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Emergency Rules

DECLARATION OF EMERGENCY

Board of Supervisors of Southern University

On November 17, 1979, at the regular meeting of the Southern University Board of Supervisors, exercising those powers conferred by the emergency provisions of the Administrative Procedures Act, R.S. 49:953B, the following rules were adopted. This action was necessary in order to protect the economic welfare of Southern University, Baton Rouge Campus.

1. An increase of two dollars in the student union fee was adopted, effective Spring Semester, 1980.
2. An increase of one dollar per semester for student health and accident insurance was adopted, effective Spring Semester, 1980.

James J. Prestage, Acting President
Board of Supervisors of Southern University

DECLARATION OF EMERGENCY

Department of Health and Human Resources
Office of Family Security

The Department of Health and Human Resources, Office of Family Security, does hereby exercise the emergency provision of the Administrative Procedures Act (R.S. 49:953 B) to adopt effective January 1, 1980, the following increases in the Aid to Families with Dependent Children (AFDC) and General Assistance (GA) Need Standards. This action is necessary so that needy families will receive public assistance which they are entitled to.

The current need standards are shown in parentheses. Using a 10.8 percent increase standard, the new AFDC and GA Need Standards are proposed as follows:

AFDC Need Standards

Size of Household	Non-Urban	Urban
1	$ 139 (125)	$ 151 (136)
2	259 (234)	289 (261)
3	366 (330)	402 (363)
4	456 (412)	494 (446)
5	543 (490)	583 (526)
6	622 (561)	664 (599)
7	704 (635)	742 (670)
8	782 (706)	821 (741)
9	856 (773)	896 (809)
10	933 (842)	972 (877)
11	1014 (915)	1054 (951)
12	1098 (991)	1138 (1027)
13	1187 (1071)	1219 (1100)
14	1273 (1149)	1306 (1179)
15	1361 (1228)	1394 (1258)
16	1448 (1307)	1488 (1343)
17	1536 (1386)	1560 (1408)
18	1623 (1465)	1659 (1497)
	For each additional person, add $94 (85)	For each additional person, add $103 (94)

GA Need Standard

1 person - $229 (207)
2 persons - 289 (261)

William A. Cherry, M.D., Secretary
Department of Health and Human Resources

DECLARATION OF EMERGENCY

Department of Health and Human Resources
Office of Family Security

In accordance with the Appropriation Act of the 1979 Louisiana Legislature, the Department of Health and Human Resources, Office of Family Security will implement policy effective January 1, 1980, providing for the semiannual adjustments for the coupon allotments and standard deduction in the Food Stamp Program. This action is necessary to allow the Food Stamp Program to be in compliance with federal regulations as specified in the federal register, Volume 44, Number 216, November 6, 1979, pages 64067 - 64069.

This is also necessary so that Food Stamp recipients will receive the Food Stamp coupons that they are entitled to.

The following is the Thrifty Food Plan (TFP) amounts and standard deduction.

Household Size	TFP	Household Size	TFP
1	$ 63	11	$517
2	115	12	564
3	165	13	611
4	209	14	658
5	248	15	705
6	298	16	752
7	329	17	799
8	376	18	846
9	423	19	893
10	470	20	940

For each additional person in excess of twenty, add forty-seven. The new standard deduction is seventy-five dollars.

William A. Cherry, M.D., Secretary
Department of Health and Human Resources

DECLARATION OF EMERGENCY

Department of Health and Human Resources
Office of Family Security

In accordance with the Appropriation Act of the 1979 Louisiana Legislature, the Department of Health and Human Resources, Office of Family Security will implement policy effective January 1, 1980, which allows persons sixty years of age or over and persons who receive Supplemental Security Income (SSI) Benefits under Title II of the Social Security Act to deduct from the household's income that portion of medical expenses in excess of thirty-five dollars per month excluding special diets. These households shall be given an excess shelter deduction for the monthly cost that exceeds fifty percent of the household's monthly income after all other applicable deductions. This action is necessary to allow the Food Stamp Program to be in compliance with federal regulations as specified in the ***Federal Register,*** Volume 44, Number 187, Tuesday, September 25, 1979, pages 55160 - 55165. It is also necessary to ensure that certain Food Stamp recipients receive deductions and coupon allotments that they are entitled to.

Spouses or other persons receiving benefits as a dependent of the SSI or disability recipient are not eligible to receive this deduction but persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction.

Allowable medical costs are:

A. Medical and dental care, including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by state law or other qualified health professional.

B. Hospitalization or outpatient treatment, nursing care, and nursing home care including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the state.

C. Prescription drugs when prescribed by a licensed practitioner authorized under state law and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional; in addition, costs of medical supplies, sick room equipment (including rental) or other prescribed equipment are deductible.

D. Health and hospitalization insurance policy premiums. The costs of health and accident policies such as those payable in lump sum settlements for death or dismemberment or income maintenance policies such as those that continue mortgage or loan payments while the beneficiary is disabled are not deductible.

E. Medicare premiums related to coverage under Title XVIII of the Social Security Act; any cost-sharing or spend-down expenses incurred by Medicaid recipients.

F. Dentures, hearing aids, and prosthetics.

G. Securing and maintaining a seeing eye or hearing dog including the cost of dog food and veterinarian bills.

H. Eye glasses prescribed by a physician skilled in eye disease or by an optometrist.

I. Reasonable cost of transportation and lodging to obtain medical treatment or services.

J. Maintaining an attendant, homemaker, home health aide, or child care services, housekeeper, necessary due to age, infirmity, or illness. In addition, an amount equal to the one person coupon allotment shall be deducted if the household furnishes the majority of the attendant's meals. The allotment for this meal-related deduction shall be that in effect at the time of initial certification. The state agency is only required to update the allotment amount at the next scheduled recertification; however, at their option, the state agency may do so earlier. If a household incurs attendant care costs that could qualify under both the medical deduction and dependent care deduction, the state agency shall treat the cost as a medical expense.

Monthly shelter costs is the amount in excess of fifty percent of the household's income after all other deductions have been applied. The shelter deduction alone or in combination with the dependent care deduction shall not exceed ninety dollars unless the household contains a member who is age sixty or over or who receives SSI (including emergency benefits based on presumptive eligibility) under Title XVI or disability payments under Title II of the Social Security Act. These households shall be given an excess shelter deduction for the monthly cost that exceeds fifty percent of the household's monthly income after all other applicable deductions. That portion of an allowable medical expense which is not reimbursable shall be included as part of the household's medical expenses. Households entitled to the medical deduction shall have the nonreimbursable portion considered at the time the amount of reimbursement is received or can otherwise be verified.

Households reporting one-time only medical expenses during their certification period may elect to have a one-time deduction or to have the expense averaged over the remaining months of the certification period. Averaging would begin the month the change would become effective.

William A. Cherry, M.D., Secretary
Department of Health and Human Resources

Rules

RULE

Board of Elementary and Secondary Education

Rule 4.01.50a

(Replaces present police in effect) The Board adopted amended Nonpublic School Testing Guidelines.

Nonpublic School Testing Guidelines

Section I: Rationale. The purpose of this program is to assess the sustained curriculum of course of study in nonpublic schools through the use of standardized instruments.

A systematic auditing of these results will give some measure of the progress achieved by the individual pupil, a local school and the system as a unit, and also serve as an indicator of the need for remedial programs.

Such an audit would assist in assessing the variation of effectiveness of different instructional procedures and/or different curricular arrangements. The program would assist in assessing the degree to which fixed goals and objectives are accomplished.

