disclosed by attorneys of the Department of Justice or other Federal agency as provided by paragraph (b)(1) of this section are—

(i) Other officers and employees (including attorneys) of the Department of Justice (including an office, board, division, or bureau of such department, such as the Federal Bureau of Investigation or the Drug Enforcement Administration) or other Federal agency described in paragraph (b)(1) of this section, such as clerical personnel (for example, secretaries, stenographers, docket and file room clerks, and mail room employees) and supervisory personnel (for example, in the case of the Department of Justice, Section Chiefs, Deputy Assistant Attorneys General, Assistant Attorneys General, the Deputy Attorney General, the Attorney General, and supervisory personnel of the Federal Bureau of Investigation or the Drug Enforcement Administration);

(ii) Officers and employees of another Federal agency (as defined in section 6103(b)(9)) working under the direction and control of such attorneys of the Department of Justice or other Federal agency described in paragraph (b)(1) of this section; and

(iii) Court reporters.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(This Treasury decision is issued under the authority contained in sections 6103(q) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1685, 68A Stat. 917; 26 U.S.C. 6103(q), 7805).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: January 19, 1977.

CHARLES M. WALKER,
Assistant Secretary of the Treasury.

[FR Doc.77-2365 Filed 1-19-77;4:51 pm]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 678-77]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart B—Office of the Attorney General

ADMINISTRATION OF THE FEDERAL JUSTICE RESEARCH PROGRAM

This order amends the functions of the Office of Policy and Planning by assigning to it responsibility for the administration of the Federal Justice Research Program.

By virtue of the authority vested in me by 28 U.S.C. 509, 510, and 5 U.S.C. 301, Subpart B of Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended as follows:

1. Paragraph (d) of § 0.6 is redesignated paragraph (e).

2. A new paragraph (d) of § 0.6 is inserted immediately after paragraph (c), to read as follows:

§ 0.6 Office of Policy and Planning.

* * * * *

(d) Administer the Federal Justice Research Program, a departmental program for the conduct, by contract or otherwise, of research bearing upon federal civil and criminal justice.

Dated: January 14, 1977.

EDWARD H. LEVI,
Attorney General.

[FR Doc.77-2192 Filed 1-24-77;8:45 am]

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

PART 657—TOBACCO MANUFACTURES INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended (29 U.S.C. 205, 206, 208)), including the Fair Labor Standards Amendments of 1974 (Pub. L. 93-259; 88 Stat. 55), and Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and by means of Administrative Order No. 647 (41 FR 40254), the Seretary of Labor appointed and convened Industry Committee No. 137 for Tobacco Manufactures Industry, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6 of the Act to such employees, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its finding of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee 137 are hereby published, amending §§ 657.2 (a)(1), (a)(2), (a)(3), and (a)(5) of Part 657, Title 29, Code of Federal Regulations. The other wage rates have heretofore reached the mainland rates and are continued.

As amended § 657.2 reads as follows:

§ 657.2 Wage rates.

* * * * *

(a) *Pre-1961 coverage classifications.* * * *

(1) *Filler tobacco processing classification.* (i) The minimum wage for this classification is $1.56 an hour through April 30, 1977. Under section 6(c) of the Act, the rate is increased $.15 on May 1, 1977, and an additional $.15 on May 1 of each succeeding year until the mainland rate is reached.

* * * * *

(2) *Wrapper type tobacco processing classification.* (i) The minimum wage for this classification is $1.85 an hour through April 30, 1977. Under section 6(c) of the Act, the rate is increased $.15 on May 1, 1977, and an additional $.15 on May 1 of each succeeding year until the mainland rate is reached.

* * * * *

(3) *Machine threshing, other operations classification.* (i) The minimum rate for this classification is $2.07 an hour through April 30, 1977. Under section 6(c) of the Act, the rate is increased $.15 on May 1, 1977, and an additional $.15 on May 1 of each succeeding year until the mainland rate is reached.

* * * * *

(5) *Other products and activities classification.* (i) The minimum rate for this classification is $2.13 an hour through April 30, 1977. Under section 6(c) of the Act, the rate is increased $.15 on May 1, 1977, and an additional $.15 on May 1 of each succeeding year until the mainland rate is reached.

* * * * *

(Secs. 5, 6, 8, 52 Stat. 1062 and 1064, as amended (29 U.S.C. 205, 206, 208).)

Effective date: The effective date of these amendments is February 10, 1977.

Signed at Washington, D.C., on this 14th day of January 1977.

RONALD J. JAMES,
Administrator, Wage and Hour Division, United States Department of Labor.

[FR Doc.77-2135 Filed 1-24-77;8:45 am]

CHAPTER XXVI—PENSION BENEFIT GUARANTY CORPORATION

PART 2608—INTERIM REGULATION ON ALLOCATION OF ASSETS

Amendment to Allow Subclasses

Correction

In FR Doc. 77-1132 appearing on page 2677 in the issue of Thursday, January 13, 1977 on page 2678, 1st column, the 2nd paragraph, beginning with the amendatory language, the document should be corrected to read as follows:

In consideration of the foregoing part 2608 of Chapter XXVI, Title 29, is amended as follows:

1. Sections 2608.7(b)(1)(i)(C) and (b)(2)(i)(A) are revised to read:

§ 2608.7 Priority category 2 benefits.

* * * * *

(b) * * *
(1) * * *
(i) * * *

* * * * *

(C) Interest, if any, on the sum of the amounts determined under paragraphs (b)(1)(i) (A) and (B) of this section compounded annually at the applicable rate under section 204(c)(2)(C)(iii) of the Act, from the beginning of the first plan year to which section 204(c) of the Act applies to the earlier of the participant's retirement date or the date of plan termination.

* * * * *

(2) * * *

(i) * * *

(A) Add accumulated employee contributions computed under paragraph (b)(1) of this section and interest at the applicable rate on such contributions under section 204(c)(2)(C)(iii) of the Act from the date of plan termination to the date on which the participant would attain normal retirement age.

2. Section 2608.10(a) is revised to read:

§ 2608.10 Priority category 5 benefits.

(a) Priority category 5 benefits consist of all nonforfeitable benefits payable with respect to a participant in a plan, other than benefits derived from voluntary employee contributions assigned to priority category 1 and all benefits assigned to priority categories 2, 3 or 4. The only benefits payable as annuities contained in this section are those benefits payable as annuities to which a participant is entitled under § 2605.5 of this chapter.

* * * * *

Title 30—Mineral Resources

CHAPTER II—GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

PART 211—COAL MINING OPERATING REGULATIONS

Surface Management; Final Regulations

On December 6, 1976, the Department of the Interior proposed several changes in the regulations contained in 30 CFR Part 211 as part of its efforts to comply with the requirements of the Federal Coal Leasing Amendments Act of 1975, 90 Stat. 1083. The proposed changes were published in 41 FR 53360 (1976). This rulemaking adopts final changes based on that proposed rulemaking. The changes from the original proposal are explained in a related rulemaking that amends Title 43 CFR. That rulemaking is published today in the FEDERAL REGISTER at page 4442. This rulemaking notice also contains several changes in the regulations in 30 CFR Part 211 that were not previously proposed. The changes are minor and are made to clarify existing requirements or to conform the language of minor provisions of the regulations to the intent of the drafters. The Department believes it is unnecessary to publish these changes as proposed rulemaking because they are minor, do not change existing right or impose new requirements. Comments on these latter changes may be directed to the Director, U.S. Geological Survey, The National Center, Reston, Virginia, 22092. Appropriate action will be taken on any comments.

Under the authority granted to the Secretary of the Interior, Title 30 CFR Part 211 is amended to read as follows:

§ 211.1 [Amended]

1. The thirteenth line of 30 CFR 211.1(b) is amended by the insertion of "economic" between "maximum" and "recovery."

§ 211.2 [Amended]

2. 30 CFR 211.2(r) is amended as follows:

(r) *Lessee* means any person or persons, partnership, association, corporation, public body, or governmental entity to whom a coal lease is issued, subject to the regulations in this Part, or an assignee of such a lease under an approved assignment.

3. 30 CFR 211.2(s) is amended by the substitution of a comma for the period at the end and the addition of the following: "or any person, association, corporation, public body, or governmental entity to whom an exploration license is issued pursuant to section 201(b) of Title 30 of the United States Code."

§ 211.10 [Amended]

4. The first sentence in 30 CFR 211.10(a)(1) is amended to read as follows:

(a) *General*. (1) Before conducting any operation on leased, permitted, or licensed land other than casual use, the operator shall submit to the Mining Supervisor, and obtain his approval of an exploration or mining plan; on any lease issued or readjusted after August 4, 1976, the first mining plan shall be submitted to the Mining Supervisor not later than three years after the effective date of the lease or three years after the date of readjustment, whichever is later.

5. 30 CFR 211.10(c)(6) is amended to read as follows:

(ii) The method of mining, including mining sequence and proposed production rate; the plan for any lease issued or readjusted after August 4, 1976, must provide for the mining of all the reserves of the logical mining unit of which the lease is a part in a period of not more than forty years; that period shall begin on the date of approval of the first mining plan for that logical mining unit.

6. 30 CFR § 211.10(d)(1) is amended by adding a sentence after the last sentence of that paragraph which says: "Where the land involved in the mining plan is under the surface jurisdiction of an agency other than the Department of the Interior, that other agency must consent to the terms of the approval of the mining plan."

§ 211.40 [Amended]

7. Title 30 CFR § 211.40(a)(12) is amended by adding a new subsection (iii) to read as follows:

(iii) For the purpose of paragraph (a)(12(i) hereof, "access roads" shall not include temporary roads constructed within a working pit for the purpose of use by equipment and personnel for access to the coal being mined.

§ 211.5 [Amended]

8. Title 30 CFR § 211.5(c)(1)(i) is amended to read as follows:

(i) Approval of a new mining plan, or any major modification thereof, and approval of any modification to a previously approved mining or exploration plan which contains a request for a variance pursuant to § 211.74 hereof.

Dated: January 19, 1977.

THOMAS S. KLEPPE,
Secretary of the Interior.

[FR Doc.77-2257 Filed 1-24-77;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

PART 3040—ENVIRONMENTAL AND SAFETY

Subpart 3041—Surface Management

This rulemaking adopts as final two conforming changes to Title 43 CFR Subpart 3040. The first of the changes is directly related to actions that the Department of the Interior has taken under 30 CFR 211.75(a). Under that section, the Department may, under certain circumstances adopt the requirements of a state's reclamation law as Federal. The Department has taken this action in Wyoming, 41 FR 53793, and proposed to do so in Montana, 41 FR 39036. The amendment made in this rulemaking codifies the Department's stated position that the requirements of 43 CFR subpart 3041 are effected by adoption of State law as Federal law. The second amendment in this rulemaking clarifies that the definition of access roads in 43 CFR § 3041.2-2(f)(12) does not include temporary roads in the mining pit. The Department has already made a similar amendment to the requirement on this point in 30 CFR 211.40(a)(12). The Department has not published either of these regulations as proposed rulemaking because it has concluded that publication as a proposed rule is unnecessary because of the minor nature of these changes. Comments on these changes may be filed with the Director, Bureau of Land Management, (210), Washington, D.C. 20240, and the Department will take appropriate action on any comments.

Under the authority granted to the Secretary of the Interior, Subpart 3041 of Title 43 CFR is amended to read as follows:

* * * * *

1. Title 43 CFR § 3041.2-2(f) is amended by adding after "subpart" and before ":", the following, "except as otherwise provided by the action of the Secretary under 30 CFR § 211.75(a)."

2. Title 43 CFR § 3041.2-2(f)(12), is amended by adding a new paragraph (f)(12)(iii), as follows:

§ 3041.2-2 Obligations and standards of performance.

* * * * *

(f) * * *

(12) * * *

(iii) For the purpose of paragraph (f)(12)(i) of this section, "access roads" shall not include temporary roads constructed within a working pit for the pur-

pose of use by equipment and personnel for access to the coal being mined.

Dated: January 19, 1977.

THOMAS S. KLEPPE,
Secretary,
Department of the Interior.

[FR Doc.77-2259 Filed 1-24-77;8:45 am]

COMPETITIVE COAL LEASING SURFACE MINING REGULATIONS: COAL

Final Regulations

This rulemaking notice discusses and adopts as final rules proposals that were made in three separate rulemaking notices: (1) proposed revisions to the Energy Minerals Activity Recommendation System (EMARS), 41 FR 47258; proposed revisions to miscellaneous regulations, 41 FR 48124; and proposed revisions to surface management coal mining operating regulations, 41 FR 53360. Each of these proposals was made to ensure that the Department of the Interior's coal leasing and management regulations conformed to the requirements of the Federal Coal Leasing Amendments Act of 1975 (FCLAA), 90 Stat. 1083. Because these three sets of proposed regulations are closely related, the Department is publishing the final rulemaking for each in this consolidated proceeding.

The Department has fully considered all of the comments that were received during the comment periods for these regulations, and has considered to the extent possible comments received after that time. This notice discusses those comments that the Department feels are of the greatest public interest. The Department has made several changes in the proposed regulations in response to the comments that were received. The notice discusses most of these important changes. These changes have also forced the Department to renumber the proposed regulations. Consequently, the section numbers in this rulemaking may not correspond to those in the proposals.

DISCUSSION OF CHANGES AND COMMENTS

1. *Confusion Over the Relationship Between EMARS and the Surface Management Regulations in 43 CFR Part 3040.* Although the Department intended that EMARS should contain the major set of requirements for competitive coal leasing, the regulations in 43 CFR Part 3040 also have contained language that is related to leasing procedures. The final rulemaking clarifies the role of both sets of regulations by removing all leasing aspects of Part 3040 and, where necessary, placing the appropriate language in the EMARS subpart, 3525. Part 3040 retains its intended function of establishing standards and procedures for the surface management of future and existing federal coal leases. To ensure that the changes made in Part 3040 are understood, this rulemaking notice reprints that entire subpart as revised. The changes made in Part 3040 are not substantive changes and do not affect or change the standards or procedures that will be used. Although this revision of Part 3040 was not included in the earlier proposals, the Department has concluded that it is unnecessary to publish them as proposed rulemaking because they make no changes in the prior standards and are essentially a recodification of the existing regulations. The public is encouraged to bring to the attention of the Department any deficiencies in the changes. If further amendments are required, the Department will make the necessary changes at an appropriate time.

The major change in subpart 3041 is the removal of the section on lease applications. The EMARS regulations, in section 3525.9, now list the exclusive requirements for coal lease applications. A person who wishes to file an application for a competitive coal lease will have to comply with this section. The application procedures in other parts of 43 CFR Part 3500, such as § 3521.2-2, do not apply to competitive coal leasing. The procedures in subpart 3525 do apply. The revised application procedures also make explicit what was implicit in previous regulations: the Department will only accept competitive lease applications for short-term competitive lease sales. Section 3525 of the final regulations restates the short-term leasing criteria that the Department adopted in May 1973, and that Secretary Kleppe reaffirmed his policy statement in January 1976. The criteria require that the coal to be leased will be used to maintain an existing operation or be used as a reserve for production in the near future for a new mine. Under the second standard, operation must be scheduled to commence within 3 years, and delivery of the coal must be expected to commence in 5 years. Short-term leases will be issued in compliance with all of the EMARS procedures except for nominations and the coal lease schedule. Except for those situations, the Department, under EMARS, will rely on nominations (and competitive coal lease applications on file) to indicate the need for additional coal leasing. To help ensure that nominations will be requested with sufficient frequency, the final regulations specifically authorize any person to ask for a call for nominations. This request is informational only, and does not trigger any Bureau action.

One other change was made in the regulations in Part 3040. Existing 3040 regulations refer to "leases, permits or licenses." Since Congress repealed the Department's authority to issue prospecting permits, the references throughout that part to permits have been deleted. (The references in Part 211 have been retained since they deal with post-issuance matters.)

2. *Clarification of EIS Requirements.* One comment requested the Department to clarify whether under EMARS, the Department would prepare an EIS on both a coal lease and a mining plan. The Department has been preparing impact statements when it proposes to approve mining plans that will significantly affect the environment. However, all of the mining plans to date cover leases for which no EIS was done prior to lease issuance. Where the Department has prepared an impact statement prior to lease issuance, it does not expect it will have to do a second statement at the mine plan stage since the impacts of mining will have been adequately considered in the leasing EIS.

3. *Special Leasing Opportunities.* The preamble to the draft regulations stated that the Department would choose a reasonable number of tracts for special leasing opportunities on an ad hoc basis. Comments on this proposal were generally favorable, and the final regulations retain this flexibility. The proposed regulations had a requirement that the Department would hold a special leasing opportunity sale only if a public body nominated tracts in a state. Because the Department wishes to promote this anti-monopoly aspect of EMARS system, the nomination requirement has been eliminated. The Department will consider timely post-nomination requests for special leasing opportunities to the extent that it is feasible. The Department urges public bodies to participate extensively in the nomination process since it is the major way the Department receives information on the need for federal coal leasing.

Several comments inquired whether a public body which has or will engage in a joint venture with a private company qualifies for the special leasing opportunity. Each situation will require separate analysis. In general, arrangements of that type will be satisfactory if there is no attempt to circumvent the obligation to use the federal coal for the benefit of the members of the public body. For example, a public body would not be disqualified from participating in a special leasing opportunity if it intended to burn the coal from a federal lease in a plant controlled by a private corporation if the power delivered to the public body was essentially equivalent to the coal it supplied to the power plant.

A comment by a coal association suggests that where both public bodies and others nominate a tract, public bodies should have to bid against private bodies and that "[t]he special leasing opportunity would derive from the fact that if a public body were willing to pay more than the highest bid made by a private company, the public entity would be allowed to lease the tract." This suggestion would negate totally the leasing preference granted in the Act and has been rejected. Some of the comments suggested that the definition of public bodies proposed in 43 CFR 3500.0-5 was too broad, others that it was too narrow. The Department has reviewed the legislative history of the Act and has concluded that although the term "public bodies" was directed primarily at rural electric cooperatives and other consumer-controlled utilities, it is broad enough to encompass a broad range of non-profit organizations. The final regulations have been amended by adding general language to include organizations similar to the ones actually named in section 3500.0-5.

Finally, one comment expressed concern whether public bodies could bid in regular lease sales. The clear answer to that question is that they may bid in both special and regular sales.

4. *Disqualification of Holder of Federal Leases for 10 Years.* Section 3525.3, as proposed, codifies the requirement in the FCLAA that disqualifies certain holders of federal coal leases from participating in competitive lease sales. One comment correctly noted that the proposed regulation omitted the statutory exception for operations that are interrupted by strikes, the elements or casualties not attributable to the lessee, or where advance royalities are being paid. The final regulations correct this omission, and renumber the proposed section as 3525.4.

5. *Attorney General Consultation.* Several comments suggested that due process and the FCLAA required the Department to hold a hearing prior to rejecting a coal lease on the basis of a determination by the Attorney General that the lease issuance would create a situation inconsistent with the anti-trust laws. The Department does not agree and has not changed this requirement. The purpose of the hearing requirement in section 15 of the FCLAA is to establish the procedures that will permit the Secretary to issue a lease despite an adverse recommendation by the Attorney General. The Secretary is not required to hold a hearing prior to rejecting a bid, in this and other situations, because the bidders do not have the type of interest protected by the due process clause of the Constitution. Also, the Departments of Interior and Justice are still determining what information a bidder must submit, and consequently, the regulations remain general on that point. The regulations have been changed in one respect. The proposed regulation stated that the Secretary could not act until 30 days after he requested the advice of the Attorney General, but did not state whether the Attorney General's failure to respond on time permitted the Secretary to issue the lease. The final regulations state that the Secretary may proceed with the issuance of a lease if the Attorney General does not respond to the request for an opinion in 30 days. Finally, the regulations clarify that the Department may offer a lease to the second high bidder if, for any reason, the high bidder is unable to receive the lease.

6. *Deferment of Bonus Payment.* Several of the comments suggested that the Department should defer the bonus payments for a 10-year period. The Department has decided to retain the 5-year schedule, as proposed, because it feels it is a good balance between the need to promote competition by reducing front-end costs and the need to have sufficient holding costs to deter speculative holdings of leases. However, the final rules contain one change from the rule proposed on deferred payment sales. The proposed rule stated that at least 50 per cent of all sales would be on a deferred payment basis. To maximize the opportunity of small businesses to compete for federal coal leases, section 3525.7 of the final regulations requires that all competitive lease sales be on a deferred payment basis.

7. *Confidentiality of Information.* Some of the comments requested that the Department omit the language in the proposed section 3525.10(f), and substitute the language in section 3520.1–2(f) of the regulations adopted on June 1, 1976, 41 FR 22053. Both sections state how information submitted under the EMARS will be treated under the Freedom of Information Act. The former section merely states that the Department will treat information in accordance with the Freedom of Information Act. The latter section states which specific type of information will be withheld from disclosure. The final regulations, section 3525.8(f), retain the language in the October 28, 1976 proposal. There are two reasons for this decision. First, the Department is currently preparing and will publish shortly extensive Freedom of Information regulations for mineral information. These regulations, if adopted, would permit the Department to adjudicate whether information is subject to disclosure at the time of its submission. Second, the Department's authority to withhold the information specified in the June 1, 1976, regulations has been challenged in a Freedom of Information suit which is currently pending before the Department. For both of these reasons, the Department prefers to leave its regulations in a general format.

8. *Limitation of Overriding Royalties.* One comment suggested that the Department institute limitations on overriding royalties to limit speculation in federal coal leases. The Department has regulations on this topic that are found in 43 CFR § 3503.3–2(c)(3)(i). If the Department determines that the limitations in this section are inadequate to prevent speculation in federal coal leases, it may reduce the limits in the section. The final rulemaking does not change the requirements of the existing regulations.

9. *Land-use Plans.* Several comments requested additional clarification of the requirements for a land-use plan. Some of the comments also suggested that the Department's Management Framework Plans were not plans which complied with the requirements of the Federal Coal Leasing Amendments Act. The Department has taken steps in these final regulations to clarify what minimum requirements are necessary to have an adequate land-use plan. The Federal Coal Leasing Amendments Act does not explain what is meant by the term "comprehensive land-use plans." Language in the legislative history of the Act suggests that the definition of a comprehensive land-use plan should be taken from what was eventually passed as the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, S. Rep. No. 94–296, 94th Cong., 1st Sess. 14 (1975). The Department is required by that Act to use a land-use planning system that conforms to its requirements. Since the Department will use the same planning system for coal leasing as well as other activities, the Department has included in the EMARS regulations a list of the planning system requirements of the Federal Land Policy and Management Act. These are included in section 3525 of the final regulations.

The Department reiterates its conclusion that the Department's existing planning processes meet the requirements of both the Federal Coal Leasing Amendments Act and the Federal Land Policy and Management Act. The legislative history of both Acts confirms that Congress was both aware of and satisfied with the Department's planning system. 122 Cong. Rec. E. 3667 (daily ed. June 29, 1976); H. Rep. No. 94–1163, 94th Cong., 2d Sess. 5 (1976). The only real changes that will be required in the Department's planning system are the addition of specific figures on underground and surface coal deposits and a more formalized public participation process. The Department will also propose for adoption as formal regulations, the procedures and requirements of its planning system. The Department is now preparing proposed land-use planning regulations. These final regulations drop the reference to the Management Framework plans, and instead refer to a land-use planning system.

