act of 1977, compiled in 30 U.S.C. §§ 1201—1328, is rendered invalid for any reason, and that determination of invalidity becomes final, the corresponding provision of this part shall be of no force and effect.

(b) If any regulation promulgated under the federal Surface Mining Control and Reclamation Act is amended, modified or rendered invalid for any reason and that amendment, modification or determination of invalidity becomes final, within thirty (30) days thereafter, the commissioner shall initiate and review for adoption, in accordance with chapter 5 of title 4, regulations conforming the corresponding Tennessee regulation under this part to the federal regulation as so amended, modified or rendered invalid.

(c) This section is to preserve the legislative intent that this part and implementing regulations conform with and meet the requirements of the federal Surface Mining Control and Reclamation Act. [Acts 1981, ch. 280, § 9.]

59–8–338. Effect of imposition of federal program in state.—Should a permanent or federal program be imposed under the provisions of the federal Surface Mining Control and Reclamation Act, compiled in 30 U.S.C. §§ 1201–1328, on coal surface mining in the state of Tennessee, this part shall not be enforceable during any time period in which the permanent federal program is in effect on coal surface mining in the state of Tennessee. [Acts 1981, ch. 280, § 9.]

59–8–339. Statute concerning serverance of mineral estates in coal not affected.—Nothing in this part shall be construed to limit or invalidate the provisions of § 66–5–102. [Acts 1981, ch. 280, § 11.]

Tennessee Regulations

Chapter	Status
0400-1-1 General Provisions	(See below).
0400-1-1-.01 Purpose	Effective.
0400-1-1-.02 Authority	Effective.
0400-1-1-.03 Definitions	Effective.

Chapter	Status
0400-1-1-.04 Scope	Suspended.
except with respect to the following categories of mining: (1) sites where the extraction of coal is for commercial purposes and where the surface mining operation affects two acres or less, (2) mine sites on which no surface coal mining and reclamation activities have occurred since the effective date of the interim program, (3) surface mining operations that extract coal incidental to the extraction of other minerals, provided that the coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, (4) surface coal mining support facilities which do not process coal and do not result from or are not incident to a regulated activity, (5) extraction of coal by a landowner for his non-commercial use on land which he owns or leases, (6) extraction of coal incidental to government-financed highway or other construction, and (7) the removal of more than 25 tons but less than 250 tons of coal.	
0400-1-2 Requirements for Permit Application for Coal Surface Mining	Effective.
0400-1-3 Processing of Permit Applications	Effective.
0400-1-4 Exploration Permits	Effective.
0400-1-5 Requirements for Permit Applications for Underground Mining	Effective.
0400-1-6 Requirements for Permits for Special Categories of Mining	Effective.
0400-1-7 Performance Bond	Effective.
0400-1-8 Public Liability Insurance Policy	Effective.
0400-1-9 Designation of Areas Unsuitable for Mining	Effective.
0400-1-10 Annual Report Release of Performance Bonds or Deposit	Effective.
0400-1-11 Bond Forfeiture	Effective.
0400-1-12 Performance Standards—General Provisions	Effective.
0400-1-13 Performance Standards for Coal Exploration	Effective.
0400-1-14 Permanent Program Performance Standards—Surface Mining Activities	Effective.
0400-1-15 Performance Standards—Underground Mining	Effective.
0400-1-16 Special Performance Standards Concurrent Surface and Underground Mining	Effective.
0400-1-17 Special Performance Standards—Auger Mining	Effective.
0400-1-18 Special Performance Standards—Operations on Prime Farm Land	Effective.
0400-1-19 Special Performance Standards—Mountaintop Removal	Effective.
0400-1-20 Special Performance Standards—Operations on Steep Slopes	Effective.
0400-1-21 Special Performance Standards—Coal Tipples and Processing Plants and Support Facilities Not Located At or Near the Minesite or Not Within the Permit Area for a Mine.	Effective.
0400-1-22 Special Performance Standards—In Situ Processing	Effective.
0400-1-23 Reserved	Effective.
0400-1-24 Reserved	Effective.
0400-1-25 Restrictions of Financial Interests	Effective.
0400-1-26 Hearings and Appeals	Suspended.
except (1) with respect to civil penalty assessments made as a result to enforcement actions taken by Tennessee after April 30, 1984, at the following types of mining operations: (a) sites where the extraction of coal is for commercial purposes and where the surface mining operation affects two acres or less, (b) mine sites on which no surface coal mining and reclamation activities have occurred since the effective date of the interim program, (c) surface mining operations that extract coal incidental to the extraction of other minerals, provided that the coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, (d) surface coal mining support facilities which do not process coal and do not result from or are not incident to a regulated activity, (e) extraction of coal by a landowner for his non-commercial use on land which he owns or leases, (f) extraction of coal incidental to government-financed highway or other construction, and (g) the removal of more than 25 tons but less than 250 tons of coal; and (2) except with respect to the review of enforcement actions taken by Tennessee prior to April 30, 1984.	
0400-1-27 Administrative and Judicial Review	Suspended.
except with respect to the review of enforcement actions taken by Tennessee prior to April 30, 1984.	
0400-1-28 Small Operator Assistance	Effective.
0400-1-29 Administrative Civil Penalties	Suspended.
except (1) with respect to civil penalty assessments made as a result of enforcement actions taken by Tennessee after April 30, 1984, at the following types of mining operations: (a) sites where the extraction of coal is for commercial purposes and where the surface mining operation affects two acres or less, (b) mine sites on which no surface coal mining and reclamation activities have occurred since the effective date of the interim program, (c) surface mining operations that extract coal incidental to the extraction of other minerals, provided that the coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, (d) surface coal mining support facilities which do not process coal and do not result from or are not incident to a regulated activity, (e) extraction of coal by a landowner for his non-commercial use on land which he owns or leases, (f) extraction of coal incidental to government-financed highway or other construction, and (g) the removal of more than 25 tons but less than 250 tons of coal; and (2) except with respect to the civil penalty assessments made as a result of enforcement actions taken by Tennessee at any site prior to April 30, 1984.	
0400-1-30 Inspections	Suspended.
except with respect to the following categories of mining: (1) sites where the extraction of coal is for commercial purposes and where the surface mining operation affects two acres or less, (2) mine sites on which no surface coal mining and reclamation activities have occurred since the effective date of the interim program, (3) surface mining operations that extract coal incidental to the extraction of other minerals, provided that the coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, (4) surface coal mining support facilities which do not process coal and do not result from or are not incident to a regulated activity, (5) extraction of coal by a landowner for his non-commercial use on land which he owns or leases, (6) extraction of coal incidental to government-financed highway or other construction, and (7) the removal of more than 25 tons but less than 250 tons of coal.	
0400-1-31 Enforcement	Suspended.
except with respect to the following categories of mining: (1) sites where the extraction of coal is for commercial purposes and where the surface mining operation affects two acres or less, (2) mine sites on which no surface coal mining and reclamation activities have occurred since the effective date of the interim program, (3) surface mining operations that extract coal incidental to the extraction of other minerals, provided that the coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, (4) surface coal mining support facilities which do not process coal and do not result from or are not incident to a regulated activity, (5) extraction of coal by a landowner for his non-commercial use on land which he owns or leases, (6) extraction of coal incidental to government-financed highway or other construction, and (7) the removal of more than 25 tons but less than 250 tons of coal.	

TENNESSEE ADMINISTRATIVE COMPILATIONS

0400-1-1-.03 Definitions.

The terms used in these regulations have the same meaning, unless the context obviously requires otherwise, or unless a specific different definition is given for a particular Regulation, as that meaning provided for in Section 59-8-303 of the Act.

In addition, the following terms have the specified meanings, except where the context obviously requires otherwise or where otherwise indicated:

(1) *Acid drainage* means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) *Acid forming materials* means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) *Act* means the Tennessee Coal Surface Mining Law of 1980.

(4) *Adjacent area* means land located outside the affected area, permit area, or mine plan area, depending on the context in which adjacent area is used, where air, surface or ground water, fish, wildlife, vegetation or other resources protected by the Act may be adversely impacted by surface coal mining and reclamation operations.

(5) *Agricultural activities* means, with respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, where the use is enhanced or facilitated by subirrigation or flood irrigation associated with alluvial valley floors. These uses include, but are not limited to, the pasturing, grazing, or watering of livestock, and the cropping, cultivation, or harvesting of plants whose production is aided by the availability of

water from subirrigation or flood irrigation. Those uses do not include agricultural practices which do not benefit from the availability of water from subirrigation or flood irrigation.

(6) *Agricultural use* means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

(7) *Aquifer* means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

(8) *Area affected* or *affected area* means the area of land or water from which overburden is to be or has been removed, or upon which overburden, topsoil, coal, or waste materials, is to be or has been deposited. It also includes land used or to be used for construction, improvement, or use of haul roads or access roads (other than maintained public roads), as well as all activities conducted on the surface of lands in connection with exploration, surface mining or underground coal mining, or land or water which is located above underground mine workings, including but not limited to, exploration disturbances, dams, basins, stockpiles, waste deposition areas, and drill hole disturbances, repair, processing, washing, crushing, shipping, and other areas upon which are sited structures, tipples, office facilities, or other property or materials on the surface resulting from or incident to such activities and disturbances to the surface resulting from the use of explosives and blasting in situ distillation or retorting, leaching, or other chemical or physical processing. It shall be further defined as the area which must be covered by a permit and bond.

(9) *Auger mining* means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

(10) *Best technology currently available* means equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state or federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Director, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with Regulations 0400–1–14 and 0400–1–15. Within the constraints of the permanent program, the Director shall have the discretion to determine the best technology currently available on a case-by-case basis as authorized by the Act.

(11) *Coal* means combustible carbonaceous rock, classified as anthracite, bituminous, sub-bituminous, or lignite by ASTM Standard D 388–77.

(12) *Coal exploration* means the field gathering of: (a) surface or sub-surface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or (b) the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of this Regulation.

(13) *Coal processing plant* means a collection of facilities where run-of-the-mine coal is subjected to chemical or physical processing and separated from its impurities. The processing plant may consist of, but need not be limited to, the following facilities; loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas; roads, railroads and other transport facilities.

(14) *Coal processing waste* means earth materials which are combustible, physically unstable, or acid-forming or toxic-forming, which are or otherwise separated from product coal, and slurred or otherwise transported from coal preparation plants, after physical or chemical processing, cleaning, or concentrating of coal.

(15) *Coal tipple* means a facility and associated areas where coal is transported from a mine or mines and is loaded onto trucks, railroad cars or barges or transport to another site.

(16) *Combustible material* means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(17) *Compaction* means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

(18) *Cropland* means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar speciality crops.

(19) *Department* means the Tennessee Department of Conservation.

(20) *Director of OSM* means the Director, Office of Surface Mining Reclamation and Enforcement, or the Director's representative.

(21) *Disturbed area* means an area where vegetation, topsoil, or overburden is removed or upon which topsoil spoil, coal processing waste, underground development waste, or non-coal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by Regulation 0400–1–7 is released.

(22) *Division* means the Division of Surface Mining and Reclamation of the Department of Conservation.

(23) *Diversion* means a channel, embankment, or other manmade structure constructed to divert water from one area to another.

(24) *Downslope* means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

(25) *Embankment* means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways or for other similar purposes.

(26) *Ephemeral stream* means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(27) *Essential hydrologic functions* means the role of an alluvial valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape and the physical properties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation.

(a) The role of the valley floor in collecting water includes accumulating run-off and discharge from aquifers in

sufficient amounts to make the water available at the alluvial valley floor greater than the amount of available from direct precipitation.

(b) The role of the alluvial valley floor in storing water involves limiting the rate of discharge of surface water, holding moisture in soils, and holding ground water in porous material.

(c)

1. The role of the alluvial valley floor in regulating the natural flow of surface water results from the characteristic configuration of the channel flood plain and adjacent low terraces.

2. The role of alluvial valley floor in regulating the natural flow of ground water results from the properties of the aquifers which control inflow and outflow.

(d) The role of the alluvial valley floor in making water usefully available for agricultural activities results from the existence of flood plains and terraces where surface and ground water can be provided in sufficient quantities to support the growth of agriculturally useful plants, from the presence of earth materials suitable for the growth of agriculturally useful plants, from the temporal and physical distribution of water making it accessible to plants throughout the critical phases of the growth cycle either by flood irrigation or by subirrigation, from the natural control of alluvial valley floors in limiting destructive extremes of stream discharge, and from the erosional stability of earth materials suitable for the growth of agriculturally useful plants.

(28) *Existing structure* means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of the Tennessee Regulatory Program by the Secretary.

(29) *Flood irrigation* means, with respect to alluvial valley floors, supplying water to plants by natural overflow or the diversion of flows, so that the irrigated surface is largely covered by a sheet of water.

(30) *Fugitive dust* means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.

(31) *Ground water* means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(32) *Half-shrub* means a perennial plant with a woody base whose annually produced stems die back each year.

(33) *Head-of-hollow fill* means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than 20 degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10 degrees. In fills with less than 250,000 cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

(34) *Highwall* means the face exposed unmined overburden and coal in an open cut of a surface mine or for entry to an underground mine.

(35) *Historically used for cropland* means:

(a) lands that have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease or option the conduct of surface coal mining and reclamation operations;

(b) lands that the Division determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five (5) years in ten (10) criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or

(c) lands that would likely have been used as cropland for any five (5) out of the last ten (10) years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

(36) *Hydrologic balance* means the relationship between the quality and quantity of water inflow to water outflow from and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake or reservoir. It encompasses the dynamic relationships among precipitation runoff, evaporation, and changes in ground and surface water storage.

(37) *Hydrologic regime* means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(38) *Imminent danger to the health and safety of the public* means the existence of any condition or practice, or any violation of a permit or any other requirement of this part, in an exploration, mining, or reclamation operation which could reasonably be expected to cause substantial physical harm to persons or property outside the permit area before such condition, practice, or violation could be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril would not expose himself or herself to the danger during the time necessary for abatement.

(39) *Impoundment* means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(40) *In situ processes* means activities conducted on the surface or underground in connection with in-place distillation, restoring, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(41) *Intermittent stream* means:

(a) a stream or reach of a stream that drains a watershed of at least one (1) square mile; or

(b) a stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

(42) *Land use* means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Division.

(a) Cropland means land used for the production of adapted crops for harvest alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops,

orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of these land use categories.

(b) Pastureland or land occasionally cut for hay. Land used primarily for the long-term production of adapted domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included.

(c) Grazingland. Includes both grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. Land used for facilities in support of ranching operations which are adjacent to or an integral part of these operations is also included.

(d) Forestry. Land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(e) Residential. Includes single- and multiple-family housing mobile home parks, and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.

(f) Industrial/Commercial. Land used for:

1. extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products. This includes all heavy and light manufacturing facilities such as lumber and wood processing, chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to all rail, road, and other transportation facilities.

2. retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land use for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to parking, storage or shipping facilities.

(g) Recreation. Land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(h) Fish and wildlife habitat. Land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(i) Developed water resources. Includes land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(j) Undeveloped land or no current use or land management. Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(43) *Materially damage the quantity or quality of water* means, with respect to alluvial valley floors, changes in the quality or quantity of the water supply to any of an alluvial valley floor where such changes are caused by surface coal mining and reclamation operations and result in changes that significantly and adversely affect the composition, diversity, or productivity of vegetation dependent on subirrigation, or which result in changes that would limit the adequacy of the water for flood irrigation of the land acreage existing prior to mining.

(44) *Mine plan area* means the area of land and water within the boundaries of all permit areas during the entire life of the surface coal mining and reclamation operations. At a minimum, it includes all areas which are or will be affected during the entire life of those operations. Other terms defined in this section which relate closely to mine plan area:

(a) Permit area, which will always be within or the same as the mine plan area;

(b) Affected area, which will always be within or the same as the permit area; and

(c) Adjacent area, which may surround or extend beyond the affected area, permit area, or mine plan area.

(45) *Moist bulk density* means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (⅓ bar moisture tension). Weight is determined after drying the soil at 105 degrees C.

(46) *Mulch* means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(47) *Noxious plants* means species that have been included on official state lists of noxious plants for the state of Tennessee.

(48) *Operator* means any person engaged in surface coal mining operations who removes or intends to remove more than twenty-five (25) tons of coal by surface mining with twelve (12) successive calendar months; or who removes overburden for the purpose of determining the location, quality, or quantity of coal.

(49) *Outslope* means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(50) *Perennial stream* means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

(51) *Performance bond* means a surety bond, collateral bond or self-bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of the act, these regulations, and the requirements of the permit and reclamation plan.

(52) *Permanent diversion* means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the Division and other appropriate state and federal agencies.

(53) *Permit* means a permit to conduct surface coal mining and reclamation operations issued by the Division pursuant to the state program.

(54) *Permit area* means the area of land indicated on the approved map submitted by the operator with his application, which area of land shall be covered by the operator's bond as required by this part, and shall be readily identifiable by appropriate markers on the site.

(55) *Person* means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, partnerships, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agency, unit or instrumentality of federal, state, or local government including any publicly owned utility of publicly owned corporation of federal, state or local government.

(56) *Person having an interest which is or may be adversely affected or person with a valid legal interest* shall include any person—

(a) who uses any resource of economic, recreational, esthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the Commissioner; or

(b) whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the Division.

(57) *Precipitation event* means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in these regulations, precipitation event also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.

(58) *Prime farmland* means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (Federal Register Vol. 4, No. 21) and which have historically been used for cropland as that phrase is defined above.

(59) *Public office* means a facility under the direction and control of a government entity which is open to public access on a regular basis during reasonable business hours.

(60) *Rangeland* means land on which the natural potential (climax) plant cover is principally native grasses, herbs, and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

(61) *Recharge capacity* means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(62) *Recurrence interval* means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the ten (10) year, twenty-four (24) hour precipitation event would be that twenty-four (24) hour precipitation event expected to occur on the average once in ten (10) years.

(63) *Reference area* means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the Division. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

(64) *Regional Director* means a Regional Director of the Office of Surface Mining or a Regional Director's representative.

(65) *Regulatory program* means any approved state or federal program.

(66) *Renewable resource lands* means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazinglands.

(67) *Road* means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, surface, and such continuous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations including use by coal-hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a Class I, Class II, or Class III road located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(a) *Class I Road* means a road that is utilized for transportation of coal.

(b) *Class II Road* means any road, other than a Class I Road, planned to be used over a six (6) month period or longer.

(c) *Class III Road* means any road, other than a Class I Road, planned to be used over a period of less than six (6) months.

(68) *Safety factor* means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(69) *Sedimentation pond* means a primary sediment control structure designed, constructed and maintained in accordance with Regulation 0400–1–14–.17 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

(70) *Short distance* as used in the definition of "wildcat miner" in Section 59–8–303(36) of the Act, means with respect to the distance an operator may inadvertently run a piece of equipment beyond a marked permit boundary and return it without being charged with wildcat mining, or mining off of the permitted area, fifty (50) feet.

(71) *Significant, imminent environmental harm to land, air* or *water resources* means—

(a) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life.

(b) An environmental harm is imminent, if a condition, practice, or violation exists which—

1. is causing such harm; or

2. may reasonably be expected to cause such harm at any time before the end of the reasonable time for correction of a violation that would be set under Section 59–8–317 of the Act.

(c) An environmental harm is significant if that harm is appreciable and not immediately repairable.

(72) *Slope* means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v:5h). It may also be expressed as a percent or in degrees.

(73) *Soil horizons* means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three (3) major soil horizons are—

(a) *A Horizon.* The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) *B Horizon.* The layer that typically is immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.

(c) *C Horizon.* The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(74) *Soil survey* means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in these regulations.

(75) *Spoil* means overburden that has been removed during surface coal mining operations.

(76) *Stabilize* means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(77) *State program* means a program established by a state and approved by the Secretary pursuant to Section 503 of PL 95–87 to regulate surface coal mining and reclamation operations on non-Indian and non-federal lands within that state, according to the requirements of the Act and this Chapter. If a cooperative agreement under Part 745 of Chapter VII of Title 30 of the Code of Federal Regulations has been entered into, a state program may apply to federal lands, in accordance with the terms of the cooperative agreement.

(78) *Steep slopes* means any slopes that exceed twenty degrees (20°) or flatter slopes that require measures to protect the area from disturbance as determined by the commissioner.

(79) *Sub-irrigation* means, with respect to alluvial valley floors, the supplying of water to plants from underneath or from a semi-saturated or saturated subsurface zone where water is available for use by vegetation. Sub-irrigation may be identified by:

(a) diurnal fluctuation of the water table, due to the differences in nighttime and daytime evapotranspiration rates;

(b) increasing soil moisture from a portion of the root zone down to the saturated zone, due to capillary action;

(c) mottling of the soils in the root zone;

(d) existence of an important part of the root zone within the capillary fringe or water table of an alluvial aquifer; or

(e) an increase in streamflow or a rise in ground water levels shortly after the first killing frost on the valley floor.

(80) *Substantially disturb* means, for purposes of coal exploration, to impact significantly upon land, air or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the surface of land.

(81) *Surface coal mining and reclamation operations* means surface mining operations, and all activities necessary or incidental to the reclamation of such operations. This term includes the term surface coal mining operations.

(82) *Surface mining activities* means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

(83) *Surface mining operations* or *surface coal mining operations* means:

(a) activities conducted on the surface of lands in connection with exploration for coal or a coal surface mine or surface operations and surface impacts incident to an underground coal mine, including but not limited to, facing-up for a deep coal mine. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in situ distillation, retorting, leaching, or other chemical or physical processing; the cleaning, concentrating, or other processing or preparation; and the loading of coal at or near the mine site; and the extraction of coal from coal refuse piles.

(b) The areas upon which the activities in subdivision (83)(a) occur or where such activities disturb the natural land surface. Such area shall also include any adjacent land, the use of which is incidential to any such activities, all lands affected by the construction of new roads or the improvement or use of exising roads, except maintained public roads, to gain access to the site of such activities and for haulage, excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, tipples, facilities, or other property or materials on the surface, resulting from or incident to such activities.

(84) *Suspended solids* or nonfilterable residue, expressed as milligrams per liter, means organic or in-organic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

(85) *Temporary diversion* means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the Division to remain after reclamation as part of the approved postmining land use.

(86) *Ton* means two thousand (2,000) pounds avoirdupois (.90718 metric ton).

(87) *Topsoil* means the A soil horizon layer of the three (3) major soil horizons.

(88) *Toxic-forming materials* means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(89) *Toxic mine drainage* means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(90) *Unconsolidated streamlaid deposits holding streams* means, with respect to alluvial valley floors, all flood plains and terraces located in the lower portions of topographic valleys which contain perennial or other streams with channels that are greater than three (3) feet in bankfull width and greater than 0.5 feet in bankfull depth.

(91) *Underground development waste* means waste rock mixtures of coal shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of during development and preparation of areas incident to underground mining activities.

(92) *Underground mining activities* means a combination of—

(a) surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which material incidental to underground mining operations are placed; and

(b) underground operations such as underground contruction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

(93) *Undeveloped rangeland* means, for purposes of alluvial valley floors, lands where the use is not specifically controlled and managed.

(94) *Upland areas* means, with respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits,

and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

(95) *Valley fill* means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(96) *Water table* means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

Authority: T.C.A. Sections 59–8–303 and 59–8–304.

0400–1–1–.07 Computation of Time.

(1) Except as otherwise provided, computation of time under these Regulations is based on calendar days.

(2) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or state holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or state holiday.

(3) Saturdays, Sundays, and state holidays are excluded from the computation when the period of prescribed time is seven (7) days or less.

Authority: T.C.A. Sections 59–8–304.

Chapter 0400–1–2—Requirements for Permit Applications For Coal Surface Mining

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Chapter 0400–1–12—Performance Standards General Provisions

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0400–1–12–.01 Scope.

Regulations 0400–1–13, 0400–1–14, 0400–1–15, 0400–1–16, 0400–1–17, 0400–1–18, 0400–1–19, 0400–1–20, 0400–1–21 and 0400–1–22 set forth the minimum performance standards and design requirements to be adopted and implemented for coal exploration and surface coal mining and reclamation operations.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–12–.02 Objective.

The objective of Regulations 0400–1–13, 0400–1–14, 0400–1–15, 0400–1–16, 0400–1–17, 0400–1–18, 0400–1–19, 0400–1–20, 0400–1–21, and 0400–1–22 is to ensure that coal exploration and surface coal mining and reclamation operations are conducted in manners which are compatible with the environmental, social, and aesthetic needs of the Nation. Accordingly the performance standards and design requirements will provide for—

(1) Protection of the health, safety, and general welfare of mine workers and the public;

(2) Maximum use and conservation of the solid fuel resource being recovered so that reaffecting the land through future surface coal mining operations can be minimized;

(3) Prompt reclamation of all affected areas to conditions that are capable of supporting the premining land uses or higher or better land uses;

(4) Reclamation of land affected by surface coal mining operations as contemporaneously as practicable with mining operations;

(5) Minimizing, to the extent possible using the best technology currently available, disturbances and adverse impacts on fish, wildlife, and other related environmental values, and enhancement of such resources where practicable;

(6) Revegetation which achieves a prompt vegetative cover and recovery of productivity levels compatible with approved land uses;

(7) Minimum disturbance to the prevailing hydrologic balance at the minesite and in associated off-site areas, and to the quality and quantity of water systems;

(8) Protection of fragile and historic lands where surface coal mining operations could result in significant damage to important historic, cultural, scientific, or aesthetic values and natural systems;

(9) Confinement of surface coal mining and reclamation operations including, but not limited to, the location of spoil disposal areas to lands within the permit area; and

(10) Striking a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy;

(11) Protection of endangered and threatened species and their critical habitats as determined by the Endangered Species Act of 1973 (16 USC 1531, et seq.).

Authority: T.C.A. Sections 59–8–304, 59–8–302, and 59–8–311.

0400–1–12–.03 Responsibility.

(1) The Division shall ensure that performance standards and design requirements at least as stringent as the federal are implemented and enforced under the state regulatory program.

(2) Each person conducting coal exploration or surface coal mining and reclamation operations is responsible for complying with performance standards and design requirements.

Authority: T.C.A. Sections 59–8–304 and 59–8–312.

Chapter 0400–1–13—Performance Standards for Coal Exploration

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0400–1–13–.01 Scope and Application.

(1) This Regulation sets forth performance standards and design requirements required for coal exploration which substantially disturbs the natural lands surface. These performance standards and design requirements are the minimum standards which shall be required of such exploration, and operators, may, at the discretion of the Division, be further required to comply with additional design and performance standards, if in the opinion of the Division, they are necessary in any specific case.

(2) The objective of this regulation is to:

(a) provide any person who conducts or intends to conduct coal exploration which substantially disturbs the natural land surface with minimum environmental protection performance standards and design requirements; and

(b) prevent degradation of environmental quality during and following the conduct of coal exploration.

Authority: T.C.A. Sections 59–8–304 and 59–8–306.

0400–1–13–.02 General Responsibility of Persons Conducting Coal Exploration.

Each person who conducts coal exploration which substantially disturbs the natural land surface in the area described in the permit from the Division shall comply with the procedures described in the exploration and reclamation operations plan and shall comply with Section 0400–1–13–.04 of this Regulation.

Authority: T.C.A. Sections 59–8–304 and 59–8–306.

0400–1–13..03 Required Documents.

Each person who conducts coal exploration which substantially disturbs the natural land surface must have an exploration permit from the Division, and, while in the exploration area, possess a copy of the permit. The permit shall be available for review by the authorized representative of the Division or the Federal Office of Surface Mining upon request.

Authority: T.C.A. Sections 59–8–304 and 59–8–306.

0400–1–13–.04 Performance Standards for Coal Exploration.

The performance standards in this Section are applicable to coal exploration which substantially disturbs land surface:

(1) Habitats of unique value for fish, wildlife, and other related environmental values and areas identified pursuant to Regulation 0400–1–4–.02(1)(c) shall not be disturbed during coal exploration.

(2) The person who conducts coal exploration shall, to the extent practicable, shall measure important environmental characteristics of the exploration area during the operations, to minimize environmental damage to the area and to provide supportive information for any permit application that person may submit under Regulation 0400–1–2 or 0400–1–5.

(3)

(a) Vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts coal exploration to that absolutely necessary to conduct the exploration. Travel shall be confined to graded and surfaced roads during periods when excessive damage to vegetation or rutting of the land surface could result.

(b) Any new road in the exploration area which is used less than six (6) months shall comply with the provisions of Regulations 0400–1–14–.86/0400–1–14–.92. If the road will be used longer than six (6) months, it shall comply with the provisions of Regulations 0400–1–14–.72—0400–1–14–.85.

(c) Existing roads may be used for exploration in accordance with the following:

(1) All applicable federal, state, and local requirements shall be met;

(2) If the road is significantly altered for exploration, including, but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to streamflow or runoff, then Paragraph (7) of this Section shall apply to all areas of the road which are altered or which result in such additional contributions;

(3) If the road is significantly altered for exploration activities and will remain as a permanent road after exploration activities are completed, the person conducting exploration shall ensure that the requirements of Regulations 0400–1–14–.72/0400–1–14–.85, as appropriate, are met for the design, construction, alteration, and maintenance, of the road.

(d) Promptly after exploration activities are completed, existing roads used during exploration shall be reclaimed either:

(1) to a condition equal to or better than their pre-exploration condition; or

(2) to the condition required for permanent roads under Regulations 0400–1–14–.72—0400–1–14–.85 as appropriate.

(4) If excavations, artificial flat areas, or embankments, are created during exploration, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

(5) Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by the Division.

(6) Revegetation of areas disturbed by coal exploration shall be performed by the person who conducts the exploration, or his or her agent. All revegetation shall be in compliance with the plan approved by the Division and carried out in a manner that encourages prompt vegetative cover and recovery of productivity levels compatible with approved post-exploration land use and in accordance with the following:

(a) All disturbed lands shall be seeded or planted to the same seasonal varieties native to the disturbed area or to other approved varieties designed to benefit wildlife. If both the pre-exploration and post-exploration land uses are intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph.

(b) The vegetative cover shall be capable of stabilizing the soil surface with regard to erosion.

(7) With the exception of small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities, no ephemeral, intermittent, or perennial stream shall be diverted during coal exploration activities. Overland flow of water shall be diverted in a manner that:

(a) prevents erosion;

(b) to the extent possible, using the best technology currently available, prevents additional contributions of suspended solids to streamflow or run-off outside the exploration area; and

(c) complies with all other applicable state or federal requirements.

(8) Each exploration hole, borehole, well, or other exposed underground opening created during exploration must meet the requirements of Regulations 0400–1–14–.04, 0400–1–14–.05, and 0400–1–14–.06.

(9) All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration except for those facilities and equipment that the Division agrees may remain, to:

(a) provide additional environmental quality data;

(b) reduce or control the on-and-off-site effects of the exploration activities; or

(c) facilitate future surface mining and reclamation operation by the person conducting the exploration under an appropriate permit.

(10) Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance, and shall include sediment control measures such as those listed in Regulation 0400–1–16–.45, or sedimentation ponds which comply with Regulation 0400–1–16–.46. The Division may specify additional measures which shall be adopted by the person engaged in coal exploration.

(11) Toxic- or acid-forming materials shall be handled and disposed of in accordance with Regulations 0400–1–14–.19 and 0400–1–14–.58. If specified by the Division, additional measures shall

be adopted by the person engaged in coal exploration.

Authority: T.C.A. Sections 59–8–304 and 59–8–306.

0400–1–13–.05 Requirement for a Surface Mining Permit.

Any person who extracts coal for commercial sale during coal exploration operations, must obtain a surface mining permit for those operations from the Division under Section 59–8–307 of the Act, and Regulation 0400–1–2.

Authority: T.C.A. Sections 59–8–304, 59–8–306, and 59–8–307.

Chapter 0400–1–14—Permanent Program Performance Standards Surface Mining Activities

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0400–1–14–.01 Scope.

This Regulation sets forth the minimum environmental protection performance standards for surface mining activities, as authorized by TCA Sections 59–8–310 and 59–8–311.

0400–1–14–.02 Objectives.

This Regulation is intended to ensure that all surface mining activities are conducted in a manner which preserves and enhances environmental and other values in accordance with the Act.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.03 Permanent Signs and Markers.

The applicant shall mark his area before mining begins according to the following requirements.

(1) Specifications. Signs and markers required under this Regulation shall—

(a) be posted and maintained by the person who conducts the surface mining activities;

(b) be of a uniform design throughout the operation that can be easily seen and read;

(c) be made of durable material; and

(d) conform to local ordinances and codes.

(2) Duration of maintenance. Signs and markers shall be maintained during

the conduct of all activities to which they pertain.

(3) Mine and permit identification signs.

(a) Mine and Permit Identification signs shall be at least twenty-four (24) inches high and thirty (30) inches wide. These signs shall be displayed at each point of access to the permit area from public roads and highways. These signs shall show—

1. company name;
2. business address;
3. telephone number of the permittee;
4. area number; and
5. mining permit and N.P.D.E.S. numbers.

(b) Signs shall be retained and maintained until after the release of all bonds for the permit area.

(4) Perimeter markers shall be posted at permitted sites before mining may begin. The perimeter markers shall be colored bands of paint applied to trees that are to be kept along the mine boundaries at intervals close enough to be easily seen by both mining equipment operators and Division personnel. The medium orange paint shall be applied in a six (6) inch wide band around marker tree trunks at about five (5) feet above ground level. Mine areas not having a forest cover should have locust posts, treated pine posts, or other durable posts set along the perimeter at sufficient intervals to be easily seen by both mining equipment operators and Division of Surface Mining (DSM) personnel.

(5) Buffer zones should be marked with a blue six (6) inch band of paint on trees or posts, after a valid surface mine permit has been issued. Buffer zones are those areas within one hundred (100) horizontal feet of either intermittent or perennial streams.

(6) Blasting signs. If blasting is conducted incident to surface mining activities, the person who conducts these activities shall—

(a) conspicuously display signs reading "Blasting Area" along the edge of any blasting area that comes within fifty (50) feet of any road within the permit area, or within one hundred (100) feet of any public road right of way;

(b) conspicuously flag, or post within the blasting area, the immediate vicinity of charged holes, if left unattended.

(c) place at all entrances to the permit area from public road or highways conspicuous signs which state "Warnings! Explosives in Use", which clearly explain the blast warning and all clear signals that are in use and which explain the marking of blast areas and charged holes within the permit area.

(7) Markers for topsoil or other vegetation-supporting material, should be of sufficiently durable board or metal that they will remain visible and readable during the time that topsoil is stored at a mine. The signs should be rectangular, four (4) inches high by eighteen (18) inches long, with the words "Top Soil" printed in legible letters. The sign should be attached to a wood or metal post that should extend five (5) feet above the surface of the stored topsoil.

(8) The Division may approve markers of different colors than those specified in (4) and (5) of this section upon request of the permittee.

Authority: T.C.A. Sections 59-8-304 and 59-8-311.

0400-1-14-.04 Casing and Sealing of Drilled Holes: General Requirements.

Each exploration hole, other drill or borehole, well, or other exposed underground opening shall be cased, sealed, or otherwise managed, as approved by the Division, to prevent acid or other toxic drainage from entering ground or surface waters, to minimize disturbance to the prevailing hydrologic balance, and to ensure the safety of people, livestock, fish and wildlife, and machinery in the mine plan and adjacent area. If these openings are uncovered or exposed by surface mining activities within the permit areas, they shall be permanently closed, unless approved for water monitoring or otherwise managed in a manner approved by the Division. Use of a drilled hole or borehole or monitoring well as a water well must meet the provision of Regulation 0400-1-14-.23. This Regulation does not apply to holes solely drilled and used for blasting.

Authority: T.C.A. Sections 59-8-304 and 59-8-311.

0400-1-14-.05 Casing and Sealing of Drilled Holes: Temporary.

Each exploration hole, other drill or boreholes, wells and other exposed underground openings which have been identified in the approved permit application for use to return coal processing waste or water to underground workings, or to be used to monitor ground water conditions, shall be temporarily sealed before use and protected during use by barricades, or fences, or other protective devices approved by the Division. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the surface mining activities.

Authority: T.C.A. Sections 59-8-304 and 59-8-311.

0400-1-14-.06 Casing and Sealing of Drilled Holes: Permanent.

When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effect, or unless approved for transfer as a water well under Regulation 0400-1-14-.24, each exploration hole, other drilled hole or borehole, well, and other exposed underground opening shall be capped, sealed, backfilled, or otherwise properly managed, as required by the Division, under Regulation 0400-1-14-.04 and consistent with Regulation 0400-1-14-.24. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery, and to keep acid or other toxic drainage from entering ground or surface waters.

Authority: T.C.A. Sections 59-8-304 and 59-8-311.

0400-1-14-.07 General Requirements.

(1) Before disturbance of an area, topsoil and subsoils to be saved under Regulation 0400-1-14-.08 shall be separately removed and segregated from other material.

(2) After removal, topsoil shall either be immediately redistributed as required under Regulation 0400-1-14-.10 or stockpiled pending redistribution as required under Regulation 0400-1-14-.09.

Authority: T.C.A. Sections 59-8-304 and 59-8-311.

0400-1-14-.08 Topsoil: Removal.

(1) Timing. Topsoil shall be removed from areas to be affected by surface operations or major structures, after vegetative cover that would interfere with the use of the topsoil is cleared from portions of those areas that will be disturbed, but before any drilling for blasting, mining, or other surface disturbance.

(2) Materials to be removed. All topsoil shall be removed in a separate layer from the areas to be disturbed, unless use of substitute or supplemental materials is approved by the Division in accordance with Paragraph (5) of this Section. If use of substitute or supplemental materials is approved, all materials to be redistributed shall be removed.

(3) Material to be removed in thin topsoil situation. If the topsoil is less than six (6) inches, a six (6) inch layer that includes the A horizon and the unconsolidated materials immediately below the A horizon or the A horizon and all unconsolidated material if the total available is less than six (6) inches,

shall be removed and the mixture segregated and redistributed as the surface soil layer, unless topsoil substitutes are approved by the Division pursuant to Paragraph (5) of this Section.

(4) Subsoil segregation. The B horizon and portions of the C horizon, or other underlying layers demonstrated to have qualities for comparable root development shall be segregated and replaced as subsoil, if the Division determines that either of these is necessary or desirable to ensure soil productivity consistent with the approved postmining land use.

(5) Topsoil substitutes and supplements.

(a) Selected overburden materials may be substituted for or used as a supplement to, topsoil, if the Division determines that the resulting soil medium is equal to or more suitable for sustaining revegetation. This determination shall be based on:

1. The results of chemical and physical analyses of overburden and topsoil. These analyses shall include determinations of pH, net acidity or alkalinity, phosphorus, potassium, texture class, and other analysis as required by the Division. The Division may also require that results of field-site trials or greenhouse tests be used to demonstrate the feasibility of using these overburden materials.

2. Results of analyses, trials, and tests shall be submitted to the Division. Certification of trials and tests shall be made by a laboratory approved by the Division, stating that:

a. the proposed substitute material is equal to or more suitable for sustaining the vegetation than is the available topsoil;

b. the substitute material is the best available material to support the vegetation;

c. the trials and tests were conducted using standard testing procedures;

d. the test samples are typical representations from the site and describing the chain of custody; and

e. the amount of substitute or supplement in thickness that is actually available for use from the site.

(b) Substituted or supplemental material shall be removed, segregated, and replaced in compliance with the requirements for topsoil under this section.

(6) Limits of topsoil removal area. Where the removal of vegetative material, topsoil, or other materials may result in erosion which may cause air or water pollution—

(a) the size of the area from which topsoil is removed at any one (1) time shall be limited;

(b) the surface soil layer shall be redistributed at a time when the physical and chemical properties of topsoil can be protected and erosion can be minimized; and

(c) such other measures shall be taken as the Division may approve or require to control erosion.

Authority: T.C.A. Sections 59-8-304 and 59-8-311.

0400-1-14-.09 Topsoil: Storage.

(1) Topsoil and other materials removed in accordance with 0400-1-14-.08 shall be stockpiled only when it is impractical to promptly redistribute such materials on regraded areas.

(2) Stockpiled materials shall be selectively placed on a stable area within the permit area, clearly marked, not disturbed, and protected from wind and water erosion, unnecessary compaction, and contaminants which lessen the capability of the materials to support vegetation when redistributed.

(a) Protection measures shall be accomplished either by—

1. an effective cover of non-noxious, quickgrowing annual and perennial plants, seeded or planted and mulched within the first normal period for favorable planting conditions, or

2. other methods demonstrated to and approved by the Division to provide equal protection.

(b) Unless approved by the Division, stockpiled topsoil and other materials shall not be moved until required for redistribution on a regraded area.

Authority: T.C.A. Sections 59-8-304 and 59-8-311.

0400-1-14-.10 Topsoil: Redistribution.

(1) After final grading and before the replacement of topsoil and other materials segregated in accordance with Regulation 0400-1-14-.09, regraded land shall be scarified or otherwise treated as required by the Division to eliminate slippage surfaces and to promote root penetration. If the person who conducts the surface mining activities shows, through appropriate tests, and the Division approves, that no harm will be caused to the topsoil and vegetation, scarification may be conducted after topsoiling.

(2) Topsoil and other materials shall be redistributed in a manner that—

(a) achieves an approximate uniform, stable thickness consistent with the approved postmining land uses, contours, and surface water drainage system;

(b) prevents excess compaction of the topsoil; and

(c) protects the topsoil from wind and water erosion before and after it is seeded and planted.

Authority: T.C.A. Sections 59-8-304 and 59-8-311.

0400-1-14-.11 Topsoil: Nutrients and Soil Amendments.

Nutrients and soil amendments in the amounts determined by soil tests shall be applied to the redistributed surface soil layer, so that it supports the approved postmining land use and meets the revegetation requirements of Regulations 0400-1-14-.62—0400-1-14-.68. All soil tests shall be performed by a qualified laboratory using standard methods approved by the Division.

Authority: T.C.A. Sections 59-8-304 and 59-8-311.

0400-1-14-.12 Hydrologic Balance: General Requirements.

(1) Surface mining activities shall be planned and conducted to minimize changes to the prevailing hydrologic balance in both the mine plan and adjacent areas, in order to prevent long-term adverse changes in the balance that could result from those activities.

(2) Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.

(3) In no case shall federal and state water quality statutes, regulations, standards, or effluent limitations be violated.

(4) Operations shall be conducted to minimize water pollution and, where necessary, treatment methods shall be used to control water pollution.

(a) Each person who conducts surface mining activities shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow of drainage shall be used in preference to the use of water treatment facilities.

(b) Acceptable practices to control and minimize water pollution include, but are not limited to—

1. stabilizing disturbed areas through land shaping;

2. diverting run-off;

3. achieving quickly germinating and growing stands of temporary vegetation;

4. regulating channel velocity of water;

5. lining drainage channels with rock or vegetation;

6. mulching;

7. selectively placing and sealing acid-forming and toxic-forming materials; and

8. selectivly placing waste materials in backfill areas.

(c) If the practices listed at Paragraph (4)(b) of this Section are not adequate to meet the requirements of this Regulation, the person who conducts surface mining activities shall operate and maintain the necessary water treatment facilities for as long as treatment is required under this Regulation.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.13 Hydrologic Balance: Water Quality Standards and Effluent Limitations.

(1)

(a) All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded, or planted shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area.

(b) Sedimentation ponds and other treatment facilities shall be maintained until the disturbed area has been restored and the vegetation requirements of Regulations 0400–1–14–.62—0400–1–14–.67 are met and the quality of the untreated drainage from the disturbed area meets the applicable state and federal water quality standards requirements for the receiving stream.

(c) The Division may grant exemptions from these requirements only when:

1. the disturbed drainage area within the total disturbed area is small; and

2. the person who conducts the surface mining activities demonstrates that sedimentation ponds and treatment facilities are not necessary for drainage from the disturbed drainage areas to meet the effluent limitations in the table below and the applicable state and federal water quality standards for downstream receiving waters.

(d) For purposes of this section only, "disturbed area" shall not include those area in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this Regulation and the upstream area is not otherwise distribued by the person who conducts the surface mining activities.

(e) Sedimentation ponds required by this section shall be constructed in accordance with Regulation 0400–1–14–.17, in appropriate locations before beginning any suface mining activities in the drainage area to be affected.

(f) Where the sedimentation pond or series of sedimentation ponds is used so as to result in the mixing of drainage from the disturbed areas with drainage from other areas not disturbed by current surface coal mining and reclamation operations, the permittee shall achieve the effluent limitations set forth below for all of the mixed drainage when it leaves the permit area.

(g) Discharges of water from areas disturbed by surface mining activities shall be made in compliance with all federal and state laws and regulations and, at a minimum, the following numerical effluent limitations:

[Effluent limitations, in milligrams per liter (mg/l) except for pH]

Effluent characteristics	Maximum allowable	Average of daily values for 30 consecutive discharge days
Iron, total	7.0	3.5
Mangsnese, total	4.0	2.0
Total suspended solids	70.0	35.0
pH	[1]	[1]

[1] Within range of 6.0 to 9.0.

(2) A discharge from the disturbed areas is not subject to the effluent limitations of this section, except for total suspended solids, which are treated in subsection (4), if—

(a) the discharge is demonstrated by the discharger to have resulted from a precipitation event equal to or larger that a ten (10) year, twenty-four (24) hour precipitation event; and

(b) the discharge is from facilities designed, constructed, and maintained in accordance with the requirements of this Regulation.

(3) Adequate facilities shall be installed, operated, and maintained to treat any water discharged from the disturbed area so that it complies with all federal and state laws and regulations and the limitations of this section. If the pH of water to be discharged from the disturbed area is less than 6.0, an automatic lime feeder or other automatic neutralization process approved by the Division shall be installed, operated, and maintained. The Division may authorize the use of a manual system, if it finds that—

(a) flow is infrequent and presents small and infrequent treatment requirements to meet applicable standards which do not require use of an automatic neutralization process; and

(b) timely and consistent treatment is ensured.

(4) A discharge from the disturbed area is not subject to the effluent limitations of this section on suspended solids if the exceeding of the limitations is caused by precipitation or snow melt, equal to or greater than the ten (10) year, twenty-four (24) hour event. This exemption shall be available only if the facility is designed, constructed, and maintained to contain or treat the volume of water which would fall on the areas covered by this Regulation during a ten (10) year, twenty-four (24) hour or larger precipitation event (or snow melt or equivalent volume). The operator shall have the burden of demonstrating to the Division that the facility in question was designed and constructed, and has been maintained, to contain or treat the required volume, and demonstrating discharge subject to the exemption met the prerequisite of having been caused by a single precipitation event.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.14 Hydrologic Balance: Diversion and Conveyance of Overland Flow and Shallow Ground Water Flows and Ephemeral Streams.

Overland flow, including flow through litter, and shallow ground water flow from undisturbed areas, and flow in ephemeral streams, may be diverted away from disturbed areas, by means of temporary or permanent diversions, if required or approved by the Division as necessary to minimize erosion, to reduce the volume of water to be treated, and to prevent or remove water from contact with acid-forming or toxic-forming materials. The following requirements shall be met for all diversions and for all collection drains that are used to transport water into water-treatment facilities and for all diversions of overland and shallow ground water flow and ephemeral streams—

(1) Temporary diversions shall be constructed to pass safely the peak run-off from a precipitation event with a two (2) year recurrence interval, or a larger event as specified by the Division.

(2) To protect fills and property and to avoid danger to public health and safety, permanent diversions shall be constructed to pass safely the peak run-off from a precipitation event with a ten (10) year recurrence interval, or a larger event as specified by the Division. Permanent diversions shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar lining shall be used only when approved by the Division to prevent seepage or to provide stability.

(3) Diversions shall be designed, constructed, and maintained in a manner which prevents additional contributions of suspended solids to streamflow and to run-off outside the permit area to the extent possible using the best technology currently available. Appropriate sediment control measures for these diversions may include, but not be limited to, maintenance of appropriate gradients, channel lining,

revegetation, roughness structures, and detention basins.

(4) No diversion shall be located so as to increase the potential for land slides. No diversion shall be constructed on existing land slides, unless approved by the Division.

(5) When no longer needed, each temporary diversion shall be removed and the affected land regraded, topsoiled, and revegetated in accordance with Regulations 0400–1–14–.10, 0400–1–14–.11, 0400–1–14–.56—0400–1–14–.61, and 0400–1–14–.62—0400–1–14–.67.

(6) Diversion design shall incorporate the following:

(a) Channel lining shall be designed using standard engineering practices to pass safely the design velocities. Riprap shall comply with the requirements of Regulation 0400–1–14–.37(2)(e), except for sand and gravel.

(b) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the Division, the design freeboard may be increased.

(c) Energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(d) Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with Regulations 0400–1–14–.36 / —0400–1–14–.39.

(e) Topsoil shall be handled in compliance with Regulations 0400–1–14–.07—0400–1–14–.11.

(7) Diversions shall not be constructed or operated to divert water into underground mines without the approval of the Division under Regulation 0400–1–14–.26.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.15 Hydrologic Balance: Stream Channel Diversions.

(1) Flow from perennial and intermittent streams within the permit area may be diverted, if the diversions—

(a) are approved by the Division after making the findings called for in Regulation 0400–1–14–.28 (1);

(b) comply with other requirements of this subchapter; and

(c) comply with local, state and federal statutes and regulations.

(2) When streamflow is allowed to be diverted, the stream channel diversion shall be designed, constructed, and removed, in accordance with the following:

(a) The longitudinal profile of the stream, the channel, and the flood plain shall be designed and constructed to remain stable and to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or to run-off outside the permit area. These contributions shall not be in excess of requirements of state or federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used in diversions only when approved by the Division as being necessary to control erosion. These structures shall be approved for permanent diversions only where they are stable and will require infrequent maintenance.

(b) The combination of channel, bank, and flood plain configurations shall be adequate to pass safely the peak run-off of a ten (10) year, twenty-four (24) hour precipitation event for temporary diversions, a one hundred (100) year, twenty-four (24) hour precipitation event for permanent diversions, or larger events specified by the Division. However, the capacity of the channel itself should be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.

(3) When no longer needed to achieve the purpose for which they were authorized, all temporary stream channel diversions shall be removed and the affected land regraded and revegetated, in accordance with Regulations 0400–1–14–.10, 0400–1–14–.11, 0400–1–14–.56—0400–1–14–.60, and 0400–1–14–.62—0400–1–14–.67. At the time diversions are removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed to prevent overtopping or failure of the facilities. This requirement shall not relieve the person who conducts the surface mining activities from maintenance of a water treatment facility otherwise required under this Regulation or the permit.

(4) When permanent diversions are constructed or stream channels restored, after temporary diversions, the operator shall:

(a) restore, enhance where practicable, or maintain natural riparian vegetation on the banks of the stream;

(b) establish or restore the stream to its natural meandering shape of an environmentally acceptable gradient, as determined by the Division;

(c) establish or restore the stream to a longitudinal profile and cross section, including aquatic habitats (usually a pattern of riffles, pools, and drops rather than uniform depth) that approximate premining stream channel characteristics.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.16 Hydrologic Balance: Sediment Control Measures.

(1) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(a) prevent, to the extent possible, additional contributions of sediment to streamflow or to run-off outside the permit area;

(b) meet the more stringent of applicable state or federal effluent limitations;

(c) minimize erosion to the extent possible.

(2) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity or practices in and downstream from the disturbed area shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to—

(a) disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in Regulation 0400–1–14–.62 (2);

(b) stabilizing the backfill material to promote a reduction in the rate and volume of run-off, in accordance with the requirements of Regulation 14–.56;

(c) retaining sediment within disturbed areas;

(d) diverting run-off away from disturbed areas;

(e) diverting run-off using protected channels or pipes through disturbed areas so as not to cause additional erosion;

(f) using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce run-off volume, or trap sediment; and

(g) treating with chemicals as approved by the Division.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.17 Hydrologic Balance: Sedimentation Ponds.

(1) General requirements. Sedimentation ponds shall be used individually or in series and shall—

(a) be constructed before any disturbance of the undisturbed area to be drained into the pond;

(b) be located as near as possible to the disturbed area and 100' from streams or streams with a biological community;

(c) be located on the flattest slope practicable, but in no case greater than 20 degrees;

(d) meet all the criteria of this section.

(2) Sediment Storage Volume. Sedimentation ponds shall provide a minimum storage volume equal to 0.2 acre feet per disturbed acre draining to the basin. The Division may approve lesser sediment storage volumes equal to the sediment calculated to enter the pond between planned cleanout intervals upon submission and approval of a plan for removing sediment from the pond which includes equipment to be used. The minimum sediment storage volume shall be equal to 0.1 acre feet per disturbed acre.

(3) Detention time. Sedimentation ponds shall provide the required theoretical detention time for the water inflow or run-off entering the pond from a ten (10) year, twenty-four (24) hour precipitation event (design event).

(4) Surface Area. Sediment ponds shall provide a minimum surface area based upon the following criteria:

(a) physical properties of water at 4° centigrade.

(b) particles with a diameter of 10 microns (1×10^{-5} meters)

(c) particles with a specific gravity of 1.8. The division may approve designs utilizing higher specific gravities based on the presentation of site specific data which supports the proposed value.

(5) Dewatering.

(a) The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the Division. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sedimentation storage volume.

(b) Sediment ponds may be permanent pool or dewatering. The Division may require either design on a particular site on a case by case basis.

(c) Permanent pool basins must have a minimum average depth of five (5) feet.

(6) Each person who conducts surface mining activities shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.

(7) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this section shall not relieve the person from compliance with applicable effluent limitations as contained in Regulation 0400–1–14–.13.

(8) There shall be no outflow through the emergency spillway during the passage of the run-off resulting from the ten (10) year, twenty-four (24) hour precipitation event or lesser events through the sedimentation pond.

(9) Sediment shall be removed from sedimentation ponds when the volume of sediment accumulates to eighty (80) percent of the sediment storage volume required.

(10) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the run-off from a twenty-five (25) year, twenty-four (24) hour precipitation event, or larger event specified by the Division. The elevation of the crest of the emergency spillway shall be a minimum of 1.0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the Division.

(11) The minimum elevation at the top of the settled embankment shall be 1.0 foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum elevation requirement shall apply at all times, including the period after settlement.

(12) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the Division that the material used and the design will ensure against all settlement.

(13) The minimum top width of the embankment shall not be less than the quotient of (H+35)/5, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(14) The combined upstream and downstream side slopes of the settled embankment shall not be less than 1v:5h with neither slope steeper than 1v:2h and the entire foundation surface scarified.

(15) The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified.

(16) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.

(17) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirements of this section. Compaction shall be conducted as specified in the design approved by the Division.

(18) If a sedimentation pond has an embankment that is more than twenty (20) feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of twenty (20) acre-feet or more, the following additional requirements shall be met:

(a) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the run-off resulting from a one hundred (100) year, twenty-four (24) hour precipitation event, or a larger event specified by the Division.

(b) The embankment shall be designed and constructed with a static safety factor of at least 1.5, or a higher safety factor as designated by the Division to ensure stability.

(c) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(d) The criteria of the Mine Safety and Health Administration shall be met.

(19) Each pond shall be designed and inspected during construction under the supervision of, and certified after construction by, a registered professional engineer. Supervision of construction may be carried out by the engineer's delegate who has been approved by the Division.

(20) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with Regulation 0400–1–14–.61

(21) All ponds, including those not meeting the size or other criteria of Regulation 0400–1–14–.20, shall be examined for structural weakness, erosion, and other hazardous conditions, and reports and modifications shall be made to the Division, in accordance with Regulation 0400–1–14. With the approval of the Division, dams not meeting these criteria shall be examined four (4) times per year.

(22) Sedimentation ponds shall not be removed until the disturbed area has been restored and the vegetation requirements of Regulations 0400–1–14–.62—0400–1–14–.68 are met and the drainage entering the pond has met the applicable state and federal water quality requirements for the receiving stream. When the sedimentation pond is removed, the affected land shall be regarded and revegetated in accordance with Regulations 0400–1–14–.55—0400–14–.61, and 0400–1–14–.61—0400–1–14–.68, unless the pond has been approved by the Division for retention as being compatible with the approved postmining land use under Regulation 0400–1–14–.71. If the Division approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments of Regulations 0400–1–14–.20 and 0400–1–14–.27.

Authority: T.C.A. Sections 59–8–304 and 59–8–311

0400–1–14–.18 Hydrologic Balance: Discharge Structures.

Discharge from sedimentation ponds, permanent and temporry impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering-design procedures.

Authority: T.C.A. Sections 59–8–304 and 59–8–311

0400–1–14–.19 Hydrologic Balance: Acid-Forming and Toxic-Forming Spoil.

Drainage from acid-forming and toxic-forming spoil into ground and surface water shall be avoided by—

(1) identifying, burying, or treating or both where necessary, spoil which, in the judgment of the Division, may be detrimental to vegetation or may adversely affect water quality if not treated or buried;

(2) preventing water from coming into contact with acid-forming and toxic-forming spoil in accordance with Regulation 0400–1–14–.58, and other measures as required by the Division; and

(3) burying or otherwise treating all acid-forming or toxic-forming spoil within thirty (30) days after it is first exposed on the mine site, or within a lesser period required by the Division. Temporary storage of the spoil may be approved by the Division upon a finding that burial or treatment within thirty (30) days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming spoil to be stored shall be place on impermeable material and protected from erosion and contact with surface water.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.20 Hydrologic Balance: Permanent and Temporary Impoundments.

(1) Permanent impoundments are prohibited unless included in the approved mining and reclamation plan, and authorized by the Division, upon the basis of the following demonstration:

(a) The quality of the impoundment water shall be suitable on permanent basis for its intended use, and discharge of water from the impoundment shall not degrade the quality of receiving waters to less than the water-quality standards established pursuant to applicable state and federal laws.

(b) The level of water shall be sufficiently stable to support the intended use.

(c) Adequate safety and access to the impounded water shall be provided for proposed water users.

(d) Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses. The design, construction, and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act. Requirement for impoundments that meet the size or other criteria of the Mine Safety and Health Administration are contained in U.S. Soil Conservation Service Technical Release No. 60, 'Earth Dams and Reservoirs,' June 1976. Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are contained in U.S. Soil Conservation Service Practice Standard 378, 'Ponds,' October 1978. The technical release and practice standard are hereby incorporated by reference as they exist on the date of adoption of this regulation and as subsequently revised.

(e) The size of the impoundment is adequate for its intended purposes.

(f) The impoundment will be suitable for the approved postmining land use.

(2) Temporary impoundments of water in which the water is impounded by a dam shall meet the requirements of Regulation 0400–1–14–.17(5)–21.

(3) Excavations that will impound water during or after the mining operation shall have perimeter slopes that are stable and shall not be steeper than 1v:2h. Where surface run-off enters the impoundment area, the side slope shall be protected against erosion.

(4) Slope protection shall be provided to minimize surface erosion at the site and sediment control measures shall be required where necessary to reduce the sediment leaving the site.

(5) All embankments of temporary and permanent impoundments, and the surrounding areas and diversion ditches disturbed or created by construction, shall be graded, fertilized, seeded, and mulched to comply with the requirements of Regulations 0400–1–14–.62—0400–1–14–.67 immediately after the embankment is completed, provided that the active, upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated to comply with the requirements of Regulations 0400–1–14–.61 and 0400–1–14–.62—0400–1–14–.68.

(6) All dams and embankments meeting the size or other criteria of Regulations 0400–1–14–.17(18), and 0400–1–15–.17(17) shall be routinely inspected by qualified registered professional engineer, or by someone under the supervision of a qualified registered professional engineer.

(7) All dams and embankments shall be routinely maintained during the mining operations. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible material present on the surface, other than material such as mulch or dry vegetation used for surface stability, shall be removed and all other appropriate maintenance procedures followed.

(8) All dams and embankments shall be certified to the Division by qualified registered professional engineer, immediately after construction and annually thereafter, as having been constructed and/or maintained to comply with the requirements of this section. Certification reports should include statements on—

(a) existing and required monitoring procedures and instrumentation;

(b) the design, depth and elevation of any impounded waters at the time of the initial certification report or the average and maximum depths and elevations of any impounded waters over the past year for the annual certification reports;

(c) existing storage capacity of the dam or embarkment;

(d) any fires occurring in the construction material up to the date of the initial certification or over the past year for the annual certification reports; and

(e) any other aspects of the dam or embarkment affecting stability.

(9) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the Division and shall comply with the requirements of this section. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the Division shall approve the plans before modification begins.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.21 Hydrologic Balance: Ground Water Protection.

(1) Backfilled materials shall be placed so as to minimize contamination of ground water systems with acid, toxic, or otherwise harmful mine drainage, to minimize adverse effects of mining on ground water systems outside the permit area, and to support approved postmining land uses.

(2) To control the effects of mine drainage, pits, cuts, and other mine excavation or disturbances shall be located, designed, constructed, and utilized in such manner as to prevent or control discharge of acid, toxic, or otherwise harmful mine drainage waters into ground water system and to prevent adverse impacts on such ground water systems or on approved postmining land uses.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.22 Hydrologic Balance: Protection of Ground Water Recharge Capacity.

Surface mining activities shall be conducted in a manner that facilitates reclamation which will restore approximate premining recharge capacity, through restoration of the capability of the reclaimed areas as a whole, excluding coal processing waste and underground development waste disposal areas and fills, to transmit water to the ground water system. The recharge capacity shall be restored to a condition which—

(1) supports the approved postmining land use;

(2) minimizes disturbances to the prevailing hydrologic balance in the mine plan area and in adjacent areas; and

(3) provides a rate of recharge that approximates the premining recharge rate.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.23 Hydrologic Balance: Surface and Ground Water Monitoring.

(1) Ground water.

(a) Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the Division, to determine the effects of surface mining activities on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems in the mine plan and adjacent areas.

(b) When surface mining activities may affect the ground water systems which serve as aquifers which significantly ensure the hydrologic balance of water use on or off the mine plan area, ground water levels and ground water quality shall be periodically monitored. Monitoring shall include measurements from a sufficient number of wells and mineralogical and chemical analyses of aquifer, overburden and spoil that are adequate to reflect changes in ground water quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of surface mining activities, if necessary, to minimize disturbance of the prevailing hydrologic balance.

(c) As specified and approved by the Division, the person who conducts surface mining activities shall conduct additional hydrologic tests, including drilling, infiltration tests, and aquifer tests and shall subnmit the results to the Division to demonstrate compliance with Regulations 0400–1–14–.21—0400–1–14–.23.

(2) Surface water.

(a) Surface water monitoring shall be conducted in accordance with the monitoring program submitted under Regulation 0400–1–2 and approved by the Division. The Division shall determine the nature of data, frequency of collection, and reporting requirements. Monitoring shall—

1. be adequate to measure accurately and record water quantity and quality of the discharges from the permit area;

2. in all cases in which analytical results of the sample collections indicate noncompliance with a permit condition or applicable standard has occurred, shall result in the person who conducts the surface mining activities notifying the Division within five (5) days Where a National Pollutant Discharge Elimination System (NPDES) permit effluent limitation noncompliance has occurred, the person who conducts surface mining activities shall forward the analytic results concurrently with the written notice of noncompliance.

3. Result in quarterly reports to the Division to include analytical results from each sample taken during the quarter. Any sample results which indicate a permit violation will be reported immediately to the Division. In those cases where the discharge for which water monitoring reports are required is also subject to regulation by a NPDES permit issued under the Federal Clean Water Act of 1977 and where such permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within ninety (90) days or less of sample collection, the following alternative procedures shall be used. The person who conducts the surface mining activities shall submit to the Division of the same time schedule as required by the NPDES permit or within ninety (90) days following sample collection, whichever is earlier, either—

a. a copy of the completed report form filed to meet NPDES permit requirements; or

b. a letter identifying the state or federal government official with whom the reporting form was filed to meet NPDES permit requirements and the date of filing.

(b) After disturbed areas have been regraded and stabilized according to this Regulation, the person who conducts surface mining activities shall monitor surface water flow and quality. Data from this monitoring may be used to demonstrate that the quality and quantity of run-off without treatment is consistent with the requirements of this Regulation to minimize disturbance to the prevailing hydrologic balance and attain the approved postmining land use. These data may also provide a basis for approval by the Division for removal of water quality or flow control systems.

(c) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area shall be properly installed, maintained, and operated and shall be removed when no longer required.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.24 Hydrologic Balance: Transfer of Wells.

(1) An exploratory or monitoring well may only be transferred by the person

who conducts surface mining activities for further use as a water well with the prior approval of the Division. That person and the surface owner of the lands where the well is located shall jointly submit a written request to the Division for that approval.

(2) Upon an approved transfer of a well, the transferee shall—

(a) assume primary liability for damages to persons or property from the well;

(b) plug the well when necessary, but in no case later than abandonment of the well; and

(c) assume primary responsibility for compliance with Regulations 0400–1–14–.04—0400–1–14–.06 with respect to the well.

(3) Upon an approved transfer of a well, the transferor shall be secondarily liable for the transferee's obligations under Paragraph (2) of this Section, until release of the bond or other equivalent guarantee required by Regulation 0400–1–7 for the area in which the well is located.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.25 Hydrologic Balance: Water Rights and Replacement.

Any person who conducts surface mining activities shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial or other legitinate use from an underground or surface source, where the water supply has been affected by contamination, diminution, or interruption proximately resulting from the surface mining activities.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.26 Hydrologic Balance: Discharge of Water Into an Underground Mine.

Surface water shall not be diverted or otherwise discharged into underground mine workings, unless the person who conducts the surface mining activities demonstrates to the Division that this will—

(1) abate water pollution or otherwise eliminate public hazards resulting from surface mining activities; and

(2) be discharged as a controlled flow, meeting the effluent limitations of Regulation 0400–1–14–.13 for pH and total suspended solids except that the pH and total suspended solid limitations may be exceeded, if approved by the Division, and is limited to—

(a) coal processing waste;

(b) fly ash from a coal-fired facility;

(c) sludge from an acid mine drainage treatment facility;

(d) flue gas desulfurization sludge;

(e) inert materials used for stabilizing underground mines; or

(f) underground mine development wastes.

(3) in any event, the discharge from underground mines to surface waters will not cause, result in or contribute to a violation of applicable water quality standards or effluent limitations;

(4) minimizes disturbance to the hydrologic balance; and

(5) meets the approval of the Mine Safety and Health Administration.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.27 Hydrologic Balance: Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities.

Before abandoning the permit area, the person who conducts the surface mining activities shall renovate all permanent sedimentation ponds, diversion, impoundments, and treatment facilities to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.28 Hydrologic Balance: Stream Buffer Zones.

(1) No land within one hundred (100) feet of a perennial stream or stream with a biological community determined according to Paragraph (3) below shall be disturbed by surface mining activities, except in accordance with Regulations 0400–1–14–.14—0400–1–14–.15, unless the Division specifically authorizes surface mining activities closer to or through such a stream upon finding—

(a) that the area within 100 feet of the stream has previously been disturbed and is currently adversely impacting the stream; and

(b) new disturbance and reclamation will result in environmental enhancement of the site; and

(c) during and after the mining, the water quantity and quality from the stream section within one hundred (100) feet of the surface mining activities shall not be adversely affected.

(2) The area not to be disturbed shall be designated a buffer zone and marked as specified in Regulation 0400–1–14–.03.

(3) A stream with a biological community shall be determined by the existence in the stream at any time of an assemblage of two (2) or more species of arthropods or molluscan animals which are—

(a) adapted to flowing water for all or part of their life cycle;

(b) dependent upon a flowing water habitat;

(c) reproducing or can reasonably be expected to reproduce in the water body where they are found; and

(d) longer than two (2) millimeters at some stage of the part of their life cycle spent in the flowing water habitat.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.29 Coal Recovery

Surface mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal mining operations is minimized.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.30 Use of Explosives: General Requirements.

(1) The use of explosives, regardless of the amount, in the production and exploration of coal shall be in accordance with all state and federal laws. Further, surface mine operators shall comply with the Tennessee Blasting Standards Act of 1975, Chapter 93, Public Acts of 1975, administered by the Commissioner of Insurance. Also, the operator shall comply with all local laws and regulations pertaining to blasting operations and use of explosives. In addition, the operator shall comply with all the regulations included in this chapter. In the event that two (2) or more of the laws or regulations governing the use of explosives conflicts, the stricter of the provisions will apply.

(2) All blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved. Each person responsible for blasting operations shall possess a valid certification as required by the portions of these regulations pertaining to the training and certification of blasters.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.31 Use of Explosives: Pre-Blasting Surveys.