The program would make available standardized testing for pupils in grades K-12 to evaluate the sustained curriculum or course of study.

Definition of Terms.

School — approved nonpublic school which is not classified as part of an organized system.

System — approved nonpublic schools forming part of an association of schools functioning under a Board which sets policy.

LDE — Louisiana Department of Education — nonpublic school testing staff.

BESE — Louisiana State Board of Elementary and Secondary Education

Goals.

1. Assessment of program evaluation as an educational priority
2. Assessment of effective pupil learning

Objectives.

1. Indicators which have been subjected to tests for both validity and reliability in terms of effectiveness that can be communicated to provide the Board of Elementary and Secondary Education (BESE) and other interested persons data by which they can evaluate the sustained curriculum or course of study in approved nonpublic schools.
2. Identification of programs that are effective.
3. Development of conclusions drawn from hard data that help decision makers refine, expand, or drop programs.

Section II: Basic Design of Testing Program.

A. Selection of Instrument. The school or system will identify one type of norm-referenced instrument to be used for testing from the approved list of test publishers, as established by the Advisory Council for Nonpublic School Testing.

B. Reporting Format. Percentile rank by subtest based on national norms will be reported. Raw score, standard score and normal curve equivalent (NCE) score will be furnished LDE for analysis. Summary results of hand scored tests must be provided the LDE by the school or system. After each school has administered the tests and returned them to the publisher for scoring, the results will be sent to the LDE with copies to the

school by calendar dates established annually by the advisory council.

C. Name and Publisher of Instrument. The school or system will submit the name and publisher of the instrument to be used for testing students to LDE sixty days prior to anticipated testing date. In addition, they will submit by grade level the number of students participating in the school program; the unit price per student as substantiated by the publisher's catalog must also be included with the school order. The publisher's remuneration shall not exceed the amount of the purchase order plus shipping costs. Addition costs must be borne by the school.

D. Acquisition of Materials. The school or system will notify the LDE of their test recommendations. The LDE staff will issue a purchase order to the publisher authorizing delivery of the tests to the schools.

E. Fiscal Administration. The school or system will provide the LDE with the name of the selected instrument, the vendor, and the number of students to be tested at each grade level.

A purchase order will be issued by the LDE to the selected vendor for each school.

The school will notify the LDE upon receipt of the materials so that partial payment may be made if required.

Upon receipt of the test results (a copy of which will be supplied the LDE) the school or system will notify the LDE and final payment will be made.

Section III: Administration of Testing Program

A. Test dates. Spring or Fall in accordance with publishers' norming dates.

B. Grade Levels to be Tested. Standardized testing to evaluate sustained curriculum or course of study, grades K-12.

C. Testing Exclusions. Any exceptional child who, with the aid of any available related services, is capable of participating in the approved nonpublic school testing program, and who meets the criteria established by the Department of Education's office of special education for participation in such program, shall participate.

Section IV.

A. Board Reporting. A summary report of data by selected instrument will be provided by LDE to the Board of Elementary and Secondary Education. This summary report may also be provided to the Elementary and Secondary Education Bureaus of the Department of Education for purposes of evaluating the sustained curriculum.

B. Release of Test Data. Data relative to test results of individual students, teachers, classes, or schools will only be released in accordance with the Buckley Amendment and Attorney General's Opinion 77-1340.

Section V: Advisory Council. The Nonpublic School Testing Advisory Council appointed by the Board of Elementary and Secondary Education will continue to function in an advisory capacity throughout the duration of the program.

Rule 4.01.50b

The Board adopted the following directives to be used in listing nonpublic schools in the Louisiana School Directory: If a school does not submit an annual school report, it shall not be listed in the directory; schools ineligible under the Brumfield vs. Dodd decision would be so listed in the directory and be noted as ineligible by the use of an asterisk. Approval categories should be listed as approved, provisional, probational, or unapproved, with appropriate notations as to whether or not the schools are special schools or alternative schools and have met those standards.

Rule 1.00.30c

Amendment to present policy which will require that referrals of advisory council minutes/reports be made to the standing committee(s) at the discretion of the Board Staff Director.

James V. Soileau, Executive Director
Board of Elementary and Secondary Education

RULES

Department of Health and Human Resources
Air Control Commission

Regulation Revisions

Add the following definitions to Section 4 of the Regulations:

4.95 "New Design" Furnace. An existing straight kraft recovery furnace with both welded-wall or membrane wall construction and emission-control-designed air systems, for which design specifications, purchase contract or manufacturer's warranty specifies a capability for continuous total reduced sulfur (TRS) emissions equivalent to the New Source Performance Standards (***Federal Register,*** February 23, 1978, Part V).

4.96 Cross-recovery. The practice of combining the spent liquors from a soda-based semi-chemical pulping process, such as NSSC, with kraft mill black liquor prior to burning in a recovery furnace. Less than seven percent semi-chemical liquor, on a quarterly basis, based on equivalent air-dry pulp production, will not be classified as cross-recovery.

4.97 "Bubble Concept." An alternative emission plan whereby a facility with multiple sources of a given pollutant may achieve a required total emission by a different mix of controls from that mandated by regulation. Some sources may be assigned more restrictive limits, while others would meet less restrictive ones, provided the resulting total emissions are equivalent. Such a concept may permit a more expeditious compliance plan.

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Add to Table 4, "Emissions—Methods of Contaminant Measurement:"

Total Reduced Sulfur (TRS) -

1) Title 40, Code of Federal Regulations, Part 60, Appendix A - Method 16 or 60.8B.

2) Coulometric titration by method specified in NCASI Atmospheric Quality Improvement Technical Bulletin Number 91. (January, 1978.)

3) Or any other equivalent method.

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Revise the first part of 22.6 to read as follows:

22.6 Organic Compounds Water Separation.

22.6.1 Water Separators-Volatile Organic Compounds. Single or multiple compartment volatile organic compound water separators which receive effluent water from any equipment processing, refining, treating, storing or handling volatile organic compounds and emit greater than one hundred tons per year of regulated hydrocarbons (uncontrolled) shall be equipped with one of the following vapor loss control devices properly installed in good working order and in operation....

a) A container having all openings sealed and totally enclosing the liquid contents. All gauging and sanpling devices will be gas-tight except when gauging or sampling is taking place.

b) A container equipped with a floating roof, consisting of a pontoon type, double deck type roof, or internal floating cover which rests or floats on the surface of the contents and be equipped with a closure seal or seals to close the space between the roof edge and container wall. All gauging and sampling devices will be gas-tight except when gauging or sampling is taking place.

c) A container equipped with a vapor disposal system capable of processing such organic vapors and gases so as to prevent their emission to the atmosphere and with all container gauging and sampling devices gas-tight except when gauging or sampling is taking place.

d) Other equivalent equipment or means as may be approved by the Technical Secretary.

This subsection does not apply to oil field separators.

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Add Section 22.6.2 as follows:

22.6.2 Water Separators - Non Volatile Organic Compounds. Single or multiple compartment water separators which receive effluent water from any equipment processing, refining, treating, storing or handling organic compounds with a vapor pressure less than 1.5 psia (at actual conditions in separator) and emit greater than one hundred tons per year of regulated hydrocarbons (uncontrolled) shall be equipped with one of the following vapor loss control devices properly installed in good working order and in operation on the forebays:

(a) A cover having all openings sealed and totally enclosing the liquid contents: All gauging and sampling devices will be gas tight except when gauging or sampling is taking place.

