

Sunshine Act Meetings

Federal Register

Vol. 49, No. 127

Friday, June 29, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL ELECTION COMMISSION

Federal Register No. 84-1663

PREVIOUSLY ANNOUNCED DATE AND TIME:

Thursday, June 28, 1984, 10:00 a.m.

Pursuant to 11 CFR 3.5(d)(1), the Commission is adding the following matter to the open meeting agenda:

Financial Control and Compliance Manual for General Election Candidates Receiving Public Financing

* * * * *

The meetings scheduled for the dates of July 3, 1984, and July 5, 1984, have been cancelled.

* * * * *

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Information Officer,
202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-17456 Filed 6-27-84; 10:45 am]

BILLING CODE 6715-01-M

2

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF

PREVIOUS ANNOUNCEMENT: June 26, 1984,
49 FR 26181.

PREVIOUSLY ANNOUNCED TIME AND DATE
OF MEETING: 10:00 a.m., June 28, 1984.

CHANGE IN THE MEETING: The following
item has been added:

Item No., Docket No., and Company

CAG-6: RP84-16-0002 and RP84-21-000,

Locust Ridge Gas Company

CAG-14: RP84-42-000 and RP72-133-000, et
al., United Gas Pipe Line Company

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-17454 Filed 6-27-84; 10:27 am]

BILLING CODE 6717-02-M

3

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF

PREVIOUS ANNOUNCEMENT: Vol. No. 49
Page No.—None at this time. Date to be
Published—Thursday, June 28, 1984.

PLACE: Board Room, 6th Floor, 1700 G
St., NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE

INFORMATION: Ms. Gravlee (202-377-
6970).

CHANGES IN THE MEETING: The following
items have been withdrawn from the
Bank Board Meeting scheduled Monday,
July 2, 1984, at 2:00 p.m.

Limitations on Acceptance of Brokered
Deposits, Recordkeeping for Insurance of
Accounts

Finance Subsidiaries

No. 88, June 27, 1984.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-17493 Filed 6-27-84; 2:44 pm]

BILLING CODE 6720-01-M

Test Report

Friday
June 29, 1984

Part II

Department of Labor

Employment Standards Administration,
Wage and Hour Division

Minimum Wages for Federal and
Federally Assisted Construction; General
Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards
Administration, Wage and Hour
DivisionMinimum Wages for Federal and
Federally Assisted Construction;
General Wage Determination
Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be

impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedes
Decisions to General Wage
Determination Decisions

Modifications and supersedes decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedes decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedes decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage
Determination Decisions

The numbers of the decisions being modified and their dates of publication in the Federal Register are listed with each State.

California: CA84-5007	May 18, 1984.
Delaware: DE82-3015	June 4, 1982.
Illinois:	
IL83-2035	Apr. 8, 1983.
IL 83-2066	Aug. 12, 1983.
Iowa: IA84-4011	Feb. 24, 1984.
Kansas: KS84-4026	Apr. 27, 1984.
Louisiana: LA84-4010	Mar. 9, 1984.
Oklahoma:	
OK84-4033	May 18, 1984.
OK84-4034	Do.
Texas:	
TX82-4045	Sept. 24, 1982.
TX84-4002	Janu. 27, 1984.

Supersedes Decisions to General Wage
Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the Federal Register are listed with each State. Supersedes decision numbers are in parentheses following the number of the decisions being superseded.

Nevada: NV82-5115(NV84-5017)	Aug. 6, 1982.
New Mexico NM83-4074 (NM84-4041)	Oct. 21, 1983.

Signed at Washington, D.C., This 22nd day
June 1984.

James L. Valin,
Assistant Administrator.

BILLING CODE 4510-27-M

MODIFICATIONS P. 2

MODIFICATIONS P. 1

DECISION NO. 1183-2035 - Mod #3 (48 FR 15413 - April 8, 1983) Bureau, Carroll, Henry, Jo- Davies, Lee, Ogle, Rock Island Stephenson, Whiteside & Winne- bago Counties, Illinois			DECISION NO. 1183-2066 - Mod #3 (48 FR 36780 - Aug. 12, 1983) Bond, Calhoun, Clinton, Greene Jersey, Macoupin, Madison, Monroe, Montgomery, St. Clair & Washington Counties, Illinois					
Basic Hourly Rates	Fringe Benefits		Basic Hourly Rates	Fringe Benefits				
CHANGE: BRICKLAYERS; Stonemasons: Area 3 \$20.75 Area 4 19.75 Area 7 20.50 Divers: Diver, Wet 38.41 Diver, Stand-by 19.205 Diver, Tender 18.205 Plasterers: 6.745 Area 2 25.40 Terrazzo Workers: Area 2 17.50 ADD: Carpenters: Area 1: Piledrivers 19.275 Area 2: Piledrivers 17.275 Marble Setters: Area 3 20.75 Area 4 19.75 Area 5 20.50 The area descriptions will read: Area 3: Los Angeles County Area 4: Riverside and San Bernardino Counties Area 5: Orange County Tile Setters: Area 6 16.45 The area description will read: Area 6: Fresno, Kings, Madera, Mariposa, Merced and Tulare Counties			CHANGE: CARPENTERS & PILEDRIEVERMEN: Area 1 \$17.30 Area 2 16.62 Area 3 16.93 Area 4 17.52 Area 5 15.35 Area 6 17.00 CEMENT MASONS: Area 3 14.90 LINE CONSTRUCTION: Area 1: Linenmen 18.10 Groundmen Equipment perator 16.89 Groundmen Truck Driver with Winch 12.85 Groundmen Truck Driver without winch 12.10 Groundmen 11.54 Area 2: Linenmen; Digger Op, Crane Op (15 tons or over) 17.40 Equipment Operator, Semi-Truck Driver 14.78 Truck Drivers 11.39 Groundmen 11.39 LABORER: Area 5: Unskilled 13.92 Semi-skilled 14.12 Skilled 14.32 Area 6: Unskilled 13.18 Semi-skilled 13.43 Skilled 13.68 TRUCK DRIVERS: Area 1: Group 1 14.275 Group 2 14.675 Group 3 14.875 Group 4 15.125 Area 2: 2-3 Axles 14.87 4 Axles 15.02 5 Axles 15.22 6 Axles 15.42 FOOTNOTE: b. \$55.00 per week per employee			CHANGE: CARPENTERS & PILEDRIEVERMEN: Area 1 \$16.785 Area 2 14.275 Area 3 14.675 Area 4 14.875 Area 5 15.125 FOOTNOTE: a. \$55.00 per week per employee		
DECISION NO. DE82-3015 - MOD. #17 (47 FR 24526 - June 4, 1982) State of Delaware			DECISION NO. 1184-4011 - MOD. #4 (49 FR 7068 - 2/24/84) Scott County, Iowa					
Basic Hourly Rates	Fringe Benefits		Basic Hourly Rates	Fringe Benefits				
CHANGE: PLUMBERS & STEAMFITTERS: New Castle & Kent Counties (north of southern boundary of Dover City) Sussex & Kent (Remainder of County) Counties 19.47 3.60 17.40 2.55			CHANGE: Bricklayers & Stonemasons: The frame construction or repair of nursing & retirement homes & apartments over 4 stories: The City of Davenport Remainder of County All other work: Carpenters Millerwrights Piledrivermen					
DECISION #KS84-4026-MOD. #2 (49 FR 18217-April 27, 1984) DOUGLAS, JEFFERSON, LEAVENWORTH MIAMI, AND SHAWNEE COUNTIES, KANSAS			DECISION NO. 1184-4011 - MOD. #4 (49 FR 7068 - 2/24/84) Scott County, Iowa					
Basic Hourly Rates	Fringe Benefits		Basic Hourly Rates	Fringe Benefits				
CHANGE: Laborers: Zone 3 Group 1 \$8.85 Group 2 9.00 Group 3 9.10 Group 4 9.25 Laborers: Zone 4 Group 1 7.65 Group 2 7.80 Group 3 7.90 Group 4 8.05			CHANGE: Bricklayers & Stonemasons: The frame construction or repair of nursing & retirement homes & apartments over 4 stories: The City of Davenport Remainder of County All other work: Carpenters Millerwrights Piledrivermen					

MODIFICATIONS P. 3

DECISION #084-4033-MOD #3 (49 FR 21257-May 18, 1984)	Basic Hourly Rates	Fringe Benefits
Adair, Atoka, Bryan, Coal, Cherokee, Craig, Creek, Delaware, Haskell, Hughes, LeFlore, Latimer, McIntosh, Mayes, Muskogee, Nowata, Okfusgee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, Rogers, Tulsa, Sequoyah, Wagoner, and Washington Cos., Oklahoma		
CHANGE: Roofers	\$12.40	\$1.39
Tile Layers, Terrazzo Workers, & Marble Masons		
Area 1	16.25	1.30
Area 2	15.09	3.10
DECISION #084-4034-MOD #3 (49 FR 21252-May 18, 1984)		
Alfalfa, Beckham, Blaine, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton County, Dewey, Ellis, Gar, Grady, Grady, Grant, Greer, Harmon, Harper, Jack- son, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Lincoln, Logan, Love, McCain, Major, Marshall, Payne, Pontotoc, Roger Mills, Pottawatomie, Semi- nole, Stephens, Tillman, Washita, Woods, & Woodward Counties, Oklahoma		
CHANGE: Roofers	\$12.40	\$1.39
Asbestos Workers		
Area 1	15.20	2.37
Area 2	17.76	2.33
Area 3	17.16	2.76

DECISION #084-4034 (contd)	Basic Hourly Rates	Fringe Benefits
Carpenters - Area 3 Carpenters Millwrights Filedirmen	\$11.25 11.50 11.50	\$1.74 1.74 1.74
Carpenters - Area 4 Carpenters	12.45	1.50
DECISION NO. LA84-4010 - MOD #7 (39 FR 3064 - 3/9/84) Statewide Louisiana		
CHANGE: Elevator constructors: Zone 2: Mechanics Helpers (Prob.) Plumbers & pipefitters: Zone 2	\$13.03 70% 50% 13.42	3.00+ 3.00+ 2.58
DECISION NO. TX82-4045 - MOD #4 (47 FR 42257 - 9/24/82) Taylor County, Texas		
CHANGE: Electricians	\$13.50	1.55+ 3-1/4%
DECISION NO. TX84-4002 - MOD #4 (49 FR 3575 - 1/27/84) Lubbock County, Texas		
CHANGE: Bricklayers & stonemason	13.50	.50

SUPERSEDES DECISION

STATE: Nevada
COUNTY: Washoe
DECISION NUMBER: NV84-5017
DATE: Date of Publication
Supersedes Decision No. NV82-5115 dated August 6, 1982, in 47 FR 34314
DESCRIPTION OF WORK: Residential Projects consisting of single family homes and apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS; Stonemasons	\$14.30	2.06
BRICK MOD CARRIERS	13.56	2.60
CARPENTERS	11.48	5.47
CEMENT MASONS:		
Lake Tahoe Area:		
Cement Masons	17.22	5.43
Mastic, Magnesite and all Composition Masons	17.47	5.43
Troweling Machine; Grinder Operator and Kelly Float	17.62	5.43
Remainder of Washoe Co.		
Cement Maons	15.47	5.43
Mastic, Magnesite and all Composition Masons	15.72	5.43
Troweling Machine; Grinder Operator and Kelly Float	15.97	5.43
DRYWALL INSTALLERS	15.55	5.47
ELECTRICIANS	12.00	3.74+ 3%
INSULATION INSTALLER	8.50	
IRONWORKERS:		
FENCE Erectors	18.99	5.95
Ornamental; Reinforcing; Structural		
PAINTERS	19.88	5.95
PLASTERERS	14.45	1.25
PLUMBERS	15.47	3.21
ROOFERS	12.67	
SHEET METAL WORKERS	18.75	2.32
SOFT FLOOR LAYERS	16.48	5.67
TERRAZZO WORKERS; TILE SETTERS	16.74	1.58
LABORERS:	15.04	2.28
Group 1	13.92	2.80
Group 2	14.02	2.80
Group 3	14.17	2.80
Group 4	14.42	2.80
Group 5	14.72	2.80
Group 6-A	14.72	2.80
Group 6-B	14.42	2.80
Group 6-C	14.07	2.80

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Piledriving:		
Group 1-A	13.62	9.14
Group 1-B	17.11	9.14
Group 2-A	18.41	9.14
Group 2-B	18.24	9.14
Group 2-C	15.49	9.14
Group 2-D	15.70	9.14
Group 3	15.92	9.14
Group 3-A	16.54	9.14
Group 4	17.34	9.14
Group 5	17.58	9.14
Group 6	19.23	9.14
Steel Erection:		
Group 1	14.31	9.14
Group 2	14.84	9.14
Group 3	16.31	9.14
Group 4	16.52	9.14
Group 4-A	16.96	9.14
Group 5	17.68	9.14
Group 6	18.30	9.14
Group 7	18.73	9.14
Group 8	19.15	9.14
Group 9	20.65	9.14
TRUCK DRIVERS:		
GROUP 1	12.97	5.28
Group 2	13.02	5.28
Group 3	13.13	5.28
Group 4	13.19	5.28
Group 5	13.24	5.28
Group 6	13.29	5.28
Group 7	13.40	5.28
Group 8	13.46	5.28
Group 9	13.51	5.28
Group 10	13.54	5.28
Group 11	13.57	5.28
Group 12	13.68	5.28
Group 13	13.73	5.28
Group 14	13.99	5.28
Group 15	14.01	5.28
Group 16	14.17	5.28
Group 17	14.34	5.28

POWER EQUIPMENT

OPERATORS:

Piledriving:

Group 1

Group 1-A

Group 1-B

Group 2-A

Group 2-B

Group 2-C

Group 2-D

Group 3

Group 3-A

Group 4

Group 5

Group 6

Steel Erection:

Group 1

Group 2

Group 3

Group 4

Group 4-A

Group 5

Group 6

Group 7

Group 8

Group 9

TRUCK DRIVERS:

GROUP 1

GROUP 2

GROUP 3

GROUP 4

GROUP 5

GROUP 6

GROUP 7

GROUP 8

GROUP 9

GROUP 10

GROUP 11

GROUP 12

GROUP 13

GROUP 14

GROUP 15

GROUP 16

GROUP 17

POWER EQUIPMENT OPERATORS
(Except Pile-driving and Steel Erection)

GROUPS	AREA 1	AREA 2	AREA 3	AREA 4
1-A	\$13.64	\$15.14	\$15.64	\$16.64
2	14.17	15.67	16.17	17.17
3	14.44	15.94	16.44	17.44
4	15.18	16.68	17.18	18.18
5	15.48	16.98	17.48	18.48
6	15.65	17.15	17.65	18.65
7	15.90	17.40	17.90	18.90
8	16.49	17.99	18.49	19.49
9	16.81	18.31	18.81	19.81
10	17.16	18.66	19.16	20.16
10-A	17.35	18.85	19.35	20.35
11	17.59	19.09	19.59	20.59
11-A	19.23	20.73	21.23	22.23

PRINCE BENEFITS PAYMENTS:
\$9.14

AREA DEFINITIONS:

- AREA 1:** Area within 50 road miles of either the Carson City Courthouse or the Washoe County Courthouse
- AREA 2:** Area between 50 and 150 road miles of the Washoe County Courthouse
- AREA 3:** Area between 150 and 300 road miles of the Washoe County Courthouse
- AREA 4:** Area over 300 road miles of the Washoe County Courthouse

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental

FOOTNOTE:

a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Seven Paid Holidays: A thru G.

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Friday after Thanksgiving Day; G-Christmas Day

LABORERS

Group 1: All cleanup work of debris, grounds and buildings including brushloader and windows and tile; Dumpman or Spotter (other than asphalt); General Laborer; Gardeners and Landscape Laborers; Limber, Brushloader and Piler

Group 2: Choker Setter or Rigger (clearing work only); Pittsburgh Chipper and similar type brush shredders; Concrete Worker (wet or dry) - all concrete work not listed in Group 3; Crusher or Grizzly Tender; Guinea Chaser (Stakeman); Panel Forms (wood or metal) - handling, cleaning and stripping off; Loading and unloading, carrying and handling of all rods and materials for use in reinforcing concrete; Railroad Trackmen (maintenance, repair or builders); Sloper; Semi-skilled Wreckers (salvaging of building materials other than those listed in Group 3); Greasing Dowels

Group 3: Asphalt Workers (Ironers, Shovelers, Cutting Machine); Buggymobile; Chainsaw, faller, logloader and bucket; Compactor (all types); Concrete Mixer, under 1/2 yard; Concrete pan work (breadpan type) (handling, cleaning, stripping); Concrete Saw, Chipping, grinding, sanding, vibrator; Cribbing, shoring, lagging, trench jacking, handguided Lagging Hammer; Curbing or Divider Machine; Curb Setter (pre-cast or cut); Ditching Machine (hand guided); Driller's Tender, Chuck Tender; Form Raiser, Slip forms; Grouting of concrete walls, windows and door jams; Header-boardman; Jackhammer, Pavement Breaker, Air Spade; Mastic Workers (wet or dry); Pipe Wrapper, Fettleman, Potman, and Men applying asphalt, creosote and similar type materials; All power tools (air, gas or electric not listed in Group 5); Pipejacking; Posthole Digger (air, gas or electric); Post Driver; Riprap-stonepaver and Rock Slinger, including placing of sack concrete wet or dry; Rototiller; Rigger and signaling in connection with Laborers' work; Sandblaster, Potman, Gunman or Nozzelman; Vibra-screed; Skilled wrecker (removing and salvaging of sash, windows, doors, plumbing and electrical fixtures)

LABORERS (Cont'd)

Group 4: Burning and welding in connection with laborer's work; Joy Drill Model TWK-2A, Gardner Denver Model DN 143 and similar type drills; Track Drillers, Diamond Core Drillers, wagon Drillers, Mechanical Drillers on multiple units; High Sealers; Concrete pump; Heavy Duty vibrator with stinger 5" diameter or over; Pipelayer, Caulker and Bander; Pipelayer - waterline, sewerline, gasoline, or conduit; Asphalt Rakers

Group 5: Blasters and powdermen, all work of loading, placing and blasting of all powder and explosives of any type, regardless of method used for such loading and placing

Group 6-A: Nozzelman

Group 6-B: Gunman, Materialman

Group 6-C: Reboundman

POWER EQUIPMENT OPERATORS

(Except Pile-driving and Steel Erection)

Group 1: Brakeman; Deckhand; Fireman; Oiler; Switchman; Tar Pot Fireman

Group 2: Compressor; Material Loader and/or Conveyor (handling building materials); Pumps; Tar Pot Fireman (power agitated)

Group 3: Box Operator (bunker); Concrete Curing Machine (streets, highways, airports, canals); Conveyor Belt (tunnel); Engineer Generating Plant (500 K.W.); Fireman Hot Plant; Hydraulic Motor; Mixer Box Operator (concrete plant); Motorman; Oiler (truck crane); Rotomist; Screedman (except asphalt or concrete paving); Bobcat or similar Loader, 1/4 cu. yd. or less

Group 4: Ballast Jack Tamper; Ballast Regulator; Ballast Tamper (multi-purpose); Boxman (asphalt plant); Concrete Mixer, skip type; Dinky; Fork Lift (construction jobsite); Line Master; Ross Carrier; Skip Loader (under 1 cu. yd.); Tie Spacer

Group 5: Concrete Mixer (over 1 cu. yd.); Concrete Pumps or Pumpcrete Guns; Elevator and Material Hoist (1 drum); Shuttle Car; Signalman; Screedman (Barber-Greene and similar) (asphalt or concrete paving)

POWER EQUIPMENT OPERATORS (Cont'd)
(Except Pile-driving and Steel Erection) (Cont'd)

Group 6: Boom Truck or Dual Purpose "A" Frame Truck; R.L.H. Lima Road Pactor or similar; Chip Box Spreader (Platetype or similar); Concrete Batch Plant (wet or dry); Concrete Saws (highways, streets, airports, canals); Highline Cableway Signalman; Locomotive (over 30 tons); Lubrication and Service Engineer (mobile and grease rack); Maginits International Full Slab Vibrator (airports, highways, canals, warehouses); Mechanical Burn, Curb and/or Curb and Cutter Machine (concrete or asphalt); Pavement Breaker, truck mounted, with compressor combination; Pavement Breaker or Tamper (with or without compressor combination); Power Jumbo (setting slip-forms, etc., in tunnels); Roller (except asphalt); Self-propelled Tape Machines; Self-propelled Compactor (single engine); Slip Form Pump (power-driven by hydraulic, electric, air, gas, etc., lifting device for concrete forms); Small rubber-tired tractors; Snooper Crane, Paxton-Mitchell or similar; Stationary pipe wrapping, Cleaning, and Bending Machine; Auger-type drilling equipment up to and including 30 ft. depth drilling capacity M.R.C.

Group 7: Bit Sharpener; Compressor (over 2); Concrete Conveyor or Concrete Pump, truck or equipment mounted (boom length to apply); Deck Engineer; Drilling and Boring Machinery, vertical and horizontal (not to apply to Waterliners, Wagon Drills or Jackhammers); Crusher Plant Engineer; Generator; Kolman Loader, Material Hoist (2 or more drums); Mechanical Finishers or Spreader Machine (asphalt, Barber-Greene and similar); Mine or Shaft Hoist; Pipe Bending Machines (pipelines only); Pipe Cleaning Machines (tractor propelled and supported); Pipe Wrapping Machines (tractor propelled and supported); Portable Crushing and Screening Plants; Pumps (over 2); Refrigeration Plants; Roller Operator (asphalt); Self-propelled Boom-type Lifting Device (center mount) (10 ton capacity or less); Slusher; Soil Tester (certified); Surface Heater and Planer; Trenching Machine (maximum digging capacity 3 ft. depth); post Driller and/or Driver; Auger-type drilling equipment over 30 ft. depth digging capacity M.R.C.