10. *Hearings and Meetings.* Several comments criticized the Department's proposed EMARS regulations for their failure to comply with the hearing requirements of the Federal Coal Leasing Amendments Act. In particular, criticism was directed at the use of the term "meeting" to describe the opportunity for public input prior to the adoption of a land-use plan. Traditionally, the Department has used the term "hearing" to denote a proceeding conducted by an Administrative Law Judge, and the term "meeting" to denote a proceeding that is conducted by other employees. Despite the Department's past practice, the final regulations do call for a "hearing" before a land-use plan is adopted if one is requested. The regulations go on to define the requirements of a hearing. Only two requirements are present. First, the Department (or the other agency which prepares a land-use plan) must allow the orderly presentation of testimony by those who wish to do so. Second, if a request is made in advance of the hearing, a complete transcript of the hearing must be made. The hearing described by the regulations is not a formal adversary proceeding that requires findings of fact or a recommended decision and does not have to be conducted by an Administrative Law Judge. Its sole function is to ensure that the agency which prepares the plan has given the public an adequate opportunity to comment on the proposed action. The regulations explicitly exempt from this more formal hearing procedure land-use plans which were adopted prior to the enactment of the Federal Coal Leasing Amendments Act if the public had an adequate opportunity to comment on the adoption of the plan.

The final regulations also clarify the requirements of the hearing that is to be conducted on the proposed lease tracts prior to a final decision. Under the final regulations, this hearing will be conducted on the record, and held after the

environmental analysis process has been completed, after the technical examination has been completed, but before the Bureau of Land Management has made recommendations on a proposed coal lease schedule to the Secretary. The regulations do not require the use of an Administrative Law Judge, although one may be used.

11. *Lease modifications*. A request was made that § 3524.2–1(a), which provides that the modification of a lease by adding contiguous coal deposits shall not exceed 160 acres or the same number of acres as that in the original lease, be modified by adding the words "whichever is less." This suggestion was adopted to clarify the intent of the section.

The proposed regulations did not require that a lease modification change the terms at the original lease and a suggestion was made to modify § 3524.2–1(c) to provide that the Secretary prescribe terms and conditions applicable to all the acreage in a modified lease. The Department has revised the section to make that requirement mandatory. The language of section 13 of the Federal Coal Lease Amendments Act states that the modified lease (the original lease plus the added acreage) must have lease terms consistent with the Act.

12. *Use of Rentals as a set-off against royalties*. Prior to the enactment of the Federal Coal Leasing Amendments Act, the Mineral Leasing Act and the Department's regulations required rentals to be credited against royalties that were owed for that year. The Federal Coal Leasing Amendments Act repealed that authority and the final regulations, in 43 CFR 3503.3–1 reflect that loss of authority. The Department will continue to allow holders of leases issued before August 4, 1976, to retain this offset until their leases are readjusted.

13. *Preliminary Plans*. The revised regulations also clarify that the requirement to submit a preliminary plan is limited to those who file an application for a lease. Nominators are not required to submit a preliminary plan. The information required by a preliminary plan is a good guide, however, to the type of information that the Bureau desires to receive under the nomination process.

14. *Nominations*. The final regulations retain the one-tier nomination system that was adopted in the June 1, 1976, regulations even though the response to the one-tier system has not been entirely favorable. The one-tier system, which was instituted at the request of the Western Governor's Regional Energy Policy Organization, does give the public opportunity to comment on the industry nominations after the nominations process has been held. This opportuntiy comes at the public meeting that will be held after the nominations are received (which may be combined with the hearing on adoption of a land-use plan) but before the Department chooses proposed coal lease tracts for environmental analysis. This is now included in 43 CFR 3525.9(1). The public may also comment on the nominations through the normal land-use planning process, and at the hearings on environmental impact statements, and at the final hearing prior to the Secretary's decision whether to adopt a coal lease schedule. The Department has concluded that because these opportunities are available, the one-tier system is satisfactory.

15. *Reasonable Prices*. One comment asserted that the Department was not fulfilling its responsibility under section 30 of the Mineral Leasing Act to ensure that coal from federal leases was sold at reasonable prices. As the comment noted, the Department has reserved in its leases the right to take adequate measures to ensure the sale of coal from federal coal leases at reasonable prices. The Department believes this protects the public interest, sufficiently for the present.

16. *Notice of availability of Exploration Plans*. The December 6, 1976, notice proposed that the notice of availability procedures in 30 CFR § 211.5 apply to exploration plans. Several adverse comments were received on this point, and the final rulemaking omits this requirement because the Department has concluded that the procedures of the section are not appropriate for exploration plans.

17. *Fair Market Value Determinations*. Comments received on the October proposed EMARS regulations included requests for more information on procedures for fair market value determinations. The long-standing method for determination of resource value in sales or leasing of onshore minerals is comparative sales. Under the comparative sales approach, the value of the property up for lease is inferred from recent sales of similar properties in the same area. Due to the long pause in Federal coal leasing and to the dominance of Federal coal in many areas, there have not been enough recent sales to allow use of the comparative sales method at least in the initial coal lease sales. To supplement the comparative sales method, the Department is currently developing at the Geological Survey a discounted cash flow (DCF) model for estimating the value of coal offered for lease. Using projections of future coal prices and estimates of coal production costs, the value of a coal tract can be estimated. The method would employ probabilistic techniques to take account of coal price uncertainties. This method of estimating coal resource value is similar to the Monte Carlo techniques now used for OCS resource value estimation.

The coal DCF model now under development is being tested in prototype situations and in short-term criteria lease sales. Because the best method for fair market value determination is still being examined, it is inappropriate at this time to make commitments to any particular method, and the final regulations are general on this point.

18. *Intertract Competition*. Two commenters stated their concern that intertract competition was authorized but no explanation was given as to how it would work. Intertract competition is a method of competitive bidding that can be employed where there is more federal coal acceptable for development in a sale area than the government has determined is suitable for lease in a given lease sale. Under intertract competition, bidders will be requested to submit bids on the tracts acceptable for development, but bids will be accepted only for tracts with the relative highest bids (a per ton basis), such that the total of leased coal equals the government's lease sale target. The purposes of intertract competition are to maintain strong bigging competition in western coal areas with highly fragmented coal and surface ownership and to determine which tracts will be leased to the basis of the size of industry bids. Although it is under active consideration for use in suitable circumstances, no determination has been made by the Department to employ intertract competition. Before a lease sale would be conducted under intertract competition, the Department would issue a full set of procedures and groundrules. Under the authority delegated to the Secretary of the Interior, Titles 30[1] and 43 CFR are amended as follows:

PART 3040—ENVIRONMENT AND SAFETY

1. Subpart 3041, in Title 43, Part 3040 is revised as follows:

Subpart 3041—Environment and Safety

Sec.
3041.0–1 Pupose.
3041.0–2 [Reserved]
3041.0–3 Authorities.
3041.0–4 Responsibilities.
3041.0–5 Applicability.
3041.0–6 Definitions.
3041.0–7 Use of surface.
3041.1 [Reserved]
3041.1–1 [Reserved]
3041.1–2 [Reserved]
3401.2 Technical examination/environmental analysis.
3041.2–1 Technical examination/environmental analysis report.
3041.2–2 Obligations and standards of performance.
3041.3 Compliance or performance bond.
3041.4 Procedures and public participation.
3041.5 Completion of operations and abandonment.
3041.6 Reports.
3041.7 Notice of noncompliance: Revocation.
3041.8 Variances.

§ 3041.0–1 Purpose.

(a) The purpose of this subpart is to establish rules and regulations to be followed in the management of the federally-owned coal estate consistent with the policies, goals, and objectives established by the Acts cited in § 3041.0–3 of this Subpart, regardless of surface ownership, to ensure effective and reasonable regulation of surface coal mining operations in accordance with the requirements hereof, as an appropriate and necessary means to minimize so far as practicable the adverse social, economic

[1] The amendments to 30 CFR relating to this rulemaking can be found in FR Doc. 77–2257, at page 4441 of this issue of the FEDERAL REGISTER.

and environmental effects of such operations.

§ 3041.0-2 [Reserved]

§ 3041.0-3 Authorities.

The regulations contained in this Subpart are issued pursuant to the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181-287), and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359), and in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended, (42 U.S.C 4321-47). Regulations governing the issuance of Federal coal leases and licenses are found in 43 CFR 3500 of this Chapter. Regulations governing operations conducted on lands subject to lease, permit, or license are found in 30 CFR 211. Regulations setting forth the general and basic policies for disposal and management of the public lands are found in 43 CFR 1725 of this Chapter.

§ 3041.0-4 Responsibilities.

(a) The Bureau of Land Management (BLM) exercises at the Bureau level the Secretary's discretionary authority to determine whether or not mineral leases and licenses are to be issued in accordance with 43 CFR Part 3500. The BLM is responsible for issuing coal leases and licenses, and is the office of record in mineral leasing matters.

(b) The Geological Survey (GS) exercises the Secretary's authority regarding operations conducted within the area of operations by permittees, lessees, and licensees and determines the action to be taken by them from the standpoint of the development, conservation, and management of mineral resources under the jurisdiction of the Department. The Geological Survey is responsible for all geologic, engineering, and economic value determinations for the Department's mineral leasing program. These determinations include: the mineral characteristics of lease and permit areas; parceling; appropriate resource evaluation; reserves; investments, diligent development, and minimum production requirements; and all other terms and conditions relating to mineral operations under leases and licenses.

(c) The BLM or other Federal surface managing agency, in consultation with the GS and the surface owner if other than the United States, formulates the requirements to be incorporated in leases and licenses for the protection of the surface and nonmineral resources and for reclamation, using the reclamation obligations and standards of performance contained in § 3041.2-2 of these regulations and in 30 CFR Part 211.40.

(d) The GS reviews and approves exploration and mining plans, and authorizes the abandonment of operations, in consultation with the BLM or other appropriate Federal surface managing agency, and the surface owner, if other than the United States, on the adequacy of the surface use, environmental protection, and reclamation aspects of such plans and will not grant approval if inconsistent with the BLM's or other Federal surface managing agency's recommendations without further discussions and referrals for resolution pursuant to 30 CFR Part 211.

(e) As to the lands outside of the area of operations, the authorized officer of the BLM or other appropriate Federal surface managing agency is responsible for conducting compliance examinations and for assuring compliance by the lessee or licensee with the requirements of this Subpart, and the terms and conditions of a lease or license and for reporting noncompliance to the Mining Supervisor for appropriate action. As to the lands inside the area of operations the GS examines operations to ensure compliance by the lessee or licensee with the terms and conditions set forth in the provisions of any lease or license or any approved mining or exploration plan. GS refers to BLM any instance of noncompliance with lease terms which may require cancellation action, and BLM may initiate such action. With respect to approval of access roads, pipelines, utility routes and other surface uses outside the area of operations, the BLM, or other Federal surface managing agency, has the primary responsibility but obtains the recommendations of the GS before taking final actions. Except as may be expressly provided for in § 3041.7 of this Subpart and 30 CFR Part 211.72, orders to operators for any remedial action are the exclusive responsibility of the Geological Survey.

(f) Subject to the supervisory authority of the Secretary, the regulations in this Subpart shall be administered by the Director, Bureau of Land Management through the authorized officers having jurisdiction over the lands subject to these regulations and authorized to perform the duties described. Prior to issuance of any coal lease or license, the authorized officer shall consult with and accept and consider recommendations from the Mining Supervisor, the Federal surface managing agency when other than the BLM, or the surface owner, as to the terms and conditions required to achieve the purpose of this Subpart. Any disagreements that cannot be resolved between the GS and BLM arising in connection with any such issuance of a lease or license will be referred for resolution to the appropriate Assistant Secretaries or to the Under Secretary of the Department of the Interior. Leases issued for lands, the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior, shall contain the terms and conditions prescribed by that agency with respect to the use and protection of the nonmineral interests in those lands.

§ 3041.0-5 Applicability.

(a) This Subpart sets forth regulations governing reclamation standards, use of surface, bond requirements, and reports relating to leases and licenses issued by the BLM with respect to Federal coal deposits located on public domain and acquired lands of the United States and reserved Federal coal deposits underlying lands the surface of which is privately owned. These regulations do not govern the leasing or development of coal deposits owned by Indians and subject to the Trust protection of the United States, which are controlled by regulations found in 25 CFR Chapter 1.

(b) The provisions of this Subpart shall become effective upon the date of publication in the FEDERAL REGISTER (January 25, 1977) as final rulemaking, except as hereinafter provided.

(1) Existing operations.

(i) On and after 180 days from the effective date of this Subpart, the provisions of § 3041.2-2(f) shall apply to all existing operations with respect to lands from which the overburden has not previously been removed, provided, however, that this subparagraph shall not be deemed or construed so as to apply the requirements of subparagraphs 3041.2-2(f) (1) and (2), hereof to any operation for which a mining plan has been approved on or before the effective date of this Subpart and for which a variance pursuant to the provisions of subparagraph 3041.2-2(f) (2) would be required.

(ii) On or before 18 months from the effective date of this Subpart, the operator of each existing operation shall have submitted and shall have obtained the approval of a plan or modification thereof which shall comply with all applicable provisions of this Subpart, provided, however, that if the Director of the GS determines that a proposed new plan or modification of an existing plan was prepared and submitted in timely fashion, taking into account the complexity of the operation and of the plan or modification involved, but that administrative delay thereafter has prevented approval within the time specified, the time for compliance with this paragraph may be extended by order of the Director of the GS for an amount of time equal to the duration of such delay.

(iii) For the purpose of this paragraph, the term "existing operation" shall mean:

(A) All operations for which a plan has been approved on or before the effective date of this Subpart, and

(B) All operations with respect to which a proposed plan has been submitted to the Department on or before the effective date of this Subpart, and with respect to which proposed plan the Department has on that date either completed its environmental impact analysis and determined that no environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act is necessary, or has determined that such a statement is necessary and has commenced, and expended substantial resources of the Department in the preparation or completion of, such a statement.

(iv) On or before 90 days from the effective date of this Subpart, the Director of the Geological Survey shall review all proposed plans which have been submitted to the Department on or before the effective date of this Subpart and, after consultation with appropriate Federal surface managing agencies, publish in the FEDERAL REGISTER a list which shall identify each such proposed plan

and whether it will be considered to cover an existing operation.

(2) All operations or proposed operations not included in the definition of "existing operation" in the preceding paragraph shall be considered to be new operations, and shall be subject to the provisions of this Subpart upon the effective date hereof.

(3) The provisions of § 3041.7(c) of this Subpart shall apply immediately upon the effective date of this Subpart.

(c) To the maximum extent possible, all environmental impact statements and all approvals of plans covering existing operations which are pending before the Department on the effective date of this Subpart shall take into account and shall reflect and implement the provisions and purposes hereof; provided, however, that nothing in this subparagraph shall be construed to relieve any operator of the obligation imposed by subparagraph (b) (1) (i) of this section.

(d) Nothing in this Subpart shall be deemed or construed as increasing or diminishing any rights not in conflict with Federal law held by any person, including any surface owner or entryman, arising under the laws of any State and relating to the giving or withholding of consent to, or consultation in connection with, entry to any land for the purpose of conducting operations subject to this Subpart.

§ 3041.0–6 Definitions.

As used in this Subpart, the following terms shall have the following meanings:

(a) *"Acid or toxic producing materials"* means natural or disturbed earth materials having chemical and physical characteristics that, under mining or postmining conditions of drainage, exposure, or other processes, may produce effluents that contain chemical constituents, such as acids, bases, or metallic compounds, in sufficient concentration to individually or in combination adversely affect the environment.

(b) *"Affected lands"* means any lands affected or to be affected by exploration, development, and mining operations and the construction of facilities necessary and related to such operations.

(c) *"Approximate original contour"* means the surface configuration achieved by backfilling and grading of the mined area so that it closely resembles the surface configuration of the land prior to mining (although not necessarily the original elevation) and blends into and complements the drainage pattern and topography of the surrounding terrain.

(d) *"Area of operations"* means that area of the leased or licensed lands which is required for exploration, development, producing, and processing operations, including all related surface structures and facilities, and which is delineated on a map or plat that is made a part of the approved exploration or mining plan.

(e) *"Authorized officer"* means any officer designated by any Federal surface managing agency to exercise its authority in matters relating to coal leases and licenses and to the provisions of this Subpart.

(f) *"Coal"* includes coal of all ranks from lignite to anthracite.

(g) *"Compaction"* means the reduction of porous spaces among the particles of soil and rock generally caused by running heavy equipment over the earth materials, as in the process of leveling the overburden material on strip mine spoil piles or banks, for the purpose of increasing the bearing capacity and stability of the earth materials.

(h) *"Contemporaneously as practicable"* means with respect to reclamation of mined or otherwise disturbed areas, the commencement, conduct and completion of reclamation activity as soon after disturbance as possible, without undue physical interference with ongoing operations, leaving a minimum of land unreclaimed, consistent with the objectives of environmental protection set forth in this Subpart.

(i) *"Daylighting"* is a term used to define the surface mining procedure for exposing an underground mined area to remove remaining coal.

(j) *"Director"* means the Director of the Bureau of Land Management, U.S. Department of the Interior.

(k) *"Exploration"* means the detailed investigation and acquisition of data pertaining to a mineral deposit, including activities for identifying regions or specific areas in which deposits are most likely to occur, and activities used to establish the nature of a coal deposit preparatory to mining.

(l) *"Exploration plan"* means a detailed plan submitted to the Mining Supervisor for approval before exploration operations commence showing the location and type of exploration work to be conducted, environmental protection procedures, roads, and reclamation procedures to be followed upon completion of such operations.

(m) *"General Coal Mining Order"* means a formal numbered order issued by the Mining Supervisor, with the prior approval of the Division Chief, and published, after opportunity for public comment, in the FEDERAL REGISTER, which implements the regulations in this Part and applies to coal mining and related operations in a specified geographic area.

(n) *"Impoundment"* means an artificially built, dammed, or excavated place for the retention of water or sediments. A permanent impoundment is one that is intended to remain after final abandonment of the operation, and shall be identified as such in approved plan.

(o) *"Leased lands, leased premises, or leased tract"* means lands embraced within a coal lease and subject to the regulations in this Subpart.

(p) *"Lessee"* means any person or persons, partnership, association, corporation, public body or governmental entity to whom a coal lease is issued, subject to the regulations in this Subpart, or an assignee of such lease under an approved assignment.

(q) *"Licensee"* means any individual, association or individuals, or municipality to whom a coal license is issued pursuant to the provisions of Section 208 of Title 30 of the United States Code, or any person, association, corporation, public body or governmental entity to whom an exploration license is granted under section 201(b) of Title 30 of the United States Code.

(r) *"Logical mining unit"* means an area of land designated as such by the Geological Survey pursuant to applicable Departmental regulations.

(s) *"Methods of operation"* means the method and manner by which any activities are performed by the operator, as described in an exploration or mining plan.

(t) *"Mine"* means an underground or surface excavation and the surface or underground support facilities that contribute directly or indirectly to coal mining, preparation, and handling.

(u) *"Mining plan"* means a detailed plan for development of the coal resource submitted to the Mining Supervisor for approval prior to commencement of any mining operation, showing the proposed location, method, and extent of mining and all related activities necessary and incidental to such operation, including steps to be taken to reclaim disturbed areas, to mitigate adverse impacts, and to otherwise meet the performance standards and requirements set forth in this Subpart.

(v) *"Mining Supervisor"* means the Area Mining Supervisor, Conservation Division, Geological Survey, or District Mining Supervisor or other subordinate acting under his direction.

(w) *"Notice of Availability"* means a formal notification, by the appropriate Federal officer, to appropriate Federal, state and local agencies and interested individuals or groups of individuals, of the availability for inspection of information, data, proposed plans or modifications thereof, pending decisions and other documents subject to such notice. Any such notice shall include the nature of the information, data, plan or modification, decision or other document involved; the name and mailing address of any applicant; the nature, location (county, township, range and section), duration and brief description of any proposed operations; the date upon which any proposed action might be taken; and, when appropriate, a specific time limit for public review, comment or request for any departmental action, including the holding of any public meeting. For the purpose of ensuring appropriate distribution of such notices, there shall be maintained at each office of a Mining Supervisor or authorized officer of the Department of the Interior a mailing list which shall consist of the names and mailing addresses of all appropriate Federal, state or local agencies and any individuals or groups of individuals who have requested in writing to be included on such lists. All notices of availability shall be mailed to such agencies, individuals or groups at the addresses indicated on such lists.

(x) *"Notice of noncompliance"* means a written notice of operator noncompliance issued pursuant to Section 211.72 of 30 CFR Part 211.

(y) *"Operator"* means a lessee or licensee, or one conducting operations on

lands under the authority of the lessee or licensee.

(z) *"Overburden"* means the earth, soil, rock, and other natural materials which lie above the coal being mined.

(aa) *"Permanent abandonment"* means the cessation of exploration or mining or other operations set forth in an approved plan on all or any portion of lands covered by a lease or license and subject to the provisions of this Subpart, where it is the intent of the operator not to continue operations at the mine or portion thereof.

(bb) [Omitted].

(cc) [Omitted].

(dd) *"Pollution"* means man-made or man-induced adverse alteration of the chemical, physical, biological, and radiological integrity of land, water or air, which reduces, or has the potential of reducing the beneficial uses of these resources.

(ee) *"Post mining land use"* means that use which will be made of affected lands after mining and reclamation is completed and which is specified in a mining or exploration plan approved pursuant to 30 CFR 211.

(ff) *"Preliminary data"* means data, consisting of maps and text, submitted by an applicant for a lease or license to the authorized officer of the BLM, which describes the applicant's proposal in the detail necessary to allow the authorized officer to conduct a technical examination and environmental analysis as described in § 3041.2.

(gg) *"Preparation"* means any crushing, sizing, cleaning, drying, mixing or other processing of coal to prepare it for market which is conducted on lands subject to this Subpart.

(hh) *"Reclamation"* means the process of returning affected lands to a stable condition and form consistent with their premining productivity and use, or other approved post mining land use.

(ii) *"Road"* means any open way for passage or travel upon which to transport people, equipment, materials, or coal, which is constructed, improved or maintained by the operator and which is used to service the pit, bench, underground mine workings, loading facilities or exploration activities.

(jj) *"Secretary"* means the Secretary of the Interior.

(kk) *"Significant vegetation"* means farm crops, including grasses and forbs, that are integral parts of agriculture or ranching operations and the natural vegetation of forests or meadows with significant recreational, watershed, agricultural, or wildlife habitat value.

(ll) *"Spoil"* means soil, rock, and other earth materials that are broken, moved, dumped, or otherwise significantly disturbed during surface coal mining operations subject to this Subpart.

(mm) *"Subsidence"* means a lowering of surface elevations over an underground mine caused by loss of support and subsequent caving of strata lying above the mine.

(nn) *"Surface owner"* means an entryman, or a person or persons who hold legal title to the land surface.

(oo) *"Topsoil"* means natural earth materials at or vertically adjacent to the land surface with physical and chemical characteristics suitable for support of vegetation.

(pp) *"Valley floors"* means the channelways, floodplains, and adjacent low terraces of streams that are flooded during periods of high flow and that are underlain by unconsolidated stream-laid deposits. Excluded are higher terraces and slopes underlain by colluvial and other surficial deposits normally occurring along valley margins.