(b) A floating roof, consisting of a pontoon type, double deck type roof, or internal floating cover which rests or floats on the surface of the contents and is equipped with a closure seal or seals to close the space between the roof edge and container wall. All gauging and sampling devices will be gas-tight except when gauging or sampling is taking place.

(c) Vapor disposal system capable of processing such organic vapors and gases so as to prevent their emission to the atmosphere and with all container gauging and sampling devices gas-tight except when gauging or sampling is taking place.

(d) Other equivalent equipment or means as may be approved by the Technical Secretary. This Subsection does not apply to oil field separators.

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In Section 22.10 revise the second sentence to read as follows: ...Sources emitting other organic compounds may be considered for exemption by the Commission if their control causes hardship....

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Add the following Subsection 23.4.3 to read:

23.4.3 Total Reduced Sulfur Emissions. Emission of Total Reduced Sulfur (TRS) from existing sources specified below shall not exceed the following limits:

(1) Kraft recovery furnaces corrected to eight percent oxygen by volume:

a. New design straight kraft recovery furnaces, five parts per million (ppm).

b. Old design straight kraft recovery furnaces, twenty ppm.

c. Cross-recovery furnaces, twenty-five ppm.

d. Recovery furnaces constructed prior to 1960: The department may establish emission limitations different from those specified above for the remaining useful life of the unit. The emission limit established for each effected furnace will reflect the lowest levels of TRS emissions consistently achievable utilizing best practicable technology.

(2) Digester systems, five ppm.

(3) Multiple-effect evaporator systems, five ppm.

(4) Lime kilns, corrected to ten percent oxygen by volume, twenty ppm.

(5) Condensate stripper systems, five ppm.

(6) Smelt dissolving tanks, 0.0084 grams per kilogram black liquor solids fired. Compliance with the particulate emission limits of Section 23.4.1 (2) by a scrubbing device employing fresh water as the scrubbing medium make-up will be accepted as evidence of adequate TRS control on smelt dissolving tanks.

Emission limits are given in terms of twelve-hour averages. For recovery furnaces, one percent, and for lime kilns, two percent of all twelve-hour TRS averages per quarter year above the specified level, under conditions of proper operation and maintenance, in the absence of start-ups, shut downs and malfunctions, are not considered to be violations of the emission limitation. These are not running averages, but are instead for discrete contiguous twelve-hour periods of time.

23.4.3.1 In any facility with multiple sources subject to this Section, alternative TRS emission limits from individual sources shall be established upon request, using the "Bubble Concept," provided that the total emissions from all the regulated sources do not exceed those permitted above.

23.4.3.2 The Department may establish alternative limits consistent with the purposes of this Section.

23.4.3.3 Compliance: Effected sources shall achieve final compliance with the provisions of Subsection 23.4.3 as expeditiously as practicable but not more than six years from the effective date of this subsection of the regulations.

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4.99 Graphic Arts (Printing). The formation of words, designs and pictures, usually by a series of application rolls each with only partial coverage.

4.100 Packaging Rotogravure Printing. The printing upon paper, paper boards, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into containers and labels for articles to be sold.

4.101 Publication Rotogravure Printing. The printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, and other types of printed materials.

4.102 Flexographic Printing. The application of words, designs and pictures to a substrate by means of a roll printing technique in which both the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomatric materials.

4.103 Vapor-Tight. Not capable of allowing the passage of gases at the pressures encountered.

4.104 Pharmaceutical Manufacturing Facility. Any facility which manufactures pharmaceutical products by chemical syntheses.

4.105 Particleboard is a manufactured board made of individual wood particles which have been coated with a binder and formed into flat sheets by pressure. Particleboard used as furniture component is not covered under this definition.

4.106 Thin particleboard is particleboard with a nominal thickness of ¼ inch or less. (Nominal ¼" is from 0.210" to 0.265").

4.107 Class II finish. A finish which complies with the requirements of NBS Voluntary Product Standard PS 59-73.

4.108 Dry cleaning facility. A facility engaged in the cleaning of fabrics in an essentially non-aqueous solvent by means of one or more washes in solvent, extraction of excess solvent by spinning and drying by tumbling in an air stream. The facility includes but is not limited to any washer, dryer, filter and purification systems, waste disposal systems, holding tanks, pumps, and attendant piping and valves used in this service.

4.109 Production equipment exhaust system. A device for collecting and directing out of the work area VOC fugitive emissions from reactor openings, centifuge opening and other vessel openings for the purpose of protecting workers from excessive VOC exposure.

4.110 Heat sensitive material. Materials which cannot be exposed to temperatures greater than 80° to 95°C (180° to 200°F).

4.111 Transfer efficiency. The portion of coating which is not lost or wasted during the application process expressed as percent.

4.112 Printed panels. Panels whose grain or natural surface is obscured by fillers and basecoats upon which a simulated grain or decorative pattern is printed.

4.113 Hardwood plywood. Plywood whose surface layer is a veneer of hardwood.

4.114 Natural finish hardwood plywood panels means panels

whose original grain pattern is enhanced by essentially transparent finishes frequently supplemented by fillers and toners.

4.115 Hardboard is a panel manufactured primarily from inter-felted lignocellulosic fibers which are consolidated under heat and pressure in a hot-press.

4.116 Low organic solvent coating (LOSC) coating which contain less organic solvent than the conventional coatings used by the industry. Low organic solvent coatings include water-borne, higher solids, electrodeposition and powder coatings.

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6.3.8 A statement that any proposed new or modified major stationary source as per Section 173 of the Federal Clean Air Act as amended August 1977 in an area which has been designated as "nonattainment" by the Environmental Protection Agency will be built or modified to achieve the lowest achievable emission rate (LAER) as defined by Section 171 of the Federal Clean Air Act as amended August 1977. In addition, the owner or operator of such proposed new or modified source will demonstrate that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in Louisiana is in compliance with all emission limits and standards under the Federal Clean Air Act or is on a schedule of actions, officially adopted by the Commission, to achieve compliance. Such demonstration shall be evidenced by the owner or operator furnishing the following certification:

> All existing major stationary sources owned and operated by the applicant in Louisiana, which are subject to a final court judgement or final EPA order or final Louisiana Air Control Commission enforcement action entered as a result of the alleged noncompliance of such sources with an emission limitation or standard under the Clean Air Act, are now in compliance with all such judgements or orders including, without limitation, any approved compliance schedules which are federally enforceable contained therein. This certification is based upon a reasonable inquiry of those employees of applicant who have operational responsibility for compliance with such emission limitations and standards.

If owner or operator is not able to make the affirmations specified in Section 6.3.8, a permit cannot be issued.

* * * *

Revise the first sentence of Section 22.3 (a) to read as follows:

22.3...(a) A floating roof, consisting of a pontoon type, double deck type roof or internal floating cover, which will rest or float on the surface of the liquid contents and can be equipped with a closure seal or seals to close the space between the roof edge and tank wall...

* * * *

Revise 22.9.2 to read: Surface Coating Industries. No person may cause, suffer, allow or permit volatile organic compound (VOC) emissions from the surface coating of any materials affected by Regulation 22.9.2 (a) through (j) to exceed the emission limits as specified in the regulation.