Group 8: Asphalt Milling Machine; Asphalt Plant Engineer; Car Passer; Cast-in-place Pipe Laying Machine; Combination Slusher and Motor; Concrete Batch Plant (multiple units); Dozer; Drill Doctor; Elevating Grader; Gradesetter, Grade Checker; Grooving and Grinding Machine (highways); Heavy-duty Repairman and/or Welder; Ken-seal; Loader (up to and including 2 1/2 cu. yds.); Mechanical Trench Shield; Mixer-mobile; Push Cats; Road Oil Mixing Machine (wood-mixer and other similar pug-mill equipment); Rubber-tired earth-moving equipment (up to and including 35 cu. yds. "struck" M.R.C., Euclid, T-Pulls, DW's 10, 20, 21 and similar); Self-propelled Compactor with Dozer; Hyster 450 or Cat 825 or similar; Sheepfoot; Small Tractor (with boom); Soil Stabilizer (P & H or equal); Timber Skidder (rubber-tired or similar equipment); Tractor-drawn Scraper; Tractor; Tractor-mounted Compressor Drill Combination; Trenching Machine (over 3 ft. depth); Tri-batch Paver; Tunnel Borer or Tunnel Boring Machine; Tunnel Mole Boring Machine; Vermeer T-600B Rock Cutter

POWER EQUIPMENT OPERATORS (Cont'd)
(Except Piledriving and Steel Erection) (Cont'd)

Group 9: Chicago Boom; Combination Backhoe and Loader (up to and including 3/8 yds.); Combination Mixer and Compressor (Gunitite); Lull Hi-lift (20 ft. or over); Mucking Machine; Subgrader (Gunities or other types); Tractor (with boom) (D6 or larger); Track-laying-type earthmoving machine (single engine with tandem scrapers)

Group 10: Room-type Backfilling Machine; Bridge Crane; Carry-lift or similar; Chemical Grouting Machine; Derricks; Derrick Barges (except excavation work); Euclid Loader and similar types; Heavy-duty Rotary Drill Rigs; Lift-slab (Vagborg and similar types); Loader (over 2 1/2 cu. yds. up to and including 4 cu. yds.); Locomotive (over 100 tons) (single or multiple units); Multiple engine Earth-moving Machines (Euclid, Dozers, etc.); Pre-stress Wire-wrapping Machines; Rubber-tired Scraper, self-loading; Single-engine Scraper (over 35 cu. yds.); Self-propelled Reservoir-debris equipment floating (200 H.P. and over); Shuttle Car (reclaim station); Train Loading Station; Trenching Machine, multi-engine with sloping attachments (Jefco or similar); Vacuum Cooling Plant; Whirley Crane (up to and including 25 tons)

Group 10-A: Backhoe (up to and including 1 cu. yd. Hydraulic); Backhoe (up to and including 1 cu. yd. cable); Cranes (not over 25 tons) (Hammerhead and Gantry); Grade-alls (up to and including 1 cu. yd.); Motor Patrol; Power Shovels, Clamshells, Draglines, Cranes (up to and including 1 cu. yd.); Rubber-tired Scraper, self-loading (twin-engine); Self-propelled boom-type lifting device (center mount) (over 10 tons up to and including 25 tons); CMI Dual-lane, Auto-grades SP300 and similar

Group 11: Automatic Asphalt or Concrete Slip-form Paver; Automatic Railroad Car Dumper; Canal Trimmer; Carry Lift, Campbell or similar; Cranes (over 25 tons); Highline Cableway Operator; Loader (over 4 cu. yds. up to and including 12 cu. yds.); Multiple-engine Scraper (when used to push pull); Power Shovels, Clamshells, Draglines, Backhoes, Gradealls (over 1 cu. yd. and up to and including 7 cu. yds. M.R.C.); Self-propelled compactor (with multiple-propulsion power units); Self-propelled boom-type lifting device (over 25 tons M.R.C.); Single-engine Rubber-tired earth-moving machine (with tandem scraper); Slit Form Paver (concrete or asphalt); Tandem Cats and Scrapers; Tower Cranes Mobile (including rail-mounted); Universal Liebherr and Tower Cranes and similar types; Wheel Excavator (up to and including 750 cu. yds. per hour); Whirley Cranes (over 25 tons); Euclid Loader when controlled from the Pullcat

Group 11-A: Band Wagon (in conjunction with wheel excavators); Loader (over 12 cu. yds.); Multi-engine earthmoving equipment (over 75 cu. yds. "struck" M.R.C.); Operator of Helicopter (when used in construction work); Power Shovels, Clamshells, Draglines, Backhoes, and Gradealls (over 7 cu. yds. M.R.C.); Remote-controlled earthmoving equipment; Wheel Excavator (over 750 cu. yds. per hour)

POWER EQUIPMENT OPERATORS (Cont'd)
PILEDIVING

Group 1: Fireman; Oilman; Deckhand

Group 1-A: Compressor Operator

Group 1-B: Truck Crane Oiler

Group 2-A: Operator of Tugger Hoist (hoisting material only)

Group 2-B: Fork Lift Operator

Group 2-C: A-Frames

Group 2-D: Compressor Operator (over 2); Generator Operator; Pump Operator (over 2); Welding Machine Operator (powered other than by electricity)

Group 3: Deck Engineer; Self-propelled boom-type lifting device (center mount) (10 ton capacity or less M.R.C.)

Group 3-A: Heavy-duty Repairman/Welder

Group 4: Operating Engineer in lieu of Assistant to Engineer tending Roller or Compressor attached to Crane Piledriver; Operator of Piledriving Rigs, skid or floating and Derrick Barges; Operator of diesel or gasoline powered Crane Pile-driver (without boiler) (up to and including 1 cu. yd. rating); Self-propelled boom-type lifting device (center mount) (over 10 tons up to and including 25 tons); Truck Crane Operator (up to and including 25 tons) (hoisting material only)

Group 5: Operator of diesel or gasoline powered Crane pile-driver (without boiler) (over 1 cu. yd. rating); Operator of Crane (with steam, flash boiler, pump or compressor attached); Operator of steam-powered Crawler, or Universal-type driver (Raymond or similar type); Truck Crane Operator (over 25 tons) (hoisting material or performing piledriving work); Self-propelled boom-type lifting device (center mount) (over 25 tons); Truck-mounted hydraulic Crane when remote-control equipped (over 10 tons up to and including 25 tons)

Group 6: Cranes (over 125 tons)

POWER EQUIPMENT OPERATORS (Cont'd)
STEEL ERECTION

Group 1: Oiler

Group 2: Compressor Operator; Generator, gasoline or diesel driven (100 K.W. or over) (Structural Steel or Tank Erection only); Truck Crane Oiler

Group 3: Compressors, Generators and/or Welding Machines or combination (2 to 6) (Structural Steel or Tank Erection only); Deck Engineer; Signalman (using mechanical equipment); Forklift

Group 4: Heavy-duty Repairman; Tractor Operator

Group 4-A: Combination Heavy-duty Repairman/Welder

Group 5: Boom Truck or Dual Purpose A-Frame Truck; Boom Cat; Chicago Boom; Crawler Cranes and Truck Cranes (15 tons M.R.C. or less); Self-propelled boom-type lifting device (center mount) (10 ton capacity or less M.R.C.); Single drum Hoist; Tugger Hoist

Group 6: Carg Lift, Campbell or similar; Crawler Cranes and Truck Cranes (over 15 tons M.R.C.); Derricks; Gantry Rider (or similar equipment); Highline Cableway; Self-propelled boom-type lifting device (center mount) (over 10 tons up to and including 25 tons); Tower Cranes Mobile; Universal Liebherr and Tower Cranes (and similar types); Two or more drum Hoist

Group 7: Self-propelled boom-type lifting device (center mount) (over 25 tons); Truck-mounted Hydraulic Crane when remote-control equipped (over 10 tons up to and including 25 tons)

Group 8: Cranes (over 125 tons)

Group 9: Operator of Helicopter

TRUCK DRIVERS

Group 1: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, under 4 yds.

Group 2: Bus and Manhaul Drivers, single units, up to 18,000 lbs.

Group 3: Bus and Manhaul Drivers, single unit, 18,000 lbs. and over; Winch Trucks and A-Frame Drivers, under 18,000 lbs.; Road Oil Trucks or Bootman; Fuel Truck Drivers; Fuel Man and Fuel Island Man

Group 4: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 4 yards and under 8 yards; Water Truck and Jetting Trucks, up to 2,500 gallons; Flatrack, includes Industrial Lift with mechanical tailgate, single unit 2-axle

Group 5: Lift Jitneys and Forklift

Group 6: Flatrack, includes Industrial Lift with mechanical tailgate, single unit 3-axle

Group 7: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 8 yds. and under 18 yds.; Transit Mix under 8 yds.; Water Trucks and Jetting Trucks, 2,500 gallons and over; Tire Repairman

Group 8: Bootman, combination; Bootman and Road Oiler

Group 9: Transit Mix, 8 yds. and including 12 yds.

Group 10: Winch Truck and A-Frame Drivers, 18,000 lbs. and over

Group 11: Dump (single or multiple unit including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 18 yds. and under 25 yds.; Heavy Duty Transport (Highbed); Heavy Duty Transport (Gooseneck Lowbed); Tiltbed or Flatbed Pull Trailers

Group 12: DW 20's and 21's and other similar Cat type, Terra Cobra, Lefourneau Pullis, Tournecrocker, euclid and similar type Equipment when pulling Aqua/Pak; Water Tank Trailers and Fuel and/or Grease Tank Trailer, or other miscellaneous Trailers (except as defined under Dump Trucks)

Group 13: Transit Mixer Over 12 yards; Truck Repairman

TRUCK DRIVERS (Cont'd)

Group 14: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 25 yds. and under 60 yds.

Group 15: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 60 yds. and under 75 yds.; Helicopter Pilot (when transporting men or materials)

Group 16: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 75 yds. and under 100 yds.

Group 17: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 100 yds. and over

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NEW MEXICO
DECISION NO. NM84-4041

COUNTY: STATEWIDE
DATE: Date of Publication

SUPERSEDES DECISION NO. NM83-4074 dated October 21, 1983 in 48 FR 48905.
DESCRIPTION OF WORK: STREETS, HIGHWAY, UTILITY AND LIGHT ENGINEERING
CONSTRUCTION shall include the construction, alteration, repair and demolition of roads, streets, highways, alleys, sidewalks, curbs, gutters, guard rails, fences, parkways, parking areas, airports (other than buildings thereon), bridge paths, athletic fields, highway bridges, median channels and grade separations involving highways; parks, golf courses, viaducts; uncovered reservoirs and uncovered sewage and water treatment facilities; canals, ditches and channels (including linings other than concrete linings); earth dams under one million (1,000,000) cubic yards; well drilling telephone and electrical transmission lines and site preparations which are part of streets, highway, utility and light engineering projects; and shall include construction, alteration, repair, and demolition of utilities such as sanitary sewers, storm sewers, water lines, gas lines, including appurtenances thereto such as lift stations, inlets, manholes, sewer lagoons, septic tanks and service outlets (stubouts), providing such utility construction is outside the property line or more than five (5) feet from a building or heavy engineering structure, including the Navajo Indian Reservation.

	Basic Hourly Rates	Fringe Benefits		Basic Hourly Rates	Fringe Benefits
CARPENTERS	\$ 8.11	.44	COMMERCIAL LINE WORK		
CEMENT MASONS	7.08	.26	(CONT'D):		
IRONWORKERS:			Equipment Ops. (includes helicopter op.):		
Reinforcing	7.49	.50	Zone I	\$16.15	2.00+
Structural	8.25	1.29	Zone II	17.68	3-1/2%
LABORERS:			Zone III	18.70	2.00+
GROUP I	4.92	.35	Zone IV	20.57	3-1/2%
GROUP II	5.22	.35			
GROUP III	5.62	.35	Equipment Mechanic (includes helicopter mechanic) & Powderman:		
COMMERCIAL LINE WORK:			Zone I	14.79	2.00+
AREA A			Zone II	16.32	2.00+
Linenmen-Technicians:			Zone III	17.34	3-1/2%
Zone I	17.00	2.00+	Zone IV	19.21	3-1/2%
Zone II	18.53	2.00+			
Zone III	19.55	2.00+	Groundman & Jackhammer:		
Zone IV	21.42	2.00+	Zone I	12.07	2.00+
Cable Splicers:			Zone II	13.60	2.00+
Zone I	18.70	2.00+	Zone III	14.62	2.00+
Zone II	20.23	2.00+	Zone IV	16.49	3-1/2%
Zone III	21.25	2.00+			
Zone IV	23.12	2.00+			

	Basic Hourly Rates	Fringe Benefits
COMMERCIAL LINE WORK		
(CONT'D):		
AREA B		
Linemen-Technicians:		
Zone I	\$14.20	.80+ 3-1/2%
Zone II	15.65	.80+ 3-1/2%
Cable Splicers:		
Zone I	14.45	.80+ 3-1/2%
Zone II	15.90	.80+ 3-1/2%
Equipment Op. & Mechanic (includes helicopter op. & helicopter mechanic):		
Zone I	12.35	.80+ 3-1/2%
Zone II	13.62	.80+ 3-1/2%
Powderman:		
Zone I	11.93	.80+ 3-1/2%
Zone II	13.15	.80+ 3-1/2%
Groundman-Jackhammer:		
Zone I	10.08	.80+ 3-1/2%
Zone II	11.11	.80+ 3-1/2%
AREA C:		
Linemen-Technicians:		
Zone I	17.10	.80+ 3-1/2%
Zone II	17.55	.80+ 3-1/2%
Zone III	17.70	.80+ 3-1/2%
Zone IV	17.95	.80+ 3-1/2%
Cable Splicers:		
Zone I	17.45	.80+ 3-1/2%
Zone II	17.90	.80+ 3-1/2%
Zone III	18.05	.80+ 3-1/2%
Zone IV	18.30	.80+ 3-1/2%

	Basic Hourly Rates	Prime Benefits
COMMERCIAL LINE WORK		
(CONT'D):		
Equipment Op. & Mechanic (includes helicopter op. & helicopter mechanic): Zone I	\$14.88	.80+ 3-1/2%
Zone II	15.33	.80+ 3-1/2%
Zone III	15.48	.80+ 3-1/2%
Zone IV	15.73	.80+ 3-1/2%
Powderman:		
Zone I	14.36	.80+ 3-1/2%
Zone II	14.81	.80+ 3-1/2%
Zone III	14.96	.80+ 3-1/2%
Zone IV	15.21	.80+ 3-1/2%
Groundman-Jackhammer:		
Zone I	12.14	.80+ 3-1/2%
Zone II	12.59	.80+ 3-1/2%
Zone III	12.74	.80+ 3-1/2%
Zone IV	12.99	.80+ 3-1/2%
LINE CONSTRUCTION-UTILITY		
FOR ELECTRIC & TELE- PHONE UTILITIES, REA CO-OPS, RAILROADS & MUNICIPALITIES: Linemen-Technicians	15.47	1.80+ 3-1/2%
Cable Splicers	16.55	1.80+ 3-1/2%
Equipment op. & mechanic (includes helicopter op. & helicopter mechanic)	13.46	1.80+ 3-1/2%
Powderman	12.99	1.80+ 3-1/2%
Groundman-Jackhammer	10.52	1.80+ 3-1/2%

Basic Hourly Rate	Fringe Benefits
\$ 8.64	\$.44
7.74	.20
PAINTERS:	
Brush	
Spray	
POWER EQUIPMENT OPERATORS:	
GROUP I	7.32 .26
GROUP II	7.52 .26
GROUP III	8.10 .26
GROUP IV	8.12 .26
GROUP V	8.12 .26
GROUP VI	8.27 .26
GROUP VII	8.32 .26
GROUP VIII	8.47 .26
GROUP IX	8.97 .26
GROUP X	9.77 .26
TRUCK DRIVERS:	
Pick-up truck 3/4 ton or under; warehouseman; dump truck under 8 cu. yds.; flat bed, 1 1/2 ton or under	5.97 .26
Dump truck, 8 to 16 cu. yds.; flat bed over 1 1/2 ton	6.17 .26
Distributor (asphalt); transit-mix; lowboy; light equipment; off-highway hauler; dump truck over 16 cu. yds.; trailer semi-trailer	6.37 .26
Dump	
Diesel-powered transport; lowboy heavy equipment	6.57 .26
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.	
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a) (1)(ii)).	

Basic Hourly Rates	Fringe Benefits

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

CLASSIFICATION AREA AND ZONE DEFINITIONS

LABORERS:

GROUP I - Common laborer; carpenter tender; concrete buggy op. (hand); concrete workers tender; asphalt heaterman; asphalt jointman; asphalt raker; batching plant scaleman; tenders (to cement mason & plasterer); chain sawman; concrete power buggyman; concrete touchup man; concrete sawman; curbing machine, asphalt or cement; cutting torchman; metal form setter-road; grade setter; hod carrier; mortar mixer & mason tender; powderman or blaster tender; sandblaster; scaler; vibratorman (hand type); vibrator compactor (hand type); wagon air tract; drill & diamond driller (outside) & tender

GROUP III - Gunite pumpcrete & nozzleman; multiple setter; manhole builder; pipelayer; powderman-blaster-make-up

COMMERCIAL LINE WORK (excluding work done for electric & telephone utilities, REA co-ops, railroad & municipalities):

AREA A - Also applies to switching stations & substations adjacent to power plants. Bernalillo, Catron, Chaves, Cibola, Colfax, Curry, DeBaca, Grant, Guadalupe, Harding, Lincoln, Los Alamos, McKinley, Mora, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Union, Valencia, White Sands Missile Range & that portion of Port Bliss in New Mexico

Zone I - Cities & Towns Basing Points & Miles from Main Post Office

*Albuquerque	- 25 miles	Roswell	- 12 miles
Santa Fe	- 10 miles	Ruidoso	- 12 miles
Las Vegas	- 8 miles	Portales	- 12 miles
Farmington	- 6 miles	Carrizozo	- 12 miles
Raton	- 6 miles	Clovis	- 12 miles
Tucumcari	- 6 miles	Gallup	- 10 miles
Aztec	- 6 miles	*Pojoaque	- 2 miles

*The eastern edge of the Albuquerque zone extends no further than the western boundary of the Village of Tijeras

**All areas adjacent to Pojoaque that are 2 miles distance from the main post office in that town will be zoned out of Santa Fe.

ZONE II - Extending up to 20 miles beyond Zone I, EXCEPT ALBUQUERQUE, rates per hour shall be increased by 9% of the journeyman rate of Zone I

Zone I

ZONE III - Extending up to 30 miles beyond Zone I, EXCEPT ALBUQUERQUE, rates per hour shall be increased by 15% of the journeyman rate of Zone I

Zone I

ZONE IV - Anything beyond 30 miles from Zone I, EXCEPT ALBUQUERQUE, rates per hour shall be increased by 26% of the journeyman rate for Zone I

For establishing the outlying free zones from the Albuquerque free zone only, Zone II shall extend up to 10 miles beyond Zone I, Zone III shall extend up to 20 miles beyond Zone I and Zone IV anything beyond 20 miles from Zone I

FOR WORK IN LOS ALAMOS COUNTY - USE THE ZONE III RATE.

CLASSIFICATION AREA AND ZONE DEFINITIONS - CONT'D

COMMERCIAL LINE WORK (Cont'd):

AREA B - Applies to switching stations & substations adjacent to power plants in Zone I & Zone II in Luna, Dona Ana, Otero & Hidalgo Cos., exclusive of White Sands Missile Range & that part of Port Bliss in New Mexico.

ZONE I - that area within 25 miles radius from the downtown Post Office of El Paso, Texas, Port Bliss & Biggs Field; the area within a 5 mile radius of any city, town or municipality within which an employer establishes or maintains his place of business; the area within 10 mile radius from the Post Office in Alamogordo, New Mexico.

ZONE II - all other areas of the jurisdiction except those specified in Zone I

AREA C - applies to switching stations adjacent to power plants in Eddy & Lea Cos.; the following zones listed shall be designated from the Main Post Office of Artesia, Carlsbad, Hobbs & Lovington:

Zone I	- 0 to 12 miles	Zone II	- 12 to 22 miles
Zone III	- 22 to 40 miles	Zone IV	- 40 miles & beyond

POWER EQUIPMENT OPERATORS

GROUP I - Concrete paving curing machine

GROUP II - Belt type conveyors (material & concrete); broom (self-propelled); fork lift; grease truck op.; head oiler; hydro lift; tractor (under 50 drawbar HP with or without attachment); industrial locomotive brakeman; front end loader (2 CY or less); fireman; oiler; screedman; roller (pull type); mulching machine; roller (self-propelled)

GROUP III - Concrete paving form grader; concrete paving gang vibrator; concrete paving joint or saw machine; concrete paving subgrader; tractor with backhoe attachment; subgrade or base finisher; power plant (electric, general or welding machine)

GROUP IV - Bulldozer (including self-propelled roller with dozer attachment; batch or continuous mix plant (concrete soil-cement or asphalt); roller (steel wheel); front end loader (2 CY thru 10 CY); scraper; motor grader

GROUP V - Asphalt distributor; asphalt paving or laydown machine; asphalt; retort heater; mixer, heavy duty, asphalt or soil cement; trenching machine; clam type shaftmucker; backhoe, clamshell, dragline, gradall, shovel (under 3/4 CY); elevating grader or belt loader; cranes (crawler or mobile) under 20 ton; air compressor (300 CFM & over); crushing, screening & washing plants; drilling machine (cable, core or rotary); mixer, concrete (1 CY & less); pump (6" intake or over); winch truck; hoist (1 drum); industrial locomotive motorman; lumber stacker; tractor (50 drawbar HP or over)

GROUP VI - Concrete paver mixer; hoist (2 drum & over); side boom; traveling crane; piledriver; backhoe, clamshell, dragline, gradall, shovel (3/4 CY to 3 CY); cranes (crawler or mobile) 20 ton to 40 ton; front end loader (over 10 CY); mixer concrete (over 1 CY); mechanic and/or welder

GROUP VII - Concrete slip-form paving machine; concrete paving finishing machine; concrete paving longitudinal float; gunite machines; refrigerator; jumbo form or drilling; stage; slusher; concrete paving spreader; pumpcrete machine; grout pump op.