(qq) *"Waste"* means solid or liquid refuse, rubbish, or other valueless material which is produced by or in connection with coal mining operations, including exploration, production, development, preparation and other related activities, and which has no useful purpose in connection with any remaining operations.

§ 3041.0-7 Use of surface.

(a) The operator shall be entitled to use only so much of the surface of the lands subject to a lease or license as is deemed necessary and has been designated in an approved plan. This Subpart shall not be construed to authorize any use of the Federal lands for a power generation plant or a commercial or industrial facility. Separate permits for such uses must be obtained from the appropriate agency. The operator shall not be entitled to use any mineral materials subject to the Materials Act except as provided by Part 3600 of this Chapter.

(b) Operations conducted in connection with other authorized uses on the same lands shall not unreasonably interfere with or endanger operations conducted in connection with uses authorized under this Chapter, nor shall operations authorized and conducted pursuant to this Chapter unreasonably interfere with or endanger operations under any lease, permit, license, or other use authorized pursuant to the provisions of any other Act.

§ 3041.1 [Reserved]

§ 3041.1-1 [Reserved]

§ 3041.1-2 [Reserved]

§ 3041.2 Technical examination/environmental analysis.

The appropriate authorized officer, with the assistance of the Mining Supervisor, shall make a technical examination and environmental analysis of the area covered by a competitive coal lease application or on Bureau motion, pursuant to the provisions of this section.

(a) The technical examination shall include:

(1) An examination of the technical aspects of the proposed operations set forth in any preliminary data and information; and

(2) An evaluation of the impacts of such operations or, if on BLM motion, the effect of coal leasing and development, on other land uses, resources, or land management programs on or adjacent to the area.

(b) The environmental analysis shall include an analysis of the impact of the proposed operations set forth in any preliminary data and information and of alternatives thereto, or, if on BLM motion, the impacts of coal leasing and development on the living and nonliving components of the environment.

§ 3041.2-1 Technical examination/environmental analysis report.

(a) Following completion of the technical examination and environmental analysis described in the preceding Section, the authorized officer shall prepare a report which sets forth recommendations as to (1) land which should be excluded from any lease or license in order to avoid mining where reclamation is not attainable or assured, or in recognition of other exclusive land use management priorities; (2) measures required to comply with the reclamation and performance standards set forth in this Subpart; (3) necessary conditions and amounts of bonds to cover estimated reclamation costs for areas that will be disturbed during the initial 5-year period of the lease, permit, of license; (4) any additional, more stringent requirements needed in the lease or license pursuant to § 3041.1(e) of this Subpart.

(b) If it is recommended that a specific area within the applied for lands be excluded from a lease or license, or modification thereof, the report shall set forth with reasonable specificity the facts upon which such recommendation is based.

§ 3041.2-2 Obligations and standards of performance.

(a) Any operator who accepts a coal lease or license shall comply with, and be bound by, the general obligations and standards of performance set forth in this section and such additional and more stringent specific requirements as may be contained in the terms and conditions of such lease or license.

(b) If the appropriate authorized officer of the BLM determines that an approved exploration or mining plan should be required to be revised or supplemented to adjust to changed conditions or to correct oversights, he may propose such revision or supplement to the Mining Supervisor for action pursuant to the provisions of 30 CFR Part 211 relating to changes in plans.

(c) Surface coal mining operations shall be conducted so as to assure the extraction of the coal resource to the maximum extent possible, taking into account existing technology, commercially available equipment, the cost of production, and the quality and quantity of the coal resource, so that future environmental disturbance through the resumption of mining will be minimized.

(d) The operator shall, in accordance with the terms and conditions of the lease or license (1) take visual resources identified by the Federal surface managing agency into account in the planning, design, location, and construction of facilities on the affected lands; and (2) take such action as may be needed to

minimize, control, or prevent damage to the recreational, cultural, scientific, historical and known or suspected archeological and paleontological values of the land contained therein.

(e) The following performance standards shall be applicable to the surface effects of underground mining.

(1) Each operator of an underground coal mine shall adopt measures consistent with feasible known technology in order to prevent or, in those instances where the mining method used requires planned subsidence in a predictable and controlled manner, control subsidence; maximize mine stability; and maintain the value and use of surface lands.

(2) Where pillars or panels are not removed and controlled subsidence is not part of the mining plan, pillars or panels of adequate dimensions shall be left to assure stability giving due consideration of the thickness and strength characteristics of the coal beds and of the strata above and immediately below the coal bed.

(f) The following performance standards shall be applicable to all coal exploration, development, mining, preparation, handling, and reclamation operations on the surface of lands subject to this Subpart:

(1) The operator shall reclaim affected lands pursuant to his approved plan, as contemporaneously as practicable with operations, to a condition capable of supporting all practicable uses which such lands were capable of supporting immediately prior to any exploration or mining, or equal or better uses that have been approved in accordance with this Subpart.

(2) The operator shall replace overburden and waste materials in the mined area by backfilling (compacting, where necessary, to ensure stability or to prevent leaching of toxic materials), grading or other means, so as to cover all acid-forming or other toxic materials and eliminate highwalls and spoil piles and restore the approximate original contour. Where the thickness of the coal deposits relative to the volume of overburden is large and where the overburden and other spoil and waste materials are either insufficient or more than sufficient to restore the approximate original contour, the operator shall, in order to provide adequate drainage, backfill, grade, and where necessary, compact, using all available overburden or spoil material, to obtain the lowest practicable grade, which shall in any event be less than the angle of repose. Excess overburden or other spoil material shall be fully reclaimed in accordance with the requirements of this Subpart. Variance from the requirements of subparagraphs (1) and (2) of this paragraph may be allowed in an approved mining plan if the Director of the Geological Survey, with the concurrence of the Director of the Bureau of Land Management or the comparable appropriate authorized officer, determines that unusual physical conditions at the site, such as steeply dipping coal beds or multiple seam mining, exist, and such conditions make backfilling pursuant to such requirements impracticable as a result of the volume of material excavated or environmentally undesirable as a result of the duration of the operation.

(3) The operator shall stabilize and protect all surface areas, including spoil piles, affected by the coal mining and reclamation operation, to effectively control slides, erosion, subsidence, and attendant air and water pollution.

(4) The operator shall remove topsoil separately, for replacement on the backfill area, and if not so utilized immediately, segregate it in a separate pile from other spoil. When topsoil is not to be replaced on a backfill area within a time short enough to avoid deterioration, the operator shall establish and maintain an approved quick growing vegetative cover or employ other approved measures so that the topsoil is protected from wind and water erosion and establishment of noxious plant species, and is in a condition for sustaining vegetation when used during reclamation. If topsoil is of insufficient quantity or of poor quality for sustaining vegetation, and if other excavated materials can be shown to be more suitable for revegetation, then the operator may be authorized in the approved plan to remove, segregate, protect, and utilize in a like manner such other materials.

(5) The operator shall ensure that water impoundments, water retention facilities, dams, or settling ponds have been set forth in an approved plan, and ensure that:

(i) Any such facility is adequate for its intended purposes and the quality and quantity of impounded water will be suitable for its intended use.

(ii) Any such facility is designed, located, built, used, and maintained in accordance with sound engineering standards and practices and applicable Federal and State laws and regulations, to ensure that such facilities will have necessary stability with an adequate margin of safety.

(iii) Final grading will provide adequate safety and access for proposed or reasonably anticipated water users.

(iv) Such facilities will not have a significant adverse impact on the water resources utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses, provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person.

(v) No mine or processing waste is used in the construction of such facilities unless authorized in the approved plan.

(6) The operator shall cover or plug all auger mine holes with noncombustible and, where necessary to minimize control or prevent harmful drainage, impervious material.

(7) The operator shall utilize the best practicable commercially available technology to minimize, control or prevent disturbances of the prevailing quality, quantity and flow of water in surface and ground water systems, and of the prevailing erosion and deposition conditions at the mine site and in affected offsite areas, both during and after coal mining operations and reclamation, by:

(i) Controlling acid or toxic drainage and the adverse consequences thereof by such measures as, but not limited to, diverting surface runoff water away from disturbed areas; excluding oxygen from, or restricting the flow of water through acid or toxic-producing minerals; treating drainage to reduce acid or toxic content which adversely affects downstream water upon being released to water courses; and casing, sealing, or otherwise treating drill holes, shafts, and wells to keep acid or toxic drainage from entering ground and surface waters.

(ii) Conducting surface mining operations so as to minimize, control, or prevent (A) contributions of suspended solids to streamflow or runoff outside the mining site above natural levels under seasonal flow conditions as measured for a period and at sites determined by the Mining Supervisor, in consultation with the appropriate authorized officer, and (B) except where specifically authorized in an approved plan, deepening or enlarging of stream channels where operations include the discharge of water from mines.

(iii) Removing or modifying siltation structures after disturbed areas are revegetated and stabilized unless otherwise authorized by the Mining Supervisor in an approved plan, with the concurrence of the appropriate authorized officer, provided, however, that any siltation structure retaining water shall, in any event, be subject to the requirements of § 3041.-2-2(f)(5) of this Subpart.

(iv) Protecting the quality, quantity and flow, including depth of flow, of upstream and downstream surface and ground water resources of those valley floors which provide water sources that support significant vegetation or supply significant quantities of water for other purposes, by such measures as, but not limited to, relocating and maintaining the gradients of stream, avoiding mining installing, reestablishing or replacing acquifers or acquicludes, and replacing soils, provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person.

(8) The operator shall: (i) Treat or dispose of all rubbish and noxious substances in a manner designed to minimize, control or prevent air and water pollution and the hazards of ignition and combustion.

(ii) Dispose of all waste resulting from the mining and preparation of coal in a manner designed to minimize, control or prevent air and water pollution and hazards of ignition and combustion. Where surface disposal of solid wastes in areas other than the mine workings or other excavations has been authorized in the approved plan, stabilize such waste including, where necessary, constructing waste piles in compacted layers with the use of incombustible and impervious materials; shape waste piles

to be compatible with the natural surroundings and terrain; cover with topsoil or other suitable material in accordance with subparagraph (f)(4) of this section; and revegetate in accordance with subparagraph (f)(13) of this section. All impoundments of liquid wastes shall comply with the requirements of subparagraph (f)(5) of this Section. Waste containing coal in such quantity that it may be later separated from the waste by washing or other means shall be stored separately.

(9) Except as provided herein, the operator shall not conduct excavation, drilling, or blasting operations within 200 feet of an active or abandoned underground mine. Where it can be established by certified maps or inspection of such an underground mine that such activities may be conducted without danger of interference with, or penetration of, an underground mine, they may be authorized in an approved plan to be conducted up to but not less than 25 feet from such underground mine provided that nothing in this paragraph shall preclude daylighting or similar surface coal mining activities intended to improve resource recovery, abate water pollution, or eliminate public hazards resulting from such underground mines.

(10) To prevent personal injury or damage to public and private property, the operator shall use explosives only in accordance with all applicable Federal and State laws and an approved plan and shall:

(i) Provide adequate advance written notice, by publication and/or posting of planned blasting schedules, to local governments and to residents who might be affected by the use of such explosives, and maintain a log of the magnitudes and times of blasts for a period of at least two years.

(ii) Limit the size, timing, and frequency of blasts, as determined by the physical conditions of the site.

(11) The operator shall design to applicable standards, construct, maintain and, when no longer necessary and unless otherwise authorized in an approved plan, remove, all roads, pipelines, powerlines and similar utility access facilities and associated bridges, culverts and ditches, into and across the site of operations, in a manner that will minimize control or prevent erosion and siltation, fugitive dust, pollution of water, damage to fish or wildlife or their habitat and public or public property.

(12) (i) Roads shall not be surfaced with any acid or toxic producing material. No access roads will be constructed unless (A) the operator shall have first submitted a surveyed profile accompanied by typical cross-sections of the road and ditches, showing pipe, entrance, exit channels and sediment control structures and other structures or configurations to be used on the road to meet performance standards and (B) the location shall have been marked and inspected, and approved by the Mining Supervisor, in consultation with the appropriate authorized officer and the surface owner, if other than the United States.

(ii) No access road shall be constructed in a stream, nor shall any stream or stream bed be used as an access road. Insofar as possible, all roads shall be located on benches, ridges, and flatter slopes to enhance stability and minimize disturbance. Stream fordings shall be avoided and the normal seasonal flow and the normal seasonal sediment load shall not be detrimentally affected by access roads in a continuous fashion that results in harm to the aquatic ecosystem. Provided, however, that nothing in this subparagraph shall be construed to prohibit relocation or alteration of such beds or channels pursuant to the provisions of this Subpart and as set forth in an approved plan.

(13) (i) The operator shall, except where other reclamation based upon post-mining land use and not requiring revegetation pursuant to the requirements of this section is expressly provided for in an approved plan, establish on regarded areas and all other affected lands a diverse vegetative cover, native to the area and capable of regeneration and plan succession at least equal in density and permanence to the natural vegetation provided, however, that the Mining Supervisor, with the concurrence of the appropriate authorized officer may allow the use of approved mixtures of introduced or native species where preferable to achieve quick cover or assure successful revegetation. In approving such mixture, preference will be given to non-toxious species.

(ii) The operator's responsibility and liability under his performance bond for revegetation of each planting area shall extend until such time as the appropriate authorized officer, in consultation with the Mining Supervisor and the surface owner, if other than the United States, determines that successful revegetation in compliance with subparagraph (i) of this subsection has occurred, provided, however, that this period shall extend for a minimum of five full years after the first planting, and for a total period of liability not to exceed 10 years from the original planting; and further provided that,

(A) Where the appropriate officer, in consultation with the Mining Supervisor, determines that natural conditions such as annual precipitation, soil characteristics and native vegetation are stable and favor rapid revegetation, and that revegetation pursuant to subparagraph (i) of this subsection is likely to occur before the expiration of such minimum period, he may specify in the lease, permit, or license that such minimum period will not apply with respect to some or all of the lands included in such lease, permit or license; and

(B) Where during any such minimum period such authorized officer, in consultation with the Mining Supervisor and the surface owner, if other than the United States, determines that natural conditions such as annual precipitation and soil characteristics are sufficiently unstable so as to favor only slow and uncertain revegetation, he may recommend to the Mining Supervisor that the liability of the operator be extended for a period of up to five years beyond the period initially established, if the financial liability that would be incurred by the operator as a result is reasonably commensurate with the increased probability of successful revegetation.

(iii) During the relevant period of liability, the Mining Supervisor and the appropriate authorized officer shall jointly inspect and evaluate the revegetated areas pursuant to subparagraph 3041.6 (b)(2) hereof.

(14) The operator shall: (i) Except as provided in subparagraph (ii) hereof, allow public access to and upon Federal lands subject to his lease, permit, or license for all lawful and proper purposes, except where such access would unduly interfere with his authorized use.

(ii) Regulate public access, vehicular traffic, and wildlife or livestock grazing in all areas of active operations, including lands undergoing reclamation, in order to protect the public, wildlife and livestock from hazards associated with such operations, and to protect revegetated areas from unplanned and uncontrolled grazing. For this purpose, the operator shall provide warning signs, fencing, flagmen, barricades, and other safety and protective measures as may be necessary.

(15) Coal storage areas shall be designed and maintained so as to eliminate fire hazards from spontaneous combustion and other accidental ignition. If a coal seam exposed by surface mining or an accumulation of slack coal or combustible waste becomes ignited during the term of a lease, the operator shall immediately take all necessary steps to extinguish the fire.

(16) Upon completion or temporary or permanent abandonment of mining operations in all or any part of a strip pit, the face of the coal shall be covered with noncombustible material that will effectively protect the coal bed from becoming ignited.

(17) The driving of any underground openings by auger or other methods from any strip pit shall not be undertaken except as specifically approved by the Mining Supervisor, in an approved plan.

§ 3041.3 Compliance or performance bond.

(a) The provisions of Subpart 3504 of this Chapter are hereby made applicable to this subpart. In addition each compliance bond will be conditioned upon faithful compliance with the regulations in this subpart and any additional terms and conditions of the lease or license.

(b) Prior to issuing a lease or license, the authorized officer, after consultation with the Mining Supervisor, shall ensure that the amount of the compliance bond or bonds to be furnished is sufficient to ensure reclamation in accordance with the performance and reclamation standards in § 3041.2-2, and with the terms and conditions of the lease or license.

(c) An application for a lease or license may be denied any applicant or offeror who has previously forfeited a bond because of failure to comply with an approved plan unless the affected lands covered by such plan have been re-

claimed without cost to the Federal Government. Nothing in this subparagraph shall be deemed to modify or limit any discretionary authority of the authorized officer of the BLM otherwise to deny for cause any application for a lease or license.

(d) Once a lease or license has been issued the authorized officer, after consulting with and receiving the recommendation to increase or to release in whole or in part any compliance bond or bonds so that the amount of the compliance bond or bonds will at all times be sufficient to cover the estimated costs of completion of the remaining reclamation requirements of the approved plan and of the terms and conditions of the lease or license.

§ 3041.4 Procedures and public participation.

Written findings. Except as may be otherwise expressly set forth in this Subpart, decisions and determinations of any appropriate authorized officer acting pursuant to this Subpart or to 30 CFR Part 211 with respect to issuance of leases, approval of mining plans or modifications thereof, and abandonment of operations shall be in writing, shall set forth with reasonable specificity the facts and the rationale upon which such decisions or determinations are based, and shall be available for public inspection during normal business hours at the offices of such officer.

§ 3041.5 Completion of operations and abandonment.

(a) *Grading and backfilling.* Upon completion of backfilling and grading as required by the approved plan and prior to replacing topsoil and revegetation, the operator shall submit a report thereon, in duplicate, to the Mining Supervisor and request inspection for approval. Whenever it is determined by such inspection that the backfilling and grading has met the requirements of the approved plan, the Mining Supervisor shall recommend to the appropriate authorized officer release of an appropriate amount of the compliance bond for the area satisfactorily backfilled and graded.

(b) *Temporary abandonment.* In areas in which there are no current operations, but operations are to be resumed under an approved plan, the operator shall substantially backfill, fence, protect, or otherwise effectively close all surface openings, auger holes, areas prone to subsidence, and surface facilities or workings which are a hazard to people or animals. Conspicuous signs shall be posted prohibiting entrance of unauthorized persons. All such protective measures shall be maintained in a secure condition until such operations are resumed or permanently abandoned.

(c) *Permanent abandonment.* Before permanent abandonment of exploration or mining operations, all openings and excavations, including water discharge points, shall be closed or backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved plan. Drill holes, trenches, and other excavations for exploration, development or prospecting shall be abandoned in such a manner as to protect the surface and not to endanger any present or future underground operations or any deposit of oil, gas, other mineral resources, or ground water. Methods of abandonment shall be approved in advance by the Mining Supervisor in an approved plan, and may include backfilling, regrading, revegetation, cementing, and capped casing, or combinations of these, or other methods. Reclamation and clean-up of surface areas around and near permanently abandoned underground or surface mines, including, except where otherwise expressly provided in an approved plan, removal of equipment and structures related to the mining operation, shall commence without delay following cessation of mining operations. Areas affected by access roads will be graded, drained, and revegetated in accordance with the approved Mining Plan and therein approved post mining land use prior to bond release. In the event that access or haul roads are intended to remain after abandonment of the operation, pursuant to § 3041.2-2(f)(11) of this Subpart, they must be designed and constructed so as to be permanently stabilized using adequate drains, water barriers, and other practices.

(d) *Notice of abandonments release of bond.* (1) Not less than 30 days prior to cessation or abandonment of operations, the operator shall submit to the Mining Supervisor, in duplicate, a notice of his intention to cease or abandon operations, together with a statement of the exact number of acres affected by his operations, the extent and kind of reclamation accomplished, and a statement as to the structures and other facilities that are to be removed from or remain on the leased or licensed lands.

(2) Upon receipt of such notice, the Mining Supervisor and the appropriate authorized officer or officers shall promptly make a joint inspection to determine whether all operations have been completed in accordance with the terms and conditions of all leases, permits, and licenses, and with the requirements of approved operating plan. Where the operator has compiled with all such terms, conditions and requirements and the regulations of this Subpart the Mining Supervisor shall recommend to the appropriate authorized officer that the appropriate period of bonded liability be terminated.

(3) When the surface of lands in a lease permit or license is not owned by the United States the Mining Supervisor shall notify the surface owner and solicit and take into account his comments before recommending to the appropriate authorized officer that the period of such bond liability be terminated.

§ 3041.6 Reports.

(a) *Operations.* The operator shall file with the Mining Supervisor within 30 days after the end of each calendar year, and within 30 days after any temporary or permanent abandonment of operations, a report, in duplicate, containing the following with respect to his operations or the operations subject to such abandonment.

(1) Serial number of the lease, permit, or license and a description of the lands affected by operations.

(2) The number of acres disturbed and the number of acres reclaimed, including areas on which revegetation is being conducted.

(3) A description of the reclamation work remaining to be done on lands disturbed.

(b) *Revegetation.* (1) The operator shall file a report, in duplicate with the Mining Supervisor within 30 days after each planting is completed. The report shall: (i) Identify the lease or license; (ii) Show the types of planting or seeding, including mixtures and amounts; (iii) Show the date of planting or seeding; (iv) Identify or describe the planted or seeded lands; (v) Describe any surface manipulation, mulching, fertilization, and irrigation procedures, if any, and contain such other information as may be considered relevant.

(2) The Mining Supervisor and the authorized officer of the Federal surface managing agency shall, as soon as possible after each full growing season, jointly inspect and evaluate the revegetated areas to determine, in consultation with the surface owned if other than the United States, whether satisfactory vegetative growth has been established, or whether additional revegetation efforts should be ordered pursuant to 30 CFR 211.62(b)(2).

§ 3041.7 Notice of noncompliance: Revocation.

(a) The appropriate authorized officer and the Mining Supervisor shall have the right to enter upon the lands subject to this Subpart under lease or license, at any reasonable time.

(b) If an appropriate authorized officer discovers that an operator is conducting on lands subject to this subpart activities which are not in compliance with the requirements of a least or license, applicable regulations, or an approved plan and such activities do not threaten immediate and serious damage to the environment, resources, or the health and safety of the public, such authorized officer shall or, in the case of an appropriate authorized officer of any Federal surface managing agency not in the Department of the Interior, may refer the matter to the Mining Supervisor for remedial action pursuant to 30 CFR 211.72(a).

(c) If an appropriate authorized officer discovers that an operator is conducting on lands subject to this subpart activities which are not in compliance with the requirements of a lease or license, applicable regulations or an approved plan and such activities threaten immediate and serious damage to the environment, resources, or the health and safety of the public, and the Mining Supervisor is not available for appropriate remedial action pursuant to 30 CFR 211.72(c), such authorized officer may order the immediate cessation of

such activities and shall promptly notify the Mining Supervisor. Upon such notification, the Mining Supervisor shall order immediate remedial action pursuant to 30 CFR 211.72(c).

(d) Failure of the operator to take action in accordance with an order for cessation of activities issued pursuant to paragraph (c) of this section, or with a written notice of noncompliance issued by the Mining Supervisor in accordance with the provisions of 30 CFR 211.72 shall be grounds for suspension of the operation and for possible cancellation of the lease, permit, or license in accordance with the regulations in 43 CFR 3500 of this Chapter.

§ 3041.8 Variances.