Add 22.9.2 (i) reading: Surface Coating of Miscellaneous Metal Parts and Products. The following emission limits shall apply:

	VOC Emission Limitation lbs per gal of coating (minus water)	kg per liter of coating (minus water)
Clear Coat	4.3	0.52
Air or forced air-dried items (not oven dried)	3.5	0.42
Frequent color change and/ or large numbers of colors applied, or first coat on un-treated ferrous substrate	3.0	0.36
Outdoor or harsh exposure or extreme performance characteristics	3.5	0.42
No or infrequent color change, or small number of colors applied		
(1) Powder Coating	0.4	0.05
(2) Other	3.0	0.36

These limits do not apply to operations covered in (a) to (h) herein or exterior coating of aircraft, auto refinishing, exterior coating of marine vessels and auto customizing topcoating (processing less than 35 vehicles per day)

Add 22.9.2 (j) reading: Factory Surface Coating of Flat Wood Paneling. The following emission limits shall apply:

	VOC Emission Limitation lbs per 1000 sq. ft. of coated surface	kg per 100 sq. meter of coated surface
Printed interior wall panels made of hardwood plywood and thin particleboard	6.0	2.9
Natural finish hardwood plywood panels	12.0	5.8
Class II finishes for hardboard paneling	10.0	4.8

Revise Section 22.9.3 (b) to read: If a person wishes to use low solvent technology to meet any of the emission limits specified in Regulation 22.9.2 (a) through (j) and if the technology to be used for any particular application is not now proven but is expected to be proven in a reasonable length of time, he may request a compliance date extension from the Technical Secretary. After consultation with appropriate local governmental agencies, the Technical Secretary may extend the compliance date to no later than December 31, 1982. Compliance date extensions will require progress reports every ninety days, or as directed, to show reasonable progress, as determined by the Technical Secretary, toward technology to meet the specified emission limitation.

Compliance with the emission limitation for any specified surface coating application shall be eighteen months after any progress report indicates the extended compliance date cannot be met with low solvent technology. Final compliance date for any control plan shall be no later than December 31, 1982. Compliance will be determined by the procedure specified in "Control of Volatile Organic Emissions for Existing Stationary Sources. Vol. 2-Surface Coating of Cans, Coils, Paper, Fabric, Autos and Lt. Duty Trucks", (EPA 450/2-77-008); a method approved by the Technical Secretary or certification from the paint manufacturer concerning the solvent makeup of the paint.

* * * *

22.12.4 Exemptions. A vapor degreaser emitting one hundred pounds (forty-five kilograms) or less of VOC in any consecutive twenty-four hour period (uncontrolled) is exempt from the provisions of this section provided the total emissions from all the vapor degreasers at the facility combined are less than one hundred tons/year of VOC, uncontrolled. If these two conditions are not met, the provisions of Section 22.12 must apply.

* * * *

22.19 Perchloroethylene Dry Cleaning Systems

22.19.1 Control Requirements.

A. There shall be no liquid leakage of volatile organic compounds from any perchloroethylene dry cleaning system. Liquid leakage shall be determined by visual inspection of the following sources:

1. Hose connections, unions, couplings and valves.
2. Machine door gasket and seating.
3. Filter head gasket and seating.
4. Pumps.

5. Base tanks and storage containers.
6. Water separators.
7. Filter sludge recovery.
8. Distillation units.
9. Divertor valves.
10. Saturated lint from lint basket.
11. Cartridge filters.

B. Vaporized perchloroethylene shall be handled in vapor-tight equipment and transfer lines.

C. The dryer exhaust must be vented through a carbon adsorber or equivalent control system for a vented solvent concentration of 100 ppm or less before dilution as determined by a method approved by the Technical Secretary or by utilizing equipment which has already been shown to meet this limitation.

D. Filter and distillation wastes.

1. The residue from any diatomaceous earth filter shall be cooked or treated so that wastes shall not contain more than twenty-five pounds of solvent per one hundred pounds of wet waste material (25kg/100kg).

2. The residue from a solvent still shall not contain more than sixty pounds of solvent per one hundred pounds of wet waste material (60kg/100kg).

3. Filtration cartridges must be drained in the filter housing for at least twenty-four hours before being discarded. The drained cartridges should be dried in the dryer tumbler after draining if at all possible.

4. Any other filtration or distillation system can be used if equivalency to these guidelines is demonstrated to the Technical Secretary. For purposes of equivalency demonstration, any system reducing waste losses below one pound solvent per one hundred pounds of clothes cleaned (1kg/100kg) will be considered equivalent.

5. The amount of solvent in filter and distillation wastes shall be determined by utilizing the test method described by the American National Standards Institute in the paper, "Standard Method of Test for Dilution of Gasoline-Engine Crankcase Oils."

22.19.2 Exemptions.

A. Perchloroethylene dry cleaning facilities are exempt from Section 22.19.1 where an adsorber cannot be accomodated because of inadequate space or where no, or insufficient, steam capacity is available to desorb adsorbers. Documented evidence must be presented to the Louisiana Air Control Commission. Any exemption granted shall be confirmed in writing.

B. Any coin operated perchloroethylene dry cleaning facility is exempted.

C. Any perchloroethylene dry cleaning facility which has a potential to emit a combined weight of volatile organic compounds less than five hundred fifty pounds (249kg) in any consecutive twenty-four hour period is exempt from the provisions of this subsection.

22.19.3 Compliance. All affected facilities shall be in compliance with the provisions of Section 22.19.1 as soon as practicable, but no later than December 31, 1982.

* * * *

22.20 Graphic Arts (Printing) by Rotogravure and Flexographic Processes

22.20.1 Control Requirements. No person shall operate or allow the operation of a packaging rotogravure, publication rotogravure, or flexographic printing facility unless volatile organic compound emissions are controlled by one of the following methods:

A. The volatile organic compound fraction of ink, as it is applied to the substrate, contains twenty-five volume percent or less of organic solvent and seventy-five volume percent or more of water.

B. A volatile organic compound adsorption or incineration system having at least ninety percent (by weight) control efficiency across the control device, which can be demonstrated to have an overall capture and abatement reduction of at least:

1. Seventy-five percent where a publication rotogravure process is employed.

2. Sixty-five percent where a packaging rotogravure process is employed.

3. Sixty percent where a flexographic printing process is employed.

C. The ink as it is applied to the substrate, less water, contains sixty percent by volume or more of nonvolatile material.

D. This rule applies to affected machines on which both surface coating and printing operations are performed.

22.20.2 Exemptions. A rotogravure or flexographic printing facility which has a potential to emit a combined weightof volatile organic compounds less than five hundred fifty pounds (249kg) in any consecutive twenty-four hour period is exempt from the provisions of Section 22.20.1.

22.20.3 Compliance. All affected facilities shall be in compliance with the provisions of 22.20.1 as soon as practicable, but no later than December 31, 1982. Compliance will be determined by the procedure specified in Appedix A of "Control of Volatile Organic Emissions for Existing Stationary Sources Vol. 2-Surface Coating of Cans, Coils, Paper, Fabric, Autos and Lt. Duty Trucks," (EPA 450/2-77008); A Method approved by the Technical Secretary or certification from the ink manufacturer concerning the solvent makeup of the ink.

* * * *

22.21 Fugitive Emission Control

22.21.1 Control Requirements.

A. No component of any petroleum refinery shall be allowed to leak at a rate which would result in a volatile organic compound concentration exceeding 10,000 parts per million (ppm) when tested in the manner described in appendix B of the OAQPS guideline series: "Control of volatile organic compound leaks from petroleum refinery equipment," (EPA 450/2-78-036).

B. No valve, except safety pressure relief valves, shall be located at the end of a pipe or line containing volatile organic compounds unless the end of such line is sealed with a second valve, a blind flange, a plug, or a cap. Such sealing device may be removed only when the line is in use, for example, when a sample is being taken.