(1) Pre-blasting surveys shall be required in the following cases for all dwelling or structures:

(a) those located within one thousand (1,000) feet of the permit boundary, excluding haul roads unless blasting is to be done along the haulroad area; or

(b) those located within one-half (½) mile of the permit boundary, excluding

haulroads unless blasting is to be done along the haulroad area, at the request of the owner, or tenant, or person responsible for the dwelling, or if specifically requested by the Director. However, in all cases, a list of all dwellings or structures within ½ mile giving the resident's name, address, and request or waiver of rights to a pre-blast survey and water monitoring will be submitted.

(c) If any structure is renovated or added to subsequent to a pre-blast survey, then upon request to the Division, a survey of the additions or renovations shall also be performed in accordance with this Section.

(2) The purpose of the survey is to ascertain the pre-blasting condition of the structure in order to:

(a) allow the Division to determine the potential hazards, if any, of the proposed blasting operation; and

(b) establish a pre-blasting record of the condition of the structure in the event of post-blasting allegations of blasting damage.

(3) A written report of the survey shall be prepared by the operator on forms provided by the Division and shall be signed by the operator and by the person who conducted the survey. The survey report shall be submitted in duplicate and shall accompany the permit application. The operator shall provide one envelope for each structure surveyed, stamped and addressed to the person responsible for the structure. The envelope shall not be sealed.

(a) The Division shall mail one (1) copy of the survey to the person requesting the survey in order to ensure that the person has the opportunity to comment on the pre-blasting survey.

(b) The person responsible for the structure shall have twenty (20) days from the postmark date of the survey to comment on the pre-blast survey.

(4) The validity and accuracy of the pre-blast survey shall be approved by the Division before a permit is issued.

(5) The pre-blasting survey report shall include—

(a) the address of the structure;

(b) the names and addresses of the owner (or agent) and tenant of the structure;

(c) the distance from the permit boundary and from the nearest blasting site;

(d) a description of the structure and the materials used in the structure, and an estimate of the age of the structure;

(e) a diagram (or photograph) depicting the location of any existing cracks within the masonry, plaster, or windows on the structure;

(f) a description of any physical factors that could magnify or mitigate the effects of blasting such as for example—

1. has the structure been previously exposed to blasting within one-half (½) mile;

2. is the structure built on a fill;

3. are foundation footings below the frost line;

4. any other contributing factors; and

5. any recommendations of any proposed changes in the blasting plan which should be adopted to prevent damage.

(6) Assessments of structures such as pipes, cables, transmission lines, wells and other water systems shall be limited to surface condition and readily available data. Special attention shall be given to the pre-blasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quality and quantity of the water.

(7) Specific items to be covered in groundwater monitoring shall include:

(a) Name of person and firm performing the analysis;

(b) date and quantity of sampling;

(c) name of owner of the water source sampled;

(d) name, address, and telephone number of principal person to be contacted at each residence;

(e) distance from the nearest blast site;

(f) wellcasing information, if known;

(g) well depth, if known;

(h) static water level, if known;

(i) type of sanitary waste disposal system and the proximity to the water supply;

(j) Structures at the spring such as spring house, cistern, etc.;

(k) spring flow, estimated;

(l) water quantity characteristics as affected by rainfall and season, if known;

(m) existence and extent of any odor;

(n) owner information concerning past or present water shortages, if any;

(o) and a water analysis, including:

1. pH;
2. total iron;
3. total manganese;
4. turbidity;
5. total hardness as $CaCO_3$;
6. sulfate;
7. chloride;
8. total dissolved solids;
9. fecal coliform;
10. fecal streptoccus; and;
11. other parameters as may be requested by the Division.

(8) The person making the survey should make a sincere effort to contact the owner of the structure to gain access to the structure. However, in no case shall the failure to obtain an approved pre-blast survey due to the non-cooperation of the owner or tenant of the structure be construed as reason to deny the permit or blasting plan.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.32 Use of Explosives: Public Notice of Blasting Schedule.

(1) Blasting schedule publication.

(a) Each person who conducts surface mining activities shall publish a blasting schedule at least ten (10) days, but no more than twenty (20) days, before beginning a blasting program. The blasting schedule shall be published in a newspaper of general circulation in the locality of the blasting site.

(b) Copies of the schedule shall be distributed by mail to local governments and public utilities and my mail or delivered to each residence within one-half (½) mile of the permit area described in the schedule. For the purposes of this section, the permit area does not include haul or access roads, coal preparation and loading facilities, and transportation facilities between coal excavation areas an coal preparation or loading facilities, if blasting is not conducted in these areas. Copies sent to residences shall be accompanied by information advising the owner or resident how to request a pre-blasting survey.

(c) The person who conducts the surface mining activities shall republish and redistribute the schedule by mail at least every twelve (12) months.

(2) Blasting schedule contents.

(a) A blasting schedule shall not be so general as to cover the entire permit area or all working hours, but shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur.

(b) The blasting schedule shall contain at a minimum—

1. the company name, address and phone number;

2. identification of the specific areas in which blasting will take place. Each specific blasting area described shall be reasonably compact and not larger than three hundred (300) acres;

3. dates and time periods when explosives are to be detonated. These periods shall not exceed an aggregate of four (4) hours in any one (1) day;

4. methods to be used to control access to the blasting area;

5. types of audible warnings and all-clear signals to be used before and after blasting; and

6. a description of unavoidable hazardous situations referred to in Regulation 0400–1–14–.33(2) which have been approved by the Division for

blasting at times other than those described in the schedule.

(3) Public notice of changes to blasting schedules.

(a) Before blasting in areas or at times not in a previous schedule, the person who conducts the surface mining activities shall prepare a revised blasting schedule according to the procedures in Paragraphs 2(a) and 2(b) of this Section. Where notice has previously been mailed to the owner or residents under Paragraph (1)(b) of this Section with advice on requesting a preblast survey, the notice of change need not include information regarding pre-blast surveys.

(b) If there is a substantial pattern of non-adherence to the published blasting schedule as evidenced by the absence of blasting during scheduled periods, the Division may require that the person who conducts the surface mining activities prepare a revised blasting schedule according to the procedures in Paragraph (3)(a) of this section.

Authority: T.C.A. Sections 59-8-304 and 59-8-311.

0400-1-14-.33 Use of Explosives: Surface Blasting Requirements.

(1) All blasting shall be conducted between sunrise and sunset.

(a) The Division may specify more restrictive time periods, based on public requests or other relevant information, according to the need to adequately protect the public from adverse conditions.

(b) Blasting may, however, be conducted between sunset and sunrise if:

1. a blast that has been prepared during the afternoon must be delayed due to the occurrence of an unavoidable hazardous condition and cannot be delayed until the next day because a potential safety hazard could result that cannot be adequately mitigated;

2. in addition to the required warning signals, oral notices are provided to persons within one-half (½) mile of the blasting site; and

3. a complete written report of blasting at night is filed by the person conducting the surface mining activities with the Division not later than three (3) days after the night blasting. The report shall include a description in detail of the reasons for the delay in blasting including why the blast could not be held to the next day, when the blast was actually conducted, the warning notices given, and a copy of the blast report required by Regulation 0400-1-14-.35.

(2) Blasting shall be conducted at times announced in the blasting schedule, except in those unavoidable hazardous situations, previously approved by the Division in the permit application, where operator or public safety require unscheduled detonation.

(3) Warning and all-clear signals of different character that are audible within a range of one-half (½) mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within one-half (½) mile of the permit area shall be notified of the meaning of the signals through appropriate instructions. These instructions shall be periodically delivered or otherwise communicated in a manner which can be reasonably expected to inform such persons of the meaning of the signals. Each person who conducts surface mining activities shall maintain signs in accordance with Regulation 0400-1-14-.03(6).

(4) Access to an area possibly subject to flyrock from blasting shall be regulated to protect the public and livestock. Access to the area shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting and until an authorized representative of the person who conducts the surface mining activities has reasonably determined—

(a) that no unusual circumstances, such as imminent slides or undetonated charges, exist; and

(b) that access to and travel in or through the area can be safely resumed.

(5)

(a) Airblast shall be controlled so that it does not exceed the values specified below at any dwelling, public building, school, church, or commercial or institutional structure, unless such structure is owned by the person who conducts the surface mining activities and is not leased to any other person. If a building owned by the person conducting surface mining activities is leased to another person, the lessee may sign a waiver relieving the operator from meeting the airblast limitations of this paragraph.

Lower frequency limit of measuring system, Hz (plus or minus 3dB)	Maximum level in dB
0.1 Hz or lower—flat response	135 peak.
2 Hz or lower—flat response	132 peak.
6 Hz or lower—flat response	130 peak.
C-weighted, slow response	109 c.

(b) In all cases except the C-weighted, slow-response, the measuring systems used shall have a flat frequency response of at least 200 Hz at the upper end. The C-weighted shall be measured with a Type 1 sound level meter that meets the standard American National Standards Institute (ANSI) § 1.4-1971 specifications. The ANSI § 1.4-1971 is hereby incorporated by reference as it exists on the date of adoption of this Regulation and is revised. ANSI § 1-4-1971 is on file and available for inspection at the office of the Tennessee Division of Surface Mining in Knoxville, Tennessee.

(c) The person who conducts blasting may satisfy the provisions of this section by meeting the applicable specifications in the chart in Paragraph (5)(a) of this Section.

(d) The Division may require an airblast measurement of any or all blasts, and may specify the location of such measurements.

(6) Except where lesser distances are approved by the Division, based upon a pre-blasting survey, seismic investigation, or other appropriate investigation, blasting shall not be conducted within—

(a) 1,000 feet of any building used as a dwelling, school, church, hospital, or nursing facility; and

(b) 500 feet of facilities including, but not limited to disposal wells, petroleum or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas or oil-collection lines or water and sewage lines.

(7) Flyrock, including blasted material traveling along the ground, shall not be cast from the blasting vicinity more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the line of property owned or leased by the permittee, or beyond the area of regulated access required under paragraph (4) of this section.

(8) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.

(9) In all blasting operations, except as otherwise authorized in this section, the maximum peak particle velocity shall not exceed one (1) inch per second at the location of any dwelling, public building, school, church, or commercial or institutional building. Peak particle velocities shall be recorded in three (3) mutually perpendicular directions. The maximum peak particle velocity shall be the largest of any of the three (3) measurements. The Division may reduce the maximum peak particle velocity allowed, if it determines that a lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts, or other factors.

(10) If blasting is conducted to prevent adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area, then the maximum peak particle velocity limitation of Paragraph (9) of this Section shall not apply at the following locations:

(a) at structures owned by the person conducting the mining activity, and not leased to another party; and

(b) at structures owned by the person conducting the mining activity, and leased to another party, if a written waiver by the lessee is submitted to the Division prior to blasting.

(11) An equation for determining the maximum weight of explosives that can be detonated within any 8-millisecond period is in Paragraph twelve (12)(a) of this Section. If the blasting is conducted in accordance with this equation, the peak particle velocity shall be deemed to be within the one (1) inch-per-second limit.

(12)

(a) The maximum weight of explosives to be detonated within an 8-millisecond period may be determined by the formula $W=(D/60)^2$ where W = the maximum weight of explosives, in pounds, that can be detonated in any 8-millisecond period, and D = the distance, in feet, from the blast to the nearest dwelling, school, church, or commercial or institutional building.

(b) For distances between 300 and 5,000 feet, solution of the equation results in the following maximum weight:

Distance, in feet (D)	Maximum weight in pounds (W)
300	25
350	34
400	44
500	69
600	100
700	136
800	178
900	225
1,000	278
1,100	336
1,200	400
1,300	469
1,400	544
1,500	625
1,600	711
1,700	803
1,800	900
1,900	1,002
2,000	1,111
2,500	1,736
3,000	2,500
3,500	3,403
4,000	4,444
4,500	5,625
5,000	6,944

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.34 Use of Explosives: Seismographic Measurements.

(1) Where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit of one (1) inch per second is not exceeded, the equation in Regulation 0400–1–14–.33(12)(a) need not be used. If that equation is not used by the person conducting the surface mining activities, a seismograph record shall be obtained for each shot.

(2) The use of a modified equation to determine maximum weight of explosives per delay for blasting operations at a particular site, may be approved by the Division, on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. In no case shall the Division approve the use of a modified equation where the peak particle velocity of one (1) inch per second required in Regulation 0400–1–14–.33(9) would be exceeded.

(3) The Division may require a seismograph record of any or all blasts and may specify the location at which such measurements are taken.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.35 Use of Explosives: Records of Blasting Operations.

A record of each blast, including seismograph reports, shall be retained for at least three (3) years and shall be available for inspection by the Division and the public on request. The record shall contain the following data:

(1) name of the operator conducting the blast;

(2) location, date, and time of blast;

(3) name, signature, and license number of blaster-in-charge;

(4) direction and distance, in feet, to the nearest dwelling, school, church, or commercial or institutional building either

(a) not located in the permit area; or

(b) not owned nor leased by the person who conducts the surface mining activities;

(5) weather conditions, including temperature, wind direction, and approximate velocity;

(6) type of material blasted;

(7) number of holes, burden, and spacing;

(8) diameter and depth of holes;

(9) types of explosives used;

(10) total weight of explosives used;

(11) maximum weight of explosives including primers detonated within any 8-millisecond period.

(12) maximum number of holes detonated within any 8-millisecond period.

(13) initiation system;

(14) type and length of stemming;

(15) mats or other protections used;

(16) type of delay detonator and delay periods used;

(17) sketch of the delay pattern;

(18) number of persons in the blasting crew;

(19) seismographic records, where required, including the calibration signal of the gain setting and—

(a) seismographic reading, including exact location of seismograph and its distance from the blast;

(b) name of the person taking the seismograph reading; and

(c) name of the person and firm analyzing the seismographic record.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.36 Disposal of Excess Spoil: General Requirements.

(1) Spoil not required to achieve the approximate original contour within the area where overburden has been removed shall be hauled or conveyed to and placed in designated disposal areas within a permit area, if the disposal areas are authorized for such purposes in the approved permit application in accordance with Regulations 0400–1–14–.36—0400–1–14.39. The spoil shall be placed in a controlled manner to ensure—

(a) that leachate and surface run-off from the fill will not degrade surface or ground waters or exceed the effluent limitations of Regulation 0400–1–14–.13;

(b) stability of the fill; and

(c) that the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(2) The fill shall be designed using recognized professional standards certified by a registered professional engineer, and approved by the Division.

(3) All vegetative and organic materials shall be removed from the disposal area and the topsoil shall be removed, segregated, and stored or replaced under Regulations 0400–1–14–.07—0400–1–14–.11. If approved by the Division, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(4) Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of Regulation 0400–1–14–.14. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(5) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the Division. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.

(6) The spoil shall be hauled or conveyed and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long-term static safety factor of 1.5.

(7) The final configuration of the fill must be suitable for postmining land uses approved in accordance with Regulation 0400–1–14–.71, except that no depressions or impoundments shall be allowed on the completed fill.

(8) Terraces may be utilized to control erosion and enhance stability if approved by the Division and consistent with Regulation 0400–1–14–.57.

(9) Where the slope in the disposal area exceeds 1v:2.8h (36 percent), or such lesser slope as may be designated by the Division based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with Regulation 0400–1–20 to determine the size of rock toe buttresses and key way cuts.

(10) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist experienced in the construction of earth and rockfill embankments at least quarterly throughout construction and during the following critical construction periods:

(a) removal of all organic material and topsoil;

(b) placement of underdrainage systems;

(c) installation of surface drainage systems;

(d) placement and compaction of fill materials; and

(e) revegetation.

The registered engineer or other qualified professional specialist shall provide to the Division a certified report within two (2) weeks after each inspection that the fill has been constructed as specified in the design approved by the Division. A copy of the report shall be retained at the minesite.

(11) Coal processing wastes shall not be disposed of in head-of-hollow or valley fills, and may only be disposed of in other excess spoil fills, if such waste is—

(a) placed in accordance with Regulation 0400–1–14–.44;

(b) demonstrated to be non-toxic and non-acid-forming; and

(c) demonstrated to be consistent with the design stability of the fill.

(12) If the disposal area contains springs, natural or manmade water-courses, or wet-weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.

(13) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall be performed in order to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(14) Excess spoil may be returned to underground mine workings, but only in accordance with a disposal program approved by the Division and MSHA upon the basis of a plan submitted under Regulation 0400–1–5–.27.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.37 Disposal of Excess Spoil: Valley Fills.

Valley fills shall meet all of the requirements of Regulation 0400–1–14–.36 and the additional requirements of this section.

(1) The fill shall be designed to attain a long-term static safety factor of 1.5 based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

(2) A subdrainage system for the fill shall be constructed in accordance with the following:

(a) A system of underdrains constructed of durable rock shall meet the requirements of Paragraph (2)(d) of this Section.

1. be installed along the natural drainage system;

2. extend from the toe to the head of the fill; and

3. contain lateral drains to each area of potential drainage or seepage.

(b) A filter system to insure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(c) In constructing the underdrains, no more than ten (10) percent of the rock may be less than twelve (12 inches in size and no single rock may be larger than twenty-five (25) percent of the width of the drain. Rock used in underdrains shall meet the requirements of Paragraph (2)(d) of this Section. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd.	Sandstone	10	4
Do	Shale	16	8
More than 1,000,000 yd.	Sandstone	16	8
Do	Shale	16	16

(d) Underdrains shall consist of non-degradable, non-acid or toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or shale.

(3) Spoil shall be hauled or conveyed and placed in a controlled manner and concurrently compacted as specified by the Division, in lifts no greater than four (4) feet or less if required by the Division to—

(a) achieve the densities designed to ensure mass stability;

(b) prevent mass movement;

(c) avoid contamination of the rock underdrain or rock core; and

(d) prevent formation of voids.

(4) Surface water run-off from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the run-off from a one hundred (100) year, twenty-four (24) hour precipitation event or larger event specified by the Division. Surface run-off from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the run-off from one hundred (100) year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of Regulation 0400–1–14–.14(6).

(5) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1v:20h (5 percent). The vertical distance between terraces shall not exceed fifty (50) feet.

(6) Drainage shall not be directed over the outslope of the fill.

(7) The outslope of the fill shall not exceed 1v:2h (50 percent). The Division may require a flatter slope.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.38 Disposal of Excess Spoil: Head-of-Hollow Fills.

Disposal of spoil in the head-of-hollow fill shall meet all standards set forth in Regulations 0400–1–14–.36 and 0400–1–14–.37 and the additional requirements of this section.

(1) The fill shall be designed to completely fill the disposal site to the approximate elevation of the ridgeline. A rock-core chimney drain may be utilized instead of the subdrain and surface diversion system required for valley fills. If the crest of the fill is not approximately at the same elevation as the low point of the adjacent ridgeline, the fill must be designed as specified in Regulation 0400–1–14–.37, with diversion of run-off around the fill. A fill associated with contour mining and placed at or near the coal seam, and which does not exceed 250,000 cubic yards may use the rock-core chimney drain.

(2) The alternative rock-core chimney drain system shall be designed and incorporated into the construction of head-of-hollow fills as follows:

(a) The fill shall have, along the vertical projection of the main buried stream channel or rill a vertical core of durable rock at least sixteen (16) feet which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock-core and underdrains shall meet the requirements of Regulation 0400–1–14–.37(2).

(b) A filter system to ensure the proper functioning of the rock-core shall be designed and constructed using standard geotechnical engineering methods.

(c) The grading may drain surface water away from the outslope of the fill and to the rock-core. The maximum slope of the top of the fill shall be 1v:33h (3 percent). Instead of the requirements of Regulation 0400–1–14–.36(7); a drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface run-off and discharge the run-off through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a three (3) to five (5) percent grade toward the fill and a one (1) percent slope toward the rock-core.

(3) The drainage control system shall be capable of passing safely the run-off from a one hundred (100) year, twenty-four (24) hour precipitation event, or larger event specified by the Division.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.39 Disposal of Excess Spoil: Durable Rock Fills.

In lieu of the requirements of Regulations 0400–1–14–.37 and 0400–1–14–.38, the Division may approve alternate methods for disposal of hard rock spoil, including fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of this Regulation and Regulation 0400–1–14–.36 are met. For this Regulation, hard rock spoil shall be defined as rockfill consisting of at least eighty (80) percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the Division.

(1) Spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.

(a) The method of spoil placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of this section.

(b) Loads of non-cemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a controlled manner to limit on a unit basis concentrations of non-cemented clay shale and clay in the fill. Such materials shall comprise no more than twenty (20) percent of the fill volume as determined by tests performed by a registered engineer and approved by the Division.

(2)

(a) Stability analyses shall be made by the registered professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations, including borings, and laboratory tests.

(b) The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the following factors of safety:

Case	Design condition	Minimum factor of safety
I	End of construction	1.5
II	Earthquake	1.1

(3) The design of a head-of-hollow fill shall include an internal drainage system which will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet-weather seeps.

(a) Anticipated discharge from springs and seeps and due to precipitation shall be based on records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(b) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not slake in water.

(c) The internal drain shall be protected by a properly designed filter system.

(4) Surface water run-off from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to pass safely the run-off from a one hundred (100) year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of Regulation 0400–1–14–.14(6).

(5) The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1v:20h (5 percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface run-off from the top surface of the fill shall not be allowed to flow over the outslope of the fill.

(6) Surface run-off from the outslope of the fill shall be diverted off the fill to properly designed channels which will pass safely a one hundred (100) year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of Regulation 0400–1–14–.14(6).

(7) Terraces shall be constructed on the outslope if required for control of erosion or for roads included in the approved postmining land use plan. Terraces shall meet the following requirements:

(a) The slope of the outslope between terrace benches shall not exceed 1v:2h (50 percent).

(b) To control surface run-off, each terrace bench shall be graded to a slope of 1v:20h (5 percent) toward the

embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.

(c) Terrace ditches shall have a five (5) percent slope toward the channels specified in Paragraph (6) above, unless steeper slopes are necessary in conjunction with approved roads.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.40 Protection of Underground Mining.

(1) No surface coal mining activities shall be conducted closer that five hundred (500) feet to any point of either an active or abandoned underground mine, except to the extent that—

(a) the nature, timing, and sequence of the operations are jointly approved by the Division, the Mine Safety and Health Administration, and the state agency, if any responsible for the safety of mine workers; and

(b) the activities result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(2) Surface mining activities shall be designed to protect disturbed surface areas, including spoil disposal sites, so as not to endanger any present or future operations of either surface or underground mining activities.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.41 Coal Processing Waste Banks: General Requirements.

(1) All coal processing waste shall be hauled or conveyed and placed in new and existing disposal areas approved by the Division for this purpose. These areas shall be within a permit area. The disposal area shall be designed, constructed, and maintained—

(a) in accordance with Regulations 0400–1–14–.36 and 0400–1–14–.37, 0400–1–14–.41 and 0400–1–14–.42—0400–1–14–.47; and

(b) to prevent combustion.

(2) Coal processing waste materials from activities located outside a permit area, such as those activities at other mines or abandoned mine waste piles may be disposed of in the permit area only if approved by the Division. Approval shall be based on a showing by the person who conducts surface mining activities in the permit area, using hydrologic, geotechnical, physical, and chemical analysis, that disposal of these materials does not—

(a) adversely affect water quality, water flow, or vegetation;

(b) create public health hazards; or

(c) cause instability in the disposal areas.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.42 Coal Processing Waste Banks: Site Inspection.

(1) All coal processing waste banks shall be inspected, on behalf of the person conducting surface mining activities, by a qualified registered engineer or other person approved by the Division.

(a) Inspection shall occur at least quarterly, beginning within seven (7) days after preparation of the disposal area begins. The Division may require more frequent inspection based upon an evaluation of the potential danger to the health or safety of the public and the potential harm to land, air and water resources. Inspections may terminate when the coal processing waste bank has been graded, covered in accordance with Reg. 0400–1–14–.44 topsoil has been distributed on the bank in accordance with Regulation 0400–1–14–.10, or at such a later time as the Division may require.

(b) Inspections shall include such observations and tests as may be necessary to evaluate the potential hazard to human life and property, to ensure that all organic material and topsoil have been removed and that proper construction and maintenance are occurring in accordance with the plan submitted under Regulation 0400–1–2 and approved by the Division.

(c) The engineer or other approved inspector shall consider steepness of slopes, seepage, and other visible factors which could indicate potential failure, and the results of failure with respect to the threat to human life and property.

(d) Copies of the inspection findings shall be maintained at the mine site.

(2) If any inspection discloses that a potential hazard exists, the Division shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Division shall be notified immediately. The Division shall then notify the appropriate emergency agencies thast other emergency procedures are required to protect the public from the coal processing waste area.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.43 Coal Processing Waste Banks: Water Control Measures.

(1) A properly designed subdrainage system shall be provided, which shall—

(a) intercept all ground water sources;

(b) be protected by an adequate filter; and

(c) be covered so as to protect against the entrance of surface water or leachate from the coal processing waste, or an alternative system shall be provided which will ensure structural integrity of the wastebank and protection of ground and surface water quality.

(2) All surface drainage from the area above the coal processing waste bank and from the crest and face of the waste disposal area shall be diverted, in accordance with Regulation 0400–1–14–.37(4).

(3) Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(4) All water discharged from a coal processing waste bank shall comply with Regulations 0400–1–14–.12, 0400–1–14–.13, 0400–1–14–.16—0400–1–14–.17, 0400–1–14–.23 and 0400–1–14–.26.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.44 Coal Processing Waste Banks: Construction Requirements.

(1) Coal processing waste banks shall be constructed in compliance with Regulations 0400–1–14–.36 and 0400–1–14–.37 except to the extent that the requirements of those Regulations are varied in this section.

(2) Coal processing waste banks shall have a minimum static safety factor of 1.5.

(3) Compaction requirements during construction or modification of all coal processing waste banks shall meet the requirements of this paragraph, instead of those specified in Regulation 0400–1–14–.37(3). The coal processing waste shall be—

(a) spread in layers no more than twenty-four (24) inches in thickness; and

(b) compacted to attain ninety (90) percent of the maximum dry density to prevent spontaneous combustion and to provide the strength required for stability of the coal processing waste bank. Dry densities shall be determined in accordance with the American Association of State Highway and Transportation Officials (AASHTO) Specification T99–74 (Twelfth Edition) (July 1978) or an equivalent method. AASHTO T99–74 is hereby incorporated-by-reference as it exists on the date of adoption of this regulation and as subsequently revised. AASHTO T99–74 is on file and available for inspection at the Offices of the

Tennessee Division of Surface Mining in Knoxville and Nashville, Tennessee.

(4) Following grading of the coal processing waste bank, the site shall be covered with a minimum of four (4) feet of the best available non-toxic and non-combustible material, in accordance with Regulation 0400–1–14–.08(5) and in a manner that does not impede flow from subdrainage systems. The coal processing waste bank shall be revegetated in accordance with Regulations 14–.62–14–.62. The Division may allow less than four (4) feet of cover material based on physical and chemical analyses which show that the requirements of Regulations 0400–1–14–.62—0400–1–14–.68 will be met.

(5) Variations may be allowed in these requirements for the disposal of dewatered fine coal waste (minus 28 sieve size) with approval of the regulatory authority.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.45 Coal Processing Waste: Burning.

Coal processing waste fires shall be extinguished by the person who conducts the surface mining activities, in accordance with a plan approved by the Division and the Mine Safety and Health Administration. The plan shall contain, at a minimum, provisions to ensure that only those persons auththorized by the operator, and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.46 Coal Processing Waste: Burned Waste Utilization.

Before any burned coal processing waste, other materials, or refuse is removed from a disposal area, approval shall be obtained from the Division. A plan for the method of removal, with maps and appropriate drawings to illustrate the proposed sequence of the operation and method of compliance with this Regulation, shall be submitted to the Division. Consideration shall be given in the plan to potential hazards which may be created by removal to persons working or living in the vicinity of the structure. The plan shall be certified by a qualified engineer.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.47 Coal Processing Waste: Return to Underground Workings.

Coal processing waste may be returned to underground mine workings only in accordance with the waste disposal program approved by the Division and MSHA.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.48 Disposal of Noncoal Wastes.

(1) Noncoal wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustibles generated during surface mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface run-off do not degrade surface or ground water, fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(2) Final disposal of noncoal wastes shall be in a designated disposal site in the permit area. Disposal sites shall be designed and constructed with appropriate water barriers on the bottom and sides of the designated site. Wastes shall be routinely compacted and covered to prevent combustion and wind-born waste. When the disposal is completed a minimum of two (2) feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with Regulation 0400–1–14–.62—0400–1–14–.68. Operation of the disposal site shall be conducted in accordance with all local, state, and federal requirements.

(3) At no time shall any solid waste material be deposited at refuse embankments or impoundment sites, nor shall any excavation for solid waste disposal be located within eight (8) feet of any coal outcrop or coal storage area.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.49 Coal Processing Waste: Dams and Embankments: General Requirements.

(1) Regulations 0400–1–14–.49—0400–1–14–.51 apply to dams and embankments, constructed of coal processing waste or intended to impound coal processing waste, whether they were completed before adoption of the regulatory program or are intended to be completed thereafter.

(2) Waste shall not be used in the construction of dams and embankments unless it has been demonstrated to the Division that the stability of such a structure conforms with the requirements of Regulation 0400–1–14–.51(l). It shall also be demonstrated that the use of waste material shall not have a detrimental effect on downstream water quality or the environment due to acid seepage through the dam or embankment. All demonstrations shall be submitted to and approved by the Division.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.50 Coal Processing Waste: Dams and Embankments: Site Preparation.

Before coal processing waste is placed at a dam or embankment site—

(1) all trees, shrubs, grasses, and other organic material shall be cleared and grubbed from the site, and all combustibles shall be removed and stockpiled in accordance with the requirements of this Regulation; and

(2) surface drainage that may cause erosion to the embankment area or the embankment features, whether during construction or after completion, shall be diverted away from the embankment by diversion ditches that comply with the requirements of Regulation 0400–1–14–.14. Adequate outlets for discharge from these diversions shall be in accordance with Regulation 0400–1–14–.18. Diversions that are designed to divert drainage from the upstream area away from the impoundment area shall be designed to carry the peak run-off from a one hundred (100) year twenty-four (24) hour precipitation event. The diversion shall be maintained to prevent blockage, and the discharge shall be in accordance with Regulation 0400–1–14–.18. Sediment control measures shall be provided at the discharge of each diversion ditch before entry into natural watercourses in accordance with Regulations 0400–1–14–.12—0400–1–14–.17.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.51 Coal Processing Waste: Dams and Embankments: Design and Construction.

(1) The design of each dam and embankment constructed of coal processing waste or intended to impound such waste shall comply with the requirements of Regulations 0400–1–14–.20 (1)(e), (5), (6), (7), (8) and (9) modified as follows:

(a) The design freeboard between the lowest point on the embankment crest and the maximum water elevation shall be at least three (3) feet. The maximum water elevation shall be that determined by the freeboard hydrograph criteria contained in the U.S. Soil Conservation Service criteria referenced in Regulation 0400–1–14–.20.

(b) The dam and embankment shall have a minimum safety factor of 1.5 for the partial pool with steady seepage

saturation conditions, and the seismic safety factor shall be at least 1.2.

(c) The dam or embankment foundation and abutments shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the safety factors of the dam or embankment for all loading conditions appearing in Paragraph (1)(b) of this Section or the publications referred to in Regulation 0400–1–14–.20 and for all increments of construction.

(2) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(3) Dams or embankments constructed of or impounding waste material shall be designed so that at least ninety (90) percent of the water stored during the design precipitation event shall be removed within a ten (10) day period.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.52 Air Resources Protection.

(1) Fugitive dust. Each person who conducts surface mining activities shall plan and employ fugitive dust control measures as an integral part of site preparation, coal mining, and reclamation operations. The Division shall approve the control measures appropriate for use in planning, according to applicable federal and state air quality standards, climate, existing air quality in the area affected by mining, and the available control technology.

(2) Control measures. The fugitive dust control measures to be used, depending on applicable federal and state air quality standards, climate, existing air quality, size of the operation, and type of operation, shall include, as necessary, but not be limited to—

(a) periodic watering of unpaved roads, with the minimum frequency of watering approved by the Division;

(b) chemical stabilization of unpaved roads with proper application of non-toxic soil cement or dust palliatives;

(c) paving of roads;

(d) prompt removal of coal, rock, soil and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface;

(e) restricting the speed of vehicles to reduce fugitive dust caused by travel;

(f) revegetating, mulching, or otherwise stabilizing the surface of all areas adjoining roads that are sources of fugitive dust;

(g) restricting the travel of unauthorized vehicles on other than established roads;

(h) enclosing, covering, watering, or otherwise treating loaded haul trucks and railroad cars, to reduce loss of material to wind and spillage;

(i) substituting of conveyor systems for haul trucks and covering of conveyor systems where conveyed loads are subjected to wind erosion;

(j) minimizing the area of disturbed land;

(k) prompt revegetation of regraded lands;

(l) use of alternatives for coal-handling methods, restriction of dumping procedures, wetting of disturbed materials during handling, and compaction of disturbed areas;

(m) planting of special windbreak vegetation at critical points in the permit area;

(n) control of dust from drilling, using water sprays, hoods, dust collectors, or other controls;

(o) restricting the areas to be blasted at any one time to reduce fugitive dust;

(p) restricting activities causing fugitive dust during periods of air stagnation;

(q) extinguishing any areas of burning or smoldering coal and periodically inspecting the burning areas whenever the potential for spontaneous combustion is high;

(r) reducing the period of time between initially disturbing the soil and revegetating or other surface stabilization; and

(s) restricting fugitive dust at spoil and coal transfer and loading points with water sprays, negative pressure system and baghouse filters, chemicals, or other practices.

(3) Additional measures. Where the Division determines that application of fugitive dust control measures listed in Paragraph (2) of this Section is inadequate, the Division may require additional measures and practices as necessary.

(4) Monitoring. Air monitoring equipment shall be installed and monitoring shall be conducted in accordance with the air monitoring plan required under Regulation 0400–1–2–.22 and approved by the Division.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.53 Protection of Fish, Wildlife, and Related Environmental Values.

(1) Any person conducting surface mining activities shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the activities on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable.

(2) A person who conducts surface mining activities shall promptly report to the Division the presence in the permit area of any critical habitat of a threatened or endangered species listed by the Secretary, and plant or animal listed as threatened or endangered by the state, or any bald or golden eagle, of which that person becomes aware and which was not previously reported to the Division by that person.

(3) A person who conducts surface mining activities shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the surface mining activities on the permit area are in accordance with the guidelines set forth in Environmental Criteria for Electric Transmission System (USDI, USDA (1970)), or in alternative guidance manuals approved by the Division. Distribution lines shall be designed and constructed in accordance with REA Bulletin 61–10, Powerline Contacts by Eagles and Other Large Birds, or in alternative guidance manuals approved by the Division. For informational purposes, these two documents are available at the OSM Office, U.S. Department of the Interior, South Interior Building, Washington, D.C. 20240, at each OSM Regional Office, District Office and Field Office, and at the Central Office of the Division.

(4) Each person who conducts surface mining activities shall, to the extent possible using the best technology currently available—

(a) locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law;

(b) fence roadways where specified by the Division to guide locally important wildlife to roadway underpasses. No new barrier shall be created in known and important wildlife migration routes;

(c) fence, cover, or use other appropriate methods to exclude wildlife from ponds with contain hazardous concentrations of toxic-forming materials;

(d) restore, enhance where practicable, or avoid disturbance to habitats of unusually high value for fish and wildlife;

(e) restore, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes and other wetland areas;

(f) afford protection to aquatic communities by avoiding stream channels as required in Regulation 0400–1–16–.14 or restoring stream channels as required in Regulation 0400–1–16–.15;

(g) not use persistent pesticides on the area during surface mining and reclamation activities, unless approved by the Division;

(h) to the extent possible prevent, control, and suppress range, forest, and coal fires which are not approved by the Division as part of a management plan;

(i) if fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall in addition to the requirements of Regulations 0400–14–.62—0400–1–14–.68:

1. select plant species to be used on reclaimed areas, based on the following criteria—

a. their proven nutritional value for fish and wildlife;

b. their uses as cover for fish and wildlife; and

c. their ability to support and enhance fish and wildlife habitat after release of bonds; and

2. distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits for fish and wildlife;

(j) where cropland is to be the alternative postmining land use on lands diverted from a fish and wildlife premining land use and where appropriate for wildlife and crop managment practices, intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. Wetlands shall be preserved or created rather than drained or otherwise permanently abolished; and

(k) where the primary land use is to be residential, public service, or industrial land use, intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs and trees useful as food and cover for birds and small animals, unless such green belts are inconsistant with the approved postmining land use.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.54 Slides And Other Damage.

(1) An undisturbed natural barrier shall be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as may be determined by the Division as needed to assure stability. The barrier shall be retained in place to prevent slides and erosion.

(2) At any time a slide occurs which may have a potential adverse affect on public property, health, safety, or the envirorment, the person who conducts the surface mining activities shall notify the Division by the fastest available means and comply with any remedial measures required by the Division.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.55 Concurrent Reclamation.

(1) All reclamation efforts, including, but not limited to, backfilling, grading, topsoil replacement, and revegetation, of all land that is disturbed by surface mining activities shall be kept current at all times and as soon after disturbance of the surface as is practical.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.56 Backfilling and Grading: General Requirements.

(1) *Timing of Backfilling and Grading.*

(a) *Contour Mining.*

1. All coal shall be picked up within thirty (30) days following removal of the overburden. For the purpose of this provision, overburden shall be considered removed when less than four (4) feet remains above the coal.

2. If the operation includes only stripping (no augering) the grading and backfilling shall follow the coal removal by not more than fifteen (15) days, and in no instance shall an area be left upgraded more than fifteen hundred (1,500) feet behind the removal of the coal.

3. If the operation includes stripping and augering, the augering shall follow the removal of stripped coal by not more than forty-five (45) days or fifteen hundred (1,500) feet, and the grading and backfilling shall follow the augering by not more than fifteen (15) days and in no instances shall an area be left ungraded more than fifteen hundred (1,500) feet behind the removal of the coal by augering.

4. If the operation consists only of augering, the backfilling and grading shall follow the augering by not more than fifteen (15) days, and in no instance shall an area be left ungraded more than fifteen hundred (1,500) feet behind the augering.

5. All backfilling, grading, topsoiling, drainage, grass or legume planting, fertilizing, mulching, or other revegetation work except tree planting, shall be completed, on any given acre, not more than ninety-two (92) days after removal of the coal from that acre.

6. All backfilling, grading, topsoiling, drainage, grass or legume planting, fertilizing, mulching, or other revegetation work except tree planting, shall be completed, on any given acre, not more than one hundred eighty (180) days after the initiation of soil disturbance on the acre.

7. All revegetation work, including tree planting, shall be completed, on any given acre, by May 1, following the planting of grass or legumes on that acre.

8. The Division is authorized to grant additional time for these occurrences if requested and technical need is shown through detailed written analysis.

(b) *Open Pit Mining With Thin Overburden.* Rough backfilling and grading shall occur in accordance with the time schedule approved by the Division, on the basis of the mining and reclamation plan submitted with the permit application under Regulation 0400–1–2, which shall specifically establish in stated increments the period between removal of the coal and completion of backfilling and grading.

(c) *Area Strip Mining.*

1. All coal shall be picked up within thirty (30) days following removal of the overburden. For the purpose of this provision, overburden shall be considered removed when less than four (4) feet remains above the coal.

2. All backfilling and grading shall be not more than two (2) spoil ridges behind the pit being worked, with the spoil from the pit being worked being considered the first spoil ridge.

3. All backfilling, grading, topsoiling, drainage, grass or legume planting, fertilizing, mulching, or other revegetation work except tree planting, shall be completed, on any given acre, not more than ninety-two (92) days after removal of the coal from that acre.

4. All backfilling, grading, topsoiling, drainage, grass or legume planting, fertilizing, mulching, or other revegetation work except tree planting, shall be completed, on any given acre, not more than one hundred eighty (180) days after the initiation of soil disturbance on that acre.

5. All revegetation work, including tree planting, shall be completed, on any given acre, by May 1, following the planting of grass or legumes on that acre.

(2) *Method for Backfilling and Grading.*

(a) Except as specifically exempted in this subchapter, all disturbed areas shall be returned to their approximate original contour. All spoil shall be transported, backfilled, compacted (where advisable to insure stability or to prevent leaching) and graded to eliminate all highwalls, spoil piles, and depressions.

(b) Backfilled material shall be placed to minimize adverse effects on ground water, minimize off-site effects and to support the approved postmining land use.

(c) The postmining graded slopes need not be of uniform slope.

(d) Cut-and-fill terraces may be used only in those situations expressly identified in Section 0400–1–14–.57.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.57 Backfilling and Grading: General Grading Requirements.

(1) The final graded slopes shall not exceed in grade either the approximate premining slopes, or any lesser slopes approved by the Division based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform but shall approximate the general nature of the premining topography. The requirements of this section may be modified by the Division where the surface mining activities are reaffecting previously mined lands that have not been restored to the standards of this Regulation and sufficient spoil is not available to otherwise comply with this section. The person who conducts surface mining activities shall, at a minimum—

(a) retain all overburden and spoil on the solid portion of existing or new benches; and

(b) backfill and grade to the most moderate slope possible, to eliminate the highwall which does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum static safety factor of 1.3. In all cases the highwall shall be eliminated.

(2) On approval by the Division in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed, if the terraces are compatible with the approved postmining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(a) The width of the individual terrace bench shall not exceed twenty (20) feet, unless specifically approved by the Division as necessary for stability, erosion control, or roads included in the approved postmining land use plan.

(b) The vertical distance between terraces shall be as specified by the Division, to prevent excessive erosion and to provide long-term stability.

(c) The slope of the terrace outslope shall not exceed 1v:2h (50 percent). Outslopes which exceed 1v:2h (50 percent) may be approved, if they have a minimum static safety factor of more than 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(d) Culverts and underground rock drains shall be used on the terrace only when approved by the Division.

(3) Small depressions may be constructed, if they—

(a) are approved by the Division to minimize erosion, conserve soil moisture, or promote vegetation;

(b) do not restrict normal access; and

(c) are not inappropriate substitutes for lower grades on the reclaimed lands.

(4) All surface mining activities on slopes above twenty (20) degrees, or on lesser slopes that the Division defines as steep slopes shall meet the provision of Regulation 0400–1–20.

(5) All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil, shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation, or placement along the contour is hazardous to equipment operators, then grading, preparation, or placement is a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacment of topsoil which will minimize slipppage.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.58 Backfilling and Grading: Covering Coal and Acid and Toxic-Forming Materials.

(1) Cover.

(a) A person who conducts surface mining activities shall insure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion.

(b) If necessary, these materials shall be treated to neutralize toxicity, in order to prevent water pollution and sustained combustion and minimize adverse effects on plant growth and land uses.

(c) Where necessary to protect against upward migration of salts, exposure by erosion, formation of acid or toxic seeps, to provide an adequate depth for plant growth, or otherwise to meet local conditions, the Division shall specify thicker amounts of cover using non-toxic material, or special compaction and isolation from ground water contact.

(d) Acid-forming or toxic-forming material shall not be be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.

(2) Stabilization. Backfilled materials shall be selectively hauled or conveyed, and compacted, wherever necessary to prevent leaching of acid-forming and toxic-forming materials into surface or ground waters and wherever necessary to insure stability of the backfilled materials. The method and design specifications of compacting material shall be approved by the Division before acid-forming or toxic-forming materials are covered.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.59 Backfilling and Grading: Thin Overburden.

(1) The provisions of this section apply only where the final thickness is less than 0.8 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal, times the bulking factor to be determined for each mine plan area. The provisions of this section apply only when surface mining activities cannot be carried out to comply with Regulation 0400–1–14.56 to achieve the approximate original contour.

(2) In surface mining activities carried out continuously in the same limited pit area for more than one (1) year from the day coal-removal operations begin and where the volume of all available spoil and suitable waste materials over the mine plan area is demonstrated to be insufficient to achieve the approximate original contour of the lands disturbed, surface mining activities shall be conducted to meet, at a minimum, the following standards—

(a) haul or convey, backfill, and grade, using all available spoil and suitable waste materials from the entire mine area, to attain the lowest practicable stable grade, to achieve a static safety factor of 1.3, and to provide adequate drainage and long-term stability of the regraded areas and cover all acid-forming and toxic-forming materials.

(b) Eliminate highwalls by grading or backfilling to stable slopes not exceeding 1v:2h (50 percent), or such lesser slopes as the Division may specify to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use.

(c) Haul or convey, backfill, grade, and revegetate in accordance with Regulations 0400–1–14–.62/–0400–1–14–.68, to achieve an ecologically sound land use compatible with the prevailing use in unmined areas surrounding the mine plan area; and

(d) Haul or convey, backfill, and grade, to ensure impoundments are constructed only where—

1. it has been demonstrated to the Division's satisfaction that all requirements of Regulations 0400–1–14–.12–0400–1–.27 have been met; and

2. the impoundments have been approved by the Division as suitable for the approved postmining land use and as meeting the requirements of this Regulation and all other applicable federal and state laws and regulations.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.60 Backfilling and Grading: Thick Overburden.

(1) The provisions of this section apply only where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal, times the bulking factor to be determined for each mine plan area. The provisions of this Section apply only when surface mining activities cannot be carried out to achieve the approximate original contour.

(2) In surface mining activities where the volume of spoil over the mine plan area is demonstrated to be more than sufficient to achieve the approximate original contour, surface mining activities shall be conducted to meet, at a minimum, the following standards—

(a) haul or convey, backfill, and grade all spoil and wastes, not required to achieve the approximate original contour of the mine plan area, to the lowest practicable grade, to achieve a static factor of safety of 1.3 and cover all acid-forming and other toxic-forming materials;

(b) haul or convey, backfill, and grade excess spoil and waste only within the permit area and dispose of such materials in accordance with Regulations 0400–1–14–.36;

(c) haul or convey, backfill, and grade excess spoil and waste to maintain the hydrologic balance, in accordance with Regulations 0400–1–14–.12—0400–1–14–.28 and to provide long-term stability by preventing slides, erosion and water pollution;

(d) haul or convey, backfill, grade, and revegetate wastes and excess spoil to achieve a sound land use approved by the Division as compatible with the prevailing land uses in unmined areas surrounding the mine plan area;

(e) eliminate all highwalls and depressions by backfilling with spoil and suitable waste materials; and

(f) meet the revegetation requirements of Regulations 0400–1–14–.62—0400–1–14–.68 for all disturbed areas.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.61 Regrading or Stabilizing Rills and Gullies.

When rills or gullies deeper than nine (9) inches form in areas that have been regraded and topsoiled, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded or replanted according to Regulations 0400–1–14–.62—0400–1–14–.68. The Division shall specify that rills or gullies of lesser size be stabilized and the area reseeded or replanted if the rills or gullies are disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.62 Revegetation: General Requirements.

(1) Each person who conducts surface mining activities shall establish on all affected land a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of disturbed land or species that supports the approved postmining land use.

(2) All revegetation shall be in compliance with the plans submitted under Regulation 0400–1–2 as approved by the Division in the permit, and carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.

(a) All disturbed land, except water areas and surface areas or roads that are approved as a part of the postmining land use, shall be seeded or planted to achieve a permanent vegetative cover of the same seasonal variety native to the area of disturbed land.

(b) The vegetative cover shall be capable of stabilizing the soil surface from erosion.

(c) Vegetative cover shall be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the approved postmining land use, when compared with the utility of naturally occurring vegetation during each season of the year.

(d) If both the premining and postmining land uses are cropland, planting of the crops normally grown will meet the requirements of Paragraph (2)(a) of this Section.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.63 Revegetation: Use of Introduced Species.

Introduced species, may be substituted for native species only if approved by the Division under the following conditions:

(1) after appropriate field trials have demonstrated that the introduced species are desirable and necessary to achieve the approved postmining land use;

(2) the species are necessary to achieve a quick, temporary, and stabilizing cover that aids in controlling erosion; and measures to establish permanent vegetation are included in the approved plan submitted under Regulations 0400–1–2;

(3) the species are compatible with the plant and animal species of the region;

(4) the species meet the requirements of applicable state and federal seed or introduced species statutes and are not poisonous or noxious.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.64 Revegetation: Timing.

Seeding and planting of disturbed areas shall be conducted within the time frames in Regulation 0400–1–14–.65. All the disturbed area shall be seeded as contemporaneously as practicable with the completion of backfilling and grading, with a cover of small grains, grasses, or legumes.

If weather conditions are unfavorable for revegetation following grading, a waiver may be obtained from the Division extending the time for revegetation until the next favorable period. The Division may require a temporary cover to control erosion. The waiver cannot be extended for more than a ninety (90) day period.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.65 Preparations, Mixture, and Seed Requirements for Revegetation.

(1) *Inoculation.* All legumes, pines, and other seeds or plants recommended by the Division shall be inoculated to induce nitrogen fixation and/or stimulate plant growth.

(2) *Scarifying.* All black locust, sericea lespedeza, and other seeds recommended by the Division shall be scarified, except when used in fall and winter seeding.

(3) *Preparation of soil.* Preparation of the seedbed by harrowing, discing, or other approved methods is required on all disturbed areas.

(4) *Fertilizer.* Fertilizer shall be applied at a minimum rate of the requirements determined by the soil tests required by Regulation 0400–1–14–.11. Fertilizer shall be applied annually according to recommendation from approved soil test.

(5) *Liming.* Agricultural lime shall be applied at a minimum rate of eight thousand (8,000) pounds per acre unless laboratory results indicate otherwise. Lime shall be applied annually according to recommendation from approved soil test.

(6) *Mulch.* All disturbed areas shall be mulched. The approved mulch rates are—

(a) dry wheat, straw, or hay at a rate of four thousand (4,000) pounds approximately eighty (80) bales per acre, or

(b) wood fiber mulch at a rate of one thousand five hundred (1,500) pounds per acre, but not in the months of November, December, January, and February.

Dry wheat, straw, and hay must be anchored by asphalt emulsion or by discing the straw or hay on contour in mined soil.

(7) *Trees: Seeding and Planting.* Direct seeding of trees and shrugs is encouraged on all disturbed areas to supplement planted trees. Some species adopted to direct seeding are:

(a) Black (Sweet) Birch;
(b) Virginia Pine;
(c) Pitch Pine;
(d) Red Maple;
(e) European Black Alder;
(f) Autumn Olive;
(g) Princess Tree;
(h) Black Locust.

Species that can be direct seeded are not limited to the above list.

(8) *Tree Planting.*

(a) *Tree Species*—Planting of a single species, or of two or more species, in pure blocks or strips at least thirty (30) feet wide, over the entire area, or of a single species in a block or a contour strip, is required.

1. Preferred tree species are—
a. Virginia Pine;
b. Shortleaf Pine (on light (sandy) soils only);
c. Black Locust; and
d. Sweet Birch.

2. Other species that may be used are—
a. Princess Tree;
b. Sawtooth Oak;
c. Sycamore;
d. European Black Alder;
e. Red Maple;
f. Loblolly Pine (below 2,000 feet elevation);
g. Pitch Pine;
h. White Pine;
i. Table Mountain Pine;
j. Shortleaf Pine; and
k. Crabapple.

(b) Tree seedlings shall be planted at a 6 ft. by 7 ft. spacing.

(c) Seedlings should be planted between November 1 and May 1.

(d) Other tree species may be used as recommended by the Division.

(9) *Wildlife Planting.*

(a) Shrub and tree species to meet the requirements for wildlife enhancement shall consist of one or more of the following. Other species may be approved by the Division.

1. Shrub Lespedeza;
a. Lespedeza Bicolor, or
b. Lespedeza Japonica.
2. Autumn Olive (Elaeagnus umbellata) (fall fruiting).
3. Crabapple;
a. Toringo, or
b. Siberian.
4. European Filbert; or
5. Sawtooth Oak.

(b) The following type of plantings may be made.

1. Intervening contour strips and borders. Contour strip or borders of wildlife food and cover shall be substituted for the appropriate number of trees to provide space for planting one or more of the following shrub species:

a. Crabapple, European Filbert, and Sawtooth Oak—1 to 3 rows 6 ft. by 6 ft. spacing: November 1 to May 1;

b. Autumn Olive—1 to 3 rows 10 ft. by 10 ft. spacing; November 1 to June 15;

c. Shrub Lespedeza plants—5 rows, 2 ft. by 2 ft. spacing: November 1 to April 15; or

d. Shrub Lespedeza seeded—12 to 15 feet width—20 pounds/acre of scarified seed: March 1 to June 15.

2. Clumps. Clump plantings may be substituted for trees to provide space for one or more of the following shrub species:

a. Bush Honeysuckle—25 plants, 6 ft. by 6 ft. spacing: February 1 to April 15;

b. Autumn Olive—25 plants, 6 ft. by 6 ft. spacing: November 1 to June 15;

c. Shrub Lespedeza plants—700 plants, 2 ft. by 2 ft. spacing, November 1 to June 15; or

d. Shrub Lespedeza—1 pound scarified seed per 50 ft. by 50 ft. area: March 1 to June 15.

3. Rocky and Stony Areas.

a. Shrub Lespedeza may be substituted for tree species on rocky and stony sites where planting of tree seedlings is not possible;

b. Plant the mixture from November 1 to June 15.

(10) Grasses, Legumes, and Grains. One of the following mixtures shall be sown on the entire disturbed area, unless an alternative mixture is proposed in the revegetation plan and approved by the Division.

	Seed per acre (pounds)
(a) Mixture One: February–April:	
1. Sericea Lespedeza (scarified)	35
2. Ky–31 Tall Fescue	35
3. Kobe or Korean Lespedeza	10
4. Ladino Clover	2
5. Wheat or Rye	30
(b) Mixture Two: May–July:	
1. Sericea Lespedeza (scarified)	35
2. Ky–31 Tall Fescue	35
3. Weeping Lovegrass	5
4. Millett (German or Brown top)	15
(c) Mixture Three: August–October:	
1. Sericea Lespedeza (unscarified)	45
2. Ky–31 Tall Fescue	25
3. Weeping Lovegrass	5
4. Ladino Clover	2
5. Wheat or Rye	30
(d) Mixture Four: November–January:	
1. Sericea Lespedeza (unscarified)	35
2. Ky–31 Tall Fescue	40
3. Wheat or Rye	45

(11) Sericea Lespedeza may be replaced by other legumes where competition with other species of vegetation presents a problem.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.66 Revegetation: Grazing.

When the approved postmining land use in pasture land, the reclaimed land shall be used for livestock grazing at a grazing capacity approved by the Division approximately equal to that for similar non-mined lands, for at least the last two (2) full years of liability required under Regulation 0400–1–7–.05(2).

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.67 Evaluation of Vegetation Survival.

Inspection and evaluation for cover and survival shall be made as soon as it is possible to determine if a satisfactory stand has been established. A revegetation evaluation report shall be prepared and filed by the inspector.

(1) *Standards for perennials*—Legumes and perennial grasses shall exhibit at least a ninety percent (90%) ground cover and/or equivalent productivity of the reference area, whichever one exhibits the greatest vegetative cover. Production shall not be considered equal if it is less than ninety percent (90%) of the production of the approved reference area or technical equivalent with ninety percent (90%)

statistical confidence. Bare areas shall not exceed one sixteenth (1/16) acre in size and total more than ten percent (10%) of the area seeded. All areas disturbed shall be stabilized with no areas contributing to erosion. The period of liability for measuring success shall meet the standards of Section 0400–1–7–.05.

(2) *Standards for woody plants and perennials*—Woody plants with legumes and perennial grasses overseed shall exhibit at least a ninety percent (90) establishment of ground cover of legumes and perennial grasses and six hundred (600) live, healthy trees per acre distributed uniformly over the acre. No fifty-foot by fifty-foot (50' × 50') area shall contain fewer than thirty-five (35) surviving trees or woody plants. This stocking density, i.e. the number of stems per unit area, will be used to determine the degree to which space is occupied by well distributed, countable trees, shrubs, or half shrubs.

(a) Root crown or root sprouts over one (1) foot in height shall count as one toward meeting the stocking requirements. Where multiple stems occur, only the tallest stem will be counted.

(b) A countable tree or shrub means a tree that can be used in calculating the degree of stocking under the following criteria:

1. the tree or shrub shall be in place at least two growing seasons;

2. the tree or shrub shall be alive and healthy; and

3. the tree or shrub shall have at least one-third (⅓) of its length in live crown.

(c) Rock areas, permanent road and surface water drainage ways on the revegetated area shall not require stocking.

Stocking density may be altered if the postmined land use is developed for wildlife management or for commercial forest as specified in Section 0400–1–14–.65. The period of liability for measuring success shall meet the standards of Section 0400–1–7–.05.

(3) *Cropland and Hayland*—For areas to be used for cropland and hayland, success in revegetation of cropland and hayland shall be determined on the basis of crop production from the mined area as compared to approved reference areas or other technical guidance procedures. Crop of hay production from the mined area shall be equal to or greater than that of the approved referenced area, (with both the reference area and mined area being managed under equivalent management systems) or technical equivalent for the last two (2) consecutive growing seasons of the five (5) year liability period. Production shall not be considered equal if it is less than ninety percent (90%) of the production of the approved reference area or technical equivalent with ninety percent (90) statistical confidence.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.68 Performance Bond Release.

After the vegetative cover has been inspected, partial bond release may be approved if all requirements have been met under the Act. No revegetation performance bonds will be released until the approved revegetation plan has been carried out. No revegetation plans will be considered to have been carried out until satisfactory coverage and survival have been obtained.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.69 Cessation of Operations: Temporary.

(1) Each person who conducts surface mining activities shall effectively secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a person of their obligation to comply with any provisions of the approved permit.

(2) Before temporary cessation of mining and reclamation operations for a period of thirty (30) days or more, or as soon as it is known that temporary cessation will extend beyond thirty (30) days, persons who conduct surface mining activities shall submit to the Division a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of acres which will have been affected in the permit area, prior to such temporary cessation the extent and kind of reclamation of those areas which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activites that will continue during the temporary cessation.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.70 Cessation of Operations: Permanent.

(1) Persons who cease surface mining activities permanently shall close or backfill or otherwise permanently reclaim all affected areas, in accordance with this section and the permit approved by the Division.

(2) All underground openings, equipment, structures, or other facilities not required for monitoring, unless approved by the Division as suitable for the postmining land use or evironmental monitoring, shall be removed and the affected land reclaimed.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.71 Postmining Land Use.

(1) General. All affected areas shall be restored in a timely manner—

(a) to conditions that are capable of supporting the uses which they were capable of supporting before any mining; or

(b) to higher or better uses achievable under criteria and procedures of this section.

(2) Determining premining use of land. The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land has not been previously mined and had been properly managed.

(a) The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the highest and best use that can be achieved and is compatible with surrounding areas.

(b) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

(c) If the premining use of the land was changed within five (5) years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceeding mining.

(3) Prior to the release of lands from the permit area, the permit area shall be restored, in a timely manner, either to conditions capable of supporting the uses they were capable of supporting before any mining or to conditions capable of supporting alternative land uses. Alternative land uses may be approved by the Division after consultation with the landowner or the land-management agency having jurisdiction over the lands, if the following criteria are met:

(a) The proposed postmining land use is compatible with adjacent land use and where applicable, with existing local, state or federal land use policies and plans. A written statement of the views of the authorities with statutory responsibilities for land use policies and plans is submitted to the Division within sixty (60) days of notice by the Division and before surface mining activities begin. Any required approval, including any necessary zoning or other changes

required for land use by local, state, or federal land management agencies, is obtained and remains valid throughout the surface mining activities.

(b) Specific plans are prepared and submitted to the Division which show the feasibility of the postmining land use as related to projected land use trends and markets and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and will be sustained. The Division may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(c) Provision of any necessary public facilities is ensured as evidenced by letters of commitment from parties other than the person who conducts surface mining activities, as appropriate, to provide the public facilities in a manner compatible with the plans submitted under Regulation 0400–1–2. The letters shall be submitted to the Division before surface mining activities begin.

(d) Specific and feasible plans are submitted to the Division which show that financing, attainment and maintenance of the postmining land use are feasible and, if appropriate, are supported by letters of commitment from parties other than the person who conducts the surface mining activities.

(e) Plans for the postmining land use are designed under the general supervision of a registered professional engineer, or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, vegetative cover, and esthetic design appropriate for the postmining use of the site.

(f) The proposed use will neither present actual or probable hazard to public health or safety nor will it pose any actual or probable threat of water flow diminution of pollution.

(g) The use will not involve unreasonable delays in reclamation.

(h) Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants is obtained from the Division and appropriate state and federal fish and wildlife management agencies have been provided a sixty (60) day period in which to review the plan before surface mining activities begin.

(i) Proposals to change premining land uses of range, fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable federal, state and local laws, are reviewed by the Division to ensure that—

1. there is a firm written commitment by the person who conducts surface mining activities or by the landowner or land manager to provide sufficient crop management after release of applicable performance bonds under Regulation 0400–1–7 and Regulations 0400–1–14–.62—0400–1–14–.68, to assure that the proposed postmining cropland use remains practical and reasonable;

2. there is sufficient water available and committed to maintain crop production; and

3. topsoil quality and depth are sufficent to support the proposed use.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.72 Roads: Class I: General.

(1) Each person who conducts surface mining activities shall design , construct or reconstruct, utilize, and maintain Class I Roads and restore the area to meet the requirements of Regulations 0400–1–14–.73—0400–1–14–.78 and to control or minimize erosion and siltation, air and water pollution, and damage to public or private property.

(2) To the extent possible using the best technology currently available, Class I Roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to run-off outside the permit area. Any such contributions shall not be in excess of limitations of state of federal law.

(3) All Class I Roads shall be removed and the land affected regraded and revegetated in accordance with the requirements of Regulation 0400–1–14–.78 unless—

(a) retention of the road is approved as part of the approved postmining land use or as being necessary to control erosion adequately;

(b) the necessary maintenance is assured; and

(c) all drainage is controlled according to Regulation 0400–1–14–.75.

(4)

(a) The design and construction or reconstruction of Class I Roads shall be certified by a registered qualified professional engineer in accordance with Regulations 0400–1–14–.73—0400–1–14–.76, except to the extent that alternative specifications are used. Alternative specifications may be used only after approval by the Division upon a demonstration by a registered qualified professional engineer that they will result in performance equal to or better than that resulting from Class I Roads complying with Regulations 0400–1–14–.73—0400–1–14–.78.

(b) The design shall incorporate the demand for mobility and travel efficiency, based on geometric criteria, both horizontal and vertical, appropriate for the anticipated volume of traffic and weight and speed of vehicles to be used.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.73 Roads: Class I: Location.

(1) Class I Roads shall be located, insofar as possible, on ridges or on the most stable available slopes to minimize erosion.

(2) No part of any Class I Road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Division.

(3) Stream fords are prohibited unless they are specifically approved by the Division as temporary routes during periods of construction. The fords shall not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossing shall be made using bridges, culverts, or other structures designed, constructed, and maintained to meet the requirements of Regulation 0400–1–.14–.75.

(4) Class I Roads shall be located to minimize downstream sedimentation and flooding.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.74 Roads: Class I: Design and Construction.

Class I Roads shall be designed and constructed or reconstructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance:

(1) Vertical alinement. Except where lesser grades are necessary to control site-specific conditions, maximum road grades shall be as follows:

(a) The overall grade shall not exceed 1v:10h (10 percent).

(b) The maximum pitch grade shall not exceed 1v:6.5h (15 percent).

(c) There shall be not more than three hundred (300) feet of pitch grade exceeding ten (10) percent within any consecutive one thousand (1,000) feet of Class I Roads, but in no case shall there be any pitch grade over fifteen (15) percent.

(2) Horizontal alinement. Class I Roads shall have horizontal alinement as consistent with the existing topography as possible, and shall

provide the alinement required to meet the performance standards of Regulations 0400–1–14–.72—0400–1–14–.78. The alinement shall be determined in accordance with the anticipated volume of traffic and weight and speed of vehicles to be used. Horizontal and vertical alinement shall be coordinated to ensure that one will not adversely affect the other and to ensure that the road will not cause environmental damage.

(3) Road cuts.

(a) Cut slopes shall not be steeper than specifically authorized by the Division which shall not authorize slopes steeper than 1v:1.5h in unconsolidated materials or 1v:0.25h in rock, except that steeper slopes may be specifically authorized by the Division if geotechnical analysis demonstrates that a minimum safety factor of 1.5 can be maintained.

(b) Topsoil or other materials suitable under Regulations 0400–1–14–.08 shall be placed on all cut slopes of 1v:1.5h or flatter to aid in establishing vegetation and to minimize erosion. Topsoil depth shall be adequate to support vegetation necessary to control erosion.

(c) Temporary erosion-control measures shall be implemented during construction to minimize sedimentation and erosion until permanent control measures can be established.

(4) Road embankments. Embankment sections shall be constructed in accordance with the following provisions:

(a) All vegetative material and topsoil shall be removed from the embankment foundation during construction to increase stability, and no vegetative material or topsoil shall be placed beneath or in any Class I Road embankment.

(b) Where an embankment is to be placed on side slopes exceeding 1v:5h (20 percent), the existing ground shall be plowed, stepped, or, if in bedrock, keyed in a manner which increases the stability of the fill. The keyway shall be minimum of ten (10) feet in width and shall extend a minimum of two (2) feet below the toe of the fill.

(c) Material containing by volume less than twenty-five (25) percent of rock larger than six (6) inches in greatest dimension shall be spread in successive uniform layers not exceeding twelve (12) inches in thickness before compaction.

(d) Where the material for an embankment consists of large-size rock, broken stone, or fragmented material that makes placing it in twelve (12) inch layers impossible under Paragraph (4)(c) of this Section, the embankment shall be constructed in uniform layers not exceeding in thickness the approximate average size of the rock used, but the layers shall not exceed thirty-six (36) inches in thickness. Rock shall not be dumped in final position, but shall be distributed by blading or dozing in a manner that will ensure proper placement in the embankment, so that voids, pockets, and bridging will be reduced to a minimum. The final layer of the embankment shall meet the requirements of Paragraph (4)(c) of this Section.

(e) Each layer of the embankment shall be compacted before the succeeding layer is placed. Loads of material shall be leveled as placed and kept smooth. The successive layers shall be compacted evenly by routing the hauling and leveling equipment over the entire width of the embankment. This procedure shall be continued until no visible horizontal movement of the embankment material is apparent.

(f) Embankment layers shall be compacted as necessary to ensure that the embankment is adequate to support the anticipated volume of traffic and weight and speed of vehicles to be used. In selecting the method to be used for placing embankment material, consideration shall be given in the design to such factors as the foundation, geological structure, soils, type of construction, and equipment to be used. A structural foundation analysis shall be performed to establish design standards for embankment stability appropriate to the site. Publications of the American Association of State Highway and Traffic Officers (AASHTO) including AASHTOT–99, T–180, T–91, and the modified AASHTO test, or other specifications generally recognized by transportation engineers as adequate for design of highway embankments, shall be used to determine the degree of compaction required, on the basis of soil type and the anticipated volume of traffic and weight and speed of vehicles to be used. Compaction effort shall be adequate to achieve the degree of compaction required. No lift shall be placed on a layer until the design density is achieved throughout the layer. AASHTO specifications such as T–99, T–180, the modified AASHTO test, or other comparable specifications approved by the Division shall be used as guidelines for the determination of the maximum dry density for granular materials.

(g) Materials shall be placed in an embankment only when its moisture content is within acceptable levels to achieve design compaction.

(h) Embankment slopes shall not be steeper than 1v:2h, except that where the embankment material is a minimum of eighty-five percent (85%) rock, slopes shall not be steeper than 1v:1.35h if it has been demonstrated to the Division that embankment stability will result. Where rock embankments are constructed, they shall meet the requirements of Paragraph (4)(d) of this Section.

(i) The minimum safety factor for all embankments shall be 1.2 or such higher factor as the Division may specify.

(j) The road surface shall be sloped toward the ditch line at minimum rate of one-quarter (¼) inch per foot of surface width, or crowned at a minimum rate of one-quarter (¼) inch per foot of surface width as measured from the centerline of the road.

(k) All material used in embankments shall be suitable for use under Paragraphs (4)(a)–(h) of this Section. The material shall be reasonably free of organic material, coal or coal blossom, frozen materials, wet or peat material, natural soils containing organic matter, or any other material considered unsuitable by the Division for use in embankment construction.