(a) Variances from compliance with the performance standards set forth in this subpart may be allowed as part of an approved mining plan under either of the following circumstances:

(1) Where an applicant states in a proposed plan or modification thereof that he cannot meet a performance standard specified in subparagraphs 3041.2-2(f) (2), (4), (6), (11), (12) or (13) of this subpart, he may request a variance from such performance standard where such variance would be compatible with the approved post mining land use, and shall support his request with appropriate information demonstrating the need therefor. The Mining Supervisor, after consultation with the appropriate authorized officer and the surface owner, if other than the United States, may approve or disapprove such variance, and shall advise the applicant and approve or disapprove the proposed plan or modification accordingly;

(2) Where an applicant proposes a post-mining land use that is substantially different from the land use immediately prior to any exploration and mining, the Mining Supervisor, with the concurrence of the appropriate authorized officer and after consultation with the surface owner, if other than the United States, may approve a mining plan containing variances from the performance standards of 30 CFR 211 and § 3041.2-2(f) hereof, provided that:

(A) After consultation with the appropriate land use planning agencies, if any, the proposed development is deemed to constitute an equal or better economic or public use of the affected land, as compared with the premining use.

(B) The granting of such variance is essential to achieving the proposed post mining land use.

(C) The applicant presents specific plans for the proposed post mining land use and appropriate assurances that such use will be: (i) Compatible with adjacent land uses; (ii) Supported by commitments and assured of investment from public agencies where appropriate; (iii) Practicable with respect to private financial capability for completion of the proposed development; (iv) Planned pursuant to a schedule made part of the proposed mining plan so as to integrate the mining operation and reclamation with the post mining land use; (v) Designed by qualified personnel in conformance with professional standards in order to assure the stability, drainage, and configuration necessary for the intended use of the site.

(D) To the degree possible and taking into account the subjective nature of the assessment, the applicant has considered the impact of the proposed land use on the aesthetic character of the area by consulting with inhabitants of the area, and utilizing expertise in the landscape and geomorphologic fields.

(b) Any application for a variance pursuant to paragraph (a) of this section shall demonstrate that any proposed disturbance of land above a highwall will facilitate compliance with the environmental protection and performance standards set forth in this subpart.

(c) Any application for variance pursuant to paragraph (a) of this section which proposes to place spoil or other material on the downslope below the bench used to mine an area classed as "steep slope," shall demonstrate to the satisfaction of Mining Supervisor that the permanent or temporary sediment loads in the receiving drainages and reclamation to the post-mining land use will not have significant adverse effects upon the aesthetics of the area.

(d) All variances granted pursuant to this section shall be reviewed by the Mining Supervisor and the appropriate authorized officer not more than three years after granting of the variance and incorporation in the mining plan, to ensure that the development is proceeding in accordance with the terms of the approved plan and the terms and conditions of any lease, permit, or license.

(e) An operator may apply for a variance pursuant to the provisions of paragraph (a) of this section only by submitting a new or revised mining plan to the Mining Supervisor for approval pursuant to the provisions of 30 CFR 211. Minor changes of operations which do not involve violations of the performance standards set forth in this subpart, and the granting of a variance pursuant to the description in § 3041.2-2(a)(2) of this subpart, will not be deemed to be subject to or require compliance with, the provisions of this section.

(f) If the Director of the GS determines that a decision to grant a variance would constitute a major Federal action significantly affecting the quality of the human environment, and that an environmental impact statement as required by Section 102(2)(C) of the National Environmental Policy Act has not been prepared with respect thereto, such a statement shall be prepared. If the Mining Supervisor grants a variance pursuant to this Section, he shall notify the appropriate land managing agency or land planning agency for the purpose of determining whether any changes may, as a result of such variance, be required in any land use plan.

PART 3500—LEASING OF MINERALS OTHER THAN OIL AND GAS: GENERAL

2. Section 3500.0-5 of 43 CFR is amended by revising paragraphs (h) and (i) as follows:

§ 3500.0-5 Definitions.

* * * * *

(h) *Public Bodies.* Public bodies are Federal and State agencies, municipalities, and rural electric cooperatives and similar types of organizations, and nonprofit corporations controlled by any of foregoing entities.

(i) *Government entities.* Governmental entities are Federal and State agencies, municipalities and subdivisions thereof, including any corporation primarily acting as an agency or instrumentality of a State, which produces electrical energy for sale to the public.

3. 43 CFR 3501.1-4 paragraphs (b)(1)(i) and (ii) are revised to read as follows:

§ 3501.1-4 Acreage limitations.

* * * * *

(b) * * *

(1) *Coal.* (i) No person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation shall take, hold, own or control at one time Federal coal leases or permits on an aggregate of more than 46,080 acres in any one State, and in no case on an aggregate of more than 100,000 acres in the United States.

(ii) No person, association, or corporation holding, owning or controlling Federal coal leases or permits (by itself or through any subsidiary, affiliate, or person under common control with it) on an aggregate of more than 100,000 acres in the United States on August 4, 1976, shall be required to relinquish any lease or permit which it held on that date, but it shall not be permitted to take, hold, own or control any further Federal coal leases or permits until such time as its holding, ownership, or control of Federal leases or permits has been reduced below an aggregate of one hundred thousand acres within the United States.

* * * * *

4. 43 CFR 3501.1-5 is revised to read as follows:

§ 3501.1-5 Exceptions.

(a) *All leaseable minerals except coal.* No lands within the boundaries of the following areas in the public domain shall be leased under the provisions of this Part:

(1) National parks and monuments.

(2) Indian reservations.

(3) Incorporated cities, towns, and villages.

(4) Naval petroleum and oil shale reserves.

(5) Lands acquired under the act of March 1, 1911 (36 Stat. 961; 16 U.S.C. 513-519) known as the Appalachian Forest Reserve Act, or other acquired lands.

(b) *Coal.* No coal leasing shall be permitted on the public domain within the areas set forth in 43 CFR 3535.4.

5. 43 CFR 3501.2-1 is revised to read as follows:

§ 3501.2 Acquired lands.

§ 3501.2-1 Lands and deposits not subject to leasing.

(a) *All leaseable minerals except coal.* The following acquired lands are not subject to leasing:

(1) Lands acquired for the development of their mineral deposits;

(2) Lands acquired by foreclosure or otherwise for resale;

(3) Lands acquired as surplus under the Surplus Property Act of October 3, 1944 (58 Stat. 765; 50 U.S.C. 1611, et seq.);

(4) Lands in incorporated cities, towns, and villages;

(5) Lands in national parks and monuments; and

(6) Lands which are tide lands or submerged coastal lands within the Continental Shelf adjacent or littoral to any part of land within the jurisdiction of the United States.

(b) *Coal.* No coal leasing shall be permitted on acquired lands within the areas set forth in 43 CFR 3525.4.

6. 43 CFR 3502.9 is amended to read as follows:

§ 3502.9 Public Bodies.

§ 3502.9-1 Coal.

(a) To obtain a coal lease on a tract set aside pursuant to 30 U.S.C. 201(a) a public body must submit:

(1) Evidence of the manner in which it is organized;

(2) Evidence that it is authorized to hold a lease or permit;

(3) Evidence that the action proposed has been duly authorized by its governing body; and

(4) A definite plan to produce energy solely for its own use or for sale to its members or customers (except for short-term sales to others).

(b) To obtain a license to mine coal pursuant to 30 U.S.C. 208, a municipality must submit:

(1) Evidence of the manner in which it is organized;

(2) Evidence that it is authorized to hold a license; and

(3) Evidence that the action proposed has been duly authorized by its governing body.

(c) To obtain a coal lease pursuant to 30 U.S.C. 352 on a tract of acquired lands set apart for military or naval purposes, a governmental entity must submit:

(1) Evidence of the manner in which it is organized, including the state in which it is located;

(2) Evidence that it is authorized to hold a lease;

(3) Evidence that the action proposed has been duly authorized by its governing body; and

(4) Evidence that it is producing electricity for sale to the public in the state where the lands to be leased is located.

(d) Where the material required in paragraphs (a), (b) and (c) of this section has previously been filed, a reference by serial number of the record in which it has been filed, together with a statement as to any amendments, will be accepted.

7. 43 CFR Subpart 3503 is amended by adding a new § 3503.3-3 to read as follows:

§ 3503.3-3 Coal.

(a) A coal lease shall require payment of a royalty of not less than 12½ per centum of the value of the coal removed from a surface mine.

(b) A coal lease shall require payment of a royalty of not less than 8 per centum of the value of the coal removed from an underground mine, except that the authorized officer may determine a lesser amount if conditions warrant.

(c) The value of coal removed from a mine is defined for royalty purposes in 30 CFR 211.63.

8. 43 CFR § 3503.3-1(b) is amended by revising paragraph (1) to read as follows:

§ 3503.3-1 General statement rentals.

* * * * *

(b) *Leases*—(1) *Coal.* Annual rental per acre or fraction thereof for coal leases shall not be less than 25 cents for the first year, not less than 50 cents for the second through fifth years and not less than $...... for each and every year thereafter during the continuance of the lease.

(i) *Leases issued before August 4, 1976.* The rental paid for any year shall be credited against the royalties for that year until the lease is readjusted.

(ii) *Leases issued or adjusted after August 4, 1976.* Rental payments may not be credited against royalties.

§§ 3505.1-1, 3505.2-1 through 3505.2-4 [Reserved]

9. 43 CFR Subpart 3505 is amended by revoking and reserving §§ 3505.1-1, 3505.2, 3505.2-1, 3505.2-2, 3505.2-3, and 3505.2-4.

§§ 3511.2-1 and 3511.2-2 [Amended]

10. 43 CFR Subpart 3511 is amended by revoking and reserving paragraph (b)(1) of § 3511.2-1(b)(1) and § 3511.4-4.

PART 3520—PREFERENCE RIGHT AND COMPETITIVE LEASES

Operator questions order of sections:

11. Section 3520.0-3 is revised as follows:

§ 3520.0-3 Authorities.

(a) *Public domain and acquired lands.* The Secretary is authorized to divide into leasing units and award leases of mineral lands and mineral deposits owned by the United States as set forth in § 3500.1-1 subject to the provisions of the Mineral Leasing Act, as amended and supplemented, and the Mineral Leasing Act for Acquired Lands as set forth in § 3500.0-3. Coal leasing is governed by the application procedures in 43 CFR Subpart 3525. Other leaseable minerals are covered by the procedures in 43 CFR Subpart 3521.

14. Section 3521.2-1 is revised as follows:

§ 3521.2-1 Application or Bureau motion.

(a) *Application.* (1) *Forms.* (i) Where filed and copies. An application for a lease must be filed in duplicate in the proper office. No specific form is required. Competi-coal lease applications will be accepted only as authorized by 43 CFR Subpart 3525. The application should include the information set forth in (ii) to (v) of this subparagraph.

(ii) The applicant's name and address.

(iii) State of citizenship and qualifications.

(iv) A complete and accurate description of the lands for which the lease is desired. See § 3501.1-3.

(v) Evidence that the land is valuable for the mineral for which application is made, with a statement as to the character, extent and mode of occurrence of the deposit.

(2) *Additional Statements Required.* The contemplated investment for the development and purchase of equipment of a producing mine of a stated average daily output. Phosphate. To the extent such information is known to the applicant, a description of the phosphate and associated or related mineral deposits in the land based upon such actual examination as can be effected without an injury to the land or deposits (such examination shall not be deemed a trespass), giving nature and extent of the deposits; an outline in general terms of the proposed method of mining and processing the same; the proposed investment in mining operations thereon, and processing facilities therefor.

(3) Evidence showing in sufficient detail that:

(i) The amount of phosphate lands, Federal and non-Federal, held by him, together with the lands described in the application are necessary for his proposed development plan.

(ii) He intends to explore, mine and develop the property in good faith.

(iii) His proposed operations of the property will be in accordance with good conservation practice and this additional development is needed in order to supply an existing demand which cannot otherwise be reasonably met.

12. Section 3521.2-2 is revised as follows:

§ 3521.2-2 Qualifications.

(a) Compliance with Subpart 3502 is required.

(b) Bureau motion. (1) Bureau of Land Management responsibility.

(2) Geological Survey responsibility.

(c) *Leasing Units.* (1) *Phosphate.* If the authorized officer shall determine, after consultation with the Mining Supervisor of the Geological Survey that specific lands or deposits, not under an outstanding permit or application for preference right lease, which constitute an acceptable leasing unit are subject to phosphate lease, they will be offered for such lease on the terms and conditions to be specified in the notice of lease offer to the qualified person who offers the highest bonus by competitive bidding equal to the fair market value of the mineral deposit either at public auction

or by sealed bids as provided in the notice of lease offer.

(2) *Solid (hardrock) minerals.* Any qualified person may file an application for the competitive offering of such deposits. Leasing units may not exceed, in reasonably compact form, 2,560 acres of land described in the manner required by this section. The authorized officer may prescribe a lesser area for any mineral deposit if the Geological Survey reports that such lesser area is adequate for a logical leasing unit.

(i) *Exception.* (a) *Phosphate.* In a notice for a phosphate lease, the detailed statement will set forth that the terms of minimum production will not be reduced or waived at the lessee's request as provided in § 3503.3-2(b)(3), (d), (e), or upon a satisfactory showing that market conditions are such that the lessee cannot operate except at a loss.

(b) *Asphalt.* All leases will be issued through competitive bidding only in the same manner as that provided for in Subpart 3120.

(c) *Publication.* Notice of offer of lands or deposits for lease by competitive bidding will be by publication once a week, or for such other period as may be deemed available, in a newspaper of general circulation in the county in which lands are situated.

13. The following sections are repealed and reserved: 43 CFR § 3520.0-4, 43 CFR § 3520.1-2, 43 CFR § 3520.1-3, 43 CFR § 3521.1-4, 43 CFR § 3521.1-5.

14. Title 43 CFR § 3520.2-1 is amended to read as follows:

§ 3520.2-1 Duration of Leases.

Leases shall be issued for indeterminate periods subject to readjustment or renewal at the end of the first 20-year period upon such terms and conditions as may be incorporated in each lease or prescribed in general regulations issued by the Secretary of the Interior, including covenants relative to mining methods, waste, period of preliminary development and minimum production (a) *Exceptions.* (1) *Asphalt.* Asphalt leases are issued for 10 years and so long thereafter as the lessee complies with the terms and conditions of the lease.

(2) *Solid (hardrock) minerals.* The lease will be issued for a period not exceeding 20 years the term to be determined upon the advice of the agency having jurisdiction over the surface and the U.S. Geological Survey.

(3) *Coal leases issued or readjusted after August 4, 1976.* The term of the lease shall be twenty years, and as long thereafter as the lessee is producing coal annually in commercial quantities.

§ 3524.1-1 [Reserved]

15. 43 CFR Subpart 3524 is amended by revoking and reserving § 3524.1-1.

16. 43 CFR 3524.2-1 is amended to read as follows:

§ 3524.2-1 Coal.

(a) *Application.* A lessee may obtain modification of his lease to include coal lands or coal deposits contiguous to those embraced in his lease if the authorized officer determines that it would be in the interest of the United States to do so. In no event shall the total area added by such modifications to an existing coal lease exceed one hundred sixty acres or the same number of acres as that in the original lease, whichever is less. The lessee shall file his application for modification in duplicate in the proper land office, describing the additional lands desired, and the needs and reasons for and the advantage to the lessee of such modification.

(b) *Availability*—(1) *Noncompetitive.* Upon determination by the authorized officer that the modification is justified and that the interest of the United States is protected, the lease will be modified without competitive bidding to include such part of the land or deposits as he shall prescribe.

(2) *Competitive.* If it is determined that the additional lands or deposits can be developed as part of an independent operation or that there is a competitive interest in them, they will be offered as provided in Subpart 3520.

(c) *Terms and conditions.* The authorized officer shall require changes in the terms and conditions of the original lease to make them consistent with the modified lease. Before a lease is modified under paragraph (a) or (b) of this section, the lessee shall file his written acceptance of the conditions imposed in the modified lease and the written consent of the surety under the bond covering the original lease to the modification of the lease and to extension of the bond to cover the additional land.

17. A new Subpart, 3525, is added to Title 43 CFR as follows:

Subpart 3525—Energy Minerals Activity Recommendation System (EMARS)

Sec.
3525.1 Authority.
3525.2 Objectives and policy.
3525.3 Competitive leases: procedures.
3525.4 Qualified applicants.
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3525.6 Special leasing opportunities.
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Subpart 3525—Energy Minerals Activity Recommendation System (EMARS)

§ 3525.1 Authority.

(a) *Acts.* (1) The Act of February 25, 1920, 41 Stat. 437, as amended by the Act of June 3, 1948, 62 Stat. 248, the Act of September 9, 1959, 73 Stat. 490, the Act of August 31, 1964, 78 Stat. 710, and the Act of August 4, 1976, 90 Stat. 1083, 30 U.S.C. 201(a).

(2) The Act of August 7, 1947, 61 Stat. 913, and the Act of August 4, 1976, 90 Stat. 1090, 30 U.S.C. 352.

(b) *Actions Authorized.* The Secretary may issue coal leases through competitive bidding.

§ 3525.2 Objectives and policy.

(a) The objectives of the Department's coal leasing process called Energy Minerals Activity Recommendation System (EMARS), include: the orderly and timely development of federally-owned coal; appropriate uses of the resources; effective environmental protection; and a fair market return to the public for the resources sold. The program consists of three principal elements: nominations; multiple resource land-use planning; and environmental analysis. Nominations provide the first indication of tracts which should or should not be leased. The nominations received are then compared with resource values through the Bureau's land-use planning process, including Management Framework Plans. From these phases, proposed tract recommendations will be made and environmental analyses will be undertaken on the proposed coal lease tracts. The integration of these three elements, i.e., nominations, multiple resource land-use planning, and environmental analysis—each of which will be undertaken with State and public participation—will produce specific coal lease recommendations for Secretarial decision.

(b) It is the policy of the Department to encourage the development of Federally-owned coal, where such development is authorized, through a program that will provide for the protection, orderly development and conservation of Federal mineral and nonmineral resources in a manner that will avoid, minimize or correct adverse impacts on society and the environment resulting from coal development, without undue duplication or administrative delay by Federal officers. It is also the policy of the Department to issue leases for coal only where reclamation of the affected lands to the standards set forth in 43 CFR Part 3040 is attainable and assured and a reclamation program will be undertaken as contemporaneously as practicable with operations.

§ 3525.3 Competitive leases: Procedures.

(a) *Establishment of leasing tracts.* General coal land or deposits shall be divided into suitable leasing tracts and leased competitively. The Energy Minerals Activity Recommendation System (EMARS) shall be used to identify tracts suitable for leasing through nominations and multiple-use land management planning. All competitive lease sales, except those that qualify under the short-term leasing criteria, will be on Bureau motion.

(b) *Selection of proposed tracts.* (1) *Bureau Motion.* Proposed tracts will be selected by the Bureau of Land Management and United States Geological Survey field offices, with participation from affected State governments, and other surface management agencies, if other than the Bureau of Land Management, based upon relevant information including information from the ap-

propriate land-use plan, from nominations and from competitive coal lease applications on file.

(2) *Selection of Proposed Tracts: Short-term Sale.* Proposed tracts for short-term sales will be selected using the same criteria as Bureau motion tracts. Prior to selecting a proposed short-term tract the Bureau must determine that the application meets the short-term leasing criteria.

(3) No lands may be included in a proposed tract unless: (i) the land is included in a completed land-use plan and leasing is compatible with the plan; (ii) the lands have been included in a known recoverable coal resource area (KRCRA);

(iii) the lands have been included in a nomination or have been identified by BLM as potential leasing tracts or included in a short-term lease application.

(4) *Tract Selection Factors.* The selection of proposed lease tracts will include consideration of such factors as: depth, quality, thickness and extent of the coal resource; water resource availability; relationship to existing communities; potential impacts on economic structure (e.g., employment, available services, etc.); service and access corridors; aesthetic qualities such as scenic, cultural, Wildlife, and vegetative values; rehabilitation potential and Coal Resources Regulations Guideline No. 1 (41 FR 43722).

(c) *Compliance with NEPA.* The National Environmental Policy Act will be complied with as follows: If several proposed leasing units have significant related characteristics and would sustain similar or related environmental impacts, as determined by the Secretary, they may be covered by a single regional environmental impact statement. Where leasing actions are adequately covered in a regional impact statement, no additional impact statement need be prepared. A public hearing will be held after publication of a draft regional environmental assessment or an impact statement, as appropriate, will be prepared for proposed leasing actions not included in a regional impact statement. The Department will provide public notice and an opportunity for a public meeting on an environmental assessment for a coal leasing proposal that indicates that an environmental impact statement is not required.

(d) *Technical examinations.* A technical examination in accordance with the procedures in 43 CFR 3041.2 and 3041.2-1 will be completed on each unit after completion of the final environmental impact statement or environmental analysis to identify specific reclamation requirements and tracts requiring special environmental consideration and to prepare bonding requirements and stipulations to minimize impacts upon the environment and other resources, lands uses, or programs. Reclamation requirements will be imposed in accordance with 43 CFR 3041. The technical examination will include an evaluation of the proposed leasing unit to balance the value of the coal against the cost of mining, the cost of mitigation of environmental damage, and the significance of unmitigable damages. The Bureau will obtain from the Geological Survey an evaluation and comparison of the effects of recovering coal by deep mining, by surface mining, and by other methods to determine which method or methods achieves the maximum economic recovery of the proposed tract.

(e) *Recommendation of tentative coal lease tracts.* (1) After the BLM has completed the actions required by paragraphs (a)–(e) of this section, after State government and surface management agency consultation, and after holding a public hearing, on the record, in the area which may be affected by the proposed coal lease sale, the State Director will recommend suitable tentative coal lease tracts to the Director. The Director will consolidate approved field recommendations into a proposed Coal Lease Sale Schedule for review and approval by the Secretary.

(2) The Director's recommendation, and the Secretary's final approval, shall include a written synopsis of earlier analyses which evaluates and compares:

(i) The effects of recovering coal by deep mining, by surface mining and by any other method to determine which method or methods or sequence of methods achieves the maximum economic recovery of the coal within the proposed leasing tract, and

(ii) The effects which mining the proposed lease might have on an impacted community or area, including impacts on the environment, on agriculture and other activities, and on public services.

§ 3525.4 Qualified applicants.

Leases may be issued to qualified applicants listed in Subpart 3502 of this chapter unless:

(a) The qualified applicant, or any subsidiary, affiliate, or person controlled by or under the common control of the qualified applicant holds a lease or leases to coal deposits issued by the United States and has held the lease for 10 years and is not producing coal in commercial quantities.

Exceptions. A lessee is not disqualified from holding a lease if either production is interrupted by strikes, the elements, or casualties not attributable to the lessee, or the Secretary has suspended the requirement of continued operation upon payment of advance royalties.

(1) The 10-year period referred to in paragraph (a) of this section shall begin on August 4, 1976, or the date the lease is issued, whichever is later.

(2) For the purpose of this paragraph, production of coal in commercial quantities means production adequate to meet the requirement for continuous operation as defined in § 3500.0-5(g) of this chapter.

(b) The qualified applicant holds or controls more than 46,080 acres of Federal coal leases in any one state or 100,000 acres of Federal coal leases in the entire United States.

§ 3525.5 Lands subject to leasing.