GROUP VIII - Mine hoist; bulldozer (multiple units); scraper (multiple units); mucking machines; backhoe, clamshell, dragline, gradall, shovel (over 3 CY); cranes (crawler or mobile)

GROUP IX - Belt loader (CMI type) op.; derrick cableway

GROUP X - Pipemobile op., mole op.

[FR Doc. 84-17149 Filed 6-28-84; 8:45 am]

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Environmental Protection Agency

Friday
June 29, 1984

Part III

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New
Stationary Sources; Flexible Vinyl and
Urethane Coating and Printing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 60****[AD-FRL 2510-6]****Standards of Performance for New Stationary Sources; Flexible Vinyl and Urethane Coating and Printing****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: Standards of performance for flexible vinyl coating and printing operations were proposed in the Federal Register on January 18, 1983 (48 FR 2276). On October 11, 1983, the proposal was extended (48 FR 46224) to cover coating and printing of urethane webs. The source category is being renamed "flexible vinyl and urethane coating and printing." The standard implements Section 111 of the Clean Air Act and is based on the Administrator's determination that rotogravure printing and coating of flexible vinyl and urethane causes, or contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of this standard is to require all new, modified, and reconstructed printing lines used for rotogravure printing and coating of flexible vinyl and urethane to achieve emission limitations reflecting the best demonstrated system of emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

EFFECTIVE DATE: June 29, 1984.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: Background Information Document. The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Flexible Vinyl and Urethane Coating and Printing—Background Information for Promulgated Standards," EPA-450/3-81-016b. The BID contains (1) a summary of all the public comments made on the proposed

standards and the Administrator's response to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement which summarizes the impacts of the standard.

Docket. A docket, number A-80-8, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions concerning development of the standard should be directed to Doug Bell, Standards Development Branch, telephone (919) 541-5624. Questions concerning the background information document for the industry should be directed to Mr. Jim Berry, Chemicals and Petroleum Branch, telephone (919) 541-5605. The address for both contacts is Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:**The Standards**

Standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

* * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated (Section 111(a)(1)). For convenience, this will be referred to as "best demonstrated technology" or "BDT."

The affected facility to which the promulgated standard applies is each rotogravure printing line used to print or coat flexible vinyl or urethane products. Construction, reconstruction or modification of the printing line must have begun after January 18, 1983 for the standard to be applicable. Existing facilities are not subject to the standard unless modified or reconstructed as defined in 40 CFR 60.14 or 60.15. The term "printing" is used in this preamble to include printing and coating processes. Similarly, the term "inks" is used to mean inks and coatings.

The owner or operator of each affected facility is required either to reduce gaseous VOC emissions by 85 percent or to use waterborne inks with an average VOC content of less than 1.0

kilogram (kg) VOC per kg ink solids. The Agency has identified as the best demonstrated technology the use of either waterborne inks, fixed-bed carbon adsorption systems, or thermal or catalytic incineration systems. Carbon adsorbers and incineration systems must be operated in conjunction with an efficient vapor capture system. Currently, low VOC-content or waterborne inks are in the developmental stage in the flexible vinyl printing industry, and therefore, their present use is limited. Industry spokespersons expect their use to increase significantly in the next 5 years.

Reference Methods 1, 2, 3, 4, and 25A will be used during the performance test to measure the gaseous VOC emissions from affected facilities using add-on control equipment to comply with the standard. Reference Method 24 or the ink manufacturer's formulation data will be used to determine compliance for affected facilities using waterborne inks. The average VOC content of waterborne inks (the weighted average mass (kg) of VOC per unit mass (kg) of ink solids) must be calculated over a time period that does not exceed one calendar month, or over a time period based on quarters consisting of two 28 calendar day periods and one 35 calendar day period. Use of the latter averaging period must be documented in the initial performance test. The weighted average VOC content of waterborne inks may also be determined using plant blending records (if plant blending is done) or inventory/purchase records in combination with Reference Method 24 or ink manufacturers' formulation data. Dilution solvent added at the rotogravure printing station must be included in the calculation of the weighted average. Each monthly average VOC content of the inks constitutes a performance test. The initial performance test results must be reported to the Administrator. Semiannual reports of exceedances of the average VOC content are also required. These data must be retained at the source for a period of 2 years.

The standard of 85 percent reduction is based on an overall gaseous VOC emission reduction. The overall gaseous reduction for a control system is calculated by multiplying the efficiency of the control device by the efficiency of the vapor capture system. The result is the overall gaseous VOC emission reduction achieved by the control system. Fixed-bed carbon adsorption systems or thermal or catalytic incineration systems will meet the

standard when operated in conjunction with an efficient vapor capture system.

There are monitoring requirements for facilities using inks with an average VOC content of 1.0 kg VOC per kg ink solids or greater. For facilities controlled by a solvent recovery emission control device, the continuous monitoring requirements will not apply until EPA has promulgated performance specifications. If a thermal or catalytic incinerator is used to control emissions, monitoring requirements include continuous measurement and recording of the temperature of the thermal incinerator exhaust gases, or of the gas temperature upstream and downstream of the catalytic incineration catalyst bed. Deviations in these parameters beyond specified limits serve as indicators to the Administrator and to the owner or operator that the control system may not be reducing emissions to performance test levels. Such deviations must be reported to the Administrator semiannually. Owners or operators are required to maintain for 2 years the records of the control device operating parameters that must be monitored, as specified in 40 CFR 60.7(d).

Summary of Environmental, Energy, and Economic Impacts

The environmental, energy, and economic impacts of this new source performance standard (NSPS) are expressed as incremental differences between the impacts for facilities complying with the standard and for those facilities if no NSPS were promulgated. In the absence of an NSPS, it is assumed that facilities would comply with the applicable State implementation plan (SIP) for VOC emissions. This SIP control level is referred to as the baseline and is based on the 65 percent overall emission reduction requirement in the control techniques guideline (CTG) document, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VIII: Graphic Arts—Rotogravure and Flexography" (EPA-450/2-78-033). It is expected that States would impose this level of control for any new plants locating in nonattainment areas. This level of control may or may not be required in attainment areas, however, and would depend on the particular plant and State agency involved. Thus, to the extent that State requirements in attainment areas differ from the requirements of a typical SIP, the actual impacts may differ from the impacts presented in the following discussion.

The flexible vinyl and urethane printing industry is composed of

approximately 112 plants, many of which have multiple rotogravure printing lines. EPA estimates that the promulgated standard will affect three to six new printing lines within the first 5 years after the standard is effective. Extensive equipment modifications and reconstructions are not expected to occur.

The growth rate and projection that three to six new printing lines would be installed by 1987 reflects a recent reevaluation. This was done in response to recent comments and information received from two trade associations. The results of the reevaluation indicate that a growth rate of at least 8.9 percent is still expected for the vinyl wallcovering industry. The reevaluation results indicate that about three new sources would be constructed. This is a conservative estimate based upon a capacity utilization rate of between 70 and 80 percent which was suggested by one of the trade associations. During the initial development of the standard, EPA estimated a 60 percent capacity utilization factor. Growth rate estimates based on this lower factor would be greater. As such, the calculated impacts of the standard which are presented below may be somewhat overstated since they are based on a projected six new printing lines.

The standard would reduce VOC emissions by about 57 percent beyond the levels achievable under the baseline level. Nationwide in 1987, the standard would reduce VOC emissions from new, modified, or reconstructed flexible vinyl printing lines by 790 megagrams (870 tons) beyond the emission level required by the baseline.

Potential wastewater pollution from a controlled flexible vinyl printing line results from the use of a carbon adsorption emission control system. National wastewater discharges would increase by 36 percent or 4,800,000 liters (1,300,000 gallons) in 1987 as a result of the standard if all affected facilities used carbon adsorption. Incineration systems generate no wastewater.

Nationwide in 1987, the solid waste load (spent carbon from carbon adsorption) associated with standard would be 5.4 megagrams (6.0 tons) or 25 percent greater than the load associated with typical SIP control if all affected facilities used carbon adsorbers as the control device. No solid waste is generated by incineration.

Carbon adsorption was the predominant VOC control technique found to be operating in the flexible vinyl printing industry, and therefore it was used to estimate energy impacts associated with standard. By comparing

the potential national energy savings resulting from reusing recovered solvent with the energy required to operate emission control devices, a potential net national energy impact can be estimated. Fuels and organic solvents can both be derived from crude oil. A decrease in the demand for solvent due to solvent recovery will thus increase the potential for fuel availability by offsetting the need for additional crude oil. On a national basis in 1987, the standard would result in an energy savings of 41,000 GJ (39 billion Btu). The standard would save about 15 percent more energy than if all facilities were controlled at the baseline level.

A typical new flexible vinyl printing line producing about 9 million square meters (10.8 million square yards) of material annually would require approximately 970 GJ (270,000 kwh) of electrical energy and approximately 9,700 GJ (9.2 billion Btu) of fuel oil energy to meet the standard. If the typical line were controlled to the level of the standard, the total energy demand would be approximately 10,700 GJ. The amount of solvent potentially recoverable under the standard could be calculated to be equivalent to about 17,500 GJ of energy. Thus, the net energy impact per print line would be a savings of approximately 6,800 GJ annually.

The energy requirements for a typical plant controlled by incineration to the level required by the standard would be approximately 37,200 GJ (35 billion Btu) per year.

The capital cost for a typical new printing line is \$1 million and the annualized costs are \$6.1 million. The initial capital cost of a control system (carbon adsorption) capable of achieving the baseline control level is \$1 million and a control system (carbon adsorption) capable of achieving the level of the standard would cost \$1.2 million. Because of the value of potentially recoverable solvent, annualized costs for control system operation represent about 1 percent of the total annualized cost for the controlled plant. At a typical new plant controlled to the baseline level by carbon adsorption, this annualized cost is about \$69,000. At a plant controlled at the level of the standard, because more solvent could be recovered, the annualized costs decrease to approximately \$48,000.

Although incineration was not being used during development of the standard, some vinyl printers anticipate the use of incineration to achieve the standard. At a typical plant, the total capital cost for an incinerator capable of achieving the standard would be

\$669,000 with an annual operating cost of \$358,000.

Projections show a growth rate of more than 8 percent per year for vinyl wallcovering products and little growth in the other sections of the industry through 1987. At this growth rate, the cumulative capital cost of control is approximately \$6.2 million for baseline control and \$7.4 million for the control level of the standard. Annualized costs (i.e., control system operation costs less recovered solvent value) are approximately \$414,000 for baseline control and \$289,000 for the control level of the standard.

The expected worst case maximum price increase, based on the use of carbon adsorption, would be 0.05 percent. If incineration were selected as the control device, the worst case price increase would be 0.67 percent. No major impacts are expected on geographical regions or local governments.

The environmental, energy, and economic impacts associated with the use of carbon adsorption are discussed in greater detail in the background information document for the proposed standard ("Rotogravure Printing and Coating of Flexible Vinyl and Urethane—Background Information for Proposed Standards," EPA-450/3-81-016a). Impacts resulting from the use of incineration are discussed in a separate document which has been added to the docket (IV-B-8).

Public Participation

Prior to proposal of the standard, interested parties were advised by public notice in the *Federal Register* (46 FR 42910, August 25, 1981) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the flexible vinyl printing standard recommended for proposal. This meeting was held on September 22, 1981. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal. The standard was proposed and published in the *Federal Register* on January 18, 1983 (48 FR 2276). The preamble to the proposed standard discussed the availability of the background information document (BID), "Flexible Vinyl Coating and Printing Operations-Background Information for Proposed Standards," EPA-450/3-81-016a, which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal and, when requested, copies of the BID were distributed to interested parties. The

proposal notice stated that a public hearing would be held if requested to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standard. There were no requests for a public hearing and, therefore, no hearing was held. The public comment period was from January 18, 1983 to April 1, 1983.

Twelve comment letters were received concerning issues relative to the proposed standard for flexible vinyl coating and printing operations. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed standard.

During the comment period, a letter was received from a major manufacturer of flexible urethane products who recommended that flexible urethane coated products be regulated under this standard. The Administrator issued a supplemental notice to the proposed rule on October 11, 1983 (48 FR 46224), to include the printing and coating of flexible urethane products. A 30-day public comment period ending November 10, 1983, was held for receipt of comments concerning urethane only. No comment letters were received. The promulgated standard includes the printing and coating of flexible urethane along with flexible vinyl.

Significant Comments and Changes to the Proposed Standards

Comments on the proposed standard were received from four vinyl printers, an ink manufacturer, a printer of urethane products, a manufacturer of flexible packaging, a manufacturer of carbon adsorbers and two vinyl printing trade associations. A detailed discussion of these comments and responses can be found in the background information document which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID serve as the basis for the revisions which have been made to the standard between proposal and promulgation. Six major comments and responses are summarized in this preamble.

In response to public comments received on the proposed rulemaking and as a result of EPA reevaluation, six major changes were made in the proposed standard prior to promulgation. The changes involved (1) expanding the applicability of the standard to include printing on urethane sheets or urethane coated webs as well as on vinyl sheets or vinyl coated webs, (2) the addition of considerations for petitioning the administrator to show

compliance using an inventory-type system to account for VOC content of waterborne inks, (3) the addition of compliance provisions for incineration, (4) the addition of semiannual reporting of exceedances of the waterborne ink limitation or deviations from the monitored parameters for carbon adsorption or incineration, (5) the redefinition of the averaging period for waterborne inks, and (6) redefining "flexible vinyl and urethane products" to exempt flexible packaging.

Most of the comment letters contained multiple comments. In the BID, the comments have been divided into the following areas: Selection of Source Category, Emission Control Technology, Modification and Reconstruction, Economic Impact, Selection of Best Demonstrated Technology, Selection of Format, Selection of Emission Limits, Legal Considerations, Test Methods and Monitoring, and Reporting and Recordkeeping. The six major comments summarized in this preamble involve application of the standard to printing on urethane sheets or urethane coated webs, the exemption of flexible packaging, test data on capture system efficiency, compliance provisions for incineration, the selection of best demonstrated technology, and the use of inventory records to determine compliance with the waterborne ink provisions.

Docket entry numbers referenced in each comment refer to docket number A-80-8. Access to this docket is described in the **ADDRESSES** section of this preamble.

Printing of Urethane Products

One commenter (IV-D-1) felt that it was a serious oversight that the proposed regulation covered the printing of flexible vinyl coated webs without reference to printing or finishing flexible urethane coated webs. The commenter, whose company produces both vinyl and urethane coated products, pointed out that the major difference between the two webs is the chemistry of the coating compounds composing the web. In one instance, these are plasticized polyvinyl chloride (PVC) compounds and in the other, flexible thermoplastic urethane polymers. The commenter noted that, regardless of the chemical composition of the coating, the webs are finished by printing with solvent solutions of PVC, urethanes, and/or acrylic resins. The commenter stated that his company knew of no technical or scientific reasons why the printing of polyurethane coated fabrics should be regulated differently from the printing of flexible polyvinyl coated fabrics. He

concluded by suggesting that the proposed standards for printing of flexible vinyl be revised to specifically include the printing of urethane coated fabrics.

After some discussion of this issue with the commenter (IV-E-1, IV-E-7) to get more information on the process of printing on urethane webs, the Administrator believes that urethane product manufacturers can achieve the proposed emission standard at reasonable costs. Since the Agency had not performed an extensive investigation of the environmental, energy, and economic impacts of the standard upon urethane product manufacturers, notice of this proposed change appeared in the *Federal Register* on October 11, 1983, at 48 FR 46224. This notice allowed for a 30-day public comment period and specifically requested comments regarding the impacts of the standard upon urethane printers. No comments were received. The Administrator has concluded that the promulgated standard should include the coating and printing of both flexible vinyl and flexible urethane.

Exemption of Flexible Packaging

One commenter (IV-D-4, IV-E-4), a producer of flexible packaging, felt that the proposed regulation could be erroneously viewed to apply to sources producing flexible packaging products such as products consisting of a thin vinyl coating applied to aluminum or paper based substrates on rotogravure printing equipment. He gave facial tissue boxes as an example of this. He noted that EPA staff members had told him that the standard did not apply to flexible packaging. He said that the definitions of "affected facility" and "flexible vinyl products" hinged on a minimum thickness of 50 micrometers (0.002 inches), but that some of his company's flexible packaging products exceeded that thickness. He urged EPA to revise the final regulation to clearly state that it does not apply to the manufacture of flexible vinyl packaging. He suggested that this be done by specifically excluding "flexible packaging" in the definition of "flexible vinyl products."

After receiving this comment, EPA contacted the Flexible Packaging Association (IV-E-5) to ask for a definition of "flexible packaging." Although the Association representative explained that there was some disagreement within the Association about an exact definition, he gave the following definition: "Flexible packaging is the use of paper, film, or foil to package a product in such a manner that the packaging material itself generally

takes the shape of its contents." The Association representative stated that most flexible packaging is less than 50 micrometers (0.002 inches) thick, but noted that some Association members have products up to 0.010 inches thick.

Although it appears that the flexible vinyl coating and printing process is similar to the flexible packaging process described by the commenter (IV-E-4), EPA did not obtain the technical or economic information to determine whether best demonstrated technology (BDT) for the flexible vinyl industry is also BDT for this segment of the flexible packaging industry. Therefore, the definition of "flexible vinyl and urethane products" has been revised to specifically exempt flexible packaging from this standard. However, the Agency is beginning to develop new source performance standards for the flexible packaging industry and the packaging process described by the commenter will be investigated in the near future. If the investigation shows that BDT for flexible vinyl is also applicable to this segment of the flexible packaging industry, then this standard will be revised to include this segment of the packaging industry.

Test Data on Capture System Efficiency

Two commenters (IV-D-6, IV-D-8), both representing producers of vinyl coated products and vinyl printed products, disagreed with EPA's treatment of the test data on capture efficiency. One of the commenters (IV-D-6) explained that during the second test which indicated a capture efficiency in excess of 90 percent, the room air supply fan was not operating and the wall exhaust fan was only operational during times that the print head fans were off. He stated that machines cannot be run with the room air supply fans off, and therefore he felt that the test was not valid or representative. The other commenter (IV-D-8) felt that the "turbulence" or "disruption of air distribution" cited in the BID due to operation of the room air supply fan and the wall exhaust fan were legitimate operating conditions, and he felt their effects should not be ignored in determining capture efficiency. He felt that EPA had "discarded all lower but real world" capture efficiency data. He urged EPA to discard the test data cited in the BID and conduct a new series of tests on a new printer. A trade association (IV-D-7) concurred with these views. In addition, the trade association stated that the emission testing program was not conducted under normal operating conditions and referred to the General Provisions, 40 CFR 60.8(c), which requires that

performance tests be "based on representative performance of the affected facility." The association noted that techniques such as turning off the fans or total enclosure of the print line may be necessary during the performance test. The association, however, maintained that enclosure of a print line creates conditions which are not representative of the capture efficiency achieved at a print line under normal operating conditions. In other words, it is not clear that any new source in this industry could achieve 90 percent capture efficiency during ordinary operations. The commenter elaborated that total print line enclosure is not practicable during operation, and the efficiency of air management around the print line depends on a number of factors over which the operator may not have control, even in the design of a new print line. For example, where a new print line is installed in a large building containing other processes, major capital expenditures could be required to achieve 90 percent capture efficiency during normal operation. Another commenter (IV-D-6) agreed that a total enclosure of the print line is not practical because of operator accessibility and the high concentrations of solvent encountered with the enclosures that in some places could exceed the lower explosive level (LEL). The trade association (IV-D-7), therefore, concluded that EPA should conduct further capture efficiency tests for a new vinyl print line during normal operation. Another commenter (IV-D-10) stated that the emission test that verified 90 percent capture efficiency was conducted under contrived conditions, and therefore questioned the results and appropriateness of a 90 percent capture regulation.

In order to respond to the comments on the performance tests and the representativeness of test conditions, it is important first to make clear that the performance test procedure is, in effect, an integral part of the standard. For this reason, the test procedures and test conditions used by EPA during the development of the standard must be the same as or have a known relationship to the test procedures which will be used and the performance test conditions which may be encountered during the testing of sources which are subject to this standard.

In this standard, the test procedures to be used by a plant operator for determining compliance will be the same as or equivalent to those used by EPA in developing the standard. The performance conditions may differ

depending, for example, on the configuration of the plant and the number of lines. However, the EPA tests were, and subsequent performance tests will be, conducted in conformance with the same criteria, thereby assuring that the standard is achievable during any performance test.