(l) Excess or unsuitable material from excavation as defined in Paragraph (4)(k) of this Section, shall be disposed of in accordance with Regulation 0400–1–14–.36. Acid- and toxic-forming material shall be disposed of in accordance with Regulations 0400–1–14–.19, 0400–1–14–.41, and 0400–1–14–.58.

(m) Acid-producing materials shall be permitted for constructing embankments for only those Class I Roads constructed or reconstructed on coal processing waste bank and only if it has been demonstrated to the Division that no additional acid will leave the confines of the coal processing waste bank. In no case shall acid-bearing refuse material be used outside the confines of the coal processing waste bank. Restoration of the road shall be in accordance with the requirements of Regulations 0400–1–14–.58—0400–1–14–.68.

(n) Topsoil or other material suitable under Regulation 0400–1–14–.08 shall be placed on all embankment slopes 1v:1.5h or flatter to aid in establishing vegetation and to minimize erosion. Topsoil material depth shall be adequate to support vegetation and to prevent erosion.

(o) Temporary erosion-control measures shall be incorporated during construction to control sedimentation and minimize erosion until permanent control measures can be established.

(5) Topsoil removal. Before initiation of construction or reconstruction of a Class I Road, topsoil and other materials, as determined under Regulation 0400–1–14–.08, shall be removed from the design roadbed,

shoulders, and surfaces where associated structures will be placed, and shall be stored in accordance with Regulation 0400–1–14–.09.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.75 Roads: Class I: Drainage.

(1) General.

(a) Each Class I Road shall be designed, constructed or reconstructed, and maintained to have adequate drainage, using structures such as, but not limited to, ditches, cross drains, and ditch relief drains. The water control system shall be designed to safely pass the peak run-off from a ten (10) year, twenty-four (24) hour precipitation event or a greater event if required by the Division.

(b) Sediment control shall comply with Regulations 0400–1–14–.13 and 0400–1–14–.16.

(c) Vegetation shall not be cleared for more than the width necessary for road and associated ditch construction, to serve traffic needs and for utilities.

(2) Ditches.

(a) A ditch shall be provided on both sides of a through-cut and on the inside shoulder of a cut-and fill section, with ditch relief cross drains spaced according to grade. Water shall be intercepted before reaching a switchback or large fill and drained safely away in accordance with this Section. Water from a fill or switchback shall be released below the fill through conduits or in riprapped channels, and shall not be discharged into the fill. Drainage ditchess shall be placed at the toe of all cut slopes formed by the construction of roads.

(b) On flat sections of Class I Roads where rolling topography is insufficent to provide natural ditch drainage, the road grade shall be undulated to provide for free flow of water in the ditch section. Road sections may be constructed to elevate the road surface above the original ground surface to facilitate drainage.

(3) Culverts and bridges.

(a)

1. Culverts with an end area of thrity-five (35) square feet or less shall be designed to safely pass the ten (10) year, twenty-four (24) hour precipitation event without a head of water at the entrance. Culverts with an end area of greater than thrity-five (35) square feet, and bridges with spans of thirty (30) feet or less, shall be designed to safely pass the twenty (20) year, twenty-four (24) hour precipitation event. Bridges with spans of more than thirty (30) feet shall be disigned to safely pass the one-hundred (100) year, twenty-four (24) hour precipitation event or a larger event as specified by the Division.

2. Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets, and outlets.

3. Trash racks and debris basins shall be installed in the drainage area wherever debris from the drainage area could impair the functions of drainage and sediment-control structures.

4. All culverts shall be covered by compacted fill to a minimum depth of one (1) foot.

5. Culverts shall be designed, constructed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles to be used.

(b) Culverts for road-surface drainage only shall be constructed in accordance with the following:

1. Unless otherwise authorized or required under Paragraphs (2) or (3), culverts shall be spaced as follows:

a. Spacing shall not exceed one thousand (1,000) feet on grades of zero (0) to three (3) percent.

b. Spacing shall not exceed eight hundred (800) feet on grades of three (3) to six (6) percent.

c. Spacing shall not exceed five hundred (500) feet on grades of six (6) to ten (10) percent.

d. Spacing shall not exceed three hundred (300) feet on grades of ten (10) percent or greater.

2. Culverts at closer intervals than the maximum in Paragraph (3)(b)1. of this Section shall be installed if required by the Division as appropriate for the erosive properties of the soil or to accommodate flow from small intersecting drainages.

3. Culverts may be constructed at greater intervals than the maximum indicated in Paragraph (3)(b)1. of this Section if authorized by the Division upon a finding that greater spacing will not increase erosion.

4. Culverts shall cross the road at not less than a thirty (30) degree angle downgrade.

5. Culverts may be designed to carry less than the peak run-of from a ten (10) year, twenty-four (24) hour precipitation event if the ditch will not overtop and will remain stable.

6. The inlet end shall be protected by a rock headwall or other material approved by the Division as adequate protection aganist erosion of the headwall. The water shall be discharged below the toe of the fill through conduits or in riprapped channels and shall not be discharged onto the fill.

(4) Natural drainage. Natural channel drainageways shall not be altered or relocated for road construction or reconstruction without the prior approval of the Division in accordance with Regulations 0400–1–14–.14 and 0400–1–14–1–.15. The Division may approve alterations and relocations only if—

(a) the natural-channel drainage is not blocked;

(b) no significant damage occurs to the hydrologic balance; and

(c) there is no adverse impact on adjoining landowners.

(5) Stream crossings. Drainage structures are required for stream channel crossings. Drainage structures shall not affect the normal flow or gradient of the stream, or adversely affect fish migration and aquatic habitat or related environmental values.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.76 Roads: Class I: Surfacing.

(1) Class I Roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the Division as sufficiently durable for the anticipated volume of traffic and weight and speed of vehicles to be used.

(2) Acid- or toxic-forming substances shall not be used in road surfacing.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.77 Roads: Class I: Maintenance.

(1) Class I Roads shall be maintained in such a manner that the required or approved design standards are met throughout the life of the entire transportation facility including surface, shoulders, parking and side areas, approach structures, erosion control devices, cut-and-fill sections, and such traffic-control devices as are necessary for safe and efficient utilization of the road.

(2) Class I Road maintenance shall include repairs to the road surface, blading, filling of potholes, and replacement of gravel or asphalt. It shall include revegetating, brush removal, watering for dust control, and minor reconstruction of road segment as necessary.

(3) Class I Roads damaged by catastrophic events such as floods or earthquakes shall not be used until reconstruction of damaged road elements. The reconstruction shall be completed as soon as practicable after the damage has occurred.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.78 Roads: Class I: Restoration.

(1) Unless the Division approves retention of a Class I Road as suitable for the approved postmining land use, immediately after the road is no longer needed for operations, recalmation, or monitoring—

(a) the road shall be closed to vehicular traffic;

(b) the natural-drainage patterns shall be restored;

(c) all bridges and culverts shall be removed;

(d) roadbeds shall be ripped, plowed, and scarified;

(e) fill slopes shall be rounded or reduced and shaped to conform the site to adjacent terrain and to meet natural-drainage restoration standards;

(f) cut slopes shall be shaped to blend with the natural contour;

(g) cross drains, dikes, and water bars shall be constructed to minimize erosion;

(h) terraces shall be constructed as necessary to prevent excessive erosion and to provide long-term stability in cut-and-fill slopes; and

(i) road surfaces shall be covered with topsoil in accordance with Regulation 0400–1–14–.10(2) and revegetated in accordance with Regulations 0400–1–14–.62 through 0400–1–14–.67.

(2) Unless otherwise authorized by the Division, all road surfacing materials shall be removed, hauled or conveyed, and disposed of under Regulation 0400–1–14–.48.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.79 Roads: Class II: General.

(1) Each person who conducts surface mining activities shall design, construct or reconstruct, utilize, and maintain Class II Roads and restore the area to meet the requirements of Regulations 0400–1–14–.80—0400–1–14–.85 and to control or minimize erosion and siltation, air and water pollution, and damage to public or private property.

(2) To the extent possible using the best technology currently available, Class II Roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to run-off outside the permit area. Any such contributions shall not be in excess of limitations of state or federal law.

(3) All Class II Roads shall be removed and the land affected, regraded, and revegetated in accordance with the requirements of Regulation 0400–1–14–.85, unless—

(a) retention of the road is approved as part of the approved postmining land use or as being necessary to control erosion adequately;

(b) the necessary maintenance is assured; and

(c) all drainage is controlled according to Regulation 0400–1–14–.82.

(4)

(a) Class II Roads shall be designed and constructed in accordance with Regulations 0400–1–14–.80 and 0400–1–14–.83, except to the extent that alternative specifications are used. Alternative specifications may only be used after approval by the Division upon a demonstration by a qualified professional engineer that they will result in performance equal to or better than that resulting from Class II Roads complying with Regulations 0400–1–14–.80 and 0400–1–14–.85.

(b) The design shall incorporate consideration of the needs of the specific uses of the road in addition to travel efficiency. To the extent that the anticipated volume of traffic or weight or speed of vehicles to be used requires higher standards than those set forth in Regulations 0400–1–14–.80—0400–1–14–.85, such higher standards shall be incorporated in the design, construction or reconstruction, and maintenance of Class II Roads.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.80 Roads: Class II: Location.

(1) Class II Roads shall be located, insofar as possible, on ridges or on the most stable available slopes to minimize erosion.

(2) No part of any Class II Road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Division.

(3) Stream fords are prohibited unless they are specifically approved by the Division as temporary routes during periods of construction. The fords shall not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using bridges, culverts, or other structures, designed, constructed, and maintained to meet the requirements of Regulation 0400–1–14–.82.

(4) Class II Roads shall be located to minimize downstream sedimentation and flooding.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.81 Roads: Class II: Design and Construction.

Class II Roads shall be designed and constructed or reconstructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance:

(1) Vertical alignment. A continuous grade with excessive cuts or embankments shall be avoided. Changes of grade shall be made to conform as closely as possible to the existing terrain, and maximum road grades shall be as follows:

(a) The overall grade shall not exceed 1v:10h (10 percent).

(b) The pitch grade shall not exceed 1v:6.5h (15 percent), for any consecutive one thousand (1,000) feet.

(c) The pitch grade exceeding fifteen (15) percent shall not be longer than three hundred (300) feet within any consecutive one thousand (1,000) feet of Class II Roads.

(2) Horizontal alignment. Class II Roads shall have horizontal alignment as consistent with the existing natural topography as possible, and shall provide the alignment required for the performance standards of Regulations 0400–1–14–.79—0400–1–14–.85. The alignment shall be determined in accordance with the anticipated volume of traffic and weight and speed of vehicles to be used. Horizontal and vertical alignment shall be coordinated to ensure that one will not adversely affect the other and to ensure that the road will not cause environmental damage.

(3) Road cuts. Cut slopes shall not be steeper than specifically authorized by the Division, which shall not authorize slopes steeper than 1v:1.5h in unconsolidated materials or 1v:0.25h in rock, except that steeper slopes may be specifically authorized by the Division if geotechnical analysis demonstrates that a minimum safety factor of 1.5 can be maintained.

(a) Topsoil or other materials suitable under Regulation 0400–1–14–.08 shall be placed on all cut slopes of 1v:1.5h or flatter to aid in establishing vegetation and to minimize erosion. Topsoil depth shall be adequate to support vegetation necessary to minimize erosion.

(b) Temporary erosion-control measures shall be implemented during construction to minimize sedimentation and erosion until permanent control measures can be established.

(4) Road embankments. Embankment sections shall be constructed in accordance with the following provisions:

(a) All vegetative material and topsoil shall be removed from the embankment foundation to increase stability, and no vegetative material or topsoil shall be

placed beneath or in any Class II Road embankment.

(b) Where an embankment is to be placed on side slopes exceeding 1.3h (33 percent), the existing ground shall be plowed, stepped, or if in rock, keyed in a manner which increases the stability of the fill. The keyway shall be minimum of ten (10) feet in width and shall begin at the toe of fill. No material shall be placed below the toe or be allowed to slide below the toe. For slopes of less than 1v:3h (33 percent), the slopes shall be scarified to ensure bonding of the embankment and natural material.

(c) Material containing by volume less than twenty-five (25) percent of rock larger than six (6) inches in greatest dimension shall be spread in successive uniform layers not exceeding twelve (12) inches in thickness before compaction.

(d) Where the material for an embankment consists of large-size rock, broken stone, or fragmented material that makes placing in twelve (12) inch layers impossible under Paragraph (4)(c) of this Section, the embankment shall be constructed in uniform layers not exceeding in thickness the approximate average size of the rock used, but the layers shall not exceed thirty-six (36) inches in thickness. Rock shall not be dumped in final position, but shall be distributed by blading or dozing in a manner that will ensure proper placement in the embankment, so that voids, pockets, and bridging will be reduced to a minimum. The final layer of the embankment shall meet the requirements of Paragraph (4)(c) of this Section.

(e) Each layer of the embankment shall be completed, leveled, and compacted before the succeeding layer is placed. Embankment material shall be leveled as placed and kept smooth. The successive layers shall be compacted evenly by routing the hauling and leveling equipment over the entire width of the embankment. This procedure shall be continued until no visible horizontal movement of the embankment material is apparent.

(f) Compaction greater than that specified in Paragraph (4)(e) of this Section shall be performed to the extent necessary to ensure stability.

(g) Material shall be placed in an embankment under moisture content conditions which will permit compaction and ensure proper soil cohesion.

(h) Embankment slopes shall not be steeper than 1v:1.5h except that if the embankment material is a minimum of eighty-five (85) percent rock, slopes shall not be steeper than 1v:1.3 if it has been demonstrated to the Division that embankment stability will result. Where rock embankments are constructed, they shall meet the requirements of Paragraph (4)(d) of this Section.

(i) The minimum safety factor for all embankments shall be 1.35, or such higher factor as the Division may specify.

(j) The road surface shall be sloped sufficiently to prevent ponding of water on the surface.

(k) All material used in embankments shall be suitable for use under Paragraphs (4) (a)–(h) of this Section. The material shall be reasonably free of organic material, coal or coal blossom, frozen materials, wet or peat material or natural soils containing organic matter, or any other material considered unsuitable for use in embankment construction by the Division.

(l) Excess or unsuitable material from excavations, as defined in Paragraph (4)(k) of this Section, shall be disposed of in accordance with Regulation 0400–1–14–.36. Acid- and toxic-forming material shall be disposed of in accordance with Regulations 0400–1–14–.19, 0400–1–14–.41, and 0400–1–14–.58.

(m) Topsoil or other material suitable under Regulation 0400–1–14–.08 shall be placed on all embankment slopes of 1v:1.5h or flatter, to aid in establishing vegetation to minimize erosion. Topsoil material depth shall be adequate to support vegetation and to minimize erosion.

(n) Temporary erosion-control measures shall be incorporated during construction to control sedimentation and minimize erosion until permanent control measures can be established.

(5) Topsoil removal. Before initiation of construction or reconstruction of a Class II Road, topsoil and other materials, as determined under Regulation 0400–1–14–.08, shall be removed from the design roadbed, shoulders, and surfaces where associated structures will be placed, and shall be stored in accordance with Regulation 0400–1–14–.09.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.82 Roads: Class II: Drainage.

(1)

(a) Each Class II road shall be designed, constructed or reconstructed, and maintained to have adequate drainage, using structures such as ditches in wet areas, cross drains in natural drainageways, surface dips, and stream crossings. The water-control system shall be designed to safely pass the peak run-off from a ten (10) year, twenty-four (24) hour precipitation event or a greater event if required by the Division.

(b) Sediment control shall comply with Regulations 0400–1–14–.13 and 0400–1–14–.16.

(2) Ditches and alternative measures for roadbed erosion control. Where required to minimize erosion on the roadbed, ditches shall be designed and constructed in accordance with Regulation 0400–1–14–.75(2). In wet areas or where there is free water, such ditch sections shall be required. For every segment of a Class II Road without drainage ditches which comply with Regulation 0400–1–14–.75(2), drainage shall be provided by surface dips. These drainage dips shall be constructed as undulations in the roadway of sufficient height from the hydraulic bottom to the top of the dip to prevent water from running down the surface of the road. Insloped dips shall discharge into a culvert or drop inlet. Outsloped dips shall discharge either onto the natural ground or onto embankments if a drain is provided. The bottom of the dip shall be rock surfaced to prevent erosion. Dip spacing shall be sufficient to minimize erosion of the road surface.

(3) Culverts and bridges.

(a)

1. Culverts with an end area of thirty-five (35) square feet or less shall be designed to safely pass the ten (10) year, twenty-four (24) hour precipitation event without a head of water at the entrance. Culverts with an end area of greater than thirty-five (35) square feet, and bridges with spans of thirty (30) feet or less, shall be designed to safely pass the twenty (20) year, twenty-four (24) hour precipitation event. Bridges with spans of more than thirty (30) feet shall be designed to safely pass the one hundred (100) year, twenty-four (24) hour precipitation event or larger event as specified by the Division.

2. Drainage pipes and culverts shall be constructed to avoid plugging or collapse, and erosion at inlets and outlets.

3. Culverts shall be covered by compacted fill to a minimum depth of one (1) foot.

4. Culverts shall be designed, constructed, and maintained to sustain the vertical soil pressure, the passive resistance of the road foundation, and the weight of vehicles to be used.

(b) Culverts or dips for road-surface drainage only, shall be constructed in accordance with the following:

1. Unless otherwise authorized or required under Paragraphs (2) or (3) of this Section, culverts and dips shall be spaced as follows:

a. Spacing shall not exceed one thousand (1,000) feet on grades of zero (0) to three (3) percent.

b. Spacing shall not exceed six hundred (600) feet on grades of three (3) to six (6) percent.

c. Spacing shall not exceed four hundred (400) feet on grades of six (6) to ten (10) percent.

d. Spacing shall not exceed two hundred (200) feet on grades of ten (10) percent or greater.

2. Surface dips or culverts at closer intervals than the maximum indicated in Paragraph (3)(b)1. of this Section shall be installed if required by the Division as appropriate for erosive properties of the soil or to accommodate flow from small intersecting drainages.

3. Surface dips or culverts may be constructed at greater intervals than the maximum indicated in Paragraph (3)(b)6. of this Section if authorized by the Division upon a finding that greater spacing will not increase erosion.

4. Culverts and the bottoms of drainage dips shall cross the road at not less than a thirty (30) degree angle downgrade.

5. A culvert may be designed to carry less than the peak run-off from a ten (10) year, twenty-four (24) hour precipitation event if the ditch will not overtop and will remain stable.

6. The inlet end of all culverts shall be protected by a rock headwall or other material approved by the Division as adequate protection against erosion of the headwall. The water shall be discharged below the toe of the fill through conduits or in riprapped channels and shall not be discharged into the fill.

(4) Natural drainage. Natural channel drainageways shall not be altered or relocated for road construction or reconstruction without the prior approval of the Division in accordance with Regulations 0400–1–16–.43 and 0400–1–16–.44. The Division may approve alterations and relocations only if—

(a) the natural channel drainage is not blocked;

(b) no significant degradation occurs to the hydrologic balance; and

(c) there is no adverse impact on adjoining landowners.

(5) Stream crossings. Drainage structures are required for stream-channel crossings. Drainage structures shall not affect the normal flow or gradient of the stream, or adversely affect fish migration or aquatic habitat or related environmental values.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.83 Roads: Class II: Surfacing.

(a) Class II Roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the Division as sufficiently durable for the anticipated volume of traffic and weight and speed of vehicles to be used.

(b) Acid- or Toxic-forming substances shall not be used in road surfacing.

(c) Vegetation shall not be cleared for more than the width necessary for road and associated ditch construction, to serve traffic needs and for utilities.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.84 Roads: Class II: Maintenance.

(1) Class II Roads shall be maintained in such a manner that the required or approved design criteria are met throughout the life of the facility including surface and shoulders, parking, side areas, approach structures, erosion-control devices, and such traffic-control devices as are necessary for safe and efficient utilization.

(2) Class II Road maintenance shall include basic custodial care as required to protect the road investment and to prevent damage to adjacent resources. This includes maintenance to control erosion, repair of structures and drainage systems, removal of rocks and debris, replacement of surface, and restoration of the road prism.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.85 Roads: Class II: Restortation.

(1) Unless the Division approves retention of a Class II Road as suitable for the approved postmining land use, immediately after the road is no longer needed for operations, reclamation, or monitoring—

(a) the road shall be closed to vehicular traffic;

(b) the natural drainage patterns shall be restored;

(c) all bridges and culverts shall be removed;

(d) roadbeds shall be ripped, plowed, and scarified;

(e) fill slopes shall be rounded or reduced and shaped to conform the site to adjacent terrain and to meet natural drainage restoration standards;

(f) cut slopes shall be reshaped to blend with the natural contour;

(g) cross drains, dikes, and water bars shall be constructed to minimize erosion;

(h) terraces shall be constructed as necessary to prevent excessive erosion and to provide long-term stability in cut-and-fill slopes; and

(i) road surfaces shall be covered with topsoil in accordance with Regulation 0400–1–14–.10(2) and revegetated in accordance with Regulations 0400–1–14–.62—0400–1–14–.67.

(2) Unless otherwise authorized by the Division, all road surfacing materials shall be removed, hauled or conveyed, and disposed of under Regulation 0400–1–14–.48.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.86 Roads: Class II: General.

(1) Each person who conducts surface mining activities shall design construct or reconstruct, utilize, and maintain Class III Roads and restore the area to meet the requirements of Regulations 0400–1–14–.89—0400–1–14–.92 and to control or minimize erosion and siltation, air and water pollution, and damage to public or private property.

(2) To the extent possible using the best technology currently available, Class III Roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to run-off outside the permit area. Any such contributions shall not be in excess of limitations of state or federal law.

(3) All Class III Roads shall be completely removed and the land affected regraded to the approximate original contour and revegetated in accordance with the requirements of Regulation 0400–1–14–.92 except where Regulation 0400–1–14–.87(7) shall apply.

(4) To the extent that the anticipated volume or weight or speed of vehicles to be used required higher standards than those set forth in Regulations 0400–1–14–.87—0400–1–14–.91, such higher standards shall be incorporated in the design, construction, and reconstruction or maintenance of Class III Roads.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.87 Roads: Class III: Location.

(1) Class III Roads shall be located on ridges or on the most stable available slopes to minimize erosion.

(2) No part of any Class III Road shall be located in the channel or an intermittent or perennial stream unless specifically approved by the Division.

(3) Stream fords are prohibited unless they are approved by the Division as temporary routes across ephemeral or intermittent streams that will not adversely affect stream sedimentation or fish, wildlife, and related

environmental values. All other stream crossings shall be made using temporary bridges, culverts, or other structures designed, constructed, and maintained to meet the requirements of Regulation 0400–1–14–.89.

(4) Class III Roads shall be located to minimize downstream sedimentation and flooding.

(5) Not later than the date a permit application is submitted to the Division for surface mining activities for which a Class III Road is proposed, the location of the proposed road shall be clearly marked in the field by flags or stakes to enable the Division to perform on-site review.

(6) Class III Roads shall not be located in wet, steep, or unstable areas where complete restoration under Regulation 0400–1–14–.92 cannot be accomplished.

(7) A Class III Road may be constructed in the same alinement as a Class I or Class II Road that is to be constructed on the same location at a later date. This may be permitted if the requirements for the location of the Class I or Class II Road are met, and the construction begins within six (6) months from the time the Class III Road is constructed.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.88 Roads: Class III: Design and Construction.

Field-design methods shall be utilized for Class III Roads.

(1) Vertical alignment. Except where lesser grades are necessary to control site-specific conditions, maximum road grades shall be as follows:

(a) The overall grade shall not exceed 1v:10h (10 percent).

(b) The pitch grade shall not exceed 1v:5h (20 percent).

(c) There shall not be more than one thousand (1,000) consecutive feet of maximum pitch grade.

(2) Horizontal alignment. Class III Roads may meander so as to avoid large growths of vegetation and other natural obstructions.

(3) Road cuts. Sidecase construction may be used.

(4) Road embankments. Compaction on embankments shall be only to the extent necessary to control erosion and maintain the road.

(5) Topsoil removal. Topsoil shall be removed and stockpiled only where excavation would require replacement of material and redistribution of topsoil for proper revegetation.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.89 Roads: Class III: Drainage.

(1) General.

(a) Class III Road drainage shall consist of temporary culverts in flowing streams, wet areas, and in ephemeral channels as necessary to protect the facility during its life and to minimize disturbance of the hydrologic balance.

(b) Sediment control shall comply with Regulations 0400–1–14–.13 and 0400–1–14–.16.

(2) Culverts and bridges. Temporary culverts shall be installed for all flowing drainages and stream crossings. Temporary culverts and bridges shall be sized to safely pass the one (1) year, six (6) hour precipitation event.

(3) Natural drainage. Natural channel drainageways shall not be altered or relocated for the purposes of Class III Road construction.

(4) Stream crossings. Temporary drainage structures are required for crossing permanent streams. Drainage structures shall not affect the normal flow or gradient of the stream, or adversely affect fish migration and aquatic habitat or related environmental values.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.90 Roads: Class III: Surfacing

(1) Class III Road surfaces shall be adequate for the use of the road.

(2) Acid- or toxic-forming substances shall not be used in road surfacing.

(3) Vegetation shall not be cleared for more than the width necessary to serve traffic needs and for utilities.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.91 Roads: Class III: Maintenance.

(1) Class III Road maintenance shall be sufficient to ensure minimization of erosion for the life of the road.

(2) Class III Roads shall not be used if climatic conditions are such that usage may cause degradation of water quality.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.92 Roads: Class III: Restoration.

Immediately after a Class III Road is no longer needed for operations, reclamation, or monitoring—

(1) the road shall be closed to vehicular traffic;

(2) the natural drainage patterns shall be restored;

(3) all bridges and culverts shall be removed;

(4) roadbeds shall be ripped, plowed, and scarified;

(5) fill slopes shall be rounded or reduced and shaped to conform the site to adjacent terrain and meet natural-drainage restoration standards;

(6) cut slopes shall be reshaped to blend with the natural contour;

(7) cross drains, dikes, and water bars shall be constructed to control erosion; and

(8) road surfaces from which topsoil has been removed shall be covered with topsoil in accordance with Regulation 0400–1–14–.10(2), and the surface shall be revegetated in accordance with Regulations 0400–1–14–.62—0400–1–14–.67.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.93 Other Transportation Facilities.

Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transportation facilities shall be designed, constructed or reconstructed, and maintained, and the area restored to—

(1) prevent, to the extent possible using the best technology currently available—

(a) damage to fish, wildlife, and related environmental values; and

(b) additional contributions of suspended solids to streamflow or run-off outside the permit area. Any such contribution shall not be in excess of limitations of state or federal law.

(2) control and minimize diminution or degradation of water quality and quantity;

(3) control and minimize erosion and siltation;

(4) control and minimize air pollution; and

(5) prevent damage to public or private property.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–14–.94 Support Facilities and Utility Installations

(1) Support facilities required for, or used incidentally to, the operation of the mine, including, but not limited to, mine buildings, coal loading facilities at or near the minesite, coal storage facilities, equipment storage facilities, fan building, hoist buildings, preparation plants, sheds, shops, and other buildings, shall be designed, constructed or reconstructed, and located to prevent or control erosion and siltation water pollution, and damage to public or private property. Support facilities shall be designed, constructed or reconstructed, maintained, and used in a

manner which prevents, to the extent possible using the best technology currently available—

(a) damage to fish, wildlife, and related environmental values and

(b) additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contribution shall not be in excess of limitations of state or federal law.

(2) All surface mining activities shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal slurry pipelines; railroads electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the Division.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

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0400–1–15–.01 Scope.

This Regulation sets forth the minimum environmental protection performance standards for underground mining activities, as authorized by T.C.A. Section 59–8–310, 59–8–311 and 59–8–312.

0400–1–15–.02 Objectives.

This Regulation is intended to ensure that all underground mining activities are conducted in a manner which preserves and enhances environmental and other values in accordance with the Act.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.03 Permanent Signs and Markers.

The applicant shall mark his area before mining begins according to the following requirements.

(1) Specifications. Signs and markers required under this Regulation shall—

(a) be posted, maintained, and removed by any person who conducts the underground mining activities;

(b) be of a uniform design throughout the operation that can be easily seen and read;

(c) be made of durable material; and

(d) conform to local ordinances and codes.

(2) Duration of maintenance. Signs and markers shall be maintained during the conduct of all activities to which they pertain.

(3) Mine and permit identification signs.

(a) Mine and Permit Identification signs shall be at least twenty-four (24) inches high and thirty (30) inches wide. These signs shall be displayed at each point of access to the permit area from public roads and highways. These signs shall show—

1. company name;
2. business address;
3. telephone number of the permittee;
4. area number; and
5. mining permit and N.P.D.E.S. numbers.

(b) Signs shall be retained and maintained until after the release of all bonds for the permit area.

(4) Perimeter markers shall be posted at permitted sites before disturbance may begin. The perimeter markers shall be orange colored bands of paint applied to trees that are to be kept along the mine boundaries at intervals close enough to be easily seen by both mining equipment operators and Division personnel. The medium orange paint shall be applied in a six (6) inch wide band around marker tree trunks at about five (5) feet above ground level. Mine areas not having a forest cover should have locust posts, treated pine posts, or other durable posts set along the perimeter at sufficient intervals to be easily seen by both mining equipment operators and Division of Surface Mining (DSM) personnel. A DSM representative is desirable to have present when the perimeter markings are posted to insure satisfactory placement.

(5) Buffer zones should be marked with a blue six (6) inch band of paint on trees or posts, after valid surface mine permit has been issued. Buffer zones are those areas within one hundred (100) horizontal feet of either intermittent or perennial streams.

(6) Blasting signs. If blasting is conducted incident to underground mining activities, the person who conducts these activities shall—

(a) conspicuously display signs reading "Blasting Area" along the edge of any blasting area that comes within fifty (50) feet of any road within the permit area, or within one hundred (100) feet of any public road right of way;

(b) conspicuously flag, or post within the blasting area, the immediate vicinity of charged holes, as required by Regulation 0400–1–15–.31 (5); and

(c) place at all entrances to the permit area from public road or highways conspicuous signs which state "Warning! Explosives in Use", which clearly explain the blast warning and all clear signals that are in use and which explain the marking of blast areas and charged holes within the permit area.

(7) Markers for topsoil or other vegetation-supporting material, as required by Regulation 0400–1–15–.09 should be of sufficiently durable board, or metal visible and readable during the time that topsoil is stored at a mine. The signs should be rectangular, four (4) inches high by eighteen (18) inches long, with the words "Top Soil" printed in legible letters. The signs should be attached to a wood or metal post that should extend five (5) feet above the surface of the stored topsoil.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.04 Casing and Sealing of Underground Openings: General Requirements.

Each exploration hole, or other drill or borehole, well, or other exposed underground opening shall be cased, sealed, or otherwise managed, as approved by the Division, to prevent acid or other toxic drainage from entering ground or surface waters, to minimize disturbance to the prevailing hydrologic balance, and to ensure the safety of people, livestock, fish and wildlife, and machinery in the mine plan and adjacent area. If these openings are uncovered or exposed by underground mining activities within the permit area, they shall be permanently closed, unless approved for water monitoring or otherwise managed in a manner approved by the Division. Use of a drilled hole or monitoring well as a water well must meet the provisions of Regulation 0400–1–15–.23. This Regulation does not apply to holes solely drilled and used for blasting.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.05 Casing and Sealing of Underground Openings: Temporary.

(1) Each mine entry which is temporarily inactive, but has a further projected useful service under the approved permit application, shall be protected by barricades or other covering devices, fenced, and posted with signs, to prevent access into the entry and to identify the hazardous nature of the opening. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the underground mining activities.

(2) Each exploration hole, other drill holes or boreholes, shafts, wells and other exposed underground openings which have been identified in the approved permit application for use to return underground development waste, coal processing waste, or water to underground workings, or to be used to monitor ground water conditions, shall be temporarily sealed before use and protected during use by barricades, or fences, or other protective devices approved by the Division. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the underground mining activities.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.06 Casing and Sealing of Underground Openings: Permanent.

When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effect, or unless approved for transfer as a water well under Regulation 0400–1–15–.23, each exploration hole, other drilled hole or borehole, well, and other exposed underground opening shall be capped, sealed, backfilled, or otherwise properly managed, as required by the Division, under Regulation 0400–1–15–.21 and consistent with Regulation 30 CFR 75.1711. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery, and to keep acid or other toxic drainage from entering ground or surface waters.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.07 Topsoil: General Requirements.

(1) Before disturbance of an area, topsoil and subsoils to be saved under Regulation 0400–1–15–.08 shall be separately removed and segregated from other material.

(2) After removal, topsoil shall either be immediately redistributed as required under Regulation 0400–1–15–.10 or stockpiled pending redistribution as required under Regulation 0400–1–15–.09, or if the permittee can demonstrate that an alternative procedure will provide equal or more protection for the topsoil, the Division, may, on a case by case basis, approve an alternative.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.08 Topsoil: Removal.

(1) Timing. Topsoil shall be removed from areas to be affected by surface operations or major structures, after vegetative cover that would interfere with the salvage of the topsoil is cleared from portions of those areas that will be disturbed, but before any drilling for blasting, mining, or other surface disturbance.

(2) Materials to be removed. All topsoil shall be removed in a separate layer from the areas to be disturbed, unless use of substitute or supplemental materials is approved by the Division in accordance with Paragraph (4) of this Section. If use of substitute or supplemental materials is approved, all materials to be redistributed shall be removed.

(3) Material to be removed in thin topsoil situation. If the topsoil is less than six (6) inches, a six (6) inch layer that includes the A horizon and the unconsolidated materials immediately below the A horizon or the A horizon and all unconsolidated material if the total available is less than six (6) inches, shall be removed and the mixture segregated and redistributed as the surface soil layer, unless topsoil substitutes are approved by the Division pursuant to Paragraph (4) of this Section.

(4) Sub-soil segregation. The B horizon and portions of the C horizon, or other underlying layers demonstrated to have qualities for comparable root development shall be segregated and replaced as subsoil, if the Division determines that either of these is necessary or desirable to ensure soil productivity consistent with the approved postmining land use.

(a) Selected overburden materials may be submitted for or used as a supplement to, topsoil, if the Division determines that the resulting soil medium is equal to or more suitable for sustaining revegetation. This determination shall be based on:

1. The results of chemical and physical analyses of overburden and topsoil. These analyses shall include determinations of pH, net acidity or alkalinity, phosphorus, potassium, texture class, and other analyses as required by the Division. The Division may also require that results of field-site trials or greenhouse tests be used to demonstrate the feasibility of using these overburden materials.

2. Results of analyses, trials, and tests shall be submitted to the Division. Certification of trials and tests shall be made by a laboratory approved by the Division, stating that:

a. The proposed substitute material is equal to or more suitable for sustaining the vegetation than is the available topsoil;

b. The substitute material is the best available material to support the vegetation;

c. The trials and tests were conducted using standard testing procedures; and

d. The amount of substitute or supplement in thickness that is actually available for use from the site;

e. The test samples are typical representations from the site, and describing the chain of custody.

(b) Substituted or supplemental material shall be removed, segregated, and replaced in compliance with the requirements for topsoil under this Section.

(5) Limits on topsoil removal area. Where the removal of vegetative material, topsoil, or other materials may result in erosion which may cause air or water pollution—

(a) the size of the area from which topsoil is removed at any one (1) time shall be limited;

(b) the surface soil layer shall be redistributed at a time when the physical and chemical properties of topsoil can be protected and erosion can be minimized; and

(c) such other measures shall be taken as the Division may approve or require to control erosion.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.09 Topsoil: Storage.

(1) Topsoil and other materials removed under Regulation 0400-1-15-.08 shall be stockpiled only when it is impractical to promptly redistribute such materials on regraded areas.

(2) Stockpiled materials shall be selectively placed on a stable area within the permit area, clearly marked, not disturbed, and protected from wind and water erosion, unnecessary compaction, and contaminants which lessen the capability of the materials to support vegetation when redistributed.

(a) Protection measures shall be accomplished either by—

1. an effective cover of non-noxious, quick-growing annual and perennial plants, seeded or planted and mulched within one (1) week after stockpiling; or

2. other methods demonstrated to and approved by the Division to provide equal protection.

(b) Unless approved by the Division, stockpiled topsoil and other materials shall not be moved until required for redistribution on a regraded area.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.10 Topsoil: Redistribution.

(1) After final grading and before the replacement of topsoil and other materials segregated in accordance with Regulation 0400-1-15-.09, regraded land shall be scarified or otherwise treated as required by the Division to eliminate slippage surfaces and to promote root penetration. If the person who conducts the underground mining activities shows, through appropriate tests, and the Division approves, that no harm will be caused to the topsoil and vegetation, scarification may be conducted after topsoiling.

(2) Topsoil and other materials shall be redistributed in a manner that—

(a) achieves an approximate uniform, stable thickness consistent with the approved postmining land uses, contours, and surface water drainage system;

(b) prevents excess compaction of the topsoil; and

(c) protects the topsoil from wind and water erosion before and after it is seeded and planted.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.11 Topsoil: Nutrients and Soil Amendments.

Nutrients and soil amendments in the amounts determined by soil test shall be applied to the redistributed surface soil layer, so that it supports the approved postmining land use and meets the revegetation requirements of Regulations 0400-1-15-.57—0400-1-15-.63. All soil tests shall be performed by a qualified laboratory using standard methods approved by the Division.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.12 Hydrologic Balance: General Requirements.

(1) Underground mining activities shall be planned and conducted to minimize changes to the prevailing hydrologic balance in both the mine plan and adjacent areas, in order to prevent long-term adverse changes in that balance that could result from those activities.

(2) Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.

(3) In no case shall federal and state water quality statutes, regulations, standards, or effluent limitations be violated.

(4) Operations shall be conducted to minimize water pollution and, where necessary, treatment methods shall be used to control water pollution.

(a) Each person who conducts underground mining activities shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow of drainage shall be used in preference to the use of water treatment facilities.

(b) Acceptable practices to control and minimize water pollution include, but are not limited to—

1. stabilizing disturbed areas through land shaping;
2. diverting run-off;
3. achieving quickly germinating and growing stands of temporary vegetation;
4. regulating channel velocity of water;
5. lining drainage channels with rock or vegetation;
6. mulching;
7. selectively placing and sealing acid-forming and toxic-forming materials;
8. selectively placing waste materials in backfill areas;
9. designing mines to prevent gravity drainage of acid waters;
10. sealing;
11. controlling subsidence; and
12. preventing acid mine drainage.

(c) If the practices listed at Paragraph (4) (b) of this Section are not adequate to meet the requirements of this Regulation, the person who conducts surface mining activities shall operate and maintain the necessary water treatment facilities for as long as treatment is required under this Regulation.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.13 Hydrologic Balance: Water Quality Standards and Effluent Limitations.

(1)

(a) All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded, or planted, shall be passed through a sedimentation pond or a series of sedimentation ponds, or a treatment facility before leaving the permit area. Any discharge of water from undergound workings to surface waters which does not meet the effluent limitations of this Section shall also be passed through a sedimentation pond, a series of sedimentation ponds, or a treatment facility before leaving the permit area.

(b) Sedimentation ponds and other treatment facilities shall be maintained until the disturbed area has been restored and the vegetation requirements of Regulations 0400-1-15-.57—0400-1-15-.63 are met and the quality of the untreated drainage from the disturbed area meets the applicable state and federal water quality standards requirements for the receiving stream. Sedimentation ponds and treatment facilities for discharges from underground workings shall be maintained until either the discharge continuously meets the effluent limitations of this Section without treatment or until the discharge has permanently ceased.

(c) The Division may grant exemptions from these requirements only when:

1. the person who conducts the underground mining activities demonstrates that sedimentation ponds and treatment facilities are not necessary for drainage from the disturbed drainage areas to meet the effluent limitations in the table below and the applicable state and federal water quality standards for downstream receiving waters.

2.

a. for drainage from areas affected by surface operations and facilities, an exemption may be authorized only if the disturbed surface drainage area within the total disturbed surface area is small and there is no mixture of surface drainage with a discharge from underground mine workings; or

b. for drainage from underground mine workings, exemption may be authorized only if there is no mixture of that drainage with drainage from surface areas.

(d) For the purposes of this section only, disturbed area shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this Regulation and the upstream area is not otherwise disturbed by the person who conducts the underground mining activities.

(e) Sedimentation ponds required by this Section shall be constructed in accordance with Regulation 0400-1-15-.17, in appropriate locations before beginning any underground mining activities in the drainage area to be affected.

(f) Where the sedimentation pond or series of sedimentation ponds is used so as to result in the mixing of drainage from the disturbed areas with drainage from other areas not disturbed by current surface coal mining and reclamation operations, the permittee shall achieve the effluent limitations set forth below for all of the mixed drainage when it leaves the permit area.

(g) Discharges of water from areas disturbed by underground mining activities shall be made in compliance with all federal and state laws and regulations and, at a minimum, the following numerical effluent limitations:

Effluent characteristics	Maximum allowable	Average of daily values for 30 consecutive discharge days
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
Total suspended solids	70.0	35.0
pH	(1)	(1)

[1] Within range of 6.0 to 9.0.

(2) A discharge from the disturbed areas is not subject to the effluent limitations of this section, except for total suspended solids, which are treated in subsection (4), if—

(a) the discharge is demonstrated by the discharger to have resulted from a precipitation event equal to or larger than a ten (10) year twenty-four (24) hour precipitation event; and

(b) the discharge is from facilities designed, constructed, and maintained in accordance with the requirements of this Regulation.

(3) Adequate facilities shall be installed, operated, and maintained to treat any water discharged from the disturbed area or underground mine so that it complies with all federal and state laws and regulations and the limitations of this section. If the pH of water to be discharged from the disturbed area or mine is less than 6.0 an automatic lime feeder or other automatic neutralization process approved by the Division shall be installed, operated, and maintained. The Division may authorize the use of a manual system, if it finds that—

(a) flow is infrequent and presents small and infrequent treatment requirements to meet applicable standards which do not require use of an automatic neutralization process; and

(b) timely and consistent treatment is ensured.

(4) A discharge from the disturbed area is not subject to the effluent limitations of this section on suspended solids if the exceeding of the limitations is caused by precipitation or snow melt. This exemption shall be available only if the facility is designed, constructed, and maintained to contain or treat the volume of water which would fall on the areas covered by this Regulation during a ten (10) year twenty-four (24) or larger precipitation event (or snow melt or equivalent volume). The operator shall have the burden of demonstrating to the Division that the facility in question was designed and constructed, and has been maintained, to contain or treat the required volume, and demonstrating that

the discharge subject to the exemption met the prerequisite of having been caused by a single precipitation event.

Authority: T.C.A. Sections 59–8–304, 59–8–311 and 59–8–312.

0400–1–15–.14 Hydrologic Balance: Diversion and Conveyance of Overland Flow and Shallow Ground Water Flow, and Ephemeral Streams

Overland flow, including flow through litter, and shallow ground water flow from undisturbed areas, and flow in ephemeral streams, may be diverted away from disturbed areas, by means of temporary or permanent diversions, if required or approved by the Division as necessary to minimize erosion, to reduce the volume of water to be treated, and to prevent or remove water from contact with acid-forming or toxic-forming materials. The following requirements shall be met for all diversions and for all collection drains that are used to transport water into water-treatment facilities and for all diversions of overland and shallow ground water flow and ephemeral streams—

(1) Temporary diversions shall be constructed to pass safely the peak run-off from a precipitation event with a two (2) year recurrence interval, or a larger event as specified by the Division.

(2) To protect fills and property and to avoid danger to public health and safety, permanent diversions shall be constructed to pass safely the peak run-off from a precipitation event with a ten (10) year recurrence interval, or a larger event as specified by the Division. Permanent diversions shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar lining shall be used only when approved by the Division to prevent seepage or to provide stability.

(3) Diversions shall be designed, constructed, and maintained in a manner which prevents additional contributions of suspended solids to streamflow and to run-off outside the permit area to the extent possible using the best technology currently available. Appropriate sediment control measures for these diversions may include, but not be limited to, maintenance of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

(4) No diversion shall be located so as to increase the potential for landslides. No diversion shall be constructed on existing land slides unless approved by the Division.

(5) When no longer needed, each temporary diversion shall be removed and the affected land regraded, topsoiled, and revegetated in accordance with Regulations 0400–1–15–.10, .11, and .53 through .63.

(6) Diversion design shall incorporate the following:

(a) Channel lining shall be designed using standard engineering practices to pass safely the design velocities. Riprap shall comply with the requirements of Regulation 0400–1–15–.35 (2)(d), except for sand and gravel.

(b) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the Division, the design freeboard may be increased.

(c) Energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(d) Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with Regulations 0400–1–15–.34—0400–1–15–.37.

(e) Topsoil removed from the diversion excavations shall be handled in compliance with Regulations 0400–1–15–.17—0400–1–15–.11.

(7) Diversions shall not be constructed or operated to divert water into underground mines without the approval of the Division under Regulation 0400–1–15–.25.

Authority: T.C.A. Sections 59–8–304, 59–8–311 59–8–312.

0400–1–15–.15 Hydrologic Balance: Stream Channel Diversions.

(1) Flow from perennial and intermittent streams within the permit area may be diverted, if the diversions—

(a) are approved by the Division after making the findings called for in Regulation 0400–1–15–.27(1);

(b) comply with other requirements of these Regulations; and

(c) comply with local, state and federal statutes and regulations.

(2) When streamflow is allowed to be diverted, the stream channel diversion shall be designed, constructed, and removed, in accordance with the following:

(a) The longitudinal profile of the stream, the channel, and the floodplain shall be designed and constructed to remain stable and to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or to runoff outside the permit area. These contributions shall not be in excess of requirements of state or federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used in diversions only when approved by the Division as being necessary to control erosion. These structures shall be approved for permanent diversions only where they are stable and will require infrequent maintenance.

(b) The combination of channel, bank, and flood-plain configurations shall be adequate to pass safely the peak runoff of a ten (10) year, twenty-four (24) hour precipitation event for temporary diversions, a one hundred (100) year, twenty-four (24) hour precipitation event for permanent diversions, or larger events specified by the Division. However, the capacity of the channel itself should be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.

(3) When no longer needed to achieve the purpose for which they were authorized, all temporary stream channel diversions shall be removed and the affected land regraded and revegetated, in accordance with Regulations 0400–1–15–.10, 0400–1–15–.11, 0400–1–15–.53—0400–1–15–.63. At the time diversions are removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed to prevent overtopping or failure of the facilities. This requirement shall not relieve the person who conducts the underground mining activities from maintenance of a water treatment facility otherwise required under this Regulation or the permit.

(4) When permanent diversions are constructed or stream channels restored, after temporary diversions, the operator shall:

(a) restore, enhance where practicable, or maintain natural riparian vegetation on the banks of the stream;

(b) establish or restore the stream to its natural meandering shape of an environmentally acceptable gradient, as determined by the Division;

(c) establish or restore the stream to a longitudinal profile and cross section, including aquatic habitats (usually a pattern of riffles, pools, and drops rather than uniform depth) that approximate premining stream channel characteristics.

Authority: T.C.A. Sections 59–8–304, 59–8–311, 59–8–312.

0400–1–15–.16 Hydrologic Balance: Sediment Control Measures.

(1) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(a) prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area;

(b) meet the more stringent of applicable state or federal effluent limitations;

(c) minimize erosion to the extent possible.

(2) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed area shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to—

(a) disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in Regulation 0400–1–15–.57(2);

(b) stabilizing the backfill material to promote a reduction in the rate and volume of run-off, in accordance with the requirements of Regulation 0400–1–15–.53;

(c) retaining sediment within disturbed areas;

(d) diverting run-off away from disturbed areas;

(e) diverting run-off using protected channels or pipes through disturbed areas so as not to cause additional erosion;

(f) using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce run-off volume, or trap sediment; and

(g) treating with chemicals; and

(h) treating mine drainage in underground sumps.

Authority: T.C.A. Sections 59–8–304, 59–8–311 and 59–8–312.

0400–1–15–.17 Hydrologic Balance: Sedimentation Ponds.

(1) General requirements. Sedimentation ponds shall be used individually or in series and shall—

(a) be constructed before any disturbance of the undisturbed area to be drained into the pond;

(b) be located as near as possible to the disturbed area and 100' from streams or streams with a biological community;

(c) be located on the flattest slope practicable, but in no case greater than 20 degrees, unless specifically approved by the Division because there is no feasible alternative;

(d) meet all the criteria of this Section.

(2) Sediment storage volume. Sedimentation ponds shall provide a minimum sediment storage volume equal to the sediment calculated to enter the pond between planned cleanout intervals.

(3) Detention time. Sedimentation ponds shall provide the required theoretical detention time for the water inflow or run-off entering the pond from a ten (10) year, twenty-four (24) hour precipitation event (design event).

(4) Dewatering. The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the Division. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sedimentation storage volume.

(5) Each person who conducts underground mining activities shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.

(6) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this section shall not relieve the person from compliance with applicable effluent limitations as contained in Regulation 0400–1–15–.13.

(7) There shall be no outflow through the emergency spillway during the passage of the run-off resulting from the ten (10) year, twenty-four (24) hour precipitation event or lesser events through the sedimentation pond, regardless of the volume of water and sediment present from the underground mine during the run-off.

(8) Sediment shall be removed from sedimentation ponds when necessary to preserve function and detention time.

(9) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the run-off from a twenty-five (25) year, twenty-four (24) hour precipitation event, or larger event specified by the Division plus any inflow from the underground mine. The elevation of the crest of the emergency spillway shall be a minimum of 1.0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the Division.

(10) The minimun elevation at the top of the settled embankment shall be 1.0 foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum elevation requirement shall apply at all times, including the period after settlement.

(11) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement; unless it has been demonstrated to the Division that the material used and the design will ensure against all settlement.

(12) The minimum top width of the embankment shall not be less than the quotient of (H+35)/5, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(13) The combined upstream and downstream side slopes of the settled embankment shall not be less than 1v:5h, with neither slope steeper than 1v:2h. Slopes shall be designed to be stable in all cases even if flatter side slopes are required.

(14) The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified.

(15) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.

(16) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirements of this section. Compaction shall be conducted as specified in the design approved by the Division.

(17) If a sedimentation pond has an embankment that is more than twenty (20) feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of twenty (20) acre-feet or more, the following additional requirements shall be met:

(a) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the run-off resulting from a one hundred (100) year, twenty-four (24) hour precipitation event, or a larger event specified by the Division, plus any inflow from the underground mine.

(b) The embankment shall be designed and constructed with a static safety factor of at least 1.5, or a higher

safety factor as designated by the Division to ensure stability.

(c) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(d) The criteria of the Mine Safety and Health Administration as published in the Regulation shall be met.

(18) Each pond shall be designed and inspected during construction under the supervision of, and certified after construction by, a registered professional engineer. Supervision of construction may be carried out by the engineer's delegate who has been approved by the Division.

(19) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with Regulation 0400–1–15–.56.

(20) All ponds, including those not meeting the size or other criteria of Regulation 0400–1–15–.20, shall be examined for structural weakness, erosion, and other hazardous conditions, and reports and modifications shall be made to the Division, in accordance with Regulation 0400–1–14. With the approval of the Division, dams not meeting these criteria shall be examined four (4) times per year.

(21) Sedimentation ponds shall not be removed until the disturbed area has been restored and the vegetation requirements of Regulation 0400–1–15–.57—0400–1–15–.63 are met and the drainage entering the pond has met the applicable state and federal water quality requirements for the receiving stream. When the sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with Regulation 0400–1–15–.52 thru 0400–1–15–.63, unless the pond has been approved by the Division for retention as being compatible with the approved postmining land use under Regulation 0400–1–15–.70. If the Division approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments of Regulations 0400–1–15–.20 and 0400–1–15–.26.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.18 Hydrologic Balance: Discharge Structures.

Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necesssary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering-design procedures.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.19 Hydrologic Balance: Acid-forming and Toxic-forming Spoil.

Drainage from acid-forming and toxic-forming underground development waste and spoil, if any into ground and surface water shall be avoided by—

(1) identifying, burying, or treating or both where necessary, waste and spoil which, in the judgment of the Division, may be detrimental to vegetation or may adversely affect water quality if not treated or buried;

(2) preventing water from coming into contact with acid-forming and toxic-forming materials in accordance with Regulation 0400–1–15–.55, and other measures as required by the Division; and

(3) burying or otherwise treating all acid-forming or toxic-forming underground development waste and spoil with thirty (30) days after it is first exposed on the mine site, or within a lesser period required by the Division. Temporary storage of such materials may be approved by the Division upon a finding that burial or treatment within thirty (30) days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming underground development waste and spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

Authority: T.C.A. Sections 59–8–304, 59–8–311, 59–8–312.

0400–1–15–.20 Hydrologic Balance: Permanent and Temporary Impoundments.

(1) Permanent impoundments are prohibited unless included in the approved mining and reclamation plan, and authorized by the Division, upon the basis of the following demonstration:

(a) The quality of the impoundment water shall be suitable on a permanent basis for its intended use, and discharge of water from the impoundment shall not degrade the quality of receiving waters to less than the water quality standards established pursuant to applicable state and federal laws.

(b) The level of water shall be sufficiently stable to support the intended use.

(c) Adequate safety and access to the impounded water shall be provided for proposed water users.

(d) Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(e) The design, construction and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, Pub. L. 83–566 (16 USC 1006). Requirements for impoundments that meet the size of other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a) are contained in U.S. Soil Conservation Service Technical Release No. 60, 'Earth Dams and Reservoirs,' June, 1976. Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are contained in U.S. Soil Conservation Service Practice Standard 378, 'Ponds,' October, 1978. The technical release and practice standard are hereby incorporated by reference as they exist on the date of adoption of this regulation and as subsequently revised.

(f) The size of the impoundment is adequate for its intended purposes.

(g) The impoundment will be suitable for the approved postmining land use.

(2) Temporary impoundments of water in which the water is impounded by a dam shall meet the requirements of Regulation 0400–1–15–.46.

(3) Excavations that will impound water during or after the mining operation shall have perimeter slopes that are stable and shall not be steeper than 1v:2h. Where surface run-off enters the impoundment area, the side slope shall be protected against erosion.

(4) Slope protection shall be provided to minimize surface erosion at the site and sediment control measures shall be required where necessary to reduce the sediment leaving the site.

(5) All embankments of temporary and permanent impoundments, and the surrounding areas and diversion ditches disturbed or created by construction, shall be graded, fertilized, seeded, and

mulched to comply with the requirements of Regulations 0400–1–15–.57—0400–1–15–.63 immediately after the embankment is completed, provided that the active, upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated to comply with the requirements of Regulations 0400–1–15–.56 and 0400–1–15–.57—0400–1–15–.63.

(6) All dams and embankments meeting the size or other criteria of Regulation 0400–1–14–.17(18) and 0400–1–15–.17(17) shall be routinely inspected by a qualified registered professional engineer; or by someone under the supervision of a qualified registered professional engineer.

(7) All dams and embankments shall be routinely maintained during the mining operations. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible material present on the surface, other than material such as mulch or dry vegetation used for surface stability, shall be removed and all other appropriate maintenance procedures followed.

(8) All dams and embankments shall be certified to the Division by qualified registered professional engineer, immediately after construction and annually thereafter, as having been constructed and/or maintained to comply with the requirements of this section. Certification reports shall include statements on—

(a) existing and required monitoring procedures and instrumentation;

(b) the design depth and elevation of any impounded waters at the time of the initial certification report or the average and maximum depths and elevations of any impounded waters over the past year for the annual certification reports;

(c) existing storage capacity of the dam or embankment;

(d) any fires occuring in the construction material up to the date of the initial certification or over the past year for the annual certification reports; and

(e) any other aspects of the dam or embankment affecting stability.

(9) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the Division and shall comply with the requirements of this section. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the Division shall approve the plans before modification begins.

Authority: T.C.A. §§ 59–8–304, 59–8–311 and 59–8–312. Administrative History: New rule filed August 30, 1982; effective September 29, 1982.

0400–1–15–.21 Hydrologic Balance: Underground Mine Entry and Access Discharges.

(1) Surface entries and accesses to underground workings, including adits and slopes, shall be located, designed, constructed, and utilized to prevent or control gravity discharge of water from the mine.

(2) Gravity discharge of water from an underground mine, other than a drift mine subject to Paragraph (3) of this Section, may be allowed by the Division, if it is demonstrated that—

(a)1. the discharge, without treatment, satisfies the water effluent limitations of Regulation 0400–1–15–.13 and all applicable state and federal water quality standards; and

2. that discharge will result in changes in the prevailing hydrologic balance that are minimal and approved postmining land uses will not be adversely affected; or

(b)1. the discharge is conveyed to a treatment facility in the permit area in accordance with Section 0400–1–15–.13(1);

2. all water from the underground mine discharged from the treatment facility meets the effluent limitations of Section 0400–1–15–.13 and all other applicable state and federal statutes and regulations; and

3. consistent maintenance of the treatment facility will occur throughout the anticipated period of gravity discharge.

(3) Notwithstanding anything to the contrary in Paragraphs (1) and (2) of this Section, for a drift mine first used after the implementation of a state, federal or federal lands program and located in acid-producing or iron-producing coal seams, surface entries and accesses shall be located in such a manner as to prevent any gravity discharge from the mine.

Authority: T.C.A. Sections 59–8–304, 59–8–311, 59–8–312.

0400–1–15–.22 Hydrologic Balance: Surface and Ground Water Monitoring.

(1) Ground water.

(a) Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the Division, to determine the effects of underground mining activities on the quantity and quality of water in ground water systems in the mine plan and adjacent areas.

(b) When underground mining activities may affect the ground water systems which serve as aquifers which significantly ensure the hydrologic balance of water use on or off the mine plan area, ground water levels and ground water quality shall be periodically monitored. Monitoring shall include measurements from a sufficient number of wells and mineralogical and chemical analyses of aquifer, overburden and spoil that are adequate to reflect changes in ground water quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of surface mining activities, if necessary, to minimize disturbance of the prevailing hydrologic balance.

(c) As specified and approved by the Division, the person who conducts underground mining activities shall conduct additional hydrologic tests, including drilling, infiltration tests, and aquifer tests and shall submit the results to the regulatory authority, to demonstrate compliance with Regulations 0400–1–15–.21—0400–1–15–.22.

(2) Surface water.

(a) Surface water monitoring shall be conducted in accordance with the monitoring program submitted under Regulation 0400–1–5 and approved by the Division. The Division shall determine the nature of data, frequency of collection, and reporting requirements. Monitoring shall—

1. be adequate to measure accurately and record water quantity and quality of the discharges from the permit area;

2. in all cases in which analytical results of the sample collections indicate noncompliance with a permit condition or applicable standard has occurred, shall result in the person who conducts the underground mining activities notifying the Division within five (5) days. Where a National Pollutant Discharge Elimination System (NPDES) permit effluent limitation noncompliance has occurred, the person who conducts underground mining activities shall forward the analytic results concurrently with the written notice of noncompliance.

3. result in quarterly reports to the Division to include analytical results from each sample taken during the quarter. Any sample results which indicate a permit violation will be reported immediately to the Division. In those cases where the discharge for which water monitoring reports are required is also subject to regulation by

a NPDES permit issued under the Clean Water Act of 1977 (U.S.C. Sec. 1251–1378) and where such permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within ninety (90) days or less of sample collection, the following alternative procedure shall be used. The person who conducts the underground mining activities shall submit to the Division on the same time schedule as required by the NPDES permit or within ninety (90) days following sample collection, whichever is earlier, either—

a. a copy of the completed report form filed to meet NPDES permit requirements; or

b. a letter identifying the state or federal government official with whom the reporting form was filed to meet NPDES permit requirements and the date of filing.

(b) Surface water flow and quality, including discharges to surface waters from the permit area, and receiving waters, shall continue to be monitored after both the cessation of use of underground mine workings and after surface disturbed areas have been regraded and stabilized according to this Regulation. Data from this monitoring may be used to demonstrate that the quality and quantity of run-off without treatment is consistent with the requirement of this Regulation to minimize disturbance to the prevailing hydrologic balance and to attain the approved postmining land use. These data may also provide a basis for approval by the Division for removal of water quality or flow control systems.

(c) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the surface disturbed area and from underground mine workings shall be properly installed, maintained, and operated and shall be removed when no longer required.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.23 Hydrologic Balance: Transfer of Wells.

(1) An exploratory or monitoring well may only be transferred by the person who conducts underground mining activities for further use as a water well with the prior approval of the Division. That person and the surface owner of the lands where the well is located shall jointly submit a written request to the Division for that approval.

(2) Upon an approved transfer of a well, the transferee shall—

(a) assume primary liability for damages to persons or property from the well;

(b) plug the well when necessary, but in no case later than abandonment of the well; and

(c) assume primary responsibility for compliance with Regulations 0400–1–15–.04—0400–1–15–.06 with respect to the well.

(3) Upon an approved transfer of a well, the transferor shall be secondarily liable for the transferee's obligations under Paragraph (2) of this Section, until release of the bond or other equivalent guarantee required by Regulation 0400–1–7 for the area in which the well is located.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.24 Hydrologic Balance: Water Rights and Replacement.

Any person who conducts underground mining activities shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where the water supply has been affected by contamination, diminution, or interruption proximately resulting from the underground mining activities.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.25 Hydrologic Balance: Discharge of Water Into an Underground Mine.

Water from the surface or from an underground mine shall not be diverted or otherwise discharged into underground mine workings, unless the person who conducts the underground mining activities demonstrates to the Division that this will—

(1) abate water pollution or otherwise eliminate public hazards resulting from underground mining activities; and

(2) be discharged as a controlled flow, meeting the effluent limitations of Regulation 0400–1–15–.13 for pH and total suspended solids except that the pH and total suspended solid limitations may be exceeded if approved by the Division, and is limited to—

(a) coal processing waste;

(b) fly ash from a coal-fired facility;

(c) sludge from an acid mine drainage treatment facility;

(d) flue gas desulfurization sludge;

(e) inert materials used for stabilizing underground mines; or

(f) underground mine development wastes;

(3) in any event, the discharge from underground mines to surface waters will not cause, result in or contribute to a violation of applicable water quality standards or effluent limitations;

(4) minimizes disturbance to the hydrologic balance;

(5) meets the approval of the Mine Safety and Health Administration; and

(6) continue as a controlled and identifiable flow and is ultimately treated by an existing treatment facility.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.26 Hydrologic Balance: Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities.

Before abandoning the permit area, the person who conducts the underground mining activities shall renovate all permanent sedimentation ponds, diversion, impoundments, and treatment facilities to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.27 Hydrologic Balance: Stream Buffer Zones.

(1) No surface area within one hundred (100) feet of a perennial stream or a stream with a biological community determined according to Paragraph (3) below shall be disturbed by surface operations and facilities, except in accordance with Regulations 0400–1–15–.14—0400–1–15–.15, unless the Division specifically authorizes underground mining activities closer to or through such a stream upon finding—

(a) that the original stream channel will be restored; and

(b) during and after the mining, the water quantity and quality from the stream section within one hundred (100) feet of the underground mining activities shall not be adversely affected.

(2) The area not to be disturbed shall be designated a buffer zone and marked as specified in Regulation 0400–1–15–.03.

(3) A stream with a biological community shall be determined by the existence in the stream at any time of an assemblage of two (2) or more species of arthropods or mulluscan animals which are—

(a) adapted to flowing water for all or part of their life cycle;

(b) dependent upon a flowing water habitat;

(c) reproducing or can reasonably be expected to reproduce in the water body where they are found; and

(d) longer than two (2) millimeters at some stage of the part of their life cycle spent in the flowing water habitat.

Authority: T.C.A. Sections 59-8-304, 59-8-311, 59-8-312.

0400-1-15-.28 Coal Recovery.

Underground mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface mining operations is minimized.

Authority: T.C.A. Sections 59-8-304, 59-8-311, 59-8-312.

0400-1-15-.29 Use of Explosives: General Requirements.

(1) All surface blasting done in conjunction with underground mine faceups, or other activity, will be conducted in accordance with Sections 0400-1-2-.18; 0400-1-14-.03(6); 0400-1-14-.30; 0400-1-14-.32 through 0400-1-14-.35; and 0400-1-14-.40.

(2) All blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved. Each person responsible for blasting operations shall possess a valid certification as required by Section 0400-1-14-.30.

Authority: T.C.A. Sections 59-8-304, 59-8-311, 59-8-312.

0400-1-15-.30 Pre-Blasting Surveys.

(1) Pre-blasting surveys shall be required in the following cases for all dwellings or structures:

(a) those located within one thousand (1,000) feet of the permit boundary, excluding haulroads unless blasting is to be done along the haulroad area; or

(b) those located within one-half (½) mile of the permit boundary, excluding haulroads, unless blasting is to be done along the haulroad area, at the request of the owner, or tenant, or person responsible for the dwelling, or if specifically requested by the Director. If any structure is renovated or added to subsequent to a pre-blast survey, then upon request to the Division, a survey of the additions or renovations shall also be performed in accordance with this Section.

(2) The purpose of the survey is to ascertain the pre-blasting condition of the structure in order to:

(a) allow the Division to determine the potential hazards, if any, of the proposed blasting operation; and

(b) establish a pre-blasting record of the condition of the structure in the event of post-blasting allegations of blasting damage.

(3) A written report of the survey shall be prepared by the operator on forms provided by the Division and shall be signed by the operator and by the person who conducted the survey. The survey report shall be submitted in duplicate and shall accompany the permit application. The operator shall provide one envelope for each structure surveyed, stamped and addressed to the person responsible for the structure. The envelope shall not be sealed.

(a) The Division shall mail one (1) copy of the survey to the person requesting the survey in order to ensure that the person has the opportunity to comment on the pre-blasting survey.

(b) The person responsible for the structure shall have twenty (20) days from the postmark date of the survey to comment on the pre-blast survey.

(4) The validity and accuracy of the pre-blast survey shall be approved by the Division before a permit is issued.

(5) The pre-blasting survey report shall include—

(a) the address of the structure;

(b) the names and addresses of the owner (or agent) and tenant of the structure;

(c) the distance from the permit boundary and from the nearest blasting site;

(d) a description of the structure and the materials used in the structure, and an estimate of the age of the structure;

(e) a diagram (or photograph) depicting the location of any existing cracks within the masonry, plaster, or windows of the structure;

(f) a description of any physical factors that could magnify or mitigate the effects of blasting such as:

1. has the structure been previously exposed to blasting within one-half (½) mile;

2. is the structure built on a fill;

3. are foundation footings below the frost line;

4. any other contributing factors; and

(g) any recommendations of any proposed changes in the blasting plan which should be adopted to prevent damage.

(6) Special attention shall be given to the pre-blasting condition of wells, springs, and other water sources used for human, animal, or agricultural purposes and to the quality and quantity of the water. The pre-blasting survey report shall include a copy of an analysis of the quality of the water with the following information:

(a) name of person and firm performing the analysis;

(b) date and quantity of sampling;

(c) name of owner of the water source sampled;

(d) water analysis, including

1. total dissolved solids,

2. total suspended solids,

3. total iron,

4. pH, and

5. any other parameter requested by the Division.

(7) Assessments of structures such as pipes, cables, and transmission lines shall be limited to surface conditions and readily available data.

(8) The person making the survey should make a sincere effort to contact the owner of the structure to gain access to the structure. However, in no case shall the failure to obtain an approved pre-blast survey due to the non-cooperation of the owner or tenant of the structure be construed as reason to deny the permit or blasting plan.

Authority: T.C.A. Sections 59-8-304, 59-8-311, 59-8-312.

0400-1-15-.31 Use of Explosives: Surface Blasting Requirements.

(1) A resident or owner of a dwelling or structure that is located within one-half (½) mile of any area affected by surface blasting activities shall be notified approximately twenty-four (24) hours prior to any surface blasting event.

(2) All blasting shall be conducted between sunrise and sunset.

(a) The Division may specify more restrictive time periods, based on public requests or other relevent information, according to the need to adequately protect the public from adverse noise.

(b) Blasting may, however, be conducted between sunset and sunrise if:

1. a blast that has been prepared during the afternoon must be delayed due to the occurrence of an unavoidable hazardous condition and cannot be delayed until the next day because a potential safety hazard could result that cannot be adequately mitigated;

2. in addition to the required warning signals, oral notices are provided to persons within one-half (½) mile of the blasting site; and

3. a complete written report of blasting at night is filed by the person conducting the surface mining activities with the Division not later than three (3) days after the night blasting. The report shall include a description in detail of the reasons for the delay in blasting including why the blast could not be held over to the next day, when the blast was actually conducted, the warning notices were given, and a copy of the blast report required by Regulation 0400-1-15-.33.