(a) The Secretary may issue coal leases on all lands owned by the United States except lands in the:

(1) National Park System;

(2) National Wildlife Refuge System;

(3) National Wilderness Preservation System;

(4) National System of Trails;

(5) Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act;

(6) Incorporated cities, towns and villages; and

(7) Tide lands, submerged coastal lands within the Continental Shelf adjacent or littoral to any part of land within the jurisdiction of the United States.

(8) Lands acquired by the United States for the development of mineral deposits, for foreclosure or otherwise for resale, or reported as surplus property pursuant to the provisions of the Surplus Property Act of 1944.

(b) (1) The Secretary may issue coal leases with the consent of the Secretary of Defense on acquired lands set apart for military or naval purposes only if the leases are issued to a governmental entity, including any corporation primarily acting as an agency or instrumentality of a State, which

(i) Produces electrical energy for sale to the public; and

(ii) Is located in the State in which the leased lands are located.

(2) A government entity is located in a State if its production facilities are in that State, and the coal produced from the lease will be used in the State.

(c) The regulations in Subpart 3525 of Title 43 CFR do not apply to the leasing and development of coal deposits owned by Indians and subject to the trust protection of the United States. Regulations governing those deposits are found in 25 CFR Chapter I.

§ 3525.6 Special leasing opportunities.

(a) The Secretary shall, under the procedures established under this subpart, reserve and offer a reasonable number of coal lease tracts within competitive lease sales each year as special leasing opportunities. Except for the limitation on bidding contained in paragraph (b) of this section, all of the requirements of this subpart apply to special leasing opportunities including the requirement that the coal be leased at its fair-market value.

(b) Only public bodies, including Federal agencies, rural electric cooperatives, or non-profit corporations controlled by any of these entities which have a definite plan to produce energy for their own use or for sale of their members or customers will be eligible to bid for leases designated as special leasing opportunities. Evidence of qualification to bid for leases designated as special leasing opportunities must be filed with the Department at least 60 days prior to a sale.

(c) The Secretary may designate certain coal lease tracts as special leasing

opportunities only if a public body has requested, in the nomination or elsewhere, that the procedures of this section apply.

(d) Leases issued under this Section may be assigned only to another public body.

§ 3525.7 Deferred Bonus Payment Policy.

All competitive coal lease sales shall be held on a deferred bonus payment basis. In a deferred bonus payment the lessee shall pay the bonus payment in five (5) equal installments: The first installment shall be made as required by § 3525. The balance shall be paid in equal annual installments due and payable on the first four anniversary dates of the lease. If a lease is relinquished or otherwise terminated, the unpaid remainder of the bid shall be immediately payable to the United States.

§ 3525.8 Request for information on areas of interest.

(a) *Purpose*. This section establishes a procedure by which industry, the general public, and State and local governments can inform the Department of the Interior of their views on coal leasing in particular areas. The Department will incorporate the information it receives into its internal planning processes for Federal coal leasing tract selections. Except for short-term leasing applications, nominations are the primary source of information on the need for additional coal leasing.

(b) *Description of process*. The Director will request information on an annual basis, or as necessary. Any person may file with the Bureau, a statement with supporting information, asking the Director to make a request for nominations. The Bureau is not required to act on the statement. The Request for Information on Areas of Interest will consist of two types.

(1) *Industry nominations*. Nominations from industry of tracts of land that the Department should or should not make available for coal leasing including, as appropriate, statements describing why the tracts should or should not be leased.

(2) *Areas of public concern*. Concurrently with Industry Nominations, State and local governments and the general public are requested to submit Areas of Public Concern covering tracts of land that the Department should or should not make available for coal leasing including, as appropriate, statements describing why the tracts should or should not be leased.

(c) *Use of nominations*. Information obtained through the nominations process will be analyzed and compared with multiple resource opportunities identified in the land-use planning process. Proposed coal lease tracts will then be developed on the basis of nominations and multiple resource information.

(d) *Description of nominations*. All nominations or statements of information for or opposed to leasing shall: (1)(i) Describe the lands by legal subdivisions, section, township, and range; or in the case of land covered only by protracted surveys, by section, township, and range according to an approved protraction diagram; or

(ii) Use the Bureau of Land Management's Surface/Minerals Management Quads (minerals ownership maps) to indicate nominated areas. A readily discernible line on these maps conforming to legal subdivision and section lines will be accepted as the description required in paragraph (d)(1)(i) of this section. The maps are available for sale at BLM State and most District Offices.

(2) Describe reasonably compact areas, which will be assumed to include all Federal coal within the boundaries described, and may not exceed 25,000 acres.

(e) *Multiple nominations*. If a person submits two or more nominations for leasing or two or more nominations against leasing, choices shall be ranked in order of importance and shall be numbered consecutively. Nominations should be ranked on a nationwide basis.

(f) *Inspection and copying*. The procedures in 43 CFR Part 2 govern the public inspection and copying of information submitted under this section.

(g) *Notice of requests for nominations on areas of interest*. (1) Notice of each Request for Information on Areas of Interest will be published in the FEDERAL REGISTER and in a newspaper(s) of general circulation in the State affected and will specify the area or areas covered by the call, the size and raking of nominations, the period of time within which to submit nominations, and the addresses to which the nominations are to be submitted.

(2) *Lands Eligible for Nominations*. Nominations will be accepted only for those lands that are eligible for coal leasing. Lands not subject to leasing include (i) lands listed in § 3525.5; (ii) lands withdrawn from coal leasing or otherwise not subject to the provisions of the Mineral Leasing Act; (iii) land subject to a coal lease, permit or preference right lease application; and (iv) areas designated by BLM as primitive areas.

(h) *Areas nominated in national forest system*. The authorized officer will notify the Secretary of Agriculture of all lands nominated for leasing that are in the National Forest System.

(i) *Meeting on Nominations*. Prior to the selection of proposed tracts, the Bureau will hold a public meeting on nominations if the public has not had an opportunity to comment on the nominations in the land-use planning process.

§ 3525.9 Applications: Short-term sales.

Applications for coal leases will be accepted only if the applicant shows that (a) the coal is needed to maintain an existing mining operation, or (b) the coal is needed as a reserve for production in the near future.

§ 3525.10 Preliminary data.

(a) Any application for coal lease filed pursuant to the regulations in this Chapter shall contain preliminary data to assist the authorized officer in making a technical evaluation and environmental analysis as described in § 3041.2.

(b) Such preliminary data shall include: (1) Such map, or maps, as may be available from State or Federal sources, on which shall be shown the topography of the land applied for, and on which the applicant shall show physical features and natural drainage patterns and existing roads, vehicular trails, and utility systems; the location of any proposed exploration operations, including seismic lines, drill holes, to the extent known, the location of any proposed mining operations and facilities, trenches, access roads or trails, and support facilities incidental thereto, including the approximate location and aerial extent of the areas to be used for pits, overburden, and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(2) A narrative statement, including: (i) The anticipated scope, method, and schedule of exploration operations, including the types of exploration equipment to be used.

(ii) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed.

(iii) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands.

(iv) A brief description, including suitable maps or aerial photographs as appropriate, of the existing land use within and adjacent to the lands applied for; and of known geologic, visual, cultural, or archaeological features; and the known habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed or reasonably anticipated exploration or mining operations.

(v) A brief description of the proposed measures to be taken to maximize, control, or prevent fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, air and noise pollution, and hazards to public health and safety; to reclaim the surface; and to otherwise meet applicable laws and regulations, which the applicant wishes to have considered by the authorized officer.

(c) The applicant shall not enter upon the land for any operational purpose, except for casual use, without prior authorization. Casual use, as used in this section, means activities which do not cause significant surface disturbance or damage to lands, resources, and improvements, such as activities which do not include (1) the use of heavy equipment or explosives, or (2) vehicular movement off established roads and trails which causes such disturbance.

(d) The authorized officer, after reviewing the preliminary data contained in an application, and at any time during a technical examination and environmental analysis, may request additional information from the applicant.

§ 3525.11 Land-use plans.

(a) *Preparation of a land-use plan*. The Secretary may not issue a lease for coal deposits unless the lands containing coal deposits have been included in a comprehensive land-use plan and the sale is compatible with the plan. A comprehensive land-use plan shall:

(1) Use and observe the principles of multiple use and sustained yield set forth in the Federal Land Policy and Management Act of 1976;

(2) Use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;

(3) Give priority to the designation and protection of areas of critical environmental concern;

(4) Rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;

(5) Consider present and potential uses of the public lands;

(6) Consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;

(7) Weigh long-term benefits to the public against short-term benefits;

(8) Provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and

(9) Assess the amount of coal deposits contained in the land and shall, based on available information, identify the amount of coal that is recoverable by deep mining operations and the amount that is recoverable by surface mining operations.

(b) *Agency to prepare land-use plans*. (1) The Bureau of Land Management will prepare plans for land under its jurisdiction in accordance with its procedures.

(2) The Department of Agriculture and other federal agencies with jurisdiction over lands where there is interest in coal mining will prepare land-use plans for those lands.

(3) If the Secretary finds that because of non-Federal interest in the surface, or because the coal resources are insufficient to justify the costs of a Federal comprehensive land use-plan, in an area, he may lease lands in that area if the lands containing the coal deposits have been included in either a comprehensive land-use plan prepared by the State within which the lands are located, or a land-use analysis prepared by the Secretary of the Interior.

(c) *Consultation and public hearing*. A plan will not be adequate for the purposes of this section unless the agency that prepares the plan has:

(1) Consulted appropriate State and local governments and the general public during the preparation of a plan; and

(2) Provided an opportunity for a public hearing on a proposed plan prior to its adoption if requested by any person who may be adversely affected by the adoption of the plan.

(d) *Hearing Requirements*. The agency that conducts the hearing shall: (1) Publish a notice of the hearing in a newspaper of general circulation at least once in each of two consecutive weeks in the affected geographical area;

(2) Provide an opportunity for testimony by anyone who desires to do so;

(3) Compile a complete transcript of the hearing if a request for a transcript is filed, in writing, at least 10 days prior to the hearing;

(4) Plans adopted prior to August 9, 1976 will be considered adequate if the public had an adequate opportunity to comment on the plan prior to its adoption, even if a formal hearing was not held.

§ 3525.12 Land-use plans: availability.

The Bureau's land-use plan and multiple land-use management plans of other Federal agencies, as appropriate, will be available for inspection at the appropriate Bureau or agency office. Upon the request of the Governor of a State affected by coal lease actions, the State Director will make available for his review the land-use plans for that State, and, as appropriate, adjacent States.

§ 3525.13 Consent to leasing: Federal surface managing agency.

(a) The Secretary may not issue leases for lands the surface of which is under the jurisdiction of any agency other than the Department of the Interior unless the Federal agency has consented to the issuance of the lease, but any lease shall contain terms and conditions as the head of the agency may prescribe for the use and protection of the nonmineral interests in those lands.

(b) The Secretary must accept the conditions prescribed by the surface managing agency, but may prescribe additional terms and conditions that are consistant with the terms proposed by the surface managing agency to protect the interests of the United States and to safeguard the public welfare.

§ 3525.14 Consultation with Governors.

(a) *General consultation*. Prior to offering a coal lease for competitive sale, the Secretary shall consult the Governor of the State in which the land to be leased is located.

(b) *Consultation for surface mining proposals in national forest*. (1) Prior to offering a coal lease in a National Forest where the method of mining which achieves maximum economic recovery of the coal resources is surface mining, the Secretary shall submit the lease proposal to the Governor of the State in which the coal deposits are found.

(2) The Secretary may not issue a lease in a National Forest for a lease which the method of mining that achieves maximum economic recovery is surface mining until at least 60 days after he notifies the Governor of the lease proposal.

(3) If the Governor fails to object to the lease proposal in 60 days, the Secretary may issue the lease. If within the sixty-day period the Governor notifies the Secretary, in writing, that he objects to the lease proposal, the Secretary may not approve the lease for six months from the date the Governor objects to the lease.

(4) The Governor may, during this six-month period, submit a written statement of reasons why the lease should not be issued, and the Secretary shall, on the basis of this statement, reconsider the lease proposal.

§ 3525.15 Notice of lease sale.

(g) *Notice of lease sale*. (1) Publication. Prior to the lease sale, the Authorized Officer shall publish in the FEDERAL REGISTER and in a newspaper(s) of general circulation in the county affected by the sale a notice of the proposed sale. The newspaper notice shall be published once a week for three consecutive weeks.

(2) The notice will show the time and place of sale whether the sale will be at public auction or by sealed bids, the description of the land, and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publication of that notice may be obtained.

(3) It will also contain a statement that sealed bids may not be modified or withdrawn unless the modifications or withdrawals are received prior to the time fixed for opening of the bids.

(4) The detailed statement will set forth the terms and conditions of the sale, including the manner in which the bids may be submitted.

(5) The detailed statement will also contain a warning to all bidders against violation of 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders.

(6) The detailed statement will specify that the Government reserves the right to reject any and all bids. If the sale is by public auction, the statement of terms and conditions of the sale will also specify that sealed bids may be submitted. If any bid be rejected, the deposit will be returned.

(7) The detailed statement will also contain a request for comments on the fair market value of the tracts to be sold. The notice shall state the address to where the comments on fair market value should be submitted.

§ 3525.16 Consultation with Attorney General.

(a) Subsequent to a lease sale, but prior to issuing a lease, the Secretary shall notify the Attorney General of the proposed lease issuance, the proposed lessee, normally the high bidder in a sale, and other relevant information. The Secretary may not issue a lease until 30 days after he notifies the Attorney General.

(b) The Secretary shall not issue the lease to the proposed lessee if, during this 30-day period, the Attorney General notifies the Secretary that the proposed lease issuance would create or maintain a situation inconsistent with the antitrust laws, which means:

(1) The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved

July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(2) The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (15 U.S.C., et seq.), as amended;

(3) The Federal Trade Commission Act (15 U.S.C. 41, et seq.), as amended;

(4) Sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; or

(5) The Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a)."

(c) If the Attorney General notifies the Secretary that a lease should not be issued the Secretary may:

(1) Reject all other bids or may request the Attorney General in accordance with paragraph (a) of this section to consider the issuance of the proposed lease to the next qualified high bidder; or

(2) Issue the lease if, after he conducts a public hearing on the record in accordance with the Administrative Procedures Act, he determines that: (i) Issuance of the lease is necessary to carry out the purposes of the Federal Coal Leasing Amendments Act of 1975; (ii) Issuance of the lease is consistent with the public interest; and (iii) There are no reasonable alternatives to the issuance of the lease that are consistent with the Federal Coal Leasing Amendments Act of 1975, the antitrust laws and the public interest.

(d) If the Attorney General does not give a written reply to the notification in paragraph (a) of this section within 30 days, the Secretary may issue a lease without waiting for the advice of the Attorney General.

§ 3525.17 Award of leases.

(a) *Pre-sale evaluation.* Before the lease sale, the U.S. Geological Survey, considering public comments on fair market value and available geotechnical, engineering and economic data, shall make a coal resource economic evaluation of each tract to be sold and shall submit it to the authorized officer.

(b) *Notification of award.* Bids will be received only until the hour on the date specified in the notice of competitive leasing. All bids submitted after the hour will be rejected. The authorized officer will read all sealed bids. If the procedure calls for sealed bids followed by oral bids the oral bidding will begin at the level of the highest sealed bid received. After the oral bidding has ceased, the highest bid will be announced. The high bidder will be required to comply with 43 CFR § 3421.2-4 and 43 CFR § 3521.4-2. No decision to accept or reject any bid will be made at this time. The sale will be adjourned and the sale panel will convene to determine if the bid adequately reflects fair market value considering, among other factors, comments on fair market value. The recommendations of the panel will be sent to the authorized officer who, after the Department complies with § 3525.17 of this subpart, will make the final decision to accept a bid or reject all bids, as soon as possible after the sale date. The successful bidder will be notified in writing. The Department reserves the right to reject any and all bids but will not accept any bids which are less than the fair market value of the tract. The Department also reserves the right to offer a lease to the second high bidder if the successful bidder fails to execute the lease.

(c) *Intertract competition.* The use of bidding competition between tracts (intertract bidding) is hereby authorized when and if the Bureau of Land Management and the U.S. Geological Survey determine it is needed in the public interest. The authorization to utilize intertract competition does not preclude the use of any other form of competitive bidding procedure.

§ 3525.18 Compliance with notice of competitive lease offer.

(a) *Action by successful bidder.* Four copies of the lease will be sent to the successful bidder, who will be required not later than the 30th day after his receipt thereof, to execute them, pay the balance of the bonus bid or the first payment of the deferred bonus payment on the first year's rental, and file a bond as required by Subpart 3504.

(b) *Death of bidder.* If the bidder dies before the lease is issued, there must be compliance with § 3502.8 of this chapter.

§ 3525.19 Procedures and public participation.

(a) *Written findings.* Except as may be otherwise expressly set forth in this subpart, decisions and determinations of any appropriate authorized officer acting pursuant to this subpart with respect to issuance of leases, shall be in writing, shall set forth with reasonable specificity the facts and the rationale upon which such decisions or determinations are based, and shall be available for public inspection during normal business hours at the offices of such officer.

(b) *Availability of documents.* Except for documents which are subject to withholding under the Freedom of Information Act, any application for a lease, together with the proposed terms, conditions, and special stipulations and any preliminary data submitted under this subpart shall be available for public inspection in the appropriate BLM office. To allow for such public inspection, a notice of the availability of any such documents shall be prepared by the appropriate officer of the BLM and promptly posted at his office and mailed to the surface owner, if other than the United States, to appropriate Federal and State agencies, and to the clerk or other appropriate officer in the county in which the proposed operation is located for posting or publication in accordance with the procedures of that office. No final action with respect to such documents shall be taken for a period of 30 days after such posting and mailing. A copy of such notice shall be published by the applicant in a local newspaper of general circulation in the locality of the proposed operation at least once a week for four consecutive weeks.

(c) Where a hearing under this subpart has been held on the record, a complete transcript, of the hearing, including any written comments submitted for the record, shall be kept and maintained available to the public during normal business hours at the appropriate Federal office under whose auspices such meeting is conducted, and shall be furnished at cost to any interested party.

Dated: January 18, 1977.

THOMAS S. KLEPPE,
Secretary,
Department of the Interior.

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CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

PART 3500—LEASING OF MINERALS OTHER THAN OIL AND GAS; GENERAL

PART 9230—TRESPASS

Exploration Licenses for Federally-Owned Coal Deposits

These regulations provide for the issuance of licenses to explore Federally-owned coal deposits subject to lease pursuant to 43 CFR Part 3500.

Section 4 of the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94-377; 90 Stat. 1039) amended section 2(b) of the Mineral Leasing Act of 1920 (30 U.S.C. 201(b)) to provide for the issuance of exploration licenses for federally-owned coal. In November 5, 1976, the Department published a notice of proposed rulemaking to implement section 4 of the new Act, 41 F.R. 48754. Comments have been received and carefully considered, and the regulations are included in this notice as a final rulemaking.

The most significant change to be made since the regulations were published in draft is in the section controlling the submission and treatment of data collected during exploration, 43 CFR § 3507.4. The statute requires the Department to treat data as confidential until the applicable land is leased or until disclosure would not damage the competitive position of the licensee, whichever is sooner. The proposed regulations repeated this requirement but limited the period of confidentiality to five years. Several commentators stated that if land was not leased within five years, the competitive position of a licensee would usually be damaged. For this reason, the five-year limitation has been deleted.

Other commentators expressed concern with the same section because it provides that only "resource data" (data relating primarily to coal deposits) as opposed to environmental data would be treated as confidential. However, the statute does not make this distinction in requiring "all data" to be treated as confidential. Accordingly, the section has been amended to eliminate the distinction and follow the wording of the statute more closely. The Department points out that in most cases the disclosure to the public of environmental information would not damage the competitive position of a licensee and, as

permitted by the statute, it will be disclosed when that finding is made.

Many comments were received in response to § 3507.3-1(d) of the proposal, which provides for participation in exploration licenses. Many commentators urged that the subsection be deleted because the requirement to explore jointly with others would reduce the incentive to explore. Nevertheless, the Department has decided not to delete the subsection. If parties are induced to group together, fewer exploration programs are apt to be conducted in any single area and any toll on the environment is therefore apt to be less.

Many commentators urged that 43 CFR § 3507.3-2(b) be modified so as to allow for an extension of the term of a license beyond two years. The Department believes that this suggested change would conflict with a provision in the statute that limits the term of a license to "not more than two years." There is no authority in the statute to extend that 2-year term. Accordingly, the Department has not modified the subsection as suggested. It should be noted that the provision for issuance of another license covering the same land at the end of the initial license's 2-year term serves the same purpose as an extension.

There was some concern expressed over the restrictive interpretation of "substantial disturbance" and "reasonable amounts" found in 43 CFR §§ 3507.-0-5(j), 3507.0-5(k), and 3507.3-3(c). It is the Department's position that the statute is intended to allow exploration of coal deposits "without substantial disturbance to the natural land surface." So-called "test burns," involving the extraction of several thousand tons of coal, would be outside the scope of the statute. Accordingly, these provisions have not been changed.

Two commentators suggested that land subject to outstanding prospecting permits or preference right lease applications be excluded from exploration activities. The statute does not provide for this limitation; it prohibits only the issuance of exploration licenses for lands for which coal leases have been issued. While no amendment has been made, however, the Department points out that if lands subject to a license are leased, those lands shall thereafter be excluded from the license.

Some commentators objected to 43 CFR § 3507.3-6 of the proposed regulations which provides that a licensee may be required to collect and submit ground water data to the authorized officer. The objections were based on a feeling that the collection of hydrologic data might be costly and beyond the scope of an exploration program. The Department feels that hydrologic data often provides valuable environmental information that can bear on the advisability of opening an area for coal leasing. For this reason, it is not considered to be beyond the scope of an exploration program. The Department has therefore not modified this section of the regulations.

On the basis of the foregoing:

1. 43 CFR Part 3500 be amended by adding a new Subpart 3507 to read as follows:

Subpart 3507—Coal Exploration Licenses

Sec.
3507.0-1 Purpose.
3507.0-2 Objective.
3507.0-3 Authority.
3507.0-4 Responsibilities.
3507.0-5 Definitions.
3507.1 Lands subject to exploration license.
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3507.2-1 Environmental review.
3507.2-2 Cultural resources.
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3507.3 Licenses.
3507.3-1 Applications for license.
3507.3-2 Issuance and termination of license.
3507.3-3 Rights under license.
3507.3-4 Operating regulations.
3507.3-5 Surface protection and reclamation.
3507.3-6 Ground water data.
3507.3-7 Bonds.
3507.4 Use of data.
3507.5 Use of surface.

Subpart 3507—Coal Exploration Licenses

§ 3507.0-1 Purpose.

This subpart provides for the issuance of licenses for exploring federally-owned coal deposits subject to disposal pursuant to this Part 3500, regardless of surface ownership.

§ 3507.0-2 Objective.

The objective of this subpart is to allow private parties to explore federally-owned coal deposits in order to obtain geological, environmental, and other pertinent data concerning the deposits and the lands in which they lie.

§ 3507.0-3 Authority.

The authority for this subpart is found in section 2(b) of the Mineral Leasing Act of February 25, 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1975, 90 Stat. 1083, 1085, 30 U.S.C. 201(b).

§ 3507.0-4 Responsibilities.