In conducting a performance test, the plant owner must demonstrate that his new line can achieve the performance standard when tested under operating conditions which are representative of normal production and/or which reflect the air change conditions during the EPA test (as specified below). One important feature of the performance test is that all fugitive VOC emissions from the printing area must be captured and vented through stacks suitable for measurement. For a new line(s) in a new plant, emissions from the room in which the line(s) is (are) located can be measured with no special arrangements. For a new line in a plant with existing lines, the owner or operator may desire to isolate emissions associated with the new line from those associated with existing lines. In this case, he has three options:

- (1) Build a permanent enclosure around the affected facility;
- (2) Build a temporary enclosure around the affected facility (the enclosure has to be ventilated at a rate which approximates the rate to which the affected facility is exposed without the enclosure up to 20 air changes per hour); or
- (3) Shut down all other sources of VOC and continue to exhaust fugitive emissions from the affected facility through any building ventilation system and other room exhausts such as print line ovens and embossers.

The industry has argued that a total enclosure restricts operator access and would allow VOC concentrations to increase to unacceptable levels. It is the Agency's position that it is possible to construct a total enclosure which provides the necessary operator access while also preventing the buildup of high concentrations of solvent. The EPA test results show that an increase in solvent concentration is not the inevitable product of a total enclosure.

The two tests performed during the development of the standard were conducted at a new facility which had installed only the first of a total of three print lines within a building. Thus, the building itself served as a permanent total enclosure housing only one line.

The industry would disregard results of the test at this plant because it alleges that EPA "contrived" the operating conditions. Air management is a critical aspect of any pollution control system.

EPA did indeed alter the old normal air management scheme within the building in an attempt to attain the best operating conditions for pollution control. As a consequence of what was learned, the plant adopted new normal operating conditions, the conditions under which the EPA tests were actually conducted.

During the first test, the room containing the printing line had two ventilation fans, one in the ceiling and one on the wall. Only the wall fan was operating prior to the first test. (The test data revealed its discharge was much less than design.) A large intake ventilation fan mounted directly above the operating line was turned on at EPA's request in an attempt to assure that the test took place under normal operating conditions. It was assumed that the ventilation fan would normally be operated when the plant ultimately had three lines. It was not until after the first test was complete that the owner explained that normal operation was usually with the overhead ventilation fan off. Because of the fan's location, it discharged directly on the print heads, causing premature drying of the inks on the gravure cylinders and adversely affecting the quality of much of the material printed during the test. The plant personnel subsequently had to turn the fan off in order to produce a product within specification. It was because EPA had inadvertently tested the plant under abnormal conditions that the decision was made to return for a second test.

The wall exhaust fan was not operated during the second test based on the Agency's judgment that the best air management for capture of VOC emissions from the plant required that the fan not operate. That judgment was based on the following reasoning. The fan was originally installed to ensure that the threshold limit value (TLV) would not be exceeded within the building. On the first day of the second test, however, air flow measurements revealed that although the fan motor was running, the fan was essentially operating at a zero discharge rate because of loose drive belts. After EPA arranged to have the belts adjusted, the fan's operation caused turbulent drafts of air through and around the printing press.

Results of the second day's test showed that the drafts interfered with the print line's fugitive capture system. The data showed that significantly less VOC was captured than during the tests conducted the previous day when the belts were loose. The plant personnel and the test team jointly concluded that the fan's location (directly adjacent to

and above the press) created drafts which adversely affected the capture system. Since the fan had previously been operating ineffectively (because of the maladjusted drive belts), there obviously was some question regarding the need for it. It was then decided to run the print line with the fan off to confirm that it was not critical to the operation of the line. If the VOC concentrations did not increase and exceed the TLV, the fan was unnecessary. The subsequent test confirmed that the exhaust systems associated with the press and embosser provided sufficient ventilation to keep the VOC concentrations below the TLV, and the wall exhaust fan was not needed during normal operation. Plant personnel concluded that the wall fan would subsequently be used only when the print line fans were off or in the event of an unusual occurrence, such as a solvent spill.

This mode of operation was advantageous for the plant because it increased the amount of solvent captured, thereby improving the return on the investment for the carbon adsorber. Obviously, this printing press could, did (because of the loose belts), and would continue to operate with ventilation provided only by the evacuation systems associated with the press and embosser exhaust systems. The results of monitoring conducted during the second test showed that with the wall exhaust fan off, the 11,700 SCFM evacuated from the vicinity of the printing press by the print head ovens and embosser ventilation system was sufficient to ensure that concentrations did not increase to unacceptable levels and that the 8-hour average concentration in working areas did not exceed the TLV. This draft would provide air changes approximately every 3 minutes to a room with dimensions of 20' x 20' x 90', more than adequate to house the print line and, coincidentally, about one-third the volume of the room which housed this print line. This is consistent with good ventilation practice for a clean room as discussed in *Industrial Ventilation—A Manual of Recommended Practices* (Committee on Industrial Ventilation), 1976, p. 5-112.

Should the operator decide to conduct his performance test with the print line contained in a total enclosure, he has two options: to construct either a permanent enclosure or a temporary enclosure which would be removed upon completion of the performance test. The cost of a permanent enclosure would be relatively small, less than 2 percent of the total capital required for

the new line (IV-B-9). A temporary enclosure would be even less expensive.

If an operator chooses to conduct the performance test with a temporary enclosure, the only constraint the Agency places on the test is that the plant operator must approximate the ventilation conditions expected to be in effect when the enclosure is removed or create conditions that would represent good ventilation practice as recognized by authoritative sources such as *Industrial Ventilation*. However, it is not necessary to ventilate the enclosed space at a rate greater than 20 air changes per hour. This rate is consistent with that of the test conducted by the Agency.

As an alternative to the total enclosure, a plant operator may elect to shut down other sources of VOC in the room which contains the affected facility. The fugitive emissions from the print line must continue to be exhausted through any area or building ventilation system and other room exhausts, such as print line ovens and embossers, that would operate under normal conditions.

At some plants, the work area may be ventilated only by the drafts of ovens and embossers. At other plants, high levels of fugitive emissions from existing facilities may require that separate ventilation fans be operated. In this latter situation, the operator should consider two of the advantages of reducing the amount of ventilation used for the existing facilities. First, the costs of circulating, pumping, heating, and conditioning large quantities of air through a plant can be significant. Secondly, poorly designed ventilation systems (as evidenced during testing of the reference plant) can interfere with the VOC capture system, increase the fugitive emissions within the building, and perhaps thereby create a need for even more ventilation air.

If a new line is installed in the same room with existing lines, there are ways to design and install or alter building ventilation systems which would minimize its effect on the efficiency of the capture system of all lines, but especially the line subject to the NSPS. For example, if a building ventilation draft fan must be used, the intake can be manifolded with the suction inlets located around the work stations of the existing lines where the fugitive VOC concentrations could be expected to be highest. If a forced air fan is used, the ventilation air can be manifolded to a number of outlets located such that they do not compete with the solvent recovery system but may actually improve it. Such a thoughtfully designed dispersion system would likely permit

operating with much smaller volumes of ventilation air.

Another improvement in air management techniques was developed by the plant that EPA tested when a second line was installed after the test program was completed. The duct work for a second new print line was constructed so that oven make-up air is collected from between the print heads by "floor sweeps", rather than above the print heads as was done by the first print line which EPA tested. This should further reduce fugitive emissions and improve overall capture efficiency. The cost of making the type of air management changes discussed above would likely not exceed 2 percent of the control cost for the new line. The potential savings to the owner in reduced utility costs and increased solvent recovery would offset some and perhaps all of the incremental control cost.

The final standard gives the plant operator a great deal of latitude in deciding how to demonstrate compliance. A new line could be constructed within a permanent enclosure, thereby simulating the conditions under which EPA conducted its tests. Alternatively, the line could be installed in a room with existing sources. If the ventilation system in the existing room is expected to affect the performance of the new line's capture system, the performance test may be conducted with the existing sources shut off or a temporary enclosure may be installed to isolate the new line from the existing plant equipment. If a temporary enclosure is constructed, the building ventilation system (to which the new line will normally be subject) must be approximated, but only up to a maximum of 20 air changes an hour. This is consistent with conditions under which EPA tests were conducted and representative of good ventilation practices.

For the reasons previously discussed, it is the Administrator's judgment that the results from the second test show that high capture efficiency can be attained and worker exposure limited if a print line and its adjunct vapor capture and work space ventilation systems are properly designed. The adjustments made to the plant's air management system during testing were needed in order to best represent the plant's normal operating conditions, but more importantly, the adjustments were made to ensure that the test was conducted under conditions which were representative of the best demonstrated technology. Also, the capture efficiency data were obtained under conditions

that could be normally and routinely maintained by properly designed new print lines and were representative of capture efficiency that could be achieved by any new print line even when installed in existing plants. Therefore, further capture efficiency tests were not conducted as requested.

Compliance Provisions for Incineration

Several commenters noted that incineration is being considered by some vinyl printers as an alternative to carbon adsorption due to certain technical difficulties with carbon adsorption. They felt that the NSPS should address incineration as a control alternative and that EPA should investigate the economic, environmental, and energy impacts associated with incineration.

During the development of this standard, carbon adsorption was the only control device in use in this industry and, thus, the analysis for development of the NSPS was based on carbon adsorption. Incineration was described in the BID and was mentioned as a possible control technique although it was not in use at the time.

Due to the several comments received on the use of incineration, the Agency reviewed the current status of this control technology in the vinyl printing industry (IV-E-10, 11, 12) by contacting the three plants listed in one commenter's letter (IV-D-7). Of these three plants, one is considering the use of incineration, one has considered it but has no current plans to install incineration, and one has firm plans to install an incinerator.

The Clean Air Act requires that each NSPS reflect "application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, * * *) the Administrator determines has been adequately demonstrated." Such technology is often referred to as "best demonstrated technology" or simply BDT. After studying the comments received, the Agency had to determine if there were some circumstances described where carbon adsorption could not be used and could not be considered BDT as it had been during the development of the standard. Because EPA found no vinyl printers using a control technology other than carbon adsorption, the only information available on which to base such a determination has come from contacts with vinyl printers who were or had considered incineration in favor of carbon adsorption and the comments received concerning incineration.

Based on this information, the Administrator has concluded that there are certain site-specific and process-specific conditions where carbon adsorption would not be BDT. Site-specific conditions include sites where only a single print line is to be controlled, where print line configuration prohibits control by a single carbon adsorber, and where the available space is insufficient for a carbon adsorber. Some of the possible process-specific conditions occur when high oven temperatures cause plasticizer emissions and when solvents with close distillation temperatures are used.

EPA developed estimates (IV-B-8) of capital and annualized costs and cost effectiveness for thermal incineration. Thermal rather than catalytic incineration was selected for the analysis because that is the type under consideration by the three plants contacted and because, since thermal incineration is more costly than catalytic, the test for reasonableness would be based on the "worst case." At a typical plant, Model Plant C described in the BID, the results of the analysis for thermal incineration showed an annualized operating cost of control of \$358,000 and a total capital investment of \$669,000. The cost effectiveness of control using incineration was determined to be approximately \$530/ton VOC reduction. The cost effectiveness of control at the baseline level was determined to be approximately \$600/ton VOC reduction or \$70/ton more than the control level of the standard. Although this is higher than the cost of carbon adsorption (\$75/ton VOC reduction), the Administrator considers this a reasonable cost and therefore compliance provisions for thermal and catalytic incineration have been added to the standard.

Energy demands of an incineration control system are greater than for carbon adsorption. At a typical plant such as Model Plant C in the BID, energy demand would be about 42×10^9 Btu per year greater for incineration than for carbon adsorption. In terms of environmental impacts, both systems can reduce VOC emissions by the required 85 percent. Noise, wastewater, and solid waste are not generated from the use of incineration.

EPA's analysis indicates that there would be no adverse environmental, economic, or energy impacts resulting from the use of incineration. Based on this fact and indications that carbon adsorption would not be BDT in some circumstances, EPA has added compliance provisions for incineration. It has been adequately demonstrated

that incineration can achieve a control efficiency comparable to that of carbon adsorption at a higher, yet reasonable cost.

Selection of Best Demonstrated Technology

The trade association commenter (IV-D-7) stated that the technology required to achieve the standard had not been demonstrated for most segments of the industry for the following reasons: (1) The emission testing program was not conducted under normal operating conditions and (2) the test data on residential wallcovering production did not adequately demonstrate that the control technology was applicable to the industry as a whole.

In regard to the applicability of the test data to the industry as a whole, the commenter questioned whether data and technology applicable to a residential wallcovering facility are transferable to or characteristic of other parts of the industry such as automotive trim, upholstery, and apparel. He cited several variables including solvents, raw materials, line speed, web widths, and coating applications which change depending on end-use of the product, stating that it is inadequate to use tests from one facility using one process to print one type of product as representative of the entire industry. Another commenter (IV-D-6) added that air management and testing of lines wider than 30 inches has not been demonstrated. He noted that the BID states that 30 inches would be a typical width for a new source but that the typical width for his lines is 57 to 60 inches. The trade association representative (IV-D-7) noted that solvents used to produce some products such as apparel are incompatible with carbon adsorption. He explained that incineration is probably the most flexible control option where process parameters are variable. Such variability would be desirable to enable a print line to produce different types of products. He listed three trade association members that use or plan to use incineration. The commenter felt that further study by EPA would be necessary to establish standards that reflect emissions reductions achievable through application of the best technological system demonstrated for the different categories of sources in the industry.

The discussion of EPA's emission testing program is included in the response to the comment on "Test Data on Capture System Efficiency." In regard to the applicability of carbon adsorption to the industry as a whole, EPA recognizes that there may be some

technological limitations to carbon adsorption. Therefore, the Agency contacted the three plants this commenter listed as having incinerators in use or being installed (IV-E-10, 11, 12). Only one of these plants has firm plans to install an incinerator. Based on these contacts and on comments outlining potential technical advantages, EPA has included compliance provisions for incineration. It appears that there may be potential situations where carbon adsorption could not be used or would not be the control device of choice, and, in these cases, incineration can be used. Incineration control efficiencies of 98 percent have been demonstrated (IV-B-8). Since incinerators can achieve higher control efficiencies than carbon adsorbers, incinerators should be able to meet the standard. For those cases in which incineration would be the preferred control method, the standard includes compliance provisions for incineration.

The standard appropriately applies to the entire vinyl printing and coating industry. In regard to the commenter's remark that the only print line tested was printing wallcovering, the rotogravure printing processes are substantially the same with respect to fugitive emission generation and capture, regardless of the vinyl printed product produced. Factors which affect the emissions from a printing line include equipment design parameters such as configurations of the dryers and print stations, air velocities at the fugitive capture points, and process and product parameters such as solvent volatilities, resin types, web widths, line speeds, and run lengths. The most important equipment design factor in reducing VOC emission by improved capture efficiency is design of the print heads and dryer to minimize exposure of the wet web as it travels from the print head to the dryer. To accomplish this, the print head can be almost completely enclosed by moveable doors or panels that can be readily opened for operator access. If these doors are panels made of transparent material, the print head will still be visible to the operator. The dryer can be designed so that the opening is very close to the point where the wet web leaves the print head and enters the dryer to assure that emissions enter the dryer rather than escape at this point. EPA believes that proper design of the print head-dryer relationship and associated air velocities are the key to achieving the demonstrated control efficiencies and that other parameters such as product type, web widths, line speeds, etc., have little effect on performance.

In a 1981 meeting of the Chemical Film and Fabrics Association (CFFA) and EPA (II-E-101), there appeared to be agreement that the main factor which affects the emissions from any flexible vinyl printing and coating print line is the design of the capture system. If the capture system is properly designed and operated, other equipment design and product parameters become much less important. Since the affected facility which prints wallcovering is the same rotogravure print line used to print other flexible vinyl products, a wallcovering rotogravure print line is representative of the industry. Most CFFA members present at the meeting apparently agreed with this position, although disagreement was later expressed by CFFA (II-D-89). (EPA's response to the CFFA letter II-D-89 is found at II-C-73.) The information in the docket (IV-B-7) supports EPA's conclusion.

EPA visited several flexible vinyl coating plants (II-B-7, II-B-9, II-B-11, II-B-13 through 19, II-B-21, II-B-22, II-B-24, II-B-25) that manufactured a variety of vinyl printed products including wallcovering, furniture upholstery, automobile upholstery, window shades, and awnings. Information from these plant visits supported the conclusions that capture system design and operation is indeed the key to achieving 90 percent capture and that tests of a wallcovering print line are representative of the entire vinyl printing industry.

Use of Inventory Records

Two commenters (IV-D-2, IV-D-5) addressed compliance provisions for facilities using waterborne inks. One commenter (IV-D-2), an ink manufacturer, felt that calculating the VOC content of each ink would be meaningless, add to overhead, and thus decrease profits because they have thousands of formulations and because they change formulations to meet customers' specifications. He agreed with the need to measure or calculate VOC content in the inks and suggested that ink manufacturers be allowed to submit general type formulations for families of inks and use approximate figures (plus or minus a certain percent) for VOC content. The second commenter (IV-D-5) felt that it was physically and economically infeasible for a facility using inks with an average VOC content of less than 1 kg VOC per kg ink solids to demonstrate compliance by determining and recording the VOC content of each ink used at the print head. He had explained this in previous comments dated October 20, 1981 (II-D-100), and resubmitted those comments with this letter. He pointed out that the

inks applied are a blend of recycled excess inks, solvent, water, and new inks. Due to recycling and addition of water and solvent, the commenter felt that ink manufacturer's data would be of little use to his company. He added that it would also be practically impossible to use Reference Method 24 for the large number of inks his company would apply per day. This would be 250 to 350 tests in on day for each of two plants.

The commenter suggested what he considered a more reasonable and more accurate compliance system where the average VOC content of the inks applied would be determined through the use of ink manufacturer's formulations, inventory and purchase records for new inks and diluents, the acceptance of recycled inks as being previously accounted for as new ink and diluent, and the measure of VOC content of discarded inks. This system was expressed by the following equation:

$$\text{Emission VOC} = \text{Ink VOC} + \text{Solvent VOC} - \text{Discard VOC} - \text{Blending and Storage VOC}$$

VOC diluent added at the press would be accounted for in the solvent inventory and purchase records. The commenter noted that a small amount of VOC would be lost from storage and blending of recycled inks, but that this loss would be of little significance to the compliance determination as the evaporation rate of the low VOC content inks would be slight and the resulting error would inflate the calculated VOC-to-solids ratio. He felt that this limited number of samples could be analyzed in outside laboratories and eliminate the creation of a need for analytical laboratories in printing facilities. He also pointed out that short-term use of solvent-based inks on primarily waterborne facilities would be accountable because the two systems are incompatible and will be easily differentiated in purchasing, inventory, and manufacturing records.

The commenter concluded by requesting that the requirement in § 60.583 (Test methods and procedures) to determine the VOC content of each ink as applied be deleted because it is not attainable for all facilities. He urged that the use of the weighted average be modified to provide credit for unused excess inks for determination of compliance. The commenter felt that the unreasonable cost of determining the VOC content of each waterborne ink, as applied, to comply with the proposed standard would discourage further development of waterborne inks.

EPA agrees that in some cases the method suggested in this comment would be preferable to the use of ink

manufacturer's formulation data or Reference Method 24. Therefore, points to be covered in petitioning the Administrator to use such a method have been added to Section 60.583(c). Under such a method, the operator would account for the VOC and solids content of new inks and dilution solvent directed to the print line during the averaging period. Credit would be given for VOC in discarded ink. Credit would also be given for inks that are to be recycled but are not yet recycled during the averaging period. Credit for these recycled inks is not to be taken again during the next averaging period. As the commenter stated, however, no credit can be given for VOC lost during blending and storage of recycled inks since this quantity cannot be easily measured. This quantity would be of little significance in the compliance determination.

The ink manufacturer (IV-D-2) explained that calculating VOC content of every formulation would be an excessive requirement and asked that ink manufacturers be allowed to submit general type of formulations and to approximate VOC content. This standard places no requirements on ink manufacturers. However, it is anticipated that, by allowing operators of affected facilities to use inventory and purchase records to account for VOC content and by easing the requirement to account for the content of each ink as used at the print head, this commenter (IV-D-5) may find some relief.

Paperwork Reduction Act

The reporting and recordkeeping requirements of the regulation are assessed in Standard Form 83 and an accompanying supporting statement, which are included in the docket (IV-H-4) for public review. This documentation contains (1) a description of the reporting and recordkeeping required by the regulation and the General Provisions, (2) the reasons for the requirements, (3) an evaluation of the major alternatives considered (including the use of existing sources of information), and (4) an estimate of the labor-hour burden of the requirements.

The General Provisions and the standard would require three types of reports: (1) Notification requirements which enable the Agency to keep abreast of facilities subject to the standard, (2) reporting of initial performance test results and continuous monitoring system performance evaluations, and (3) semiannual reporting of exceedances of the waterborne ink limitation or deviations

from the monitored parameters for carbon adsorption or incineration. Analysis of these reporting requirements (IV-H-4) indicates that they are both necessary and reasonable considering the savings in Agency time and resources required for effective enforcement.

The resources needed by the industry to maintain records and to prepare the reports for the first 2 years average about 0.36 person-years per year. The resources required by EPA and State and local agencies to process the reports and to maintain records for the first 2 years would average about 0.06 person-years per year.

Information collection requirements associated with this regulation (40 CFR 60.7, 60.8, 60.583, 60.584, and 60.585) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060-0073.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (Section 307(d)(7)(A)).

Miscellaneous

The effective date of this regulation is June 29, 1984. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities, construction or modification of which was commenced after the date of proposal (January 18, 1983).