C. The operator of a refinery shall make every reasonable effort to repair a leaking component, as described in Section 22.21.1A. within fifteen days. If the repair of a component would require a unit shutdown, and if the shutdown would create more emissions than the repair would eliminate, the repair may be delayed to the next scheduled shutdown.

22.21.2 Monitoring Requirements. The monitoring of components containing volatile organic compounds shall be performed by the following schedule using the method described in Section 22.21.1 A. (CEPA 450/2-78-036).

A. Monitor with a VOC detection device one time per year (annually) the following equipment items:

1. Pump seals.
2. Pipeline valves in liquid service.
3. Process drains.

B. Monitor with a VOC detection device four times per year (quarterly) the following equipment items:

1. Compressor seals.
2. Pipeline valves in gas service.
3. Pressure relief valves in gas service.

C. Monitor pump seals visually fifty-two times a year (weekly).

D. Monitor promptly with a VOC detection device any pump seal when liquids are observed dripping from the pump seals.

E. Monitor with a VOC detection device any pressure relief valve within seven days after it has vented to the atmosphere.

F. Monitoring is not required on the following equipment items:

1. Pipeline flanges, inaccessible valves, tank valves or check valves (including similar devices not externally regulated),

2. Pressure relief valves in liquid service, and

3. Pressure relief devices which are tied into either a flare header or vapor recovery device.

G. The monitoring schedule of Section 22.21.2 A, B, and C may be modified as follows:

1. After at least two complete annual checks, the operator of a refinery may request in writing to the Louisiana Air Control Commission that the monitoring schedule be revised. This request shall include data that have been developed to justify any modification in the monitoring schedule.

2. If the Technical Secretary determines that there is an excessive number of leaks in any given process area, he may require an increase in the frequency of monitoring for that process area of the refinery.

H. The Technical Secretary may approve an alternate monitoring method if the refinery operator can demonstrate that the alternate monitoring method is equivalent to the method required by this Regulation. Any request for an alternate monitoring method must be made in writing to the Technical Secretary.

22.21.3 Records Requirements.

A. When a leak, as described in Section 22.21.1 A. is located, a weatherproof and readily visible tag bearing an identification number and the date the leak is located shall be affixed to the leaking component. The tag may be discarded after the leak is repaired.

B. A survey log shall be maintained by the operator of a refinery which shall include the following:

1. The name of the process unit where the leaking component is located.

2. The name of the leaking component.

3. The stream composition at the leak.

4. The identification number from the tag required by Section 22.21.3A.

5. The date the leak was located.

6. The date maintenance was performed.

7. The date the component was rechecked after maintenance, as well as the instrument reading upon check.

8. A record of VOC detection device calibration.

9. A listing of leaks not repaired until turnaround.

10. A list of the total number of items checked versus the total found leaking.

The operator shall retain the survey log for two years after the latter date specified in Section 22.21.3 B 7 and make said log available to the Technical Secretary upon request.

22.21.4 Reporting Requirements. The operator of a refinery shall, after each quarterly monitoring has been performed, submit a report to the Technical Secretary of the Louisiana Air Control Commission listing all leaks that were located but not repaired within the fifteen day limit. These reports are due the fifteenth day of January, April, July and October. Such report shall include the following:

A. The name of the unit where the leaking component is located, the date of last unit shutdown.

B. The name of the leaking component.

C. The stream composition at the leak.

D. The date the leak was located.

E. The date maintenance was attempted.

F. The date the leak will be repaired.

G. The reason repairs failed or were postponed. The operator shall include in this report a signed statement attesting to the fact that all other monitoring has been performed as required by this rule.

H. The list of items awaiting turnaround for repair.

I. The number of items checked versus the number found leaking.

22.21.5 Compliance Schedule. All facilities affected by this regulation shall be in compliance as soon as practicable, but no later than December 31, 1982.

* * * *

22.22 Gasoline Terminal Vapor-Tight Control Procedure

22.22.1 Gasoline Tank Trucks.

A. Gasoline tank trucks and their vapor collection systems shall not sustain a pressure change of more than three inches of water (0.75 kPa) in five minutes when pressurized to eighteen inches of water (4.5 kPa) or evacuated to six inches of water (1.5 kPa) using the test procedure described in Appendix A of the OAQPS Guideline series: "Control of volatile organic compound leaks from gasoline tank trucks and vapor collection systems," December 1978, (EPA-450/278051).

B. All tank trucks must have a sticker displayed on each tank indicating the identification number of the tank and the date each tank last passed the pressure and vacuum test described in Section 22.22.1 A. Each tank must be certified annually and the sticker must be displayed near the Department of Transportation certification plate. Any repairs necessary to pass the specified requirements must be made within fifteen days of failure.

22.22.2 Vapor Collection System.

A. Loading and unloading operations at gasoline terminals shall not produce a reading equal to or greater than 100 percent of the lower explosive limit (LEL, measured as propane) at 2.5 centimeters around the perimeter of a potential leak source as detected by a combustible gas detector using the test procedure described in appendix B of the document referenced in Section 22.22.1 A.

B. Vapor collection and processing equipment shall be designed and operated to prevent tank truck gauge pressure from exceeding eighteen inches of water (4.5 kPa) and prevent vacuum from exceeding six inches of water (1.5 kPa).

C. The gasoline terminal operator shall keep records for two years indicating the last time the vapor collection facility passed the requirements specified in Section 22.22.2 A. Items which required repair in order to pass the specified requirements must also be recorded during the annual test procedure. Any repairs necessary to pass the specified requirements must be made within fifteen days of failure.

D. The monitoring frequency for the vapor collection system may be modified as follows:

1. After at least two annual checks, the terminal operator may request in writing to the Louisiana Air Control Commission that the monitoring frequency be extended. The operator should include data that have been developed to justify less frequent monitoring.

2. If the Technical Secretary determines that there is an excessive number of leaks during any given test by the terminal operator or by a Louisiana Air Control Commission representative, he may require an increase in the monitoring frequency.

22.22.3 Exemptions. All loading and unloading facilities for crude oil and condensate, for ships and barges and for facilities loading or unloading only liquified petroleum gas are exempt from Section 22.22.

22.22.4 Compliance Schedule. All affected facilities shall be in compliance with the provisions of these regulations as soon as practicable, but no later than December 31, 1982.

* * * *

22.23 Pharmaceutical Manufacturing Facilities

22.23.1 Reactors, Distillation Operations, Crystallizers, Centrifuges, and Vacuum Dryers. The owner or operator of a this regulation shall control the volatile organic compound emissions from all reactors, distillation operations, crystallizers, centrifuges and vacuum dryers that have the potential to emit fifteen pounds per day (6.8 kg/day) or more of VOC. Surface condensers or equivalent controls shall be used, provided that:

A. If surface condensers are used, the condenser outlet gas temperature must not exceed:

1. -13°F (-25°C) when condensing VOC of vapor pressure greater than 5.8 psia (40.0 KPA),
2. 5°F (-15°C) when condensing VOC of vapor pressure greater than 2.9 psia (20.0 KPA),
3. 32°F (0°C) when condensing VOC of vapor pressure greater than 1.5 psia (1.0 KPA),
4. 50°F (10°C) when condensing organic compounds of vapor pressure greater than 1.0 psia (7.0 KPA), or,
5. 77°F (25°C) when condensing organic compounds of vapor pressure greater than 0.5 psia (3.50 KPA).

B. If equivalent controls are used, the VOC emissions must be reduced by at least as much as they would be by using a surface condenser which meets the requirements of Section 22.23.1 A.