(3) Warning and all-clear signals of different character that are audible within a range of one-half (½) mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within one-half (½) mile of the permit area shall be notified of the meaning of the signals through appropriate instructions. These instructions shall be periodically delivered or otherwise communicated in a manner which can be reasonably expected to inform such persons of the meaning of the signals. Each person who conducts surface blasting incident to underground mining activities shall maintain signs in accordance with Regulation 0400-1-15-.03(6).

(4) Access to an area possibly subject to flyrock from blasting shall be regulated to protect the public and livestock. Access to the area shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting and until an authorized representative of the person who conducts the underground mining activities has reasonably determined—

(a) that no unusual circumstances, such as imminent slides or undetonated charges, exist; and

(b) that access to and travel in or through the area can be safely resumed.

(5)

(a) Airblast shall be controlled so that it does not exceed the values specified below at any dwelling, public building, school, church, or commercial or institutional structure, unless such structure is owned or leased by the person who conducts the underground mining activities and is not leased to any other person. If a building owned by the person conducting underground mining activities is leased to another person, the lessee may sign a waiver relieving the operator from meeting the airblast limitations of this paragraph.

Lower frequency limit of measuring system, Hz (plus or minus 3dB)	Maximum level in dB
0.1 Hz or lower—flat response	135 peak.
2 Hz or lower—flat response	132 peak.
6 Hz or lower—flat response	130 peak.
C-weighted, slow response	109 c.

(b) In all cases except the C-weighted, slow-response, the measuring systems used shall have a flat frequency response of at least 200 Hz at the upper end. The C-weighted shall be measured with a Type 1 sound level meter that meets the standard American National Standards Institute (ANSI) SI.4–1971 specifications. The ANSI SI.4–1971 is hereby incorporated by reference as it exists on the date of adoption of this regulation and is subsequently revised. ANSI SI–4–1971 is on file and available for inspection at the Offices of the Tennessee Division of Surface Mining in Knoxville and Nashville, Tennessee.

(c) The Division may require an airblast measurement of any or all blasts, and may specify the location of such measurement.

(6) Except where lesser distances are approved by the Division, based upon a pre-blasting survey, seismic investigation, or other appropriate investigation, blasting shall not be conducted within—

(a) 1,000 feet of any building used as a dwelling, school, church, hospital, or nursing facility; and

(b) 500 feet of facilities including, but not limited to, disposal wells, petroleum or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines.

(7) Flyrock, including blasted material traveling along the ground, shall not be cast from the blasting vicinity more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the line of property owned or leased by the permittee, or beyond the area of regulated access required under Paragraph (4) of this Section.

(8) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.

(9) In all blasting operations, except as otherwise authorized in this section, the maximum peak particle velocity shall not exceed one (1) inch per second at the location of any dwelling, public building, school, church, or commercial or institutional building. Peak particle velocities shall be recorded in three (3) mutually perpendicular directions. The maximum peak particle velocity shall be the largest of any of the three (3) measurements. The Division may reduce the maximum peak particle velocity allowed, if it determines that a lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts, or other factors.

(10) If blasting is conducted to prevent adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area, then the maximum peak particle velocity limitation of Paragraph (9) of this section shall not apply at the following locations:

(a) at structures owned by the person conducting the mining activity, and not leased to another party; and

(b) at structures owned by the person conducting the mining activity, and leased to another party, if a written waiver by the lessee is submitted to the Division prior to blasting.

(11) An equation for determining the maximum weight of explosives that can be detonated within any 8-millisecond period is in Paragraph 12(a) of this Section. If the blasting is conducted in accordance with this equation, the peak particle velocity shall be deemed to be within the one (1) inch-per-second limit.

(12)(a) The maximum weight of explosives to be detonated within an 8-millisecond period may be determined by the formula $W=(D/60^2)$ where W = the maximum weight of explosives, in pounds, that can be detonated in any 8-millisecond period, and D = the distance, in feet, from the blast to the nearest dwelling, school, church, or commercial or institutional building.

(b) For distances between 300 and 5,000 feet, solution of the equation results in the following maximum weight:

Distance in feet (D)	Maximum weight in pounds (W)
300	25
350	34
400	44
500	69
600	100
700	136
800	178
900	225
1,000	278
1,100	336
1,200	400
1,300	469
1,400	544
1,500	625
1,600	711
1,700	803
1,800	900
1,900	1,002
2,000	1,111
2,500	1,736
3,000	2,500
3,500	3,403
4,000	4,444
4,500	5,625
5,000	6,944

Authority: T.C.A. Sections 59–8–304, 59–8–311 and 59–8–312.

0400–1–15–.32 Use of Explosives: Seismographic Measurements.

(1) Where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit of one (1) inch per second is not exceeded, the equation in Regulation 0400–1–15–.31 (11)(a) need not be used. If that equation is not used by the person conducting the underground mining activities, a

seismograph record shall be obtained for each shot.

(2) The use of a modified equation to determine maximum weight of explosives per delay for blasting operations at a particular site, may be approved by the Division, on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. In no case shall the Division approve the use of a modified equation where the peak particle velocity of one (1) inch per second required in Regulation 0400–1–15–.31 (9) would be exceeded.

(3) The Division may require a seismograph record of any or all blasts and may specify the location at which such measurements are taken.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.33 Use of Explosives: Records of Blasting Operations.

A record of each blast, including seismograph reports, shall be retained for at least three (3) years and shall be available for inspection by the Division and the public on request. The record shall contain the following data:

(1) Name of the operator conducting the blast.

(2) Location, date, and time of blast.

(3) Name, signature, and license number of blaster-in-charge.

(4) Direction and distance, in feet, to the nearest dwelling, school, church, or commercial or institutional building either—

(a) not located in the permit area; or

(b) not owned or leased by the person who conducts the underground mining activities.

(5) Weather conditions, including temperature, wind direction, and approximate velocity.

(6) Type of material blasted.

(7) Number of holes, burden, and spacing.

(8) Diameter and depth of holes.

(9) Types of explosives used.

(10) Total weight of explosives used.

(11) Maximum weight of explosives detonated within any 8-millisecond period.

(12) Maximum number of holes detonated within any 8-millisecond period.

(13) Initiation system.

(14) Type and length of stemming.

(15) Mats or other protections used.

(16) Type of delay detonator and delay periods used.

(17) Sketch of the delay pattern.

(18) Number of persons in the blasting crew.

(19) Seismographic records, where required, including the calibration signal of the gain setting and—

(a) seismographic reading, including exact location of seismograph and its distance from the blast;

(b) name of the person taking the seismograph reading; and

(c) name of the person and firm analyzing the seismographic record.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.34 Disposal of Underground Development Waste and Excess Spoil: General Requirements.

(1) Underground development waste and spoil not required to achieve the approximate original contour and which is not used as backfill shall be hauled or conveyed to and placed in designated disposal areas within a permit area if the disposal areas are authorized for such purposes in the approved permit application in accordance with Sections 0400–1–15–.34—0400–1–15–.37. The material shall be placed in a controlled manner to ensure—

(a) that leachate and surface run-off from the fill will not degrade surface or ground waters or exceed the effluent limitations of Regulation 0400–1–14–.13;

(b) stability of the fill; and

(c) that the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(2) The fill shall be designed using recognized professional standards certified by a registered professional engineer, and approved by the Division.

(3) All vegetative and organic materials shall be removed from the disposal area and the topsoil shall be removed, segregated, and stored or replaced under Regulations 0400–1–15–.07—0400–1–15–.11. If approved by the Division, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth or vegetation or increase the moisture retention of the soil.

(4) Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of Regulation 0400–1–15–.14. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(5) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the Division. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.

(6) The spoil shall be hauled or conveyed and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long-term static safety factor of 1.5.

(7) The final configuration of the fill must be suitable for postmining land uses approved in accordance with Regulation 0400–1–15–.70, except that no depressions or impoundments shall be allowed on the completed fill.

(8) Terraces may be utilized to control erosion and enhance stability if approved by the Division and consistent with Regulation 0400–1–15–.54(2).

(9) Where the slope in the disposal area exceeds 1v:2.8H (36 percent), or such lesser slope as may be designated by the Division based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with Regulation 0400–1–20 to determine the size of rock toe buttresses and keyway cuts.

(10) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist experienced in the construction of earth and rockfill embankments at least quarterly throughout construction and during the following critical construction periods:

(a) removal of all organic material and topsoil;

(b) placement of underdrainage;

(c) installation of surface drainage systems;

(d) placement and compaction of fill materials; and

(e) revegetation.

The registered engineer or other qualified professional specialist shall provide to the Division a certified report within two (2) weeks after each inspection that the fill has been constructed as specified in the design approved by the Division. A copy of the report shall be retained at the minesite.

(11) Coal processing wastes shall not be disposed of in head-of-hollow or valley fills, and may only be disposed of in other excess spoil fills, if such waste is—

(a) placed in accordance with Regulation 0400–1–15–.41;

(b) demonstrated to be non-toxic and non-acid forming; and

(c) demonstrated to be consistent with the design stability of the fill.

(12) If the disposal area contains springs, natural or manmade water-

courses, or wet-weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.

(13) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall be performed in order to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(14) Excess spoil may be returned to underground mine workings, but only in accordance with a disposal program approved by the Division and MSHA upon the basis of a plan submitted under Regulation 0400–1–5–.27.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.35 Disposal of Underground Development Waste and Excess Spoil: Valley Fills.

Valley fills shall meet all of the requirements of Regulation 0400–1–15–.34 and the additional requirements of this Section.

(1) The fill shall be designed to attain a long-term static safety factor of 1.5 based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

(2) A subdrainage system for the fill shall be constructed in accordance with the following:

(a) A system of underdrains constructed of durable rock shall meet the requirements of Paragraph (2)(d) of this Section and

1. be installed along the natural drainage system;

2. extend from the toe to the head of the fill; and

3. contain lateral drains to each area of potential drainage or seepage.

(b) A filter system to insure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(c) In constructing the underdrains, no more than ten (10) percent of the rock may be less than twelve (12) inches in size and no single rock may be larger than twenty-five (25) percent of the width of the drain. Rock used in underdrains shall meet the requirements of Paragraph (2)(d) of this Section. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd.	Sandstone	10	4
Do	Shale	16	8
More than 1,000,000 yd.	Sandstone	16	8
Do	Shale	16	16

(d) Underdrains shall consist of nondegradable, non-acid or toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or shale.

(3) Underground development and excess spoil shall be hauled or conveyed and placed in a controlled manner and concurrently compacted as specified by the Division, in lifts no greater than four (4) feet or less if required by the Division to—

(a) achieve the densities designed to ensure mass stability;

(b) prevent mass movement;

(c) avoid contamination of the rock underdrain or rock core; and

(d) prevent formation of voids.

(4) Surface water run-off from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the run-off from a one hundred (100) year, twenty-four (24) hour precipitation event or larger event specified by the Division. Surface run-off from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the run-off from a one hundred (100) year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of Regulation 0400–1–15–.14(6).

(5) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1v:20h (5 percent). The vertical distance between terraces shall not exceed fifty (50) feet.

(6) Drainage shall not be directed over the outslope of the fill.

(7) The outslope of the fill shall not exceed 1v:2h (50 percent). The Division may require a flatter slope.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.36 Disposal of Underground Development Waste and Excess Spoil: Head-of-Hollow Fills.

Disposal of underground development waste and excess spoil in the head-of-hollow fill shall meet all standards set forth in Regulations 0400–1–15–.34 and 0400–1–15–.35 and the additional requirements of this Regulation.

(1) The fill shall be designed to completely fill the disposal site to the approximate elevation of the ridgeline. A rock-core chimney drain may be utilized instead of the subdrain and surface diversion system required for valley fills. If the crest of the fill is not approximately at the same elevation as the low point of the adjacent ridgeline, the fill must be designed as specified in Regulation 0400–1–15–.35, with diversion of run-off around the fill.

(2) The alternative rock-core chimney drain system shall be designed and incorporated into the construction of head-of-hollow fills as follows:

(a) The fill shall have, along the vertical projection of the main buried stream channel or rill a vertical core of durable rock at least sixteen (16) feet which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of Regulation 0400–1–15–.35(2).

(b) A filter system to ensure the proper functioning of the rock core shall be designed and constructed using standard geotechnical engineering methods.

(c) The grading may drain surface water away from the outslope of the fill and toward the rock core. The maximum slope of the top of the fill shall be 1v:33h (3 percent). Instead of the requirements of Regulation 0400–1–15–.34(7), a drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface run-off and discharge the run-off through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a three (3) to five (5) percent grade toward the fill and a one (1) percent slope toward the rock core.

(3) The drainage control system shall be capable of passing safely the run-off from a one hundred (100) year, twenty-four (24) hour precipitation event, or larger event specified by the Division.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.37 Disposal of Underground Development Waste and Excess Spoil: Durable Rock Fills.

In lieu of the requirements of Regulations 0400–1–15–.35 and 0400–1–

15–.36, the Division may approve alternate methods for disposal of hard rock spoil, including fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of this Regulation and Regulation 0400–1–15–.34 are met. Hard rock spoil shall be defined as rockfill consisting of at least eighty (80) percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the Division.

(1) Waste or spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.

(a) The method of waste or spoil placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of this section.

(b) Loads of non-cemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a controlled manner to limit on a unit basis concentrations of non-cemented clay shale and clay in the fill. Such materials shall comprise no more than twenty (20) percent of the fill volume as determined by tests performed by a registered engineer and approved by the Division.

(2)

(a) Stability analyses shall be made by the registered professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations, including borings, and laboratory tests.

(b) The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the following factors of safety:

Case	Design condition	Minimum factor of safety
I	End of construction	1.5
II	Earthquake	1.1

(3) The design of a head-of-hollow fill shall include an internal drainage system which will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(a) Anticipated discharge from springs and seeps and due to precipitation shall be based on records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(b) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not slake in water.

(c) The internal drain shall be protected by a properly designed filter system.

(4) Surface water run-off from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to pass safely the run-off from a one hundred (100) year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of Regulation 0400–1–15–.14(6).

(5) The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1v:20h (5 percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface run-off from the top surface of the fill shall not be allowed to flow over the outslope of the fill.

(6) Surface run-off from the outslope of the fill shall be diverted off the fill to properly designed channels which will pass safely a one hundred (100) year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of Regulation 0400–1–15–.14(6).

(7) Terraces shall be constructed on the outslope if required for control of erosion or for roads included in the approved postmining land use plan. Terraces shall meet the following requirements:

(a) The slope of the outslope between terrace benches shall not exceed 1v:2h (50 percent).

(b) To control surface run-off, each terrace bench shall be graded to a slope of 1v:20h (5 percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.

(c) Terrace ditches shall have a five (5) percent slope toward the channels specified in paragraph (6) above, unless steeper slopes are necessary in conjunction with approved roads.

Authority: T.C. A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.38 Coal Processing Waste Banks: General Requirements.

(1) All coal processing waste shall be hauled or conveyed and place in new and existing disposal areas approved by the Division for this purpose. These areas shall be within a permit area. The disposal area shall be designed, constructed, and maintained—

(a) in accordance with Regulations 0400–1–15–.34 and 0400–1–15–.35, 0400–1–15–.38 and 0400–1–15–.39—0400–1–15–.44; and

(b) to prevent combustion.

(2) Coal processing waste materials from activities located outside a permit area, such as those activities at other mines or abandoned mine waste piles may be disposed of in the permit area only if approved by the Division. Approval shall be based on a showing by the person who conducts underground mining activities in the permit area, using hydrologic, geotechnical, physical, and chemical analysis, that disposal of these materials does not—

(a) adversely affect water quality, water flow, or vegetation;

(b) create public health hazards; or

(c) cause instability in the disposal areas.

Authority: T.C. A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.39 Coal Processing Waste Banks: Site Inspection.

(1) All coal processing waste banks shall be inspected, on behalf of the person conducting underground mining activities, by a qualified registered engineer or other person approved by the Division.

(a) Inspection shall occur at least quarterly, beginning within seven (7) days after preparation of the disposal area begins. The Division may require more frequent inspection based upon an evaluation of the potential danger to the health or safety of the public and the potential harm to land, air and water resources. Inspections may terminate when the coal processing waste bank has been graded, covered in accordance with Regulation 0400–1–15–41, topsoil has been distributed on the bank in accordance with Regulation 0400–1–15.–10, or at such a later time as the Division may require.

(b) Inspections shall include such observations and tests as may be necessary to evaluate the potential hazard to human life and property, to ensure that all organic material and topsoil have been removed and that proper construction and maintenance are occurring in accordance with the plan submitted under Regulation 0400–1–6 and approved by the Division.

(c) The engineer or other approved inspector shall consider steepness of slopes, seepage, and other visible factors which could indicate potential failure, and the results of failure with

respect to the threat to human life and property.

(d) Copies of the inspection findings shall be maintained at the mine site.

(2) If any inspection discloses that a potential hazard exists, the Division shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Division shall be notified immediately. The Division shall then notify the appropriate emergency agencies that other emergency procedures are required to protect the public from the coal processing waste area.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.40 Coal Processing Waste Banks: Water Control Measures.

(1) A properly designed subdrainage system shall be provided, which shall—

(a) intercept all ground water sources;

(b) be protected by an adequate filter; and

(c) be covered so as to protect against the entrance of surface water or leachate from the coal processing waste, or an alternative system shall be provided which will ensure structural integrity of the waste bank and protection of ground and surface water quality.

(2) All surface drainage from the area above the coal processing waste bank and from the crest and face of the waste disposal area shall be diverted, in accordance with Regulation 0400–1–15–.35 (4).

(3) Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(4) All water discharged from a coal processing waste bank shall comply with Regulations 0400–1–15–.12, 0400–1–15–.13, 0400–1–15–.16—0400–1–15–.17, 0400–1–15–.22 and 0400–1–15–.25.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.41 Coal Processing Waste Banks: Construction Requirements.

(1) Coal processing waste banks shall be constructed in compliance with Regulations 0400–1–15–.34 and 0400–1–15–.35, except to the extent that the requirements of those Regulations are varied in this section.

(2) Coal processing waste banks shall have a minimum static safety factor of 1.5.

(3) Compaction requirements during construction or modification of all coal processing waste banks shall meet the requirements of this paragraph, instead of those specified in Regulation 0400–1–15–.35(3). The coal processing waste shall be—

(a) spread in layers no more than twenty-four (24) inches in thickness; and

(b) compacted to attain ninety (90) percent of the maximum dry density to prevent spontaneous combustion and to provide the strength required for stability of the coal processing waste bank. Dry densities shall be determined in accordance with the American Association of State Highway and Transportation Officials (AASHTO) Specification T99–74 (Twelfth Edition) (July 1978) or an equivalent method. AASHTO T99–74 is hereby incorporated-by-reference as it exists on the date of adoption of this regulation and as subsequently revised. AASHTO T99–74 is on file and available for inspection at the Offices of the Tennessee Division of Surface Mining in Knoxville and Nashville, Tennessee.

(c) Variations may be allowed in these requirements for the disposal of dewatered fine coal waste (minus 28 sieve size) with approval of the Division.

(4) Following grading of the coal processing waste bank, the site shall be covered with a minimum of four (4) feet of the best available non-toxic and non-combustible material, in accordance with Regulation 0400–1–15–.08(5), and in a manner that does not impede flow from subdrainage systems. The coal processing waste bank shall be revegetated in accordance with Regulations 0400–1–15–.57— 0400–1–15–.63. The Division may allow less than four (4) feet of cover material based on physical and chemical analyses which show that the requirements of Regulations 0400–1–15–.57—0400–1–15–.63 will be met.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–7–312.

0400–1–15–.42 Coal Processing Waste: Burning.

Coal processing waste fires shall be extinguished by the person who conducts the underground mining activities, in accordance with a plan approved by the Division and the Mines Safety and Health Administration. The plan shall contain, at a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.

Authority: T.C.A sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.43 Coal Processing Waste: Burned Waste Utilization.

Before any burned coal processing waste, other materials, or refuse is removed from a disposal area, approval shall be obtained from the Division. A plan for the method of removal, with maps and appropriate drawings to illustrate the proposed sequence of the operation and method of compliance with this Regulation, shall be submitted to the Division. Consideration shall be given in the plan to potential hazards which may be created by removal to persons working or living in the vicinity of the structure. The plan shall be certified by a qualified engineer.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15.44 Coal Processing Waste: Return To Underground Workings.

Coal processing waste may be returned to underground mine workings only in accordance with the waste disposal program approved by the Division and MSHA under Regulation 0400–1–5.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.45 Disposal of Noncoal Wastes.

(1) Non-coal wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustibles generated during underground mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface run-off do not degrade surface or ground water, fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(2) Final disposal of noncoal wastes shall be in a designated disposal site in the permit area. Disposal sites shall be designed and constructed with appropriate water barriers on the bottom and sides of the designated site. ⅓Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of two (2) feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with Regulation 0400–1–15–.57—0400–15–.63. Operation of the disposal site shall be conducted in accordance with all local, state, and federal requirements.

(3) At no time shall any solid waste material be deposited at refuse embankments or impoundment sites, nor shall any excavation for solid waste disposal be located within eight (8) feet of any coal outcrop or coal storage area.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.46 Coal Processing Waste: Dams and Embankments: General Requirements.

(1) Regulations 0400-1-15-.46—0400-1-15-.48 apply to dams and embankments, constructed of coal processing waste or intended to impound coal processing waste, whether they were completed before adoption of the regulatory program or are intended to be completed thereafter.

(2) Waste shall not be used in the construction of dams and embankments unless it has been demonstrated to the Division that the stability of such a structure conforms with the requirements of Regulation 0400-1-15-.48(1). It shall also be demonstrated that the use of waste material shall not have a detrimental effect on downstream water quality or the environment due to acid seepage through the dam or embankment. All demonstrations shall be submitted to and approved by the Division.

Authority: T.C.A. Sections 59-8-304, 69-8-311, and 59-8-312.

0400-1-15-.47 Coal Processing Waste: Dams and Embankments: Site Preparation.

Before coal processing waste is placed at a dam or embankment site—

(1) all trees, shrubs, grasses, and other organic material shall be cleared and grubbed from the site, and all combustibles shall be removed and stockpiled in accordance with the requirements of this Regulation; and

(2) surface drainage that may cause erosion to the embankment area or the embankment features, whether during construction or after completion, shall be diverted away from the embankment by diversion ditches that comply with the requirements of Regulation 0400-1-15-.14. Adequate outlets for discharge from these diversions shall be in accordance with Regulation 0400-1-15-.18. Diversions that are designed to divert drainage from the upstream area away from the impoundment area shall be designed to carry the peak run-off from a one hundred (100) year twenty-four (24) hour precipitation event. The diversion shall be maintained to prevent blockage, and the discharge shall be in accordance with Regulation 0400-1-15-.18. Sediment control measures shall be provided at the discharge of each diversion ditch before entry into natural watercourses in accordance with Regulations 0400-1-15-.12—0400-1-15-.17.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.48 Coal Processing Waste: Dams and Embankments: Design and Construction.

(1) The design of each dam and embankment constructed of coal processing waste or intended to impound such waste shall comply with the requirements of Regulations 0400-1-15-.20 (1), (e), (5), (6), (7), (8), and (9) modified as follows:

(a) The design freeboard between the lowest point on the embankment crest and the maximum water elevation shall be at least three (3) feet. The maximum water elevation shall be that determined by the freeboard hydrograph criteria contained in the U.S. Soil Conservation Service criteria referenced in Regulation 0400-1-5-.20.

(b) The dam and embankment shall have a minimum safety factor of 1.5 for the partial pool with steady seepage saturation conditions, and the seismic safety factor shall be at least 1.2.

(c) The dam or embankment foundation and abutments shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the safety factors of the dam or embankment for all loading conditions appearing in Paragraph (1)(b) of this Section or the publications referred to in Regulation 0400-1-15-.20 and for all increments of construction.

(2) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(3) Dams or embankments constructed of or impounding waste material shall be designed so that at least ninety (90) percent of the water stored during the design precipitation event shall be removed within a ten (10) day period.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.49 Air Resources Protection.

(1) Fugitive dust. Each person who conducts underground mining activities shall plan and employ fugitive dust control measures as an integral part of site preparation, coal mining, and reclamation operations. The Division shall approve the control measures appropriate for use in planning, according to applicable federal and state air quality standards, climate, existing air quality, size of the operation, and type of operation, shall include, as necessary, but not be limited to—

(a) periodic watering of unpaved roads, with the minimum frequency of watering approved by the Division;

(b) chemical stabilization of unpaved roads with proper application of non-toxic soil cement or dust palliatives;

(c) paving of roads;

(d) prompt removal of coal, rock, soil, and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface;

(e) restricting the speed of vehicles to reduce fugitive dust caused by travel;

(f) revegetating, mulching, or otherwise stabilizing the surface of all areas adjoining roads that are sources of fugitive dust;

(g) restricting the travel of unauthorized vehicles on other than established roads;

(h) enclosing, covering, watering, or otherwise treating loaded haul trucks and railroad cars, to reduce loss of material to wind and spillage;

(i) substituting of conveyor systems for haul trucks and covering of conveyor systems which conveyed loads are subjected to wind erosion;

(j) minimizing the area of disturbed land;

(k) prompt revegetation of regraded lands;

(l) use of alternatives for coal-handling methods, restriction of dumping procedures, wetting of disturbed materials during handling, and compaction of disturbed areas;

(m) planting of special windbreak vegetation at critical point in the permit area;

(n) control of dust from drilling, using water sprays, hoods, dust collectors, or other controls;

(o) restricting the areas to be blasted at any one time to reduce fugitive dust;

(p) restricting activities causing fugitive dust during periods of air stagnation;

(q) extinguishing any areas of burning or smoldering coal and periodically inspecting the burning areas whenever the potential for spontaneous combustion is high;

(r) reducing the period of time between initially disturbing the soil and revegetating or other surface stabilization; and

(s) restricting fugitive dust at spoil and coal transfer and loading points with water sprays, negative pressure system

and baghouse filters, chemicals, or other practices.

(3) Additional measures. Where the Division determines that application of fugitive dust control measures listed in Paragraph (2) of this Section is inadequate, the Division may require additional measures and practices as necessary.

(4) Monitoring. Air monitoring equipment shall be installed and monitoring shall be conducted in accordance with the air monitoring plan required under Regulation 0400-1-5-.21 and approved by the Division.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.50 Protection of Fish, Wildlife, and Related Environmental Values.

(1) Any person conducting underground mining activities shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the activities on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable.

(2) A person who conducts underground mining activities shall promptly report to the Division the presence in the permit area of any critical habitat of a threatened or endangered species listed by the Secretary, and plant or animal listed as threatened or endangered by the state, or any bald or golden eagle, of which that person becomes aware and which was not previously reported to the Division by that person.

(3) A person who conducts underground mining activities shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the underground mining activities on the permit area are in accordance with the guidelines set forth in Environmental Criteria for Electric Transmission System (USDI, USDA (1970)), or in alternative guidance manuals approved by the Division. Distribution lines shall be designed and constructed in accordance with REA Bulletin 61-10, Powerline Contacts by Eagles and Other Large Birds, or in alternative guidance manuals approved by the Division. For informational purposes, these two documents are available at the OSM Office, U.S. Department of the Interior, South Interior Building, Washington, D.C. 20240, at each OSM State Office, and OSM Technical center, and at the Central Office of the Division.

(4) Each person who conducts underground mining activities shall, to the extent possible using the best technology currently available—

(a) locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law;

(b) fence roadways where specified by the Division to guide locally important wildlife to roadway underpasses. No new barrier shall be created in known and important wildlife migration routes;

(c) fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials;

(d) restore, enhance where practicable, or avoid disturbance to habitats of unusually high value for fish and wildlife;

(e) restore, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes and other wetland areas;

(f) afford protection to aquatic communities by avoiding stream channels as required in Regulation 0400-1-15-.27, 0400-1-15.67 restoring stream channels as required in Regulation 0400-1-15-.15;

(g) not use persistent pesticides on the area during underground mining and reclamation activities, unless approved by the Division.

(h) to the extent possible prevent, control, and suppress range, forest, and coal fires which are not approved by the Division as part of a management plan.

(i) if fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall in addition to the requirements of Regulations 0400-1-15-.57—0400-1-15-.63—

1. select plant species to be used on reclaimed areas, based on the following criteria—

a. their proven nutritional value for fish and wildlife;

b. their uses as cover for fish and wildlife; and

c. their ability to support and enhance fish and wildlife habitat after release of bonds; and

2. distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits for fish and wildlife;

(j) where cropland is to be the alternative postmining land use on lands diverted from a fish and wildlife premining land use and where appropriate for wildlife and crop management practices, intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. Wetlands shall be preserved or created rather than drained or otherwise permanently abolished; and

(k) where the primary land use is to be residential, public service, or industrial land use, intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs and trees useful as food and cover for birds and small animals.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.51 Slides and Other Damage.

At any time a slide occurs which may have potential adverse affects on public property, health, safety, or the environment, the person who conducts the underground mining activities shall notify the Division by the fastest available means and comply with any remedial measures required by the Division.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.52 Concurrent Reclamation.

(1) All reclamation efforts, including, but not limited to, backfilling, grading, topsoil replacement, and revegetation, of all areas affected by surface operations shall be kept current at all times and as soon after disturbance of the surface as is practical.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-2-15-.53 Backfilling and Grading: General Requirements.

(1) Surface areas disturbed incident to underground mining activities shall be backfilled and graded in accordance with the time schedule approved by the Division as a condition of the permit.

(2) Backfilling and grading.

(a) All areas affected by surface operations shall be returned to approximate original contour. All spoil shall be transported, backfilled, and compacted (where advisable to ensure stability or to prevent leaching) and graded to eliminate all highwalls, spoil piles, and depressions.

(b) Backfilled material shall be placed to minimize adverse effects on ground water, minimize off-site effects, and support the approved postmining land use.

(c) The postmining graded slopes need not be uniform.

(d) Cut-and-fill terraces may be used only in those situations expressly identified in Section 0400–1–15–.54.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.54 Backfilling and Grading: General Grading Requirements.

(1) The final graded slopes shall not exceed in grade either the approximate premining slopes, or any lesser slopes approved by the Division based on consideration of soil, climate, or other characteristic of the surrounding area. Postmining final graded slopes need not be uniform but shall approximate the general nature of the premining topography. The requirements of this section may be modified by the Division where the underground mining activities are reaffecting previously mined lands that have not been restored to the standards of this Regulation and sufficient spoil is not available to otherwise comply with this section. The person who conducts underground mining activities shall, at a minimum—

(a) retain all overburden and spoil on the solid portion of existing or new benches; and

(b) backfill and grade to the most moderate slope possible, to eliminate the highwall which does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum static safety factor of 1.3. In all cases the highwall shall be eliminated.

(2) On approval by the Division in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed, if the terraces are compatible with the approved postmining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(a) The width of the individual terrace bench shall not exceed twenty (20) feet, unless specifically approved by the Division as necessary for stability, erosion control, or roads included in the approved postmining land use plan.

(b) The vertical distance between terraces shall be as specified by the Division, to prevent excessive erosion and to provide long-term stability.

(c) The slope of the terrace outslope shall not exceed 1v:2h (50 percent). Outslopes which exceed 1v:2h (50 percent) may be approved, if they have a minimum static safety factor of more than 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(d) Culverts and underground rock drains shall be used on the terrace only when approved by the Division.

(3) Small depressions may be constructed, if they—

(a) are approved by the Division to minimize erosion, conserve soil moisture, or promote vegetation;

(b) do not restrict normal access; and

(c) are not inappropriate substitutes for lower grades on the reclaimed lands.

(4) All surface mining activities on slopes above twenty (20) degrees, or on lesser slopes that the Division defines as steep slopes shall meet the provision of Regulation 0400–1–20.

(5) All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil, shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation or placement along the contour is hazardous to equipment operators, then grading, preparation, or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.55 Backfilling and Grading: Covering Coal and Acid- and Toxic-Forming Materials.

(1) Cover.

(a) A person who conducts underground mining activities shall insure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion.

(b) If necessary, these materials shall be treated to neutralize toxicity, in order to prevent water pollution and sustained combustion and minimize adverse effects on plant growth and land uses.

(c) Where necessary to protect against upward migration of salts, exposure by erosion, formation of acid or toxic seeps, to provide an adequate depth for plant growth, or otherwise to meet local conditions, the Division shall specify thicker amounts of cover using non-toxic material, or special compaction and isolation from ground water contact.

(d) Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.

(2) Stabilization. Backfilled materials shall be selectively hauled or conveyed, and compacted, wherever necessary to prevent leaching of acid-forming and toxic-forming materials into surface or ground waters and wherever necessary to insure stability of the backfilled materials. The method and design specifications of compacting material shall be approved by the Division before acid-forming or toxic-forming materials are covered.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.56 Regrading or Stabilizing Rills and Gullies.

When rills or gullies deeper than nine (9) inches form in areas that have been regraded and topsoiled, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded or replanted according to Regulations 0400–1–15–.57—0400–1–15–.63. The Division shall specify that rills or gullies of lesser size be stabilized and the area reseeded or replanted if the rills or gullies are disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 50–8–312.

0400–1–15–.57 Revegetation: General Requirements.

(1) Each person who conducts underground mining activities shall establish on all areas disturbed by surface operations and facilities diverse, effective, and permanent vegetative cover. For areas designated as prime farmland, the requirements of Regulation 0400–1–18 shall apply.

(2) All revegetation shall be in compliance with the plans submitted under Regulation 0400–1–.20 as approved by the Division in the permit, and carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.

(a) All disturbed land, except water areas and surface areas or roads that are approved as a part of the postmining land use, shall be seeded or planted to achieve a permanent vegetative cover of the same seasonal variety native to the area of disturbed land.

(b) The vegetative cover shall be capable of self-regeneration and plant succession.

(c) Vegetative cover shall be at least equal in extent of cover to the natural vegetation of the area.

(d) If both the premining and postmining land uses are cropland, planting of the crops normally grown

will meet the requirements of Paragraph (2)(a) of this Section.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.58 Revegetation: Use of Introduced Species.

Introduced species, may be substituted for native species only if approved by the Division under the following conditions;

(1) after appropriate field trials have demonstrated that the introduced species can establish a diverse, effective, and permanent cover capable of achieving the approved postmining land use; or

(2) the species are necessary to achieve a quick, temporary, and stabilizing cover that aids in controlling erosion; and measures to establish permanent vegetation are included in the approved plan;

(3) the species are compatible with the plant and animal species of the region; and

(4) the species meet the requirements of applicable state and federal seed or introduced species statutes and are not poisonous or noxious.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.59 Revegetation: Timing.

Seeding and planting of disturbed areas shall be conducted within the time frames in Regulation 0400–1–15–.60. All the disturbed area shall be seeded and planted, as contemporaneously as practicable with the completion of backfilling and grading, with a temporary cover of small grains, grasses, or legumes. If weather conditions are unfavorable for revegetation, following grading, a waiver may be obtained from the Division extending the time for revegetation until the next favorable period. The Division may require a temporary cover of small grain to control erosion.The waiver cannot be extended for more than a ninety (90) day period.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.60 Preparations, Mixture, and Seed Requirements for Revegetation.

(1) *Inoculation.* All legumes, pines, and other seeds or plants recommended by the Division shall be inoculated to induce nitrogen fixation and/or stimulate plant growth.

(2) *Scarifying.* All black locust, sericea lespedeza, and other seeds recommended by the Division shall be scarified, except when used in fall and winter seeding.

(3) *Preparation of soil.* Preparation of the seedbed by harrowing, discing, or other approved methods is required on all disturbed areas.

(4) *Fertilizer.* Fertilizer shall be applied at a minimum rate of the requirements determined by the soil tests required by Regulation 0400–1–15–.11. Fertilizer shall be applied annually according to recommendations from approved soil test.

(5) *Liming.* Agricultural lime shall be applied at a minimum rate of eight thousand (8,000) pounds per acre unless laboratory results indicate otherwise. Fertilizer shall be applied annually according to recommendations from approved soil test.

(6) *Mulch.* All disturbed areas shall be mulched. The approved mulch rates are—

(a) dry wheat, straw, or hay at a rate of four thousand (4,000) pounds (approximately eighty (80) bales) per acre; or

(b) wood fiber mulch at a rate of one thousand five hundred (1,500) pounds per acre, but not in the months of November, December, January, and February.

Dry wheat, straw, and hay must be anchored by asphalt emulsion or by discing the straw or hay on contour in mined soil.

(7) *Trees: Seeding and planting.* Direct seeding of trees and shrubs is encouraged on all disturbed areas to supplement planted trees. Some species adopted to direct seeding are:

(a) Black (sweet) Birch;
(b) Virginia Pine;
(c) Pitch Pine;
(d) Red Maple;
(e) European Black Alder;
(f) Autumn Olive;
(g) Princess tree; and
(h) Black Locust.

Species that can be direct seeded are not limited to the above list.

(8) *Tree planting.*

(a) *Tree species*—Planting of a single species, or of two or more species, in pure blocks or strips at least thirty (30) feet wide, over the entire area, or of a single species in a block or a contour strip, is required.

1. Preferred tree species are—
a. Virginia Pine;
b. Shortleaf Pine (on light (sandy) soils only);
c. Black Locust; and
d. Sweet Birch.

2. Other species that may be used are—
a. Princess Tree;
b. Sawtooth Oak;
c. Sycamore;
d. European Black Alder;
e. Red Maple;
f. Loblolly Pine (below 2,000 feet elevation);
g. Pitch Pine;
h. White Pine;
i. Table Mountain Pine;
j. Shortleaf Pine; and
k. Crabapple.

(b) Tree seedlings shall be planted at a 6 ft. by 7 ft. spacing.

(c) Seedlings should be planted between November 1 and May 1.

3. Other tree species may be used as recommended by the Division.

(9) *Wildlife Planting.*

(a) Shrub and tree species to meet the requirements for wildlife enhancement shall consist of one or more of the following other species to be approved by the Division:

1. Shrub lespedeza;
a. Lespedeza bicolor, or
b. Lespedeza japonica
2. Autumn Olive (Elaeagnus umbellata) (fall fruiting);
3. Crabapple;
a. Toringo, or
b. Siberian
4. European Filbert; or
5. Sawtooth Oak. (Good sites)

(b) The following type of plantings may be made:

1. Intervening contour strips and borders. Contour strips or borders of wildlife food and cover shall be substituted for the appropriate number of trees to provide space for planting one or more of the following shrub species;

a. Crabapple, European Filbert, and Sawtooth Oak—1 to 3 rows 6 ft. by 6 ft. spacing: November 1 to May 1;

b. Autumn Olive—1 to 3 rows 10 ft. by 10 ft. spacing: November 1 to June 15;

c. Shrub lespedeza plants—5 rows, 2 ft. by 2 ft. spacing: November 1 to April 15; or

d. Shrub lespedeza seeded—12 to 15 feet width—20 pounds/acre of scarified seed: March 1 to June 15.

2. Clumps. Clump plantings may be substituted for trees to provide space for one or more of the following shrubs species:

a. Bush Honeysuckle—25 plants, 6 ft. by 6 ft. spacing: February 1 to April 15;

b. Autumn Olive—25 plants, 6 ft. by 6 ft. spacing: November 1 to June 15;

c. Shrub Lespedeza plants—700 plants, 2 ft. by 2 ft. spacing: November 1 to June 15; or

d. Shrub Lespedeza—1 pound scarified seed per 50 ft. by 50 ft. area: March 1 to June 15.

3. Rocky and Stony Areas.

a. Shrub lespedeza may be substituted for tree species on rocky and stony sites

where planting of tree seedlings is not possible;

b. Plant the mixture from November 1 to June 15.

(10) *Grasses, Legumes, and Grains.* One of the following mixtures shall be sown on the entire disturbed area, unless an alternative mixture is proposed in the revegetation plan and approved by the Division.

	Seed per acre (pounds)
(a) Mixture One: February–April:	
1. Sericea Lespedeza (scarified) #	35
2. Ky–31 Tall Fescue	35
3. Kobe or Korean Lespedeza	10
4. Ladino Clover	2
5. Wheat or Rye	30
(b) Mixture Two: May–July:	
1. Sericea Lespedeza (scarified)	35
2. Ky–31 Tall Fescue	35
3. Weeping Lovegrass	5
4. Millett (German or Brown top)	15
(c) Mixture Three: August–October:	
1. Sericea Lespedeza (unscarified)	45
2. Ky–31 Tall Fescue	35
3. Weeping Lovegrass	5
4. Ladino Clover	2
5. Wheat or Rye	30
(d) Mixture Four: November–January:	
1. Sericea Lespedeza (unscarified)	35
2. Ky–31 Tall Fescue	40
3. Wheat or Rye	45

(11) Sericea Lespedeza may be replaced by other legumes where competition with other species of vegetation presents a problem.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.61 Revegetation: Grazing.

When the approved postmining land use is range or pasture land, the reclaimed land shall be used for livestock grazing at a grazing capacity approved by the Division approximately equal to that for similar non-mined lands, for at least the last two (2) full years or liability required under Regulation 0400–1–7–.05(2).

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.62 Evaluation of Vegetation Survival.

Inspection and evaluation for cover and survival shall be made as soon as it is possible to determine if a satisfactory stand has been established. A revegetation evaluation report shall be prepared and filed by the inspector.

(1) *Standards for perennials.* Legumes and perennial grasses shall exhibit at least a ninety percent (90%) ground cover and/or equivalent productivity of the reference area, whichever one exhibits the greatest vegetative cover. Production shall not be considered equal if it is less than ninety (90%) percent of the production of the approved reference area or technical equivalent with ninety (90%) percent statistical confidence. Bare areas shall not exceed one sixteenth (1/16) acre in size and total more than ten (10) percent of the area seeded. All areas disturbed shall be stabilized with no areas contributing to erosion. The period of liability for measuring success shall meet the standards of Section 0400–1–7–.05.

(2) *Standards for woody plants with perennials.* Woody plants with legumes and perennial grasses overseeded shall exhibit at least a ninety percent (90%) establishment of ground cover or legumes and perennial grasses and six hundred (600) live, healthy trees per acre distributed more-or-less uniformly over the area. No fifty-foot by fifty-foot (50'x50') area shall contain fewer than thirty-five (35) surviving trees or woody plants. Stocking density, i.e., the number of stems per unit area will be used to determine the degree to which space is occupied by well-distributed, countable trees, shrubs, or half shrubs.

(a) Root crown or root sprouts over one (1) foot in height shall count as one(1) toward meeting the stocking requirements. Where multiple stems occur, only the tallest stem will be counted.

(b) A countable tree or shrub means a tree that can be used in calculating the degree of stocking under the following criteria:

1. the tree or shrub shall be in place at least two (2) growing seasons;

2. the tree or shrub shall be alive and healthy; and

3. the tree or shrub shall have at least one third (⅓) of its length in live crown.

(c) Rock areas, permanent road and surface water drainageway on the revegetated area shall not require stocking. Stocking density may be altered if the postmined land use is developed for wildlife management or for commercial forest as specified in Section 0400–1–15–.60. The period of liability for measuring success shall meet the standards of section 0400–1–7–.05.

(3) *Cropland and Hayland.* For areas to be used for cropland, success in revegetation of cropland shall be determined on the basis of crop production from the mined area as compared to approved reference areas or other technical guidance procedures. Crop production from the mined areas shall be equal to or greater than that of the approved referenced area or technical equivalent for the last two (2) consecutive growing seasons of the 5-year liability period. Production shall not be considered equal if it is less than ninety percent (90%) of the production of the approved reference area or technical equivalent with ninety percent (90%) statistical confidence.

Authority: T.C.A. Sections 59–8–304, 59–8–311 and 59–8–312.

0400–1–15–.63 Performance Bond Release.

After the vegetative cover has been inspected, partial bond release may be approved if all requirements have been met under the Act. No revegetation performance bonds will be released until the approved revegetation plan has been carried out. No revegetation plans will be considered to have been carried out until satisfactory coverage and survival have been obtained.

Authority: T.C.A. Sections 59–8–304, 59–8–311 and 59–8–312.

0400–1–15–.64 Subsidence Control: General Requirements.

(1) Underground mining activities shall be planned and conducted so as to prevent subsidence from causing material damage to the surface, to the extent technologically and economically feasible, and so as to maintain the value and reasonably forseeable use of surface lands. This may be accomplished by leaving adequate coal in place, backfilling, or other measures to support the surface, or by conducting underground mining in a manner that provides for planned and controlled subsidence. Nothing in this Regulation shall be construed to prohibit the standard method of room and pillar mining.

(2) The person engaged in underground mining activities shall comply with all provisions of the subsidence control plan prepared pursuant to Regulation 0400–1–5–.30 and approved by the Division.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.65 Subsidence Control: Public Notice.

The mining schedule shall be distributed by mail to all owners of property and residents within the area above the underground workings and adjacent areas. Each such person shall be notified by mail at least six (6) months prior to mining beneath his or her property or residence. The notification shall contain as a minimum:

(a) identification of specific areas in which mining will take place;

(b) dates of mining activities that could cause subsidence and affect specific structures; and

(c) measures to be taken to prevent or control adverse surface effects.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.66 Subsidence Control: Surface Owner Protection.

(1) Each person who conducts underground mining activities shall adopt all measures approved by the Division under Regulation 0400-1-5-.30 to reduce the likelihood of subsidence, to prevent subsidence causing material damage or reducing the value or reasonably forseeble use of surface lands, and to mitigate the effects of any such damage or reduction which may occur.

(2) Each person who conducts underground mining which results in subsidence that causes material damage or reduces the value or reasonably forseeable use of the surface lands shall, with respect to each surface area affected by subsidence—

(a) restore, rehabilitate, or remove and replace each damaged structure, feature or value, promptly after the damage is suffered, to the condition it would be in if no subsidence had occurred and restore the land to a condition capable of supporting reasonably forseeable uses it was capable of supporting before subsidence; or

(b) purchase the damaged structure or feature for its fair market, pre-subsidence value and shall promptly after subsidence occurs, to the extent technologically and economically feasible, restore the land surface to a condition capable and appropriate of supporting the purchased structure, and other forseeable uses it was capable of supporting before mining. Nothing in this paragraph shall be deemed to grant or authorize an exercise of the power of condemnation or the right of eminent domain by any person engaged in underground mining activities; or

(3) Each person who conducts underground mining activities will compensate the owner of any surface structure in the full amount of the diminution in value resulting from subsidence, by purchase prior to mining of a noncancellable, premium prepaid insurance policy or other means approved by the Division as assuring before mining begins that payment will occur; indemnify every person with an interest in the surface for all damages suffered as a result of the subsidence; and, to the extent technologically and economically feasible, fully restore the land to a condition capable of maintaining reasonably forseeable uses which it could support before subsidence.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.67 Subsidence Control: Buffer Zones.

(1) Underground mining activities shall not be conducted beneath or adjacent to any perennial stream, or impoundment having a storage volume of twenty (20) acre-feet or more, unless the Division, on the basis of detailed subsurface information, determines that subsidence will not cause material damage to streams, water bodies and associated structures. If subsidence causes material damage, then measures will be taken to the extent technologically and economically feasible to correct the damage and to prevent additional subsidence from occurring.

(2) Underground mining activities beneath any aquifer that serves as a significant source of water supply to any public water system shall be conducted so as to avoid disruption of the aquifer and consequent exchange of ground water between the aquifer and other strata. The Division may prohibit mining in the vicinity of the aquifer or may limit the percentage of coal extraction to protect the acquifer and water supply.

(3) Underground mining activities shall not be conducted beneath or in close proximity to any public buildings, including but not limited to churches, schools, hospitals, courthouses and government offices, unless the Division, on the basis of detailed subsurface information, determines that subsidence from those activities will not cause material damage to these structures and specifically authorizes the mining activities.

(4) The Division shall suspend underground coal mining under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments or permanent streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.68 Cessation of Operations: Temporary.

(1) Each person who conducts underground mining activities shall effectively support and maintain all surface access openings to underground operations and secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a person of their obligation to comply with any provisions of the approved permit.

(2) Before temporary cessation of mining and reclamation operations for a period of thirty (30) days or more, or as soon as it is known that temporary cessation will extend beyond thirty (30) days, each person who conducts underground mining activities shall submit to the Division a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of surface acre and the horizontal and vertical extent of subsurface strata which have been in the permit area prior to cessation or abandonment, the extent and kind of reclamation of surface area which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, underground opening closure and water treatment activities that will continue during the temporary cessation.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.69 Cessation of Operations: Permanent.

(1) The person who conducts underground mining activities shall close or backfill or otherwise permanently reclaim all affected areas, in accordance with this Section and the permit approved by the Division.

(2) All surface equipment, structures, or other facilities not required for continued underground mining activities and monitoring, unless approved by the Division as suitable for the postmining land use or environmental monitoring, shall be removed and the affected land reclaimed.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.70 Postmining Land Use.

(1) General. All affected surface land areas shall be restored in a timely manner—

(a) to conditions that are capable of supporting the uses which they were capable of supporting before any mining; or

(b) to higher or better uses achievable under criteria and procedures of this section.

(2) Determining premining use of land. The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land has not been previously mined and had been properly managed.

(a) The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of

the highest and best use that can be achieved and is compatible with surrounding areas.

(b) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

(c) If the premining use of the land was changed within five (5) years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

(3) Prior to the release of lands from the permit area in accordance with Regulation 0400–1–10 the permit area shall be restored, in a timely manner, either to conditions capable of supporting the uses they were capable of supporting before any mining or to conditions capable of supporting approved alternative land uses. Alternative land uses may be approved by the Division after consultation with the landowner or the land-management agency having jurisdiction over the lands, if the following criteria are met.

(a) The proposed postmining land use is compatible with adjacent land use and where applicable, with existing local, state or federal land use policies and plans: A written statement of the views of the authorities with statutory responsibilities for land use policies and plans is submitted to the Division within sixty (60) days of notice by the Division and before surface mining activities begin. Any required approval, including any necessary zoning or other changes required for land use by local, state, or federal land management agencies is obtained and remains valid throughout the underground mining activities.

(b) Specific plans are prepared and submitted to the Division which show the feasibility of the postmining land use as related to projected land use trends and markets and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and will be sustained. The Division may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(c) Provision of any necessary public facilities is ensured as evidenced by letters of commitment for parties other than the person who conducts underground mining activities, as appropriate, to provide the public facilities in a manner compatible with the plans submitted under Regulation 0400–1–5. The letters shall be submitted to the Division before underground mining activities begin.

(d) Specific and feasible plans are submitted to the Division which show that financing, attainment and maintenance of the postmining land use are feasible and, if appropriate, are supported by letters of commitment from parties other than the person who conducts the underground mining activities.

(e) Plans for the postmining land use are designed under the general supervision of a registered professional engineer, or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, vegetative cover, and esthetic design appropriate for the postmining use of the site.

(f) The proposed use will neither present actual or probable hazard to public health or safety nor will it pose any actual or probable threat of water flow diminution of pollution.

(g) The use will not involve unreasonable delays in reclamation.

(h) Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants is obtained from the Division and appropriate state and federal fish and wildlife management agencies have been provided a sixty (60) day period in which to review the plan before underground mining activities begin.

(i) Proposals to change premining land uses of range, fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable federal, state and local laws, are reviewed by the Division to ensure that—

1. there is a firm written commitment by the person who conducts underground mining activities or by the landowner or land manager to provide sufficient crop management after release of applicable performance bond under Regulations 0400–1–7, 0400–1–15–.57 through 0400–1–15–.63 to assure that the proposed postmining cropland use remains practical and reasonable;

2. there is sufficient water available and committed to maintain crop production; and

3. topsoil quality and depth are sufficient to support the proposed use.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.71 Roads: Class I: General.

(1) Each person who conducts underground mining activities shall design, construct or reconstruct, utilize, and maintain Class I Roads and restore the area to meet the requirements of Regulations 0400–1–15–.72—0400–1–15–.77 and to control or minimize erosion and siltation, air and water pollution, and damage to public or private property.

(2) To the extent possible using the best technology currently available, Class I Roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to runoff outside the permit area. Any such contributions shall not be in excess of limitations of state or federal law.

(3) All Class I Roads shall be removed and the land affected regraded and revegetated in accordance with the requirements of Regulation 0400–1–15–.77 unless—

(a) retention of the road is approved as part of the approved postmining land use or as being necessary to control erosion adequately;

(b) the necessary maintenance is assured; and

(c) all drainage is controlled according to Regulation 0400–1–15–.74.

(a) The design and construction or reconstruction of Class I Roads shall be certified by a registered qualified professional engineer in accordance with Regulations 0400–1–15–.72—0400–1–15–.75, except to the extent that alternative specifications are used. Alternative specifications may be used only after approval by the Division upon a demonstration by a registered qualified professional engineer that they will result in performance equal to or better than that resulting from Class I Roads complying with Regulations 0400–1–15–.72—0400–1–15–.77.

(b) The design shall incorporate the demand for mobility and travel efficiency, based on geometric criteria, both horizontal and vertical, appropriate for the anticipated volume of traffic and weight and speed of vehicles to be used.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.72 Roads: Class I: Location.

(1) Class I Roads shall be located, insofar as possible, on ridges or on the most stable available slopes to minimize erosion.

(2) No part of any Class I Road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Division.

(3) Stream fords are prohibited unless they are specifically approved by the Division as temporary routes during periods of construction. The fords shall not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using bridges, culverts, or other structures designed, constructed, and maintained to meet the requirements of Regulation 0400–1–15–.74.

(4) Class I Roads shall be located to minimize downstream sedimentation and flooding.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.73 Roads: Class I: Design and Construction.

Class I Roads shall be designed and constructed or reconstructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance:

(1) Vertical alignment. Except where lesser grades are necessary to control site-specific conditions, maximum road grades shall be as follows:

(a) The overall grade shall not exceed 1v:10h (10 percent).

(b) The maximum pitch grade shall not exceed 1v:6.5h (15 percent).

(c) There shall be not more than three hundred (300) feet of pitch grade exceeding ten (10) percent within any consecutive one thousand (1,000) feet of Class I Roads, but in no case shall there be any pitch grade over fifteen (15) percent.

(2) Horizontal alignment. Class I Roads shall have horizontal alignment as consistent with the existing topography as possible, and shall provide the alignment required to meet the performance standards of Regulations 0400–1–15–.71—0400–1–15–.77. The alignment shall be determined in accordance with the anticipated volume of traffic and weight and speed of vehicles to be used. Horizontal and vertical alignment shall be coordinated to ensure that one will not adversely affect the other and to ensure that the road will not cause environmental damage.

(3) Road cuts.

(a) Cut slopes shall not be steeper than specifically authorized by the Division which shall not authorize slopes steeper than 1v:1.5h in unconsolidated materials or 1v:0.25h in rock, except that steeper slopes may be specifically authorized by the Division if geotechnical analysis demonstrates that a minimum safety factor of 1.5 can be maintained.

(b) Topsoil or other materials suitable under Regulation 0400–1–14–.08 shall be placed on all cut slopes of 1v:1.5h or flatter to aid in establishing vegetation and to minimize erosion. Topsoil depth shall be adequate to support vegetation necessary to control erosion.

(c) Temporary erosion-control measures shall be implemented during construction to minimize sedimentation and erosion until permanent control measures can be established.

(4) Road embankments. Embankment sections shall be constructed in accordance with the following provisions:

(a) All vegetative material and topsoil shall be removed from the embankment foundation during construction to increase stability, and no vegetative material or topsoil shall be placed beneath or in any Class I road embankment.

(b) where an embankment is to be placed on side slopes exceeding 1v:5h (20 percent), the existing ground shall be plowed, stepped, or, if in bedrock, keyed in a manner which increases the stability of the fill. The keyway shall be minimum or ten (10) feet in width and shall extend a minimum of two (2) feet below the toe of the fill.

(c) Material containing by volume less than twenty-five (25) percent of rock larger than six (6) inches in greatest dimension shall be spread in successive uniform layers not exceeding twelve (12) inches in thickness before compaction.

(d) Where the material for an embankment consists of large-size rock, broken stone, or fragmented material that makes placing it in twelve (12) inch layers impossible under Paragraph (4)(c) of this Section, the embankment shall be constructed in uniform layers not exceeding in thickness the approximate average size of the rock used, but the layers shall not exceed thirty-six (36) inches in thickness. Rock shall not be dumped in final position, but shall be distributed by blading or dozing in a manner that will ensure proper placement in the embankment, so that voids, pockets, and bridging will be reduced to a minimum. The final layer of the embankment shall meet the requirements of Paragraph (4)(c) of this Section.

(e) Each layer of the embankment shall be compacted before the succeeding layer is placed. Loads of material shall be leveled as placed and kept smooth. The successive layers shall be compacted evenly by routing the hauling and leveling equipment over the entire width of the embankment. This procedure shall be continued until no visible horizontal movement of the embankment material is apparent.

(f) Embankment layers shall be compacted as necessary to ensure that the embankment is adequate to support the anticipated volume of traffic and weight and speed of vehicles to be used. In selecting the method to be used for placing embankment material, consideration shall be given in the design to such factors as the foundation, geological structure, soils, type of construction, and equipment to be used. A structural and foundation analysis shall be performed to establish design standards for embankment stability appropriate to the site. Publications of the American Association of State Highway and Traffic Officers (AASHTO) including AASHTOT–99, T–180, T–91, and the modified AASHTO test, or other specifications generally recognized by transportation engineers as adequate for design of highway embankments, shall be used to determine the degree of compaction required, on the basis of soil type and the anticipated volume of traffic and weight and speed of vehicles to be used. Compaction effort shall be adequate to achieve the degree of compaction required. No lift shall be placed on a layer until the design density is achieved throughout the layer. AASHTO specifications such as T–99, T–180, the modified AASHTO test, or other comparable specifications approved by the Division shall be used as guidelines for the determination of the maximum dry density for granular materials.

(g) Material shall be placed in an embankment only when its moisture content is within acceptable levels to achieve design compaction.

(h) Embankment slopes shall not be steeper than 1v:2h, except that where the embankment material is a minimum of eighty-five percent (85%) rock, slopes shall not be steeper than 1v:1.35h if it has been demonstrated to the Division that embankment stability will result. Where rock embankments are constructed, they shall meet the requirements of Paragraph (4)(d) of this Section.

(i) The minimum safety factor for all embankments shall be 1.25, or such higher factor as the Division may specify.

(j) The road surface shall be sloped toward the ditch line at minimum rate of one-quarter (¼) inch per foot of surface width, or crowned at a minimum rate of one-quarter (¼) inch per foot of surface width as measured from the centerline of the road.

(k) All material used in embankments shall be suitable for use under Paragraphs (4) (a)–(h) of this Section. The material shall be reasonably free of

organic material, coal or coal blossom, frozen materials, wet or peat material, natural soils containing organic matter, or any other material considered unsuitable by the Division for use in embankment construction.

(l) Excess or unsuitable material from excavation as defined in Paragraph (4)(k) of this Section, shall be disposed of in accordance with Regulation 0400–1–15–.34. Acid- and toxic-forming material shall be disposed of in accordance with Regulations 0400–1–15–.19, 0400–1–15–.38, and 0400–1–15–.55.

(m) Acid-producing materials shall be permitted for constructing embankments for only those Class I Roads constructed or reconstructed on coal processing waste bank and only if it has been demonstrated to the Division that no additional acid will leave the confines of the coal processing waste bank. In no case shall acid-bearing refuse material be used outside the confines of the coal processing waste bank. Restoration of the road shall be in accordance with the requirements of Regulations 0400–1–15–.55—0400–1–15–.63.

(n) Topsoil or other material suitable under Regulation 0400–1–15–.08 shall be placed on all embankment slopes of 1v:1.5h or flatter to aid in establishing vegetation and to minimize erosion. Topsoil material depth shall be adequate to support vegetation and to prevent erosion.

(o) Temporary erosions shall be incorporated during construction to control sedimentation and minimize erosion until permanent control measures can be established.

(5) Topsoil removal. Before initiation of construction or reconstruction of a Class I Road, topsoil and other materials, as determined under Regulation 0400–1–15–.08, shall be removed from the design roadbed, shoulders, and surfaces where associated structures will be placed, and shall be stored in accordance with Regulation 0400–1–15–.09.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.74 Roads: Class I: Drainage.

(1) General.

(a) Each Class I Road shall be designed, constructed or reconstructed, and maintained to have adequate drainage, using structures such as, but not limited to, ditches, cross drains, and ditch relief drains. The water control system shall be designed to safely pass the peak run-off from a ten (10) year, twenty-four (24) hour precipitation event or a greater event if required by the Division.

(b) Sediment control shall comply with Regulations 0400–1–15–.13 and 0400–1–15–.16.

(c) Vegetation shall not be cleared for more than the width necessary for road and associated ditch construction, to serve traffic needs and for utilities.

(2) Ditches.

(a) A ditch shall be provided on both sides of a through-cut and on the inside shoulder of a cut-and-fill section, with ditch relief cross drains spaced according to grade. Water shall be intercepted before reaching a switchback or large fill and drained safely away in accordance with this Section. Water from a fill or switchback shall be released below the fill through conduits or in riprapped channels, and shall not be discharged into the fill. Drainage ditches shall be placed at the toe of all cut slopes formed by the construction of roads.

(b) On flat sections of Class I Roads where rolling topography is insufficient to provide natural ditch drainage, the road grade shall be undulated to provide for free flow of water in the ditch section. Road sections may be constructed to elevate the road surface above the original ground surface to facilitate drainage.

(3) Culverts and bridges.

(a)

1. Culverts with an end area of thirty-five (35) square feet or less shall be designed to safely pass the ten (10) year, twenty-four (24) hour precipitation event without a head of water at the entrance. Culverts with an end area of greater than thirty-five (35) square feet, and bridges with spans of thirty (30) feet or less, shall be designed to safely pass the twenty (20) year, twenty-four (24) hour precipitation event. Bridges with spans of more than thirty (30) feet shall be designed to safely pass the one-hundred (100) year, twenty-four (24) hour precipitation event or a larger event as specified by the Division.

2. Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets.

3. Trash racks and debris basins shall be installed in the drainage area wherever debris from the drainage area could impair the functions of drainage and sediment-control structures.

4. All culverts shall be covered by compacted fill to a minimum depth of one (1) foot.

5. Culverts shall be designed, constructed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles to be used.

b. Culverts for road-surface drainage only shall be constructed in accordance with the following:

1. Unless otherwise authorized or required under Paragraphs (2) or (3), culverts shall be spaced as follows:

a. Spacing shall not exceed one thousand (1,000) feet on grades of zero (0) to three (3) percent.

b. Spacing shall not exceed eight hundred (800) feet on grades of three (3) to six (6) percent.

c. Spacing shall not exceed five hundred (500) feet on grades of six (6) to ten (10) percent.

d. Spacing shall not exceed three hundred (300) feet on grades of ten (10) percent or greater.

2. Culverts at closer intervals than the maximum in Paragraph (3)(b)1. of this Section shall be installed if required by the Division as appropriate for the erosive properties of the soil or to accommodate flow from small intersecting drainages.

3. Culverts may be constructed at greater intervals than the maximum indicated in Paragraph (3)(b)1. of this Section if authorized by the Division upon a finding that greater spacing will not increase erosion.

4. Culverts shall cross the road at not less than a thirty (30) degree angle downgrade.

5. Culverts may be designated to carry less than the peak runoff from a ten (10) year, twenty-four (24) hour precipitation event if the ditch will not overtop and will remain stable.

6. The inlet end shall be protected by a rock headwall or other material approved by the Division as adequate protection against erosion of the headwall. The water shall be discharged below the toe of the fill through conduits or in riprapped channels and shall not be discharged onto the fill.

(4) Natural drainage. Natural channel drainageways shall not be altered or relocated for road construction or reconstruction without the prior approval of the Division in accordance with Regulations 0400–1–15–.43 and 0400–1–15–.44. The Division may approve alterations and relocations only if—

(a) the natural-channel drainage is not blocked;

(b) no significant damage occurs to the hydrologic balance; and

(c) there is no adverse impact on adjoining landowners.

(5) Stream crossings. Drainage structures are required for stream channel crossings. Drainage structures shall not affect the normal flow or gradient of the stream, or adversely

affect fish migration and aquatic habitat or related environmental values.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.75 Roads: Class I Surfacing.

(1) Class I Roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the Division as sufficiently durable for the anticipated volume of traffic and weight and speed of vehicles to be used.

(2) Acid- or toxic-forming substances shall not be used in road surfacing.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.76 Roads: Class I: Maintenance.

(1) Class I Roads shall be maintained in such a manner that the required or approved design standards are met throughout the life of the entire transportation facility including surface, shoulders parking and side areas, approach structures, erosion control devices, cut-and-fill sections, and such traffic-control devices as are necessary for safe and efficient utilization of the road.

(2) Class I Road maintenance shall include repairs to the road surface, blading, filling of potholes, and replacement of gravel or asphalt. It shall include revegetating, brush removal, watering for dust control, and minor reconstruction of road segments as necessary.

(3) Class I Roads damaged by catastrophic events such as floods or earthquakes shall not be used until reconstruction of damaged road elements. The reconstruction shall be completed as soon as practicable after the damage has occured.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.77 Roads: Class I: Restoration.

(1) Unless the Division approves retention of a Class I Road as suitable for the approved postmining land use, immediately after the road is no longer needed for operations, reclamation, or monitoring—

(a) the road shall be closed to vehicular traffic;

(b) the natural-drainage patterns shall be restored;

(c) all bridges and culverts shall be removed;

(d) roadbeds shall be ripped, plowed, and scarified;

(e) fill slopes shall be rounded or reduced and shaped to conform the site to adjacent terrain and to meet natural-drainage restoration standards;

(f) cut slopes shall be shaped to blend with the natural contour;

(g) cross drains, dikes, and water bars shall be constructed to minimize erosion;

(h) terraces shall be constructed as necessary to prevent excessive erosion and to provide long-term stability in cut-and-fill slopes; and

(i) road surfaces shall be covered with topsoil and revegetated in accordance with Regulations 0400-1-15-.57—0400-1-15-.62.

(2) Unless otherwise authorized by the Division, all road surfacing materials shall be removed, hauled or conveyed, and disposed of under Regulation 0400-1-15-.45.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.78 Roads: Class II: General.

(1) Each person who conducts underground mining activities shall design, construct or reconstruct, utilize, and maintain Class II Roads and restore the area to meet the requirements of Regulations 0400-1-15-.80—0400-1-15-.84 and to control or minimize erosion and siltation, air and water pollution, and damage to public or private property.

(2) To the extent possible using the best technology currently available, Class II Roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to run-off outside the permit area. Any such contributions shall not be in excess of limitations of state or federal law.

(3) All Class II Roads shall be removed and the land affected regarded and revegetated in accordance with the requirements of Regulation 0400-1-15-.84, unless—

(a) retention of the road is approved as part of the approved postmining land use or as being necessary to control erosion adequately;

(b) the necessary maintenance is assured; and

(c) all drainage is controlled according to Regulation 0400-1-15-.81.

(4) (a) Class II Roads shall be designed and constructed in accordance with Regulations 0400-1-15-.79—0400-1-15-.82, except to the extent that alternative specifications are used. Alternative specifications may only be used after approval by the Division upon a demonstration by a qualified professional engineer that they will result in performance equal to or better than that resulting from Class II Roads complying with Regulations 0400-1-15-.79—0400-1-15-.84.

(b) The design shall incorporate consideration of the needs of the specific uses of the road in addition to travel efficiency. To the extent that the anticipated volume of traffic or weight or speed of vehicles to be used requires higher standards than those set forth in Regulation 0400-1-15-.79—0400-1-15-.84, such higher standards shall be incorporated in the design, construction or reconstruction, and maintenance of Class II Roads.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.77 Roads: Class II: Location.

(1) Class II Roads shall be located, insofar as possible, on ridges or on the most stable available slopes to minimize erosion.

(2) No part of any Class II Road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Division.

(3) Stream fords are prohibited unless they are specifically approved by the Division as temporary routes during periods of construction. The fords shall not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using bridges, culverts, or other structures, designed, constructed, and maintained to meet the requirements of Regulation 0400-1-15-.81.

(4) Class II Roads shall be located to minimize downstream sedimentation and flooding.

Authority: T.C.A. Sections 59-8-304, 59-8-311, and 59-8-312.