As prescribed by Section 111, the promulgation of this standard was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of this promulgated standard was preceded by consultation with appropriate advisory

committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed four years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements. The reporting requirements in this regulation will be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under Section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. For the purposes of the economic impact assessment, three regulatory alternatives were identified. Regulatory Alternatives I, II, and III called for 65, 75, and 85 percent overall reduction of VOC, respectively. All aspects of the assessment were considered in the formulation of the standards to insure that cost was carefully considered in determining BDT. The economic impact assessment is included in the background information document for the proposed standard.

Under Executive Order 12291, the EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not "major" because: (1) The national annualized compliance costs, including capital charges resulting from the standards, total less than \$100 million; (2) the standards do not cause a major increase in prices or production costs; and (3) the standards do not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation or competition in foreign markets. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to the EPA and any EPA response to those comments are included in docket number A-81-03. The docket is available for public inspection at the EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

Regulatory Flexibility Analysis

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant impact on a substantial number of small

business entities. There are approximately 107 plants that manufacture vinyl products and about five companies that manufacture urethane products, one of which would be considered small. The economic analysis conducted for small vinyl manufacturers indicated no significant impacts. Similarly, it is not expected that the standard will significantly impact small urethane manufacturers. Further, this standard will have no impact on any other small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

Dated: June 15, 1984.

William D. Ruckelshaus,
Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended by adding a new Subpart FFF to read as follows:

Subpart FFF—Standards of Performance for Flexible Vinyl and Urethane Coating and Printing

- Sec.
- 60.580 Applicability and designation of affected facility.
 - 60.581 Definitions and symbols.
 - 60.582 Standard for volatile organic compounds.
 - 60.583 Test methods and procedures.
 - 60.584 Monitoring of operations and recordkeeping requirements.
 - 60.585 Reporting requirements.

Authority: Secs. 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart FFF—Standards of Performance for Flexible Vinyl and Urethane Coating and Printing

§ 60.580 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each rotogravure printing line used to print or coat flexible vinyl or urethane products.

(b) This subpart applies to any affected facility which begins

construction, modification, or reconstruction after January 18, 1983.

(c) For facilities controlled by a solvent recovery emission control device, the provisions of § 60.584(a) requiring monitoring of operations will not apply until EPA has promulgated performance specifications under Appendix B for the continuous monitoring system. After the promulgation of performance specifications, these provisions will apply to each affected facility under paragraph (b) of this section. Facilities controlled by a solvent recovery emission control device that become subject to the standard prior to promulgation of performance specifications must conduct performance tests in accordance with § 60.13(b) after performance specifications are promulgated.

§ 60.581 Definitions and symbols.

(a) All terms used in this subpart, not defined below, are given the same meaning as in the Act or in Subpart A of this part.

"Emission control device" means any solvent recovery or solvent destruction device used to control volatile organic compounds (VOC) emissions from flexible vinyl and urethane rotogravure printing lines.

"Emission control system" means the combination of an emission control device and a vapor capture system for the purpose of reducing VOC emissions from flexible vinyl and urethane rotogravure printing lines.

"Flexible vinyl and urethane products" mean those products, except for resilient floor coverings (1977 Standard Industry Code 3996) and flexible packaging, that are more than 50 micrometers (0.002 inches) thick, and that consist of or contain a vinyl or urethane sheet or a vinyl or urethane coated web.

"Gravure cylinder" means a plated cylinder with a printing image consisting of minute cells or indentations, specifically engraved or etched into the cylinder's surface to hold ink when continuously revolved through a fountain of ink.

"Ink" means any mixture of ink, coating solids, organic solvents including dilution solvent, and water that is applied to the web of flexible vinyl or urethane on a rotogravure printing line.

"Ink solids" means the solids content of an ink as determined by Reference Method 24, ink manufacturer's formulation data, or plant blending records.

"Inventory system" means a method of physically accounting for the quantity

of ink, solvent, and solids used at one or more affected facilities during a time period. The system is based on plant purchase or inventory records.

"Plant blending records" means those records which document the weight fraction of organic solvents and solids used in the formulation or preparation of inks at the vinyl or urethane printing plant where they are used.

"Rotogravure print station" means any device designed to print or coat inks on one side of a continuous web or substrate using the intaglio printing process with a gravure cylinder.

"Rotogravure printing line" means any number of rotogravure print stations and associated dryers capable of printing or coating simultaneously on the same continuous vinyl or urethane web or substrate, which is fed from a continuous roll.

"Vapor capture system" means any device or combination of devices designed to contain, collect, and route organic solvent vapors emitted from the flexible vinyl or urethane rotogravure printing line.

(b) All symbols used in this subpart not defined below are given the same meaning as in the Act or in Subpart A of this part.

"a" means the gas stream vents exiting the emission control device.

"b" means the gas stream vents entering the emission control device.

"f" means the gas stream vents which are not directed to an emission control device.

"C_{aj}" means the concentration of VOC in each gas stream (j) for the time period exiting the emission control device, in parts per million by volume.

"C_{bi}" means the concentration of VOC in each gas stream (i) for the time period entering the emission control device, in parts per million by volume.

"C_{fk}" means the concentration of VOC in each gas stream (k) for the time period which is not directed to an emission control device, in parts per million by volume.

"G" means the weighted average mass of VOC per mass of ink solids applied, in kilograms per kilogram.

"M_{ci}" means the total mass of each ink (i) applied in the time period as determined from plant records, in kilograms.

"M_{dj}" means the total mass of each dilution solvent (j) added at the print line in the time period determined from plant records, in kilograms.

"Q_{aj}" means the volumetric flow rate of each effluent gas stream (j) exiting the emission control device, in standard cubic meters per hour.

"Q_{abi}" means the volumetric flow rate of each effluent gas stream (i) entering

the emission control device, in standard cubic meters per hour.

"Q_{ak}" means the volumetric flow rate of each effluent gas stream (k) not directed to an emission control device, in standard cubic meters per hour.

"E" means the VOC emission reduction efficiency (as a fraction) of the emission control device during performance testing.

"F" means the VOC emission capture efficiency (as a fraction) of the vapor capture system during performance testing.

"W_{oi}" means the weight fraction of VOC in each ink (i) used in the time period as determined from Reference Method 24, manufacturer's formulation data, or plant blending records, in kilograms per kilogram.

"W_{si}" means the weight fraction of solids in each ink (i) used in the time period as determined from Reference Method 24, manufacturer's formulation data, or plant blending records, in kilograms per kilogram.

"W_{dj}" means the weight fraction of VOC in each dilution solvent (j) added at the print line in the time period determined from Reference Method 24, manufacturer's formulation data, or plant blending records, in kilograms per kilogram.

§ 60.582 Standard for volatile organic compounds.

(a) On and after the date on which the performance test required by § 60.8 has been completed, each owner or operator subject to this subpart shall either:

(1) Use inks with a weighted average VOC content less than 1.0 kilogram VOC per kilogram ink solids at each affected facility, or

(2) Reduce VOC emissions to the atmosphere by 85 percent from each affected facility.

§ 60.583 Test methods and procedures.

(a) Reference Methods in Appendix A of this part, except as provided under § 60.8(b), shall be used to determine compliance with § 60.582(a) as follows:

(1) Method 24 for analysis of inks. If nonphotochemically reactive solvents are used in the inks, standard gas chromatographic techniques may be used to identify and quantify these solvents. The results of Reference Method 24 may be adjusted to subtract these solvents from the measured VOC content.

(2) Method 25A for VOC concentration (the calibration gas shall be propane);

(3) Method 1 for sample and velocity traverses;

(4) Method 2 for velocity and volumetric flow rates;

(5) Method 3 for gas analysis;

(6) Method for stack gas moisture.

(b) To demonstrate compliance with § 60.582(a)(1), the owner or operator of an affected facility shall determine the weighted average VOC content of the inks according to the following procedures:

(1) Determine and record the VOC content and amount of each ink used at the print head, including the VOC content and amount of diluent solvent, for any time periods when VOC emission control equipment is not used.

(2) Compute the weighted average VOC content by the following equation:

$$G = \frac{\sum_{i=1}^n (W_{oi} M_{ci}) + \sum_{j=1}^m (W_{oj} M_{dj})}{\sum_{i=1}^n (M_{ci} W_{si})}$$

(3) The weighted average VOC content of the inks shall be calculated over a period that does not exceed one calendar month, or four consecutive weeks. A facility that uses an accounting system based on quarters consisting of two 28 calendar day periods and one 35 calendar day period may use an averaging period of 35 calendar days four times per year, provided the use of such an accounting system is documented in the initial performance test.

(4) Each determination of the weighted average VOC content shall constitute a performance test for any period when VOC emission control equipment is not used. Results of the initial performance test must be reported to the Administrator. Reference Method 24 or ink manufacturers' formulation data along with plant blending records (if plant blending is done) may be used to determine VOC content. The Administrator may require the use of Reference Method 24 if there is a question concerning the accuracy of the ink manufacturer's data or plant blending records.

(5) If, during the time periods when emission control equipment is not used, all inks used contain less than 1.0 kilogram VOC per kilogram ink solids, the owner or operator is not required to calculate the weighted average VOC content, but must verify and record the VOC content of each ink (including any added dilution solvent) used as determined by Reference Method 24, ink manufacturers' formulation data, or plant blending records.

(c) To demonstrate compliance with § 60.582(a)(1), the owner or operator

may determine the weighted average VOC content using an inventory system.

(1) The inventory system shall accurately account to the nearest kilogram for the VOC content of all inks and dilution solvent used, recycled, and discarded for each affected facility during the averaging period. Separate records must be kept for each affected facility.

(2) To determine VOC content of inks and dilution solvent used or recycled, Reference Method 24 or ink manufacturers' formulation data must be used in combination with plant blending records (if plant blending is done) or inventory records or purchase records for new inks or dilution solvent.

(3) For inks to be discarded, only Reference Method 24 shall be used to determine the VOC content. Inks to be discarded may be combined prior to measurement of volume or weight and testing by Reference Method 24.

(4) The Administrator may require the use of Reference Method 24 if there is a question concerning the accuracy of the ink manufacturer's data or plant records.

(5) The Administrator shall approve the inventory system of accounting for VOC content prior to the initial performance test.

(d) To demonstrate compliance with § 60.582(a)(2), the owner or operator of an affected facility controlled by a solvent recovery emission control device or an incineration control device shall conduct a performance test to determine overall VOC emission control efficiency according to the following procedures:

(1) The performance test shall consist of three runs. Each test run must last a minimum of 30 minutes and shall continue until the printing operation is interrupted or until 180 minutes of continuous operation occurs. During each test run, the print line shall be printing continuously and operating normally. The VOC emission reduction efficiency achieved for each test run is averaged over the entire test run period.

(2) VOC concentration values at each site shall be measured simultaneously.

(3) The volumetric flow rate shall be determined from one Method 2 measurement for each test run conducted immediately prior to, during, or after that test run. Volumetric flow rates at each site do not need to be measured simultaneously.

(4) In order to determine capture efficiency from an affected facility, all fugitive VOC emissions from the affected facility shall be captured and vented through stacks suitable for measurement. During a performance test, the owner or operator of an

affected facility located in an area with other sources of VOC shall isolate the affected facility from other sources of VOC. These two requirements shall be accomplished using one of the following methods:

(i) Build a permanent enclosure around the affected facility;

(ii) Build a temporary enclosure around the affected facility and duplicate, to an extent that is reasonably feasible, the ventilation conditions that are in effect when the affected facility is not enclosed (one way to do this is to divide the room exhaust rate by the volume of the room and then duplicate that quotient or 20 air changes per hour, whichever is smaller, in the temporary enclosure); or

(iii) Shut down all other sources of VOC and continue to exhaust fugitive emissions from the affected facility through any building ventilation system and other room exhausts such as print line ovens and embossers.

(5) For each affected facility, compliance with § 60.582(a)(2) has been demonstrated if the average value of the overall control efficiency (EF) for the three runs is equal to or greater than 85 percent. An overall control efficiency is calculated for each run as follows:

(i) For efficiency of the emission control device,

$$E = \frac{\sum_{i=1}^n (Q_{bi} C_{bi}) - \sum_{j=1}^m (Q_{aj} C_{aj})}{\sum_{i=1}^n (Q_{bi} C_{bi})}$$

(ii) For efficiency of the vapor capture system,

$$F = \frac{\sum_{i=1}^n (Q_{bi} C_{bi})}{\sum_{i=1}^n (Q_{bi} C_{bi}) + \sum_{k=1}^p (Q_{fk} C_{fk})}$$

(Sec. 114, Clean Air Act as amended [42 U.S.C. 7414])

§ 60.584 Monitoring of operations and recordkeeping requirements.

(a) The owner or operator of an affected facility controlled by a solvent recovery emission control device shall install, calibrate, operate, and maintain a monitoring system which continuously measures and records the VOC concentration of the exhaust vent stream from the control device and shall comply with the following requirements:

(1) The continuous monitoring system shall be installed in a location that is representative of the VOC concentration in the exhaust vent, at least two equivalent stack diameters from the exhaust point, and protected from interferences due to wind, weather, or other processes.

(2) During the performance test, the owner or operator shall determine and record the average exhaust vent VOC concentration in parts per million by volume. After the performance test, the owner or operator shall determine and, in addition to the record made by the continuous monitoring device, record the average exhaust vent VOC concentration for each 3-hour clock period of printing operation when the average concentration is greater than 50 ppm and more than 20 percent greater than the average concentration value demonstrated during the most recent performance test.

(b) The owner or operator of an affected facility controlled by a thermal incineration emission control device shall install, calibrate, operate, and maintain a monitoring device that continuously measures and records the temperature of the control device exhaust gases and shall comply with the following requirements:

(1) The continuous monitoring device shall be calibrated annually and have an accuracy of ± 0.75 percent of the temperature being measured or $\pm 2.5^\circ\text{C}$, whichever is greater.

(2) During the performance test, the owner or operator shall determine and record the average temperature of the control device exhaust gases. After the performance test, the owner or operator shall determine and record, in addition to the record made by the continuous monitoring device, the average temperature for each 3-hour clock period of printing operation when the average

temperature of the exhaust gases is more than 28°C below the average temperature demonstrated during the most recent performance test.

(c) The owner or operator of an affected facility controlled by a catalytic incineration emission control device shall install, calibrate, operate, and maintain monitoring devices that continuously measure and record the gas temperatures both upstream and downstream of the catalyst bed and shall comply with the following requirements:

(1) Each continuous monitoring device shall be calibrated annually and have an accuracy of ± 0.75 percent of the temperature being measured or $\pm 2.5^\circ\text{C}$, whichever is greater.

(2) During the performance test, the owner or operator shall determine and record the average gas temperature both upstream and downstream of the catalyst bed. After the performance test, the owner or operator shall determine and record, in addition to the record made by the continuous monitoring device, the average temperatures for each 3-hour clock period of printing operation when the average temperature of the gas stream before the catalyst bed is more than 28°C below the average temperature demonstrated during the most recent performance test or the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference of the device during the most recent performance test.

(d) The owner or operator of an affected facility shall record time periods of operation when an emission control device is not in use.

(Sec. 114, Clean Air Act as amended (42 U.S.C. 7414))

(Approved by the Office of Management and Budget under the control number 2060-0073)

§ 60.585 Reporting requirements.

(a) For all affected facilities subject to compliance with § 60.582, the performance test data and results from the performance test shall be submitted to the Administrator as specified in § 60.8(a).

(b) The owner or operator of each affected facility shall submit semiannual reports to the Administrator of occurrences of the following:

(1) Exceedances of the weighted average VOC content specified in § 60.582(a)(1);

(2) Exceedances of the average value of the exhaust vent VOC concentration as defined under § 60.584(a)(2);

(3) Drops in the incinerator temperature as defined under § 60.584(b)(2); and

(4) Drops in the average temperature of the gas stream immediately before the catalyst bed or drops in the average temperature across the catalyst bed as defined under § 60.584(c)(2).

(c) The reports required under paragraph (b) shall be postmarked within 30 days following the end of the second and fourth calendar quarters.

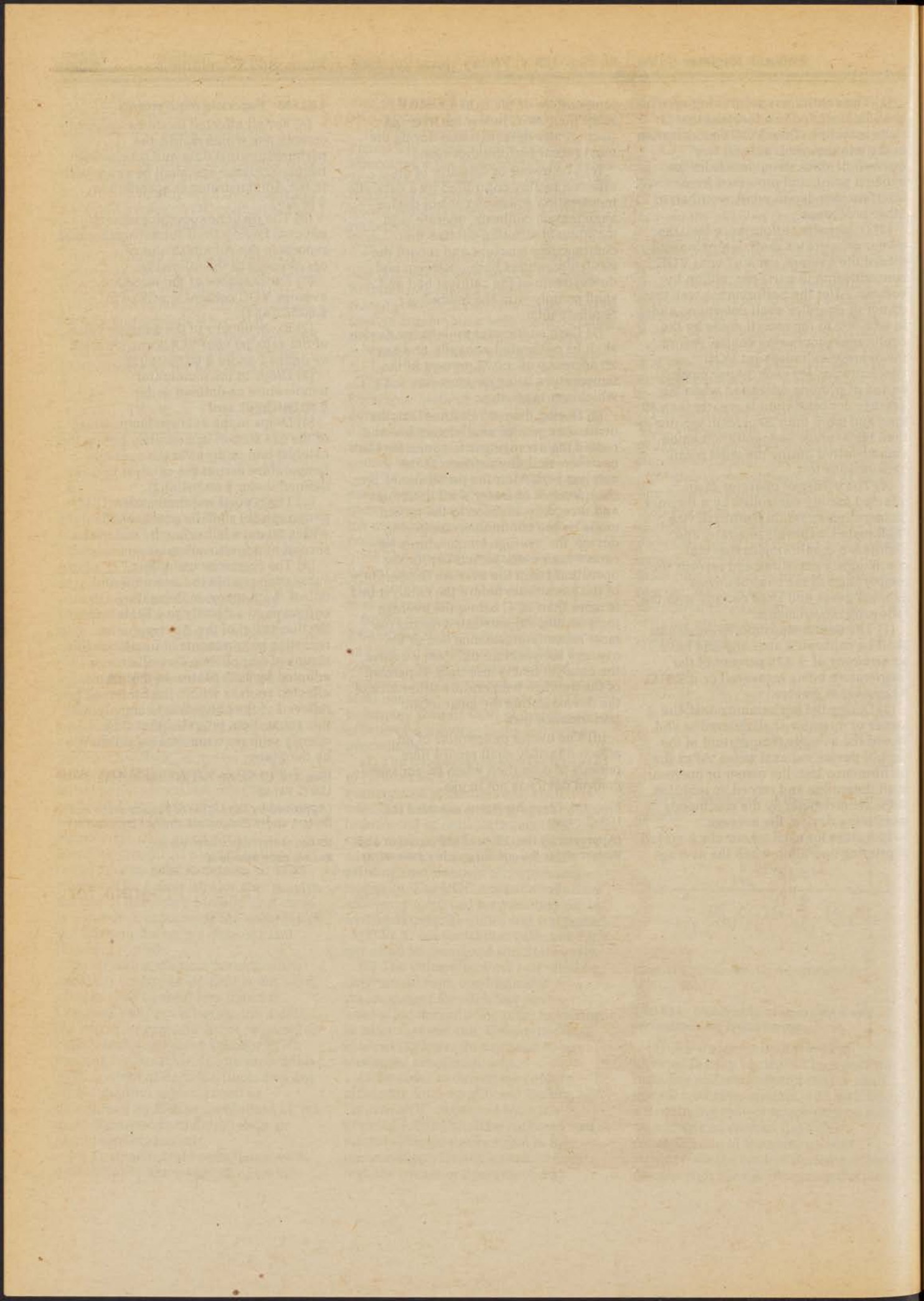
(d) The requirements of this subsection remain in force until and unless the Agency, in delegating enforcement authority to a State under Section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such States. In that event, affected sources within the State will be relieved of the obligation to comply with this subsection, provided that they comply with requirements established by the State.

(Sec. 114, Clean Air Act as amended (42 U.S.C. 7414))

(Approved by the Office of Management and Budget under the control number 2060-0073)

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Friday
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Part IV

Department of the Interior

Office of Surface Mining Reclamation and
Enforcement

30 CFR Part 942
Surface Mining and Reclamation
Operations Under a Federal Program for
Tennessee; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

Surface Mining and Reclamation Operations Under a Federal Program for Tennessee

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior proposes to promulgate a Federal program for regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in the State of Tennessee. This includes the surface effects of underground coal mining. This program is necessary in order to regulate surface coal mining activities because of the State Legislature's repeal of the Tennessee Coal Surface Mining Act and regulations effective October 1, 1984. OSM is also proposing to withdraw approval of the Tennessee regulatory program and to suspend Tennessee's Abandoned Mine Land Reclamation Plan. Approval of the State's regulatory program and Reclamation Plan on August 10, 1982, provided the State with exclusive responsibility for regulating surface coal mining activities and administering a reclamation program for restoring land and water resources adversely affected by past mining practices. The Federal Surface Mining Act, however, makes continued funding for the Reclamation Plan contingent on the state having an approved regulatory program.

DATES: Written comments will be accepted until 5:00 p.m. on August 8, 1984 at the administrative record address indicated below. A public hearing will be held on August 3, 1984 as indicated below under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Written comments must be mailed to: Administrative Record Room (R & I-21), Office of Surface Mining, 530 Gay St. SW., Knoxville, TN 37902.

The public hearing will be held at the Hyatt House, 500 Hill Avenue SE., Knoxville, Tennessee 37901.

FOR FURTHER INFORMATION CONTACT: James A. Curry, Field Office Director, OSM, 530 Gay Street SW., Knoxville, TN 37902 (ph. 615-673-4504); and James M. Kress, Office of Surface Mining, Branch of Regulatory Programs, Rm. 222, 1951 Constitution Avenue, NW., Washington, DC 20240 (ph. 202-343-5361).