(a) The Bureau of Land Management (BLM) exercises at the Bureau level the Secretary's discretionary authority to determine whether exploration licenses are to be issued, and is responsible for issuing and cancelling exploration licenses and terminating the period of liability of bonds. The regulations in this Subpart shall be administered by the Director through the State Director and the authorized officer, subject to the supervisory authority of the Secretary. The proper BLM office is also the office of record.

(b) The Geological Survey exercises the Secretary's authority regarding operations conducted within the area of operations by the licensee, and is responsible for all geological, economic, and engineering determinations for the Department's coal leasing program.

(c) The authorized officer in consultation with the Geological Survey, and where appropriate, the surface management agency and the surface owner if other than the United States, formulates the requirements to be incorporated in exploration licenses for the protection of the surface resources, for reclamation, using as guidelines the surface operating and reclamation performance standards in Subpart 3041 of this chapter and 30 CFR Part 211, and for the bonding requirements.

(d) The Geological Survey, after consultation with the authorized officer, and where appropriate, the surface management agency and the surface owner, if other than the United States, reviews and concurs in exploration plans and recommends termination of the period liability of the bond upon the completion of exploration operations.

§ 3507.0-5 Definitions.

(a) "Coal deposit" means all federally-owned deposits which are subject to disposal under applicable law, except those held in trust for Indians.

(b) "Exploration" means drilling, excavating, and geophysical or geochemical surveying operations designed to obtain detailed data on the physical and chemical characteristics of coal deposits and their environment including the strata above the deposit, the hydrologic conditions associated with the deposit, and any other information that may be necessary to prepare a complete resource evaluation of the land.

(c) "Surface management agency" means the Federal ageny or authorized officer thereof other than the Bureau of Land Management having jurisdiction over the surface of lands containing coal deposits subject to this part.

(d) "Exploration plan" means a detailed plan showing the location and type of exploration work to be conducted, environmental protection procedures, present and proposed roads, as well as reclamation and abandonment procedures to be followed upon completion of such operations.

(e) "Exploration license" means a license issued by the authorized officer to permit the exploration of federally-owned coal deposits under terms and conditions that will protect the surface and subsurface resources and the environment, and provide for the reclamation of any damage caused by such exploration.

(f) "Participate" means to have or take part or share with others in an exploration license.

(g) "Participant" means a person who participates or shares in an exploration license.

(h) "Reasonable amount of coal for analysis and study" means only that amount of coal necessary to establish whether or not a federally owned deposit can be economically extracted and the removal of which does not cause substantial disturbance to the natural land surface.

(i) "Substantial disturbance to the natural land surface" means disturbance of the surface other than that necessary for the mere location of potential coal deposits and for the access to those deposits necessary to determine their location and quality by operations such as

surface sampling or drilling geologic study and exploration holes. These operations shall extend only to the degree and extent necessary to determine the nature of the overlying strata and the depth, thickness, shape, grade, and quality of the coal deposit.

§ 3507.1 Lands subject to exploration license.

(a) Exploration licenses may be issued for:

(1) Lands administered by the Secretary subject to coal leasing;

(2) National forest lands or other lands administered by the Secretary of Agriculture through the Forest Service subject to coal leasing;

(3) Coal deposits in lands which have been conveyed by the United States subject to a reservation to the United States or mineral deposits, to the extent that those deposits are subject to lease pursuant to this Part 3500; and

(4) Coal or lignite deposits in acquired lands set apart for military or naval purposes.

(b) No exploration license will be issued for any land on which a coal lease has been issued.

§ 3507.2 Prelicensing procedures.

§ 3507.2-1 Environmental review.

Before the issuance of an exploration license:

(a) The authorized officer or, where the surface is not administered by BLM, the surface management agency shall, in accordance with 43 CFR §§ 3041.2 and 3041.2-1 and using the exploration plan submitted by the applicant, make an environmental analysis and technical examination of the potential effect of such exploration on the resources of the area and its environment, including fish and other aquatic resources, wildlife habitats and populations, visual resources, recreation, cultural, and other resources in the affected area. The applicant shall not begin exploration until an environmental analysis is accomplished and the exploration plan has been approved.

(b) If the authorized officer or, where the surface is not administered by BLM, the surface management agency determines that an environmental impact statement is required by the National Environmental Policy Act of 1969 (43 U.S.C. 4321-4327), he will take necessary steps to prepare such a statement.

§ 3507.2-2 Cultural resources.

If lands in the National Register or nominated for inclusion in the National Register contain cultural resources which might be affected by the issuance of an exploration license, no license for such lands will be authorized until there has been compliance with Section 106 of the Historic Preservation Act (80 Stat. 917; 16 U.S.C. 470f) and Section 2(b) of E.O. 11593 of May 13, 1971, (36 FR 8921 (16 U.S.C. 470 fn)).

§ 3507.2-3 Threatened or endangered species.

The authorized officer shall not issue an exploration license if he determines pursuant to the Act of December 28, 1973 (87 Stat. 884, 16 U.S.C. 1531-1543) that the existence of any threatened or endangered species of fauna or flora will be jeopardized and that critical habitat would be destroyed or adversely modified to a significant degree by the exploration activities authorized by that license. In making this determination, the authorized officer shall consult the surface management agency, if the surface is not managed by BLM.

§ 3507.2-4 Surface management agency.

The authorized officer shall issue an exploration license covering lands the surface of which is under the jurisdiction of any Federal agency other than the Bureau of Land Management only upon such conditions as the surface management agency may prescribe with respect to the use and protection of the nonmineral interests in those lands.

§ 3507.3 Licenses.

§ 3507.3-1 Applications for license.

(a) *Applications.* Exploration license applications shall be submitted to the authorized officer and shall be subject to the following requirements:

(1) No specified form of application is required.

(2) Each application shall identify the tract or tracts to be explored described by legal description (or, if unavailable, by metes and bounds).

(3) Each application shall contain three copies of an exploration plan which complies with the requirements of 30 CFR 211.10.

(4) Each application with supporting documents shall be filed in the proper BLM Office, together with a nonrefundable $250 license fee.

(5) A separate application shall be filed for exploration in each State.

(b) *Qualified persons.* Any person qualified to hold leases or contracts issued pursuant to this Part 3500 may apply for an exploration license.

(c) *Call for applications.* Nothing in this subpart shall preclude the authorized officer from issuing a call for an expression of interest in exploration licenses for a given area.

(d) *Participation.* Applicants for licenses shall be required, after approval of the plan and prior to issuance, to afford other parties an opportunity, on a pro rata cost sharing basis, to participate in the approved exploration plan. Upon notice that a license will be issued to him an applicant must publish a "Notice of Invitation," approved by the authorized officer, once every week for four consecutive weeks in at least one newspaper of general circulation in the area where the lands covered by the license application are situated. This notice must contain an invitation to the public to participate in the proposed exploration program. Copies of published Notices of Invitation must be filed with the authorized officer upon each publication for posting in the proper BLM Office. Any person who elects to participate in the exploration programs shall notify in writing the authorized officer and the applicant. Upon the applicant's compliance with the requirements of this section, all else being regular, the authorized officer may issue the exploration license.

§ 3507.3-2 Issuance and termination of license.

(a) *General.* No person may conduct exploration without a lease unless he has been issued an exploration license. An exploration license shall not be required for "casual use" as defined in 30 CFR § 211.10(a). The issuance of exploration licenses under this Subpart is discretionary with the authorized officer. An exploration license shall confer no right to a lease.

(b) *Duration.* Exploration licenses may be issued for not more than two years, including the time for clean up and restoration. The authorized officer shall designate the date on which operations may begin.

(c) *Relinquishments.* A licensee may, subject to his own and his surety's continued obligation to comply with the terms and conditions and special stipulations of the license, the plan, and the regulations, relinquish an exploration license for all or any portion of the lands embraced in it. A relinquishment must be filed in the proper BLM Office.

(d) *Revocation.* An exploration license may be revoked for noncompliance with the terms of the license, the plan, or the regulations, after the licensee has been given a notice of violation and the licensee has failed to correct the violations within the period prescribed in the notice.

(e) *Exploration Plan.* The approved exploration plan will be dated, attached, and made a part of each license issued.

(f) *Modifications.* When unforeseen conditions that could result in signficant disturbance or damage are encountered or when geologic or other physical conditions warrant a modification in the approved exploration plan, (1) the authorized officer, after consultation with the Mining Supervisor and, where appropriate, the surface management agency, may adjust the terms and conditions of the license or, (2) the Mining Supervisor, after consultation with the authorized officer, and where appropriate, the surface management agency, may approve changes in the exploration plan.

(g) *Different States.* A separate exploration license is required for exploration in each State.

(h) *Extensions.* Exploration licenses may not be extended. Exploration operations may not be conducted after a license has expired. The licensee may apply for a new license as described in § 3507.3-1. A new license may be issued simultaneously with the termination of the existing license.

§ 3507.3-3 Rights under licenses.

(a) The issuance of an exploration license shall confer the right to perform exploration operations in accordance with the specific terms and conditions of the license, the approved plan, and the regulations.

(b) The issuance of exploration licenses shall not preclude the issuance of

coal leases at such time and places and to such persons as are deemed appropriate, subject to applicable regulations, and, if a coal lease is issued for lands embraced in an exploration license, those lands shall be eliminated from the license upon the effective date of the lease.

(c) A licensee may not remove for sale any coal from the deposits subject to his license, but he may remove a reasonable amount of coal for analysis and study.

§ 3507.3–4 Operating regulations.

The licensee shall comply with all regulations of the Secretary of the Interior, including the provisions of the operating regulations of the Geological Survey (30 CFR Part 211). Copies of the operating regulations may be obtained from the Mining Supervisor. The licensee shall allow inspection of the premises and operations by duly authorized representatives of the Secretary and, where appropriate, any surface management agency, and shall provide for the free ingress and egress of Government officers and persons using the lands under authority of the United States.

§ 3507.3–5 Surface protection and reclamation.

(a) The authorized officer shall include in each exploration license requirements and stipulations to protect the environment and other resources and to ensure reclamation of the land disturbed by exploration.

(b) A licensee may not cause substantial disturbance to the natural land surface.

§ 3507.3–6 Ground water data.

The applicant may be required to collect and report ground water data to the authorized officer.

§ 3507.3–7 Bonds.

(a) The provisions of the regulations in Subpart 3504 of this part are hereby made applicable to these regulations. The holding of an adequate compliance bond will be a condition of the exploration license.

(b) Prior to issuing an exploration license the authorized officer after consultation with the Mining Supervisor and, where appropriate, the surface management agency, the surface owner, shall ensure that the amount of the compliance bond or bonds to be furnished is sufficient to ensure compliance with the terms and conditions of the license and regulations, but in no event shall the amount of such bond be less than $5,000.

(c) Upon completion of an exploration and reclamation program which is in compliance with the terms and conditions of the exploration license, the approved plan, and the regulations, or upon discontinuance of exploration operations and completion of such reclamation as may be needed to the satisfaction of the authorized officer and, where appropriate, the surface management agency, the authorized officer will terminate the period of liability of the compliance bond. Where the surface of the land being explored is in private ownership, the authorized officer shall not terminate the period of liability under the compliance bond until he has received written acknowledgement from the surface owner of his satisfaction with the reclamation of the surface. In the event the licensee and surface owners are unable to reach agreement on the adequacy of the reclamation the authorized officer shall make the final determination. He will terminate the period of liability under the compliance bond after determining that the terms and conditions and special stipulations of the license, the approved plan, and the regulations have been met.

§ 3507.4 Use of data.

The licensee shall furnish to the Mining Supervisor copies of all data (including but not limited to, geological, geophysical, and core drilling analyses) obtained during exploration. The licensee shall submit such data and, where appropriate, the methods by which the data were gathered, at such time and in such form as required by the Mining Supervisor, the authorized officer, or surface management agency, or as specified in this Subpart the license, or the plan. The confidentiality of all data so obtained shall be maintained until after the areas involved have been leased or until such time as the Mining Supervisor determines that making the data available to the public would not damage the competitive position of the licensee, whichever comes first.

§ 3507.5 Use of surface.

(a) A licensee shall be entitled to use for exploration purposes only so much of the surface of the licensed lands as is authorized in the approved exploration plan.

(b) Operations under these regulations shall not unreasonably interfere with or endanger operations under any other authorized use pursuant to the provisions of any other Act.

(c) The licensee shall comply with all applicable Federal, State and local laws and regulations including the regulations in Parts 3041, 3500, 3600 of this chapter and 30 CFR Parts 211 and 231.

(d) Any person who willfully conducts coal exploration on lands subject to this subpart without an exploration license shall be subject to the provisions of § 9239.5–3(f) of this chapter.

2. Paragraph (b)(3) of 43 CFR 9239.0–3 be amended to read as follows:

§ 9239.0–3 Authority.

* * * * *

(b) * * *

(3) *Coal trespass*. 18 U.S.C. 1851; 30 U.S.C. 201(b)(4).

3. 43 CFR 9239.5–3 be amended by adding a new paragraph (f) to read as follows:

§ 9239.5–3 Coal.

* * * * *

(f) *Penalties for unauthorized exploration for coal.* (1) Any person who willfully conducts coal exploration for commercial purposes without an exploration license issued under Subpart 3507 of this chapter shall be subject to a fine of not more than $1,000 for each day of violation.

(2) All data collected by said person on any Federal lands as a result of such violations shall immediately be made available to the Secretary, who shall make the data available to the public as soon as possible.

(3) No penalty under this section may be assessed unless such person is given notice and opportunity for a hearing with respect to such violation pursuant to Part 4 of this chapter.

Effective: January 19, 1977.

Dated: January 19, 1977.

THOMAS S. KLEPPE,
Secretary,
Department of the Interior.

[FR Doc.77-2261 Filed 1-24-77;8:45 am]

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 99—PRIVACY RIGHTS OF PARENTS AND STUDENTS

On June 17, 1976, final regulations were published in the FEDERAL REGISTER at 41 FR 24662 setting forth the requirements to be met by an educational agency or institution to protect the privacy of parents and students under section 438 of the General Education Provisions Act, as amended (added by section 513 of Pub. L. 93-380 and amended by section 2 of Pub. L. 93-568). Due to an inadvertent drafting error § 99.32 of those regulations require technical corrections in order to bring it into conformity with the statutory requirement upon which it is based.

Accordingly, the purpose of this correction notice is to make technical changes in the regulations of June 17, 1976.

The Department finds that there is good cause to dispense with proposed rule-making procedures as unnecessary, since the correction notice makes only technical changes to change incorrect wording and restore omissions. Furthermore, to delay the effective date of these changes might result in an unnecessary expenditure on the part of educational agencies and institutions; specifically, with respect to the requirement that a record be kept of certain requests for disclosure of education records, even though an accounting need not be made for the actual disclosure of information pursuant to these requests. As modified, § 99.32 will relieve educational agencies and institutions of keeping a record of requests for disclosure in those areas where they are not required to record actual disclosures.

Section 99.32 of Title 45 of the Code of Federal Regulations is amended as follows:

1. The title of § 99.32 is revised to read as follows:

§ 99.32 Record of requests and disclosures required to be maintained.

2. Paragraph (b) of § 99.32 is revised to read as follows:

(b) Paragraph (a) of this section does not apply:

(i) to requests by or disclosure to a parent of a student or an eligible student;

(ii) to requests by or disclosures to school officials under § 99.31(a)(1);

(iii) if there is written consent of a parent of a student or an eligible student, or

(iv) to requests for or disclosure of directory information under § 99.37.

3. Paragraph (c) is amended by inserting the phrase "requests and" before the word "disclosures".

Effective date: These amendments take effect on January 25, 1977.

Dated: January 17, 1977.

THOMAS S. MCFEE,
Deputy Assistant Secretary for Management Planning and Technology.

[FR Doc.77-2226 Filed 1-24-77;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20119; FCC 77-50]

PART 15—RADIO FREQUENCY DEVICES

Low Power Communication Devices

Adopted: January 13, 1977.

Released: January 19, 1977.

By the Commission: Commissioner Lee absent.

1. The Commission has received two timely filed petitions and three letters requesting reconsideration of the revised rules adopted February 4, 1976, by the Report and Order[1] in the above described proceeding. The letters are being considered part of this proceeding, since they deal with the same questions raised in the petitions. Petitions were filed by Radio Communications Co., Inc. (Radcom) and Teletronics United Inc. (Teletronics).[2] Letters were received from Barrett Electronics Corp., (Barrett), Gutzmer International Inc. (Gutzmer) and Mr. Bruce D. Ross, a private consultant in electronics.

2. Teletronics, Gutzmer, Radcom and Ross stated that they are either manufacturing and marketing or in the design stage of producing a cordless telephone terminal device.[3] They allege that the new rules are not satisfactory to permit the continued marketing of their devices and therefore request reconsideration of these rules. Barrett claims that the channelization of the frequencies has placed a severe restriction on the marketability of low power communication devices[4] used to control material handling equipment used by the grocery industry.

3. The new rules adopted in this proceeding that, among other things, shifted low power voice-operated communication devices, such as toy walkie-talkies, from the 27 MHz band to a new band at 49 MHz, went into effect on March 18, 1976. The rules in effect prior to March 18, 1976, permitted the operation of a low power communication device on any frequency in the 26.97-27.27 MHz band—a band that coincides with the band allocated for the Class D Citizen Radio Service commonly referred to as the CB band. The principal technical restrictions for operating a low power communication device in this band were a power and antenna limitation of 100 milliwatts and 1.5 meters, respectively. Toy walkie-talkies are the most prevalent example of devices operating under these provisions. Because of enforcement and interference problems between transmitters licensed in the Class D Citizen Radio Service and toy walkie-talkies which operate without an individual license, the Commission shifted low power voice-operated devices from the CB band to 49 MHz.[5] Non-voice operated devices were permitted to remain in the 27 MHz band under more restrictive technical requirements.

PETITIONS FOR A CORDLESS TELEPHONE TERMINAL DEVICE

4. Teletronics manufacturers and markets a cordless telephone terminal device under the trade name of PortaCall. The system is comprised of a base unit that interfaces with the interstate telephone network and a mobile unit that can be carried from place to place. The battery-operated mobile unit and base units contain a telephone handset and cradle unit fitted with a low power transmitter. To permit duplex operation, i.e., a continuous conversation between sender and receiver, two frequencies separated by at least 150 kHz are required. According to Teletronics this is a critical operating requirement. Under the previous provisions at 27 MHz, Teletronics claimed that it was possible to operate up to five PortaCall systems in the same area at the same time without causing interference to one another and still avoid the most active citizens band channels. With respect to its interference potential, Teletronics argued that it was to their advantage to avoid CB channels, since PortaCall systems operate with low power and are more susceptible to receiving harmful interference than causing harmful interference. It should also be noted that the propensity for the interception of communications, as with any radio transmitter, is a possibility with the use of these devices.

5. According to Teletronics, cordless telephone terminal devices serve the public in a number of useful ways. For example an individual who is confined to a wheel chair, or otherwise has difficulty in moving rapidly to a telephone, is thereby provided with communications capability to deal with personal and emergency situations which are not possible with cord bound phones. It is also argued that these systems provide additional flexibility for many thousands of people who are required to stay by a telephone terminal. The extended range, which is advertised to be 300 feet in most operating environments, allows these individuals to receive important (and in some cases emergency) phone calls no matter where they may be as long as they are within the bounds of the system.

6. In their initial filing, Teletronics stated: "We find the shift to the 49.82 to 49.90 MHz band attractive in principle in that it will allow more reliable and secure short range communications without the present legal and illegal interference from Citizen Band users. However, the proposal (new rules) requiring that operation be confined to five defined 20 kHz channels inhibits certain developments in progress that could enable us [Teletronics] to shift to the 49 MHz band with little cost penalty and major performance advantage." Their initial petition concludes by requesting the Commission to allow the simultaneous use of two adjacent channels with a total bandwidth of 35 kHz to allow the operation of a single carrier time shared duplex communication.

7. In a subsequent supplemental filing, Teletronics stated "* * * after extensive evaluation it has been determined that the current allocation at 49.82-49.90 MHz places serious limitations that would result in its (Teletronics) demise." Moreover, the petition asserts that even if a satisfactory 49 MHz PortaCall could be developed, it would not likely be marketable due to its increased cost and single system limitation, i.e., only one system could be operated in one given area at a time. The net result of limiting such devices to the 49 MHz band, according to Teletronics, would be the cessation of their manufacture and use.

8. In its supplemental filing Teletronics suggested that the true answer to the dilemma presented to the cordless telephone industry lies in an allocation of more frequencies. This can be accomplished by permitting cordless telephones to continue to operate in the 27 MHz band with the same technical requirements as adopted for non-voice devices under Section 15.116 of the new rules adopted in this proceeding.[6] A claim is also made that the cordless phones would not be confused with the licensed Class

[1] 41 FR 7394, February 18, 1976.

[2] A supplement to the Teletronics petition for reconsideration was subsequently received and accepted on the basis of the justifications presented in a separate pleading "Motion for leave to file a supplemental Petition for Reconsideration."

[3] A cordless telephone terminal device is customer provided ancillary equipment which is connected to the telephone network through interface equipment.

[4] A low power communication device complying with both the technical and certification requirements of Subpart D of Part 15 may be operated without an individual license for any legitimate purpose.

[5] Report and Order in Docket No. 20119 at paragraph 1.

[6] Non-voice (i.e., radio control) devices operating under the new requirements (§ 15.116), among other things, are restricted to six 20-kHz channels in the 26.99-27.26 MHz band and field strength limits of 10,000 μV/m at 3 meters. It would appear that Teletronics is requesting the Commission to amend the rules in Part 15 to permit cordless telephones to operate under these same provisions.

D Citizen Stations since the cordless phone operates on different frequencies (Class C frequencies) and its transmissions are preceded with a tone signal for dialing purposes. This, coupled with Porta-Call's low power and field strength limitations, practically eliminates the possibility of interference it is asserted.

9. Gutzmer International Inc., also a manufacturer of personal communication devices including cordless telephone equipment, submitted two letters supporting the Teletronics petition. The modus operandi of the Gutzmer system is slightly different from that of Teletronics in that the base station of the Gutzmer system uses carrier current techniques at frequencies just above the standard AM Broadcast Band.[7] Its mobile unit operates at 27 MHz under the interim provisions of § 15.115 of the rules. In addition to supporting Teletronics petitions, Gutzmer emphasized the need for additional frequencies if the portable telephone industry is to grow, otherwise usage density (i.e., the number of systems in a given area) becomes high enough to cause interstation interference. Even under the previous rules in Part 15, Gutzmer says there isn't sufficient spectrum to promote growth and additional frequencies would be needed in a couple of years in any case. It claims that further studies are under way but the immediate need is a relaxation of the new rules adopted in this proceeding.

10. Gutzmer in their first correspondence requested the following technical specifications as an immediate but temporary solution for allowing the continued development and manufacture of cordless telephone extensions:

Continued operation at 27 MHz with 100 milliwatt power to the final on the six Class C Citizen Radio Station Channels.

Continued operation at 1.7 MHz using carrier current technique.

30,000 μV/m at 3 meters instead of 10,000 μV/m at 3 meters for devices at 49 MHz.