0400-1-15-.80 Roads: Class II: Design and Construction.

Class II Roads shall be designed and constructed or reconstructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance:

(1) Vertical alignment. A continuous grade with excessive cuts or embankments shall be avoided. Changes of grade shall be made to conform as closely as possible to the existing terrain, and maximum road grades shall be as follows:

(a) The overall grade shall not exceed 1v:10h (10 percent).

(b) The pitch grade shall not exceed 1v:6.5h (15 percent) for any consecutive one thousand (1,000) feet.

(c) The pitch grade exceeding fifteen (15) percent shall not be longer than three hundred (300) feet within any consecutive one thousand (1,000) feet of Class II Roads.

(2) Horizontal alignment. Class II Roads shall have horizontal alignment as consistent with the existing natural topography as possible, and shall provide the alignment required for the performance standards of Regulations 0400–1–15–.78—0400–1–15–.84. The alignment shall be determined in accordance with the anticipated volume of traffic and weight and speed of vehicles to be used. Horizontal and vertical alinement shall be coordinated to ensure that one will not adversely affect the other and to ensure that the road will not cause environmental damage.

(3) Road cuts. Cut slopes shall not be steeper than specifically authorized by the Division, which shall not authorize slopes steeper than 1v:1.5h in unconsolidated materials or 1v:0.25h in rock, except that steeper slopes may be specifically authorized by the Division if geotechnical analysis demonstrates that a minimum safety factor of 1.5 can be maintained.

(a) Topsoil or other materials suitable under Regulation 0400–1–15–.08 shall be placed on all cut slopes of 1v:1.5h or flatter to aid in establishing vegetation and to minimize erosion. Topsoil depth shall be adequate to support vegetation necessary to minimize erosion.

(b) Temporary erosion-control measures shall be implemented during construction to mimimize sedimentation and erosion until permanent control measures can be established.

(4) Road embankments. Embankment sections shall be constructed in accordance with the following provisions:

(a) All vegetative material and topsoil shall be removed from the embankment foundation to increase stability, and no vegetative material or topsoil shall be placed beneath or in any Class II Road embankment.

(b) Where an embankment is to be placed on side slopes exceeding 1:3h (33 percent), the existing ground shall be plowed, stepped, or if in rock, keyed in a manner which increases the stability of the fill. The keyway shall be a minimum of ten (10) feet in width and shall begin at the toe of fill. No material shall be placed below the toe or be allowed to slide below the toe. For slopes of less than 1v:3h (33 percent), the slopes shall be scarified to ensure bonding of the embankment and natural material.

(c) Material containing by volume less than twenty-five (25) percent of rock larger than six (6) inches in greatest dimension shall be spread in successive, uniform layers not exceeding twelve (12) inches in thickness before compaction.

(d) Where the material for an embankment consists of large-size rock, broken stone, or fragmented material that makes placing in twelve (12) inch layers impossible under Paragraph (4)(c) of this Section, the embankment shall be constructed in uniform layers not exceeding in thickness the approximate average size of the rock used, but the layers shall not exceed thirty-six (36) inches in thickness. Rock shall not be dumped in final position, but shall be distributed by blading or dozing in a manner that will ensure proper placement in the embankment, so that voids, pockets, and bridging will be reduced to a minimum. The final layer of the embankment shall meet the requirements of Paragraph (4)(c) of this Section.

(e) Each layer of the embankment shall be completed, leveled, and compacted before the succeeding layer is placed. Embankment material shall be leveled as placed and kept smooth. The successive layers shall be compacted evenly by routing the hauling and leveling equipment over the entire width of the embankment. This procedure shall be continued until no visible horizontal movement of the embankment material is apparent.

(f) Compaction greater than that specified in Paragraph (4)(e) of this Section shall be performed to the extent necessary to ensure stability.

(g) Material shall be placed in an embankment under moisture content conditions which will permit compaction and ensure proper soil cohesion.

(h) Embankment slopes shall not be steeper than 1v:1.5h except that if the embankment material is a minimum of eighty-five (85) percent rock, slopes shall not be steeper than 1v:1.35h if it has been demonstrated to the Division that embankment stability will result. Where rock embankments are constructed, they shall meet the requirements of Paragraph (4)(d) of this Section.

(i) The minimum safety factor for all embankments shall be 1.35, or such higher factor as the Division may specify.

(j) The road surface shall be sloped sufficiently to prevent ponding of water on the surface.

(k) All material used in embankments shall be suitable for use under Paragraphs (4) (a)–(h) of this Section. The material shall be reasonably free of organic material, coal or coal blossom, frozen materials, wet or peat material or natural soils containing organic matter, or any other material considered unsuitable for use in embankment construction by the Division.

(l) Excess or unsuitable material from excavations, as defined in Paragraph (4)(k) of this Section, shall be disposed of in accordance with Regulation 0400–1–15–.34. Acid- and toxic-forming material shall be disposed of in accordance with Regulations 0400–1–15–.19, 0400–1–15–.38, and 0400–1–15–.55.

(m) Topsoil or other material suitable under Regulation 0400–1–15–.08 shall be placed on all embankment slopes of 1v:1.5h or flatter, to aid in establishing vegetation to minimize erosion. Topsoil material depth shall be adequate to support vegetation and to minimize erosion.

(n) Temporary erosion-control measures shall be incorporated during construction to control sedimentation and minimize erosion until permanent control measures can be established.

(5) Topsoil removal. Before initiation of construction or reconstruction of a Class II Road, topsoil and other materials determined under Regulation 0400–1–15–.08, shall be removed from the design roadbed, shoulders, and surfaces where associated structures will be placed, and shall be stored in accordance with Regulation 0400–1–15–.09.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.81 Roads: Class II: Drainage.

(1) General

(a) Each Class II road shall be designed, constructed or reconstructed, and maintained to have adequate drainage, using structures such as ditches in wet areas, cross drains in natural drainageways, surface dips, and stream crossings. The water-control system shall be designed to safely pass the peak run-off from a ten (10) year twenty-four (24) hour precipitation event or a greater event if required by the Division.

(b) Sediment control shall comply with Regulation 0400–1–15–.13 and 0400–1–15–.16.

(2) Ditches and alternative measures for roadbed erosion control. Where required to minimize erosion on the roadbed, ditches shall be designed and constructed in accordance with Regulation 0400–1–15–.74(2). In wet areas or where there is free water, such ditch sections shall be required. For every segment of a Class II Road without drainage ditches which comply with Regulation o0400–1–15.74(2), drainage shall be provided by surface dips. These drainage dips shall be constructed as undulations in the roadway of sufficient height from the hydraulic bottom to the top of the dip to prevent water from running down the surface of the road. Insloped dips shall discharge into a culvert or drop inlet. Outsloped dips shall discharge either

onto the natural ground or onto embankments if a drain is provided. The bottom of the dip shall be rock surfaced to prevent erosion. Dip spacing shall be sufficient to minimize erosion of the road surface.

(3) Culverts and bridges.

(a)

1. Culverts with an end area of thirty-five (35) square feet or less shall be designed to safely pass the ten (10) year, twenty-four (24) hour precipitation event without a head of water at the entrance. Culverts with an end area of greater than thirty-five (35) square feet, and bridges with spans of thirty (30) feet or less, shall be designed to safely pass the twenty (20) year, twenty-four (24) hour precipitation event. Bridges with spans of more than thirty (30) feet shall be designed to safely pass the one hundred (100) year, twenty-four (24) hour precipitation event or larger event as specified by the Division.

2. Drainage pipes and culverts shall be constructed to avoid plugging or collapse, and erosion at inlets and outlets.

3. Culverts shall be covered by compacted fill to a minimum depth of one (1) foot.

4. Culverts shall be designed, constructed, and maintained to sustain the vertical soil pressure, the passive resistance of the road foundation, and the weight of vehicles to be used.

(b) Culverts or dips for road-surface drainage only, shall be constructed in accordance with the following:

1. Unless otherwise authorized or required under Paragraphs (2) or (3) of this Section, culverts and dips shall be spaced as follows:

a. Spacing shall not exceed one thousand (1,000) feet on grades of zero (0) to three (3) percent.

b. Spacing shall not exceed six hundred (600) feet on grades of three (3) to six (6) percent.

c. Spacing shall not exceed four hundred (400) feet on grades of six (6) to ten (10) percent.

d. Spacing shall not exceed two hundred (200) feet on grades of ten (10) percent or greater.

2. Surface dips or culverts at closer intervals than the maximum indicated in Paragraph (3)(b)1. of this section shall be installed if required by the Division as appropriate for erosive properties of the soil or to accommodate flow from small intersecting drainages.

3. Surface dips or culverts may be constructed at greater intervals than the maximum indicated in Paragraph (3)(b)1. of this Section if authorized by the Division upon a finding that greater spacing will not increase erosion.

4. Culverts and the bottoms of drainage dips shall cross the road at not less than a thirty (30) degree angle downgrade.

5. A culvert may be designed to carry less than the peak run-off from a ten (10) year, twenty-four (24) hour precipitation event if the ditch will not overtop and will remain stable.

6. The inlet end of all culverts shall be protected by a rock headwall or other material approved by the Division as adequate protection against erosion of the headwall. The water shall be discharged below the toe of the fill through conduits or in riprapped channels and shall not be discharged onto the fill.

(4) Natural drainage. Natural channel drainageways shall not be altered or relocated for road construction or reconstruction without the prior approval of the Division in accordance with Regulations 0400–1–15–.14 and 0400–1–15–.15. The Division may approve alterations and relocations only if—

(a) the natural channel drainage is not blocked;

(b) no significant degradation occurs to the hydrologic balance; and

(c) there is no adverse impact on adjoining landowners.

(5) Stream crossings. Drainage structures are required for stream-channel crossings. Drainage structures shall not affect the normal flow or gradient of the stream, or adversely affect fish migration or aquatic habitat or related environmental values.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.82 Roads: Class II: Surfacing.

(1) Class II Roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the Division as sufficiently durable for the anticipated volume of traffic and weight and speed of vehicles to be used.

(2) Acid- or toxic-forming substances shall not be used in road surfacing.

(3) Vegetation shall not be cleared for more than the width necessary for road and associated ditch construction, to serve traffic needs and for utilities.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.83 Roads: Class II: Maintenance.

(1) Class II Roads shall be maintained in such a manner that the required or approved design criteria are met throughout the life of the facility including surface and shoulders, parking, side areas, approach structures, erosion-control devices, and such traffic-control devices as are necessary for safe and efficient utilization.

(2) Class II Road maintenance shall include basic custodial care as required to protect the road investment and to prevent damage to adjacent resources. This includes maintenance to control erosion, repair of structures and drainage systems, removal of rocks and debris, replacement of surface, and restoration of the road prism.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.84 Roads: Class II: Restoration.

(1) Unless the Division approves retention of a Class II Road as suitable for the approved postmining land use, immediately after the road is no longer needed for operations, reclamation, or monitoring—

(a) the road shall be closed to vehicular traffic;

(b) the natural drainage patterns shall be restored;

(c) all bridges and culverts shall be removed;

(d) roadbeds shall be ripped, plowed, and scarified;

(e) fill slopes shall be rounded or reduced and shaped to conform the site to adjacent terrain and to meet natural drainage restoration standards;

(f) cut slopes shall be reshaped to blend with the natural contour;

(g) cross drains, dikes, and waterbars shall be constructed to minimize erosion;

(h) terraces shall be constructed as necessary to prevent excessive erosion and to provide long-term stability in cut-and-fill slopes; and

(i) road surfaces shall be covered with topsoil in accordance with Regulation 0400–1–15–.10(2) and revegetated in accordance with Regulation 0400–1–15–.57—0400–1–15–.62.

(2) Unless otherwise authorized by the Division, all road surfacing materials shall be removed, hauled or conveyed, and disposed of under Regulation 0400–1–15.45.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.85 Roads: Class III: General.

(1) Each person who conducts surface mining activities shall design construct or reconstruct, utilize, and maintain Class III Roads and restore the area to meet the requirements of Regulations 0400–1–15–.86—0400–1–15–.91 and to control or minimize erosion and siltation, air and water pollution, and damage to public or private property.

(2) To the extent possible using the best technology currently available, Class III Roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to run-off outside the permit area. Any such contributions shall not be in excess of limitation of state or federal law.

(3) All Class III Roads shall be completely removed and the land affected regraded to the approximate original contour and revegetated in accordance with the requirements of Regulation 0400–1–15–.91, except where Regulation 0400–1–15–.86(7) shall apply.

(4) To the extent that the anticipated volume or weight or speed of vehicles to be used require higher standards than those set forth in Regulations 0400–1–15–.86—0400–1–15–.90, such higher standards shall be incorporated into the design, construction, and reconstruction or maintenance of Class III Roads.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.86 Roads: Class III: Location.

(1) Class III Roads shall be located on ridges or on the most stable available slopes to minimize erosion.

(2) No part of any Class III Road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Division.

(3) Stream fords are prohibited unless they are approved by the Division as temporary routes across ephermeral or intermittent streams that will not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using temporary bridges, culverts, or other structures designed, constructed, and maintained to meet the requirements of Regulation 0400–1–15–.88

(4) Class III Roads shall be located to minimize downstream sedimentation and flooding.

(5) Not later than the date a permit application is submitted to the Division for surface mining activities for which a Class III Road is proposed, the location of the proposed road shall be clearly marked in the field by flags or stakes to enable the Division to perform onsite review.

(6) Class III Roads shall not be located in wet, steep, or unstable areas where complete restoration under Regulation 0400–1–15–.91 cannot be accomplished.

(7) A Class III Road may be constructed in the same alinement as a Class I or Class II Road that is to be constructed on the same location at a later date. This may be permitted if the requirements for the location of the Class I or Class II Road are met, and the construction begins within six (6) months from the time the Class III Road is constructed.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.87 Roads: Class III: Design and Construction.

Field-design methods shall be utilized for Class III Roads.

(1) Vertical alignment. Except where lesser grades are necessary to control site-specific conditions, maximum road grades shall be as follows:

(a) The overall grade shall not exceed 1v:10h (10 percent).

(b) The pitch grade shall not exceed 1v:5h (20 percent).

(c) There shall not be more than one thousand (1,000) consecutive feet of maximum pitch grade.

(2) Horizontal alignment. Class III Roads may meander so as to avoid large growths of vegetation and other natural obstructions.

(3) Road cuts. Sidecast construction may be used.

(4) Road embankments. Compaction on embankments shall be required only to the extent necessary to control erosion and maintain the road.

(5) Topsoil removal. Topsoil shall be removed and stockpiled only where excavation would require replacement of material and redistribution of topsoil for proper revegetation.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.88 Roads: Class III Drainage.

(1) General.

(a) Class III Road drainage shall consist of temporary culverts in flowing streams, wet areas, and in ephemeral channels as necessary to protect the facility during its life and to minimize disturbance of the hydrologic balance.

(b) Sediment control shall comply with Regulations 0400–1–15–.13 and 0400–1–15–.16.

(2) Culverts and bridges. Temporary culverts shall be installed for all flowing drainages and stream crossings. Temporary culverts and bridges shall be sized to safely pass the one (1) year, six (6) hour precipitation event.

(3) Natural drainage. Natural channel drainageways shall not be altered or relocated for the purposes of Class III Road construction.

(4) Stream crossings. Temporary drainage structures are required for crossing permanent streams. Drainage structures shall not affect the normal flow or gradient of the the stream, adversely affect fish migration and aquatic habitat or related environmental values.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.89 Roads: Class III Surfacing.

(1) Class III Roads surfaces shall be adequate for the use of the road.

(2) Acid-or toxic-forming substances shall not be used in road surfacing.

(3) Vegetation shall not be cleared for more than the width necessary to serve traffic needs and for utilities.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.90 Roads: Class III: Maintenance.

(1) Class III Road maintenance shall be sufficient to ensure minimization of erosion for the life of the road.

(2) Class III Roads shall not be used if climatic conditions are such that usage may cause degradation of water quality.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.91 Roads: Class III: Restoration.

Immediately after a Class III Road is no longer needed for operations, reclamation, or monitoring—

(1) the road shall be closed to vehicular traffic;

(2) the natural drainage patterns shall be restored;

(3) all bridges and culverts shall be removed;

(4) roadbeds shall be ripped, plowed, and scarified;

(5) fill slopes shall be rounded or reduced and shaped to conform the site to adjacent terrain and meet natural-drainage restoration standards;

(6) cut slopes shall be reshaped to blend with the natural contour;

(7) cross drains, dikes, and water bars shall be constructed to control erosion; and

(8) road surfaces from which topsoil has been removed shall be covered with topsoil in accordance with Regulation 0400–1–15–.10 (2), and the surface shall be revegetated in accordance with Regulations 0400–1–15–.57—0400–1–15–.62.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.92 Other Transportation Facilities.

Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transportation facilities shall be designed, constructed

or reconstructed, and maintained, and the area restored, to—

(1) prevent, to the extent possible using the best technology currently available—

(a) damage to fish, wildlife, and related environmental values and

(b) additional contributions of suspended solids to streamflow or run-off outside the permit area. Any such contribution shall not be in excess of limitations of state or federal law;

(2) control and minimize diminution or degradation of water quality and quantity;

(3) control and minimize erosion and siltation;

(4) control and minimize air pollution; and

(5) prevent damage to public or private property.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–15–.93 Support Facilities and Utility Installations.

(1) Support facilities required for, or used incidentally to, the operation of the underground mine, including, but not limited to, mine buildings, coal loading facilities at or near the minesite, coal storage facilities, equipment-storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops, and other buildings, shall be designed, constructed or reconstructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property. Support facilities shall be designed, constructed or reconstructed, maintained, and used in a manner which prevents, to the extent possible using the best technology currently available—

(a) damage to fish, wildlife, and related environmental values and

(b) additional contributions of suspended solids to streamflow or run-off outside the permit area. Any such contribution shall not be in excess of limitations of state or federal law.

(2) All underground mining activities shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the Division.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

Chapter 0400–1–16—Special Performance Standards Concurrent Surface and Underground Mining

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0400–1–16–.01 Scope.

This Regulation sets forth the minimum performance standards with which each person who combines surface mining activities with underground mining activities must comply under a variance from the requirement that reclamation efforts proceed as contemporaneously as practicable for specific areas within the permit area.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–16–.02 Objective.

The objective of this Regulation is to ensure the maximum practicable recovery of coal resources and to avoid multiple disturbances of surface lands or waters.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–16–.03 Responsibilities.

(1) The Division shall review and grant or deny requests for variances from the requirements that reclamation efforts proceed as contemporaneously as practicable, in accordance with Regulation 0400–1–6–.08 and this Regulation.

(2) The person who conducts combined surface and underground mining activities shall comply with the provisions of this Regulation.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–16–.04 Applicability.

A variance under this Regulation applies only to those specific areas within the permit area that the person conducting combined surface and underground mining activities has shown to be necessary for implementing the proposed concurrent operations and that the Division has approved in the permit under the provisions of Regulation 0400–1–6–.08. The variance is effective for any particular portion of the permit area only for the time necessary to facilitate the authorized underground mining activities.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–16–.05 Compliance With Variance Terms.

(1) Each person who conducts operations under a variance issued under Regulation 0400–1–6–.08 shall comply with all applicable requirements of these Regulations and the regulatory program, except to the extent that—

(a) a delay in compliance with these requirements is specifically authorized by the variance issued under the permit; and

(b) the delay in compliance is necessary to achieve the purposes for which the variance was granted.

(2) Each person who conducts activities under a variance issued under Regulation 0400–1–6–.08 shall comply with each requirement of the variance as set forth in the permit.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–16–.06 Additional Performance Standards.

In addition to the requirements of Regulations 0400–1–14 and 0400–1–15, each person who conducts combined surface and underground mining activities shall comply with the following: (1) A five hundred (500) foot barrier pillar of coal shall be maintained between the surface and underground mining activities in any one seam. The Division and the Mine Safety and Health Administration, and the Department of Labor may, however, approve a lesser distance, after a finding by the Division that mining at a lesser distance will result in—

(a) improved coal resources recovery;

(b) abatement of water pollution; or

(c) elimination of hazards to the health and safety of the public.

(2) The vertical distance between combined surface and underground mining activities working separate seams shall be sufficient to provide for the health and safety of the workers and to prevent surface water from entering the underground workings.

(3) No combined activities shall reduce the protection provided public health and safety below the level of protection required for those activities if conducted without a variance.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

Chapter 0400–1–17—Special Performance Standards Auger Mining

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0400–1–17–.01 Scope
0400–1–17–.02 Objectives
0400–1–17–.03 Auger Mining: Additional Performance Standards

0400–1–17–.01 Scope.

This Regulation sets forth environmental protection performance standards in addition to those of Regulation 0400–1–14 for surface mining activities involving auger mining.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–17–.02 Objectives.

The objectives of this Regulation are to—

(1) Prevent adverse environmental effects from auger mining; and

(2) Prevent any unnecessary loss of coal reserves.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–17–.03 Auger Mining: Additional Performance Standards.

(1) Any auger mining association with surface mining activities shall be conducted to maximize recoverability of coal reserves remaining after the mining activities are completed. Each person who conducts auger mining operations shall leave areas of undisturbed coal to provide access for removal of those reserves by future underground mining activities, unless the Division determines that the coal reserves have been depleted or are limited in thickness or extent to the point that it will not be practicable to recover the remaining coal reserves. The Division shall make such determination only upon presentation of appropriate technical evidence by the operator.

Undisturbed areas of coal shall be left in unmined sections which—

(a) are a minimum of two hundred fifty (250) feet wide at any point between each group of auger openings to the full depth of the auger hole;

(b) are no more than two thousand five hundred (2,500) feet apart, measured from the center of one section to the center of the next section, unless a greater distance is set forth in the permit application under Regulation 0400–1–6–.09 and approved by the Division; and

(c) for multiple seam mining, shall have a width of at least two hundred fifty (250) feet plus fifty (50) feet for each subjacent workable coal seam. The centers of all unmined sections shall be aligned vertically.

(2) No auger hole shall be made closer than five hundred (500) feet in horizontal distance to any abandoned or active underground mine workings, except as approved in accordance with Regulation 0400–1–14–.40.

(3) In order to prevent pollution of surface and ground water and to reduce fire hazards, each auger hole, except as provided in Paragraph (4) of this Section, shall be plugged so as to prevent the discharge of water from the hole and access of air to the coal, as follows:

(a) Each auger hole discharging water containing toxic-forming or acid-forming material shall be plugged within 72 hours after completion by backfilling and compacting noncumbustible and impervious material into the hole to a depth sufficient to form a water tight seal, or the discharge shall be treated commencing within 72 hours after completion to meet applicable effluent limitations and water quality standards under Regulaton 0400–1–14–.13 until the hole is properly sealed; and

(b) Each auger hole not discharging water shall be sealed as in Paragraph (3) (a) of this Section, to close the opening within thirty (30) days following completion.

(4) An auger hole need not be plugged, if the Division finds—

(a) impoundment of the water which would result from plugging the hole may create a hazard to the environment or public health or safety; and

(b) drainage from the auger hole will not pose a threat of pollution to surface water and will comply with the requirements of Regulation 0400–1–14–.12—0400–1–14–.13.

(5) The Division shall prohibit auger mining, if it determines that—

(a) adverse water quality impacts cannot be prevented or corrected;

(b) fill stability cannot be achieved;

(c) the prohibition is necessary to maximize the utilization, recoverability or conservation of the solid fuel resources or

(d) subsidence resulting from auger mining may disturb or damage powerlines, pipelines, buildings, or other facilities.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

Chapter 0400–1–18—Special Performance Standards Operations on Prime Farmland

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0400–1–18–.07 Prime Farmland: Revegetation

0400–1–18–.01 Scope.

This Regulation sets forth special environmental protection, performance, reclamation, and design standards for surface coal mining and reclamation operations on prime farmland.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–18–.02 Objective.

The objective of this Regulation is to set forth those soil removal, stockpiling, and replacement operational requirements and revegetation and other reclamation standards for prime farmlands to ensure both that the land will have agricultural productive capacity which is equal after mining to pre-mining levels and the land is not lost as an important national resource.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–18–.03 Prime Farmland: Special Requirements.

Surface coal mining and reclamation operations conducted on prime farmland shall meet the following requirements:

(1) A permit shall be obtained for those operations under the requirements of Regulation 0400–1–6–.07.

(2) Soil materials to be used in the reconstruction of the prime farmland soil shall be removed before drilling, blasting, or mining, in accordance with Regulation 0400–1–18–.04 and in a manner that prevents mixing or contaminating these materials with undesirable material. Where removal of soil materials results in erosion that may cause air and water pollution, the Division shall specify methods to control erosion of exposed overburden.

(3) Revegetation success on prime farmlands shall be measured upon the basis of a comparison of actual crop production from the disturbed area, compared to the predetermined target level of crop production appoved by the Division in the permit in accordance with Regulation 0400–1–6–.07 (4)(c).

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–18–.04 Prime Farmland: Soil Removal.

(1) Surface coal mining and reclamation operations on prime farmland shall be conducted to:

(a) separately remove the entire A horizon or other suitable soil materials which will create a final soil having an equal or greater productive capacity than that which existed prior to mining;

(b) separately remove the B horizon of the soil, a combination of B horizon and underlying C horizon, or other suitable soil material that will create a reconstructed soil of equal or greater

productive capacity than that which existed before mining;

(c) separately remove the underlying C horizons, other strata, or a combination of horizons or other strata, to be used instead of the B horizon. When replaced, these combinations shall be equal to, or more favorable for plant growth than, the B horizon.

(2) The minimum depth of soil and soil material to be removed for use in reconstruction of prime farmland soils shall be sufficient to meet the soil replacement requirements of Regulation 0400–1–18–.06 (1).

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–18–.05 Prime Farmland: Soil Stockpiling.

If not utilized immediately, the A horizon or other suitable soil materials specified in Regulation 0400–1–18–.04 (1) (a) and the B horizon or other suitable soil materials specified in Regulations 0400–1–18–.04 (1) (b) and 0400–1–18–.04 (1) (c) shall be stored separately from each other and from spoil. These stockpiles shall be placed within the permit area where they are not disturbed or exposed to excessive water or wind erosion before the stockpiled horizons can be redistributed. Stockpiles in place for more than thirty (30) days shall meet the requirements of Regulation 0400–1–14–.09 or 0400–1–15–.09.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–18–.06 Prime Farmland: Soil Replacement.

Surface coal mining and reclamation operations on prime farmland shall be conducted according to the following:

(1) The minimum depth of soil and soil material to be reconstructed for prime farmland shall be forty-eight (48) inches, or a depth equal to the depth of a subsurface horizon in the natural soil that inhibits root penetration, whichever is shallower. The Division shall specify a depth greater than forty-eight (48) inches, wherever necessary to restore productive capacity due to uniquely favorable soil horizons at greater depths. Soil horizons shall be considered as inhibiting root penetration if their densities, chemical properties, or water supplying capacities restrict or prevent penetration by roots of plants common to the vicinity of the permit area and have little or no beneficial effect on soil productive capacity.

(2) Replace soil material only on land which has been first returned to final grade and scarified according to Regulations 0400–1–14–.56—0400–1–14–.60 or 0400–1–15–.53—0400–1–15–.56, unless site-specific evidence is provided and approved by the Division showing that scarification will not enhance the capability of the reconstructed soil to achieve equivalent or higher levels of yield.

(3) Replace the soil horizons or other suitable soil material in a manner that avoids excessive compaction.

(4) Replace the B horizon or other suitable material specified in Regulation 0400–1–18–.04 (1)(b) and (1)(c) to the thickness needed to meet the requirements of Paragraph (1) of this Section.

(5) Replace the A horizon or other suitable soil materials specified in Regulation 0400–1–18–.04 (1) (a) as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original soil, as determined according to Regulation 0400–1–6–.07 (2) (a) 2., and be replaced in a manner that protects the surface layer from wind and water erosion before it is seeded or planted.

(6) Apply nutrients and soil amendments as needed to quickly establish vegetative growth.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–18–.07 Prime Farmland: Revegetation.

Each person who conducts surface coal mining and reclamation operations on prime farmland shall meet the following revegetation requirements during reclamation;

(1) Following soil replacement, that person shall establish a vegetative cover capable of stabilizing the soil surface with respect to erosion. All vegetation shall be in compliance with the plan approved by the Division under Regulation 0400–1–6–.07 and carried out in a manner that encourages prompt vegetative cover and recovery of productive capacity. The timing and mulching provisions of Regulations 0400–1–14–.64—0400–1–14–.65 shall be met or 0400–1–15–.59—0400–1–15–.60 shall be met.

(2) Within a time period specified in the permit, but not to exceed ten (10) years after completion of backfilling and rough grading, any portion of the permit area which is being used as prime farmland must be used for crops commonly grown, such as corn, soybeans, cotton, grain, hay, sorghum, wheat, oats, barley, or other crops on surrounding prime farmland. The crops may be grown in rotation with hay or pasture crops as defined for cropland. The Division may approve a crop use of perennial plants for hay, where this is a common long-term use of prime farmland soils in the surrounding area. The level of management shall be equivalent to that on which the target yields are based.

(3) Measurement of success in prime farmland revegetation will be determined based upon the techniques approved in the permit by the Division under Regulation 0400–1–6–.07. As a minimum, the following standards shall be met:

(a) Average annual crop production shall be determined based upon a minimum of three (3) years data. Crop production shall be measured for the three (3) years immediately prior to release of bond according to Section 0400–1–10 of the Regulations.

(b) Adjustment for weather-induced variability in the annual mean crop production may be permitted by the Division.

(c) Revegetation on prime farmland shall be considered a success when the adjusted three (3) year average annual crop production is equivalent to, or higher than, the predetermined target level of crop production specified in the permit in accordance with Regulation 0400–1–6–.07 (4) (c).

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

Chapter 0400–1–19—Special Performance Standards Mountaintop Removal

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0400–1–19–.03 Mountaintop Removal: Performance Standards

0400–1–19–.01 Scope.

This Regulation sets forth special environmental protection performance, reclamation, and design standards for surface coal mining activities constituting mountaintop removal mining.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–19–.02 Objectives.

The objectives of this Regulation are to—

(1) enhance coal recovery;

(2) reclaim the land to equal or higher postmining use; and

(3) protect and enhance environmental and other values protected under the Act and this Regulation.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–19–.03 Mountaintop Removal: Performance Standards.

(1) Surface coal mining activities may be conducted under a variance from the requirement of Regulation 0400–1–14 for restoring affected areas to their approximate original contour, if—

(a) the Division grants the variance under a permit, in accordance with Regulation 0400–1–6–.04

(b) the activities involve the mining of an entire coal seam running through the upper fraction of a mountain, ridge, or hill, by removing all of the overburden and creating a level plateau or gently rolling contour with no highwalls remaining;

(c) an industrial, commercial, agricultural, residential, or public facility (including recreational facilities use) is proposed and approved for the affected land;

(d) the alternative land-use requirements of Regulation 0400–1–14–.71 are met;

(e) all applicable requirements of the Act and Regulations, other than the requirement to restore affected areas to their approximate original contour, are met;

(f) an outcrop barrier of sufficient width, consisting of the toe of the lowest coal seam, and its associated overburden are retained to prevent slides and erosion, except that the Division may permit an exemption to the retention of the coal barrier requirement if the following conditions are satisfied:

1. the proposed mine site was mined prior to May 3, 1978, and the toe of the lowest seam has been removed; or

2. a coal barrier adjacent to a head-of-hollow fill may be removed after the elevation of a head-of-hollow fill attains the elevation of the coal barrier if the head-of-hollow fill provides the stability otherwise ensured by the retention of a coal barrier:

(g) the final graded slopes on the mined area are less than 1 vertical to 5 horizontal, so as to create a level plateau or gently rolling configuration, and the outslopes of the plateau do not exceed 1 vertical to 2 horizontal except where engineering data substantiates, and the Director finds, in writing, and includes in the permit under Regulation 0400–1–6–.04, that a minimum static safety factor of 1.5 will be attained;

(h) the resulting level or gently rolling contour is graded to drain inward from the outslope, except at specified points where it drains over the out-slope in stable and protected channels. The drainage shall not be through or over a valley or head-of-hollow fill;

(i) natural watercourses below the lowest coal seam mined are not damaged;

(j) all waste and acid-forming or toxic-forming materials, including the strata immediately below the coal seam, are covered with non-toxic spoil to prevent pollution and achieve the approved postmining land use; and

(k) spoil is placed on the mountaintop bench as necessary to achieve the postmining land use approved under Paragraphs (1)(c) and (1)(d) of this Regulation. All excess spoil material not retained on the mountaintop shall be placed in accordance with Regulations 0400–1–14–.23 and 0400–1–14–.36—0400–1–14–.39.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

Chapter 0400–1–20—Special Performance Standards Operations on Steep Slopes

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0400–1–20–.06 Steep Slopes: Multiple Seam

0400–1–20–.01 Scope.

This Regulation sets forth special, additional environmental protection performance, reclamation, and design standards for surface coal mining and reclamation operations conducted on step slopes, meaning any slope of twenty (20) degrees or more.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–20–.02 Objective.

The objective of this Regulation is to ensure adequate environmental protection during surface coal mining and reclamation operations on steep slopes.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–20–.03 Applicability.

(1) Any surface coal mining and reclamation operations on steep slopes shall meet the requirements of this Regulation.

(2) The standards of this Regulation do not apply to mining conducted on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominately flat area, or to operations covered by Regulation 0400–1–18.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–20–.04 Steep Slopes: Performance Standards.

Surface coal mining and reclamation operations subject to this Regulation shall comply with requirements of Regulations 0400–1–2, and 0400–1–3, and the following, except to the extent a variance is approved under Section 0400–1–20–.05:

(1)

(a) The person engaged in surface coal mining and reclamation operations shall prevent the following materials from being placed or allowed to remain on the downslope:

1. spoil;

2. waste materials, including waste mineral matter;

3. debris, including that from clearing and grubbing of haul road construction; and

4. abandoned or disabled equipment;

(b) Nothing in this subsection shall prohibit the placement of material in road embankments located on the downslope, so long as the material used and embankment design comply with the requirements of Regulations 0400–1–14–.72—0400–1–14–.93 or 0400–1–15–.71—0400–15–.92 and the material is moved and placed in a controlled manner.

(2) The highwall shall be completely covered with compacted spoil and the disturbed area graded to comply with the provisions of Regulation 0400–1–14–.56—0400–14–.61 or 0400–1–15–.53—0400–1–15–.56, including, but not limited to, the return of the site to the approximate original contour.The person who conducts the surface coal mining and reclamation operation must demonstrate to the Division, using standard geotechnical analysis, that the minimum static factor of safety for the stability of all portions of the reclaimed land is at least 1.3.

(3) Land above the highwall shall not be disturbed, unless the Division finds that the disturbance facilitates compliance with the requirements of this Regulation.

(4) Material in excess of that required by the grading and Backfilling provisions of Paragraph (2) of this Section shall be disposed of in accordance with the requirements of Regulations 0400–1–14–.36—0400–1–14–.39 or 0400–1–15–.34—0400–1–15–.37.

(5) Woody materials shall not be buried in the backfilled area unless the Division determines that the proposed method for placing woody material beneath the highwall will not deteriorate the stable condition of the backfilled

area as required in Regulation 0400–1–20–.04 (2). Woody materials may be chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and approved by the Division.

(6) Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the Division as stable and not subject to erosion.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–20–.05 Steep Slopes: Limited Variances.

Persons may be granted variances from the approximate original contour requirements of Regulation 0400–1–20–.04 (2) for steep slope surface coal mining and reclamation operations, if the following standards are met and a permit incorporating the variance is approved under Regulation 0400–1–6–.06.

(1) The highwall shall be completely backfilled with spoil material in a manner which results in a static factor of safety of at least 1.3 using standard geotechnical analyses.

(2) The watershed control of the area within which the mining occurs shall be improved by reducing the peak flow from precipitation or thaw and reducing the total suspended solids or other pollutants in the surface water discharge during precipitation or thaw. The total volume of flow during every season of the year shall not vary in a way that adversely affects the ecology of any surface water or any existing or planned public or private use of surface or ground water.

(3) Land above the highwall may be disturbed only to the extent that the Division deems appropriate and approves as necessary to facilitate compliance with the provisions of this Regulation and if the Division finds that the disturbance is necessary to—

(a) blend the solid highwall and the backfilled material;

(b) control surface run-off; or

(c) provide access to the area above the highwall.

(4) The landowner of the permit area has requested, in writing, as part of the permit application under Regulation 0400–1–6–.06 that the variance be granted.

(5) The operations are conducted in full compliance with a permit issued in accordance with Regulation 0400–1–6–.06.

(6) Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the Act and this Regulation shall be placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with Regulation 0400–1–14–.36—0400–1–14–.39 or 0400–1–15–.34—0400–1–15–.37 and Regulation 0400–1–14–.56—0400–1–14–.57 or 0400–1–15–.53—0400–1–15–.54.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–20–.06 Steep Slopes: Multiple Seam.

In multiple-seam steep slope affected areas, spoil not required to reclaim and restore the permit area may be placed on a pre-existing bench, if approved by the Division and if the following requirements are met:

(1) All excess spoil must be hauled, placed, and retained on the solid bench.

(2) The spoil must be graded to the most moderate slope so as to eliminate the existing highwall to the extent possible with the available spoil.

(3) The fill must comply with Regulation 0400–1–14–.36 or 0400–1–15–.36 and the other requirements of this Regulation.

(4) The bench on which the spoil is to be placed must have been created and abandoned due to coal mining prior to August 3, 1977.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

Chapter 0400–1–21—Special Performance Standards; Coal Tipples and Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine

Table of Contents

0400–1–21–.01 Scope
0400–1–21–.02 Applicability
0400–1–21–.03 Coal Tipples and Coal Processing Plants: Performance Standards

0400–0–21–.01 Scope.

This Regulation sets forth requirements for coal tipples and coal processing plants and support facilities not located within the permit area for a mine, to ensure the protection of public property and the environment, in accordance with the Act.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

0400–1–21–.02 Applicability.

Any person who operates a coal tipple, a coal processing plant or other support facility which is not located within the permit area for a specific mine, shall obtain a permit in accordance with Regulation 0400–1–2 and Regulation 0400–1–14. The specific plans will be reviewed for the relevance of all sections of these Regulations. Certain sections may be determined to be inappropriate by the Director according to the nature of the disturbance and the operation of the facility.

Authority: T.C.A. Sections 59–8–303, 59–8–304, and 59–8–311.

0400–1–21–.03 Coal Tipples and Coal Processing Plants: Performance Standards.

Construction, operation, maintenance, modification, reclamation, and removal activities at operations covered by this Regulation shall comply with the following:

(1) Signs and markers for the coal processing plant, coal tipple, coal processing waste disposal area, and other support facilities shall comply with Regulation 0400–1–14–.03.

(2) Roads, transport, and associated structures shall be constructed, maintained, and reclaimed in accordance with Regulation 0400–1–14–.72—0400–1–14–.94.

(3) Any stream or channel realignment shall comply with Regulation 0400–1–14–.15.

(4) If required by the Division, any disturbed area related to the coal processing plant, coal tipple and other support facilities shall have sediment control structures, in compliance with Regulation 0400–1–14.16 and 0400–1–14–.17, and all discharges from these areas shall meet the requirements of Regulation 0400–1–14–.12—0400–1–14–.13 and any other applicable state or federal law.

(5) Permanent impoundments associated with coal tipples and coal processing plants shall meet the requirements of Regulation 0400–1–14–.20 and 0400–1–14–.27. Dams constructed of or impounding coal processing waste shall comply with Regulation 0400–1–14–.49—0400–1–14–.51.

(6) Use of water wells shall comply with Regulation 0400–1–14–.24, and water rights shall be protected in accordance with Regulation 0400–1–14–.25.

(7) Disposal of coal processing waste, solid waste, and any excavated materials shall comply with Regulation 0400–1–14–.41—0400–1–14–.47, Regulation 0400–1–14–.48, and 0400–1–14–.36—0400–1–14–.39, respectively.

(8) Discharge structures for diversions and sediment control structures shall comply with Regulation 0400–1–14–.18.

(9) Air pollution control measures associated with fugitive dust emissions shall comply with Regulation 0400–1–14–.52.

(10) Fish, wildlife and related environmental values shall be protected in accordance with Regulation 0400–1–14–.53.

(11) Slide areas and other surface areas shall comply with Regulation 0400–1–14–.54.

(12) Adverse effects upon or resulting from nearby underground coal mining activities shall be minimized by appropriate measures including, but not limited to, compliance with Regulations 0400–1–14–.26 and 0400–1–14–.40.

(13) Reclamation shall include proper topsoil handling procedures, revegetation, and abandonment, in accordance with Regulations 0400–1–14.27, 0400–1–14–.55—0400–1–14–.61, 0400–1–14–.62—0400–1–14–.68, and 0400–1–14–.69—0440–1–14–.71.

(14) Conveyors, buildings, storage bins or stockpiles, water treatment facilities, water storage facilities, and any structure or system related to the coal tipple and coal processing plant shall comply with Regulation 0400–1–14.

(15) Any coal tipple or processing plant or associated structures located on prime farmland shall meet the requirements of Regulation 0400–1–18.

Authority: T.C.A. Sections 59–8–304 and 59–8–311.

Chapter 0400–1–22—Special Performance Standards—In Situ Processing

Table of Contents

0400–1–22–.01 Scope
0400–1–22–.02 Objectives
0400–1–22–.03 In Situ Processing: Performance Standards
0400–1–22–.04 In Situ Processing: Monitoring

0400–1–22–.01 Scope.

This Regulation sets forth special environmental protection performance, reclamation and design standards for in situ processing activities.

Authority: T.C.A. Sections 59–8–304, 59–8–311 and 59–8–312.

0400–1–22–.02 Objectives.

This Regulation is intended to ensure that all in situ processing activities are conducted in a manner which preserve and enhances environmental values in accordance with the Act. This Regulation provides additional performance, reclamation, and design standards to reflect the nature of in situ processing.

0400–1–22–.03 In Situ Processing: Performance Standards.

(1) The person who conducts in situ processing activities shall comply with Regulation 0400–1–14, 0400–1–15 and this Regulation.

(2) In situ processing activities shall be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:

(a) Avoiding discharge of fluids into holes or wells, other than as approved by the Division.

(b) Injecting process recovery fluids only into geologic zones or intervals approved as production zones by the Division.

(c) Avoiding annular injection between the wall of the drill hole and the casing; and

(d) Preventing discharge of process fluid into surface waters.

(3) Each person who conducts in situ processing activities shall submit for approval as part of the application for permit under Regulation 0400–1–6–.11 and follow, after approval, a plan that ensures that all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard and caused by the mining and recovery process are promptly treated, confined, or disposed of, in a manner that prevents contamination of ground and surface waters, damage to fish, wildlife and related environmental values, and threats to the public health and safety.

(4) Each person who conducts in situ processing activities shall prevent flow of the process recovery fluid:

(a) horizontally beyond the affected area identified in the permit; and

(b) vertically into overlying or underlying aquifers.

(5) Each person who conducts in situ processing activities shall restore the quality of affected ground water in the mine plan and adjacent area, including ground water above and below the production zone, to the approximate premining levels or better, to ensure that the potential for use of the ground water is not diminished.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

0400–1–22–.04 In Situ Processing: Monitoring.

(1) Each person who conducts in situ processing activities shall monitor the quality and quantity of surface and ground water and the subsurface flow and storage characteristics, in a manner approved by the Division under Regulation 0400–1–15–.22 to measure change in the quantity and quality of water in surface and ground water systems in the mine plan and in adjacent areas.

(2) Air and water quality monitoring shall be conducted in accordance with monitoring programs approved by the Division as necessary according to appropriate federal and state air and water quality standards.

Authority: T.C.A. Sections 59–8–304, 59–8–311, and 59–8–312.

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federal register

Friday
May 18, 1984

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

Nebraska: NE84–4035

Modifications to General Wage Determinations Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California:	
CA83–5119	Sept. 16, 1983.
CA84–5001	Mar. 30, 1984.
Illinois: IL83–2052	July 1, 1983.
Kansas:	
KS84–4026	Apr. 27, 1984.
KS83–4064	Sept. 2, 1983.
KS83–4063	Do.
Missouri: MO84–4025	Apr. 27, 1984.
Nevada: NV83–5121	Sept. 23, 1983.
Pennsylvania: PA84–3012	May 4, 1984.
West Virginia: WV83–3022	Nov. 18, 1983.

Supersedeas Decision to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

California: CA83–5118(CA84–5007)	Sept. 16, 1983.
Michigan: MI83–2023(MI84–5013)	Mar. 18, 1983.
Oklahoma:	
OK83–4068(OK84–4034)	Sept. 16, 1983.
OK83–4067(OK84–4033)	Do.
Nevada: NV84–5002(NV84–5012)	Feb. 10, 1984.
New Mexico: NM83–4071(NM84–4027)	Oct. 7, 1983.

Cancellation of General Wage Determination Decisions

The general wage decision listed below is cancelled. Agencies with construction projects pending to which the cancelled decision would have been applicable should utilize the project determination procedure by submitting Form SF–308. See Regulations Part 1 (29 CFR), § 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.6(c)(2)(i)(A), the incorporation of the cancelled decision in contract specifications, the opening of bids is within ten (10) days of this notice, need not be affected.

AL83–1008—Mobile County, Alabama, dated February 18, 1983 in 48 FR 7365—Building Construction.

Signed at Washington, D.C. this 11th day of May 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510–27–M

	Basic Hourly Rates	Fringe Benefits
DECISION #CA83-5119-MOD#3		
(48 FR 41702-September 16, 1983)		
San Diego, California		
Change:		
Plumbers; Pipefitters; Steamfitters; Air Condition, Refrigeration	$21.38	$7.62
Tile Marble and Terrazzo Setters	17.35	4.40
DECISION #CA84-5001-MOD#2		
(49 FR 12873-March 30, 1984)		
Alameda, Alpine, Amador, Butte, Calaveras ... Counties, etc. California		
Change:		
Brick Tenders:		
Area 2	16.23	4.85
Divers:		
Divers	31.63	6.105
Stand-by Divers	19.38	6.105
Electricians:		
Area 9:		
Electricians	22.85	4.74+3%
Cable Splicers	25.14	4.74+3%
Marble Finishers	14.81	4.82
Power Equipment Operators:		
Dredging - Schedule I		
Clamshell and Dipper Dredging (New Construction):	Area 1	Area 2
Group 1	14.30	15.63
Group 2	15.65	16.98
Group 3	17.01	18.34
Group 4	19.68	21.01
Group 4-A	20.08	21.41
	Area 3	Area 4
Group 1	16.02	16.42
Group 2	17.37	17.77
Group 3	18.73	19.13
Group 4	21.40	21.80
Group 4-A	21.80	22.20
Fringe Benefits remain at $8.56		
Soft Floor Layers:		
Area 3	17.69	5.66
Tile Finishers	14.81	4.82
Tile Setters:		
Area 1	22.10	6.68
Omit:		
Drywall Installers/Lathers:		
Drywall Installer; Lathers	20.12	6.225
Residential Drywall; Lather:		
Area 1	13.57	6.225
Add:		
Boilermakers - Blacksmith (storage tank erection)	17.25	4.00
Boilermaker - Blacksmith (storage tank repair)	16.05	4.00
Drywall Installers/Lathers (non-residential):		
Area 1	20.30	6.485
Area 2	17.18	6.485
Drywall Installers/Lathers (Residential)		
Area 1	13.57	6.225
Area Descriptions:		
Drywall Installer/Lathers:		
Non-Residential:		
Area 1: Alameda, Contra Costa, Marin, Monterey, Napa, San Mateo, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma Counties		
Area 2: Remainder of Counties		
Drywall Installers/Lathers Residential:		
Area 1: Calaveras, Mariposa, Merced, Tuolumne Counties		

DECISION NO. IL83-2052 - Mod #7	Basic Hourly Rates	Fringe Benefits
(48 FR 30576 - July 1, 1983)		
Adams, Bond, Boone, Brown, Bureau, Calhoun, Carroll, Cass, Clinton, DeKalb, Fulton, Greene Hancock, Henderson, Henry, Jersey, JoDaviess, Knox, LaSalle Lee, Livingston, Logan, McDonough, McLean, Macoupin, Marshall Mason, Menard, Mercer, Monroe, Montgomery, Morgan, Ogle, Pike, Putnam, Randolph, Rock Island, Schuyler, Scott, Stark, Stephenson, Warren, Washington, Whiteside, Winnebago, and Woodford Counties, Illinois		
CHANGE:		
Glaziers:		
Area 3	$14.53	$2.77
Area 4	13.50	2.27
Painters:		
Area 2:		
Brush	15.01	1.86
Taping	15.26	1.86
Spray & Blast	16.01	1.86
Roofers:		
Area 3	16.97	1.93
Laborers:		
Area 24:		
Class 1	13.10	2.915
Class 2	13.35	2.915
Area 29:		
Unskilled	14.43	2.15
Semi Skilled	14.63	2.15
Skilled	14.83	2.15
Area 30:		
Unskilled	14.23	2.35
Semi skilled	14.43	2.35
Skilled	14.63	2.35
Area 31:		
Unskilled	13.70	2.55
Semi Skilled	13.90	2.55
Skilled	14.10	2.55
Area 32:		
Unskilled	13.73	2.85
Semi Skilled	13.93	2.85
Skilled	14.13	2.85
Area 33:		
Unskilled	13.51	3.07
Semi Skilled	13.71	3.07
Skilled	13.91	3.07

DECISION #MO84-4025-MOD#1	Basic Hourly Rates	Fringe Benefits
(49 FR 18220-April 27, 1984)		
Cass, Clay, Jackson, Platte, Ray, Henry, Johnson & Lafayette Cos., Missouri; Johnson & Wyandotte Cos., Kansas		
OMIT:		
Classification Definitions		
Truck Drivers (Site Preparation)		
Group I		
Mechanics & Welders		
Group V		
Oilers; greasers		
ADD:		
Classification Definitions		
Truck Drivers (Site Preparation)		
Group I		
Mechanics & Welders - field		
Group V		
Oilers; greasers - field		

MODIFICATIONS P. 3

DECISION NO. KS84-4026 -	Basic Hourly Rates	Fringe Benefits
MOD. #1		
(49 FR 18217 - April 27, 1984)		
Douglas, Jefferson, Leavenworth, Miami & Shawnee Counties, Kansas		
Change:		
Truck Drivers Zone 1:		
Leavenworth & Miami Cos.:		
Group 1	$13.82	$4.00
Group 2	13.67	4.00
Group 3	13.36	4.00
Group 4	13.16	4.00
Group 5	12.94	4.00
Truck Drivers Zone 1:		
Leavenworth & Miami Cos.:		
Classifications		
Definitions:		
Group 1: Mechanics and Welders - Field		
Group 2: A Frame Low Boy-Boom Truck Driver		
Group 3: Insley Wagons; Dump Trucks, Excavating, 5 cu. yds. and over; Dumpsters; Half-Tracks; Speedace; Euclids and similar Excavating Equipment; Material Truck, Tandem Two Teams; Semi-Trailers; Winch Truck-Fork Trucks; Distributor Drivers and Operators; Agigator and Transit Mix; Tank Wagon Drivers; Tandem or Semi.		
Group 4: One Team; Station Wagons; Pick-up Trucks; Material Trucks, Single Axle; Tank Wagon Drivers, Single Axle.		
Group 5: Oilers and Greasers-Field		

DECISION NO. KS83-4064 -	Basic Hourly Rates	Fringe Benefits
MOD. #4		
(48 FR 40087 - Sept. 2, 1983)		
Sedgwick County, Kansas		
Change:		
Tile, Marble, & Terrazzo Setters	$13.40	

DECISION NO. KS83-4063 -	Basic Hourly Rates	Fringe Benefits
MOD. #5		
(48 FR 40085 - Sept. 2, 1983)		
Shawnee County, Kansas		
Change:		
Painters (Building:		
Brush, drywall, taping	$13.60	$1.25
Spray, Sandblasting	14.10	1.25
Painters (Residential)	10.50	1.25

DECISION #NV83-5121-MOD #4	Basic Hourly Rates	Fringe Benefits
(48 FR 43532-September 23, 1983)		
Clark County (does not include the Nevada test site), Nevada		
Change:		
Asbestos Workers	$20.30	$4.48
Power Equipment Operators: (Except Piledriving and Steel Erection):		
Fringe Benefits to read $7.25		
Sheet Metal Workers	20.02	5.82

MODIFICATIONS P. 4

DECISION NO. PA84-3012 -	Basic Hourly Rates	Fringe Benefits
MOD. #1		
(49 FR 19200 - May 4, 1984)		
Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania		
CHANGE:		
ELECTRICIANS		
Zone 1		
Commercial	18.67	28%
Residential up to and including 4 stories	17.50	27%
PAINTERS		
Zone 2		
Commercial, Brush	15.38	3.40
Commercial, Spray	15.88	3.40
ROOFERS		
All other work:	19.57	2.93+h
Mechanic II (for all other work) - Handles and transports all materials, tools and equipment; clean-up debris	8.25	2.93+h
SHEET METAL WORKERS	18.72	4.95
BUILDING CONSTRUCTION		
TRUCK DRIVERS		
CLASS I	12.05	2.8725 +k+1
CLASS II	12.15	2.8725 +k+1
CLASS III	12.35	2.8725 +k+1
TRUCK DRIVERS: HEAVY & HIGHWAY INCLUDING SITE PREPARATION, PAVING & UTILITIES ON BUILDING CONSTRUCTION		
CLASS 1	11.90	2.8725 +o+p
CLASS 2	12.00	2.8725 +o+p
CLASS 3	12.20	2.8725 +o+p

DECISION NO. WV83-3022 -	Basic Hourly Rates	Fringe Benefits
MOD. #7		
(48 FR 52547 - November 18, 1983)		
Statewide West Virginia excluding the counties of Berkley, Jefferson and Morgan.		
CHANGE:		
SPRINKLER FITTERS	16.67	3.23

NEW DECISION

STATE: Nebraska COUNTIES: Cass, Douglas & Sarpy
DECISION NO.: NE84-4035 DATE: Date of Publication
DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden-type apartments up to and including 4 stories.

	BASIC HOURLY RATES	FRINGE BENEFITS
BRICK & BLOCK MASONS	$11.79	
CARPENTERS	12.80	2.10
CEMENT MASONS	12.02	2.45
DRYWALL:		
Hanger	9.43	
Finisher	9.92	
ELECTRICIANS:		
Not to exceed 3 stories	11.33	3⅛ + .55
Over 3 stories	15.27	
INSULATORS	11.21	
IRONWORKERS	13.00	2.00
LABORERS	8.63	
PAINTERS	10.62	
PLASTERERS	16.21	
PLUMBERS & PIPEFITTERS	12.46	
ROOFERS	9.06	
SHEET METAL WORKERS	11.89	1.34
TRUCK DRIVERS	10.27	
POWER EQUIPMENT OPERATORS:		
Loader	13.49	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: CALIFORNIA COUNTIES: Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura
DECISION NUMBER: CA84-5007 DATE: Date of Publication
Supersedes Decision No. CA83-5118 dated September 16, 1983 in 48 FR 41695
DESCRIPTION OF WORK: Building; Heavy (excluding Water Well Drilling and, in Kern County, excluding Oil Well Drilling); Highway; Residential (excluding Inyo and Mono Counties); Dredging

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$21.54	$4.92
BOILERMAKERS	21.39	3.96
BRICKLAYERS: STONEMASONS:		
Area 1	19.09	3.59
Area 2	17.19	4.11
Area 3	20.50	3.52
Area 4	19.25	4.15
Area 5	17.40	4.56
Area 6	17.72	4.46
Area 7	20.75	2.97
BRICK TENDERS	13.47	7.53
CARPENTERS:		
Area 1:		
Carpenters; Cabinet Installers; Insulation Installers	18.575	6.745
Saw Filers	18.655	6.745
Table Power Saw Operator	18.675	6.745
Bridge or Dock Carpenters; Derrick Bargeman and Rockslinger	18.705	6.745
Hardwood Floor Layer and Acoustical Installer	18.775	6.745
Pneumatic Nailer or Power Stapler	18.825	6.745
Millwrights	18.075	6.745
Area 2:		
Carpenters; Cabinet Installers; Insulation Installers	16.575	6.745
Saw Filers	16.655	6.745
Table Power Saw Operator	16.675	6.745
Bridge or Dock Carpenters; Derrick Bargeman and Rockslinger	16.705	6.745

	Basic Hourly Rates	Fringe Benefits
CARPENTERS: (Cont'd)		
Area 2: (Cont'd)		
Hardwood Floor Layer and Acoustical Installer	$16.775	6.745
Pneumatic Nailer or Power Stapler	16.825	6.745
Millwrights	17.075	6.745
CEMENT MASONS:		
Area 1:		
Cement Masons	18.56	6.50
Cement Floating and Troweling Machine Operators	18.81	6.50
Area 2:		
Cement Masons	16.56	6.50
Cement Floating and Troweling Machine Operators	16.81	6.50
DIVERS:		
Diver, Wet	37.84	6.53
Diver, Stand-by	18.92	6.53
Diver, Tender	17.92	6.53
DRYWALL INSTALLERS/ LATHERS	18.06	6.56
ELECTRICIANS:		
Area 1:		
Electricians	23.15	3.78+ 3%
Cable Splicers	23.60	3.78+ 3%
Sound Installers	16.47	1.46+ 3%
Utility Technicians (covers street lights, traffic signals, and underground systems in streets and/or established easements)	16.50	0.47+ 3%
Area 2:		
Electricians	20.15	4.55+ 3%

DECISION NO. CA84-5007	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS: (Cont'd)		
Area 2: (Cont'd)		
Cable Splicers	$22.17	$4.55+ 3%
Residential Electricians	11.40	2.00+ 3%
Area 3:		
Electricians	23.00	4.65+ 3%
Cable Splicers	23.60	4.65+ 3%
Sound Technician	16.95	2.25+ 3%
Area 4:		
Electrician	22.88	3.55+ 3%
Cable Splicer	23.93	3.55+ 3%
Area 5:		
Electrician	17.79	4.81+ 3%
Cable Splicers	18.29	4.81+ 3%
Area 6:		
Electrician	20.80	5.10+ 3%
Cable Splicers	21.30	5.10+ 3%
Area 7:		
Electrician	22.23	3.36+ 3%
Cable Splicers	24.45	3.36+ 3%
Residential Electicians	11.40	3.36+ 3%
Area 8:		
Electricians	23.13	3.75+ 3%
Cable Splicers	23.63	3.75+ 3%
Area 9:		
Electrician	23.11	4.97+ 3%
Cable Splicer	25.42	4.97+ 3%
Area 10:		
Electrician	26.88	3.75+ 3%
Cable Splicer	28.38	3.75+ 3% A
Area 11:		
Electricians	23.90	4.55+ 3%
Cable Splicers	25.92	4.55+ 3%

Page 2

DECISION NO. CA84-5007	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS: (Cont'd)		
Area 11: (Cont'd)		
Residential Electrician	$12.40	$2.00+ 3%
ELEVATOR CONSTRUCTORS:		
Area 1:		
Mechanics	22.74	3.00+a
Helpers	15.92	3.00+a
Probationary Helpers	11.37	
Area 2:		
Mechanics	28.35	3.00+a
Helpers	19.845	3.00+a
Probationary Helpers	14.175	
GLAZIERS:		
Area 1	17.58	6.19
Area 2	17.87	3.15
IRONWORKERS:		
Fence Erectors	16.41	8.53
Structural, Ornamental, Reinforcing	17.30	8.53
IRRIGATION and LAWN SPRINKLERS	15.00	39%
LINE CONSTRUCTION:		
Area 1:		
Groundman	17.41	3.65+ 4%
Lineman	22.61	3.65+ 4%
Cable Splicers	22.91	3.65+ 4%
Area 2:		
Groundman	15.11	4.40+ 4%
Lineman	20.15	4.40+ 4%
Cable Splicers	22.17	4.40+ 4% 4%
Area 3:		
Groundman	14.73	2.28+ 3%
Lineman; Equipment Operators	18.09	2.28+ 3%
Area 4:		
Lineman	23.00	4.65+ 3%
Cable Splicers	23.60	4.65+ 3%
Groundman	17.25	4.65+ 3%
Area 5:		
Lineman	18.22	4.70+ 3%
Area 6:		
Groundman 1	13.17	3.78+ 3%

DECISION NO. CA84-5007	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION: (Cont'd)		
Area 7:		
Groundman	16.67	3.36+ 3%
Lineman; Equipment Operators	22.23	3.36+ 3%
Cable Splicers	24.45	3.36+ 3%
Area 8:		
Groundman	17.69	4.97+ 3%
Lineman; Equipment Operators	23.11	4.97+ 3%
Cable Splicers	25.42	4.97+ 3%
Area 9:		
Groundman	21.53	3.15+ 4%
Lineman; Equipment Operators	27.45	3.15+ 4%
Cable Splicers	28.95	3.15+ 4%
Area 10:		
Groundman	18.86	4.40+ 4%
Lineman	23.90	4.40+ 4%
Cable Splicers	25.92	4.40+ 4%
Area 11:		
Groundman	17.78	3.15+ 4%
Lineman; Equipment Operators	23.70	3.15+ 4%
Cable Splicers	25.20	3.15+ 4%
MARBLE SETTERS:		
Area 1	14.89	5.96
Area 2	18.50	2.95
MARBLE FINISHERS:		
Area 1	14.14	3.30
MARBLE, TERRAZZO, TILE FINISHERS:		
Area 2	14.62	3.70
PAINTERS:		
Area 1:		
Brush; Painter Burners	18.37	4.67
Paperhangers	18.87	4.67

Page 3

DECISION NO. CA84-5007	Basic Hourly Rates	Fringe Benefits
PAINTERS: (Cont'd)		
Area 1: (Cont'd)		
Sandblaster; Iron, Steel and bridge (Swing Stage)	19.37	4.67
Sheet Rock Tapers	19.37	4.67
Brush (Swing Stage); Spray	18.62	4.67
Steeplejack	20.02	4.67
Area 2:		
Brush	18.27	4.68
Brush Painter, Structural Steel; Paint Burner	18.39	4.68
Swing Stage, under 13 Stories; Sandblaster; Pressure Roller Operator; Paperhanger	18.52	4.68
Swing Stage, over 13 Stories	18.64	4.68
Paste Machine Operator	18.77	4.68
Spray Painter; Steeplejack	19.52	4.68
Taper	19.31	4.68
Area 3:		
Brush	14.90	4.12
Brush or Roller (Swing Stage); Paperhangers; Tapers (Sheet Rock)	15.40	4.12
Spray; Sandblaster	15.90	4.12
Steeplejack	16.90	4.12
Area 4:		
Brush; Pot Tender	18.48	4.14
Paperhangers; Paste Machine Operators; Iron and Steel	18.73	4.14
Spray; Taper; Sandblaster	18.98	4.14
Sign Painter	19.13	4.14
Iron and Steel Spray Painter	19.23	4.14
Steeplejack	19.48	4.14
Drywall Taper and Spray Texture	19.81	4.14
High Iron & Steel Construction, Bridges over 30 Ft.:		
Brush; Steeplejack (brush)	20.23	3.61
Steel, Sandblaster, Waterblaster, Power Cleaning, Steam Cleaning		
Steeplejack (spray)	20.73	3.61

DECISION NO. CA84-5007	Basic Hourly Rates	Fringe Benefits
PAINTERS: (Cont'd)		
Area 4: (Cont'd)		
Parking Lot Striping Work and/or Highway Markers:		
Traffic Delineating	14.48	1.65+b
Device Applicator	14.48	1.65+b
Wheel Stop Installer; Traffic Surface Sandblaster; Striper	13.95	1.65+b
Slurry Seal Operation:		
Mixer Operator		
Squeegee Man; Applicator		
Operator and Shuttleman	12.37	1.65+b
Top Man	10.39	1.65+b
PLASTERERS:		
Area 1	19.59	3.905
Area 2	23.90	
Area 3	21.77	
Area 4	18.07	3.35
Area 5	19.62	5.17
Area 6:		
Plasterers	15.57	4.41
Nozzleman	15.695	4.41
PLASTERERS' TENDERS:		
Area 1	15.66	7.56
Area 2	12.75	6.10
Area 3	16.015	7.31
Area 4:		
All work except Residential work	14.14	7.66
Residential Work	12.14	7.66
Area 5	17.47	7.02
Area 6	16.25	6.10
PLUMBERS: STEAMFITTERS:		
Area 1	21.38	7.62
Area 2	18.14	5.53
Area 3	23.14	5.53
Area 4	23.63	7.62
REFRIGERATION and AIR CONDITIONING:		
Area 1	19.89	7.85
ROOFERS:		
Area 1	14.54	5.16
Area 2	14.55	1.55
Area 3	17.65	4.55
Area 4	18.17	5.485
Area 5	17.055	2.435
SHEET METAL WORKERS:		
Area 1	20.23	4.73
Area 2	19.30	3.72

Page 4	Basic Hourly Rates	Fringe Benefits
SHEET METAL WORKERS		
Area 3 (Cont'd)	21.09	4.77
Area 4	19.93	4.62
Area 5	20.08	4.28
Area 6	19.92	4.74+ 10%
Area 7	23.80	3.33
SOFT FLOOR LAYERS:		
Area 1	18.45	3.94
Area 2	18.17	4.65
Area 3	15.57	3.49
SPRINKLER FITTERS:		
Area 1	21.87	3.23
Area 2	22.97	6.39
TERRAZZO WORKERS:		
Area 1	18.50	2.95
Area 2	17.00	4.80
TILE SETTERS:		
Area 1	18.50	2.95
Area 2	20.03	3.51
Area 3	15.89	3.95
Area 4	18.00	4.20
Area 5	16.70	2.30
TILE FINISHERS:		
Area 1	13.73	3.71
Area 2	12.80	3.30
LABORERS:		
Area 1:		
Group 1	14.82	7.78
Group 2	14.97	7.78
Group 3	15.17	7.78
Group 4	15.47	7.78
Group 5	15.67	7.78
TUNNEL LABORERS:		
Group 1	16.73	7.16
Group 2	16.85	7.16
Group 3	17.01	7.16
Group 4	17.29	7.16
Area 2:		
Group 1	12.82	7.78
Group 2	12.97	7.78
Group 3	13.17	7.78
Group 4	13.47	7.78
Group 5	13.67	7.78
TUNNEL LABORERS:		
Group 1	14.73	7.16
Group 2	14.85	7.16
Group 3	15.01	7.16
Group 4	15.29	7.16
GUNNITE LABORERS:		
Areas 1 & 2		
Group 1	15.31	7.66
Group 2	14.36	7.66
Group 3	13.10	7.66

DECISION NO. CA84-5007	Basic Hourly Rates	Fringe Benefits
LABORERS: (Cont'd)		
Area 2: (Cont'd)		
RESIDENTIAL LABORERS:		
Areas 1 & 2:		
Cleanup; Landscaping; Fencing	9.00	7.78
All other Residential Laborers	10.00	7.78
POWER EQUIPMENT OPERATORS*:		
DREDGING:		
(Hydraulic Suction Dredges)		
Leverman	18.10	7.05
Watch Engineer; Welder; Deckmate	17.52	7.05
Winchman (Stern Winch or Dredge)	16.97	7.05
Bargeman; Deckhand; Fireman; Oiler; Leveehand	16.43	7.05
Dozer	17.63	7.05
(Clamshell Dredges):		
Leverman	18.10	7.05
Watch Engineer; Deckmate	17.52	7.05
Barge Mate	17.04	7.05
Bargeman; Deckhand; Fireman; Oiler	16.43	7.05
POWER EQUIPMENT OPERATORS:		
Group 1	16.25*	7.05
Group 2	16.53*	7.05
Group 3	16.82*	7.05
Group 4	16.96*	7.05
Group 5	17.18*	7.05
Group 6	17.29*	7.05
Group 7	17.41*	7.05
Group 8	17.58*	7.05
Group 9	17.71*	7.05

*When the home of any employee is over 30 road miles from the center of the job or project on Vandenberg Air Force Base, a rate of $22.00 per scheduled work day shall be added to the base pay.