SUPPLEMENTARY INFORMATION:

Availability of Copies

Copies of the proposed Tennessee Federal regulatory program are available for inspection and may be obtained at the OSM offices listed above under **ADDRESSES**.

Public Comment Period

The comment period on this proposed program will extend until August 8, 1984. All comments must be received at the location listed above under **ADDRESSES** by the close of business on that date. All written comments received, summaries of public meetings held at the request of any person or organization to receive advice and recommendations concerning the program with representatives of OSM, and other documents comprising the administrative record on the Tennessee Federal program will be made available for public review during regular business hours at the OSM location listed above under **ADDRESSES**.

Comments should be as specific as possible, focus on the issues of this rulemaking, and provide reasons for any recommendations. OSM will not consider comments that do not pertain to the issues in this rulemaking. Nor can OSM ensure consideration of comments received after the comment period ends or those delivered to an address other than that specified.

A rulemaking notice appeared on June 28, 1984, adding a new § 942.736 which established a public comment period of 40 days for a Tennessee Federal program. The rule established an exception to the requirement of 30 CFR 736.13(b) in light of the need to have the Tennessee Federal program in effect by October 1, 1984.

Public Hearing

A public hearing is scheduled for August 3, 1984 at the Hyatt House, 500 Hill Avenue SE., Knoxville, Tennessee 37901. The hearing will be divided into daytime and evening sessions. The daytime hearing will begin at 9:00 a.m. and will continue until all persons then in attendance during the day wishing to present testimony have had an opportunity to do so. The evening session will begin at 7:00 p.m. to allow persons to present testimony who are unable to attend the daytime hearing.

The hearing will be legislative in nature. Persons wishing to present testimony should contact the Field Office Director at least five (5) days before the hearing date. A written statement submitted with oral presentation would be helpful to the presiding OSM officials.

A rulemaking notice appeared on June 28, 1984, adding a new § 942.736 which provided that a public hearing will be held between 30 and 40 days after publication of a proposed Tennessee Federal program. The rule established an exception to the requirement of 30 CFR 736.13(b) in light of the need to have the Tennessee Federal program in effect by October 1, 1984.

To assist the reader, this preamble is arranged as follows:

- I. Proposed Withdrawal of State Program Approval
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I. Proposed Withdrawal of State Program Approval

A. Withdrawal of Regulatory Program Approval

On August 10, 1982, the State of Tennessee received conditional approval of its permanent regulatory program. 47 FR 34753. Because of problems identified in the State's implementation, maintenance and enforcement of its program, the Director of OSM on April 8, 1983, notified the Governor of the problems and sought corrective measures pursuant to 30 CFR Part 733. See the notice of public hearing at 48 FR 22541 (May 19, 1983). The State failed to adequately indicate its intent and capability to implement, maintain and enforce its regulatory program. By final rulemaking notice published on April 18, 1984, 49 FR 15496, OSM assumed direct Federal enforcement of the inspection and enforcement portions of the Tennessee regulatory program pursuant to 30 CFR 733.12 because of the State's failure to adequately implement certain parts of its program. The State's statute and pertinent program regulations that OSM would be enforcing appeared in the *Federal Register* on May 18, 1984, 49 FR 21140.

By action of the State Legislature on May 16, 1984, most of the Tennessee Coal Surface Mining Law of 1980, Tennessee Code Annotated §§ 59-8-301-59-8-339, was repealed effective October 1, 1984. The legislation also repealed the implementing regulations for the regulatory program effective the same date.

With the action of the State Legislature, Secretarial withdrawal of state regulatory program approval would be a formality. Under Section 503(a)(1) of the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or the "Act"), 30 U.S.C. 1253(a)(1), to achieve and retain primacy a coal-producing state must have a law which provides for the regulation of surface coal mining and reclamation operations in accordance with the Act. The State's failure to have a surface mining law cannot be cured by substitution of Federal enforcement. Pursuant to 30 CFR 733.12(g), the Secretary is to withdraw program approval if the failure of the state to administer or enforce its program cannot be remedied by substitution of Federal enforcement of the program.

Therefore, OSM proposes to withdraw approval of the Tennessee permanent regulatory program in full effective October 1, 1984. On and after that date, OSM would be the regulatory authority in Tennessee.

B. Suspension of Abandoned Mine Land Plan

Title IV of the Surface Mining Act establishes an Abandoned Mine Land (AML) program for the purposes of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under state or Federal law. Title IV provides that a state with an approved surface mining regulatory program may have an AML plan approved which gives it the responsibility and primary authority to implement the plan. On August 10, 1982, Tennessee's plan was approved. 47 FR 34757.

Section 405(c) of the Act provides that the Secretary shall not approve, fund or continue to fund a state AML unless that state has an approved state regulatory program pursuant to Section 503 of the Act. Regulation implementing this provision are found in 30 CFR 884.16 and 886.18. Upon withdrawal of regulatory program approval, the Director of OSM must suspend the AML plan.

If the Director determines that a state reclamation plan should be suspended and the AML grants terminated, the Director must notify the state by mail of the proposed action. The notice must state the reasons for the proposed action and provide the state 30 days to show

cause why such action should not be taken. The Director will afford the state an opportunity for consultation, including a hearing, if requested, and performance of remedial action prior to suspension. The Director will notify the State of the proposed suspension of its Reclamation Plan. The State was informed that no further projects would be funded after assumption of Federal enforcement of the regulatory program. 49 FR 15505.

Formal suspension of a state's Reclamation Plan will have the following consequences: 1) the state will not longer be eligible to receive its 50% allocation of the AML funds collected within the state; 2) funds which have been allocated to the state but have remained unexpended for three years may be withdrawn by the Director and used in any eligible area in the country; and 3) OSM will conduct only limited reclamation efforts in the state addressing only the highest priority problems which threaten the public health and safety.

II. Federal Programs Generally

Under Section 504(a) of the Act, 30 U.S.C. 1254(a), the Secretary of the Interior (the Secretary) is required to promulgate a Federal program in a state for, among other reasons, the failure of a state granted primary regulatory responsibility to adequately implement, enforce or maintain its program. Upon promulgation of a Federal regulatory program, the Secretary becomes the regulatory authority. *Id.*

Once a decision is made that a Federal regulatory program is necessary for a state, the Secretary must make several determinations in promulgating a program. Section 504(a) of the Act requires that the Secretary take into consideration the nature of the state's terrain, climate, biological, chemical, and other relevant physical conditions. This requirement is also set forth in the regulations for the promulgation of Federal programs, 30 CFR Part 736. The Act (Section 505(b)) and the regulations (30 CFR 736.22(a)(1)) also provide that if a state has more stringent land use and environmental protection laws or regulations, they shall not be construed to be inconsistent with the Act or the Secretary's regulations. The Secretary believes that the requirements of section 505(b) can best be met by identifying any state laws and regulations which may impose more stringent environmental controls and by then listing them in the Federal program. If the state's laws or regulations establish more stringent standards than those of the Act or the Secretary's regulations in 30 CFR Chapter VII, or if the state

regulates any aspect of the environment which neither the Act nor the Secretary's regulations protect, the Secretary would then specifically preserve those state standards in the Federal program. By identifying any state laws as more stringent than Federal surface coal mining statutory and regulatory standards, however, the Secretary would not be assuming any responsibility to enforce such state laws.

Also, in promulgating a Federal program, section 504(g) of the Act specifies that any state statutes or regulations which regulate surface mining and reclamation operations are to be identified by the Secretary and will be superseded and preempted to the extent that they interfere with the achievement of the purposes and requirements of the Act and Federal program. This provision is reinforced by section 505(a) which states that only inconsistent state laws shall be superseded by any provision of the Act or regulation. State statutes and rules regulating the same activities as those covered by the Federal law and regulations and which do not provide as much protection as do the Federal law and regulations are considered to interfere with achievement of the purposes of the Act. Accordingly, they must be identified and preempted.

Federal programs are based on the Secretary's permanent program regulations. 30 CFR Subchapters A, F, G, H, J, K, L, and M. The permanent program regulations implement five essential aspects of the surface coal mining regulatory program: permitting, performance standards, designation of lands as unsuitable for mining, bonding, and inspection and enforcement. These rules form the benchmark for state regulatory programs. In order for a state to have a regulatory program approved, section 503(a)(7) of the Act requires that the state's rules and regulations be consistent with the Secretary's regulations.

The permanent program rules refer to the "regulatory authority." Under a Federal program, that is the Secretary. Act, section 701(22). The Secretary has delegated all of his authority under the Act to the Assistant Secretary for Land and Minerals Management. Secretarial Order No. 3013 (Nov. 9, 1977); Order No. 3099 (Dec. 22, 1983). With limited exceptions, the Assistant Secretary has in turn redelegated all of this authority under the Act to the Director of OSM. 216 Departmental Manual 1 (November 9, 1977). Thus, the Director of OSM is the official directly responsible for the

implementation of a Federal regulatory program.

The parts of the permanent regulatory program rules that must be included in a Federal program are listed in 30 CFR 736.22(b). They include the general requirements and definitions (Parts 700 and 701), the exemption for coal extraction incident to government-financed highway or other construction (Part 707), the designation of lands as unsuitable for surface mining (Parts 760, 761, 762, and 765), permits and permit applications (Subchapter G), small operator assistance (Subchapter H), reclamation bonding (Subchapter J), performance standards (Subchapter K), inspection and enforcement (Parts 842, 843 and 845), and blaster training and certification (Subchapter M). In addition, the provisions in the permanent regulations on protection of employees (Subchapter P) and restrictions on financial interests (Part 706) are applicable to Federal employees who, in the instance of a Federal regulatory program, are directly enforcing the Act.

Federal programs are promulgated by means of cross-referencing the permanent program rules which set the substantive standards. The proposed Federal regulatory program for Tennessee would replace the current 30 CFR Part 942. In the new program, sections on various topics would cross-reference the counterpart permanent program rules on those topics. For example, for general requirements for permits and permit applications, the proposed § 942.771 of the Tennessee Federal regulatory program would cross-reference 30 CFR Part 771 of the permanent program rules by stating that 30 CFR Part 771 shall apply to any person who makes application for a permit to conduct exploration of surface coal mining operations. Cross-referencing avoids duplication of the full text of the permanent regulatory program rules for each Federal program.

If a particular permanent program regulation needs to be modified for use in a Federal program, an additional paragraph of the Federal program rule would be added to modify the permanent regulatory program standard for the that Federal program state or to add additional requirements or standards. If more than one standard needs to be modified in any particular permanent program rule, additional paragraphs would be added to the Federal program section. For example, if an additional permit application requirement is identified for the Tennessee Federal program, a paragraph (b) would be added to the

proposed § 942.771 to accomplish this. This is one means of implementing the mandate of Section 504(a) of the Act this in promulgating a Federal program the Secretary take into consideration relevant conditions in the state.

One effect of cross-referencing in a Federal program is that if a permanent program rule is revised, the corresponding Federal program rule would be similarly revised. However, the notice of proposed rulemaking would invite comments not only on the proposed rule generally, but also on how it might affect a particular Federal program. If certain changes were needed for a Federal program, then a separate provision would be added to the Federal program provision which is the counterpart to the permanent program rule.

Several provisions of the permanent program rules are already applicable to all Federal programs because they were fully promulgated for application to all regulatory programs and, therefore, need not be cross-referenced. Those provisions are 30 CFR Chapter VII, Subchapter P—Protection of Employees; Part 706—Restrictions on Financial Interests of Federal Employees; and Part 769—Petition Process for Designation of Federal Lands Unsuitable for Surface Coal Mining. 30 CFR Part 764—Designating Lands Unsuitable for Surface Coal Mining is included in this proposed Federal program by cross-reference under § 942.764 to provide a petition process on non-Federal lands in Tennessee. Also, Part 760 is not included because its provisions do not provide any substantive requirements. Instead, it imposes requirements on the Secretary and his delegates which need not be incorporated in each Federal program. Part 765 is not included because it is directly applicable to a Federal program state without being cross-referenced. Parts 810 and 840 are also not included because they are unnecessary to a Federal program.

III. Tennessee Federal Program

A. Federal/State Program Interface and Transition

The Federal program for Tennessee would be the first such permanent program for a state in which approval of the state regulatory program would be withdrawn. Previously, Federal programs have been promulgated for states which have chosen not to submit programs. See, e.g., the Washington Federal program, 48 FR 7883 (Feb. 24, 1983). In promulgating the previous Federal programs, state statutes and regulations which regulated an aspect of surface coal mining and reclamation

were examined to determine whether there were any provisions which would either interfere with a Federal program or set more stringent environmental protection standards. In the case of Tennessee, however, except for retaining very limited authority to regulate (as explained below) surface coal mining and reclamation activities, the State, by passage of the repealing legislation, has chosen to remove itself from any regulatory function in that area. Therefore, on general review of state statutes and regulations has been undertaken in promulgating this proposed Federal regulatory program.

The Tennessee legislation repealing the state regulatory program statute and regulations establishes several areas of limited state jurisdiction. Criminal penalties are established for any person who willfully and knowingly mines more than 25 tons of coal in any 12 successive calendar months without first obtaining a permit from the "primary regulatory authority pursuant to [the Federal Act] or without a permit for such mine obtained * * * prior to [October 1, 1984] * * *." Exceptions are then set for the extraction of coal incident to government-financed construction and construction operations affecting less than one acre where coal removal is an incidental part of the project.

Under section 528(1) of the Federal Act, a landowner may remove coal for his noncommercial use free from regulation. Under section 528(2) of the Act, surface coal mining operations affecting two acres or less are not subject to the Act. Also, under section 528(3), the extraction of coal as an incidental part of government-financed construction is exempt from regulation. Because of these exemptions in the Act, OSM cannot exercise any jurisdiction over such operations. Therefore, OSM does not propose to preempt the State with respect to surface coal mining activities which remove more than 25 tons of coal during a 12 successive calendar month period, which affect areas larger than one acre and which are not part of government-financed construction projects. However, the provision in the repealing legislation mentions the "primary regulatory authority." The term is not defined. Presumably, on October 1, 1984, the Secretary, acting through OSM, would become the "primary" regulatory authority. But since OSM cannot exert jurisdiction over surface coal mining activities affecting two acres or less, government-financed construction projects incidentally removed coal or extraction by a landowner for his noncommercial use, it cannot issue

permits for any such activities. Therefore, only those operations which have obtained a permit under the Tennessee program and come within the exceptions of section 528 of the Act could conceivably be allowed to continue without being in violation of the repealing legislation sanctions. Enforcement, nevertheless, would be a matter for the State to pursue where the operation is exempt under the Act. However, OSM retains the right to determine, on a case-by-case basis, whether any surface coal mining operation is affecting more than two acres, is incidental to a government-financed construction project or is conducted by a landowner for his noncommercial use. Furthermore, the Federal program would require a permit for any operations affecting more than two acres. Failure to have such a permit would be a violation of the Federal program and would be subject to enforcement action by OSM. The Secretary concludes preliminarily, subject to public comment on this proposed program, that the provisions of the repealing legislation discussed here would not interfere with achievement of the purposes of the Federal program. Therefore, they are not proposed to be preempted or superseded.

After promulgation of this Federal program, the State would also continue to regulate water quality under the National Pollution Discharge Elimination System (NPDES). Section 508(a)(9) of the Federal Act requires an applicant to demonstrate how he will comply with, *inter alia*, applicable water quality laws, and section 702(a)(3) provides that the Act shall not affect the Federal Water Pollution Control Act or any state laws enacted pursuant to that law. In the permanent program rules on water quality, 30 CFR 816.41(e) provides for surface water monitoring reporting consistent with the NPDES. Also, 30 CFR 816.42 requires compliance with applicable state and Federal water quality standards and effluent limitations set by the Environmental Protection Agency.

The State Board of Reclamation Review would continue to hear cases before it. Tenn. Code Ann. § 59-8-321. The repealing legislation modified its authority in only a limited way.

Under the repealing legislation, the Board retains jurisdiction over (1) all persons who conducted surface coal mining prior to May 3, 1978 and who have not had their bond fully released, and (2) all persons who have permits issued by the State and who have had bond forfeiture initiated against them. However, the legislation provides with

respect to the latter category that if the Secretary exercises jurisdiction over such forfeitures, the retention of jurisdiction is removed. For the first category, OSM has no authority to assert jurisdiction; therefore, Tennessee jurisdiction would not constitute interference with the achievement of the Federal program's purposes. With respect to the second category, however, the assumption of Federal enforcement announced on April 18, 1984, 49 FR 15496, indicated that Federal inspectors would be conducting inspections on sites on which bond forfeiture had been initiated. In view of the fact that the State retains a bond made payable to it or has collateral in its possession, OSM will not assume jurisdiction over such sites for purposes of bond forfeiture so long as the State continues to proceed with bond collection and to undertake any reclamation work. Continued administrative action by the Board with respect to bond forfeitures would not interfere with the purposes of a Federal program.

For those interim program bonds for which the Tennessee Department of Health and Environment has not commenced forfeiture, OSM is considering whether it can assume any responsibility with respect to them. There is no requirement under the Act for a reclamation bond until a permanent program permit is to be issued. SMCRA § 509(a). Therefore, OSM may lack authority to require an assignment of the bond. Nevertheless, such operations are subject to the interim program performance standards, as is being made clear by a proposed rule at § 942.701 and OSM will continue to inspect such sites. Should a violation be detected, the appropriate enforcement action will be taken. If the decision is made that the Act does authorize the regulatory authority to assume responsibility with respect to interim program bonds, then an assignment of those bonds to the United States would be required in order for OSM to take any action under them. The final rule notice will indicate what action, if any, OSM will take.

One important consequence of the promulgation of a Federal program is the triggering of Federal laws and regulations which are made applicable through Federal agency action. One such law is the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* For certain OSM actions taken after the promulgation of the program NEPA compliance is required. Promulgation of program itself is exempt from compliance under section 702(d) of the Act. In addition to NEPA, OSM must

comply with other Federal laws. Those laws are identified in 30 CFR 773.12. Compliance with the those laws, as well as NEPA, may require obtaining information from a permit applicant in addition to that specified in 30 CFR Chapter VII, Subchapter G. A provision is proposed to be added to § 942.773 to allow OSM to require a permit applicant to furnish any additional information. OSM invites comment on whether proposed § 942.773 should provide more specificity for those requirements.

Section 504(d) of the Act directs the Secretary to undertake, immediately after promulgation of a Federal program, the review of permits issued under the state program. With the assumption of Federal enforcement of the state program, intensive oversight of the State's permitting activities was initiated. Upon publication of the final rulemaking notice, that effort would be converted into a full review of each outstanding permit. OSM anticipates that discussions with the State will result in making all state records available to OSM to aid in the process. Should the decision be made that a permit revision is required, the permittee will be given adequate notice of the required change. The Federal rules in 30 CFR 774.11 now call for the review of a permit at least mid-way during its term. 30 CFR 773.11(a) establishes a procedure for review in the instance of promulgation of a Federal program. Therefore, a rule is proposed to be added at § 942.776 which would cover more specifically the review of the permits issued by Tennessee under its permanent regulatory program. However, for those permittees who have posted a reclamation bond made payable to the State of Tennessee only, OSM may require immediately upon the effective date of the Federal program that the payee be changed to include the United States.

Under the soon-to-be repealed State Coal Surface Mining Law of 1980, Tenn. Code Ann. § 59-8-335, operators in Tennessee were required to comply with the performance standards upon the effective date of the statute and regulations adopted pursuant to the statute. This scheme is different than that in the Act which requires operators to adhere to permanent program standards upon the issuance of permits. Act sections 515(a) and 516(b), which, depending on the delay in issuance of permanent program permits, can and has occurred much later than Secretarial approval of the regulatory program. Until final promulgation of a Federal program, OSM will enforce the performance standards of the Tennessee

program whether or not an operator has been issued a permanent program permit, as long as such an operator has filed an application timely. However, on and after the effective date of a Federal program, the permanent program performance standards will be applicable to those surface coal mining operations in Tennessee which have been issued permits—either by OSM or the State. Permanent program permits issued by Tennessee will be reviewed as indicated above and operators will be given adequate notice and opportunity to revise their permits should OSM determine that such revision is necessary. If there are any operators in Tennessee conducting surface coal mining and reclamation operations who have filed complete applications and have not had permits issued to them, then notwithstanding the provision of the repealed § 59-8-335 the permanent program performance standards will not be applicable to them until permit issuance. Nevertheless, the Federal interim program standards, 30 CFR Chapter VII, Subchapter B, will be applicable. A rule is proposed to be added at § 942.701 to make clear that the interim program rules are applicable to operations which do not have permanent program permits.

For operators who have posted reclamation bonds with the State under its permanent regulatory program or who have given the State collateral to guarantee reclamation, OSM will be reviewing the adequacy of those bonds in the permit review process. If it is determined that a bond amount is inadequate, the operator would be notified that additional bond must be posted. If notice has not previously been that the payee must be changed to include the Federal government, OSM will require that the permittee either post a new bond which is payable to "The United States or the State of Tennessee" or to provide an executed document from the surety adding the United States as payee. It was indicated in the decision to assume Federal enforcement of the program that all bonds accepted by the State after the Federal assumption of enforcement would have to be made payable to "The United States or the State of Tennessee." 49 FR 15505. This would continue to be a requirement in the meantime and during the Federal program in the event that the State reassumes primary regulatory authority. For all operators who have posted bonds with the State and against which forfeiture has not been initiated prior to October 1, 1984, they would have to execute assignments of the bonds or

have to post new bonds. A provision is proposed to be added at § 942.800(b) to establish these requirements. OSM is considering making it mandatory upon the effective date of the Federal program that permittees change the payee of already-posted reclamation bonds to include the United States.