11. The second letter from Gutzmer revises their original request and asks for a higher level of radiated signal at 27 MHz. Gutzmer states that after extensive evaluation, the 10,000 μV/m at 3 meters, (which is the level of radiated signal requested by Teletronics in their Supplemental Petition) is too low to provide an operating range of 100 meter (300 feet) for a cordless telephone. A sample calculation based on a number of assumptions ostensibly shows that an order of magnitude increase of radiated signal is required to obtain a 100 meter operating distance. No measurement data is provided. Based on these calculations, Gutzmer requests that its portable phone be permitted 100,000 μ/Vm at 3 meters, which they claim is equivalent to the 100 milliwatt limit under the previous provisions.

12. The relief sought by cordless telephone terminal equipment manufacturers puts the Commission in somewhat of a quandary. On one hand, we are faced with diluting, if not abandoning, the original stated purpose of this proceeding.[8]

On the other hand, if we insist on the immediate removal of all voice-operated low power communication devices from the CB Band, it may cause the demise of these manufacturers. In part, this is due to the fact that cordless telephone equipment was designed to operate under rules which were never intended to provide for a reliable communication service. It appears that the proposal to make changes in the 27 MHz band did not come to the attention of these manufacturers until after the revised rules were promulgated. Accordingly, the Commission was not made aware of their needs when it adopted the Report and Order in Docket No. 20119. When the revised rules did come to their attention, the petitioner realized that they could not operate under the new rules and that they no longer had a marketable system.

13. The statements and claims made by the manufacturers of this equipment raise a number of questions which cannot be addressed in this reconsideration. A basic question that needs to be answered relates to the public interest aspect of the cordless equipment under our obligation to assure efficient use of the limited radio spectrum. Another is: Should such cordless equipment be operated under Part 15 or should it be licensed? These questions can only be answered in a formal rule making proceeding with adequate opportunity for all interested parties to participate and make their views known to the Commission.

14. Inasmuch as these questions cannot possibly be answered here and since at the same time we do not desire the demise of these manufacturers without giving them a reasonable opportunity to develop alternatives, the Commission is hereby granting temporary relief for manufacturers of cordless telephone terminal devices. A new § 15.114 is added to provide for the operation of such devices for a limited period of three years during which a petition for permanent regulations can be received and considered. The temporary regulations are essentially the same as those in § 15.116 which regulate the operation of nonvoice devices, except that the permitted field strength has been increased from 10,000 to 50,000 μV/m at 3m in response to the Gutzmer pleading. The text of these new regulations is set out in the Appendix.[9] [10]

15. During this 3 year period, the cordless telephone equipment industry may petition the Commission to amend the rules to make special provisions for their devices. This must be accompanied by a positive showing why it is in the public interest to do so. Any such petition should be submitted promptly, but in no event later than 9 months after release of this order, to allow adequate time for normal rule making process. The industry is also put on notice that the Commission does not anticipate extending the temporary regulations adopted herein beyond the three years specified. Also, the industry is reminded that the responsibility is theirs and not the Commission's for making a showing that such rules are necessary and in the public interest. Such a determination has not been made here.

PETITIONS RE RESTRICTIONS IN THE 49 MHz BAND

16. Radio Communications Co., Inc., (Radcom) another manufacturer of such cordless equipment, in its petition requests reconsideration of the requirement in § 15.118(d) that a device operating under the new provisions at 49 MHz must be completely self-contained with the antenna permanently attached and the microphone built into the box containing the device. Radcom states that they contemplate redesign of their system, which operates under the old provisions at 27 MHz, to use the new frequencies at 49 MHz. Although not explicitly stated, the petition implies that the restriction in § 15.118(d) would preclude their type of device, since the microphone which is in a telephone handset, is separated by a connecting wire from the box housing the transmitter. Whether the firm is able to produce a marketable system at 49 MHz is not clear from the petition.

17. In a similar vein, Mr. Bruce D. Ross, a private consultant, states that he is in the process of designing a cordless telephone equipment and that the new rules, particularly § 15.118(d), are unnecessary. Mr. Ross argues that there are man configurations and services that should be allowed, but are presently excluded by the built-in microphone and no remote control rule. Most of these, he states, could be used in commercial applications; such as, desk top sets with microphones or handsets on cords, wall mounted sets with handsets, fork truck, scooter, bicycle and hard hat mounted units for use inside factories and construction sites, telephone operator type headsets. If the intent of the requirement is curtailment of the range by preventing the device to be mounted on tall poles, this can be accomplished by more direct rules, he argues. He also recommends that prohibition of remote opera-

[7] Presently these systems operate under the provision in § 15.7 of the rules, which limits the radiated energy from the system to 15μV/m at a distance of $\lambda/2\pi$. The Notice of Proposed Rule Making in FCC Docket No. 20780 (41 FR 17938) proposed to revise § 15.7. If revised as proposed the subject system would be redefined as a low power communication device.

[8] See paragraph 3, supra.

[9] Although there are no requirements on the receiver part of these systems at present, this is subject to change in another rule making proceeding in FCC Docket No. 20746 (41 FR 13375, 58 FCC 2nd 5, page 839).

[10] Inasmuch as cordless phones are attached to the telephone network, they must be separately registered with the Commission pursuant to Part 68 and Subpart L of Part 2 of FCC Rules.

tion, restrictions on modulation and channel specfications be deleted. No justification is provided for these recommendations.

18. With respect to the self-contained restriction in § 15.118, the Commission agrees, in part with Radcom and Mr. Ross that a requirement for a built-in microphone would preclude many types of useful devices. The intent of this restriction is to insure that the radiated signal from the device, hence its interference potential, is not increased by attachment of external antennae and microphones. Since this can be accomplished by limiting the microphone cable length and by requiring the device be tested with the permanently attached microphone cable orientated so as to produce maximum radiation, we are revising this restriction accordingly.

BARRETT PETITION FOR ADDITIONAL RADIO CONTROL FREQUENCIES

19. Barrett Electronics Corporation, in their petition, states that the rule changes in this proceeding will preclude a material handling equipment that they have been manufacturing and marketing to the grocery industry for over 20 years. The system they are producing is described as a radio remote controlled tractor-trailer train which is used by wholesale grocery warehouses for order selections. The train operator wearing a small transmitter on his belt controls the tractor from the various positions adjacent to the vehicle as he finishes each loading operation.

20. To insure that each operator controls only his particular tractor, Barrett designs each system (transmitter-tractor combination) to operate on a separate frequency and have a range of approximately 30 feet. Because some warehouses utilize up to 50 trains, 50 separate frequencies are used with the present equipment operating under the interim provisions of Section 15.115 of the rules with a 5 kHz spacing between each channnel over the entire band, 26.97–27.27. The petition states that this type of operation is obviously not feasible on the 5 channels at 49 MHz, nor is it on the 6 channels in the 27 MHz under the new provisions. Electronic schemes to reduce the number of channels, such as time division or synchronous operation, Barrett claims have not proved feasible. Redesigning the equipment to operate in the licensed Business Radio Service is also not acceptable, because of the limited number of channels available, Barrett asserts. Distributing the system over all bands available, licensed or unlicensed is costly and entirely unsatisfactory to the petitioner. Barrett concludes by requesting that instead of the present unlicensed operation anywhere in the CB band, licensed low power (100 milliwatts) limited bandwidth operation be allowed, with 5 kHz spacing throughout the entire 26.97–27.27 MHz band.

21. Barrett's request for a number of frequencies spaced 5 kHz apart over the entire CB band to provide for the licensed operation of remote control devices is outside the scope of this proceeding. To accomplish this, a new rule making proceeding must be initiated to amend the present rules to make additional frequencies available for remote control operation in the 27 MHz band. However, it is not apparent that new rules are necessary in this instance, since the present rules appear to accommodate the type of operation described by Barrett. For instance, a transmitter licensed for use in the Business Radio Service under Part 91 of the rules with an output power of 200 milliwatts may operate on almost any frequency allocated for use in the Business Radio Service with minimum technical restrictions. Eligibility requirements for licensing in this service are minimal and certainly within the realm of most small businesses. A second possibility in the Business Radio Service is use of the offset frequencies at 450–470 MHz (band).

22. Notwithstanding these alternatives, there are eleven frequencies available for remote operation without an individual license at 27 MHz and 49 MHz,[11] provided the device complies with both the technical and certification requirements of Subpart D of Part 15 of FCC Rules. A suitable coding scheme, similar to the type used by most door opener controls, could accommodate several controllers on each frequency.

EXTENSION OF INTERIM REQUIREMENTS

23. The rules adopted in this proceeding allow a 7 year period for amortization of devices operating in the 27 MHz band under the previous provisions in Part 15. Manufacture and marketing must cease March 18, 1977 and March 18, 1978, respectively. Inasmuch as several petitioners must modify their present equipment in accordance with the rules appended hereto, the Commission is extending the 7 year amortization period under the interim provisions in Section 15.115 for an additional six months. This is to allow these manufacturers the time needed to produce equipment under these modified requirements.

24. In view of the foregoing, the Commission finds that it is in the public interest to amend Section 15.118(e), in the manner described herein, to extend the date for manufacturing low power communication devices in the CB Band for six months, and to permit continued manufacture of cordless telephone terminal devices under restricted conditions for a period of 3 years, pursuant to the discussion in paragraph 12 above. Pursuant to the authority contained in Section 4(1), 302 and 303(r) of the Communications Act of 1934, as amended *it is ordered*, That effective February 28, 1977, Part 15 is amended as set forth below.

25. *It is further ordered*, That to the extent indicated above, the subject petitions are granted and in all other respects, denied.

[11] Six frequencies are available to non-voice operation at 27 MHz and five frequencies at 49 MHz making a total of 11 frequencies available under Part 15 for remote operation.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082, Sec. 302, 82 Stat., 290; 47 U.S.C. 154, 302, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

Part 15 is amended as follows:

1. A new § 15.114 is added to read as follows:

§ 15.114 Interim requirements for cordless telephone terminal devices operating between 26.97–27.2 MHz.

A low power communication device used as a cordless telephone terminal device that complies with all the requirements of paragraphs (a) through (i) may be operated until January 1, 1986. Manufacture, importation and marketing of such a device shall cease January 1, 1980, April 1, 1980 and January 1, 1981, respectively.

(a) The device may only be used as a cordless telephone terminal device.

(b) The device shall operate on one or more of the following frequencies:

26.995 MHz	27.145 MHz
27.045 MHz	27.195 MHz
27.095 MHz	27.255 MHz

(c) Frequency tolerance of carrier: ±0.01%. This tolerance shall be maintained for a temperature variation of −20° to +50°C at normal supply voltage and for a variation in the primary supply from 85% to 115% of the rated supply voltage at a temperature of 20°C.

(d) The authorized band shall be 20 kHz centered on the frequencies listed in paragraph (b) of this section.

(e) Emissions within the authorized band shall not exceed 50,000 μV/m when measured at 3 meters in accordance with a procedure approved by the Commission.

(f) Emissions between 10 kHz and 50 kHz from the carrier frequency shall not exceed 1000 μV/m at 3 meters.

(g) Emissions greater than 50 kHz from the carrier frequency shall not exceed 300 μV/m at 3 meters. The spectrum shall be scanned from 10 kHz to 1000 MHz and all emissions from the device shall be scanned from 10 kHz to 100 MHz exceeding 30 μV/m at 3 meters shall be reported.

(h) If the device is designed to operate from commercial power lines, the RF energy fed back into the power lines shall not exceed 100 microvolts on any frequency below 25 MHz when measured in accordance with the procedure in IEEE Standard 213 (See § 15.75 of this Part).

(i) The device shall be registered pursuant to the procedures in Subpart L of Part 2 of this Chapter demonstrating that the device complies with the requirements in Part 68 of this Chapter.

2. The headnote and introductory text of § 15.115 are revised to read as follows:

§ 15.115 Interim requirements for operation between 26.97–27.27 MHz.

A low power communications device complying with all the provisions of par-

agraphs (a) through (d) of this section may be operated until September 18, 1983. Manufacture and importation of such a device shall cease September 18, 1977 and October 18, 1977, respectively. Applications for certification of such a device will not be accepted by the Commission after June 18, 1977. Marketing of such a device shall be terminated not later than September 18, 1978.

* * * * *

3. Paragraph (e) of § 15.118 is revised to read as follows:

§ 15.118 Technical Specifications for the band 49.82–49.90 MHz.

* * * * *

(e) The device shall, with the exception of the microphone, be completely self-contained with the antenna permanently attached to the enclosure containing the device. The microphone may be external to the device, provided it is permanently attached to the enclosure with a cable not longer than 1.5 meters.

* * * * *

4. Paragraph (d) of § 15.119 is revised to read as follows:

§ 15.119 Alternative technical specifications for the band 49.82–49.90 MHz.

* * * * *

(d) The device shall, with the exception of the microphone, be completely self-contained with the antenna permanently attached to the enclosure containing the device. The microphone may be external to the device, provided it is permanently attached to the enclosure with a cable not longer than 1.5 meters.

* * * * *

[FR Doc.77-2339 Filed 1-24-77;8:45 am]

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[FRA Docket No. HS-4, Notice No. 6]

HOURS OF SERVICE ACT

Signal Service: Interim Statement of Agency Policy and Interpretation

On September 28, 1976, the Federal Railroad Administration (FRA) published in the FEDERAL REGISTER a proposed statement of agency policy and interpretation concerning the Hours of Service Act, as amended (45 U.S.C. 61–64b; hereinafter "Act") (41 FR 42692). Public comments were requested to be submitted by October 29, 1976. Subsequent notices extended the comment period through December 7, 1976 (see 41 FR 48163, November 2, 1976; 41 FR 52351, November 29, 1976; 41 FR 54047, December 7, 1976). FRA administers and enforces the Act under section 6(f)(3)(A) of the Department of Transportation Act (49 U.S.C. 1655(f)(3)(A)) and a delegation from the Secretary of Transportation (49 CFR 1.49(d)).

Having analyzed the comments received in light of the express purpose of the Act, its legislative history, case law, and prior administrative interpretations, FRA has decided to issue interim interpretations concerning the limitations on hours of service of individuals engaged in installing, repairing or maintaining signal systems (section 3A of the Act). A final statement of policy and interpretation addressing the balance of the statute will be published in the very near future.

Eleven individuals or organizations submitted comments on the segment of the proposed statement dealing with signal service. A joint submission by the organization representing the great majority of common carriers by railroad and the principal labor union representing employees affected by section 3A of the Act was particularly helpful. FRA has adopted much of the substance of that joint submission in preparing the interim interpretations. Other comments have been considered and incorporated to the extent appropriate.

The interim interpretations set forth below are designed to implement safety policy considerations within the framework of the Act, guarding against excessive periods of work while permitting enough flexibility to assure that systems vital to the safety and efficiency of rail transportation are properly maintained. FRA is issuing interim interpretations at this time because of the complexity of the administrative problems involved in applying the amended statute to the variety of factual situations possible. These interpretations may be modified as knowledge is gained of the various practical situations that may arise under the Act. This will permit FRA to assess the actual application of the Act to persons in signal service. If it becomes evident that the intent of the Act is not achieved by these interpretations, then FRA may be required to issue interpretations based on a more strict reading of the statute.

In making their joint submission, industry and labor representatives noted their intention to seek legislative action to address possible deficiencies in the Act and clarify its intended application. FRA has been mindful of the likelihood of such action in preparing these interim interpretations.

Covered service. Six commenters addressed the issue of the scope of covered signal service. One commenter urged that all maintenance of way employees have a role in the installation, maintenance or repair of signal systems and that a tired or fatigued person working any place on the signal system is a danger to the integrity of the entire system. An organization representing electrical workers detailed the tasks which are the responsibility of its members on some railroads but which are listed in the legislative history as duties of "signalmen". The commenter objected to the use of the term "signalman" to identify members of other crafts and concluded by arguing that the Act should be construed to apply only to such tasks as are uniformly assigned to the signal craft on all railroads across the country.

FRA is convinced by the language of the legislative history and the stated purpose of the Hours of Service Act that the proper benchmark for application of the Act must be found in the relationship of the particular function or service to the safety of the devices and systems which Congress deemed to fall under the general rubric of "signal systems". That is, covered service cannot be defined by reference to the craft which owns the contractual right to a particular task on one or more railroads. Rather, the focus must be safety of railroad operations as it is affected by the readiness of individuals who work on the identified devices and systems. Therefore, the discussion of covered service which appears in the interim interpretations is substantially unchanged from the discussion in the notice of interpretations. A commenter has noted that, through inadvertent error, the words "train control and cab signal systems, interlocking systems" were omitted from the quotation taken from House Report 94-1166. The quotation has been corrected in the present document.

Two commenters urged that the construction of signal systems should be distinguished from the "installation" of signal systems. The commenters believe that the latter term should be read to mean "activation". No basis appears in the legislative history for making such a distinction. While it is true that normal testing procedures should limit potential hazards deriving from defects in construction, Congress may well have assumed that some problems could go undetected as a result of faulty testing or that a lack of durability could be caused by poor workmanship. Indeed, the Committee on Interstate and Foreign Commerce of the House stated in its report on the legislation "A signalman who worked excessive hours in either the "construction" or maintenance of signal systems may make errors in the intricate wiring or adjustment of those devices which would circumvent the safety functions of the system." (Emphasis added.) H.R. Rep. No. 94-1166 (1976) at page 13. Two commenters stressed the use of subsequent component tests as a basis for excluding work done in carrier signal shops from the coverage of the Act. Again, there would seem to be insufficient basis for distinguishing between repairs on components in the field and repairs effected in a carrier shop. One commenter would exclude testing and inspection functions from covered service. FRA believes that testing and inspection are an important and integral part of overall system maintenance.

Limitations on hours. One commenter suggested that the text point out more strongly that a new 24-hour period may begin after any 8-hour period of release. Additional examples have been added which point out this fact.

Duty time. Perhaps the most difficult problem posed by the general language of section 3A of the Act is the definition of time on duty. Individuals who work on signal systems often spend much of their compensated time traveling for the carrier's purposes. Since such travel inevitably adds to fatigue and detracts from time available for rest, and since the provision on commingled service contemplates that noncovered service will

normally be counted with covered service in computing total time on duty, clearly time spent in transportation before covered service and enroute between work sites must be recognized to be on-duty time. Similarly, travel from a work site to headquarters by on-track vehicle involves potential peril to train operations and to the individuals themselves and must be viewed as time on duty. However, as one commenter pointed out, highway travel back to the headquarters or residence after work is complete, by itself, involves no hazard to the safety of train operations. Further, travel to the residence (directly or via the headquarters) following a period of covered service closely resembles deadheading or a combination of deadheading and commuting.

As recommended in the joint industry/labor submission, FRA has revised the discussion and examples concerning travel time from the work site to the headquarters or residence outside the regular work day.

Both industry and employee representatives have urged that, while all travel time within regular assigned work hours should be acknowledged to be time on duty, time spent in transportation from a work site to the headquarters or residence outside regularly assigned hours should be treated neither as time on duty nor as time off duty. That is, the employee should be considered to have been "released" for purposes of the prohibition on excess service; but the employee would not be considered "off duty" for purposes of the required period of release of 8 or 10 hours. In the text below, FRA authorizes this treatment of transportation time following any period of covered or commingled service outside regularly scheduled hours. That is, during the next months FRA will not assert statutory penalties involving alleged violations where such time is used in computing excess service and no violation would exist absent the addition of such time. However, FRA will monitor implementation of this approach during the period these interim interpretations are under study.

Effective periods of release. Because many employees who work on signal systems perform overtime service outside their regularly assigned hours, and because the Act does not expressly articulate the requirements for effective periods of release, both FRA and the commenters have experienced difficulty in fashioning principles of general application concerning when time available for rest may be considered off-duty time and when the continuity of service is broken. The question of continuity is important because it may determine whether an employee is required to have 10 rather than 8 hours off following a period of 12 hours service. Obviously, any period considered off-duty time would not count toward the 12-hour maximum.

After review of all comments and in light of specific recommendations by representatives of the industry and affected employees, FRA has decided to modify its position on periods of release. It has been determined that regularly assigned meal periods should be treated as off-duty time but should not be viewed as interrupting the essential continuity of service. Similarly, other periods of release during which the employee is entirely free of responsibilities to the carrier are treated as off-duty time. However, only periods of 1 hour or more would be recognized as effective breaks in the continuity of service.

One commenter urged that transportation time to or from a food service facility should not be counted as time on duty. While FRA believes that a strong case can be made that such time, which is expended in part for the convenience of the carrier, should be treated as on-duty time, FRA recognizes that such a view may be impractical as applied in many situations. Thus, where the employee has the option to eat his lunch at the site (by use of a lunch box or other arrangement), the entire meal period may be treated as time off duty.

It should be stressed that, with the exception of assigned meal periods, all compensated time during a scheduled work tour is considered time on duty. A carrier may not stretch the permitted 12-hour work period by creating breaks in a regular work day which do not afford meaningful periods of relaxation.

Emergencies. Several commenters seriously questioned the proposed interpretation of the special emergency provision for signal service and urged a more liberal reading of the statute. The commenters noted, for instance, that there may be no way in many instances to ascertain whether a false restrictive indication involves a hazard to train operations without first calling a signal maintainer to investigate the situation.

FRA appreciates that the section 3A(f) "emergency situation" is a broader concept than the section 5(d) "casualty or unavoidable accident or * * * act of God". That is, an emergency permitting service up to 16 hours may be a less extraordinary event than an act of God permitting service in excess of 16 hours. By the same token, FRA is concerned that the exception not be read in a way which will largely consume the rule.

The joint submission of industry and employee representatives implicitly recognized that many potential safety problems associated with false restrictive conditions and device malfunctions may be eliminated through temporary measures such as operation at restricted speed; but the submission noted that certain other conditions might produce service disruptions or secondary safety problems rising to the level of emergencies. The text below reflects an FRA determination that conditions producing material disruptions of service may be legitimate emergencies within section 3A(f).

As noted above, FRA has decided to issue the interpretations which appear below as operative interim interpretations pending review of their effectiveness in carrying out the statutory design and purpose. Therefore, FRA hereby reopens for comment its Docket No. HS-4 on an indefinite basis and invites further public comment on the proper application of section 3A of the Act. FRA will publish a notice in the future renewing the invitation for comments and setting a date for closing of the comment period.

Comments should refer to Docket No. HS-4 and should be submitted in triplicate to the Docket Clerk Office of Chief Counsel (RCC-1), Federal Railroad Administration, 400 7th Street, SW., Washington, D.C. 20590.

In consideration of the foregoing, the following statement constitutes the policy of FRA concerning the administration and enforcement of section 3A of the Hours of Service Act, as amended (45 U.S.C. 63a), and is effective on January 25, 1977. This statement should be read in conjunction with the final statement of policy on the balance of the statute, including general provisions, which will be published in the very near future.

INTERIM STATEMENT OF AGENCY POLICY AND INTERPRETATION: SECTION 3A OF THE HOURS OF SERVICE ACT

(Act of March 4, 1907, 34 Stat. 1415, as amended (45 U.S.C. 61-64b); sec. 6(f)(3)(A) of Pub. L. 89-670, 80 Stat. 940 (49 U.S.C. 1655 (f)(3)(A)); § 1.49(d) of the Regulations of the Secretary of Transportation (49 CFR 1.49 (d).)

The discussion below describes the policy of the Federal Railroad Administration (FRA) concerning the administration and enforcement of section 3A of the Hours of Service Act (45 U.S.C. 63a). Section 3A establishes maximum hours of service and required periods of release for individuals employed by common carriers who are engaged in installing, repairing or maintaining signal systems.