Page 5	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS*:		
Group 1	15.18	6.80
Group 2	15.26	6.80
Group 3	15.32	6.80
Group 4	15.41	6.80
Group 5	15.44	6.80
Group 6	15.46	6.80
Group 7	15.50	6.80
Group 8	15.51	6.80
Group 9	15.56	6.80
Group 10	15.59	6.80
Group 11	15.64	6.80
Group 12A	15.66	6.80
Group 12B	15.69	6.80
Group 13	15.71	6.80
Group 14	15.96	6.80
Group 15	15.21	6.80
Group 16	16.31	6.80
Group 17	16.41	6.80
Group 18	16.71	6.80
Group 19	17.21	6.80

*When the home of an employee is over 30 road miles from the center of the job or project on Vandenberg Air Force Base, a rate of $20.00 per scheduled work day shall be added to the Base Pay.

FOOTNOTES:

a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Six Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day

b. Employer contributes $.23 per hour to Holiday Fund plus $.14 per hour to Vacation Fund for the first year of employment, 1 year but less than 5 years $.34 per hour to Vacation Fund, 5 years but less than 10 years $.44 per hour to Vacation Fund, over 10 years $.54 per hour to Vacation Fund.

AREA DESCRIPTIONS

BRICKLAYERS; STONEMASONS:
Area 1: Imperial County
Area 2: Inyo, Kern, and Mono Counties
Area 3: Los Angeles County
Area 4: Riverside and San Bernardino Counties
Area 5: Santa Barbara and San Luis Obispo Counties
Area 6: Ventura County
Area 7: Orange County

CARPENTERS:
Area 1: Camp Roberts, Edwards Air Force Base, Naval Ordnance Test Station, Point Arguello and Vandenberg Air Force Base
Area 2: Remaining Counties

CEMENT MASONS:
Area 1: Camp Roberts, Edwards Air Force Base, Naval Ordnance Test Station, Point Arguello and Vandenberg Air Force Base
Area 2: Remaining counties

DIVERS:*
Shall receive a minimum of 8 hours pay for any day or part thereof.

ELECTRICIANS:
Area 1: Imperial County
Area 2: Kern County (Remainder of County)
Area 3: Los Angeles County
Area 4: Orange County
Area 5: Riverside County
Area 6: Inyo, Mono, and San Bernardino Counties
Area 7: San Luis Obispo County
Area 8: Santa Barbara (Remainder of County)
Area 9: Ventura County
Area 10: Point Arguello and Vandenberg Air Force Base
Area 11: China Lake Naval Ordnance Test Station and Edwards Air Force Base

ELEVATOR CONSTRUCTORS:
Area 1: Imperial and Inyo Counties; Kern County (south of Tehachapi Range); Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties
Area 2: Kern County (north of Tehachapi Range)

18 3 346

AREA DESCRIPTIONS (Cont'd)

GLAZIERS:
Area 1: Los Angeles, Orange, Riverside, San Bernardino, Santa Barbara, San Luis Obispo, and Ventura Counties
Area 2: Imperial County

IRONWORKERS:
Where the project is located 60 miles or more from the City Halls indicated below, the following amount shall be added to the Base Pay:

60 miles to 100 miles - $18.00 per day
100 miles and over - $24.00 per day

City Hall of San Francisco, Oakland, San Jose, Sacramento, Stockton, Fresno, Bakersfield, Eureka, Redding, Napa, Los Angeles, San Diego, San Bernardino, Ventura, and El Centro

LINE CONSTRUCTION:
Area 1: Imperial County
Area 2: Kern County (Remainder of County)
Area 3: Orange County
Area 4: Los Angeles County
Area 5: Inyo, Mono, and San Bernardino Counties
Area 6: Riverside County
Area 7: San Luis Obispo County
Area 8: Ventura County
Area 9: Point Arguello and Vandenberg Air Force Base
Area 10: China Lake Naval Ordnance Test Station and Edwards Air Force Base
Area 11: Santa Barbara (Remainder of County)

MARBLE SETTERS:
Area 1: Inyo and Mono Counties
Area 2: Imperial County

MARBLE FINISHERS:
Area 1: Imperial County

MARBLE, TERRAZZO, TILE FINISHERS:
Area 2: Inyo, Kern, Mono Counties

PAINTERS:
Area 1: Imperial, Orange, and Riverside Counties; Los Angeles County (Pomona Area); San Bernardino County (excluding western portion)
Area 2: Inyo County; Los Angeles County (except Pomona Area); Mono County; San Bernardino County (west of a line north of Trono including China Lake Area, Johannesburg, Boron, south including the Wrightwood Area); Kern County (east of the Los Angeles Aqueduct)
Area 3: Kern County (except the portion lying east of the Los Angeles Aqueduct)
Area 4: San Luis Obispo, Santa Barbara, and Ventura Counties

AREA DESCRIPTIONS (Cont'd)

PLASTERERS:
Area 1: Los Angeles and Orange Counties
Area 2: Imperial, Riverside, and San Bernardino Counties
Area 3: San Luis Obispo County
Area 4: Santa Barbara County
Area 5: Ventura County
Area 6: Kern, Inyo, and Mono Counties

PLASTERERS' TENDERS:
Area 1: Imperial, Inyo, Mono, Riverside, and San Bernardino Counties
Area 2: Kern County
Area 3: Los Angeles and Orange Counties
Area 4: San Luis Obispo and Santa Barbara Counties
Area 5: Ventura County
Area 6: China Lake Naval Ordnance Test Station and Edwards Air Force Base

PLUMBERS; STEAMFITTERS:
Area 1: Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties
Area 2: Inyo, Kern, and Mono Counties
Area 3: Edwards Air Force Base, Naval Weapons-Center and China Lake Naval Ordnance Test Center

REFRIGERATION and AIR CONDITIONING:
Area 1: Los Angeles and Orange Counties

ROOFERS:
Area 1: Imperial County
Area 2: Inyo, Kern, and Mono Counties
Area 3: Riverside and San Bernardino Counties
Area 4: Los Angeles, Orange, and Ventura Counties
Area 5: San Luis Obispo and Santa Barbara Counties

SHEET METAL WORKERS:
Area 1: Imperial County
Area 2: Kern County and all of Inyo and Mono Counties; Los Angeles County (that portion north of a straight line drawn between Gorman and Big Pines)
Area 3: Los Angeles County (Remaining portion)
Area 4: Orange County
Area 5: Riverside and San Bernardino Counties
Area 6: San Luis Obispo, Santa Barbara, and Ventura Counties
Area 7: Edwards Air Force Base and China Lake Naval Weapons Base

SOFT FLOOR LAYERS:
Area 1: Imperial County
Area 2: Los Angeles, Orange, Riverside, Santa Barbara, San Luis Obispo, San Bernardino, and Ventura Counties
Area 3: Kern, Inyo, and Mono Counties

AREA DESCRIPTIONS (Cont'd)

SPRINKLER FITTERS:
Area 1: Imperial, Inyo, Kern, and Mono Counties, Oragne County (except Santa Ana); Riverside County, San Bernardino County (except Ontario); San Luis Obispo, Santa Barbara and Ventura Counties
Area 2: Los Angeles City and area within 25 miles and Pomona Area; Orange County (Santa Ana); San Bernardino County (Ontario); and Ventura County (Santa Paula, Point Mugu and Port Hueneme)

TERRAZZO WORKERS:
Area 1: Imperial County
Area 2: Remaining Counties

TILE SETTERS:
Area 1: Imperial County
Area 2: Los Angeles, Orange, and Ventura Counties
Area 3: San Luis Obispo and Santa Barbara Counties
Area 4: Riverside and San Bernardino Counties
Area 5: Inyo, Kern and Mono Counties

TILE FINISHERS:
Area 1: Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties
Area 2: Inyo, Kern and Mono Counties

LABORERS:
Area 1: Point Arguello, Camp Roberts, Edwards Air Force Base, Naval Ordance Test Center, Vandenberg Air Force Base
Area 2: Remainder of Counties

LABORERS
AREAS 1 and 2

Group 1: Cleaning and Handling of Panels Forms; Concrete Screeding for rough strike-off; Concrete, water curing; Demolition Laborer, the cleaning of brick and lumber; Dry packing of concrete, plugging, filling of Shee-bolt Holes; Fire Watcher, Limber, Brush Loaders, Pilers and Debris Handlers; Gas, oil and/or water pipeline Laborer; Laborer, general or construction; Laborer, general cleanup; Laborer, landscaping; Laborer, jetting, temporary water and air lines; Material Hoseman (walls, slabs, floors, and decks); Rigging and Signaling; Scaler; Slip Form Raisers; Slurry Seal Crews (Mixer Operator, Applicator Operator, Squeegee Man, Shuttle Man, Top Man); Striper, Concrete or other paved surfaces; Tarman and Mortar Man; Tool Crib or Tool House Laborer; Traffic Delineating Device Applicator; Window Cleaner; Wire Mesh, pulling all concrete pouring operations

LABORERS (Cont'd)
AREAS 1 and 2 (Cont'd)

Group 2: Asphalt Shoveler; Cement Dumper (on 1 yard or larger Mixer and handling bulk cement); Cesspool Digger and Installer, Chucktender; Chute Man, pouring concrete, the handling of the Chute from Ready Mic Trucks, such as walls, slabs, decks, floors, foundations, footings, curb, gutters, and sidewalks; Concrete Curer, Impervious Membrane and Form Oiler; Cutting Torch Operator (demolition); Fine Grader, highways and street paving, airport, runways, and similar type heavy construction; Gas, oil and/or water Pipeline Wrapper; Pot Tender and Form Man; Guinea Chaser; Headerboard Man, asphalt; Laborer, packing rod steel and pans; Power Broom Sweepers (small); Riprap Stonepaver, placing stone or wet sacked concrete; Roto Scraper and Tiller; Sandblaster (Pot Tender); Septic Tank Digger and Installer (Leadman); Tank Scaler and Cleaner; Tree Climber, Faller, Chain Saw Operator, Pittsburgh Chipper and similar type Brush Shredders; Underground Laborer, including Caisson Bellower

Group 3: Asphalt Raker, Luteman, Ironer and Asphalt Spreader Boxes (all types); Buggymobile Man; Concrete Core Cutter, Grinder or Sander; Concrete Cutting Torch; Concrete Saw Man, cutting, scouring old or new concrete; Driller, Jackhammer, 2½ ft. drill steel or longer; Dri Pak-it Machine; Gas, oil and/or water Pipeline Wrapper, 6" pipe and over, by any method, inside and out; Hydro Seeder and similar type; Impact Wrench Multi-plate; Kettlemen, Potmen and Men applying asphalt, Lay-kold, creosote, lime caustic and similar type materials ("applying" means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operators of pneumatic, gas, electric tools; Vibrating Machines, Pavement Breakers, Air Blasting, Come-alongs, and similar mechanical tools not separately classified herein; Pipelayer's Backup Man, coating, grouting, making of joints, sealing, caulking, diapering and including Rubber Gasket Joints, pointing and any and all other services; Rock Slinger; Rotary Scarifier or Multiple Head Concrete Chipping Scarifier; Steel Headerboard Man and Guideline Setter; Tampers; Barko, Wacker, and similar type; Trenching Machine, hand propelled

Group 4: Cribber, Shorer, Lagging, Sheeting and Trench Bracing, hand-guided Lagging Hammer; Head Rock Slinger; Laser Beam; Over-size Concrete Vibrator Operator, 70 lbs. and over; Pipelayer, including water, sewage, solid, gas or air; Prefabricated Manhole Installer; Sandblaster (Nozzleman), water blasting; Welding in connection with Laborers' work

Group 5: Blaster Powderman, all work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Driller; All power drills, excluding Jackhammer, whether Core, Diamond, Wagon, Track, Multiple Unit, and any and all types of mechanical drills

GUNNITE

Group 1: Nozzlemen and Rodmen

Group 2: Gunmen

Group 3: Reboundmen

LABORERS (Cont'd)
TUNNEL

Group 1: Batch Plant Laborers; Bull Gang Mucker, Trackman; Concrete Crew; including Rodders and Spreaders; Changehouseman; Dumpman; Dumpman (outside); Swamper (Brakeman and Switchman on tunnel work); Tunnel materials handling Man; Tool Man

Group 2: Cable Tender; Chuck Tender; Nipper; Steel Form Raiser and Setter's Tender; Vibratorman, Jackhammer, pneumatic tools (except Driller; Loading and unloading Agitator Cars; Pot Tender, using mastic or other materials

Group 3: Blaster, Driller, Powderman; Chemical Grout Jetman; Cherry Pickerman; Grout Gunman; Grout Mixerman; Grout Pumpman; Jackleg Miner; Jumbo Man; Kemper and other pneumatic concrete Placer Operator; Miner, tunnel (hand or machine); Powderman (Primer House); Primer Man; Shotcrete Man; Steel Form Raiser and Setter; Timberman; Retimber (wood or steel); Tunnel Concrete Finisher; Nozzleman; Operating Troweling and/or Grouting Machine; Sandblaster

Group 4: Shaft, Raise Miner; Diamond Driller

POWER EQUIPMENT OPERATORS

Group 1: Brakeman; Compressor (less than 600 C.F.M.); Engineer Oiler; Generator; Heavy Duty Repairman; Tender; Pump; Signalman; Switchman

Group 2: Compressor (600 C.F.M. or larger); Concrete Mixer, Skip type, Conveyor; Fireman; Hydrostatic Pump; Oiler Crusher (asphalt or concrete plant); Plant Operator; Generator, Pump or compressor; Rotary Drill Helper (Oilfield); Skiploader, wheel type up to 3/4 yard without attachments; Soils Field Technician; Tar Pot Fireman; Temporary Heating Plant; Trenching Machine Oiler; Truck Crane Oiler

Group 3: A-Frame or Winch Truck; Elevator Operator (inside); Equipment Greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter Radioman (ground); Power Concrete Curing Machine; Power Concrete Saw; Power driven Jumbo Form Setter; Ross Carrier (job site); Stationary Pipe Wrapping and Cleaning Machine

Group 4: Asphalt Plant Fireman; Boring Machine; Boxman or Mixerman (asphalt or concrete); Chip Spreading Machine; Concrete Pump (small portable); Bridge type Unloader and Turntable; Dinkey Locomotive or Motorman (up to and including 10 tons); Equipment Greaser (Greaser Truck); Helicopter Hoist; Highline Cableway Signalman; Hydra-Hammer-Area Stomper; Power Sweeper; Roller (compacting); Screed (asphalt or concrete); Trenching Machine (up to 6 feet)

POWER EQUIPMENT OPERATORS (Cont'd)

Group 5: Asphalt Plant Engineer; Backhoe (up to and including 3/4 yard); Batch Plant; Bit Sharpener; Concrete Joint Machine (canal and similar type); Concrete Planer; Deck Engineer; Derrick Man (Oil-field type); Drilling Machine Operator; Derrick Man (canal lift (under 5 ton capacity); Hydrographic Seeder Machine (straw, pulp or seed); Machine Tool Operator; Maginnis Internal Full Slab Vibrator; Mechanic Berm, Curb or Gutter (asphalt or concrete); Mechanical Finisher (Concrete-Clary, Johnson, Bidwell, or similar); Pavement Breaker (truck mounted); Road Oil Mixing Machine; Roller (asphalt or finish); Rubber-tired Earth Moving Equipment (single engine, up to and including 25 yards struck); Self-propelled Tar Pipelining Machine; Slip Form Pump (power driven hydraulic lifting device for concrete forms); Skip-loader (Crawler and wheel type, over 3/4 yard and up to and including 1½ yd.s); Stinger Crane (Austin-Western or similar type); Tractor, Bulldozer, Tamper Scraper (single engine, up to 100 HP, flywheel and similar types, up to and including D-5 and similar types); Tugger Hoist, 1 drum; Tunnel Locomotive (over 10 tons up to and including 30 tons); Welder-general

Group 6: Asphalt or Concrete Spreading (tamping or finishing); Asphalt Paving Machine (Barber Greene or similar type); Bridge Crane Operator; Cast-in-place Pipe Laying Machine; Combination Mixer and Compressor (Gunite work); Compactor, self-propelled; Concrete Mixer - paving; Concrete Pump (truck mounted); Crane Operator (up to and including 25 ton capacity) (Long-boom pay applicable); Crushing Plant; Drill Doctor; Elevating Grader; Forklift (over 5 tons); Grade Checker; Grade-all; Grouting Machine; Heading Shield; Heavy Duty Repairman; Hoist Operator (Chicago Boom and similar type); Kolman Belt Loader and similar type; LeTourneau Blob Compactor or similar type; Lift Mobile; Lift Slab Machine (Vagtborg and similar types); Loader (Athey, Euclid, Sierra and similar type); Material Hoist; Mucking Machine (1/4 yard rubber tired, rail or track or similar type); Pneumatic Heading Shield (tunnel); Pumpcrete Gun; Rotary Drill (excluding Caisson type); Rubber-tired Earth Moving Equipment (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments, over 25 yards struck); Rubber-tired Scraper (self-loading paddle wheel type, John Deere, 1040 and similar single unit); Skip-loader (Crawler and wheel type, over 1½ yds., up to and including 6½ yds.); Surface Heaters and Planer; Trenching Machine (over 6 ft. depth capacity); Tower Crane; Tractor Compressor Drill Combination; Tractor (any type larger than D-5-100 flywheel HP and over, or similar); Bulldozer, Tamper, Scraper and Push Tractor (single engine); Tractor (boot attachments); Traveling Pipe Wrapping, Cleaning and Bending Machine; Tunnel Locomotive (over 30 tons); Shovel, Backhoe, Dragline, Clamshell (over 3/4 yd. and up to 5 cu. yds. M.R.C.) (Long-boom pay applicable); Self-propelled Curb and Gutter Machine

POWER EQUIPMENT OPERATORS (Cont'd)

Group 7: Crane, over 25 ton up to and including 100 tons M.R.C. (Long boom pay applicable); Derrick Barge (Long-boom pay applicable); Dual Drum Mixer; Heavy Duty Repairman, Welder combination; Hoist, Stiff-legs, Guy Derrick or similar type, up to and including 100 tons (Long-boom pay applicable); Monorail Locomotive (diesel, gas or electric); Motor Patrol-blade Operator (single engine); Muliple Engine Tractor (Euclid and similar type, except Quad 9 Cat); Rubber-tired Earth Moving Equipment (single engine, over 50 yards struck); Rubber-tired Earth Moving Equipment (multiple engine, Euclid, Caterpillar and similar) (over 25 yards and up to 50 cu. yds. struck); Shovel, Backhoe, Dragline, Clamshell (over 5 cu. yds. M.R.C) (Long-boom pay applicable); Tower Crane Repairman; Tractor Loader (Crawler and wheel type, over 6½ yards); Welder, certified; Woods Mixer and similar Pugmill Equipment

Group 8: Auto Grader; Automatic Slip Form; Crane-over 100 tons (Long-boom pay applicable); Hoist, Stiff Legs, Guy Derrick or similar types (capable of hoisting 100 tons or more) (Long boom pay applicable); Mass Excavator, less than 750 cu. yds.; Mechanical Finishing Machine; Mobile Form Traveler; Motor Patrol, multi-engine; Pipe Mobile Machine; Rubber-tired Earth Moving Equipment (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck); Rubber-tired Self-loading Scraper (paddle wheel, auger type self-loading, 2 or more units); Rubber-tired Scraper, pushing one another without Push Cat. Push-pull (50¢ per hour additional to base rate); Tandem Equipment (2 units only); Tandem Tractor (Quad 9 or similar type); Tunnel Mole Boring Machine

Group 9: Canal Liner; Canal Trimmer; Helicopter Pilot; High-line Cableway; Remote Controlled Earth Moving Equipment ($1.00 per hour additional to base rate); Wheel Excavator (over 750 cu. yds.)

TRUCK DRIVERS

Group 1: Warehouseman and Teamster

Group 2: Driver of vehicle or combinations of vehicles of 2 axles (including all vehicles less than 6 tons); Traffic Control Pilot Car, excluding moving heavy equipment permit load

Group 3: Truck mounted power Broom

Group 4: Drivers of vehicles or combination of vehicles of 3 axles

Group 5: Bootman; Cement Distributor; Fuel Truck; Water Truck, 2 axle

SUPERSEDEAS DECISION

STATE: MICHIGAN
COUNTIES: BERRIEN, BRANCH, CASS, ST. JOSEPH, & VAN BUREN
DECISION NUMBER: MI84-5013 DATE: DATE OF PUBLICATION
Supersedes Decision Number MI83-2023, dated March 18, 1983, in 48 FR 11614.
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS - consisting of single family homes and apartments up to and including four (4) stories.
*Please note Kalamazoo County is no longer covered by this decision.

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$11.50	
CARPENTERS	8.72	
CEMENT MASONS	11.12	
DRYWALL FINISHERS/TAPERS	10.85	
DRYWALL HANGERS	10.28	
ELECTRICIANS	11.43	
INSULATION INSTALLERS	8.25	
LABORERS:		
Laborers - Unskilled	6.77	
Landscape laborers	5.24	
PAINTERS - BRUSH	8.61	
PLUMBERS & PIPEFITTERS	11.99	
SHEET METAL WORKERS	10.64	
SOFT FLOOR LAYERS	10.00	
TILE SETTERS	10.85	
TRUCK DRIVERS	8.85	

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Backhoe	9.14	
Bulldozer	9.03	
Front end loader	9.96	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clause (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: OKLAHOMA

COUNTIES: Alfalfa, Beckham, Blain, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Lincoln, Logan, Love, McClain, Major, Marshall, Murray, Noble, Oklahoma, Payne, Pontotoc, Pottawatomie, Roger Mills, Seminole, Stephens, Tillman, Washita, Woods and Woodward.

DECISION NO. OK84-4034 DATE: Date of Publication
SUPERSEDES DECISION NO. OK83-4068, dated September 16, 1983, 48 FR 41714.
DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including four stories); water and sewage treatment plants and water sewage utility lines on the plant site in Canadian, Cleveland and Oklahoma Counties, Oklahoma.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
AREA I	$15.20	2.37
AREA II	16.45	2.33
AREA III	17.16	2.76
BOILERMAKERS	16.40	2.645
BRICKLAYERS, STONEMASONS:		
AREA I	15.48	2.23
AREA II	15.65	
AREA III	13.18	2.17
AREA IV	15.48	2.08
AREA V	14.50	1.40
AREA VI	14.74	2.15
AREA VII	15.48	1.67
CARPENTERS - AREA I		
Carpenters	13.75	1.74
Millwrights	14.25	1.74
Piledrivermen	14.25	1.74
Power saw operator	14.25	1.74
CARPENTERS - AREA II		
Carpenters	10.95	1.74
Millwrights	14.25	1.74
Piledrivermen	14.25	1.74
Power saw operator	14.25	1.74
CARPENTERS - AREA III		
Carpenters	10.95	1.74
Millwrights	14.25	1.74
Piledrivermen	14.25	1.74
CARPENTERS - AREA IV		
Carpenters	12.20	1.50
Millwrights	14.35	1.64
Piledrivermen	14.35	1.64
CARPENTERS - AREA V		
Carpenters	11.95	1.25
Piledrivermen	12.775	1.25
Millwrights	14.38	1.25
CARPENTERS - AREA VI		
Carpenters	12.35	1.59
Piledrivermen	12.85	1.59
Power saw operator	12.475	1.59
CARPENTERS - AREA VII		
Carpenters	12.45	1.37
Millwrights	12.95	1.37
Piledrivermen	12.95	1.37
Power saw operator	12.80	1.37
CARPENTERS - AREA VIII		
Carpenters	11.60	1.10
Millwrights	12.425	1.10
Piledrivermen	12.425	1.10
Power saw operator	11.85	1.10
CARPENTERS - AREA IX		
Carpenters	12.70	1.10
Millwrights	14.38	1.10
Piledrivermen	14.38	1.10
Power saw operator	12.95	1.10
CARPENTERS - AREA X		
Carpenters	12.88	.85
Millwrights	14.33	.85
Piledrivermen	14.33	.85
CEMENT MASONS - AREA I		
Cement Masons	$10.80	
Power tool operator	11.50	
CEMENT MASONS - AREA II		
Cement Masons	15.14	.76
Power tool operator	15.54	.76
CEMENT MASONS - AREA III		
Cement Masons	13.83	.75
Power tool operator	14.08	.75

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS		
AREA I - ZONE I	15.60	9%+ 1.05
ZONE II	15.85	9%+ 1.05
ZONE III	16.10	9%+ 1.05
AREA II	15.40	3.8%+ 2.20
AREA III - ZONE I	14.05	3¼+ 1.30
ZONE II	14.25	3¼+ 1.30
AREA IV	17.10	9%+.80
AREA V	15.15	1.58
CABLE SPLICERS		
AREA I - ZONE I	15.85	9%+ 1.05
ZONE II	16.10	9%+ 1.05
ZONE III	16.35	9%+ 1.05
AREA II	15.65	3.8%+ 2.20
AREA IV	18.81	9%+.80
ELEVATOR CONSTRUCTORS		
Journeymen	14.665	2.465 +a
Helpers	70%JR	2.465 +a
Probationary helper	50%JR	
GLAZIERS	15.72	.30
IRONWORKERS:		
AREA I	14.60	2.37
AREA II	13.625	2.95
AREA III	14.30	3.00
AREA IV	16.19	2.92
AREA V	15.29	1.14
LABORERS - AREA I		
GROUP I	$10.65	$1.00
GROUP II	10.90	1.00
LABORERS - AREA II		
GROUP I	8.95	1.00
GROUP II	9.20	1.00
LABORERS - AREA III		
GROUP I	9.10	1.00
GROUP II	9.35	1.00
LABORERS - AREA IV		
GROUP I	9.30	1.00
GROUP II	9.55	1.00
LABORERS - AREA V		
GROUP I	9.25	1.00
GROUP II	9.55	1.00
LABORERS - AREA VI		
GROUP I	5.35	
GROUP II	6.59	

	Basic Hourly Rates	Fringe Benefits
LATHERS		
AREA I	14.25	1.74
AREA II	13.85	1.64
MARBLE MASONS, TILE SETTERS & TERRAZZO WORKERS	16.25	1.30
MARBLE & TILE FINISHERS	12.75	
TERRAZZO FINISHERS	13.60	
TERRAZZO FLOOR MACHINE MAN	13.90	
TERRAZZO BASE MACHINE MAN	14.30	
PAINTERS - AREA I		
Brush & Roller	9.90	1.03
Brush & Roller (Strl. steel)	10.15	1.03
PAINTERS - AREA I		
Spray	10.55	1.03
Swing, stage, bosun chair	10.15	1.03
Taping & Bedding (hand tools)	10.20	1.03
Sandblasting	10.25	1.03
PAINTERS - AREA II		
Brush	13.60	2.28
Spray under 30 ft.	14.10	2.28
Spray over 30 ft.	14.60	2.28
Paper hanging	14.60	2.28
Tapers using machine tools	14.10	2.28
PLASTERERS		
AREA I	15.60	.85
AREA II	14.20	
PLUMBERS - AREA I		
Mechanical contracts under $150,000.00	14.00	2.55
Mechanical contracts of $150,000.00 & over	15.50	2.55
PLUMBERS - AREA II	16.64	2.27
ROOFERS	13.40	1.39
SHEET METAL WORKERS	16.15	2.66
SOFT FLOOR LAYERS	13.95	2.03
SPRINKLER FITTERS	16.17	3.23
LINE CONSTRUCTION:		
Linemen	16.24	3¼+1.00
Cable splicers	17.54	"
Hole digger operator, heavy equipment opr.	14.41	"
Line truck driver (winch operator)	12.69	"
Jackhammerman	11.50	"
Powderman	13.99	"
Groundman	10.31	"
Truck driver (flat bed, ton-half & under)	10.96	"

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS		
GROUP I	15.75	2.18
GROUP II	15.25	2.18
GROUP III	14.75	2.18
GROUP IV	14.50	2.18
GROUP V	14.25	2.18
GROUP VI	14.00	2.18
GROUP VII	13.75	2.18
GROUP VIII	12.75	2.18
GROUP IX	13.35	2.18
TRUCK DRIVERS - AREA I		
GROUP I	9.70	
GROUP II	9.40	
AREA II		
GROUP I	12.80	
GROUP II	12.85	
GROUP III	12.95	
AREA III		
GROUP I	10.43	
GROUP II	10.53	
GROUP III	10.63	
GROUP IV	10.58	
GROUP V	10.73	

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS AS FOLLOWS:

ASBESTOS WORKERS:

AREA I	Harper, Ellis, Roger Mills, Beckham, Greer and Harmon Counties
AREA II	Kay County
AREA III	Remaining Counties

BRICKLAYERS - STONEMASONS:

AREA I	Logan, Payne, Canadian, Oklahoma, Cleveland and McClain Counties
AREA II	Harper, Woods, Alfalfa, Grant, Ellis, Woodward, Major, Garfield, Blaine and Kingfisher Counties
AREA III	Harmon, Jackson, Tillman, Comanche, Cotton and Jefferson Counties
AREA IV	Lincoln, Pottawatomie, Seminole, Pontotoc, Johnston and Marshall Counties
AREA V	Kay and Noble Counties
AREA VI	Caddo, Grady, Stephens, Garvin, Murray, Carter and Love Counties
AREA VII	Roger Mills, Beckham, Greer, Dewey, Custer, Washita and Kiowa Counties

CARPENTERS - MILLWRIGHTS - PILEDRIVERMEN - POWER SAW OPERATORS:

AREA I	Oklahoma, Logan, Canadian, Kingfisher, Pottawatomie, McClain, Cleveland, and Lincoln County south of the Turner Turnpike
AREA II	Dewey, Custer, Washita and Blaine Counties
AREA III	Caddo and Grady Counties
AREA IV	Alfalfa, Grant, Major and Garfield Counties
AREA V	Love, Murray, Carter, Pontotoc, Seminole, Johnston, Garvin and Marshall County west of highway #99
AREA VI	Beckham, Jefferson, Comanche, Cotton, Greer, Harmon, Jackson, Kiowa, Stephens and Tillman Counties
AREA VII	Payne County, Northern Half of Lincoln County and Noble County east of Interstate 35 and south of Black Bear Creek
AREA VIII	Woodward, Woods, Harper, Ellis and Roger Mills Counties
AREA IX	Kay and Noble Counties north of Black Bear Creek and west of Interstate #35
AREA X	Marshall County east of highway #99

CEMENT MASONS - POWER TOOL OPERATOR:

AREA I	Kay County
AREA II	Johnston and Marshall Counties
AREA III	Ellis, Roger Mills, Beckham, Dewey, Custer, Grady, Carter, Oklahoma, Logan McClain, Washita, Blaine, Caddo, Kingfisher, Canadian, Cleveland, Garvin, Lincoln, Payne, Noble, Woodward Murray, Harper, Major, Woods, Alfalfa, Grant Garfield, Harmon, Greer, Kiowa, Jackson, Tillman, Comanche, Cotton, Stephens, Jefferson and Love Counties

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

ELECTRICIANS - CABLE SPLICERS:

AREA I	Oklahoma, Cleveland, Canadian, Grady, McClain, Garvin, Carter, Murray, Johnston, Pontotoc, Seminole, Pottawatomie, Lincoln, Logan, Kingfisher, Garfield, Grant, Alfalfa, Major, Blaine, Caddo, Washita, Custer, Dewey, Woodward, Woods, Harper, Ellis, Roger Mills, Beckham, Love and that portion of Payne County which is closer to Oklahoma City than Tulsa
ZONE I	The area within the twelve mile radius of the Main Post Office located in one of the cities listed as follows: Ada, Alva, El Reno, Enid, Moore, Arapahoe, Tecumseh, Norman, Midwest City, Ardmore, Oklahoma City, Stillwater, Sulphur and Tuttle Counties
ZONE II	The area between the twelve mile radius of the Zone I Post Office, except where Zone II intercepts another Zone I area
ZONE III	The area outside Zone I and Zone II
AREA II	Kay and Noble Counties
AREA III:	
ZONE I	Comanche, Jackson and Stephens Counties
ZPME II	Harmon, Greer, Kiowa, Tillman, Cotton and Jefferson
AREA IV	Marshall County
AREA V	That portion of Payne County closer to Tulsa than Oklahoma City

IRONWORKERS:

AREA I	Blaine, Caddo, Canadian, Carter, Cleveland, Comanche, Custer, Dewey, Garfield, Garvin, Grady, Johnston, Kingfisher, Kiowa, Lincoln, Major, Logan, McClain, Murray, Noble, Oklahoma, Pontotoc, Pottawatomie, Roger Mills, Seminole, Stephens, Washita, Woodward, and western Payne County to a line due north of state highway #177 and #33
AREA II	Beckham, Greer, Harmon, Jackson, Tillman, Cotton, Jefferson and Love Counties
AREA III	Harper and Ellis Counties
AREA IV	Marshall County
AREA V	Alfalfa, Grant, Kay, and Woods Counties

LABORERS:

AREA I	Logan, Canadian, Oklahoma, Lincoln, Cleveland and Pottawatomie Counties
AREA II	Harper, Woods, Alfalfa, Grant, Ellis, Woodward, Major, Garfield, Dewey, Blaine and Kingfisher Counties
AREA III	Roger Mills, Custer, Beckham, Washita, Caddo, Grady, McClain, Harmon, Greer, Kiowa, Comanche, Stephens, Garvin, Tillman, Cotton, Jefferson, Murray, Carter, Love and Marshall Counties
AREA IV	Kay, Noble and Payne Counties
AREA V	Seminole, Pontotoc and Johnston Counties
AREA VI	Jackson County

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

LABORERS (CONT'D):

GROUP I - All digging and dirt work, firing of salamanders and smudge pots; loading and unloading of materials and equipment; loading and unloading of materials to and from hoist or cages of stock piling only; wheeling and placing concrete; handling of lumber, steel, cement and distribution of materials; all cleaning, including cleaning windows; wrecking and razing of building and all structures; cleaning when the manis directly tendering, lathers, masons or plasters; common laborers.

GROUP II - All machine tools operators; all sewer and drain tile layers and handling at the ditch, excluding distribution; operators of water pumps up to 4 inches and slip form jacks; men erecting scaffolds and directly tending lathers, masons, cement masons and plasterers, mortar mixers, hod carriers and dry mixers; high work over 30 ft. from the ground or floors; cement finishers laborer; work on swinging scaffold; all kettle and potmen, tank cleaning, all pipe doping treating and wrapping, including all men working with dope; mortar and plaster mixing machine, pump-crete machines, and gunite mixing machines including concrete, creosoted or treated materials, liquid acids, or like materials, when injurious to health, eye and skin or clothes; all newly developed mechanical equipment which replaces wheel barrows or plants; all laborers screening sand, running sand drier, and feeding operator sand blasterer, except nozzle; and cutting torch operators in connection with laborers' work; concrete grader.

LATHERS:

AREA I — Oklahoma, Logan,Canadian, Kingfisher, Custer, Washita, Blaine, Pottawatomie, Dewey, Beckham, Caddo, Cleveland, Ellis, Garvin, Grady, Johnston, McClain, Murray, Noble, Pontotoc, Roger Mills, Seminole, Woodward, Lincoln County south of Turner Turnpike and Payne County up to and including the city of Cushing.

AREA II — Alfalfa, Grant, Garfield and Major Counties

PAINTERS:

AREA I — Harmon, Greer, Kiowa, Jackson, Tillman, Comanche, Cotton Stephens, Jefferson, Carter, Love, Pontotoc, Johnston and Marshall Counties

AREA II — Remaining Counties

PLASTERERS:

AREA I — Ellis, Roger Mills, Beckham, Greer, Harmon, Jackson, Dewey, Custer, Washita, Kiowa, Tillman, Blaine, Caddo, Comanche, Cotton, Kingfisher, Canadian, Grady, Stephens, Jefferson, Logan, Oklahoma, Cleveland, McClain, Gargin, Murray, Carter, Love, Payne, Lincoln, Johnston and Marshall Counties

AREA II — Pontotoc, Pottawatomie and Seminole Counties

PLUMBERS - PIPEFITTERS

AREA I — Kay County

AREA II — Remaining Counties

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

POWER EQUIPMENT OPERATORS:

GROUP I — All crane type equipment with 300' of boom or over (including jib)

GROUP II — All crane type equipment with 200-300' of boom (including jib)

GROUP III — All crane type equipment with 100-200' of boom (including jib), all tower cranes and all crane type equipment of 3 cu. yd. or more

GROUP IV — Side boom (booms 30' and over); Guy Derrick

GROUP V — Heavy duty mechanic; welder; crane-hook and overhead monorail; whirley; panel board batch plant operator; piledriver engineer; dragline, shovel; clamshell; backhoe (3/4 yd. and over); gradall; hydro crane; cherry picker; hoists while operating 2 or more drums; hoists while doing stack and chimney work (1 or 2 drums); power driven hole digger (with 30' and longer mast); motor patrol (blade); side boom (under 30')

GROUP VI — Fork lift (35' and over); dozer (engine hp 65 or over); Fordson tractor or like equipment with hoe or loader equipment or ditcher; scraper type equipment; loader operator or hi-lift (engine hp 65 or over); asphalt lay machine; tail boom; conveyor-multiple, panel board control; power driven hole digger with less than 30' mast; trenching machine; concrete pump-boom type; roller and compactors with dozer blade

GROUP VII — Locomotive engineer; boring machine; tug boat; mixer 18 cu. ft. and over; sand barge; dredging machine; tugger; hoist-when operating one drum; welding machine, 3 to 6; air compressor, 3 to 500 cu. ft. and under; air compressor, over 500 cu. ft. (1); pumps, battery, 3 to 6; fork-lift bobcat and similar equipment; generator plant engineers, Diesel elec.; winch truck with A-frame; roller all types; outside elevator or building type of personnel hoist; concrete buster/or tamper; heaters under jurisdiction of operating engineers; firemen; boiler operator; crushing plants, oiler distributor, pulvimixer; farmer tractor with or without attachments; batch plant operator (portable); conveyor operator-duel, continuous or belt bulk handling; screed operator; concrete pump; form grader; screening plant; well point pump operator; signal man on large whirleys when and if required; operator for rotary drilling machines when operated from console or machines

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

POWER EQUIPMENT OPERATORS CONT'D):	
GROUP VIII	Permanent elevator - building type (automatic); concrete mixer, with hopper less than 18 cu. ft.; air compressor, 500 cu. ft. and under (1 or 2); welding machine (1 or 2); pump (1 or 2); fuelman; truck crane oiler driver or crane oiler; conveyor operator-single continuous belt bulk handling; asphalt lay machine back end man
GROUP IX	Greaser and tilt top trailer operator
TRUCK DRIVERS:	
AREA I	Alfalfa, Beckham, Blaine, Caddo, Carter, Canadian, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson Johnston, Kingfisher, Kiowa, Logan, Love, Major, McLain, Murray, Oklahoma, Pontotoc, Pottawatomie, Payne, Roger Mills, Seminole, Stephens, Tillman, Washita, Wood and Woodward Counties
GROUP I	Truck drivers for heavy equipment such as lowboys, heavy winch and floats, heavy earth moving equipment such as dump trucks and euclids
GROUP II	Truck drivers and swampers, such as dump trucks, flat beds, stakebodies, and 3/4 and ½ ton pick-up trucks
AREA II	Kay, Noble and Lincoln Counties
GROUP I	Truck drivers, including pick-up, 1½ tons or 2½ yards up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake body or bus driver
GROUP II	3 tons or 4 yards up to but not including 4 tons or 6 yards
GROUP III	Ready mix concrete truck; tractor trailer and similar equipment
AREA III	Marshall County
GROUP I	Pick-up, 1½ tons or 2½ yards and up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, state bodies and buses
GROUP II	3 tons or 4 yards and up to but not including 4 tons or 6 yards
GROUP III	5 tons or 6 yards and over including heavy equipment such as pole trucks, winch trucks, euclids, Mississippi wagons, semi-dumps, turner pulls, or other heavy material moving equipment; tractor trailer drivers and similar equipment, such as tractors, ten wheelers
GROUP IV	Ready-mix concrete trucks up to but not including 3 yards
GROUP V	Ready-mix concrete trucks 3 yards and over

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

FOOTNOTES

a - 6 mos. to 5 yrs. 6%; over 5 years 8% of basic hourly rate plus seven paid holidays - A through G.

PAID HOLIDAYS:

A - New Year's Day; B - Memorial Day; C - Independence Day; D - Labor Day; E - Thanksgiving Day; F - Friday after Thanksgiving Day; G - Christmas Day.

SUPERSEDEAS DECISION

STATE: OKLAHOMA

COUNTIES: Adair,Atoka,Bryan,Cherokee, Coal,Craig,Creek,Delaware,Haskell, Hughes,Latimer,LeFlore,McIntosh, Mayes,Muskogee,Nowata, Okfuskee, Okmulgee,Osage,Ottawa,Pawnee, Pittsburg,Pushmataha,Rogers,Sequoyah, Tulsa,Wagoner,Washington

DECISION NO.: OK84-4033 DATE: Date of Publication

SUPERSEDES DECISION NO. OK83-4067,dated September 16, 1983

DESCRIPTION OF WORK: BUILDING PROJECTS (excluding single family homes and apartments up to and including 4 stories); Water and Sewer Treatment Plant Construction in Tulsa County, Oklahoma; and Heavy Construction within the city of Muskogee.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Area I	$17.16	$2.76
Area II	16.45	2.33
BOILERMAKERS	16.40	2.645
BRICKLAYERS-STONE-MASONS:		
Area I	16.60	1.75
Area II	15.48	2.08
Area III	14.84	2.04
Area IV	15.31	1.54
Area V	16.90	
Area VI	14.50	1.40
CARPENTERS - AREA I		
Carpenters	12.00	1.55
Millwrights, Pile-drivermen	13.35	1.55
CARPENTERS - AREA II		
Carpenters	12.88	.85
Millwrights, Pile-drivermen	14.33	.85
CARPENTERS - AREA III		
Carpenters	11.95	1.25
Piledrivermen	12.775	1.25
Millwrights	14.38	1.25
CARPENTERS - AREA IV		
Carpenters	14.08	1.72
Millwrights	14.38	1.72
Piledrivermen	14.38	1.72
CARPENTERS - AREA V		
Carpenters	13.00	
Millwrights	16.10	
Piledrivermen	16.10	
CARPENTERS - AREA VI		
Carpenters	12.19	1.57
Millwrights,Pile-drivermen	12.69	1.57
CARPENTERS - AREA VII		
Carpenters	$12.70	$1.10
Millwrights, Piledriver-men	14.38	1.10
Power Saw Operator	12.95	1.10
CARPENTERS - AREA VIII		
Carpenters	12.27	1.50
Millwrights, Piledriver-men	12.52	1.50
CEMENT MASONS:		
Area I	10.80	
Area II	13.83	.75
Area III	15.14	.76
POWER TOOL OPERATOR:		
Area I	11.05	
Area II	14.08	.75
Area III	15.54	.76
ELECTRICIANS:		
Area I - Zone I	14.55	3⅛%+.80
Zone II	14.95	3⅛%+.80
Area II	15.40	3.8%+ 2.20
Area III	17.10	9%+.80
Area IV	15.15	3%+ 1.58
CABLE SPLICERS:		
Area I - Zone I	14.95	3⅛%+.80
Zone II	15.35	3⅛%+.80
Area II	15.65	3.8%+ 2.20
Area III	18.81	9%+.80

	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTORS:		
Area I		
Journeymen	$15.40	2.69+a
Helpers	70%JR	2.69+a
Probationary Helper	50%JR	
Area II		
Journeymen	14.665	2.465+a
Helpers	70%JR	2.465+a
Probationary Helper	50%JR	
GLAZIERS		
Area I	15.72	.30
Area II	15.04	
Area III	14.68	1.96
IRONWORKERS:		
Area I	16.19	2.92
Area II	14.60	2.37
LABORERS - AREA I		
Group I	10.65	1.00
Group 1I	10.95	1.00
LABORERS - AREA II		
Group I	9.65	1.00
Group II	9.95	1.00
LABORERS - AREA III		
Group I	9.25	1.00
Group II	9.55	1.00
LABORERS - AREA IV		
Group I	9.30	1.00
Group II	9.55	1.00
PAINTERS - AREA I		
Brush,Sheetrock handtools	14.70	.90
Highwork & Stage	15.10	.90
Spray, & Sandblasting, Sheetrock Power Tools	15.70	.90
Hot & Bituminous	16.00	.90
PAINTERS - AREA II		
Brush & Roller	9.90	1.03
Brush, Roller (Strl. Steel)	10.15	1.03
Spray	10.55	1.03
Swing Stage, Bosun Chair	10.15	1.03
Taping & Bedding (hand tools)	10.20	1.03
Sandblasting	10.25	1.03
PAINTERS - AREA III		
Brush,Roller,Tapers & Paperhangers	12.72	.60
Spray,Steamclean,Sandblast & Pot Tenders	13.22	.60
PLASTERERS - AREA I	15.45	.01
AREA II	12.50	.39
PLUMBERS & PIPEFITTERS:		
AREA I	$16.62	$2.83
AREA II	17.25	2.35
AREA III	16.64	2.27
AREA IV		
Mechanical Contracts under $150,000.00	14.00	2.55
Mechanical Contracts $150,000.00 & over	15.50	2.55
AREA V	15.20	2.25
ROOFERS	13.40	1.39
SHEET METAL WORKERS:		
AREA I	16.15	2.66
AREA II	16.58	3%+1.89
SOFT FLOOR LAYERS:		
AREA I	13.95	2.03
AREA II	13.47	1.88+b
SPRINKLER FITTERS	16.17	3.23
LATHERS - AREA I	14.25	1.74
AREA II	12.42	1.10
TILE LAYERS, TERRAZZO WORKERS & MARBLE MASONS:		
AREA I	16.25	1.30
AREA II	14.58	2.70
TILE & MARBLE FINISHERS:		
AREA I	12.75	
AREA II	12.26	1.70
TERRAZZO FINISHERS:		
AREA I	13.60	
AREA II	12.26	1.70
TERRAZZO FLOOR MACHINE:		
AREA I	13.90	
AREA II	12.45	1.70
TERRAZZO BASE MACHINE:		
AREA I	14.30	
AREA II	12.78	1.70
LINE CONSTRUCTION (except Braden,Pocola & Spiro Townships in LeFlore Co.):		
Linemen	16.24	3⅛%+ 1.00
Cable Splicers	17.54	3⅛%+ 1.00
Hole Digger Operator & Heavy Equipment Op. (pole or cat equivalent)	14.41	3⅛%+ 1.00
Jack Hammerman	11.50	3⅛%+ 1.00

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (Braden, Pocola, and Spiro Townships in LeFlore Co.; that portion east of Brent, Prices Chapel, Rocky Mountain & Sallisaw Townships in Sequoyah Co.:		
Lineman, Heavy Equipment Operator	14.54	1.30+ 3-3/4%
Cable Splicer	14.79	1.30+ 3-3/4%
Powderman	90%JR	1.30+ 3-3/4%
Truck Driver	75%JR	1.30+ 3-3/4%
Groundman	75%JR	1.30+ 3-3/4%
POWER EQUIPMENT OPERATORS:		
Group I	$15.75	$2.18
Group II	15.25	2.18
Group III	14.75	2.18
Group IV	14.50	2.18
Group V	14.25	2.18
Group VI	14.00	2.18
Group VII	13.75	2.18
Group VIII	12.75	2.18
Group IX	13.35	2.18
TRUCK DRIVERS:		
AREA I		
Group I	12.80	
Group II	12.85	
Group III	12.95	
AREA II		
Group I	10.43	
Group II	10.53	
Group III	10.63	
Group IV	10.58	
Group V	10.73	

Basic Hourly Rates	Fringe Benefits

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS AS FOLLOWS:

ASBESTOS WORKERS:
AREA I - Coal, Atoka and Bryan Counties
AREA II - Remaining Counties

BRICKLAYERS - STONEMANSONS:
AREA I - Wagoner, Cherokee, Adair, Muskogee, Sequoyah, Haskell, LeFlore, Latimer and Pushmataha Counties
AREA II - Hughes, Coal, Atoka and Bryan Counties
AREA III - Creek, Tulsa, Rogers, Mayes, Craign, Ottawa and Delaware Counties
AREA IV - Okfuskee, Okmulgee, McIntosh and Pittsburg Counties
AREA V - Osage, Washington and Nowata Counties
AREA VI - Pawnee County

CARPENTERS - MILLWRIGHTS & PILEDRIVERMEN:
AREA I - Okmulgee, Okfuskee, Pittsburg, Latimer, LeFlore, the western part of McIntosh County - the line running straight south from the east line of Okmulgee County, Haskell County south of Highway #9 and north one-half of Atoka County
AREA II - Pushmataha, Bryan and south one-half of Atoka County
AREA III - Coal and Hughes County
AREA IV - Tulsa, Rogers, Mayes, Creek, Craig and Delaware Counties
AREA V - Washington, Nowata and Eastern two-thirds of Osage County
AREA VI - Muskogee, Wagoner, Adair, Cherokee, Sequoyah, Eastern part of McIntosh and Haskell County north of Highway #9
AREA VII - Pawnee and western one-third of Osage County
AREA VIII - Ottawa County

CEMENT MASONS - POWER TOOL OPERATORS:
AREA I - Western one-third of Osage County
AREA II - Pawnee County west of a line running due north from the western boundary of Creek County
AREA III - Remaining Counties

ELECTRICIANS - CABLE SPLICERS:
AREA I - Cherokee, Adair, Muskogee, Sequoyah, McIntosh, Haskell, LeFlore, Latimer, Atoka and Pushmataha Counties
ZONE I - 30-mile radius from Post Office of the City of Muskogee
ZONE II - Area outside Zone 1
AREA II - Osage and Pawnee Counties west of Highway #18
AREA III - Bryan County
AREA IV - Washington, Nowata, Craign, Ottawa, Rogers, Mayes, Delaware, Creek, Tulsa, Wagoner, Okmulgee, Okfuskee, Hughes, Pittsburg, Coal, Osage and Pawnee east of Highway #18

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

ELEVATOR CONSTRUCTORS:
AREA I - Osage, Washington, Nowata, Craig, Ottawa, Rogers, Mayes, Delaware, Pawnee, Creek, Tulsa, Wagoner, Cherokee, Adair, Okmulgee, Muskogee, and Sequoyah Counties
AREA II - Remaining Counties

GLAZIERS:
AREA I - Hughes, Coal, Atoka and Bryan Counties
AREA II - Ottawa and that portion of Craig County east of Vineta
AREA III - Remaining Counties

IRONWORKERS:
AREA I - Bryan County
AREA II - Remaining Counties

LABORERS:
AREA I - Creek, Tulsa, Nowata, Craig, Ottawa, Rogers, Mayes, Delaware, Washington and Okmulgee Counties
AREA II - Wagoner, Cherokee, Adair, Muskogee, Sequoyah, Okfuskee, McIntosh, Haskell, LeFlore Counties
AREA III - Hughes, Pittsburg, Latimer, Coal, Atoka, Pushmataha and Bryan Counties
AREA IV - Osage, and Pawnee Counties
GROUP I - All digging and dirt work, firing of salamanders and portable space heaters; loading and unloading of materials and equipment; loading and unloading of materials to and from hoist or cages for stock piling only; wheeling and placing concrete; handling of lumber, steel, cement and distribution of materials; all cleaning, including cleaning of windows; wrecking and razing of building and all structures; cleaning and clearing of debris; loading and unloading of materials, hoist or cages, except when the man is directly tending lathers, masons, or plasterers; water boys, when used; carpenter tender.
GROUP II - All machine tool operators; all sewer and drain tile layers and handling at the ditch, excluding distribution; oprs. of water pumps up to 4 inches and slip form jacks; men erecting scaffolds and directly tending lathers, masons, cement masons and plasterers; mortar mixers, hod carriers and dry mixers; high work over 30 ft. from the ground or floors; cement finisher laborer; work on swinging scaffold; all kettle & potmen, tank cleaning, all pipe doping treating & wrapping, including all men working with dope; mortar & plaster mixing machine, pump-crete machines, and gunite mixing machines including placing of concrete; handling creosoted or treated materials, liquid acids, or like materials, when injurious to health, eye and skin or clothes; all newly developed mechanical equipment which replaces wheel barrows or buggies; all laborers screening sand, running sand drier, and feeding oper. sandblasterer, except nozzle; and cutting torch oprs. in connection with laborers work; concrete greader.

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

LATHERS:
AREA I - Atoka, Coal and Hughes
AREA II - Ottawa County

PAINTERS:
AREA I - Pawnee, Osage, Washington, Nowata, Rogers, Mayes, Creek, Tulsa, Okfuskee, Okmulgee, Wagoner, Cherokee, Adair, Muskogee, Sequoyah, McIntosh, Haskell, Pittsburg, Latimer, LeFlore, and Pushmataha
AREA II -Hughes, Coal, Atoka and Bryan Counties
AREA III - Craig, Ottawa and Delaware Counties

PLASTERERS:
AREA I - Adair, Cherokee, Craig, Creek, Delaware, McIntosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Rogers,Tulsa, Wagoner, Washington, and the northern and western portions of Sequoyah County north and west of a line running southwesterly from the northeastern corner of Sequoyah County including the town of Sallisaw.
AREA II - LeFlore County and the southern and eastern portions south and east of a line running wouthwesterly from the northeast corner of Sequoyah County

PLUMBERS - PIPEFITTERS:
AREA I - Ottawa, Delaware, Craig, Mayes, Nowata, Rogers, Tulsa, Creek and Osage and Pawnee Counties east of Highway #18
AREA II - Adair, Cherokee, Haskell, Latimer, LeFlore, McIntosh, Muskogee, Okfuskee, Okmulgee, Pittsburg, Sequoyah and Wagoner Counties
AREA III - Hughes, Coal, Atoka, Pushmataha and Bryan Counties
AREA IV - Osage and Pawnee Counties west of Highway #18
AREA V - Washington County

SHEET METAL WORKERS:
AREA I - Hughes and Coal Counties
AREA II - Remaining Counties

SOFT FLOOR LAYERS:
AREA I - Hughes, Coal, Atoka and Bryan Counties
AREA II - Remaining Counties

TILE LAYERS & TERRAZZO WORKERS:
AREA I - Bryan County
AREA II - Remaining Counties

TILE & TERRAZZO FINISHERS - TERRAZZO FLOOR MACHINE - TERRAZZO BASE MACHINE:
AREA I - Bryan County
AREA II - Remaining Counties

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'D):

POWER EQUIPMENT OPERATORS:

GROUP I - All crane type equipment with 300' of boom or over (including jib).

GROUP II - All crane type equipment with 200-300' of boom (including jib).

GROUP III - All crane type equipment with 100-200' of boom (including jib, all tower cranes and all crane type equipment of 3 cu. yards or more).

GROUP IV - Side boom (booms 30' and over); Guy Derrick

GROUP V - Heavy duty mechanic, welder; crane-hook and overhead monorail; whirley; panel board batch plant operator; pile-driver engineer, dragline, shovel; clamshell; backhoe (3/4 yd. & over); gradall; hydro crane, cherry picker; hoists while operating 2 or more drums; hoists while doing stack and chimney work (1 or 2 drums); power driven hole digger (with 30' & longer mast); motor patrol (blade); side boom (under 30').

GROUP VI - Fork lift (35' and over); dozer (engine hp 65 or over); Fordson tractor or like equipment with hoe or loader equipment or ditcher; scraper type equipment; loader operator or hi-lift (engine hp 65 or over); asphalt lay machine; tail boom; conveyor-multiple, panel board control; power driven hole digger with less than 30' mast; trenching machine; concrete pump-boom type; roller & compactors with dozer blade.

GROUP VII - Locomotive engineer; boring machine; tug boat; mixer 18 cu. ft. and over; sand barge; dredging machine; tugger; hoist-when operating one drum; welding machine, 3 to 6; air compressor, 3 to 500 cu. ft. & under; air compressor, over 500 cu. ft. (1); pumps, battery, 3 to 6; fork-lift, bobcat and similar equipment, generator plant engineers, Diesel elec.; winch truck with A-frame; roller all types; outside elevator or building type of personnel hoist; concrete buster/or tamper; heaters under jurisdiction of operating engineers; firemen; boiler operator, crushing plants; oiler distributor; pulvi-mixer; farmer tractor-with or without attachments; batch plant operator (portable); conveyor operator-duel, continuous or belt bulk handling; screed op.; concrete pump; form grader; screening plant; well point pump op.; signal man or large whirleys when and if required; operator for rotary drilling machines when operated from console or machines.

GROUP VIII - Permanent elevator - building type (automatic); concrete mixer, with hopper less than 18 cu. ft.; air compressor, 500 cu. ft. and under (1 or 2); welding machine (1 or 2); pump (1 or 2); fuelman; truck crane oiler driver or crane oiler; conveyor operator-single continuous belt bulk handling; asphalt lay machine back end man.

GROUP IX - Greaser and tilt top trailer operator.

CLASSIFICATION AREAS, GROUPS AND DEFINITIONS (CONT'd):

TRUCK DRIVERS:

AREA I - Osage, Washington, Nowata, Craig, Ottawa, Pawnee, Rogers, Creek, Tulsa, Okmulgee, Okfuskee and Mayes and Wagoner Counties west of Highway #69.

GROUP I - Truck drivers, including pick-up, 1½ tons or 2½ yards up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake body or bus driver.

GROUP II - 3 tons or 4 yards up to but not including 4 tons or 6 yards.

GROUP III - Ready mix concrete truck; tractor-trailer and similar equipment.

AREA II - Bryan, Atoka, Pushmataha, Coal, Hughes, Pittsburg, Latimer, LeFlore, McIntosh, Haskell, Sequoyah, Muskogee, Cherokee, Adair, Delaware, and Mayes and Wagoner Counties east of Highway #69.

GROUP I - Pick-up, 1½ tons or 2½ yards and up to but not including 3 tons or 4 yards, such as dump trucks, flat beds, stake bodies and buses.

GROUP II - 3 tons or 4 yards and up to but not including 4 tons or 6 yards.

GROUP III - 5 tons or 6 yards and over including heavy equipment such as pole truck, winch trucks, euclids, Mississippi wagons, semi-dumps, turner pulls, or other heavy material moving equipment; tractor trailer drivers and similar equipment, such as tractors, ten wheelers

GROUP IV - Ready-mix concrete trucks up to but not including 3 yards.

GROUP V - Ready-mix concrete trucks up to but not including 3 yards and over

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

FOOTNOTES:

a - 6 months to 5 years 6%; over 5 years 8% of basic hourly rate plus seven paid holidays - A through G.

b - 6 paid holidays - A through E plus G

PAID HOLIDAYS:

A - New Year's Day; B - Memorial Day; C - Independence Day; D - Labor Day; E - Thanksgiving Day; F - Friday after Thanksgiving Day; G - Christmas Day

SUPERSEDEAS DECISION

STATE: NEVADA

COUNTIES: Nevada Test Site including Tonopah Test Range in Clark, Lincoln, and Nye Counties

DECISION NUMBER: NV84-5012

DATE: Date of Publication

Supersedes Decision NV84-5002 dated February 10, 1984, in 49 FR 5292

DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories), Heavy and Highway Projects

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$19.31	4.51
BOILERMAKERS	21.39	3.86
BRICKLAYERS	16.59	1.86
CARPENTERS:		
Carpenters; Saw Filer; Power actuated tools; Pneumatic Nailer	17.66	3.05
Floor Layers; Shingler	17.685	3.05
Millwrights	18.66	3.05
Piledrivers	17.86	3.05
Power Saw Operator	17.81	3.05
CEMENT MASONS	12.73	6.95
ELECTRICIANS:		
Electricians; Equipment Operators; Linemen	18.74	5.56 +3%
Cable Splicers	19.07	5.56 +3%
Groundman	14.942	5.56 +3%
ELEVATOR CONSTRUCTORS:		
Mechanics	22.74	3.00 +a
Mechanics' helpers	15.92	3.00+a
Probationary Helpers	11.37	
GLAZERS	16.07	3.66
IRONWORKERS:		
Ornamental; Reinforcing; Structural	18.26	5.93
MARBLE SETTERS	16.59	1.86
MASON TENDERS	13.14	5.79
PAINTERS:		
Brush; Roller	15.46	3.66
Paperhangers; Spray; Steel; Sandblasters; Swing Stage; Tapers	15.81	3.66
Buffing Steel; Sandblasters, Steel	16.07	3.66
PLUMBERS	21.30	4.48
ROOFERS	22.40	1.00
SHEET METAL WORKERS	17.85	6.22
TERRAZZO WORKERS:		
TILE SETTERS	16.59	1.86
LABORERS:		
Group 1	12.94	4.85
Group 2	12.99	4.85
Group 3	13.02	4.85
Group 4	13.04	4.85
Group 5	13.06	4.85
Group 6	13.07	4.85
Group 7	13.09	4.85
Group 8	13.12	4.85
Group 9	13.13	4.85
Group 10	13.15	4.85
Group 11	13.20	4.85
Group 12	13.23	4.85
Group 13	13.25	4.85
Group 14	13.28	4.85
Group 15	13.30	4.85
Group 16	13.37	4.85
Group 17	13.39	4.85
Group 18	13.46	4.85
POWER EQUIPMENT OPERATORS (Except Piledriving and Steel Erection):		
Group 1	15.08	6.31
Group 2	15.32	6.31
Group 3	15.56	6.31
Group 4	15.67	6.31
Group 5	15.86	6.31
Group 6	15.96	6.31
TRUCK DRIVERS:		
Group 1	15.46	3.11
Group 2	15.57	3.11
Group 3	15.62	3.11
Group 4	15.78	3.11
Group 5	15.96	3.11

LABORERS

Group 1: General laborer; Demolition (cleaning of bricks, lumber, etc.); Dry packing of concrete and filling of form-bolt holes; Spotter; Debris handler & dumpman; Fence builder; Tool Attendant (job site only); Gas and oil pipeline laborer; Window cleaner

Group 2: Cutting torch operator (demolition); Tarman and Mortarman

Group 3: Guinea chaser

Group 4: Fine grader (highway and street paving, airport runways, and similar work); Landscape Gardner; Nurseryman and Grounds Keeper

Group 5: Laborer - packing rod steel and pans

Group 6: Underground laborers including caisson bellowers (except tunnels)

Group 7: Chucktender (except tunnels); Scaler; Septic tank Digger and Installer (lead man); Tank Scaler and Cleaner

Group 8: Cesspool Digger and Installer

Group 9: Concrete curer - Impervious membrane and oiler of all materials and form oiler; Riprap Stonepaver; Sandblaster (Pot tender); Making and caulking of all non-metallic pipe joints

Group 10: Operators and Tenders of Pneumatic and Electric Tools, vibrating machines, and similar mechanical tools not separately classified herein including hand-guided ditch witch and hand-type roller; Asphalt Raker, Ironer, Spreader; Buggymobileman; Cement dumper (on one yard or larger mixers and handling bulk cement); Concrete Saw Man (excluding tractor type); Concrete core cutter; Gas and Oil pipeline wrapper - Pot tender and form man; Operator of cement grinding machine; Roto-scraper; Tree climber; Faller; Chain saw operator; Pittsburgh Chipper and similar type brush shredders

Group 11: Rock Slinger; Scaler (using Bos'n chair or safety belt or power tools)

Group 12: Driller and/or pavement breaker

Group 13: Laying of all nonmetallic pipe, including sewer pipe, drain pipe and underground tile

Group 14: Gas and oil pipeline wrapper - 6 inch pipe and over

Group 15: Cribber or shorer; Powderman

Group 16: Steel headerboardman

Group 17: Driller (Core, Diamond or Wagon); Joy Driller model TW-M-2A, Gardner, Denver model DH-143 and similar type drills; Sandblaster (Nozzleman)

Group 18: Head Rock Slinger

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental

FOOTNOTE:
a. Employer contributes 8% basic hourly rate for over 5 years' service and 6% basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Seven Paid Holidays: A thru. G

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Friday after Thanksgiving; G-Christmas Day

POWER EQUIPMENT OPERATORS
(Except Piledriving and Steel Erection)

Group 1: Air Compressor, Pump or generator; Engineer Oiler and Signal Man; Heavy Duty Repairman's Tender; Rotary Drill Tender (Rotary and Core); Switchman or Brakeman

Group 2: Concrete Mixer, skip type; Conveyor and Beltman; Fireman; Generator, pump or compressor (2-5 units inclusive, over 5 units, $0.10 per hour for each additional unit up to 10 units, portable units); Generator, pump or compressor plant; Hydrostatic Pump; Motorman (Rotary and Core); Skiploader, wheeltype, Ford, Ferguson, Jeep or similar type, 3/4 yard or less (without drag-type attachments); Temporary Heating Plant; Truck Crane Oiler

Group 3: A-Frame or Winch Truck; Derrickman (Rotary and Core); Dinky Locomotive or Tunnel Motor; Elevator Hoist; Equipment Greaser; Ford, Ferguson or similar type (with drag-type attachments); Hydra-hammer or similar type equipment; Power Concrete Curing Machine; Power Concrete Saw; Power-driven Jumbo Form Setter; Ross Carrier; Self-propelled Tar Pipelining Machine; Stationary Pipe Wrapping and Cleaning Machine; Towblade Operator

Group 4: Asphalt Plant Fireman; Boring Machine; Boxman or Mixer Box (concrete or asphalt plant); Fishing Tool Engineer; Highline Cableway Signalman; Locomotive Engineer; Mud Plant Operator; Power Sweeper; Roller, Compacting Screed; Trenching Machine (up to 6 ft. depth capacity, manfacturer's rating)

Group 5: Asphalt or Concrete Spreading, Mechanical Tamping or Finishing Machine - Roller (all types and sizes), soil, cement, asphalt - finish; Asphalt Plant Engineer; Deck Engine; Grade Checker; Pavement Breaker; Pneumatic Heading Shield - tunnel; Road Oil Mixing Machine; Forklift, under five tons; Rubber-tired, heavy duty equipment (Oshkosh, DW, Euclid, LeTourneau, LaPlant-Choate, or similar type equipment with any type attachments); Skiploader, wheeltype, over 3/4 yds., up to and including 1½ yds.; Slip Form Pump (power-driven hydraulic lifting device for concrete forms); Tractor Operator - Drag-type Shovel, Bulldozer, Tamper, Scraper and Push Tractor

POWER EQUIPMENT OPERATORS (Cont'd)
(Except Piledriving and Steel Erection) (Cont'd)

Group 6: Combination Heavy-duty Repairman and Welder (additional $0.10 per hour premium, $0.05 per hour tool allowance); Concrete Mixer, paving; Concrete Mobile Mixer; Concrete Pump or Pumpcrete Gun; Crushing Plant Engineer; Driller (Rotary and Core); Elevating Grader; Forklift, over 5 tons; Grade-all; Heavy-duty Repairman ($0.05 per hour tool allowance); Heavy-duty Welder; Highline Cableway; Hoist (Chicago Boom and Mine); Kolman Belt Loader and similar type; Lift Slab Machine; Loader Operator - Athey, Euclid, Hancock, Sierra or similar type; Motor Patrol (any type or size); Multiple-engine earthmoving machinery; Pneumatic Concrete Placing Machine - Hackley-Presswell or similar type; Shovel, Backhoe, Dragline, Clamshell, Derrick, Derrick Barge, Crane Piledriver and Mucking Machine; Skiploader, wheeltype, over 1½ yds.; Surface Heater and Planer; Tractor Loader - Crawler type - all types and sizes; Tractor, with boom attachments; Traveling Pipe Wrapping, Cleaning and Bending Machine; Trenching Machine (over 6 ft. depth capacity, manufacturer's rating)

TRUCK DRIVERS

Group 1: Light Duty Driver

Group 2: Bootman; Truck Greaser

Group 3: Tireman

Group 4: Heavy Duty Driver; Forklift Driver

Group 5: Extra Heavy Duty Driver

Unlisted classifications needed for work not included with the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NEW MEXICO

COUNTY: STATEWIDE (excluding Eddy & Lea Cos. for building construction)

DECISION NO.: NM84-4027

DATE: Date of Publication

SUPERSEDES DECISION NO. NM83-4071, dated October 7, 1983 in 48 FR 45910.