OSM will administer the Small Operator Assistance Program (SOAP) under Subchapter H, Part 795, of the permanent program rules which are proposed to be cross-referenced in § 942.795. See 48 FR 2272 (Jan. 18, 1983) and 48 FR 44780 (September 30, 1983). Complete assumption of administration of the SOAP is expected to occur no later than October 1, 1984. The State has already indicated that it would like OSM to assume Federal administration of the SOAP. A notice may appear in the *Federal Register* announcing OSM assumption of the state SOAP pursuant to the proceeding under 30 CFR Part 733. Even if that assumption does not take place, OSM expects that all prior SOAP contracts awarded by the State will be completed by that date. OSM plans to be in a position to receive applications for assistance after August 30, 1984. Applications for assistance can be secured from the Knoxville Field Office Director. Completed applications should also be submitted to that office. Should any small operator be notified through the OSM permit review that their permit needs revision in connection with the determination of the probable hydrologic consequences or the results of test borings, they may apply for assistance in having the work done.

The State has considered and decided two petitions to designate lands as unsuitable for surface coal mining. One petition was granted, the other denied. However, both are under administrative review. The Federal Act provides no guidance on the extent to which a decision by a state on a petition must be recognized by OSM in the situation at hand. Comment is specifically invited on whether OSM should defer to the decisions on the petitions, especially in light of their present lack of administrative finality.

Final decisions have not been made as yet on many of the details of a Federal program for Tennessee, particularly administrative and other matters which need not be included in a regulation. By the time of final rulemaking notice, some of the decisions will have been made. The final rulemaking notice will provide as much information as possible on the details that have been resolved by that time. However, questions in the meantime should be directed to the Knoxville Field

Office indicated above under **FOR FURTHER INFORMATION CONTACT.**

B. Content and Organization of the Federal Program

The content and organization of the Federal program for Tennessee follows the permanent program regulations. But, as discussed above, instead of the full text appearing, each section includes only a reference to the pertinent permanent program regulatory part. No provisions of Tennessee state law (other than those in the soon-to-expire Coal Surface Mining Law) have been identified as being more stringent than the Federal standards, and no state laws or rules have been identified as interfering with achievement of the purposes of the Federal program. However, several Tennessee laws are identified in § 942.762(b) which the Office will rely upon in considering petitions to designate or terminate lands as unsuitable for surface coal mining. Comment is specifically invited on whether there may be such state laws and regulations. If any are identified, the final rulemaking notice may add subsections to § 942.700 specifically preserving or preempting the state laws and regulations.

In instances where additional standards may provide concrete direction to an operator, the Tennessee surface coal mining regulations have been examined in order to determine where and how the State chose to establish additional standards. Only one such standard, involving revegetation success standards for bond release, is proposed to be added. See § 942.816(b) and .817(b). Options for the addition of other standards are proposed to several performance standards and to the definition of the term "support facilities." Other such additions may be advocated by commenters or they may urge modification of the permanent program standard which is being adopted by cross-reference in the Federal program. If such changes are to be made in the final rule, the result would be an addition to the permanent program rule indicating additional or modified requirements applicable only to the Tennessee Federal program. Where additions are proposed to the permanent program rules in this program, the term "Office" is used. It means the Office of Surface Mining Control and Reclamation Enforcement—OSM.

The content and organization of the proposed Tennessee Federal program are based on the following provisions of the Federal permanent program regulations, 30 CFR Chapter VII:

Subchapter A—General

Subchapter F—Areas Unsuitable for Mining

Subchapter G—Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Systems under Regulatory Program

Subchapter H—Small Operator Assistance

Subchapter J—Bond and Insurance Requirements for Bonding of Surface Coal Mining and Reclamation Operations

Subchapter K—Permanent Program Performance Standards

Subchapter L—Permanent Program Inspection and Enforcement Procedures

Subchapter M—Training Program for Blasters and Members of Blasting Crews, and Certification Programs for Blasters

Technical literature cited by OSM in the preambles to the permanent regulatory program (44 FR 14901-15309, March 13, 1979) and the regulatory reform rulemaking notices ending September 30, 1983, was relied upon in developing the Tennessee Federal program. The reader is referred to those preambles for a discussion of the basis and purpose of the permanent program rules referenced in the Tennessee program without substantive change.

The numbering system of the permanent program regulations has been incorporated into the numbering system for the Tennessee Federal program. Subchapter I in 30 CFR Chapter VII has been established to include regulatory programs by state in alphabetical order. Each state is assigned a part number; the regulatory program for Tennessee is assigned Part 942. The Federal program would replace the current contents of the part once promulgated in final. Program elements have been categorized under headings similar to the subchapter titles of the permanent program CFR parts.

C. Detailed Discussion of Program

Options

Two options are offered for public comment in the proposed Federal program. The first option consists of cross-referencing the Federal permanent program rules with a number of additions made to those rules as specified under each of the subject headings of the program parts. The second option consists of the first option with several additions made to those rules. The additions would add a limitation to the term "coal loading facility" for purposes of regulating support facilities in Tennessee and several detailed performance criteria on

diversion desing, sedimentation ponds, underdrains in excess spoil fills, and timing for backfilling and grading. The second option appears in the rules section of this notice the first. Only those portions of the rules to be added are published. These options are proposed of soliciting public comment. OSM may adopt either option; some combination or steps between the options; or Option 2 with additions.

Option 1

General. Section 942.700 contains four subsections. They contain general statements on the scope and applicability of the program. No Tennessee laws are identified as setting standards which are either more stringent than those in the Federal permanent program regulations or which interfere with achievement of the purposes of a Federal program. If any such laws are identified they would be listed in separate additional paragraphs of this section.

A paragraph (b) is proposed to be added at § 942.701 to make clear that unless an operation has a permanent program permit, issued either by Tennessee or OSM, compliance with the interim program standards, Subchapter B of Chapter VII, is required. Compliance with the interim program standards can only be required under the Act until a permanent program permit is issued. SMCRA §§ 515(a) and 516(b). Although, as explained above, the Tennessee statute and regulations were made applicable to all operations upon program approval, there is no authority under the Act for OSM applying the permanent program standards until a permanent program permit is issued.

Section 942.701(d) requires OSM to make records available locally to the public at the county courthouse or other appropriate public office within the county of the surface coal mining operation. This requirement also applies to Sections 942.776(b) and 942.782(b).

Areas Unsuitable for Mining. Sections 942.761 through 942.764 establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter F, Areas Unsuitable for Mining. The effective date for implementing the petition process for designating lands unsuitable for surface mining or for terminating designations has already passed. Section 504(a) of the Act, which defers applicability of Sections 522(a), (c) and (d), is inapplicable since a state regulatory program was implemented in Tennessee. 30 CFR 736.15(b)(2). No separate section for Federal lands is proposed because 30 CFR Part 769 is

directly applicable and need not be made a part of a Federal program.

A paragraph is proposed to be added to § 942.762 to indicate that the Office would consider lands in Tennessee placed on the State's Natural Areas Registry, designated Natural Areas or Scenic Areas and lands adjoining Scenic Rivers in considering a petition to designate lands as unsuitable for surface mining or termination of such a designation. The consideration would be given in the context of lands as defined as "fragile" under 30 CFR 762.5.

A paragraph has been proposed in § 942.764 to ensure that the State is notified on the designation of areas as unsuitable or for which designations are terminated. This notification would be provided as a courtesy since agencies in the State apparently will be regulating limited aspects of surface coal mining operations.

Permits and Coal Exploration Approvals. Sections 942.770 through 942.795 establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter G, Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures Systems Under Regulatory Programs. Section 942.770 cross-references 30 CFR 770. Section 771.12 of the permanent program rules lists other laws with which the Secretary will coordinate permitting activities. That coordination is required pursuant to section 504(h).

In addition to the requirements under the permanent program rules, additional provisions are added for OSM permit review. More detail is necessary when OSM is the regulatory authority in order to provide direction to the permit applicant.

The proposed rule at § 942.773(b) would establish a procedure for the handling of permit applications. This is considered necessary in order to dispose of applications which are grossly deficient early in the processing, to provide a formal procedure for obtaining additional information, and to indicate the procedure for determinations of completeness.

The proposed rule at § 942.773(c) would authorize the Office to obtain additional permit information than that required under 30 CFR 773. Such additional information would be required in order to meet the obligations imposed on the Office under the Federal laws identified under 30 CFR 773.12. It would also allow the Office to obtain information in order to comply with the National Environmental Policy Act, as discussed above.

The proposed rule at § 942.774(b) would indicate that a significant revision of the permit is one requiring public notice and is subject to formal hearing if one is requested. Section 774.13(b) directs the regulatory authority to establish guidelines for a permit revision. Section 511(a)(2) of the Act authorizes the regulatory authority to establish such guidelines, but also provides that any significant alteration in the reclamation plan shall be subject to formal revision. The proposed rule provides that a change in the reclamation plan will be considered significant if it has the potential to affect the achievement of reclamation as set in the approved plan.

The proposed rule at § 942.774(c) would specify a period of 30 days within which to submit written comments on an application for approval of a transfer, assignment or sale of a permit. There is no period set in 30 CFR 774.17.

A section applicable only to the Tennessee Federal Program is proposed to be added at § 942.776 for the review of existing permanent program permits issued under the Tennessee state regulatory program. It is based on section 504(d) of the Act. Section 773.11(d) of the permanent program rules, in part, implement the provision in the Act. However, there is no specific procedure set out in that regulation; nor is there a provision for the permittee who is notified that a revision is required to obtain administrative review of that determination. There is also no provision for the permittee who fails to conform his or her operation to the Federal program requirements to have that permit revoked or suspended. The proposed rule would specify generally that a state-issued permit is valid, that such permits will be reviewed and if determined not to be in conformity with the Act, a notice will be given and a period of time set for conforming the operation to the requirements of the Act. It would also generally specify what a permittee could do to have such a determination reviewed and the procedure for the Office suspending or revoking the permit.

The proposed rule at § 942.776(a) would also specify the performance standards with which a permittee would have to comply. Such a provision is necessary in light of the repeal of the Tennessee statute and regulations under which the permit was issued. The rule would provide that if the permit specifies standards with which compliance is required, then that would control. However, if the permit is silent, then the Federal program standards would apply. For example, if the state-

issued permit specified the seeding rate for revegetating reclaimed land, then that standard would be prevail. If, however, the permit does not so specify, then the standards set in the Federal program would be applicable. Such standards would be applicable unless and until they are modified through the permit review undertaken by OSM.

The permanent program rules for granting variances from approximate original contour requirements in 30 CFR 785.16 provide in paragraph (f) that variances may be granted only if the regulatory authority has established specific rules to govern them. The rules in 30 CFR 816.133(d) provide the specific criteria required by § 785.16(f). Therefore, no additional criteria are needed or proposed.

A permit fee is required under section 507(a) of the Act and 30 CFR 771.25. Section 942.771 cross-references the latter regulation. However, no fee schedule has been set for Federal programs generally, and one is not being proposed at this time for Tennessee. A rulemaking notice is expected to appear in the near future to set a fee schedule for Tennessee, other Federal programs and Federal lands permits.

OSM is currently developing permit application forms for use in Tennessee. In the meantime, a prospective permit applicant should contact OSM in order to determine the format for an application.

Small Operator Assistance. Section 942.795 would establish the same standards for the small operator assistance program as are found in Part 795 of the permanent program rules. OSM expects during its administration of the SOAP in Tennessee that Federal funds will be sufficient to provide for the authorized services, and does not expect to exercise its option at 30 CFR 795.11(b). That option allows OSM to establish a formula for allocating limited funds to provide the services pursuant to Part 795.

OSM will award SOAP contracts to qualified laboratories utilizing a streamlined procurement system that complies with the Federal Acquisition Regulations. Prior to issuing a Request for Proposal, OSM will announce its intention through publication in the Commerce Business Daily. Unlike the procedures currently used by Tennessee to develop an independent list of qualified labs, OSM will qualify labs as part of its contracting process.

Bonding. Section 942.800 establishes the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter J, Bond and Insurance Requirements for

Surface Coal Mining and Reclamation Operations.

A provision would be added as paragraph (b) of § 942.800 specifying the procedure that the Office would follow in reviewing the bonds posted by operators in order to obtain a permanent program permit from Tennessee. If a bond amount is determined to be inadequate, notice would be given and the operator would have the option of replacing the existing bond with an adequate one or of posting an additional bond for the amount of the shortfall.

OSM is considering adding a provision which would require all permittees within a period of time after the program effective date to submit an assignment of the bond which would include the United States. If added to the final rule, no actual notice would be given to an operator. By rule, in order to continue mining past a specified date, the operator would have to submit a document indicating that the United States was a payee of the bond, as well as the State. This would foreclose sending notice to operators as it is assumed that only those operators who would have obtained permits from the State after April 18, 1984, would have posted a bond made payable to the United States or the State.

Performance Standards. Except where specifically modified for the Tennessee Federal program, §§ 942.815 through 942.828 establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter K, Permanent Program Performance Standards. An addition to those standards is proposed at §§ 942.816 and 942.817 with respect to the standards for revegetation success. Options are offered for other performance standards on which the Office is soliciting comment under Option 2.

The proposed addition for revegetation success is considered necessary because 30 CFR 816.116(a)(1) requires that the regulatory authority establish standards for success and statistically valid sampling techniques for measuring success. Proposed § 942.816(b) would set forth success standards and sampling techniques for use at the time of bond release for each major post-mining land use. For grazing land or pasture the Office is proposing a standard of 90% ground cover. In addition to satisfy this ground cover requirement, the production of living plants must be equal to or greater than the average county yield as determined by the U.S. Department of Agriculture soil survey. The 90% standard is a provision of the Tennessee regulatory program and is usually considered to be

the minimum acceptable level of cover for pasture land. A production standard is also being proposed because ground cover alone may not always indicate the capability of reclaimed land to support livestock.

For areas developed as cropland, the Office is proposing that average county yield be used as the standard for determining reclamation success. Such information would be taken from the U.S. Agriculture Department soil survey. Adjustments for local yield variation within the county would be made for disease, pests and weather-induced variations and differences in crop management practices. The Office is proposing that actual crop yields be used to demonstrate the restoration of cropland soils because there is insufficient research and experience to establish the reliability of other methods. The proposed rule would require crops to be grown on only a representative portion of the permit area that would be sufficient in size to demonstrate successful soil restoration. For the purposes of this rule, hayland would be included in the definition of cropland.

Another subparagraph of paragraph (b) would require 80% ground cover for areas developed for wildlife habitat, recreation, or forest products. The stocking requirement for woody plants would be approved by the Office on a case-by-case basis and specified in the mining and reclamation plan. In approving stocking rates, the Office would rely heavily upon recommendations of the State agencies responsible for the administration of forestry and wildlife programs. The Office believes that case-by-case approval would allow the flexibility necessary to accommodate the specialized requirements of various wildlife and forest management plans. Eighty percent ground cover is believed to be necessary to control erosion on steep terrain that is common to eastern Tennessee coal fields. In applying this and other ground cover standards, the Office would use the definition of ground cover that is in the permanent program rules at 30 CFR 701.5. By the definition, ground cover includes both the aerial parts of living vegetation and litter that is produced naturally on site.

Another subparagraph of paragraph (b) would adopt the existing requirement of Tennessee permanent program rules which prohibits bare areas larger than one-sixteenth of an acre in size and that total more than 10% of the area seeded. The Office believes that such a provision is necessary to avoid releasing bond on lands that meet the overall

cover requirements of 80 or 90% ground cover, but still have localized areas that are not yet stabilized from soil erosion.

The next subparagraph of paragraph (b) would require the distribution of woody plants within the permit area to be consistent with the post-mining land use. This is to ensure that all growing space is effectively utilized for land uses such as timber production. It would require mine operators to replant areas where the survival of woody plants was uneven.

The final subparagraph of paragraph (b) would adopt by reference the sampling techniques for measuring wood plant stocking and ground cover that are contained in the Office's publication "Technical Guides on Use of Reference Areas and Technical Standards for Evaluation of Surface Mine Revegetation in OSM Regions I and II." It would also allow for alternative sampling techniques to be used if approved by the Office. The Office notes that the sampling techniques described in the above publication were developed by the Tennessee Valley Authority for use on mining operations common to the Appalachian region and are, therefore, believed to be well-suited to mines in eastern Tennessee. The proposed rule also provides for the use of quadrants and total crop yields where cropland is the post-mining land use.

The same standards would be added to paragraph (b) of § 942.817 for underground mining.

The Office specifically invites comments on any aspect of these proposed revegetation success rules.

The options provided in Option 2, discussed below, would add additional performance standards. OSM specifically invites comments on whether additional provisions of specificity should also be added to the performance standards. Such additions may be necessary because OSM is the regulatory authority and a greater level of detail could be helpful in adequately informing interested parties.

Inspection and Enforcement Procedures. Sections 942.842, 942.843 and 942.845 establish the same provisions as 30 CFR Chapter VII, Subchapter L, Permanent Program Inspection and Enforcement Procedures. No changes are proposed in those procedures for the Tennessee Federal program.

Blaster Training and Certification. Section 942.850 cross-references 30 CFR Part 850. However, there are no substantive standards for a Federal program for blaster training and certification at present. OSM has been

developing such a program and will in the future be proposing one which, upon its adoption in final, would be applicable to the Tennessee Federal program.

Option 2

Option 2 would add several provisions to Option 1. The first would place a limitation on the definition of "Coal loading facilities" in the definition of "support facilities" in 30 CFR 701.5. The others would add specific detail to performance standards.

The limitation on the term "coal loading facilities" would make clear to all operators of such facilities whether they would be subject to regulation. If an operator of a tippie in Tennessee accepts raw coal from a mine, then the operation would be subject to regulation. The Act in Section 701(28)(A) defines "surface coal mining operations" as consisting of the loading of coal for interstate commerce at or near the mine site. The permanent program rules in § 701.5 define the term "support facilities" as those resulting from or incident to a surface coal mining operation. But there is no further indication of the outer parameters of OSM's jurisdiction. The functional test of the first or initial loading facility—one which does not process coal—would provide a limitation upon which an operator would be able to determine whether he was subject to OSM's jurisdiction.

As an alternative to the option of the first loading facility from a mine, OSM solicits comments on placing a geographic distance limitation for purposes of whether a tippie is subject to regulation. The definition in the Act indicates that a coal loading facility must be at or near the mine site, but no particular distance is specified. The definition of "support facility" indicates that the phrase "resulting from or incident to" connotes an element of proximity. Thus, OSM could set a particular distance from a mine as the limitation for asserting jurisdiction over coal tipples. OSM could also adopt a geographic limit in conjunction with the adoption of the functional test in the option.

The performance standards under Option 2 seek comment on the possible addition of detailed standards in four areas: Diversions, sedimentation ponds, underdrains in excess spoil fills, and backfilling and grading timing requirements. The revision of the permanent program rules resulted in flexibility being added to the rules. This affords the regulatory authority latitude in setting standards in its rules. The

regulatory authority also has the option of not adding any particular design criteria to its program rules and deferring to the qualified, registered professional engineer who is to certify many of the designs in the permit application. Thus, OSM would like to receive comment on the possible addition of the design criteria in three areas—ones which are considered important in surface mining operations.

The proposed criteria for diversions, sedimentation ponds and underdrains for excess spoil fills are for the most part taken from the Tennessee program regulations. In large part, those regulations are based on the previous Federal permanent program regulations. Borrowing the Tennessee regulations is appropriate since they would at least have had to meet the previous Federal rules and may have been modified for particular conditions in the State. Further, adoption of such rules would provide a measure of continuity from the state to the Federal program.

As an alternative to the adoption of the criteria set out in Option 2 § 942.816(c), (d) and (e) OSM is considering not providing any additional standards in the rules than the revised permanent program rules, but instead issuing technical guidelines. If such guideline were issued, an operator or engineer could rely on the guidelines for the design of a structure. Having designs other than those in the guidelines would be approved on a case-by-case basis if the engineering is sound. Specific comment is solicited on the adoption of this alternative instead of the addition of design criteria.

These alternatives—diversions, sedimentation ponds and underdrains—would also be made applicable to the underground mining rule. § 942.817.

A fourth performance standard is offered under § 942.816(f) of Option 2. It would set timing requirements for backfilling and grading. They would be the same standards as the previous unrevise Federal permanent program rules in § 816.101(a). See 44 FR 15395 (March 13, 1979). They would establish the requirement for contour mining backfilling and regrading of 60 days or no more than 1,500 linear feet. This would be the most important for Tennessee operators. The current Federal program rule which would be cross-referenced in § 942.816 under Option 1 in § 816.102 does not establish particular timing requirements. The Act in section 515(b)(16) requires reclamation to proceed as contemporaneously as practicable with mining. A definite standard would remove any doubt as to the contemporaneous requirement.

Comment is sought on the addition of such a timing requirement or of any other standards for the timing of backfilling and regrading. This option is not proposed to be added to the underground mining section, § 942.817. No timing requirement is necessary for underground mining.

IV. Other Information

OSM has examined these proposed rules according to the criteria of Executive Order 12291 (46 FR 3193, February 19, 1981) and has determined that they do not constitute a major rule. There would be no major economic impact through adoption of this rule. The coal mining industry in Tennessee is already subject to the regulatory standards similar to those the proposed Federal program would impose.

OSM has examined these proposed rules pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and determined that they will not have a significant impact on a substantial number of small entities. The impact is no different than the effect of the approval of the state regulatory program.