22.23.2 Air dryers, and production equipment exhaust systems. The owner or operator of a synthesized pharmaceutical manufacturing facility subject to this regulation shall reduce the VOC emissions from all air dryers and production equipment exhaust systems:

1. By at least 90 percent if emissions are 330 lb/day (150 kg/day) or more of VOC; or,
2. To 33 lb/day (15.0 kg/day) or less if emissions are less than 330 lb/day (150 kg/day) of VOC.

22.23.3 Storage and loading controls. The owner or operator of a synthesized pharmaceutical manufacturing facility subject to this regulation shall:

A. Provide a vapor balance system or equivalent control that is at least 90 percent effective in reducing emissions from truck or railcar deliveries to storage tanks with capacities greater than 2,000 gallons that store VOC with vapor pressures greater than 4.1 psia (28.0 KPA) at 20°C and,

B. Install pressure/vacuum conservation vents set at plus or minus 0.03 psi gauge (plus or minus 0.2 KPA) on all storage tanks that store VOC with vapor pressures greater than 1.5 psia (10.3 KPA) at 20°C, unless a more effective control system is used.

22.23.4 Centrifuges, filters, and in-process tank requirements. The owner or operator of a synthesized pharmaceutical facility subject to this regulation shall:

A. Enclose all centrifuges, rotary vacuum filters, and other filters which have exposed liquid surfaces, where the liquid contains volatile organic compounds and exerts a total volatile organic compound vapor pressure of 0.5 psia (3.50 KPA) or more at 20°C.

B. Install covers on all in-process tanks containing a volatile organic compound at any time. These covers must remain closed, unless production, sampling, maintenance, or inspection procedures require operator access.

22.23.5 Volatile organic compound leaks. The owner or operator of a synthesized pharmaceutical manufacturing facility subject to this regulation shall repair all leaks from which a liquid, containing VOC, can be observed running or dripping. The repair shall be completed the first time the equipment is off-line for a period of time long enough to complete the repair.

22.23.6 Exemptions. Any pharmaceutical manufacturing facility which has a potential to emit a combined weight of volatile organic compounds less than 550 pounds (249 kg) in any consecutive twenty-four-hour period is exempt from the provisions of Section 22.23.

22.23.7 Compliance. All affected persons shall be in compliance with these rules as soon as practicable, but no later than December 31, 1982 as determined by a method approved by the Technical Secretary.

William A. Cherry, M.D., Secretary
Department of Health and Human Resources

RULE

Department of Health and Human Resources
Board of Embalmers and Funeral Directors

The following rule was adopted by the Louisiana State Board of Embalmers and Funeral Directors, as being reasonably necessary to enforce the provisions of Title 37, Chapter 10. Rules previously numbered 14, 15, and 16 will become Rules 15, 16, and 17.

Rule 14. Pressure Sales Tactics

The use of pressure sales tactics and/or plans, including but not limited to a bait and switch plan, and/or a sales commission plan by a funeral establishment or by anyone in their employ or by anyone acting on their behalf, in the sale of merchandise or services shall be an unethical and/or deceptive practice.

Lloyd E. Eagan, Secretary
Board of Embalmers and Funeral Directors

RULE

Department of Health and Human Resources
Office of Family Security

The Department of Health and Human Resources, Office of Family Security, has adopted a rule that will require the timely submittal by providers of medical claims as follows:

(1) Rehabilitation Center providers must submit their claims within twelve months from the date of service.

(2) Laboratory and X-Ray Service Providers must submit their claims within six months from the date of service.

(3) Medical Transportation Providers must submit their claims within six months from the date of service.

William A. Cherry, M.D., Secretary
Department of Health and Human Resources

RULE

Department of Health and Human Resources
Office of Human Development

Editor's Note: The Department of the State Register has chosen not to publish the forms mentioned in these rules. Interested persons may obtain copies of the forms by phoning or writing: Don Fuller, Director, Division of Evaluation and Services, 333 Laurel Street, Room 810, Baton Rouge, Louisiana 70802, (504) 342-4043. The forms are: Form 4-H, (Expanded Income Status Eligibility Determination and Fee Assessment); Form 4-H 1-2, (Explanation of 4-H); "Notification" statement form; Form 800 RC, (OHD-DES Community Respite Care Services Provider Referral Form); 800 RC-1. (Referral for Community Respite Care Services Explanation); Form 801 RC and 801 RC-1. (Provider Monthly Service Delivery Report).

In accordance with the Appropriations Act of the 1979 Louisiana Legislature, and the Louisiana Comprehensive Annual

Service Program Plan for 1979, the Department of Health and Human Resources, Office of Human Development has adopted policies and procedures to implement a program of Community Respite Care Services for handicapped persons and their families. This program represents an effort by the Department of Health and Human Resources, Office of Human Development to meet the need for family support services in order to maintain handicapped persons in their own homes.

Part III—Community Respite Care for Handicapped Persons and Their Families

13-300—Introduction and Objectives.

Rationale. It is widely recognized that the most desirable placement for many handicapped and multi-handicapped persons is in his/her own family home. It must also be recognized that any family providing such care is exposed to psychological and physical stresses which are unique, demanding, and unrelenting. Eventually, unless support services are made available, some families are stressed beyond their capacity to cope, and the result can be an increased risk to the handicapped person of being placed in an environment more restrictive than his current situation.

The Community Respite Care program represents an effort by the Division of Evaluation and Services to meet the need for family support services in order to maintain handicapped persons in their own homes.

Definitions. Community Respite Care Services are family support services which provide short-term relief for families who have the special responsibility of providing ongoing care for a handicapped person living at home.

A handicapped person, for purposes of this policy, is defined as anyone with a physically or mentally disabling condition(s) which, without respite services, could lead to placement in a setting more restrictive than his/her present situation. Examples of disabling conditions for which respite care services would be appropriate are: Moderate or severe mental retardation; autism, other developmental disabilities such as cerebral palsy or epilepsy; and multiple handicaps.

Types of service. Community Respite Care includes substitute care services for all or part of a twenty-four-hour day either in the home (Family Aide Service), or outside the home (Respite Care Out of Home); and Training and Counseling Services (Family Education and Training for the handicapped person and/or other family members).

How Services are Delivered. Office of Human Development/Division of Evaluation and Services (OHD/DES) purchases Community Respite Services for eligible recipients through Title XX contractual agreements with Respite Care providers. See Appendix II for a list of Providers and Contracted Services.

Goal. The goal of the Community Respite Program is to combine respite services with other community services to help support the family in their effort to maintain the family home as the principal caretaking resource for the handicapped person, thus preventing placement of the handicapped person in a more restrictive setting. This goal will be attained through the use of one or more of the following strategies:

A. To temporarily relieve the stress imposed on families because of the responsibility of caring for a handicapped person by providing temporary in home and/or out-of-home substitute care.

B. To provide a temporary substitute care resource for emergency situations which pervent the relative caretaker(s) from providing adequate care for the handicapped person.

C. To provide the education, training, and counseling necessary to assist the handicapped person and/or members of his family to maintain self-sufficiency, and avoid unnecessary institutional placement.

13-305—Eligibility Determination.

A case coordinator shall be designated in each parish as the staff person responsible for the determination of eligibility for respite care cases. All applications/requests for respite care services from all sources (including providers) shall be referred to the designated case coordinator for an eligibility determination. However, when a request for respite care services is made for persons whose DES case is already involved in the client placement process, and is being handled by a case coordinator, the case coordinator already working with the family shall make the respite care eligibility determination.