DESCRIPTION OF WORK: GENERAL BUILDING AND HEAVY ENGINEERING CONSTRUCTION shall include the construction, alteration, repair and demolition of buildings, including office buildings, warehouses, industrial and commercial buildings, institutional and public buildings, and all air conditioning, conduit, heating and other mechanical and electrical works and site preparation for building or heavy engineering projects under this classification, stadia; and shall include electrical, gas, water, sewer lines, and other such utility construction which are part of projects under this classification and included within the property line or less than five (5) feet from the building or heavy engineering structure, whichever is closer, provided, however, regard to electrical utilities such construction shall include construction from the first attachment of incoming power source without regard to the property line or proximity to the building or the heavy engineering structure; and include construction, alteration, repair and demolition of heavy engineering work such as power generating plants, pump stations, natural gas compressing stations; covered reservoirs and covered sewage and water treatment facilities; concrete linings for canals, ditches and channels; concrete dams; earth dams of one million (1,000,000) cubic yards or over; radio towers, ovens, furnaces, kilns, silos, shafts and tunnels (other than highway shafts and tunnels), hydro-electric projects; and well drilling, telephone and electrical transmission lines which are part of GENERAL BUILDING & HEAVY ENGINEERING PROJECTS: mining appurtenances such as tipples, washeries and loading and discharging chutes, and specialized structures for testing, launching and recovering space and other rocket-type missiles.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
ZONE I	$16.78	3.31
ZONE II	16.60	2.37
BOILERMAKERS	13.75	3.44
BRICKLAYERS-STONEMASONS:		
ZONE I-A	13.86	1.82
ZONE I-B	15.36	1.82
ZONE I-C	16.11	1.82
ZONE II	13.96	1.72
ZONE III	15.48	1.72
ZONE IV	14.16	1.52
ZONE V	15.66	1.52
ZONE VI-A	13.66	1.62
ZONE VI-B	15.16	1.62
ZONE VII	15.39	1.42
ZONE VIII	13.64	1.42
CARPENTERS/LATHERS/PILEDRIVERMEN:		
Construction, erection, alteration, repair, modification, addition to or improvement in whole or in part of structures for which the major support system is wood frame construction and will also include all convenience stores, fast food restaurants, automobile service stations and motels up to 2 stories high	8.00	1.20
All other work	13.15	3.45
CEMENT MASONS:		
AREA I	11.99	2.22
AREA II:		
ZONE 1	11.99	2.22
ZONE 2	13.49	2.22
ZONE 3	13.74	2.22
CEMENT MASONS (HEAVY CONST.)	11.99	2.22
CEMENT MASONS (COMPOSITION & MACHINE OPERATORS):		
AREA I	12.24	2.22
AREA II - Zone I	12.24	2.22
AREA II - Zone II	13.74	2.22
AREA II - Zone III	13.99	2.22
ELECTRICIANS:		
ZONE I:		
AREA I-A	17.00	3⅛%+ 2.00
AREA I-B	18.53	"
AREA I-C	19.55	"
AREA I-D	21.42	"
ZONE II	19.55	"

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS: (CONT'D)		
ZONE III:		
3-A	14.20	3⅛%+.80
3-B	15.65	3⅛%+.80
ZONE IV:		
4-A	16.50	3%+.84
4-B	16.95	3%+.84
4-C	17.10	3%+.84
4-D	17.35	3%+.84
CABLE SPLICERS:		
ZONE I:		
Area 1-A	18.70	3⅛%+ 2.00
Area 1-B	20.23	"
Area 1-C	21.25	"
Area 1-D	23.12	"
ZONE II	21.25	"
ZONE III		
3-A	14.45	3⅛%+.80
3-B	15.90	"
ZONE IV:		
4-A	16.85	3%+.84
4-B	17.30	3%+.84
4-C	17.45	3%+.84
4-D	17.90	3%+.84
ELEVATOR CONSTRUCTORS:		
AREA I	16.28	JJ
AREA II	12.38	JJ
Elevator constr. helpers	70%JR	JJ
Elevator prob. helpers	50%JR	
JJ - $2.69 + seven paid Holidays; and employees with 6 mos. to 5 yrs. of service 6%; over 5 yrs. 8% of basic hourly rate.		
GLAZIERS	13.39	1.20
IRONWORKERS:		
ZONE I	14.60	2.83
ZONE II - Area 1	14.60	2.83
Area 2	15.85	2.83
Area 3	17.85	2.83
Area 4	17.10	2.83
ZONE III	13.55	2.95
ZONE IV	14.55	2.95
LABORERS:		
GROUP 1	8.75	1.91
GROUP 2	9.25	1.91
GROUP 3	9.80	1.91

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	Basic Hourly Rates	Fringe Benefits
LEADBURNERS:		
ZONE I	$17.29	3.43
ZONE II	18.04	3.43
ZONE III	19.54	3.43
ZONE IV (SPECIFIC AREA)	18.09	3.43
COMMERCIAL LINE WORK:		
AREA A		
LINEMEN - TECHNICIANS		
Zone I	17.00	3⅛+ 2.00
Zone II	18.53	"
Zone III	19.55	"
Zone IV	21.42	"
CABLE SPLICERS		
Zone I	18.70	"
Zone II	20.23	"
Zone III	21.25	"
Zone IV	23.12	"
EQUIPMENT OPR. (Includes helicopter op.):		
Zone I	16.15	"
Zone II	17.68	"
Zone III	18.70	"
Zone IV	20.57	"
EQUIPMENT MECHANIC (include helicopter mech.) & POWDERMAN		
Zone I	14.79	"
Zone II	16.32	"
Zone III	17.34	"
Zone IV	19.21	"
GROUNDMAN-JACKHAMMER OPRS.:		
Zone I	12.07	"
Zone II	13.60	"
Zone III	14.62	"
Zone IV	16.49	"
AREA B		
LINEMEN-TECHNICIANS		
Zone I	14.20	3⅛+.80
Zone II	15.65	3⅛+.80
CABLE SPLICERS		
Zone I	14.45	3⅛+.80
Zone II	15.90	3⅛+.80
EQUIPMENT OP. (includes helicopter operators)		
Zone I	12.35	3⅛+.80
Zone II	13.62	3⅛+.80
EQUIPMENT MECHANIC (including helicopter mechanic)		
Zone I	12.35	3⅛+.80
Zone II	13.62	3⅛+.80

	Basic Hourly Rates	Fringe Benefits
COMMERCIAL LINE WORK CONT'D:		
AREA B		
POWDERMAN		
Zone I	11.93	3⅛+.80
Zone II	13.15	3⅛+.80
GROUNDMAN-JACKHAMMER		
Zone I	10.08	3⅛+.80
Zone II	11.11	3⅛+.80
AREA C		
LINEMEN-TECHNICIANS		
Zone I	17.10	3⅛+.80
Zone II	17.55	"
Zone III	17.70	"
Zone IV	17.95	"
CABLE SPLICERS		
Zone I	17.45	"
Zone II	17.90	"
Zone III	18.05	"
Zone IV	18.30	"
EQUIPMENT OP. & MECHANICS (includes helicopter op. & mechanics		
Zone I	14.88	"
Zone II	15.33	"
Zone III	15.48	"
Zone IV	15.73	"
POWDERMAN		
Zone I	14.36	"
Zone II	14.81	"
Zone III	14.96	"
Zone IV	15.21	"
GROUNDMAN-JACKHAMMER		
Zone I	12.14	"
Zone II	12.59	"
Zone III	12.74	"
Zone IV	12.99	"
MARBLE, TILE & TERRAZZO WORKERS	12.90	1.02
MARBLE, TILE & TERRAZZO FINISHERS	10.89	1.02
MILLWRIGHTS		
ZONE 1	14.30	3.45
ZONE 2	15.80	3.45
ZONE 3	16.55	3.45
PAINTERS:		
ZONE 1:		
Mines,mills,power plants,energy plants, refineries,coal gassification plants, nuclear related facilities & all steel work incidental thereto including stacks of all descriptions:		
Brush,roller,pot tender,sandblaster grinder operator:		
New Work	13.15	2.10
Repaint/remodel	11.18	2.10

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	Basic Hourly Rates	Fringe Benefits
PAINTERS (CONT'D):		
ZONE 1 (CONT'D)		
Spray:		
New work	$13.65	2.10
Repaint/remodel	11.68	2.10
Drywall finisher & ames tool op.:		
New work	13.65	2.10
Repaint/remodel	11.60	2.10
Handfinisher, machine textures:		
New work	13.45	2.10
Repaint/remodel	11.43	2.10
Paperhanger:		
New work	14.15	2.10
Repaint/remodel	12.03	2.10
All other work:		
Brush & roller, hand texture:		
New work	11.85	2.10
Repaint/remodel	10.07	2.10
Spray:		
New work	12.35	2.10
Repaint/remodel	10.57	2.10
Special coating applicator,sandblaster, steel painter:		
New work	12.35	2.10
Repaint/remodel	10.50	2.10
Paperhanger:		
New work	12.85	2.10
Repaint/remodel	10.92	2.10
Ames tool op.:		
New work	12.43	2.10
Repaint/remodel	10.57	2.10
Hand finisher, machine texture:		
New work	12.18	2.10
Repaint/remodel	10.35	2.10
ZONE II		
Building Construction:		
Brush,roller,paperhanger, tapers	8.96	1.02
Steel after erection, power driven tools	9.105	1.02
Spray	9.38	1.02
Sandblast,swing stage, striping machine	10.11	1.02
Ames tools	9.105	1.02
Heavy Construction:		
Brush roller	9.52	1.02
Spray,sandblast,swing stage,steam cleaning, power driven tools	10.11	1.02
Water tanks,towers,smoke stacks	10.26	1.02

	Basic Hourly Rates	Fringe Benefits
PLASTERERS	$13.23	2.12
PLUMBERS-PIPEFITTERS:		
AREA I	16.54	3.43
AREA II	17.54	3.43
AREA III	19.04	3.43
Specific Area	17.59	3.43
POWER EQUIPMENT OPERATORS:		
GENERAL BUILDING CONSTRUCTION:		
GROUP I	10.98	1.80
GROUP II	12.07	1.80
GROUP III	12.15	1.80
GROUP IV	12.26	1.80
GROUP V	12.32	1.80
GROUP VI	12.42	1.80
GROUP VII	12.52	1.80
GROUP VIII	13.65	1.80
POWER EQUIPMENT OPERATORS		
HEAVY CONSTRUCTION:		
GROUP I	10.93	1.85
GROUP II	12.02	1.85
GROUP III	12.10	1.85
GROUP IV	12.21	1.85
GROUP V	12.27	1.85
GROUP VI	12.37	1.85
GROUP VII	12.47	1.85
GROUP VIII	13.50	1.85
ROOFERS	10.62	.50
SHEET METAL WORKERS:		
Zone I-A	17.17	3%+2.96
Zone I-B	20.42	3%+2.96
Zone I-C	20.42	3%+2.96
Zone I-D	20.42	3%+2.96
SHEET METAL WORKERS:		
Zone II-A	13.80	3%+2.07
ZONE II-B	15.30	3%+2.07
Zone II-C	16.05	3%+2.07
SPRINKLER FITTERS	16.17	2.83
SOFT FLOOR LAYERS	11.55	2.10
SOUND INSTALLERS:		
SOUNDMAN		
Zone I	13.55	3⅛+ 1.55
Zone II	15.24	"
Zone III	18.63	"
TECHNICIANS:		
Zone I	10.84	"
Zone II	12.53	"
Zone III	15.92	"
SOUND INSTALLERS:		
Zone I	8.81	"
Zone II	10.50	"
Zone III	13.89	"

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
BUILDING CONSTRUCTION		
ZONE I		
GROUP I	$ 9.93	1.79
GROUP II	10.20	1.79
GROUP III	10.28	1.79
GROUP IV	10.40	1.79
GROUP V	10.45	1.79
GROUP VI	10.55	1.79
GROUP VII	10.65	1.79
GROUP VIII	10.79	1.79
GROUP IX	10.94	1.79
ZONE II		
GROUP I	11.68	1.79
GROUP II	11.95	1.79
GROUP III	12.03	1.79
GROUP IV	12.15	1.79
GROUP V	12.20	1.79
GROUP VI	12.30	1.79
GROUP VII	12.40	1.79
GROUP VIII	12.54	1.79
GROUP IX	12.69	1.79
ZONE III		
GROUP I	12.18	1.79
GROUP II	12.45	1.79
GROUP III	12.53	1.79
GROUP IV	12.65	1.79
GROUP V	12.70	1.79
GROUP VI	12.80	1.79
GROUP VII	12.90	1.79
GROUP VIII	13.04	1.79
GROUP IX	13.19	1.79
HEAVY CONSTRUCTION:		
ZONE I		
GROUP I	10.08	1.54
GROUP II	10.35	1.54
GROUP III	10.43	1.54
GROUP IV	10.55	1.54
GROUP V	10.60	1.54
GROUP VI	10.70	1.54
GROUP VII	10.80	1.54
GROUP VIII	10.94	1.54
GROUP IX	11.09	1.54
ZONE II		
GROUP I	11.38	1.54
GROUP II	11.50	1.54
GROUP III	11.58	1.54
GROUP IV	11.70	1.54
GROUP V	11.75	1.54
GROUP VI	11.85	1.54
GROUP VII	11.95	1.54
GROUP VIII	12.09	1.54
GROUP IX	12.24	1.54

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS (CONT'D		
HEAVY CONSTRUCTION		
ZONE III		
GROUP I	$11.63	1.54
GROUP II	11.75	1.54
GROUP III	11.85	1.54
GROUP IV	11.95	1.54
GROUP V	12.00	1.54
GROUP VI	12.10	1.54
GROUP VII	12.20	1.54
GROUP VIII	12.34	1.54
GROUP IX	12.49	1.54

CLASSIFICATION AREAS AND ZONES DEFINITIONS

ASBESTOS WORKERS:
ZONE I - Statewide, except Union, Harding, Curry, Roosevelt and Quay Counties.
ZONE I - Union, Harding, Curry, Roosevelt and Quay Counties

BRICKLAYERS-STONEMASONS:
ZONE 1-A; 1-B and 1-C - Union, Harding, Santa Fe, Valencia, Torrance, Taos, Socorro, Mora, McKinley, Colfax, Catron, San Miguel, San Juan, Sandoval, Rio Arriba, Bernalillo, Cibola and Los Alamos Counties
FROM BASING POINT OF ALBUQUERQUE MAIN POST OFFICE:
Zone 1-A - 0 to 25 road miles
Zone 1-B - 25 to 50 road miles
Zone 1-C - Over 50 road miles
ZONE II - Curry and Roosevelt Counties
ZONE III - DeBaca, Guadalupe and Quay Counties
ZONE IV - Chaves County
ZONE V - Lincoln County
ZONE VI A Lea & Eddy Cos. (except at Mine & refinery sites outside Municipal limits)
ZONE VI B - Lea & Eddy Cos. (employees at mine & refinery sites outside municipal limits)
ZONE VII - Luna and Grant Counties, communities of Silver City, Bayard, Central, Hurley and new town site of Tyrone; Hidalgo, Sierra and Otero Counties.
ZONE VIII - Dona Ana County

CEMENT MASONS:
AREA I
Statewide, except Farmington, San Juan County
AREA II
Farmington, San Juan County
Zone I - 0-15 miles from Farmington City Hall
Zone II - 15-35 miles from Farmington City Hall
Zone III - 35 miles and over from Farmington City Hall

ELECTRICIANS - CABLE SPLICERS
ZONE I
AREA I - Bernalillo, Sante Fe, Torrance, DeBaca, Guadalupe, Quay, San Miguel, Mora, Harding, Union, Colfax, Taos, Rio Arriba, Grant, Sandoval, Valencia, Socorro, Catron, McKinley, Sierra, San Juan, Chaves, Curry, Lincoln, Cibola and Roosevelt Counties.
AREA 1 - A
From nearest basing point cities, towns and mileage from main post office in the following towns;

Albuquerque - 15 miles
Santa Fe - 10 miles
Las Vegas - 8 miles
Farmington - 6 miles
Raton - 6 miles
Tucumri - 6 miles
Aztec - 6 miles
Roswell - 12 miles
Ruidoso - 12 miles
Portales - 12 miles
Carrizozo - 12 miles
Clovis - 12 miles
Gallup - 10 miles
*Pojoaque - 2 miles

*All areas adjacent to Pojoaque are over 2 miles distant from main post office in that town will be zoned out of Santa Fe.

CLASSIFICATION AREA AND ZONE DEFINITIONS (CONT'D)

ELECTRICIANS - CABLE SPLICERS (CONT'D):
AREA 1-B
Extending up to 20 miles beyond Area 1-A
AREA 1-C
Extending up to 30 miles from Area 1-A
AREA 1-D
Anything beyond 30 miles from Area 1-A
ZONE II - Los Alamos County
ZONE III - Dona Ana, Otero, Luna, Hidalgo Counties
Zone 3-A - Within 10 miles radius from the Post Office in Las Cruces and within a 5 m. radius from the Post Office in Alamorgordo
Zone 3-B - Dona Ana, Otero, Luna, and Hidalgo Counties (except that area specified in Zone 3-A)
ZONE IV
Eddy & Lea Cos. the following zones shall be designated from the main post office in Artesia, Carlsbad, Hobbs & Lovington
Zone 4-A - 0 to 12 miles
Zone 4-B - 12 to 22 miles
Zone 4-C - 22 to 40 miles
Zone 4-D - Over 40 miles

ELEVATOR CONSTRUCTORS:
AREA I
Bernalillo, Catron, Colfax, Curry, DeBaca, Guadalupe, Harding, Lincoln, Los Alamos, McKinley, Mora, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Socorro, Taos, Torrance, Union, Cibola and Valencia Counties.
AREA II
Chaves, Hidalgo, Dona Ana, Grant, Luna, Otero and Sierra Cos.

IRONWORKERS:
ZONE I
Bernalillo, Catron, Colfax, DeBaca, Guadalupe, Lincoln, Los Alamos, Taos, McKinley, Mora, Rio Arriba, Sandoval, Santa Fe, Socorro, Torrance, Cibola, and Valencia Counties.
ZONE II
FARMINGTON, SAN JUAN COUNTY
Area 1 - Shall extend a distance of 6 road miles inclusive beyond City Hall.
Area 2 - Shall extend a distance of 8 road miles inclusive beyond the outer perimeter of area 1
Area 3 - Shall extend a distance of 10 rd. mi. inclusive beyond the outer limits of area 2
Area 4 - Shall extend a distance of 27 rd. mi. inclusive beyond the outer limits of area 3
Other areas not within area 1, 2, 3 and 4 shall revert to the $15.00 per day subsistence.
ZONE III
Dona Ana County with the exception of that portion of the county that lies within the White Sands Missile Range; Chaves County, Eddy Co., except that Potash Basin & defined as the area 10 rd. miles on Highway 62 & Highway 180, east of Carlsbad
ZONE VI
Curry, Harding, Quay, Union, Hidalgo, Grant, Lea, Luna, Otero, and Sierra Counties; also White Sands & McGregor Missile Ranges, Potash Basin

CLASSIFICATION AREA AND ZONE DEFINITIONS (CONT'D)

LABORERS
GROUP 1 - Building & common laborers; chainmen; stake drivers; demolition; heatertender; pick & shovel work; window cleaning & cleanup
GROUP 2 - Carpenter tender; concrete workers; concrete buggy operators
GROUP 3 - Air & power tool operator; asphalt raker; chain-saw operators; cutting torch operators; gunite reboundmen; fog machine operators; power buggy operators; sandblasters (potmen); window washers; wagon, core & diamonddriller tenders (outside); pumps under 6"; asbestos removal; concrete burner; cement mason tenders; hod carriers; mortar mixers; plaster spreader operators; plaster tenders; gunite nozzlemen; pipelayer; pumpcrete nozzlemen; powdermen; blaster

LEAD BURNERS BASING POINT AND AREA DEFINITIONS
BASING POINT CITIES OR TOWNS:
Albuquerque, Alamorgordo, Anthony, Artesia, Belen, Carlsbad, Clovis, Deming, Espanola, Farmington, Gallup, Grants, Hobbs, Las Cruces, Las Vegas, Lovington, Portales, Raton, Socorro, Roswell, Ruidoso, Santa Fe, Silver City, Santa Rosa, Taos, Tucumcari and Truth of Consequence
ZONE I - Shall include a distance of 7 rd. mi. inclusive beyond the city or town limits
ZONE II - Shall extend a distance of 4 rd. mi. inclusive beyond the outer perimeter of area I
ZONE III - Shall apply to all areas not within 1 or 2, or not within the specific areas
ZONE IV (SPECIFIC AREA)- Los Alamos, White Rock, South Mesa, McGregor Range, White Sands Missile Range, and/or Proving Grounds.

COMMERCIAL LINE WORK
AREA A
Bernalillo, Colfax, Catron, Chaves, Curry, DeBaca, Grant, Guadalupe, Harding, Lincoln, Los Alamos, McKinley, Mora, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Union, Valencia and White Sands Missile Range and that portion of Fort Bliss in New Mexico
AREA A
ZONE I
Cities and Towns Basing Points - Miles from Main Post Offices

Albuquerque - 15 miles	Aztec - 6 miles
Santa Fe - 10 miles	Roswell - 12 miles
Las Vegas - 8 miles	Ruidoso - 12 miles
Farmington - 6 miles	Clovis - 12 miles
Raton - 6 miles	Gallup - 12 miles
Tucumari - 6 miles	

*All areas adjacent to Pojoaque that are over two miles distant from the main post office in that town will be zoned out of Santa Fe
ZONE II
Extending up to 20 miles beyond Zone 1
ZONE III
Extending up to 30 miles beyond zone 1
ZONE IV
Anything beyond 30 miles from zone 1
Las Alamos County - Use ZONE III RATES.

CLASSIFICATION AREA AND ZONEDEFINITIONS (CONT'D)

COMMERCIAL LINE WORK (CONT'D):

AREA B

Applies to switching stations and sub-stations adjacent to power plants in Zone 1 and Zone 2 in Luna, Dona Ana, Otero, and Hidalgo Counties, exclusive of White Sands Missile Range and that portion of Fort Bliss in New Mexico.

ZONE I

That area within 25 miles radius from the downtown Post Office of El Paso, Texas. Fort Bliss and Biggs Field; the area within a five mile radius of any city, town or municipality within which an employer established or maintains his place of business; the area within ten mile radius from the post office in Las Cruces, New Mexico, and within a five mile radius from the post office in Alamogordo, New Mexico.

ZONE II

All other areas of the jurisdiction except those specified in zone 1

AREA C

Applies to switching stations adjacent to power plants in Eddy & Lea Cos.; the following zones listed shall be designatedfrom post office of Artesia, Carlsbad, Hobbs and Lovington:

Zone I - 0 to 12 miles
Zone II - 12 to 22 miles
Zone III - 22 to 40 miles
Zone IV - 40 miles and beyond

MILLWRIGHTS

BASING POINT - FROM ALBUQUERQUE CITY LIMITS:

ZONE 1 - 0 to 15 road miles from basing point
ZONE 2 - 15 to 35 road miles from basing point
ZONE 3 - Over 35 road miles from basing point

PAINTERS

ZONE I

San Juan, McKinley, Bernalillo, Torrance, Guadalupe, Quay, Catron, Eddy, Socorro, Lincoln, DeBaca, Roosevelt, Chaves, Valencia, Sierra, Grant, Lea, Hidalgo, Curry, Sandoval, Colfax, Harding, Los Alamos, Mora, San Miguel, Rio Arriba, Taos, Union and Santa Fe Counties

ZONE II

Luna, Otero & Dona Ana Counties

PLUMBERS-PIPEFITTERS AREA DEFINITIONS

BASING POINT CITIES OR TOWNS:

Alamogordo, Anthony, Artesia, Belen, Carlsbad, Clovis, Deming, Espanola, Farmington, Gallup, Grants, Hobbs, Las Cruces, Las Vegas, Lordsburg, Lovington, Portales, Raton, Roswell, Ruidoso, Santa Fe, Silver City, Santa Rosa, Taos, Tucumcari, Truth or Consequence and Socorro, New Mexico.

AREA I

Shall include a distance of seven road miles inclusive beyond the city or town limits

AREA II

Shall extend a distance of four road miles inclusive beyond the outer perimeter of area I.

AREA III

Shall apply to all areas not within areas 1 or 2 or not within the specific area.

SPECIFIC AREA

Los Alamos, White Rock, South Mesa, McGregor Range, White Sands Missile Range and/or Proving Grounds, Atlas Missile Complex Sites in Chaves and Lincoln Counties, and the Oro Grande Range Camp and Dona Ana and Otero Counties.

CLASSIFICATION AREA AND ZONE DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATORS - BUILDING & HEAVY CONSTRUCTION

GROUP I

Fireman, oiler, screedman, scale op. such as bin-a-batch, rubber tired farm type tractor, tractors under 50 HP w/o attachments, breakman, concrete paving curing machine (bridgetype), helper (mechanic, welder, grease truck)

GROUP II

Rollers, sheepsfoot or pneumatic self-propelled w/o dozer, concrete conveyors, service truck op. (head oiler), air compressor (300 DFM & over), pumps (6" & over), screening plants, concrete mixers (under 1 CY), concrete saw or grinder-span type, 1 drum hoist, air tugger, elevating belt type loaders, forklift, lumber stacker, tractor farm type (under 50 HP w/attachments), motorman and industrial locomotive op., winch truck, front end loaders (under 2 CY), power plants which generate over 15 KW., welding machines

GROUP III

Bituminous distributors, boilers, retort & hot oil heaters, concrete mixers (1 CY & over), conc. paver-single drum, drilling equip.; (refrigeration, slusher, jumbo forms), trenching machines (all types), pumpcrete & gunite machines, slipform paver, mechanical bullfloats, concrete slab spreading machine, conc. slab finishing machine, asphalt plants, bituminous finishing machines, crushing plants

GROUP IV

Front end loaders (2 thru 10 CY), rollers steel wheeled-all types, bulldozers, scrapers (motor or towed), elevating graders, concrete batching plants, self-propelled rollers -- equipped w/dozer, twin-bowl scrapers and quad 8 or 9 pushers (35¢ over basic rate, three bowl scraper (60¢ over basic rate).

GROUP V

Hydraulic cranes-with less than 50 feet of boom (20 tons and under), concrete paver-double drum, cat cranes, hysters, side and swingboom cats, 2 drum hoist, auto fine grader

GROUP VI

Mucking machines-all types, motor grader (finish) mechanic welder

GROUP VII

Steam engineers, loader (front end over 10 CY), concrete pump (snorkel type)

GROUP VIII

All shovel type equipment; cranes, draglines, backhoes, derricks, guy & stiff leg, pipemobile (No. 2 operator), piledriver, hydraulic cranes (20 tons & over), mine hoist, belt loader ("C.M.I." Type), boom and jibs 150 ft. through 199 ft. - 25¢ per hour above base pay 200 ft. and over-50¢ per hour above base pay. Shovel (wheel type), boring machine (tunnel or shaft mole), pipe mobile

SHEET METAL WORKERS ZONE AND CLASSIFICATION DEFINITIONS

ZONE I

Bernalillo, Catron, Chaves, Colfax, Curry, DeBaca, Guadalupe, Harding, Lincoln, Los Alamos, McKinley, Mora, Quay, Rio Arribo, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Socorro, Taos, Torrance, Union, Cibola and Valencia Counties.

CLASSIFICATION AREA AND ZONE DEFINITIONS (CONT'D)

SHEET METAL WORKERS (CONT'D):

ZONE IA
Any area within a five mile radius of the city limits of Albuquerque, Santa Fe, Farmington, Roswell and Kirtland AFB, East & West; Rio Rancho; Paradise Hills; An area including ten miles each direction east and west of interstate Highway 25 and extending north and south, terminating with but including, Santa Fe and Belen; an area identified by corner reference points beginning at and including Projoaque, to Chimayo, to Velarde, to Abiquiu and back to Pojoaque; an area identified by corner reference points beginning at and including Farmington to Aztec, to Bloomfield and back to Farmington.
ZONE IB - Los Alamos County ZONE IC - San Juan (except that area in Zone
ZONE IC - San Juan (except that area in Zone IA)
ZONE ID - All area not in Zone IA, IB, or IC
ZONE II
Dona Ana, Grant, Hidalgo, Luna, Sierra, Otero, Eddy & Lea Counties
ZONE IIA - Any area w/in a 5 mile radius of the city limits of Carlsbad, Las Cruces, Artesia, Alamogordo, Hobbs and Sunland Park
ZONE IIB - White Sands, including Holloman, McGregor & Lyndon B. Johnson.
ZONE IIC - All areas not in zone IIA or IIB.

SOUND INSTALLERS
ZONE I
Thirty mile radius of main post office in Albuquerque
ZONE II
Remainder of Valencia, Sandoval, Santa Fe, Torrance, Cibola and Socorro Counties, the hourly rates of pay shall be increased for twelve and one-half (12½) percent of journeymen rate of pay for ZONE I.
ZONE III
Chaves, Curry, Roosevelt, Lincoln, Guadalupe, DeBaca, Quay, San Miguel, Mora, Harding, Union, Colfax, Taos, Rio Arribo, Catron, Sierra, Grant, Los Alamos, San Juan, McKinley Counties the hourly rates of pay shall be increased by thirty-seven and one-half (37.5) percent of the journeyman rate of pay for ZONE I.

TRUCK DRIVERS ZONE PAY BASING POINTS AND DEFINITIONS LISTED BELOW FOR BUILDING AND HEAVY CONSTRUCTION - BASING POINTS ARE AS FOLLOWS:
Alamogordo, Albuquerque, Artesia, Bayard, Belen, Carlsbad, Clovis, Deming, Espanola, Eunice, Farmington, Gallup, Grants, Hobbs, Las Cruces, Las Vegas, Lordsburg, Lovington, Portales, Raton, Roswell, Ruidoso, Santa Fe, Santa Rosa, Silver City, Socorro, Taos, Tucumcari
ZONE I
Shall be jobs or projects within 15 road miles from the starting points listed above
ZONE II
Shall be jobs or projects which are more than fifteen road miles, but less than thirty-five road miles from base points, also, includes all of Los Alamos County
ZONE III
Shall be those jobs or projects which are thirty-five road miles or more from the base points.

CLASSIFICATION AREA AND ZONE DEFINITIONS (CONT'D)

TRUCK DRIVERS (BUILDING & HEAVY CONSTRUCTION)
GROUP I
Pickup 3/4 ton and under, lubrication, light tire repair and washer, swamper, 2 or 4 and up.
GROUP II
Dump or batch truck under 8 C.Y.W.L.C.: flat bed (bobtail) 2 ton and under; warehouseman including material checker, fork lift under 5 tons MRC.
GROUP III
Dump trucks (including all highway and off highway) 8 up to 16 C.Y.W.L.C.; water, fuel or oil trucks less than 3,000 gal., flat bed (bobtail) over 2 tons.
GROUP IV
Distributor driver, heavy tire repair, lumber carrier driver, young buggy or similar equipment, transit mix or agitator 2 or 3 axle bobtail equipment, scissor truck, bulk cement bobtail 2 or 3 axles, semi-trailer flatbed or van single axle, forklift 5 ton and over M.R.C.
GROUP V
Dumpsters and dumpcrete driver; water, fuel or oil truck 3,000 to 6,000 gallons; lowboys and light equipment driver; euclid type tank wagon under 6,000 gallons
GROUP VI
Vacuum truck; dump trucks (including all highway and off-highway 16 up to 22 C.Y.W.L.C.
GROUP VII
Transit mix or agitator semi or 4 axle equipment driver; flaherty truck type spreader box driver; slurry truck driver; bulk cement driver; semi-doubles; 4 axle bobtail; winch truck and "A" frame; dump truck (including all highway and off-highway) 22 CY up to 35 C.Y.W.L.C.
GROUP VIII
Euclid diesel power turnarocker; terra coba-DW20-Le-Tourneau Pulls and similar diesel powered equipment when used to haul materials and assigned to a teamster-lowboy heavy equipment driver; water, fuel or oil trucks 6,000 gallons and over including tank wagon drivers, semi-trailer driver (flat-bed or van tandems); light equipment mechanic; dump trucks (including all highway and off-highway) 35 C.Y.W.L.C. and over; truck and trailer or semi-trailer (flatbed); eject all
GROUP IX
Lowboy (heavy equipment double gooseneck); heavy equipment mechanic; welder (body and fender men)

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day; G-Friday after Thanksgiving.

WELDERS--receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

[FR Doc. 84-13208 Filed 5-17-84; 8:45 am]

BILLING CODE 4510-27-C

federal register

Friday
May 18, 1984

Part IV

Department of Education

Experimental and Innovative Training and Rehabilitative Long-Term Training Programs; Proposed Funding Priorities and Application Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Experimental and Innovative Training Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priority for Fiscal Year 1984.

SUMMARY: The Secretary proposes a funding priority for Experimental and Innovative Training grants in order to ensure effective use of program funds and to direct funds to an area of identified need during Fiscal Year 1984.

The Secretary proposes this priority in response to an identified training need and in support of the OSERS goal of facilitating the transaction of severely disabled individuals from school to employment in order to assure a continuum of care from early childhood to maximum functioning as adults.

DATE: Interested persons are invited to submit comments or suggestions regarding the proposed priority on or before the 30 day after publication of this Notice in the **Federal Register.**

ADDRESSES: All written comments and suggestions should be sent to Martin W. Spickler, Division of Resource Development, Office of Special Education and Rehabilitative Services, Department of Education, 400 Maryland Avenue SW., Room 3319, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Martin W. Spickler, Division of Resource Development, Rehabilitation Services Administration. Telephone: (202) 732–1352.

SUPPLEMENTARY INFORMATION: Grants for the Rehabilitation Training Program are authorized by Title III, Section 304 of the Rehabilitation Act of 1973, as amended. Program regulations for the Experimental and Innovative Training Program are established at 34 CFR Part 387. The purpose of the Experimental and Innovative Training Program is to develop new types of rehabilitation personnel and to demonstrate the effectiveness of these new types of personnel in providing rehabilitation services to severely handicapped persons and to develop new and imporved methods of training rehabilitation personnel so there may be a more effective delivery of rehabilitation services by State and other rehabilitation agencies. Applicants are notified that the Secretary will be collecting data to enable him, in accordance with the Rehabilitation Amendments of 1984 (Pub. L. 98–221), to target more closely awards made in future years to areas of personnel shortages.

Eligible Applicants: Awards are made under this program to State vocational rehabilitation agencies and other public or non-profit agencies or organizations, including institutions of higher education. Historically Black colleges and universities are encouraged to participate in this program.

Funds Available: A total of $700,000 is estimated to be available for the support of new projects under the Experimental and Innovative Training Program in Fiscal Year 1984. Of this amount, it is estimated that $250,000 will be available for new projects that address the designated priority, while the remaining funds of $450,000 will be available for other new Experimental and Innovative Training projects which do not address the priority. It is estimated that approximately three new projects which address the designated priority will be funded at an average project cost of $83,300, and that approximately five new projects which do not address the designated priority will be funded at an average project cost of $90,000. These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulation.

Proposed Priority: In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3)(i), the Secretary proposes to give an absolute preference to applications submitted in Fiscal Year 1984 in response to the established priority. An absolute preference is one which permits the Secretary to reserve all or part of a program's funds solely for applications that meet the priority.

All applications will be evaluated according to criteria which appear in program regulations in 34 CFR 387.30.

Priority: Applications must address the training of individuals who are in positions of leadership in special education and rehabilitation. The individuals to be trained may include administrators and managers of State vocational rehabilitation agencies. rehabilitation facilities, independent living centers, State and local departments of special education, and community-based organizations and agencies directly involved in providing special education and rehabilitation services to handicapped persons. The focus of the training must be the acquisition of knowledge and development of skills necessary to develop and implement cooperative agreements and service delivery programs between special education and rehabilition to facilitate the transition of handicapped persons, especially the most severely handicapped, from school to employment.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priority. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 30th day after publication of this document will be considered before the Secretary issues a final priority. All comments submitted in response to this proposed priority will be available for public inspection during and after the comment period, in Room 3319 Switzer Building, 330 C Street SW., Wasington, D.C., between the hours of 8:30 a.m., and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(29 U.S.C. 774)

(Catalog of Federal Domestic Assistance No. 84.129 Rehabilitation Training Programs)

Dated: May 11, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84–13399 Filed 5–17–84; 8:45 am]

BILLING CODE 4000–01–M

Rehabilitation Services Administration

AGENCY: Department of Education.

ACTION: Application notice establishing closing date for transmittal of new Experimental and Innovative Training Program applications for Fiscal Year 1984.

Applications are invited for new Experimental and Innovative Training Program projects for Fiscal Year 1984.

Authority for this program is contained in section 304 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 774)

Closing Date for Transmittal of Applications: Applications for grant awards must be mailed or hand delivered by July 9, 1984.

Applications Delivered by Mail: Applications for new projects must be addressed to the Department of Education, Application Control Center, Attention: 84.129Y, 400 Maryland Avenue SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A ligible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other evidence of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

Applicants are encouraged to use registered or at least first class mail. Each late applicant for a new award will be notified that its application will not be considered.

Applications Delivered by Hand: Hand delivered applications must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: Awards are made under this program to State vocational rehabilitation agencies and other public or nonprofit agencies or organizations, including institutions of higher education.

The purpose of the Experimental and Innovative Training Program is to train new types of rehabilitation personnel and to demonstrate new and improved methods of training rehabilitation personnel.

Available Funds: The total amount of funds available for rehabilitation training in Fiscal Year 1984 is $22,000,000, including $700,000 for new Experimental and Innovative Training projects. The range of funded projects is expected to be from $50,000 to $150,000. These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Of the total amount available for new projects under this program, $250,000 is reserved for the funding of project(s) in the proposed priority area published elsewhere in this issue of the **Federal Register**. The remaining $450,000 in available new funds under this program will be used to support other non-priority projects in the Experimental and Innovative Training area. Each applicant is responsible for designating whether the application addresses the proposed priority or non-priority area.

Application Forms: Application forms and program information packages for new awards are available and may be obtained by writing to the Office of Developmental Programs, Rehabilitation Services Administration Office of Special Education and Rehabilitative Services, U.S. Department of Education, Room 3329, Mary E. Switzer Building, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The program information is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing this competition.

The Secretary strongly urges that the narrative portion of the applications for new awards not exceed 25 pages in length. The Secretary further urges that applicants submit only the information that is requested. (OMB #1820–0018, expires November 1984)

Applicable Regulations: Regulations applicable to this program include the following:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78); and

(b) Regulations governing the Rehabilitation Experimental and Innovative Training Program (34 CFR Parts 385 and 387). A notice of proposed annual priorities is published in this issue of the **Federal Register**. If your application addresses this proposed Experimental and Innovative priority and there are substantive changes made in the proposed priority when published in final form, you will be given the opportunity to amend or resubmit your application.

Further Information: Martin W. Spickler, Ph. D., Director, Division of Resource Development, Rehabilitation Services Administration, U.S. Department of Education, Room 3319, Mary E. Switzer Building, 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: (202) 732–1325.

(29 U.S.C. 774)

Dated: May 11, 1984.

(Catalog of Federal Domestic Assistance No. 84.129 Rehabilitation Training)

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 84–13400 Filed 5–17–84; 8:45 am]

BILLING CODE 4000–01–M

Rehabilitation Long-Term Training Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priorities for Fiscal Year 1984.

SUMMARY: The Secretary proposes funding priorities for long-term training grants in the fields of vocational evaluation/work adjustment, rehabilitation of the mentally ill, rehabilitation psychology, and other training fields (special education, rehabilitation coordination, management, dissemination of training materials and new knowledge, and development of training materials). To ensure effective use of program funds, the Secretary proposes priorities to direct funds to areas of identified need during Fiscal Year 1984. The Secretray proposes to reserve funds for applications meeting these priorities.

DATE: Interested persons are invited to submit comments or suggestions regarding the proposed priorities on or before June 18, 1984.

ADDRESS: All written comments and suggestions should be sent to Martin W. Spickler, Division of Resource Development, Office of Special Education and Rehabilitative Services, Department of Education, 400 Maryland Avenue SW., Room 3319, Mary E. Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Martin W. Spickler, Division of Resource Development, Rehabilitation Services Administration, Telephone: (202) 732–1352.

SUPPLEMENTARY INFORMATION: Grants for the Rehabilitation Long-Term Training Program are authorized by Title III, Section 304 of the Rehabilitation Act of 1973, as amended. Program regulations are established in 34 CFR Part 386.

The purpose of the Rehabilitation Long-Term Training Program is to support projects designed for training personnel to be available for employment in public and private agencies involved in the rehabilitation of physically and mentally handicapped individuals, especially those who are the most severely handicapped. Applicants are notified that the Secretary will be

collecting data to enable him, in accordance with the Rehabilitation Amendments of 1984 (Pub. L. 98–221), to target more closely awards made in future years to areas of personnel shortages.

Eligible Applicants: Awards are made under this program to State vocational rehabilitation agencies and other public or nonprofit agencies or organizations, including institutions of higher education. Historically Black colleges are encouraged to participate in this program.

Proposed Priorities: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3)(i), the Secretary proposes to give an absolute preference to applications submitted in Fiscal Year 1984 in response to one of several priorities. An absolute priority is one which permits the Secretary to select only those applications that address the priority within the identified fields.

Available Funds: It is estimated that a total of $6,245,100 will be available in Fiscal Year 1984 for new projects under the Rehabilitation Long-Term Training Program. Of this amount, it is estimated that $1,966,000 will be awarded for new projects responding to proposed Fiscal Year 1984 priorities identified in the fields of vocational evaluation/work adjustment, rehabilitation of the mentally ill, rehabilitation psychology, and other. Funds have been reserved for new projects addressing the designated priorities in those fields as follows: $900,000 for vocational evaluation/work adjustment; $350,000 for rehabilitation of the mentally ill; $112,000 for rehabilitation psychology; and $604,000 for other training fields.

All applications will be evaluated according to selection criteria which appear in program regulations in 34 CFR 386.30.

Proposed Priorities

1. Vocational Evaluation/Work Adjustment

This priority is designed to respond to projected manpower shortages in identified geographic areas in vocational evaluation/work adjustment and to promote broader geographic distribution of vocational evaluation/work adjustment training projects.

It is currently projected that the following Department of Education regions will not have vocational evaluation/work adjustment projects without RSA funding support in Fiscal Year 1984: Regions I, II, III, IV, V, VII, VIII, and X. Priority will, therefore, be given to applications proposing projects in those geographic areas.

Applications submitted under the field of vocational evaluation/work adjustment should demonstrate the need for new personnel or for upgrading the skills of employed personnel in a specific geographic area, and the application should describe how the proposed project will address those needs. The training content for employed personnel should be developed in consultation with the current employers of the rehabilitation personnel to be trained. It is estimated that a total of $900,000 will be available for the support of approximately eight new projects.

2. Rehabilitation of the Mentally Ill

The priority for applications under the field of rehabilitation of the mentally ill is for training programs designed to develop knowledge and skills necessary to furnish services for individuals who are chronically mentally ill. The training should focus on preparing personnel skilled in providing services necessary to enable chronically mentally ill individuals to participate in and benefit from vocational rehabilitation services and to maintain employment after completing vocational rehabilitation services. To foster coordination of services, the training should include joint training for supportive services and vocational rehabilitation personnel.

Supportive services for individuals who are chronically mentally ill could include such services as teaching independent living skills, arranging housing, securing services from other social agencies, and intervening in crisis situations which interfere with the individuals, participation in rehabilitation services or threaten the retention of the benefits of those services.

It is estimated that a total of $350,000 will be available for the support of approximately three new projects.

3. Rehabilitation Psychology

Applications submitted under rehabilitation psychology should propose training for psychologists currently employed or used by State vocational rehabilitation agencies or rehabilitation facilities to provide diagnostic services or psychological consultation. The purpose of the training should be to improve services to learning disabled individuals by upgrading the skills of these personnel to diagnose, treat, and plan rehabilitation services for learning disabled individuals and to facilitate the transition of learning disabled youth from school to employment.

It is estimated that a total of $112,000 will be available for the support of one new project.

Other Training Fields Not Enumerated in the Statute that Contribute to the Rehabilitation of Handicapped Individuals

The six priorities proposed under this field are for programs to: train personnel to coordinate special education and rehabilitation services for learning disabled persons; train State agency managerial personnel and rehabilitation trainers; train managers for rehabilitation facilities; train managers for independent living centers; disseminate training materials and information; and develop training materials.

All applications submitted in response to these priorities should be national in scope, and the activities carried out under these projects should be appropriate for general use throughout the country and available to individuals throughout the country.

1. Special Education—Rehabilitation Coordination

Applications submitted under this priority should be targeted to the training of State vocational rehabilitation agency and rehabilitation facility personnel. The training content should address diagnosis, determination of eligibility, and delivery of rehabilitation services to individuals who are learning disabled, especially as related to achieving improved coordination between special education and rehabilitation and facilitating the transition of individuals who are learning disabled from special education to rehabilitation service delivery programs.

It is estimated that $100,000 will be available for the support of one project.

2. Management

Management: State Agencies. Applications submitted under this priority are to develop training programs targeted to State vocational rehabilitation agency managerial personnel (e.g., administrators and evaluators) and rehabilitation trainers (e.g., trainers within State vocational rehabilitation agencies and Rehabilitation Continuing Education Programs). The content should be based on the Title I State/Federal Program and Procedural Standards which were developed through an RSA contract. Program Standards are value statements reflecting program mission and intent. They are accompained by statistical measures which allow for evaluation of

agency performance in each of the Standards areas. Procedural Standards cover essential aspects of service recording and delivery which are addressed by case reviews.

Training proposed in response to this priority should be based on these training materials. RSA will provide to interested applicants information regarding the details of the Title I State/Federal Program and Procedural Standards and training materials previously developed for RSA.

It is estimated that $93,000 will be available for the support of one project.

3. Management: Facilities

Applications submitted under this priority should be directed to the training of rehabilitation facility personnel and State vocational rehabilitation agency facility specialists. Both a resource manual and accompanying training manual have been developed under contract for RSA. The resource manual is entitled "Selected Aspects of Financial Management in Rehabilitation Facilities." A set of guidelines, entitled "Guidelines for Agreements Between State Rehabilitation Agencies and Rehabilitation Facilities," and accompanying discussion manual have also been developed for RSA. Training content developed in response to this priority should be based on these training materials. Interested applicants can obtain copies of these materials from RSA.

It is estimated that $93,000 will be available for the support of one project.

4. Management: Independent Living Centers

Applications submitted under this priority should address training to develop and upgrade the management skills of personnel in independent living centers. Applications should identify specific management needs, provide for a coordinated and sequential training program to meet those needs, and demonstrate that the proposed training needs cannot be met by ongoing programs in the geographic area.

It is estimated that $93,000 will be available for the support of one project.

5. Dissemination of Training Materials

Applications submitted under this priority should be directed to the dissemination of rehabilitation training materials. This priority is intended to ensure that training materials of all types developed under the RSA Training Program and other training materials relevant for the training of rehabilitation personnel are available for dissemination to the rehabilitation community. Applications submitted under this priority should demonstrate the need for this training activity, define the proposed approach to be utilized, and substantiate the cost effectiveness of the proposed approach.

It is estimated that $125,000 will be available for the support of one project.

6. Development of Training Materials

An application submitted under this priority should be for the development of materials designed to train personnel in the areas of vocational evaluation/work adjustment service delivery, rehabilitation facility administration, and job placement service delivery. The project should include within its scope activities directed to the development of training materials that can be self-instructional. The target audience for the training materials should be vocational rehabilitation facilities, rehabilitation-focused university training programs, and other programs providing rehabilitation services. Applications submitted under this priority should demonstrate the need for this training activity, define the proposed approach, and substantiate the cost effectiveness of the proposed approach.

It is estimated that $100,000 will be available for the support of one project.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priorities. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 30th day after publication of this document will be considered before the Secretary issues final priorities. All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in Room 3319, Mary E. Switzer Building, 330 C Street, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(29 U.S.C. 774)

Dated: May 11, 1984.

(Catalog of Federal Domestic Assistance No. 84.129 Rehabilitation Training Program)

T. H. Bell,

Secretary of Education.

[FR Doc. 84-13401 Filed 5-17-84; 8:45 am]

BILLING CODE 4000-01-M

Rehabilitation Services Administration

AGENCY: Department of Education.

ACTION: Application notice establishing closing date for transmittal of certain Rehabilitation Long-Term Training Project applications for Fiscal Year 1984.

Applications are invited for new Rehabilitation Long-Term Training projects for Fiscal Year 1984 in the following Long-Term Training categories:

(a) Vocational Evaluation and work Adjustment.

(b) Rehabilitation Psychology.

(c) Rehabilitation of the Mentally Ill.

(d) Other Training Fields.

Authority for this program is contained in Section 304 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 774)

Closing Date for Transmittal of Applications: Applications for grant awards must be mailed or hand delivered by July 9, 1984.

Applications Delivered by Mail: Applications for new projects must be addressed to the Department of Education, Application Control Center, Attention: 84.129, 400 Maryland Avenue SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Sevice.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other evidence of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its post office.

Applicants are encouraged to use registered or at least first class mail. Each late applicant for a new award will be notified that its application will not be considered.

Applications Delivered by Hand: Hand-delivered applications must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal

holidays. An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: Awards are made under this program to State vocational rehabilitation agencies and other public or nonprofit agencies of organizations, including institutions of higher education.

The purpose of the Rehabilitation Long-Term Training Program is to support projects designed for training personnel available for employment in public or private agencies involved in the rehabilitation of physically and mentally handicapped individuals, expecially those who are the most severely handicapped. Historically Black colleges and universities are encouraged to participate in this program.

Available Funds: The total amount of funds available for rehabilitation training in Fiscal Year 1984 is $22,000,000, including $6,245,100 for new rehabilitation long-term training projects. Of this amount, $1,966,000 is planned for the categories listed below. The range of funded projects is expected to be from $93,000 to $150,000. These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

It is estimated that the following funds will be available for new projects in these Long-Term Training categories.

	Dollars (rounded)
Vocational Evaluation and Work Adjustment	$900,000
Rehabilitation of the Mentally Ill	350,000
Rehabilitation Psychology	112,000
Other Training Fields	604,000
Total	$1,966,000

It is expected that new projects funded under these training categories in Fiscal Year 1984 will be limited to one year of support.

An announcement for the Long-Term Training categories of Rehabilitation Medicine, Rehabilitation Counseling, Prosthetics and Orthotics, Rehabilitation Facility Administration, Rehabilitation Nursing, Physical Therapy, Occupational Therapy, Speech Pathology and Audiology, Rehailitation of the Blind, Rehabilitation of the Deaf, Job Placement/Job Development, and Undergraduate Education in the Rehabilitation Services was published at 49 FR 4817 on February 8, 1984.

Application Forms: Application forms and program information packages for new awards are available and may be obtained by writing to the office of Developmental Programs, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Room 3329, Mary E. Switzer Building, 400 Maryland Avenue SW., Washington, D.C. 20202.

Application forms and program information package will be mailed to grantees who are completing long-term training projects in these training categories during the 1983–1984 academic year.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The program information is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the competitions.

The Secretary urges that the narrative portion of the applications for new awards not exceed 25 pages in length. The Secretary further urges that applicants submit only the informaiton that is requested. (OMB #1820–0018 expires November 1984)

Applicable Regulations: Regulations applicable to this program include the following:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

(b) Regulations governing the Rehabilitation Long-Term Training Program (34 CFR Parts 385 and 386). A notice of proposed priorities is published i this issue of the **Federal Register.** if substantive changes are made to the proposed priorities when published in final form, you will be given the opportunity to amend or resubmit your application if it addresses a revised priority.

Further Information: Martin W. Spickler, Ph. D., Director, Division of Resource Development, Rehabilitation Services Administration, U.S. Department of Education, Room 3319, Mary E. Switzer Building, 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: (202) 732–1325.

(29 U.S.C. 774)

Dated: May 11, 1984.

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation training)

Madeleine Will,

Assistant secretary Office of special Education and Rehabilitative Services.

[FR Doc. 84–13402 Filed 5–17–84; 8:45 am]

BILLING CODE 4000–01–M

federal register

Friday
May 18, 1984

Part V

Department of Energy

Federal Energy Regulatory Commission

NGPA Notices of Determination by Jurisdictional Agencies; Notice

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Vol. 1125]

NGPA Notices of Determination by Jurisdictional Agencies

Issued: May 14, 1984.

Note.—By final rule issued by the Commission on February 22, 1984 (Order No. 362, Docket RM83–50–000, 49 FR 7109–13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, will not be published in the **Federal Register**. Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determinations. All other parties should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, DC 20426, to inquire about subscribing to these notices. Copies of Order No. 362 are available from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Road, Springfield, Virginia 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
- 102–2 New well (2.5 mile rule)
- 102–3 New well (1000 ft rule)
- 102–4 New onshore reservoir
- 102–5 New res. on old OCS lease

Section 103: New onshore production well

Section 107–DP: 15,000 ft or deeper
- 107–GB: Geopressured brine
- 107–DV: Devonian shale
- 107–CS: Coal seam gas
- 107–PE: Production enhancement
- 107–TF: New tight formation
- 107–RT: Recompletion tight formation

Section 108: Stripper well
- 108–SA: Seasonally affected
- 108–ER: Enhanced recovery
- 108–PB: Temporary pressure buildup

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS

ISSUED MAY 14, 1984

VOLUME 1125

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
********** NEW MEXICO DEPARTMENT OF ENERGY & MINERALS **********									
-AMOCO PRODUCTION CO				RECEIVED:	04/25/84	JA: NM			
8430579		3004512171		108		SNYDER GAS COM "B" #1	BASIN DAKOTA	16.0	EL PASO NATURAL G
-BELCO DEVELOPMENT CORP				RECEIVED:	04/25/84	JA: NM			
8430577		3002500000		103		C E BROOKS #1	SOUTH KNOWLES	0.0	PHILLIPS PETROLEU
-BRAZOS PETROLEUM CO				RECEIVED:	04/25/84	JA: NM			
8430615		3004100000		103		HEFFLEFINGER #1	CHAVERRO (SAN ANDRES)	73.0	CITIES SERVICE OI
8430617		3004100000		103		HEFFLEFINGER #2	CHAVERRO (SAN ANDRES)	73.0	CITIES SERVICEOIL
-C & K PETROLEUM INC				RECEIVED:	04/25/84	JA: NM			
8430582		3002527957		103		SHIPP "27" #2	CASEY (STRAWN)	0.0	PHILLIPS PETROLEU
-CARL A SCHELLINGER				RECEIVED:	04/25/84	JA: NM			
8430600		3000562015		103	107-TF	CAMPBELL STATION UNIT #3	UNDESIGNATED - ABO	180.0	TRANSWESTERN PIPE
8430601		3000562015		103	107-TF	CAMPBELL STATION UNIT #3	UNDESIGNATED - ABO	180.0	TRANSWESTERN PIPE
-CONOCO INC				RECEIVED:	04/25/84	JA: NM			
8430611		3000520908		103		YOAKUM #1	CHAVEROO	5.0	WARREN PETROLEUM
-EL PASO EXPLORATION CO				RECEIVED:	04/25/84	JA: NM			
8430621		3003906813		108-PB		SAN JUAN 27-5 UNIT PC #18	TAPACITO	0.0	NORTHWEST PIPELIN
-ENERGY RESERVES GROUP INC				RECEIVED:	04/25/84	JA: NM			
8430607		3004120712		103		LAMBIRTH #1	S PETERSON PENN ASSOC	216.0	WARREN PETROLEUM
-EXXON CORPORATION				RECEIVED:	04/25/84	JA: NM			
8430597		3001524513		103		NEW MEXICO "DM" STATE #1	WILDCAT	3.0	
-GULF OIL CORPORATION				RECEIVED:	04/25/84	JA: NM			
8430586		3002525465		108		ARNOTT RAMSAY (NCT-E) #7	LANGLIE MATTIX	1.4	EL PASO NATURAL G
8430592		3001500310		108		ATOKA SAN ANDRES UNIT #116	ATOKA SAN ANDRES	1.2	PHILLIPS PETROLEU
8430594		3001500311		108		ATOKA SAN ANDRES UNIT #117	ATOKA SAN ANDRES	1.2	PHILLIPS PETROLEU
8430614		3002508774		108		J F JANDA (NCT-F) #8	EUNICE SOUTH AND JALM	13.3	PHILLIPS PETROLEU
-HANSON OPERATING CO INC				RECEIVED:	04/25/84	JA: NM			
8430598		3002500000		103		MAX GUTMAN #8	WANTZ GRANITE WASH SW	30.0	WARREN PETROLEUM
-MERRION OIL & GAS CORP				RECEIVED:	04/25/84	JA: NM			
8430608		3003923127		103		BOX CANYON COM #1	DEVILS FORK GALLUP	42.4	NEGOTIATING
8430609		3003923352		103		ENCHILADA #1	COUNSELORS GALLUP EXT	82.1	
8430604		3003923351		103		RITA #5	COUNSELORS GALLUP	49.3	NORTHWEST PIPELIN
-MESA PETROLEUM CO				RECEIVED:	04/25/84	JA: NM			
8430606		3001524145		103		MOORE #2	PJ DELAWARE	36.0	
8430590		3004521702		108		STATE COM K #7A	BLANCO MESAVERDE	18.8	EL PASO NATURAL G
-MYCO INDUSTRIES INC				RECEIVED:	04/25/84	JA: NM			
8430596		3001524720		103		HEYCO "7" ST #1	RED LAKE-ON-GRBG-SA	0.0	
-NORTHWEST PIPELINE CORPORATION				RECEIVED:	04/25/84	JA: NM			
8430578		3003921486		108		GOBERNADOR #2	GOBERNADOR PICTURED C	0.0	NORTHWEST PIPELIN
8430591		3004521484		108-PB		HOLT 4	BLANCO PICTURED CLIFF	0.0	NORTHWEST PIPELIN
8430593		3003922678		108-PB		SAN JUAN 30-5 UNIT 41	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	04/25/84	JA: NM			
8430584		3002508529		108		EAST VAC GB/SA UNIT TR 2957 #001	VACUUM GB/SA	1.0	EL PASO NATURAL G
8430583		3002502996		108		EAST VAC GB/SA UNIT TR 3308 #002	VACUUM GB/SA	3.0	EL PASO NATURAL G
8430616		3002528423		103		LEAMEX #36	MALJAMAR GB/SA	25.0	EL PASO NATURAL G
8430581		3002525088		108		WOOLWORTH C D #18	JALMAT YATES	1.0	EL PASO NATURAL G
-POGO PRODUCING COMPANY				RECEIVED:	04/25/84	JA: NM			

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8430610		3002500000		103		STATE WES #2	SAUNDERS (PERMO UPPER	110.0	WARREN PETROLEUM
-RALPH NIX OIL INC				RECEIVED:	04/25/84	JA: NM			
8430612		3001500000		103		FEDELL #1 30-015-24626	ATOKA GLORIETA/YESO	28.0	PHILLIPS PETROLEU
8430599		3001524627		103		FEDELL #2	ATOKA GLORIETA/YESO	17.0	PHILLIPS PETROLEU
8430618		3001500000		103		FEDELL #3 30-015-24628	ATOKA GLORIETA/YESO	16.0	PHILLIPS PETROLEU
8430603		3001500000		103		FEDELL #4 30-015-24629	ATOKA GLORIETA/YESO	0.0	PHILLIPS PETROLEU
8430602		3001500000		103		FOX #1 30-015-24426	ATOKA GLORIETA/YESO	10.0	PHILLIPS PETROLEU
-SHELL WESTERN E&P INC				RECEIVED:	04/25/84	JA: NM			
8430613		3002500000		108		N HOBBS (G-SA) UNIT SEC 25 #111	HOBBS (G-SA)	1.4	PHILLIPS PETROLEU
-SIMS OIL CO INC				RECEIVED:	04/25/84	JA: NM			
8430622		3004513089		108-PB		COOK #2	AZTEC	0.0	EL PASO NATURAL G
-SOUTHLAND ROYALTY CO				RECEIVED:	04/25/84	JA: NM			
8430620		3004500000		108-PB		ALBINO CANYON #1 (MV)	BLANCO MESAVERDE	0.0	EL PASO NATURAL G
8430619		3004509726		108-PB		CURRENT #1	AZTEC	0.0	EL PASO NATURAL G
-TENNECO OIL COMPANY				RECEIVED:	04/25/84	JA: NM			
8430623		3004500000		108-PB		STATE COM K #11	BLANCO	0.0	EL PASO NATURAL G
8430624		3004511775		108-PB		STATE COM LL #12	BLANCO	0.0	EL PASO NATURAL G
8430589		3004524508		108		TURNER B COM 2	BASIN DAKOTA	17.0	EL PASO NATURAL G
-TEXACO INC				RECEIVED:	04/25/84	JA: NM			
8430605		3002528386		103		NEW MEXICO "AT" STATE #12	SAUNDERS (PERMO UPPER	36.1	WARREN PETROLEUM
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:	04/25/84	JA: NM			
8430587		3002525198		108		HARRY LEONARD (NCT-E) #6	DRINKARD	8.5	EL PASO NATURAL G
8430588		3002506366		108		HENRY LEONARD (NCT-F) #19	BLINEBRY	9.4	EL PASO NATURAL G
8430585		3002504877		108		J F JANDA (NCT-B) #5	EUNONT	10.7	EL PASO NATURAL G
-WESTERN OIL PRODUCERS INC				RECEIVED:	04/25/84	JA: NM			
8430595		3002528248		103		STATE MTS #4 LG-740	SCHARB (WOLFCAMP)	45.6	WARREN PETROLEUM
-YATES PETROLEUM CORPORATION				RECEIVED:	04/25/84	JA: NM			
8430580		3004120713		103		DURWOOD "XW" #1	TOMAHAWK S/A	0.0	
**********									
WEST VIRGINIA DEPARTMENT OF MINES									
**********									
-ALAMCO INC				RECEIVED:	04/25/84	JA: WV			
8430570		4708300771		103		A 1323	ROARING CREEK DISTRIC	0.0	COLUMBIA GAS TRAN
8430532		4708300428		108		A-1000	MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
8430542		4702103763		108		A-1002	GLENVILLE DISTRICT	0.0	CONSOLIDATED GAS
8430535		4708300457		108		A-1008	MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
8430539		4708300460		108		A-1026	ROARING CREEK DISTRIC	0.0	COLUMBIA GAS TRAN
8430540		4708300449		108		A-1027	ROARING CREEK DISTRIC	0.0	COLUMBIA GAS TRAN
8430533		4709702272		108		A-1046	MEADE DISTRICT	0.0	COLUMBIA GAS TRAN
8430545		4704103118		108		A-1093	COURTHOUSE DISTRICT	0.0	CONSOLIDATED GAS
8430536		4708300546		108		A-1095	MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
8430550		4708300654		103		A-1120	MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
8430547		4704103245		103		A-1132	FREEMANS CREEK DISTRI	0.0	CONSOLIDATED GAS
8430543		4700701810		108		A-1135	SALTUCK DISTRICT	0.0	CONSOLIDATED GAS
8430546		4704103311		103		A-1143	COURT HOUSE DISTRICT	0.0	CONSOLIDATED GAS
8430537		4708300570		108		A-1155	MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
8430569		4708300770		103		A-1171	ROARING CREEK DISTRIC	0.0	COLUMBIA GAS TRAN
8430548		4704103228		103		A-1173	FREEMANS CREEK DISTRI	0.0	CONSOLIDATED GAS
8430549		4704103218		103		A-1176	FREEMANS CREEK	0.0	CONSOLIDATED GAS
8430554		4709702429		103		A-1182	WASHINGTON DISTRICT	0.0	COLUMBIA GAS TRAN
8430567		4708300638		103		A-1187	MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
8430556		4708300667		103		A-1231	MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
8430568		4708300737		103		A-1282	ROARING CREEK	0.0	COLUMBIA GAS TRAN
8430561		4704103348		103		A-1317	FREEMANS CREEK DISTRI	0.0	CONSOLIDATED GAS
8430557		4702104074		103		A-1320	GLENVILLE	0.0	CONSOLIDATED GAS
8430558		4702104075		103		A-1321	GLENVILLE	0.0	CONSOLIDATED GAS
8430571		4708300772		103		A-1324	ROARING CREEK DISTRIC	0.0	COLUMBIA GAS TRAN
8430560		4704103312		103		A-1325	COURTHOUSE DISTRICT	0.0	CONSOLIDATED GAS
8430552		4701502204		103		A-1338	UNION	0.0	COLUMBIA GAS TRAN
8430566		4708300773		103		A-1341	ROARING CREEK DISTRIC	0.0	COLUMBIA GAS TRAN
8430572		4708300774		103		A-1342	MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
8430565		4704103371		103		A-1354	FREEMANS CREEK DISTRI	0.0	CONSOLIDATED GAS
8430564		4704103370		103		A-1355	FREEMANS CREEK	0.0	CONSOLIDATED GAS
8430562		4704103367		103		A-1362	COURT HOUSE DISTRICT	0.0	CONSOLIDATED GAS
8430563		4704103369		103		A-1373	FREEMANS CREEK DISTRI	0.0	CONSOLIDATED GAS
8430559		4708300798		103		A-1377	MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
8430553		4708300820		103		A-1378	MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
8430551		4708300806		103		A-1379	MIDDLE FORK	0.0	COLUMBIA GAS TRAN
8430544		4703301049		108		A-657	SARDIS DISTRICT	0.0	CONSOLIDATED GAS
8430527		4703301148		108		A-713	SARDIS DISTRICT	0.0	CONSOLIDATED GAS
8430529		4703301208		108		A-734	UNION	0.0	CONSOLIDATED GAS
8430528		4708300404		108		A-946	MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
8430530		4704103012		108		A-947	COURTHOUSE DISTRICT	0.0	CONSOLIDATED GAS
8430531		4708300422		108		A-959	ROARING CREEK DISTRIC	0.0	COLUMBIA GAS TRAN
8430538		4709702186		108		A-967	WASHINGTON DISTRICT	0.0	COLUMBIA GAS TRAN
8430541		4708300413		108		A-976	MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
8430534		4708300403		108		A-984	ROARING CREEK DISTRIC	0.0	COLUMBIA GAS TRAN
8430555		4701703034		103		A-993	MCCLELLON DISTRICT	0.0	CONSOLIDATED GAS
**********									
** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, DENVER, CO									
**********									
-CONOCO INC				RECEIVED:	04/25/84	JA: CO F			
8430673 CD-0197-83		0510308940		103	107-TF	DRAGON TRAIL UNIT #65	DRAGON TRAIL	73.0	MOUNTAIN FUEL RES
-COSEKA RESOURCES (USA) LIMITED				RECEIVED:	04/25/84	JA: CO F			
8430574 CD 0219-84		0510308660		108		FEDERAL #2-15-15-103	TAIGA MOUNTAIN	4.4	NATURAL GAS CORP
8430576 CD 0222-84		0510308768		108		FEDERAL #8-32-4-103	WILDCAT	46.4	NORTHWEST PIPELIN
8430575 CD 220-84		0510308611		108		FEDERAL 5-25-4-104	COLUMBINE SPRING	52.6	NORTHWEST PIPELIN
**********									
** DEPT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, METAIRIE, LA									
**********									
-AMINOIL USA INC				RECEIVED:	04/25/84	JA: LA W			
8430470 G3-4034		1771140687		102-5		SHIP SHOAL BLK 130 #E-1A	SHIP SHOAL BLOCK AREA	1.5	TENNESSEE GAS PIP
-AMOCO PRODUCTION CO				RECEIVED:	04/25/84	JA: LA W			
8430517 G2-2877		1770340334		102-5		OCS-G-2037 #A-11	EAST CAMERON	1900.0	TEXAS EASTERN TRA
-ARCO OIL AND GAS COMPANY				RECEIVED:	04/25/84	JA: LA W			
8430526 G4-4205		1772340109		102-5		OCS-G 1612 S PASS BLK 67 A-8 ST #1	SOUTH PASS	150.0	SOUTHERN NATURAL
8430499 G3-4124		1772140287		102-5		OCS-G 2137 #E-22	SOUTH PASS	250.0	SOUTHERN NATURAL
-CONOCO INC				RECEIVED:	04/25/84	JA: LA W			
8430471 G3-4083		1771940250		102-5		W D BLK 58 D-2	WEST DELTA	1251.0	TENNESSEE GAS PIP
8430479 G3-4082		1771940285		102-5		W D BLK 58 D-3	W D BLK 58 D-3	547.0	TENNESSEE GAS PIP
-GULF OIL CORPORATION				RECEIVED:	04/25/84	JA: LA W			
8430474 G3-4150		1770940603		102-5		EUGENE ISL 238 FLK OCS-G 0983T-8	EUGENE ISLAND	110.0	SEA ROBIN PIPELIN
8430502 G3-4159		1771540230		102-5		OCS-G 2625 #C-2	SOUTH TIMBALIER BLK 3	400.0	TEXAS EASTERN TRA
8430487 G3-4107		1772040053		102-5		OCS-G-1101 WELL F-15 W/D BLOCK 117	WEST DELTA	164.0	TEXAS EASTERN TRA

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-MARATHON OIL COMPANY				RECEIVED:	04/25/84	JA: LA W			
8430484	G3-4115	1772240084		102-5		SOUTH PASS BLK 89 WELL B-5	SOUTH PASS SOUTHEAST	1095.0	TEXAS EASTERN TRA
8430493	G4-4200	1772240095		102-5		SOUTH PASS BLK 89 WELL B-6	SOUTH PASS SOUTHEAST	730.0	TEXAS EASTERN TRA
8430481	G3-3760	1772240085		102-5		SOUTH PASS BLK 89 WELL B-7	SOUTH PASS SOUTHEAST	365.0	TEXAS EASTERN TRA
8430505	G3-4138	1772240039		102-5		SOUTH PASS BLOCK 89 WELL A-7A	SOUTH PASS SOUTHEAST	175.0	TEXAS EASTERN TRA
8430507	G3-3863	1772240038		102-5		SOUTH PASS BLOCK 89 WELL A-9	SOUTH PASS SOUTHEAST	365.0	TEXAS EASTERN TRA
8430485	G3-4146	1770640286		102-5		VERMILION BLK 331 WELL #A-8B	VERMILION	52.0	TEXAS EASTERN TRA
8430480	D3-3701	1771940280		102-5		WEST DELTA BLK 86 WELL A-6	WEST DELTA	3000.0	TEXAS EASTERN TRA
8430504	G3-3702	1771940280		102-5		WEST DELTA BLOCK 86 WELL A-6	WEST DELTA	6000.0	TEXAS EASTERN TRA
-MCMORAN OFFSHORE EXPLORATION CO				RECEIVED:	04/25/84	JA: LA W			
8430523	G3-3798	1770540399		102-5		OCS-G 1143 WELL #A-5	VERMILION	2555.0	TENNESSEE GAS PIP
8430511	G3-3811	1770540399		102-5		OCS-G 1143 WELL #A-5A	VERMILION	0.0	TENNESSEE GAS PIP
8430515	G3-3800	1770540501		102-5		OCS-G 1143 WELL #A-8 (ST-1)	VERMILION	2190.0	TENNESSEE GAS PIP
8430490	G3-3812	1770540464		102-5		OCS-G 1144 WELL #A-1 (ST-1) A	VERMILION	2920.0	TENNESSEE GAS PIP
8430495	G3-3788	1770540471		102-5		OCS-G 1144 WELL #A-2 (ST-2)	VERMILION	2738.0	TENNESSEE GAS PIP
8430497	G3-3789	1770540488		102-5		OCS-G 1144 WELL #A-3 (ST-1)	VERMILION	1095.0	TENNESSEE GAS PIP
8430521	G3-3797	1770540258		102-5		OCS-G 1144 WELL #A-4	VERMILION	2738.0	TENNESSEE GAS PIP
8430520	G3-3813	1770540258		102-5		OCS-G 1144 WELL #A-4A	VERMILION	0.0	TENNESSEE GAS PIP
8430525	G3-3799	1770540493		102-5		OCS-G 1144 WELL #A-6	VERMILION	1825.0	TENNESSEE GAS PIP
8430496	G3-3790	1770540495		102-5		OCS-G 1144 WELL #A-7 (ST-1)	VERMILION	3650.0	TENNESSEE GAS PIP
8430489	G3-3801	1770540517		102-5		OCS-G 1144 WELL #A-9 (ST-1)	VERMILION	1825.0	TENNESSEE GAS PIP
-MOBIL OIL EXPLORATION & PROD S E				RECEIVED:	04/25/84	JA: LA W			
8430510	G3-3504	1771340106		102-5		OCS-G-2925 #19 - A SOUTH PELTO 10	SOUTH PELTO	1250.0	TRANSCONTINENTAL
8430475	G3-3506	1771340106		102-5		OCS-G-2925 #19 - C SOUTH PELTO 10	SOUTH PELTO	67.0	TRANSCONTINENTAL
8430514	G3-3505	1771340106		102-5		OCS-G-2925 #19 -B(ALT) S PELTO 10	SOUTH PELTO	555.0	TRANSCONTINENTAL
8430508	G2-3423	1771340095		102-5		SOUTH PELTO 10 #15A	SOUTH PELTO	96.0	TRANSCONTINENTAL
-ODECO OIL & GAS CO				RECEIVED:	04/25/84	JA: LA W			
8430524	G3-4038	1770940554		102-5		OCS 044 #19B	EUGENE ISLAND	122.0	UNITED GAS PIPELI
-SHELL OFFSHORE INC				RECEIVED:	04/25/84	JA: LA W			
8430494	G3-4130	1770540216		102-5		OCS-G 2865 A-15A	VERMILION	333.0	SOUTHERN NATURAL
-SONAT EXPLORATION CO				RECEIVED:	04/25/84	JA: LA W			
8430522	G3-3856	1770340422		102-5		EAST CAMERON 231 D-2	EAST CAMERON	0.0	SEA ROBIN PIPELIN
8430516	G3-3858	1770340416		102-5		EAST CAMERON 231 D-3	EAST CAMERON	0.0	SEA ROBIN PIPELIN
8430519	G3-3857	1770340416		102-5		EAST CAMERON 231 D-3D	EAST CAMERON	0.0	SEA ROBIN PIPELIN
8430473	G3-4139	1770340423		102-5		EAST CAMERON 231 D-4	EAST CAMERON	0.0	SEA ROBIN PIPELIN
-SUPERIOR OIL CO				RECEIVED:	04/25/84	JA: LA W			
8430482	G3-4086	1770040576		102-5		OCS 0253 #E-3	WEST CAMERON	1000.0	
8430500	G4-4166	1770040611		102-5		OCS-G-0253 #A-15	WEST CAMERON	1000.0	
-TENNECO OIL COMPANY				RECEIVED:	04/25/84	JA: LA W			
8430501	G3-4131	1770500304		102-5		VERMILION 250 B-7	VERMILION 250	1460.0	TENNESSEE GAS PIP
8430476	G3-3510	1770640506		102-1		VERMILION 253 #E 1 S/T	VERMILION	5475.0	
8430472	G3-4139	1770240535		102-5		WEST CAMERON 643 A UNIT #A-16	WEST CAMERON	1.8	TENNESSEE GAS PIP
-TEXACO INC				RECEIVED:	04/25/84	JA: LA W			
8430498	G3-4120	1770740440		102-5		OCS G-0310 SOUTH MARSH ISL 236 #A-9	SOUTH MARSH ISLAND	365.0	NATURAL GAS PIPEL
8430486	G4-4186	1770740439		102-5		OCS- -0310 SOUTH MARSH ISL 236 #A-8	SOUTH MARSH ISLAND	365.0	NATURAL GAS PIPEL
8430503	G3-4154	1770740430		102-5		OCS-G-0310 SOUTH MARSH ISL 236 #A-7	SOUTH MARSH ISLAND	548.0	NATURAL GAS PIPEL
-TEXOMA PRODUCTION CO				RECEIVED:	04/25/84	JA: LA W			
8430509	G3-4088	1772540339		102-5		MAIN PASS 148 #A-5	MAIN PASS	182.0	NATURAL GAS PIPEL
8430492	G4-4184	1772540349		102-5		MAIN PASS 148 #A-6	MAIN PASS	182.0	NATURAL GAS PIPEL
8430506	G3-4110	1772540314		102-5		MAIN PASS 151 #A-3 (ALT NO 1)	MAIN PASS	1825.0	NATURAL GAS PIPEL
8430483	G3-4152	1772540344		102-5		MAIN PASS 151 #A-8	MAIN PASS	1825.0	NATURAL GAS PIPEL
8430513	G4-4209	1772540354		102-5		MAIN PASS 151 #A-9	MAIN PASS	730.0	NATURAL GAS PIPEL
-AMOCO PRODUCTION CO				RECEIVED:	04/25/84	JA: TX W			
8430469	G3-3955	4270940351		102-5		OCS-G-2698 #B-9	HIGH ISLAND	89.0	UNITED GAS PIPELI
-MOBIL PRDG TEXAS & NEW MEXICO INC				RECEIVED:	04/25/84	JA: TX W			
8430488	G3-3600	4270940569		102-5		D-2	HIGH ISLAND A-573	855.4	
8430491	G3-3845	4271140528		102-5		HIGH ISLAND A-283	HIGH ISLAND	0.0	TRANSCONTINENTAL
8430518	G3-3842	4271140528		102-5		OCS-G-2404 #B-2A	HIGH ISLAND	0.0	TRANSCONTINENTAL
8430477	G3-3591	4270940705		102-5		OCS-G-2721 # D-10A	HIGH ISLAND BLK A-573	27.8	
8430512	G3-3601	4270940643		102-5		OCS-G-2722 #D-7	HIGH ISLAND BLK A-573	28.8	
8430478	G3-3584	4270940684		102-5		OCS-2722 #D-9	HIGH ISLAND BLK A-573	546.1	

[FR Doc. 84-13492 Filed 5-17-84; 8:45 am]

BILLING CODE 6717-01-C

[Vol. 1126]

NGPA Notices of Determination by Jurisdictional Agencies

Issued: May 14, 1984.