Section 3A was added to the Act by section 4(d) of the Federal Railroad Safety Authorization Act of 1976, Pub. L. No. 94-348, 90 Stat. 819. This amendment became effective July 8, 1976.

COVERED SERVICE

The legislative history of section 3A establishes that Congress intended to make subject to the Act all those persons who work on "signal systems," and that this term was meant to refer to a variety of technologies bearing on the safety of railroad operations. The House committee report on the 1976 amendments contains the following statement, which was repeated on the Senate floor during the debate on passage in that body and which sets forth the congressional understanding of the term "signal systems":

The duties of signalmen encompass the construction, installation, repair, maintenance, testing and inspection of signal systems. These signal systems include automatic block signal systems, traffic control systems, train stop, train control and cab signal systems, interlocking systems, rail-highway grade crossing protection, automatic classification yards, hot box detectors, broken

flange detectors, and other similar devices, appliances and systems. H.R. Rep. No. 94-1166 (1976) at pg. 12. See 122 Cong. Rec. S 10376 (daily ed. June 24, 1976).

This explanation of the language of the statute stands as the basic guide to the types of duties covered by this amendment. The reference to "automatic classification yards" is to retarder mechanisms and related control systems.

On many railroads certain of the functions described by Congress as relating to signal systems are performed by persons who are assigned to other departments within the carrier's organization, persons who may not be affiliated with the labor union which represents "signalmen" as that term is commonly employed. It is neither practical nor realistic to vary the application of the Act from one railroad to another, based on which craft has the contractual right to particular work of the individual carrier. Thus, the only reasonable construction of the statute in light of the legislative purpose is that any employee who performs work on one or more of the enumerated systems during a twenty-four hour period is covered by and subject to the Act. In the discussion below, individuals covered by the statute are referred to as "signalmen" for purposes of convenience only. That term is meant to include all individuals engaged in installing, repairing or maintaining signal systems.

It should be noted that certain related work will have such a minimal relation to traditional signal duties as to put it outside the scope of covered service. For instance, an individual responsible for track maintenance whose only signal-related work is the replacement of insulation at rail joints would not be covered by the Act.

In keeping with the functional approach of the Act, employees are subject to the Act only if they perform covered service. Work in the nature of digging ditches into which signal cables are to be laid, putting up poles (without installing signal lines), and driving signal department vehicles is not covered service under the Act. Of course, if an individual performing non-covered service also engages in covered service during the twenty-four hour period, then the individual will be subject to the Act with respect to "on-duty" time and required off-duty periods.

LIMITATIONS ON HOURS

No individual employed by a common carrier in installing, repairing or maintaining signal systems may be required or permitted to work in excess of twelve continuous hours. After working twelve continuous hours, an individual must be given at least ten consecutive hours off duty before being permitted to return to work.

No individual engaged in covered work may be required or permitted to continue on duty or go on duty unless he has had "at least eight consecutive hours off duty within the preceding twenty-four hours." The clear spirit and intent of the quoted language lead to the conclusions that:

(1) When the time on duty is broken or interrupted by off-duty periods of less than 8 consecutive hours, the individual may be on duty up to a maximum of 12 hours during a 24 hour period, so long as such individual has had a statutory off-duty period of at least 8 or 10 consecutive hours immediately prior to reporting for work.

(2) After completing the 12 hours of broken duty, or at the end of the 24 hour period, whichever occurs first, the employee may not be required or permitted to continue on duty or to go on duty until he has had at least 8 consecutive hours off duty.

(3) The 24-hour period referred to in paragraphs 1 and 2 above shall begin when an employee reports for work immediately after his having had a statutory off-duty period of 8 or 10 hours.

The provision on emergencies, discussed below, may extend the permissible time on duty referred to above.

The following examples illustrate the effect of the limitations on hours of service in situations similar to those likely to be encountered on many railroads. For simplicity, the examples assume no regularly assigned meal periods during the stated hours, no emergencies, and no travel time. As used throughout these interim interpretations, "regular duty tour" refers to any scheduled period of service. It is to be distinguished from trouble calls, when the employee is called without prior warning to perform a particular task.

EXAMPLE A

Facts: Regular duty tour, 7:00 a.m.-3:00 p.m. (8 hours). Trouble call, 10:00 p.m.-1:00 a.m. (3 hours).

Effect of law: The individual may not return to his regular job until 9:00 a.m., since he must have 8 consecutive hours off duty before commencing a new 24-hour period. (Note that the individual had not had 8 consecutive hours off duty between his release at 3:00 p.m. and the trouble call). On these facts the employee could take a short trouble call if he could complete it by 7:00 a.m. However, if he returned home at 7:00 a.m. he could not return to work before 3:00 p.m.

EXAMPLE B

Facts: Regular duty tour, 7:00 a.m.-3:00 p.m. (8 hours). Trouble call, 11:00 p.m.-1:00 a.m. (2 hours).

Effect of law: The individual may return to work at 7:00 a.m., his normal starting time, since he did have 8 consecutive hours off duty prior to the 11:00 p.m. trouble call, which commenced a new 24-hour period. However, the individual would be limited to 10 hours of work, since he has already worked 2 hours in the new 24-hour period.

EXAMPLE C

Facts: Work, 7:00 a.m.-3:00 p.m. (8 hours). Off duty, 3:00 p.m.-11:00 p.m. (8 hours). Work, 11:00 p.m.-7:00 a.m. (8 hours). Off duty, 7:00 a.m.-3:00 p.m. (8 hours). Work, 3:00 p.m.-11:00 p.m. (8 hours).

Effect of law: No violation of law because a new 24-hour period commences when the employee reports for work after each 8-hour period off duty. At the end of the last 8-hour work period, the employee has an additional 4 hours that he may work in other than emergency service under the law during the 24-hour period which began at 3:00 p.m.

EXAMPLE D

Facts: Regular duty tour, 7:00 a.m.-3:00 p.m. (8 hours). Trouble call 1, 10:00 p.m.-12:00 midnight (2 hours). Trouble call 2, 5:00 a.m.-6:00 a.m. (1 hour).

Effect of law: The individual may not return to his regular duty tour until 2:00 p.m., since he must have 8 consecutive hours off duty before a new 24-hour period would commence. Note that on these facts the employee could take a short trouble call if he could complete it by 7:00 a.m. However, if he returned home at 7:00 a.m. he could not return to work before 3:00 p.m.

EXAMPLE E

Facts: Regular duty tour, 7:00 a.m.-3:00 p.m. (8 hours). Trouble call 1, 10:00 p.m.-12:00 midnight (2 hours). Trouble call 2, 6:00 a.m.

Effect of law: The individual must be released from duty at 7:00 a.m. since the 24-hour period which commenced at 7:00 a.m. the previous day has now expired. He must have 8 consecutive hours off duty before returning to work.

DUTY TIME

The Act provides that time on duty commences when an individual reports for duty and terminates when the individual is finally released from duty.

Uniform and consistent administration of the Act requires that a fixed, known standard be enunciated for the treatment of time spent in transportation for the carrier's purposes. FRA has determined that the following discussion fairly interprets the intent of the Act while providing objective standards applicable to most common situations. For purposes of the following, compensated travel time means time spent in transportation for the carrier's purposes, which is compensated by the employer.

1. *Commuting distinguished from travel for employer.* Normal commuting between the individual's residence and his normal "headquarters" or "regular reporting point" is not time on duty for any purpose. This principle applies only to commuting associated with a regular work day, irrespective of the method by which the employee commutes. By contrast, compensated travel time to an initial work site other than the individual's headquarters in connection with a regular work day is considered time on duty. Customarily, signal maintainers and other employees engaged in this work will report to headquarters before going to a work site on the line of railroad. However, in those instances where an employee is permitted to utilize some of his compensated time traveling directly from his residence to a work site where covered service is performed, that compensated time is counted as time on duty under the Act. It is administratively impracticable to distinguish between work sites which are relatively close to the residence and those distant from the residence.

Example 1-A. Signalman A operates out of a headquarters point to which he normally reports at the beginning of a regular work day. As a matter of personal preference, Signalman A chooses to live 1 hour's drive from headquarters. His transportation time between his home and the headquarters point at the beginning and end of the regular work day is counted as part of his required off-duty period of 8 or 10 hours.

Example 1-B. Signalman A, whose regular work day begins at 7:00 a.m., goes directly to a work site on a given day instead of reporting to headquarters. Signalman A leaves his home at 6:30 a.m. and drives to the work site, arriving at 7:45 a.m. He is paid from 7:00 a.m. until he goes off duty. Signalman A is on duty for purposes of the Act commencing at 7:00 a.m. It is immaterial whether he drove to the work site in his personal automobile or a carrier-provided truck.

2. *Transportation during and following regular work day.* All time spent in transportation during a regular work day is normally on-duty time. Time spent in non-rail transportation returning to headquarters or the individual's residence after the expiration of the regular work day is neither time on duty nor time off duty, even though such time may be paid for. Time spent in transportation by on-track vehicle is always time on duty.

Example 2-A. Signalman B reports to headquarters for a regular work day, 7:00 a.m.-3:00 p.m., and rides or drives to work site where covered service is performed, commencing at 7:40 a.m. He departs work site at 2:20 p.m. and rides or drives back to headquarters where he is relieved at 3:00 p.m. Signalman B has been on duty a total of 8 hours.

Example 2-B. Signalman B reports to headquarters for a regular work day, 7:00 a.m.-3:00 p.m., and rides or drives to work site where covered service is performed, commencing at 7:40 a.m. He departs work site

at 3:00 p.m. and rides or drives back to headquarters where he is relieved at 3:40 p.m. Signalman B has been on duty a total of 8 hours from 7:00 a.m. to 3:00 p.m. Off-duty time commences at 3:40 p.m.

Example 2–C. Signalman B reports to headquarters for a regular work day, 7:00 a.m.–3:30 p.m., and rides or drives to work site where covered service is performed, commencing at 7:40 a.m. He departs work site at 2:50 p.m. and rides or drives back to headquarters where he is relieved at 3:30 p.m. Signalman B has been on duty a total of 8 hours from 7:00 a.m. until 3:00 p.m. Off-duty time commenced at 3:30 p.m.

Example 2–D. A signal gang travels to a work site remote from individual residences. The carrier houses the crew in a motel (or other facility), which is treated as the tie-up point for the gang. The gang has had a statutory off-duty period and departs the motel at 7:30 a.m. for a work site, works continuously until 7:30 p.m. and returns to the tie-up point arriving at 8:00 p.m. Members of the gang have been on duty for 12 hours for purposes of the Act and must have 10 consecutive hours off duty before returning to work. The travel time to the tie-up point from 7:30 p.m. to 8:00 p.m. is considered neither on-duty time nor off-duty time; consequently, the 10 consecutive hours off duty commenced on arrival at the tie-up point at 8:00 p.m.

3. *Trouble calls.* As a general rule, all compensated time from the time an individual receives a trouble call until he has completed the work for which he was called with be considered time on duty. Of course, this assumes the individual actually begins service for the carrier immediately and that there are no diversions for personal reasons. If an individual devotes only 2 hours to a call for which he receives 2 hours and 40 minutes pay under a collective bargaining agreement, only the actual time worked (2 hours) is counted for purposes of the Act. Travel time on return from an individual's work site to his headquarters or his home outside his assigned hours (except any part of said time performed in or on an on-track vehicle traveling on rails); prior to receiving an off-duty period, is not counted as either off-duty time or on-duty time.

Example 3–A. Signalman C, after returning home following a regular work day of 8 hours, receives a trouble call at 10:00 p.m. The work location is some distance from his residence. Signalman C immediately puts on work clothing and departs for the work site and completes repairs by 11:30 p.m. He arrives home at midnight having consumed 30 minutes on the return trip. He has been on duty 9½ hours (8 plus 1½ hours). His off-duty time began at 12:00 midnight, when he returned home and had an opportunity for meaningful rest.

Example 3–B. Signalman C, after returning home following a regular work day of 8 hours, receives a trouble call at 10:00 p.m. The work location is some distance from his residence. Signalman C immediately puts on work clothing and departs for his headquarters and takes an on-track vehicle and drives it over the rails to the work site. He completes repairs by 11:30 p.m. He arrives at his headquarters at midnight after driving the on-track vehicle over the rails, having consumed 30 minutes on the return trip. Taking a direct route, he arrives home at 12:15 a.m. Signalman C was on duty until his arrival at headquarters at midnight. If Signalman C is compensated in some way for the drive to his residence, then the period from 12:00 to 12:15 a.m. is counted neither as on-duty time nor as off-duty time.

As a general rule, on-duty time ceases with the employee's release. (Where travel prior to the end of the work day is involved, see paragraph 2 above.) With respect to trouble calls, on-duty time ceases with completion of the work (paragraph 3 above). On-duty time begins again at the commencement of the employee's next regular work day or with the receipt of a trouble call (paragraph 3 above).

EFFECTIVE PERIODS OF RELEASE

In order to qualify as off-duty time, a period of release must provide a meaningful opportunity for relaxation. In addition, the employee must be free of all responsibilities to the carrier, including any duty to remain at a particular location.

Because of the unique characteristics of signal service, regularly assigned meal periods are not computed as on-duty time but do not break the continuity of service. This is true regardless of the duration of the meal period. Thus, service through a scheduled work tour is deemed to be continuous for purposes of the 10-hour release requirement if the only non-duty period is a regularly assigned meal period. Of course, the 10-hour release requirement would come into play only if the continuous service (less the meal period) totaled 12 hours.

EXAMPLE A

Facts: Regular duty tour, 7:00 a.m.–12:00 noon. Assigned meal period, 12:00 noon–12:30 p.m. Regular duty tour continued, 12:30–3:30 p.m. Additional service, 3:30–7:30 p.m.

Effect of law: The individual has worked 12 continuous hours and must be afforded 10 consecutive hours off duty.

EXAMPLE B

Facts: Regular duty tour, 7:00 a.m.–12:00 noon. Assigned meal period, 12:00 noon–12:30 p.m. Regular duty tour continued, 12:30–3:30 p.m. Trouble call, 4:30 p.m.–8:30 p.m.

Effect of law: The individual has worked a total of 12 hours in broken service and must be afforded 8 consecutive hours off duty before being permitted to return to work.

All other non-duty periods of less than one hour during which there is an opportunity for relaxation and during which the individual is free of responsibilities to the carrier are excepted from the computation of on-duty time. However, such periods of less than one hour are not deemed to interrupt the continuity of service. Conversely, periods, of one hour or more which are available for rest and during which the individual is free of responsibilities are considered off-duty time and do break the continuity of service.

EXAMPLE C

Facts: Regular duty tour, 7:00 a.m.–12 noon. Assigned meal period, 12:00 noon–1:00 p.m. Regular duty tour continued, 1:00–4:00 p.m. Trouble call, 4:30 p.m.–8:30 p.m. Travel on return from trouble call, 8:30 p.m.–9:00 p.m.

Effect of law: The individual has been on duty 12 continuous hours (5+3+4) and must receive 10 consecutive hours off duty. The 30-minute period between the close of the scheduled duty tour and the trouble call is not counted toward time on duty but does not interrupt the essential continuity of service. The off-duty period begins at 9:00 p.m.

EXAMPLE D

Facts: Scheduled duty tour, 7:00 a.m.–12:00 noon. Assigned meal period, 12:00 noon–12:30 p.m. Scheduled duty tour continued, 12:30 p.m.–3:30 p.m. Trouble call, 5:30 p.m.–9:30 p.m. Travel on return from trouble call, 9:30 p.m.–10:00 p.m.

Effect of law: The individual has been on duty 12 hours in broken service (5+3+4) and must receive 8 consecutive hours off duty. The off-duty period begins to run at 10:00 p.m.

EMERGENCIES

Section 3A(f) of the Act provides that an individual engaged in installing, repairing, or maintaining signal systems may work up to 4 additional hours within a 24-hour period when an actual emergency exists and the work of the individual is related to such emergency. This means that during an ongoing emergency the individual may work up to 16 hours consecutively or in the aggregate. An emergency ceases to exist when the signal systems are restored to service.

An emergency for purposes of signal service is considered to be any condition causing a material disruption of service or constituting a significant safety hazard. Examples of emergencies include (1) false proceed indications, (2) malfunctioning grade crossing protection devices, and (3) false restrictive conditions that materially disrupt service or which may cause a significant safety hazard. An emergency is to be distinguished from an extraordinary event under section 5(d) of the Act which may render the limitations of the Act inapplicable. For instance, an unusually severe ice storm might rise above an emergency and qualify as an "act of God" permitting service in excess of 16 hours. However, judicial pronouncements on section 5(d) have made it clear that, even in the presence of an "act of God" or other extraordinary event the carrier must employ due diligence to avoid or limit excess service.

It is important to remember that the existence of a bona fide emergency does not excuse the failure to provide a proper off-duty period after the emergency is over. In addition, the existence of a continuing emergency will not always justify working an employee a full 16 hours.

Consider the following:

EXAMPLE

Facts: Work: 7:00 a.m.–3:00 p.m. (8 hours). Trouble call 10:00 p.m.–12:00 midnight (2 hours). Emergency call (valid continuing emergency) 3:00 a.m.

Effect of law: The individual must be released for 8 hours off duty not later than 7:00 a.m., even though at that time he has worked only 14 hours total. The reason for this is that the 24 hour period which commenced at 7:00 a.m. the previous day has now expired.

NOTE.—These interim interpretations should be read in conjunction with the final statement of agency policy and interpretation on the balance of the Hours of Service Act which will be issued in the very near future.

Issued at Washington, D.C., on January 18, 1977.

ASAPH H. HALL,
Administrator.

[FR Doc.77-2197 Filed 1-24-77;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Service Order No. 1256]

PART 1033—CAR SERVICE

The Baltimore and Ohio Railroad Co. and the Chesapeake and Ohio Railway Co. Authorized To Select Certain Cars of Coal To Be Unloaded by Port Coal Dumping Machines

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 17th day of January, 1977.

It appearing, that, there are massive accumulations of carloads of coal for transshipment by water awaiting unloading by the coal dumping machines of The Baltimore and Ohio Railroad Company (B&O) at its Curtis Bay coal piers at Baltimore, Maryland, and by The Chesapeake and Ohio Railway Company (C&O) at its coal piers at Newport News, Virginia; that because of extreme cold and high moisture content, many of these carloads of coal are so deeply frozen that they cannot be unloaded at rates in excess of five cars per hour; that other carloads of coal are available which are not so deeply frozen which can be unloaded without excessive delay for thawing and loosening; that the normal practice of the B&O and C&O is to unload cars on a sequential basis determined by the arrival of the vessel designated by the transshipper to receive the coal; that such practice results in excessive delays to cars of coal which are unfrozen or only partially frozen on arrival thereby causing these cars also to become deeply frozen; that the transshipment of coal from railroad cars to vessels has been drastically reduced because of these conditions; that the B&O and C&O are unable to supply sufficient cars to coal mines, thereby forcing some mines to close or severely to curtail operations resulting in the unemployment of coal miners, railroad employees and others engaged in the mining and transporting of coal; that several thousand carloads of coal awaiting movement are being stored at points as far distant as 300 miles from the ports; that such practices are resulting in serious congestion and are interfering with the normal flows of other types of traffic; that the prompt unloading of coal less deeply frozen or unfrozen without regard to the normal sequence of unloading will enable the B&O and C&O to reduce the backlog of cars awaiting unloading, thereby making these cars available to shippers and reducing congestion at various points between the coal fields and the ports; that the severity of the operating and car supply problems caused by the continued attempt to unload frozen coal on the normal sequential basis requires immediate modification; that in the opinion of the Commission an emergency exists; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1256 The Baltimore and Ohio Railroad Company and the Chesapeake and Ohio Railway Company authorized to select certain cars of coal to be unloaded by port coal dumping machines.

(a) The Baltimore and Ohio Railroad Company (B&O) and The Chesapeake and Ohio Railway Company (C&O), be, and they are hereby, authorized to select for unloading by the coal dumping machines of the B&O at Curtis Bay, Baltimore, Maryland, and by the coal dumping machines of the C&O at Newport News, Virginia, carloads of coal consigned to such ports for transshipment to vessels, which, in the judgment of the carrier, may be unloaded more promptly than other carloads of coal which are more deeply frozen regardless of the normal sequence of unloading.

(b) *Application*. The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Effective date*. This order shall become effective at 12:01 a.m., January 19, 1977.

(d) *Expiration date*. The provisions of this order shall expire at 11:59 p.m., February 28, 1977.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies Secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2).)

It is further ordered, That copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Lewis R. Teeple, and Thomas J. Byrne.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2345 Filed 1-24-77;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 263—UNITED STATES STANDARDS FOR GRADES OF FISH FILLETS

Subpart A—United States General Standards for Fish Fillets

The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), proposes to issue interim regulations to amend Title 50, Code of Federal Regulations, by the addition of a new Subpart A to Part 263. The purpose of this proposed amendment is to issue U.S. general standards for grades of fish fillets.

The scope of the proposed general standards cover fresh or frozen fish fillets of any commercial marine or fresh water species except those fillets covered by specific U.S. Standards for Grades as follows:

PART 263

Subpart B—U.S. Standards for Grades of Cod Fillets
Subpart C—U.S. Standards for Grades of Flounder and Sole Fillets
Subpart D—U.S. Standards for Grades of Haddock Fillets
Subpart E—U.S. Standards for Grades of Ocean Perch and Pacific Ocean Perch Fillets

The intent of the proposed general standards is to allow for the systematic differentiation of the quality of fish fillets into three categories, U.S. Grades A, B, and C, and subsequently to permit identification of such quality levels on the product or product label for the benefit of the consumer and the industry.

Issuance of general standards is expected to facilitate trade in fish fillets of all commercial species, not just those currently covered by specific standards. This will allow consumers to select purchases of any fish fillet on the basis of identified quality.

It is the policy of the Department of Commerce, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendments on or before February 28, 1977, to the Director, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

Because of the high level of interest expressed for the availability of this document, NMFS intends to allow the use of the proposed interim general standards for fish fillets in its voluntary program of fishery products inspection and certification commencing on January 25, 1977.

The amendments are proposed pursuant to 16 U.S.C. 742e; D.O.O. 25-5A, subsection 3.01 K(A); and D.O.O. 25-5B, section 12.

Accordingly, Title 50 Chapter II, Part 263 of the Code of Federal Regulations is hereby proposed to be amended by the addition of a new Subpart A to read as follows:

Subpart A—U.S. General Standards for Grades of Fish Fillets

Sec.
263.101 Scope and product description.
263.102 Product forms.
263.103 Grades.
263.104 Grade determination.

AUTHORITY: 16 U.S.C. 742e; D.O.O. 25-5A, subsection 3.01K(A); and D.O.O. 25-5B, section 12.

Subpart A—U.S. General Standards for Grades of Fish Fillets

§ 263.101 Scope and product description.

This standard shall apply to fillets of fish that are fresh or frozen of any species suitable for use as human food and processed and maintained in accordance with good manufacturing procedures. It does not apply to products covered by Subparts B, C, D, and E of Part 263. Fillets are slices of fish of irregular size and shape which are removed from the carcass by cuts made parallel to the backbone and sections of such fillets cut so as to facilitate packing.

§ 263.102 Product forms.

(a) *Types*.
(1) Fresh.
(2) Frozen individually (IQF); glazed or unglazed.
(3) Frozen solid packs; glazed or unglazed.

(b) *Styles*. (1) Single.