The determination of eligibility for respite care is a two-fold process. Step 1: A determination must be made as to whether the handicapped person named in the request for services meets the definition provided in 13-300. Step 2: The family must be determined eligible for Title XX social services on the basis of income maintenance status, income status, or without regard to income (WRI) in certain protective services situations.

13.305.1—Eligibility Condition of a Handicapped Person.

In order to be eligible for Community Respite Care Services, the handicapped person in the family requesting services must be a handicapped person as defined in 13-300. To meet this prerequisite to eligibility, the handicapping condition must be disabling to the extent that the handicapped person cannot care for himself/herself or function in an age-appropriate manner; and it may reasonably be expected, that the handicapped person could require placement in a more restrictive setting if respite care services are not provided.

The applicant's word shall be considered acceptable verification of the extent of a handicapped person's disability and it's impact on the family unless there is some reason to doubt it. The case coordinator shall attempt to determine the source of any medical diagnosis regarding the handicapped person's condition and record this along with any other pertinent information on the handicap in the case record.

13-305.2—Title XX Eligibility Determination.

The applicant/family shall be determined eligible for Title XX Community Respite Care Services on an individual basis. This determination shall be made by a DES case coordinator, using procedures outlined in Chapter XX, and this section. Form 4 shall be signed by the family member responsible for the handicapped person. If an eighteen year old is unable to sign for himself, the caretaker may sign if there is no legally responsible person. If the handicapped person is eighteen years of age or over, and is not claimed as a dependent for federal income tax purposes, he may be considered a single person family for the purpose of eligibility determination. For families with a handicapped person under the age of eighteen, the family must be determined eligible based on income maintenance status, income status or WRI criteria.

Provision of Respite Care to Income Maintenance and Income Status Eligibles.

A. Income Maintenance Status Eligibles. Basic Title XX eligibility criteria for income maintenance status eligibles are contained in 20-605.

B. Income Status Eligibles.

1. Basic Income Status Criteria. Basic Title XX eligibility criteria for income status eligibles are contained in 20-610. Form 4 shall be completed to determine eligibility or ineligibility for Title XX services by basic income status criteria.

2. Expanded Income Status Criteria. Income status eligibility standards have been expanded for respite care services to include persons whose family gross monthly income is more than 57.8 percent, but not greater than 115 percent of the state's median income, adjusted for

family size. The following chart gives the maximum gross monthly incomes allowable. Above these amounts of income, families will not be eligible for Community Respite Care Services.

Family Size	Gross Monthly Income	Family Size	Gross Monthly Income
1	$ 823	7	$2,136
2	1,076	8	2,184
3	1,329	9	2,231
4	1,582	10	2,279
5	1,835	11	2,327
6	2,088	12	2,375

For each additional family member above twelve persons add forty-eight dollars to the gross monthly income for a family of twelve.

Form 4-H has been designed as a supplement to Form 4 for applications on persons in this expanded group of income status eligibles.

When the family's gross monthly income falls within the above listed expanded income status range, a fee shall be charged for Community Respite Care Services (see Section 13-309 for policy regarding fees). Formal notification of the responsibility to pay fees, the rate at which fees must be paid, and the procedure for paying fees must be made to the client, using Form 4-H.

Persons determined eligible because their income falls in the expanded income status range of eligibility are eligible for Community Respite Care Services only, and will therefore not receive a Form 4-C. Providers shall be informed of such persons' eligibility and responsibility to pay fees for Community Respite Care by Form 800 RC (Referral for Community Respite Care).

C. Without Regard to Income (WRI).

Community Respite Care shall be available in certain protective services situations without regard to income (WRI). To provide respite care to families WRI, it must be established that Community Respite Care is needed for the following reasons:

1. Handicapped person is currently harmed or threatened with imminent harm through action or inaction of the person(s) responsible for his/her care.
2. The OHD/DES Protective Services Staff is involved in an investigation or is providing on-going protective services to the family on behalf of the handicapped person.

When Community Respite Services are provided WRI, Manual Policy 20-725 (D) must be applied. This policy requires the worker to document in the case record the circumstances which establish that the above child is subject to, or at risk of abuse, neglect, or exploitation. Once the adult or child has been certified, a redetermination of eligibility for Community Respite Services WRI shall be made at least every six months to verify that conditions necessitating protective services still exist. The adult or child is eligible for respite care only if the service plan specifies respite care as a necessary service to remedy or prevent neglect, abuse or exploitation.

D. Group Eligibility.

Group eligibility for Title XX social service shall not be applicable to the provision of Community Respite Care Services. An individual case determination is required to establish that the need for respite care is within the reasons set forth in C above and in 13-305.1.

13-307—Availability of a Title XX Community Respite Services Provider.

The case coordinator shall refer persons eligible for Title XX Community Respite Services to the provider in the client's region of residence using Form 800 RC. The provider shall determine if their services are appropriate for and adequate to meet the needs of the handicapped person. Community Respite Services will be available only after the provider determines that adequate services can be delivered to the handicapped person. Persons determined to be inappropriate for the services will be so advised by the provider.

The case coordinator shall advise the applicant at the time of eligibility determination that the availability of Community Respite Care Services is contingent upon the regional provider's capacity to provide adequate care and services to the handicapped family member. The case coordinator should screen applicants for Community Respite Care Services in terms of the potential for services being available to the handicapped person and the applicant should be advised if the provider is not available to provide services to their handicapped family member. If the applicant requests an eligibility determination even though the initial screening indicates services will not be available, the applicant will not be refused an opportunity to apply for the services.

13-308—Application and Referral Process.

13-308.1—Non-Emergent Application.

A. When the Referral for Respite Care is Received by a Provider.

When a provider of community respite care services receives a request for these services, he shall refer the applicant to the DES designated case coordinator in the parish of the prospective client's residence, for eligibility determination. The applicant/family shall be responsible for contacting the DES case coordinator for a determination of eligibility for respite care services.

B. When the Request for Respite Care Services is Received by the DES Worker.

When a Division of Evaluation and Services intake worker receives a request for respite care services, he/she shall refer the case to the designated case coordinator for a determination of eligibility.

The DES case coordinator shall make an initial assessment of the request, completing Form 800 RC (Referral for Respite Care Services). The case coordinator shall identify the person needing care, the extent of his/her disability, the impact of the condition on the family, and whether Title XX eligibility has already been established.

If Title XX eligibility has not already been established, the case coordinator shall make the eligibility determination as shown in 13-305. If the applicant is found eligible for Respite Care Services, he/she shall be referred to the Regional Respite Care Provider. If he/she is found ineligible for Community Respite Care Services, the case coordinator and other DES staff shall assist the applicant to meet his need through other available resources.

C. Notification Processes.

The client shall be formally notified by the DES case coordinator of his eligibility or ineligibility for Community Respite Services, using Form 18-S.

The provider shall be notified of an applicant's eligibility for Title XX Community Respite Care Service, and of any responsibility the client/family may have to pay fees for the Respite Care Services received by Form 800 RC.

The provider will in turn notify the DES case coordinator as to whether the agency can deliver the requested service, using Section IV of Form 800 RC.

13-308.2—Application and Referral Process: Emergency Applications. The following are emergency procedures designed to expedite delivery of respite care services to families whose need for Respite Care Out-of-Home or Family Aide Services is both extreme and urgent. These procedures shall not be used to circum-

vent the non-emergent application process described in 13-308.1. Any use of the emergency application process outlined below shall be fully documented in the case record as to need, lack of alternative resources, and the urgency of the situation.