Note.—By final rule issued by the Commission on February 22, 1984 (Order No. 362, Docket RM83–50–000, 49 FR 7109–13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, *will not be published in the* Federal Register. Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determinations. All other parties should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, DC 20426, to inquire about subscribing to these notices. Copies of Order No. 362 are available from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC 825 North Capitol St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Road, Springfield, Virginia 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1,000 ft rule)
102–4: New onshore reservoir
102–5: New res. on old OCS lease
Section 103: New onshore production well
Section 107–DP: 15,000 ft or deeper
107–GB: Geopressured brine
107–DV: Devonian shale
107–CS: Coal seam gas
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Temporary pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS — VOLUME 1126

ISSUED MAY 14, 1984

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
********** NEBRASKA OIL & GAS CONSERVATION COMMISSION **********									
-STRIKER PETROLEUM CORP				RECEIVED:	04/24/84	JA: NB			
8430760		2610522108		103		GUNDERSON #1	FARRELL	1.0	CITIES SERVICE CO
-TXO PRODUCTION CORP				RECEIVED:	04/24/84	JA: NB			
8430759		2603322171		103		DEYER #1	WEST SIDNEY	118.0	MARATHON OIL CO
********** OHIO DEPARTMENT OF NATURAL RESOURCES **********									
-ALSID OIL & GAS DEVELOPMENT CO				RECEIVED:	04/25/84	JA: OH			
8430625		3409921678		107-TF		HENDERSON #1	GOSHEN	10.5	
8430626		3409921679		107-TF		HENDERSON #2	GOSHEN	15.0	
8430628		3409921685		107-TF		SCHISLER #2	BERLIN	15.0	
8430627		3409921684		107-TF		SCHISLER #3	BERLIN	15.0	
-APPALACHIAN EXPLORATION INC				RECEIVED:	04/25/84	JA: OH			
8430631		3415321360		107-TF		BESSEMER UNIT #3	PORTAGE	36.5	YANKEE RESOURCES
8430630		3415321070		107-TF		O FLESHER #3	NORTON	73.0	
8430632		3415321496		107-TF		ST DEMETRIUS #1	COPLEY	18.3	YANKEE RESOURCES
8430629		3410322710		107-TF		W HARTLEY #2	WADSWORTH	18.3	
-ATWOOD RESOURCES INC				RECEIVED:	04/25/84	JA: OH			
8430634		3415723988		103	107-TF	GARBER/HOSTETLER UNIT #2	STRASBURG	15.0	BELDON BRICK CO
8430633		3403124213		103	107-TF	VERNON STUTZMAN #1	KEENE	15.0	
-BEREA OIL AND GAS CORPORATION				RECEIVED:	04/25/84	JA: OH			
8430635		3416727638		103	107-TF	W IRELAND #1	PALMER TOWNSHIP	18.0	
-BERRESFORD ENTERPRISES INC				RECEIVED:	04/25/84	JA: OH			
8430636		3416726492		107-TF		EILEEN TAYLOR #4	WATERFORD	0.0	
-BUCKEYE OIL PRODUCING CO				RECEIVED:	04/25/84	JA: OH			
8430637		3410323119		107-TF		BRIGGS UNIT #4	HARRISVILLE	10.0	COLUMBIA GAS TRAN
-CAVENDISH PETROLEUM OF OHIO INC				RECEIVED:	04/25/84	JA: OH			
8430638		3411926867		103	107-TF	JOHNSON 1-AEP	MEIGS	27.3	POI ENERGY INC
-CENTRAL ENERGY CO INC				RECEIVED:	04/25/84	JA: OH			
8430639		3411926754		107-TF		HINDEL #3	IRISH RIDGE	10.0	NATIONAL GAS & OI
-CLINTON OIL CO				RECEIVED:	04/25/84	JA: OH			
8430692		3411926975		107-TF		D WILSON #1-888	BLUE ROCK	10.0	
8430690		3400722579		107-TF		GRAVES HALL UNIT #1-846	GENEVA	10.0	
8430691		3400722586		107-TF		PERKINS UNIT #1-865	GENEVA	10.0	
-COASTAL PETROLEUM CORP				RECEIVED:	04/25/84	JA: OH			
8430642		3410323600		107-TF		WESTERN RESERVE #16	SHARON	9.0	EAST OHIO GAS CO
8430640		3410323133		107-TF		WESTERN RESERVE #5	SHARON	9.0	EAST OHIO GAS CO
8430641		3410323588		107-TF		WIITA #1	SHARON	9.0	EAST OHIO GAS CO
-CONCORD ENERGY INC				RECEIVED:	04/25/84	JA: OH			
8430644		3411926936		107-TF		STRICKLER #1	OTSEGO	70.0	EAST OHIO GAS CO
8430643		3411926935		107-TF		STRICKLER #2	OTSEGO	45.0	EAST OHIO GAS CO
-DAVID A WALDRON & ASSOC INC				RECEIVED:	04/25/84	JA: OH			
8430645		3415723980		107-TF		CUNNINGHAM #1	SALEM	15.0	
-EASTERN PETROLEUM SERVICES INC				RECEIVED:	04/25/84	JA: OH			
8430646		3415522443		107-TF		BRADLEY METAL CO #1	HOWLAND	20.0	EAST OHIO GAS CO
8430647		3415522444		107-TF		WOON MFG CO #2	HOWLAND	20.0	EAST OHIO GAS CO

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-ENTERPRISE ENERGY CORP				RECEIVED: 04/25/84 JA: OH					
8430648		3411523387		103	107-TF	STEGNER #1	MEIGSVILLE	18.2	
-ENVIROGAS INC				RECEIVED: 04/25/84 JA: OH					
8430660		3400922965		103	107-TF	DRYDOCK COAL #65TR	TRIMBLE	18.2	
8430655		3400722396		107-TF		F BRAND #1	AUSTINBURG	18.0	EAST OHIO GAS CO
8430656		3400722397		107-TF		F BRAND #2	AUSTINBURG	18.0	EAST OHIO GAS CO
8430651		3400722324		107-TF		H BAILEY #1	KINGSVILLE	18.0	VESCORP INDUSTRIE
8430653		3400722336		107-TF		HART EGGS INC #1	AUSTINBURG	18.0	VESCORP INDUSTRIE
8430654		3400722394		107-TF		HART EGGS INC #2	AUSTINBURG	18.0	VESCORP INDUSTRIE
8430657		3400722417		107-TF		J EKENSTEN #1	AUSTINBURG	18.0	EAST OHIO GAS CO
8430652		3400722325		107-TF		J REPASKY #1	KINGSVILLE	18.0	EAST OHIO GAS CO
8430650		3400722321		107-TF		L RICE #1	AUSTINBURG	18.0	EAST OHIO GAS CO
8430659		3400722468		107-TF		M OBHOF #4	AUSTINBURG	18.0	EAST OHIO GAS CO
8430649		3400922344		103	107-TF	PEABODY COAL #1D	DOVER	18.2	
8430658		3400722439		107-TF		X BEEBE #1	AUSTINBURG	18.0	VESCORP INDUSTRIE
-GNC ENERGY CORP				RECEIVED: 04/25/84 JA: OH					
8430663		3411522463		107-TF		JAMES & JANICE MCCONKEY #8	UNION	15.0	
8430661		3411522444		107-TF		THELMA CANNIFF ET AL #1	UNION	15.0	
8430662		3411522447		107-TF		THOMAS SR & MARTHA JOHNSON #4	UNION	15.0	
-HLH DRILLING INC				RECEIVED: 04/25/84 JA: OH					
8430664		3400722409		107-TF		FREEMAN #1	RICHMOND	0.0	POI ENERGY INC
-HOLROYD PRODUCTION CO				RECEIVED: 04/25/84 JA: OH					
8430665		3408720228		108		ALVA BALDWIN #1 28-15858		6.0	COLUMBIA GAS TRAN
-J O B INC				RECEIVED: 04/25/84 JA: OH					
8430666		3416727410		107-TF		KRIS - MAR #2	WARREN	4.0	
8430667		3416727416		107-TF		KRIS - MAR #4	WARREN	4.0	
8430668		3416727501		107-TF		KRIS - MAR #5	WARREN	4.0	
8430669		3416727502		107-TF		KRIS - MAR #8	WARREN	4.0	
-LIBERTY OIL & GAS CORP				RECEIVED: 04/25/84 JA: OH					
8430671		3416723974		108		BLAIN & LYDIA HALL #1		12.0	COLUMBIA GAS TRAN
8430672		3416724227		108		BLAINE & LYDIA HALL #2		0.0	COLUMBIA GAS TRAN
8430673		3416724237		108		JOHN & JANICE HUGHES #1		0.0	COLUMBIA GAS TRAN
8430670		3410521770		108		KENNETH HAGER #1		15.0	COLUMBIA GAS TRAN
-LOMAK PETROLEUM INC				RECEIVED: 04/25/84 JA: OH					
8430676		3405520592		103	107-TF	FISHER-TIBER UNIT #1	BURTON	24.0	
8430674		3405520323		103	107-TF	H WHITING #3	BURTON	24.0	
8430675		3412122976		103	107-TF	V SMITH #3	SHARON	24.0	
-M B OPERATING CO INC				RECEIVED: 04/25/84 JA: OH					
8430677		3415723323		108		R GINTZ #2		22.8	REPUBLIC STEEL CO
-NOBLE OIL CORP				RECEIVED: 04/25/84 JA: OH					
8430678		3413323000		107-TF		JONES-LOHR #1	PALMYRA	20.0	
8430679		3413323114		107-TF		STARON #1	EDINBURG	20.0	GENERAL ELECTRIC
-NORTH COAST PETROLEUM INC				RECEIVED: 04/25/84 JA: OH					
8430681		3413323121		103	107-TF	CROSS UNIT #1	RAVENNA	8.5	
8430680		3413323117		103	107-TF	WILSON UNIT #1	RAVENNA	8.5	
8430682		3413323149		103	107-TF	WINDMILL #4	RAVENNA	8.5	
-OXI OIL CORP				RECEIVED: 04/25/84 JA: OH					
8430683		3415321630		107-TF		MINNESOTA MINING & MANUFACTURING #1	COPLEY	60.0	
8430684		3415321660		107-TF		STEELE UNIT #1	COPLEY	10.0	
-PETRO EVALUATION SERVICES INC				RECEIVED: 04/25/84 JA: OH					
8430685		3408520472		103	107-TF	DRZIK #4	MADISON	30.0	
-STRATA CORP				RECEIVED: 04/25/84 JA: OH					
8430686		3412726200		103	107-TF	BLOOMFIELD-RODGERS #2	PLEASANT	35.0	TEXAS EASTERN TRA
-THE BENATTY CORPORATION				RECEIVED: 04/25/84 JA: OH					
8430687		3411523186		103	107-TF	DAILEY #7	BLOOM	15.0	
8430689		3412123105		103	107-TF	I CLARK #1-117	JACKSON	30.0	
8430688		3412103071		103	107-TF	MARIETTA COAL #1	JACKSON	40.0	
-TITAN ENERGY CORP				RECEIVED: 04/25/84 JA: OH					
8430693		3405923521		103	107-TF	GERENT #1	KNOX	20.0	EAST OHIO GAS CO
8430694		3405923533		103	107-TF	KITTLE #1	KNOX	20.0	EAST OHIO GAS CO
8430696		3415522434		103	107-TF	RUST #3	BROOKFIELD	20.0	ATLAS ENERGY GROU
8430695		3415522432		103	107-TF	WHITMORE UNIT #1	HARTFORD	20.0	ATLAS ENERGY GROU
-VIKING RESOURCES CORP				RECEIVED: 04/25/84 JA: OH					
8430697		3415321715		103	107-TF	RUSYN/WHITE UNIT #3	COPLEY	30.0	
-W P BROWN ENTERPRISES INC				RECEIVED: 04/25/84 JA: OH					
8430698		3412121401		108		CALDWELL-OHIO POWER #1 PERMIT 1401	OLIVE GREEN	8.5	EAST OHIO GAS CO
-WENNER PETROLEUM CORPORATION				RECEIVED: 04/25/84 JA: OH					
8430699		3416923636		107-TF		WILBUR C WISE #3	PLAIN-WAYNE POOL	36.5	COLUMBIA GAS TRAN

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PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES

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-ADOBE OIL & GAS CORPORATION				RECEIVED: 04/26/84 JA: PA					
8430712	22236	3706522772		103		C ARMAGOST #1	REYNOLDSVILLE "F"	25.0	T W PHILLIPS GAS
-B & J EXPLORATION LTD				RECEIVED: 04/26/84 JA: PA					
8430713	22867	3706522676		103		J CALTAGARONE 2A	WISHAW	10.0	NATIONAL FUEL GAS
-BEARER MARTIN L				RECEIVED: 04/26/84 JA: PA					
8430714	22744	3706327743		103		MARTIN L BEARER (ANDRE) #1	BRUSH VALLEY TOWNSHIP	14.4	
-C & C TROYER BROTHERS				RECEIVED: 04/26/84 JA: PA					
8430746	11250	3704921461		102-2		M PAVKOV #1 (#46)	EDINBORO	15.0	NATIONAL FUEL GAS
8430747	11251	3704921461		107-TF		M PAVKOV #1 (46)	EDINBORO	15.0	NATIONAL FUEL GAS
-CANTERBURY PARTNERS LTD				RECEIVED: 04/26/84 JA: PA					
8430716	26748	3706327622		103		JOHN S STEWART #1	YOUNG	25.0	
-CNG DEVELOPMENT CO				RECEIVED: 04/26/84 JA: PA					
8430715	22863	3702120238		102-3		WILLIAM BUTERBAUGH #5 CNGD #402	SUSQUEHANNA	8.0	
-D'APPOLONIA PETROLEUM INC				RECEIVED: 04/26/84 JA: PA					
8430717	22844	3702120200		103		JOHN NIEMIEC JR #3	SUSQUEHANNA	50.0	YORKTOWNE PAPER M
-J & J ENTERPRISES INC				RECEIVED: 04/26/84 JA: PA					
8430718	22857	3703321707		103		JOHN NAGLE #1 (75A)	BURNSIDE	0.0	CONSOLIDATED GAS
-KEYSTONE ENERGY OIL & GAS PRODUCTIO				RECEIVED: 04/26/84 JA: PA					
8430719	22761	3706327755		103		GELETKA #1	WILLIAM GELETKA	30.6	COLUMBIA GAS TRAN
8430720	22762	3706327746		103		SIGAFOES #3	HARRY SIGAFOES	26.6	PEOPLES NATURAL G
-KRIEBEL WELLS 83				RECEIVED: 04/26/84 JA: PA					
8430758	22516	3706327649		103		BROWN #1	NASHVILLE	29.0	
8430722	22515	3706327648		103		BROWN #2	NASHVILLE	29.0	
8430721	22379	3706522862		103		HARROLD #1	CLOE	28.0	
-MAC-MAR INC				RECEIVED: 04/26/84 JA: PA					
8430723	22686	3706327614		103		SAVAGE #1	BLAIRSVILLE	15.0	PEOPLES NATURAL G
-MITCHELL ENERGY CORPORATION				RECEIVED: 04/26/84 JA: PA					
8430724	22347	3703922035		103		C SNYDER UNIT #1 22035	LINESVILLE (MEDINA-WH	20.5	COLUMBIA GAS TRAN
8430725	22348	3703922035		107-TF		C SNYDER UNIT #1 22035	LINESVILLE (MEDINA-WH	20.5	COLUMBIA GAS TRAN
-NEA CROSS CO				RECEIVED: 04/26/84 JA: PA					
8430726	22846	3704923155		102-2		DELOS PORT #3	LE BOEUF	10.0	COLUMBIA GAS TRAN
8430733	22845	3704923155		107-TF		DELOS PORT #3	LEBOEUF	10.0	COLUMBIA GAS TRAN
8430727	22847	3704923231		102-2		DONALD KRIEGER #2	LEBOEUF	10.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8430734	22848	3704923231		107-TF		DONALD KRIEGER #2	LEBOEUF	10.0	COLUMBIA GAS TRAN
8430728	22850	3704923394		102-2		JAMES JANKOWIAK #1	LEBOEUF	10.0	COLUMBIA GAS TRAN
8430735	22849	3704923394		107-TF		JAMES JANKOWIAK #1	LEBOEUF	10.0	COLUMBIA GAS TRAN
8430731	22856	3704923607		102-2		JOHN CRANE #2	LEBOEUF	10.0	COLUMBIA GAS TRAN
8430737	22855	3704923607		107-TF		JOHN CRANE #2	LEBOEUF	10.0	COLUMBIA GAS TRAN
8430730	22854	3704923543		102-2		JOHN GOCAL #2	LEBOEUF	10.0	COLUMBIA GAS TRAN
8430736	22853	3704923543		107-TF		JOHN GOCAL #2	LEBOEUF	10.0	COLUMBIA GAS TRAN
8430729	22852	3704923494		102-2		JOHN GOCAL #3	LEBOEUF	10.0	COLUMBIA GAS TRAN
8430732	22851	3704923494		107-TF		JOHN GOCAL #3	LEBOEUF	10.0	COLUMBIA GAS TRAN
-PC EXPLORATION INC				RECEIVED:	04/26/84	JA: PA			
8430738	22555	3706327731		103		HOMER E CLAWSON ET UX #1	BLACKLICK	35.0	
8430739	22769	3706327729		103		HOMER JOHNSTON ET UX #1	BLACKLICK	30.0	T W PHILLIPS GAS
-PEOPLES NATURAL GAS CO				RECEIVED:	04/26/84	JA: PA			
8430741	22729	3706327509		103		CALVIN L STEVENS #3 - IND-27509	W PENNA UPPER DEVONIA	21.0	PEOPLES NATURAL G
8430742	22730	3706327470		103		W L WATSON #3 - IND-27470	W PENNA - UPPER DEVON	21.0	PEOPLES NATURAL G
-PNB PETROLEUM CORP				RECEIVED:	04/26/84	JA: PA			
8430740	22767	3708520557		107-TF		W TURNER #1	DEER CREEK	14.9	TENNESSEE GAS PIP
-S T JOINT VENTURE 82E				RECEIVED:	04/26/84	JA: PA			
8430743	22667	3706327710		103		BOGDANSKI #2	BLACKLICK	25.0	COLUMBIA GAS TRAN
8430744	22668	3706327699		103		BOGDANSKI #5	BLACKLICK	25.0	COLUMBIA GAS TRAN
-SNYDER BROTHERS INC				RECEIVED:	04/26/84	JA: PA			
8430745	22426	3706522817		103		JOSEPH A NOGACEK JR #2-75AC	BELL TWP	10.0	T W PHILLIPS GAS
-UNION DRILLING INC				RECEIVED:	04/26/84	JA: PA			
8430752	22684	3706327754		103		DENNIS DOWNES #3 0730	CHERRYHILL TWP	0.0	COLUMBIA GAS TRAN
8430751	22683	3706327747		103		WILLIAM KENSEY #2 0717	CHERRYHILL TWP	0.0	COLUMBIA GAS TRAN
8430749	22629	3706327724		103		WILLIAM KENSEY #3 0718	CHERRYHILL TWP	0.0	COLUMBIA GAS TRAN
8430748	22626	3706327723		103		WILLIAM KENSEY #4 0719	CHERRYHILL TWP	20.0	COLUMBIA GAS TRAN
8430750	22628	3706327711		103		ZENAS HENRY #3 0708	CHERRYHILL TWP	0.0	COLUMBIA GAS TRAN
-VAR-GAS EXPLORATION INC				RECEIVED:	04/26/84	JA: PA			
8430753	22763	3706327685		103		BLACK & BYERS #1 (10.1A)	WHITE	0.0	T W PHILLIPS GAS
-WITCO CHEMICAL CORP				RECEIVED:	04/26/84	JA: PA			
8430756	20801	3708337213		108		TALLY HO #215	TALLY HO	1.7	NATIONAL FUEL GAS
8430757	20800	3708337214		108		TALLY HO #216	TALLY HO	1.7	NATIONAL FUEL GAS
8430754	20799	3708337215		108		TALLY HO #217	TALLY HO	1.7	NATIONAL FUEL GAS
8430755	20798	3708337216		108		TALLY HO #218	TALLY HO	1.7	NATIONAL FUEL GAS
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** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, DENVER, CO									
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-CONOCO INC				RECEIVED:	04/26/84	JA: CO F			
8430701	CD-0205-84	0510309094		103		WEST DOUGLAS CREEK #16	WEST DOUGLAS CREEK	110.0	WESTERN SLOPE GAS
-COSEKA RESOURCES (USA) LIMITED				RECEIVED:	04/26/84	JA: CO F			
8430702	CD-0221-84	0510308545		108		FEDERAL #13-25-4-104	COLUMBINE SPRING	169.9	NORTHWEST PIPELIN
-MITCHELL ENERGY CORPORATION				RECEIVED:	04/26/84	JA: CO F			
8430703	CD-0224-84	0510309119		102-3		FEDERAL #1-14-2-104 C-26940	HELLS HOLE CANYON (DA	225.0	
8430704	CD-0225-84	0510309119		103		FEDERAL #1-14-2-104 C-26940	HELLS HOLE CANYON (DA	225.0	
**********									
** DEPT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, METAIRIE, LA									
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-MCMORAN OFFSHORE EXPLORATION CO				RECEIVED:	04/26/84	JA: LA W			
8430700	G3-3787	1770540464		102-5		OCS-G 1144 WELL #A-1 (ST-1)	VERMILION	2920.0	TENNESSEE GAS PIP
**********									
** BUREAU OF INDIAN AFFAIRS, OSAGE AGENCY, PAWHUSKA, OK									
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-CENTENNIAL PETROLEUM INC				RECEIVED:	04/26/84	JA: OK Y			
8430711		3511300000		103		WELL #2 SW 1/4 SEC 19-T26N-R9E	WILDCAT	108.0	PHILLIPS PETROLEU
-G/O INTERNATIONAL INC				RECEIVED:	04/26/84	JA: OK Y			
8430709		3511300000		102-4		FREEMAN #1	FREEMAN	45.0	PHILLIPS PETROLEU
8430710		3511300000		102-4		FREEMAN NO 2-A	FREEMAN	6.3	PHILLIPS PETROLEU
-J M GRAVES				RECEIVED:	04/26/84	JA: OK Y			
8430707		3511300000		103		LINDY #1-A	HICKORY CREEK	10.0	AJAX GAS CORP
8430708		3511300000		103		LINDY #2-A	HICKORY CREEK	10.0	AJAX GAS CORP
8430705		3511300000		102-4		NOMO #13	N E BLACKLAND	5.0	NORTHWEST CENTRAL
8430706		3511300000		102-4		NOMO #14	N E BLACKLAND	36.0	NORTHWEST CENTRAL

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federal register

Friday
May 18, 1984

Part VI

Department of Transportation

Urban Mass Transportation Administration

Urban Mass Transportation Major Capital Investment Policy; Notice

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Urban Mass Transportation Major Capital Investment Policy

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of policy and request for comments.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is issuing a policy statement regarding Federal financial support for major urban mass transportation capital investments. This policy statement sets forth UMTA's criteria for evaluating proposals for new fixed guideway systems and extensions of existing systems. The statement supersedes previous policy guidance published in the **Federal Register** on September 22, 1976, March 7, 1978, and October 30, 1980, and relates the evaluation criteria contained herein to existing regulations concerning the project development process and procedures for major capital investment projects.

DATE: This policy is effective May 18, 1984. Comments on this policy statement should be received by July 17, 1984.

ADDRESS: Comments on this notice should be submitted to UMTA Docket Number 84–B, Urban Mass Transportation Administration, Room 9228, 400 Seventh Street SW., Washington, D.C. 20590. Comments may be inspected by the public at this address, Monday through Friday between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles H. Graves, Director, Office of Planning Assistance, Room 9311, (202) 426–2360.

Kenneth Butler, Associate Administrator for Budget and Policy, Room 9310, (202) 426–4050.

SUPPLEMENTARY INFORMATION:

Requests for Comments

This policy is being made effective immediately in order to permit potential applicants for major capital investment projects and the public the greatest possible notice of the policy UMTA will follow in evaulating requests for Federal financial assistance. However, UMTA is aware that changes, clarifications, and refinements may be necessary to this policy.

Therefore, UMTA will accept comments for sixty days from the date of the publication of this notice. Following the end of the comment period, UMTA will review the comments and publish another notice in the **Federal Register.** This notice will respond to the comments and, if appropriate, make changes to the policy statement.

Notice of Proposed Rulemaking

The material in the "Project Development Process and Procedures" section of this notice sets out in detail the process applicants should follow in order to be eligible for Federal financial assistance for major capital investment projects. In order to maximize the availability of this information to the public, UMTA will propose that it be published in the Code of Federal Regulations. Accordingly, UMTA will publish for comment a notice of proposed rulemaking (NPRM) in conjunction with the notice responding to the comments on the policy notice being published today.

Issued at Washington, D.C., this 15th day of May 1984.

Ralph L. Stanley,

Administrator.

MAJOR URBAN MASS TRANSPORTATION CAPITAL INVESTMENTS STATEMENT OF POLICY

Purpose

This policy defines the process applicants must follow in developing major urban mass transportation investment projects so that they can be considered for capital grants from UMTA. It also defines the process UMTA will follow in evaluating proposals and in allocating discretionary funds for such projects.

Scope

The policy is applicable in particular to proposals for discretionary grants authorized by Section 3 of the Urban Mass Transportation Act of 1964, as amended, and 23 U.S.C. Section 103(e)(4) (Interstate Transfer Program). In addition, it applies to grants under the authority of Sections 5, 9 and 9A of the Act, and 23 U.S.C. Section 142 (Federal-Aid Urban System Program) if they supplement discretionary grants; if not, the policy only applies as to the project development process described herein and the threshold criteria for approval of fixed guideway projects.

For purposes of this statement, a "major urban mass transportation investment" is any project that involves the construction of a new fixed guideway segment, or extension of an existing fixed guideway, for use by buses or rail vehicles. A "fixed guideway" is a facility which utilizes and occupies a separate right-of-way, reserved lanes, or rails. This includes, but is not limited to, rapid rail, light rail, commuter rail, automated guideway transit, people movers, and exclusive facilities for buses and high occupancy vehicles. The construction of short busway facilities for the purpose of localized operational improvements, or to enhance access to terminals or stations, will not be considered major urban mass transportation investments. Typically, the cost of a major investment will be in excess of $100 million.

Projects to rehabilitate or modernize existing fixed rail lines are outside the scope of this statement. However, major elements of modernization programs (e.g., electrification of existing services) may be financed under full funding contracts, and be subjected to similar evaluation to ensure the cost-effective use of Federal discretionary funds.

Background

The Federal Government has provided a large share of the Nation's capital investment in urban mass transportation since the early 1970's. By the mid-1970's, because of the magnitude and scheduled duration of commitments being proposed, the Department found it useful to publish a statement of Federal policy to ensure that available Federal resources would be utilized in the most prudent and effective manner. Such a statement was issued in 1976, and was supplemented and revised in 1978 and 1980. Today, the need for a restatement of principles and improvement in procedures is even more urgent. Despite the passage of the Surface Transportation Assistance Act of 1982, which earmarked one cent of the increased motor fuel tax to the Mass Transit Account of the Highway Trust Fund, the amount of Federal funding available to support major fixed guideway transit investments will continue to be limited. For example, the full demand for projects currently earmarked by the Congress exceeds the amount of money available within current authorizations by a factor of approximately four, and the demand for other projects undergoing study exceeds available authorizations by a factor of more than ten. A brief review of the elements of the earlier statements, and of the current statement, puts the problem in perspective.

Earlier Statements

The 1976 policy statement established a process-oriented approach, designed to allow each urban area to take into account its unique characteristics in the planning, design and implementation of transportation improvements. It required as a condition of eligibility for Federal

assistance that alternative investment strategies be considered in order to determine which investment best served the locality's transportation needs, promoted its social, economic, environmental, and urban development goals, and supported national aims and objectives. Cost-effectiveness was defined in these general terms and a demonstration of cost-effectiveness was required for projects to be advanced for Federal funding assistance. The 1976 statement stressed the need to consider combinations of transit modes and technologies appropriate to the transportation service requirements of specific corridors, and required major fixed guideway systems to be implemented incrementally, with priority given to the most immediate needs of the locality. It called for a comprehensive Transporation System Management (TSM) alternative to represent the best that can be done to improve transit service without making a major capital investment. It also called for actions to enhance a project's accessibility and convenience, and to improve the quality of transportation service in other parts of the metropolitan area which would not be served by the fixed guideway project. These TSM actions typically include expanded bus service, paratransit, ridesharing, traffic engineering and regulatory and pricing strategies, but not fixed guideways, to facilitate transit and high-occupany vehicle flow on existing highway facilities. Finally, the 1976 statement emphasized the importance of public involvement throughout the development process.

The 1978 policy reinforced the 1976 policy and added further considerations. It explicitly stated that approval of a preliminary engineering grant would not imply any commitment to finance construction of a project. It required the development of a stable and reliable source of funding to cover operating deficits, and specified that construction grant contracts would be negotiated with a fixed ceiling on the Federal contribution, subject to a defined method of adjustment for inflation (the full funding contract). The 1978 statement suggested that the formal pledge of assistance known as the Letter of Intent be considered after preliminary engineering. Finally, it required commitment to a program of local supportive policies and actions to enhance prospects for economic viability of fixed guideway projects; for example, zoning policies and development incentives to stimulate high density private real estate development around selected transit stations.

The 1980 revised policy linked project development procedures more closely to the environmental impact statement (EIS) process. It allowed conceptual engineering studies during the preparation of the alternatives analysis and draft EIS, and completion of the final EIS during preliminary engineering rather than before that stage. It specified that a Letter of Intent would be considered only upon completion of circulation of the final EIS, and that it had to be based upon a comparison of the proposed project with other projects than pending. However, neither this statement nor the earlier ones specified how such an intercity comparison of projects might be made, describing only a process for sorting out alternatives within each urban area.

Current Statement

The basic policy tenets and processes of the earlier statements are essentially retained and described anew in the section below, entitled Project Development Process and Procedures, which also takes into account recent legislation. The important addition, however, is that UMTA's own evaluation process is made more explicit. The policy describes an intention to use more quantifiable techniques for evaluating proposals. This is done in the section entitled Description of Rating System. In other sections, the policy identifies threshold criteria to be met before a project can be advanced into the alternatives analysis phase. It also sets threshold criteria that must be met before a project can be advanced from the alternatives analysis to the preliminary engineering phase. In these respects, this statement is an attempt to make more operational the policy framework developed in earlier statements. It also responds to the legislative history of the Surface Transportation Assistance Act (STAA) of 1982 which speaks to financing cost-effective fixed guideway projects and to extra local fiscal effort being taken into account. Finally, this statement reflects language in the 1984 Senate Appropriations Report adopted in the Conference Report, suggesting that factors to be considered should include: the results of alternatives analysis, cost-effectiveness, and the degree of local financial commitment including evidence of stable and reliable funding sources to maintain and operate the system; also the degree of local government support, private sector support, community support, and participation of minority business.

The position being taken in this statement is that if these policy tenets are given better definition and clarity in an operational rating system, fixed guideway investments have a place in the array of projects which can be considered for Federal transit funding. The alternative of trying to cope with unconstrained local demand without a clear evaluation system is unworkable.

Description of Rating System

Fixed guideway projects are to be developed in four phases prior to actual construction: systems planning, alternatives analysis, preliminary engineering, and final design. This process is described fully in the section of this statement entitled "Project Development Process and Procedures". Projects contending for discretionary grants are evaluated at two points in this project development process. The first evaluation takes place at the conclusion of the alternatives analysis to provide preliminary information about the relative merits of projects in the pipeline and to make a decision about whether or not to advance a project into preliminary engineering. For those which are advanced, a second and more critical evaluation occurs at the conclusion of preliminary engineering, at which time a decision may be made on the allocation of discretionary program funds for final design and eventual construction. To facilitate allocation decisions in the budget cycle, these evaluations are compiled in the first quarter of each fiscal year to guide decisions for the succeeding fiscal year. At that time the Secretary, the Office of Management and Budget, the Congress and the public will be provided information indicating which projects have completed alternatives analysis and which have completed preliminary engineering and their ratings. An explanatory narrative will accompany the ratings.

Statutory Objectives and Federal Interest

The rating system described below is based on statutory objectives. One such objective, expressed in Section 2 of the Urban Mass Transportation Act, is "to encourage the planning and establishment of areawide urban mass transportation systems needed for economical and desirable urban development . . ."; another is "to provide assistance to State and local governments and their instruments in financing such systems, to be operated by public or private mass transportation companies as determined by local needs."

To make such general objectives operational, the Federal interest expressed in the rating system is the provision of an essential level or urban mobility for the public by financially assisting the development of efficient urban mass transportation networks. It is not an interest in networks which may provide maximum comfort, convenience, amenity and other such benefits. The rating system does not preclude local authorities from proposing projects which tend to maximize such benefits, but it identifies the extra costs and accounts for them in the rating process.

Rating Criteria

The rating system is driven by two primary criteria called out in the 1984 Appropriations Conference Report, cost-effectiveness and local financial commitment. Implicit in the consideration of cost-effectiveness is consideration of the results of alternatives analyses, a third major factor. The Conference Report also recommended four other criteria for evaluating fixed guideway projects. Two of these (the degree of local government support and private sector support) are to a considerable extent subsumed under the local financial commitment criteria; and the remaining two (community support and the participation of minority business) can be considered requirements accounted for respectively during the required public hearing process and by meeting the 10 percent goal specified in Section 105(f) of the STAA of 1982.

Because the two primary criteria, cost-effectiveness and local financial commitment, are quantifiable, it is possible to formulate numerical indices of project merit based on them, as a primary guide to ratings. These two criteria and their use in such indices are therefore given further definition as follows.

Cost-Effectiveness

Cost-effectiveness is represented by the incremental costs and effectiveness of fixed guideway alternatives compared to the Transportation System Management alternative. The TSM alternative consists of improvements to the existing transportation system including such actions as expanded bus service, paratransit, ridesharing, traffic engineering and regulatory and pricing strategies, but does not include fixed guideway investments. Costs and effects are discounted to reflect the different time streams of capital and operating expenditures, ridership, and service improvements as well as the different expected lifetimes of each alternative.

Effectiveness is measured in terms of new riders, travel time savings for existing riders, and operating cost savings.

Additional ridership is used as one measure of effectiveness (or benefit) because it is a good indicator of how well a transit facility will serve future urban travel needs. It is also an accurate index of many of transit's potential secondary benefits, including the structuring of urban development patterns and reductions in congestion, pollutant emissions and energy consumption.

Travel time savings to existing riders is used as a second effectiveness measure since it represents improved travel conditions for existing transit users. In many corridors the principal objective of a major improvement is, in fact, better service for existing transit riders. Where large volumes of transit riders exist, the service improvements which could be enjoyed by these riders constitute a large benefit not accounted for by the additional ridership measure. Improvement in service to existing riders is also a good indicator of improved mobility for the transit dependent and increased accessibility to employment locations. The benefits derived from these time savings are converted to their monetary equivalent using an average value of time.

Savings in operating and maintenace costs also are included in the cost-effectiveness calculations to reflect the potential for improvements in efficiency introduced by new transit facilities.

Together, the attraction of new riders, time savings for existing riders, and operating cost savings are good measures of the benefits that are of primary Federal interest as well as general indicators of a wide range of other benefits associated with major investment projects.

In order to rate major transit projects in terms of their Federal investment worthiness, two cost-effectiveness indices are computed. The first reflects incremental ridership, travel time savings and the operating cost savings noted above, and focuses on the capital costs of specific interest to the Federal Government; namely, total capital costs offset by funds provided by State and local governments and the private sector to match (or overmatch) Federal funds. Overmatch means funds in excess of that required by Federal law. The second cost-effectiveness index is computed on the basis of total operating and capital costs and reflects project merit irrespective of the source of funding.

These indices can be computed as ratios in which capital costs and offsets to cost (e.g., the value of time savings, operating cost savings and non-Federal funds) comprise the numerator, and the number of added riders is the denominator. It should be noted that increases in operating and maintenance cost and increases in travel time of existng transit users will be dealt with as increases rather than as offsets to cost.

In computing both indices of project merit, UMTA will consider the extent to which the alternatives analysis has indicated that another guideway alternative in the corridor would be more cost-effective than the locally preferred project. Where there is a more cost-effective guideway alternative, the rating of the locally preferred project will be reduced.

Furthermore, where there is a lower cost guideway alternative which produces more benefits than the locally preferred project, a larger local capital contribution will be required for an applicant to be able to construct the locally preferred project.

Local Financial Effort

The degree of local financial effort is a particularly important criterion because it will encourage communities to make an extra fiscal effort. Large local capital match will stretch scarce Federal dollars and permit Federal support for a larger number of worthy projects. The development of stable and reliable sources for operating costs will reduce the risk that after making a very large Federal capital investment, local resources will not be available to adequately maintain and operate the transit system. Private sector urban development is also taken into account if private sector commitments to value recapture have been made to financing transit capital or operating costs. This is an indication that developers actually believe in the project.

Local financial effort is incorporated into the rating system in two ways. First, local capital match is valued to the extent that it improves the project's cost-effectiveness index computed in terms of the Federal financial interest. For a given total project cost, a higher local match reduces the Federal capital cost in calculating the index. The second way local financial effort is reflected in the rating process pertains to the stability and reliability of the financial resources to operate and maintain the system once it is built. This will require a judgmental assessment by UMTA and its financial advisors. Among projects which rate similarly in terms of cost-

effectiveness, perference will be given to projects which have long-term, dedicated sources of local funds committed to defray operating deficits; that is, where the community has an established resource stream commensurate in time with the life of the capital asset, or approximating this objective. By contrast, the sharing of a general revenue stream with other municipal services would not enhance a project's standing. Until Federal operating assistance is phased out, any profferred agreement for a long-term limit on the amount of Section 9 funds used for operating assistance would be favorably viewed.

With respect to the source of funds to provide the local share of net project cost, applicants utilizing a cash rather than an in-kind source would be judged to be making the greater local fiscal effort. In any case, in-kind local share would not qualify for overmatch credit.

The stability and reliability of the local commitment to financing the maintenance and operation of fixed guideway projects, including the supporting bus system, will be included in the terms and conditions of the full funding contract (FCC). The local commitment of dedicated sources of local funding to defray operating costs, will also be addressed in this contract, as will any agreement to limit the amount of Section 9 funds used for operating assistance.

The Federal Decision Process

The decision process will identify those projects which are clearly superior, those with some merit and those which are obviously least worthy. Those which rate well on both indices will by placed in the top group and projects which rate poorly on both indices described above in the discussion of cost-effectiveness will be placed in the lowest group. All others will be placed in an intermediate group or groups. The final position of projects within each group will then be determined on the basis of the degree of local financial commitment, particularly the degree to which dedicated local funding sources would be used to maintain and operate the transit system. Projects, however, may ultimately get a better rating as the result of enhanced local financial efforts and/or changes in the project scope, such as changes in project length and design.

This rating system extracts from the technical information two objective indices of project merit. However, it recognizes the margin of error implicit in any forecast and avoids an automatic, discrete ranking of projects on the basis of a single, composite criterion. By avoiding a mechanical reliance on forecast data, it permits the application of informed judgment and emphasis on selected policy objectives. This approach to rating potential investments is similar to that used by private financial institutions to evaluate or grade investment options and assess risk. Private institutions typically use a set of objective criteria to place investment options into broad groups with similar worthiness and then apply judgmental criteria to determine the final ranking of projects within the groups. In the UMTA acting system, the two cost-effectiveness indices are the objective measures of project merit or investment worthiness, and the degree of stable and reliable financing for operating costs is the judgmental criteria.

As a set of projects is selected annually for Federal support, consideration will be given to the amount of uncommitted funds in the UMTA budget authorization allocated for fixed guideway projects. A Letter of Intent or a full funding contract will not be issued to a single project which would consume all, or substantially all, of UMTA's unobligated budget authority. In addition, the sum of all the Letters of Intent and full funding contracts cannot exceed the unobligated authority.

A detail description of the rating system is available from UMTA's Office of Planning Assistance, 400 7th Street SW., Washington, D.C. 20590, and from UMTA's ten regional offices.

Projct Development Process and Procedures

General Description

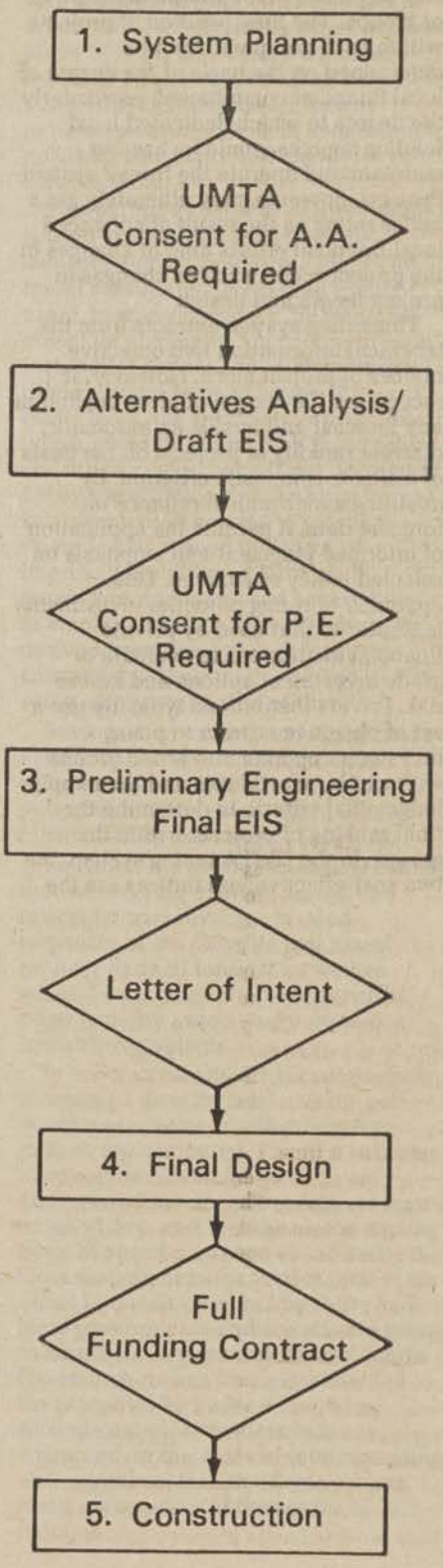
The process for developing major transit investments includes four general phases prior to actual construction: systems planning, alternatives analysis, preliminary engineering, and final design. Work may not begin on one phase of the process until the prior phase is completed. Approval by the UMTA Administrator is required for a project to advance from one phase to the next. Figure 1 graphically illustrates the development process.

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Figure 1

UMTA Project Development Process

Major Investments



▭ Denotes local activities funded by UMTA

◇ Denotes UMTA decision

BILLING CODE 4910-57-C

As proposals are advanced through these phases, estimates of their costs, effects, and impacts (as well as the costs, effects, and impacts of alternative courses of action) are developed and refined. Also, financing plans are developed and local commitments are obtained. This allows local officials and UMTA to identify the options that are most cost-effective and rank well in terms of local financial effort. The application of a similar process for the past several years has shown that a careful and systematic analysis of present and future transportation needs, followed by a detailed analysis of the relative costs and benefits of alternative courses of action for addressing them, does improve the quality of both local and Federal decisionmaking.

Experience with these policies has shown that fixed guideway transit systems are not, in many cases, as cost-effective as less capital intensive solutions to local transportation problems. Nevertheless, rail transit and bus guideway projects may be efficient and cost-effective solutions to local transportation problems in heavily traveled corridors found in some densely populated cities with large concentrations of employment and retail activities.

There should be a full opportunity for the timely involvement of the public, private interest groups, local elected officials, and all levels of government in the planning and project development process for major urban mass transportation investments. This involvement should be initiated early, so that all affected groups have an opportunity to influence the process in a timely and constructive fashion, particularly as to the alternatives to be considered, priority actions for implementation, and the actions to be taken to avoid or minimize adverse environmental effects.

Systems Planning

This first phase of project development is financially assisted mainly by UMTA's Section 8 planning grants together with planning funds provided by the Federal Highway Administration. The grants are made to metropolitan planning organizations (MPO's) to carry out a continuous, comprehensive, and cooperative transportation planning process in each urbanized area. During this phase, local officials examine long-range urban development trends, collect travel data, forecast needs, and evaluate regionwide transportation policies and investment options. Based on their preliminary assessments of travel patterns and problems, local officials select a broad range of potential solutions for each corridor. If one or more corridors may require a major transit investment, these corridors are ranked by local officials in order of priority, and a small set of potentially cost-effective alternatives for the highest priority corridor is identified for detailed study in subsequent project development phases.

Proposals for major mass transportation investments must be consistent with an urban area's comprehensive plan which articulates the overall direction for metropolitan development and identifies major transportation corridors. The comprehensive plan should reflect an awareness that different levels and types of transportation service may be needed in different portions of the metropolitan area. The comprehensive plan should also recognize the need for local community-level transit service as well as for express line-haul connections that foster regionwide accessibility. Each major corridor should be considered individually to determine the level and type of service that will best meet its projected requirements. Corridors which do not require fixed guideway transit service should be provided with levels and types of service appropriate to their needs, with the level of service being progressively upgraded as demand develops.

The comprehensive plan should be revised periodically as part of the continuing transportation planning process. Plan revisions will allow local decisionmakers to reflect changes in local goals, priorities, and long-range forecasts; respond to new land development and travel patterns; adapt to new technologies as they are developed; and adjust to the impact of previously implemented actions.

Although the comprehensive plan may identify the need for major new transportation facilties in several corridors, a regional system should be developed in stages, one operable segment at a time. Each segment should be capable of independent justification on its own merits. This incremental approach is intended to ensure that the most cost-effective segments receive priority attention, that the burden of financing the system is spread out over time, that the benefits of the public investment begin to accrue as soon as possible, and that maximum flexibility is preserved to modify the system in response to subsequent advances in technology, changes in growth patterns, and other unforeseen circumstances. Case-by-case exceptions may be given where local officials propose to advance more than one low cost busway at the same time.

Alternatives Analysis

This phase of project development may be financially assisted by Section 8 planning grants, supplemented as necessary by Sections 9 and 9A formula grants. Section 3 funds will not be used for alternatives analysis.

Following systems planning, any metropolitan area which intends to apply for UMTA assistance for a major urban mass transportation investment must next perform a corridor-wide analysis of transportation alternatives in its priority corridor. Approval by the UMTA Administrator is required before such an alternatives analysis may be undertaken. If Section 8 funds are to be used, approval will be given where the results of systems planning demonstrate that there is a reasonable possibility that the fixed guideway alternatives proposed for study will be shown to be cost-effective. Further, as a guide to local authorities, UMTA approval to proceed into this phase can be expected only if certain threshold criteria are met. One such criterion is that a corridor to be studied should be experiencing more than 15,000 existing daily transit trips. In addition, alternatives with excessive costs compared to added benefits may not be advanced into alternatives analysis. More detailed definitions of these and other criteria will be published periodically. If Section 9 or Formula Interstate Transfer funds are to be used, grantees may nevertheless proceed with proposals which do not satisfy the threshold tests. In this case UMTA will transmit a letter of exeption to forewarn a grantee that although formula funds may be used for the alternatives analysis phase, it seems unlikely that fixed guideway transit investments in the study corridor would prove to be cost-effective and able to qualify subsequently for UMTA funds. Therefore, UMTA would take exception to the funds being used for the alternatives analysis, although permitting it.

In the alternatives analysis phase the priority corridor is studied in detail, with respect to alternative solutions to the transportation problems identified in system planning. In addition to any high cost options that show promise, the alternative must include both medium- and low-cost options addressing identified transportation problems in the corridor. Each alternative should include TSM actions to increase the efficiency of the existing transit and highway system. One alternative should consist solely of such TSM actions in order to

provide a baseline that represents the best that can be done without major investments in the corridor. TSM actions typically consist of improvements to the existing transportation system including such actions as expanded bus service, paratransit, ridesharing, trafffic engineering and regulatory pricing strategies, but not not include fixed guideway investments. The range of alternatives typically will include one or more rail options, a bus guideway alternative (often with provisions for use by carpools), plus combinations of these modes. Early in the alternatives analysis phase, local officials and UMTA will reach agreement on the range of alternatives to be included in the analysis.

The analysis must also assess each alternative's capital, operating, and maintenance costs; anticipated ridership; and impacts on congestion and travel times. Social, economic and environmental impacts of importance to a decision on mode and alignment should be evaluated along with other factors considered important by the local community. The financial feasibility of each alternative should be assessed in terms of local, State, and private sector funding options and the availability of stable and dependable resources to cover the predicted operating and maintenance costs of the transit system. The analysis should also include an evaluation of the relative cost and effectiveness of the alternatives, where effectiveness is measured by the degree to which each alternative accomplishes local and Federal objectives. The primary measures of Federal objectives, as described earlier, will be the attraction of new transit ridership and the reduction in transit travel time for existing riders, compared with the Transportation System Management (TSM) alternative. Costs include capital and operating costs over the lifetime of the proposed investment. Local agencies should provide UMTA an early opportunity to review and concur in the methods and results of these analyses.

During the alternatives analysis phase, UMTA and the applicant will prepare a draft Environmental Impact Statement (EIS) or Environmental Assessment (EA) in accordance with published regulations (23 CFR Part 771) and guidelines. UMTA is responsible for ensuring that the environmental document fulfills Federal requirements and presents a complete and objective basis for mode and alignment decisions. After completion of the draft EIS and EA, formal public hearings must be held covering both the analysis of alternatives and the environmental document.

Following the public hearing, local officials will select a preferred alternative and adopt a plan for financing its capital and operating costs. If local officials select a major investment, UMTA will evaluate the local financing effort, evaluate the cost-effectiveness of the locally preferred alternative, and consider advancing the locally preferred alternative into preliminary engineering.

An evaluation of projects which have completed the alternatives analysis phase and meet the threshold criterial for undertaking preliminary engineering will be undertaken in the first quarter of each fiscal year in accordance with the rating method described above. The results of this evaluation will be shared with local officials, the Secretary of Transportation, the Office of Management and Budget, and cognizant congressional committees. No formal pledges in the form of Letters of Intent (LOI) authorized in Section 3(a)(4) of the Urban Mass Transportation Act may be issued at this stage, nor will Letters of No Prejudice (LONP) be considered except in emergency or unique situations. The LONP is not even a pledge of assistance, but does permit a local authority to be reimbursed for eligible expenses incurred from the date of the letter should a grant ultimately be approved.

Preliminary Engineering

This phase of project development must be financed henceforth from Section 9 and 9A formula program funds, except for the very largest projects which may be financially assisted with Section 3 grants.

Written approval of the UMTA Administrator is required before fixed guideway projects may be advanced into preliminary engineering. This approval can be expected where UMTA finds that the locally preferred alternative is cost effective. One threshold test for this finding is that the proposed project must produce greater benefits (in terms of new riders and travel time savings for existing riders) than the TSM alternative. In addition, alternatives with excessive costs per additional rider may not be advanced into preliminary engineering. More detailed definitions of these and other threshold criterial will be published periodically. If threshold tests are not met, no UMTA funds may be used for the preliminary engineering phase. Approval to initiate preliminary engineering is not a commitment to find final design or construction.

During the preliminary engineering (PE) phase, local project sponsors refine the design of the proposal, taking into consideration all reasonable design alternatives. The PE process results in estimates of project costs and impacts which have a high confidence level. In addition, environmental requirements are completed. This will typically involve preparation of a final EIS (and in some cases, a supplemental draft EIS). UMTA is responsible for ensuring that the EIS fulfills Federal requirements and provides a complete and objective basis for decisions on the design, operations, and mitigation measures for the guideway facility. UMTA will review and concur in the technical work performed by local agencies and participate in the preparation of the EIS consistent with its responsibilities under the National Environmental Policy Act.

Project management concepts also are finalized during preliminary engineering. The project management concepts define the scope of project implementation during the final design, construction, and start-up operation stages, including the establishment of policies for activities such as quality assurance, quality control and safety. Also, agreements are reached on the allocation of existing financial resources, required new taxes are put in place, and private financing commitments are obtained.

Preliminary engineering encompasses not only the locally preferred and the TSM alternatives, but also may include one or more lower cost alternatives found to be cost-effective in the alternatives analysis phase. As necessary, estimates of the capital cost of each cost-effective alternative will be refined, together with forecasts of transit ridership and travel time. Estimates of future operating and maintenance expenses of cost-effective alternatives will also be updated. Localities are also encouraged to incorporate into their planning at this stage, and to implement, a program of local supportive policies and actions designed to enhance the proposed project's cost-effectiveness and financial feasibility.

i. Zoning policies and development incentives to stimulate high density private real estate development, particularly joint development, around transit stations. Such development activities should include value recapture mechanisms which finance the planned transit system.

ii. Land use plans that support or reinforce the development impact and shaping influence of the transit system.

iii. Coordinated bus and/or paratransit feeder services to the guideway system, especially to low density suburban transit station.

iv. Pricing, regulatory, or traffic control measures aimed at managing the peak-period use of automobiles within transit guideway corridors (e.g., traffic metering, higher parking fees, elimination of employer subsidized parking).

v. Financing mechanisms which make use of taxes and/or fees paid by developers and property owners benefiting from the transit investment.

vi. Coordinated bus and/or paratransit feeder services to the guideway system, especially to low density suburban transit stations.

Localities seeking Federal assistance for a major urban mass transportation investment will, in the course of preliminary engineering, be expected to develop an early and systematic approach to promoting the participation of small, disadvantaged, and women's business enterprises (DBE's and WBE's). In addition to addressing the requirements of UMTA's DBE regulations (49 CFR Part 23), they should revise their existing DBE and WBE plans in accordance with the nature of the proposed project, establishing specific policies and procedures designed to maximize the opportunities for DBE's and WBE's in the entire range of transit activities, from planning to final design, construction, and operations. Intensive outreach and technical assistance programs, contract specifications for DBE and WBE awards, and professional staffing to identify opportunities for DBE and WBE participation and qualified firms are some of the strategies that should be considered.

Early in the first quarter of each fiscal year, UMTA will rate the projects which are performing or have completed the preliminary engineering phase, and recommend an allocation of Section 3 funds among projects for the succeeding fiscal year. The rating will be assigned pursuant to the method outlined in this statement, and will be shared with local officials, the Office of the Secretary of Transportation, the Office of Management and Budget and cognizant congressional committees. Ratings also will be assigned to projects completing PE after the first quarter as PE is completed. The allocation of uncommitted funds will be re-evaluated, if feasible, at subsequent points in the Federal budget cycle.

Funding commitments will be given ultimately to those highest rated projects that have completed PE and can be funded to the completion of an operable segment within available program authorization. When a project has been selected for funding with Section 3 funds, UMTA will normally issue a Letter of Intent and approve funding for final design following the successful completion of preliminary engineering. The Letter of Intent is a formal pledge which documents UMTA's intention to obligate funds for a particular project, but is not a Federal obligation or administrative commitment. The total amount of potential Federal obligations covered by all outstanding Letters of Intent will not exceed the amount allocated for new starts for Section 3, less an amount necessary for other grants not covered by Letters of Intent.

Local officials may use their formula allocated Section 9 and Interstate Transfer funds for fixed guideway projects without regard to the project's rating relative to other pending Section 3 projects, if they enter into a contractual agreement that supplemental Section 3 discretionary funds will never be sought. However, approval from UMTA must be obtained before the applicant may commence right-of-way acquisition or construction. Approval will depend upon the grantee certifying that:

i. No future Section 3 discretionary assistance will be required either for that new start project or for other routine capital needs, which may be constrained by a decision to use formula funds for new construction.

ii. Sufficient funds are available to operate and maintain the project.

iii. The project is cost-effective based on the results of alternatives analysis.

iv. The project will meet minimum design criteria to ensure safe system construction and operation.

In addition, right-of-way acquisition, vehicle procurement, and construction may not be undertaken until the completion of an environmental document in accordance with the National Environmental Policy Act.

Final Design

This is the last phase of project development prior to construction and is typically financed with Section 3 or Interstate Transfer funds. Upon receipt of the Letter of Intent, local agencies normally proceed with right-of-way acquisition, utility relocation, and the preparation of final construction plans including construction management plans, detailed specifications, estimates and bid documents. During the final design of a fixed guideway project, UMTA and the grantee will negotiate a construction grant contract (i.e., a full funding contract) with a fixed ceiling on the Federal contribution, subject to a defined method of adjustment for inflation. Localities will be required to complete construction of the project, as defined, to the point of initiation of revenue operations, and to absorb any additional costs incurred, except under certain specified extraordinary circumstances. The full funding contract will also include a mutually agreeable schedule for anticipating Federal contributions during the construction period. Specific annual contributions under the Letter of Intent and full funding contract will be subject to the availability of budget authority and the ability of the grant recipient to use the funds effectively.

The full funding contract will incorporate any local commitments to fund the non-Federal capital match (including the overmatch used to rank the project), to dedicate resources to finance projected operating deficits, and to forego the use of Section 9 for operating assistance.

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LIST OF PUBLIC LAWS

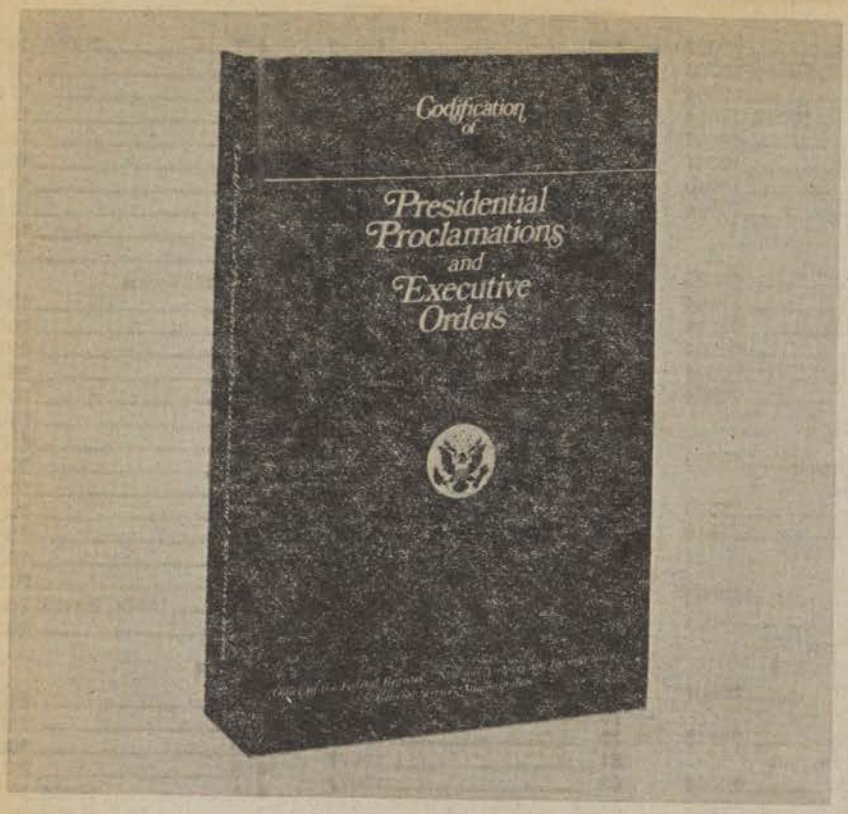
Last List May 16, 1984

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202–275–3030).

S.J. Res. 232 / Pub. L. 98–283

To authorize and request the President to designate the month of May 1984 as "National Physical Fitness and Sports Month". (May 15, 1984; 98 Stat. 180) Price: $1.50

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