Section 702(d) of the Act provides that promulgation of a Federal program shall not constitute a major Federal action under the National Environmental Policy Act, 42 U.S.C. 4332. Thus, no Environmental Assessment is required for this rulemaking.

Office of Management and Budget Review

The recordkeeping and reporting requirements of this rule are the same as those of the permanent program regulations which have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507.

Any forms which are developed by OSM for the Tennessee Federal program will be submitted to OMB for clearance under the Paperwork Reduction Act.

Drafting Information

These proposed regulations were drafted principally by David Jones, Office of the Solicitor, Interior Department.

List of Subjects in 30 CFR 942

Coal mining, Intergovernmental relations, Surface mining, Underground mining, Reporting requirements.

Accordingly, 30 CFR Part 942 is proposed to be amended as set forth herein.

Dated: June 22, 1984.

Leona A. Power,
Acting Assistant Secretary, Land and Minerals Management.

30 CFR Chapter VII is amended by revising Part 942.

Option 1 for New Part 942

1. Part 942 is revised to read as follows:

PART 942—TENNESSEE

- Sec.
- 942.700 Tennessee federal program.
 - 942.701 General.
 - 942.707 Exemption for coal extraction incident to government-financed highway or other construction.
 - 942.761 Areas designated unsuitable for surface coal mining by act of Congress.
 - 942.762 Criteria for designating areas as unsuitable for surface coal mining operations.
 - 942.764 Processes for designating areas unsuitable for surface coal mining operations.
 - 942.770 General requirements for permit and exploration procedure systems under regulatory programs.
 - 942.771 General requirements for permits and permit applications.
 - 942.772 Requirements for coal exploration.
 - 942.773 Requirements for permits and permit processing.
 - 942.774 Revision, renewal, and transfer, assignment, or sale of permit rights.
 - 942.775 Administrative and judicial review of decisions.
 - 942.776 Review of Tennessee Permanent Program permits.
 - 942.777 General content requirements for permit applications.
 - 942.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.
 - 942.779 Surface mining permit applications—minimum requirements for information on environmental resources.
 - 942.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.
 - 942.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.
 - 942.783 Underground mining permit applications—minimum requirements for information on environmental resources.
 - 942.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
 - 942.785 Requirements for special categories of mining.
 - 942.795 Small operator assistance.
 - 942.800 Bond and insurance requirements surface coal mining and reclamation operations.
 - 942.815 Performance standards—coal exploration.
 - 942.816 Performance standards—surface mining activities.
 - 942.817 Performance standards—underground mining activities.

Sec.

- 942.819 Special performance standards—
auger mining.
- 942.823 Special performance standards—
operations on prime farmland.
- 942.824 Special performance standards—
mountaintop removal.
- 942.827 Special performance standards—
coal preparation plants not located
within the permit area of a mine.
- 942.828 Special performance standards—in
situ processing.
- 942.842 Federal inspections.
- 942.843 Federal enforcement.
- 942.845 Civil penalties.
- 942.8509 Blaster training and certification.

Authority: Pub. L. 95-87, The Surface
Mining Control and Reclamation Act of 1977,
30 U.S.C. 1201 *et seq.*

§ 942.700 Tennessee Federal program.

(a) This part contains all rules that are applicable to surface coal mining operations in Tennessee which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) Certain of the rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a cross-referenced rule is in the permanent program rule cited under the relevant section of the Tennessee Federal program.

(c) The rules in this part apply to all surface coal mining operations in Tennessee conducted on non-Federal and non-Indian lands. To the extent required by Part 740 of this chapter, this part also applies to operations on Federal lands in Tennessee.

(d) The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance No. —.

§ 942.701 General.

(a) Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to coal exploration and surface coal mining and reclamation operations in Tennessee.

(b) Surface coal mining and reclamation operations in Tennessee which do not have a valid permanent program permit on the effective date of this program shall comply with subchapter B of this chapter until issuance of a permit under this program.

(c) Records required by § 700.14 of this chapter to be made available locally to the public shall be retained at the county recorder's office or another appropriate public office in the county in which an operation is located, and at the nearest OSM Field Office.

§ 942.707 Exemption for coal extraction incident to Government-financed highway or other construction.

Part 707 of this chapter, Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction, shall apply to surface coal mining and reclamation operations.

§ 942.761 Areas designated unsuitable for surface coal mining by act of Congress.

Part 761 of this chapter, Areas Designated by Act of Congress, shall apply to surface coal mining and reclamation operations.

§ 942.762 Criteria for designating areas as unsuitable for surface coal mining operations.

(a) Part 762 of this chapter, Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations, shall apply to surface coal mining and reclamation operations.

(b) In addition to the lands defined as fragile in § 762.5 of this chapter, the Office will consider lands included on the Tennessee Natural Areas Registry under Tennessee Code Annotated (TCA) § 11-14-112, Natural Areas designated by the Tennessee General Assembly under TCA 11-14-108, areas adjoining Tennessee Scenic Trails designated under TCA 11-13-101, and Scenic Trails under that same law.

§ 942.764 Process for designating areas unsuitable for surface coal mining operations.

(a) Part 764 of this chapter, State Process for Designating Areas Unsuitable for Surface Coal Mining Operations, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mining and reclamation operations.

(b) The Secretary shall notify the Tennessee Department of Health and Environment of any area designated unsuitable or for which such designation has been requested or terminated.

§ 942.770 General requirements for permit and exploration procedure systems under regulatory programs.

Part 770 of this chapter, General Requirements for Permit and Exploration Procedure Systems Under Regulatory Programs, shall apply to surface coal mining operations and exploration.

§ 942.771 General requirements for permits and permit applications.

Part 771 of this chapter, General Requirements for Permits and Permit Applications, shall apply to any person who makes application for a permit to

conduct surface coal mining and reclamation operations.

§ 942.772 Requirements for coal exploration.

Part 772 of this chapter, Requirements for Coal Exploration, shall apply to any person who conducts coal exploration.

§ 942.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, Requirements for Permits and Permit Processing, shall apply to any permits for surface coal mining and reclamation operations.

(b) In addition to the requirements of 30 CFR Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a new permit shall submit seven copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office shall:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings, or

(ii) Request additional information required for completeness stating specifically what information must be supplied and the date by which the information must be submitted, or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 943.773(b)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant of its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) The Office shall visit the proposed permit area to determine whether the mining and reclamation plan is consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, and other significant features contained in the application marked by flagging.

(6) Adequacy of information to allow the Office to comply with the National Environmental Policy Act, 42 U.S.C.

4322, shall be considered in the determination of a complete application. The Office may require specific additional information from the applicant as any environmental review progresses when such specific information is needed for approval. Failure to submit the additional information by the date(s) requested could result in disapproval of the application.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

§ 942.774 Revision, renewal, and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved mining or reclamation plan will be subject to review and approval by the Office. A significant revision to the reclamation plan will be subject to the public notice and hearing provisions of the program prior to approval and implementation. A change in the reclamation plan will be considered significant if it has the potential to affect the achievement of reclamation as outlined in the approved plan.

(c) In addition to the requirements of 30 CFR Part 774, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty (30) days of either the publication of the newspaper advertisement required by 30 CFR 774.17(b)(2) or receipt of an administratively complete application, whichever is later.

§ 942.775 Administrative and judicial review of decisions.

Part 775 of this chapter, Administrative and Judicial Review of Decisions, shall apply to all decisions on permits.

§ 942.776 Review of Tennessee Permanent Program permits.

(a)(1) All permits issued under the approved State regulatory program by the Tennessee Department of Conservation or the Department of Health and Environment prior to the effective date of this program shall be

valid, but subject to further action by OSM.

(2) The permittee shall comply with the specific terms of the permit. Where the permit does not specify specific standards with which compliance is required the permittee shall comply with the standards of the Federal program.

(b)(1) The Office will review all permanent program permits issued by the State of Tennessee beginning on the effective date of this program. If the Office determines that any State permit was granted contrary to the requirements of the Act, the permittee will be notified and periods of time specified within which to revise the permit and to conform any ongoing surface coal mining operations to the requirements of this part and the Act.

(2) If the permittee wants to have the decision that the State permit was granted contrary to the requirements of the Act reviewed, he or she shall file a petition for review with the Office of Hearings and Appeals pursuant to 43 CFR 4.1280 within 30 days of notification.

(3) If a permittee fails to revise the permit and conform operations to the requirements of this part and the Act within reasonable periods of time as specified by the Office, the permittee will be issued an order to show cause as to why the permit should not be suspended or revoked. The notice shall be filed in accordance with 30 CFR 843.14. The Director shall promptly file a copy of the order to show cause with the Office of Hearings and Appeals. The permittee may file an answer to the order and request a hearing under 43 CFR Part 4. If a hearing is requested, the procedures provided in 43 CFR Part 4 for show cause hearings shall be applicable.

§ 942.777 General content requirements for permit applications.

Part 777 of this chapter, General Content Requirements for Permit Applications, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 942.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 942.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, Surface Mining Permit Applications—Minimum

Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 942.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

Part 780 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 942.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 782 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application to conduct underground coal mining and reclamation operations.

§ 942.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct underground coal mining and reclamation operations.

§ 942.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, shall apply to any person who makes application for a permit to conduct underground coal mining and reclamation operations.

§ 942.785 Requirements for special categories of mining.

Part 785 of this chapter, Requirements for Special Categories of Mining, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 942.795 Small operator assistance.

Part 795 of this chapter, Small Operator Assistance, shall apply to any person making application for assistance under the small operator assistance program.

§ 942.800 Bond and insurance requirements for surface coal mining and reclamation operations.

(c) Except as provided in the following paragraph, Part 800 of this chapter, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs, shall apply to any person conducting surface coal mining and reclamation operations.

(b)(1) The Office shall review the adequacy of the bonds for those operators who posted reclamation bonds with the State of Tennessee under its permanent regulatory program prior to the effective date of this program or who gave the State collateral to guarantee reclamation.

(2) The Office shall notify any permittee that additional bond is required where it is determined that the bond amount is inadequate and shall require, within a reasonable period of time as specified, that any permittee either—

(i) Post a new bond in sufficient amount made payable to "The United States or The State of Tennessee"; or

(ii) Provide an executed assignment of the bond may payable to "The United States or The States of Tennessee" and an additional bond or bonds made payable in the same manner.

§ 942.815 Performance standards—coal exploration.

Part 815 of this chapter, Permanent Program Performance Standards—Coal Exploration, shall apply to any person who conducts coal exploration.

§ 942.816 Performance standards—surface mining activities.

(a) Part 816 of this chapter, Permanent Program Performance Standards—Surface Mining Activities, shall apply to any person who conducts surface coal mining and reclamation operations.

(b) The following success standards and sampling techniques shall be used by the Office for determining bond release.

(1) For areas developed for use as grazing land or pasture, the ground cover shall be at least ninety percent (90%) and production of living plants shall be equal to or greater than the average county yield as stated in the U.S. Department of Agriculture soil survey for the county in which the permit area is located.

(2) For areas developed for use as cropland, crop production shall be equal to or greater than the average county yield as stated in the U.S. Department of Agriculture soil survey for the county in which the permit area is located.

(3) For areas developed for wildlife habitat, recreational or forest products, the ground cover shall be at least 80 percent (80%) and the stocking of woody plants shall be at least equal the rate specified in the approved mining and reclamation plan.

(4) Bare areas shall not exceed one-sixteenth ($\frac{1}{16}$) acre in size and total not more than ten percent (10%) of the area seeded.

(5) Distribution of woody plants within the permit area shall be consistent with the post-mining land use.

(6) Sampling techniques for measuring woody plant stocking and ground cover shall be in accordance with the Office's publication "Technical Guides on Use of Reference Areas and Technical Standards for Evaluating Surface Mine Revegetation in OSM Regions I and II" unless alternative techniques are approved by the Office. Quadrats or actual crop yields shall be used to determine production.

§ 942.817 Performance standards—underground mining activities.

(a) Part 817 of this chapter, Permanent Program Performance Standards—Underground Mining Activities, shall apply to any person who conducts underground coal mining and reclamation operations.

(b) The following success standards and sampling techniques shall be used by the Office in determining bond release.

(1) For areas developed for use as grazing land or pasture, the ground cover shall be at least ninety percent (90%) and production of living plants shall be equal to or greater than the average county yield as stated in the U.S. Department of Agriculture soil survey for the county in which the permit area is located.

(2) For areas developed for use as cropland, crop production shall be equal to or greater than the average county yield as stated in the U.S. Department of Agriculture soil survey for the county in which the permit area is located.

(3) For areas developed for wildlife habitat, recreational or forest products, the ground cover shall be at least 80 percent (80%) and the stocking of woody plants shall be at least equal to the rate specified in the approval mining and reclamation plan.

(4) Bare areas shall not exceed one-sixteenth ($\frac{1}{16}$) acre in size and total not more than ten percent (10%) of the area seeded.

(5) Distribution of woody plants within the permit area shall be consistent with the post-mining land use.

(6) Sampling techniques for measuring woody plant stocking and ground cover shall be in accordance with the Office's publication "Technical Guides on Use of Reference Areas and Technical Standards for Evaluating Surface Mine Revegetation in OSM Regions I and II" unless alternative techniques are approved by the Office. Quadrats or actual crop yields shall be used to determine production.

§ 942.819 Special performance standards—auger mining.

Part 819 of this chapter, Special Permanent Program Performance Standards—Auger Mining, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 942.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, Special Permanent Program Performance Standards—Operations on Prime Farmland, shall apply to any person who conducts surface coal mining operations on prime farmland.

§ 942.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, Special Permanent Program Performance Standards—Mountaintop Removal, shall apply to any person who conducts surface coal mining and reclamation operations constituting mountaintop removal.

§ 942.827 Special performance standards—coal preparation plants not located within the permit area of a mine.

Part 827 of this chapter, Permanent Program Performance Standards—Coal Preparation Plants Not Located Within the Permit Area of a Mine, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of a coal preparation plant not located within the permit area of a mine.

§ 942.828 Special performance standards—in situ processing.

Part 828 of this chapter, Special Permanent Program Performance Standards—In Situ Processing, shall apply to any person who conducts surface coal mining and reclamation operations which include the in situ processing of coal.

§ 942.842 Federal inspections.

Part 842 of this chapter, Federal Inspections, shall apply to all exploration and surface coal mining and reclamation operations.

§ 942.843 Federal enforcement.

Part 843 of this chapter, Federal Enforcement, shall apply when enforcement action is required for violations on coal exploration and surface coal mining and reclamation operations.

§ 942.845 Civil penalties.

Part 845 of this chapter, Civil Penalties, shall apply when civil penalties are assessed for violations on coal exploration and surface coal mining and reclamation operations.

§ 942.850 Blaster training and certification.

Part 850 of this chapter, Programs for Blaster Training and Certification, shall apply to any person who conducts coal exploration or surface coal mining and reclamation operations.

Option 2 for New Part 942

2. Proposed Part 942 as set forth under Option 1 is further amended by adding §§ 942.701(d), 942.816 (c), (d), (e), and (f), and 942.817 (c), (d), and (e) to read as follows:

§ 942.701 General.

(d) For purposes of the definition of the term "support facilities" in § 701.5 of this chapter, "Coal loading facilities" shall be limited to all facilities on a permit area and the first handling facility for raw coal after it leaves the permit area of the mine.

§ 942.816 Performance standards—surface mining activities.

(c) In lieu of the requirements of § 816.43(a)(4) of this chapter, diversion design shall incorporate the following:

(1) Channel lining shall be designed using standard engineering practices to pass safely the design velocities. Riprap shall comply with the requirements of § 816.71(b)(3) of this chapter, except for sand and gravel.

(2) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the Office, the design freeboard may be increased.

(3) Energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(4) Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with §§ 816.71 through 816.74 of this chapter.

(5) Topsoil shall be handled in compliance with § 816.22 of this chapter.

(d) In lieu of the requirements of §§ 816.46(c)(1)(ii) through 816.46(c)(iii)(D) of this chapter, sedimentation ponds shall:

(1) Be located as near as possible to the disturbed area and one-hundred (100) feet from streams or streams with a biologic community; and be located on the flattest slope practicable, but in no case on a slope greater than 20 degrees.

(2) Provide a minimum storage volume equal to 0.2 acre feet per disturbed acre draining to the basin. The Office may approve lesser sediment storage volumes equal to the sediment calculated to enter the pond between planned cleanout intervals upon submission and approval of a plan for removing sediment from the pond which includes a description of the equipment to be used. The minimum sediment storage volume shall be equal to 0.1 acre feet per distributed acre.

(3) Provide adequate detention time to allow the effluent from the pond to meet the State and Federal effluent standards. Sedimentation ponds shall be designed to provide the required theoretical detention time for the water inflow or run-off entering the pond from a ten (10) year, twenty-four (24) hour precipitation event (design event).

(4) Provide a minimum surface area based on the following criteria:

- (i) Physical properties of water at 4 degrees centigrade,
- (ii) Particles with a diameter of 10 microns (1×10^{-5} meters), and
- (iii) Particles with a specific gravity of 1.8. The Office may approve designs utilizing higher specific gravities based on the presentation of site specific data which supports the proposed value.

(5) Provide a nonclogging dewatering device or conduit spillway approved by the Office for the water storage resulting from inflow. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sedimentation storage volume and shall provide the detention time to allow the effluent from the pond to meet State and Federal effluent limitations.

(e) In lieu of the requirements of § 816.71(f)(3) of this chapter, underdrains shall consist of durable rock, be designed and constructed using current, prudent engineering practices, and meet the following design criteria: In constructing the underdrains, no more than ten percent (10%) of the rock may be less than twelve (12) inches in size and no single rock may be larger than twenty-five percent (25%) of the width of the drain. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd.....	Sandstone.....	10	4
Do.....	Shale.....	16	8
More than 1,000,000 yd.....	Sandstone.....	16	8
Do.....	Shale.....	16	16

Underdrains shall consist of non-degradable, non-acid or toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or shale. The underdrain system shall be designed to carry the anticipated seepage of water due to rainfall from the excess spoil fill and from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter.

(f) In lieu of the requirements of § 816.101(a) of this chapter, backfilling and grading shall proceed in accordance with the following timing requirements:

(1) *Contour mining.* Rough backfilling and grading shall follow coal removal by not more than 60 days or 1,500 linear feet. The Office may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under § 780.18(b)(3) of this chapter, that additional time is necessary.

(2) *Open pit mining with thin overburden.* Rough backfilling and grading shall occur in accordance with the time schedule approved by the Office, on the basis of the materials submitted under § 780.18(b)(3) of this chapter, which shall specifically establish in stated increments the period between removal of coal and completion of backfilling and grading.

(3) *Area strip mining.* Rough backfilling and grading shall be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The Office may grant additional time for rough backfilling and grading if the permittee can demonstrate, through the detailed written analysis under § 780.18(b)(3) of this chapter, that additional time is necessary.

§ 942.817 Performance standards—underground mining activities.

(c) In lieu of the requirements of § 816.43(a)(4) of this chapter, diversion design shall incorporate the following:

(1) Channel lining shall be designed using standard engineering practices to pass safely the design velocities. Riprap shall comply with the requirements of

§ 816.71(b)(3) of this chapter, except for sand and gravel.

(2) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the Office, the design freeboard may be increased.

(3) Energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(4) Excess excavated material not necessary for diversion channel geometry or regarding of the channel shall be disposed of in accordance with §§ 816.71 through 816.74 of this chapter.

(5) Topsoil shall be handled in compliance with § 816.22 of this chapter.

(d) In lieu of the requirements of §§ 816.46(c)(1)(ii) through 816.46(c)(iii)(D) of this chapter, sedimentation ponds shall:

(1) Be located as near as possible to the disturbed area and one-hundred (100) feet from streams or streams with a biologic community; and be located on the flattest slope practicable, but in no case on a slope greater than 20 degrees.

(2) Provide a minimum storage volume equal to 0.2 acre feet per disturbed acre draining to the basin. The Office may approve lesser sediment storage volumes equal to the sediment calculated to enter the pond between

planned cleanout intervals upon submission and approval of a plan for removing sediment from the pond which includes a description of the equipment to be used. The minimum sediment storage volume shall be equal to 0.1 acre feet per disturbed acre.

(3) Provide adequate detention time to allow the effluent from the pond to meet the State and Federal effluent standards. Sedimentation ponds shall be designed to provide the required theoretical detention time for the water inflow or run-off entering the pond from a ten (10) year, twenty-four (24) hour precipitation event (design event).

(4) Provide a minimum surface area based on the following criteria:

(i) Physical properties of water at 4 degrees centigrade,

(ii) Particles with a diameter of 10 microns (1×10^{-5} meters), and

(iii) Particles with a specific gravity of 1.8. The Office may approve designs utilizing higher specific gravities based on the presentation of site specific data which supports the proposed value.

(5) Provide a nonclogging dewatering device or conduit spillway approved by the Office for the water storage resulting from inflow. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sedimentation storage volume and shall provide the detention time to allow the effluent from the pond to meet State and Federal effluent limitations.

(e) In lieu of the requirements of § 816.71(f)(3) of this chapter, underdrains shall consist of durable rock, be designed and constructed using current, prudent engineering practices, and meet the following design criteria: In constructing the underdrains, no more than ten percent (10%) of the rock may be less than twelve (12) inches in size and no single rock may be larger than twenty-five percent (25%) of the width of the drain. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
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More than 1,000,000 yd.....	Sandstone.....	16	8
Do.....	Shale.....	16	16

Underdrains shall consist of non-degradable, non-acid or toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or shale. The underdrain system shall be designed to carry the anticipated seepage of water due to rainfall from the excess spoil fill and from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter.

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