A. Emergency Defined—An emergency for purposes of this section is any situation which meets the following criteria: (1) the client is requesting immediate respite care service due to urgent circumstances; and (2) the problem is one which, without respite care, could have the immediate result of causing harm or inadequate care to the handicapped person, or a serious hardship for a member or members of his family. The person taking the application shall use his best judgment in determining whether each situation is an emergent one.

B. When Emergent Application is Made Directly To a Provider.

If an applicant requests Respite Care Out-of-Home or Family Aide Services from a provider due to emergent circumstances as defined above, the role of OHD/DES shall be to assist the provider to respond quickly to meet the needs of the handicapped person and his family during the crisis period.

Title XX eligibility determination cannot be waived for families experiencing an emergency, but the following procedure allows for a tentative eligibility determination for the purpose of allowing immediate provider response.

If a provider receives what he feels is an emergency application, and he wishes to claim Title XX funding for the provision of these services he/she should:

1. Make a tentative determination as to whether the disabled person fits the policy definition of a handicapped person, as shown in 13-300, and 13-305.1.
2. Check existing Title XX eligibility by: Viewing 4-C, Medicaid card; and/or checking with DES case coordinator.
3. Complete a Form 4, (if existing Title XX eligibility cannot be confirmed).
4. If the family falls in the fifty-eight to one-hundred-fifteen percent income range, Form 4-H shall be completed, and an explanation of the responsibility to pay fees made.
5. If the client/family appears to be eligible, services may be delivered immediately. The provider must understand that should the client/family prove to be ineligible for Title XX Community Respite Care Services, Title XX funds shall not be made available for this service.
6. Give an explanation to the family of the necessity for forwarding the application to DES for a final determination of Title XX eligibility and fees (if applicable).
7. The provider shall prepare a written explanation of the need for emergency application and referral procedures, and submit this along with Form 4 and 4-H (if applicable) to the appropriate DES case coordinator not later than the second working day following the initial day of service delivery. If Title XX eligibility was verified by viewing the client's 4-C or medicaid card, the provider shall include a statement to this effect in the written explanation.
8. The case coordinator, on receipt of the emergency application, etc. shall check the application for accuracy. If no errors are noted, the client/family is to be considered eligible for Title XX Community Respite Care Services. The family and the provider shall be notified. The family is notified by 18-S. The provider is notified using Form 800 RC (Referral for Respite Care Services).

If the client/family is determined by the case coordinator to be ineligible for Title XX Community Respite Care Services, the provider shall be contacted immediately by telephone to inform him that Title XX funds cannot be used to pay for the services. This call shall be confirmed in writing to the provider, and filed in the case record. The client/family shall be notified via Form 18-S.

C. When Emergent Application is Made to DES.

The case coordinator responsible for the case shall make every effort to expedite the application and referral process in situations which are emergencies as defined in A above. The Case Coordinator shall:

1. Determine whether the request constitutes an emergency.
2. Determine if the client/applicant is already Title XX eligible.
3. Contact the provider by telephone and relay the information from 1 and 2 above.
4. Refer the client to the Provider as soon as possible. An explanation shall be made of the possibility that the provider will not have the services needed to meet the needs of the handicapped person/family. The client shall be given an explanation of the need for a future Title XX eligibility and fee determination.
5. Document the emergency referral and the reasons for making it in the case record.
6. After Form 4 and 4-H (where applicable) are received from the provider, determine eligibility for Title XX Community Respite Care Services, and the rate of fees payable (if applicable).
7. Notify family of their eligibility or ineligibility (Form 18-S) and if applicable, of their responsibility to pay fees, and the rate at which fees will be charged (Form 4-H).
8. Notify the Provider using Form 800 RC regarding the family's eligibility and responsibility to pay fees.

The Provider may accept the DES referral if the agency is willing to accept the responsibility for providing services to the handicapped person. When the provider agrees to deliver services on an emergency basis prior to the Title XX eligibility determination, the provider shall:

1. Take a Title XX application as described in B above, on cases not already Title XX eligible.
2. Provide the service if the client/family situation is appropriate for their agency services.
3. Refer for eligibility determination to DES case coordinator, using Form 4 and 4-H (if applicable).

13-309—Fees.

When an eligible family's gross monthly income is more than 57.8 percent of the state's median income for a family of four, adjusted for size, a fee shall be charged for the various Community Respite Care Services in accordance with a sliding scale established by DHHR. The fee schedule (see Part III, Appendix I) is based on service delivered, family size, and family yearly gross income.

DES shall be responsible for the assessment and collection of fees for Community Respite Care Services. Form 4-H shall be completed by the case coordinator to assess the rate of fee payment for persons responsible to pay a fee for the services, and to notify the responsible client/parent/guardian of his responsibility to pay the fees.

13-309.1—Definitions. For purposes of establishing fees, the following definitions shall apply:

Family—The basic family unit is defined as consisting of one or more adults and children, if any, related by blood, marriage, or adoption, and residing in the same household. Where related adults, other than spouses, or unrelated adults reside together, each will be considered a separate family, unless they are included as part of the family unit for federal income tax reporting purposes. Children living with non-legally responsible relatives, emancipated minors, and children living under the care of unrelated persons will be considered a member of the family, if any, that claims that child as a dependent for federal

income tax purposes. If they are not claimed as a dependent they will be considered a single person family.

Gross Income—The yearly income received from sources identified by the United States Census Bureau in computing the median income and defined in Chapter XX, reference 20-610 C.

Dependent—As used herein, means all persons dependent on the household income as reported to IRS for federal income tax purposes.

13-309.2—General Regulations.

A. Notification and Billing.

1. All income status eligible persons applying for Community Respite Care Services with incomes above 57.8 percent and less than 115 percent shall be promptly notified of their responsibility to pay a fee for the services they receive. The case coordinator shall discuss the requirement of the fee payment, the methods of computation of payments and the rates at which fees are computed. This discussion shall include the information that the hourly fee will be charged for each hour of service received for Family Aide Service, Family Education and Training, and Respite Care Out of Home Services.

2. The client/parent/guardian will be required to pay fees as billed. Billing for services received will be sent by state office to the client or responsible person.

B. Failure to Provide Information. If an individual in the appropriate income range is responsible for fees for services rendered, and he refuses to supply the information necessary for a determination of the fee, the individual may be determined ineligible for Community Respite Care Services.

C. Reporting Changes in Information. The individual responsible for fees for services rendered is also responsible for reporting to the case coordinator any changes in income, family composition, or other information which may result in an adjusted fee.

D. Periodic Review. A periodic check, no less than annually, shall be made by the case coordinator with the individual responsible for fees, in order to make any adjustments necessary in the amount of contributions.

13.309.3—Procedures for Determining the Fee Amount. At the time of certification for Title XX Services, the case coordinator shall determine whether the family's Title XX eligibility is based on income status above 57.8 percent but less than 115 percent. If so, an explanation shall be made regarding fees as described above, and Form 4-H shall be completed.

A. Persons Responsible for Payment of Fees.

The person responsible for paying the fees for Community Respite Services shall be the parent, guardian, or tutor in the case of a handicapped client under the age of eighteen, unless someone else claims the client child as a dependent for federal income tax purposes in which case it shall be that person's responsibility to pay the fees.

If the handicapped person (client) is eighteen or over he shall be responsible for the fees based on his individual income unless he is claimed by someone else as a dependent for income tax purposes, in which case the claimant becomes responsible for the fees, based on the claimant's family income.

B. Verification of Income and Family Size.

The declaration method of verification of income that is currently being used for Title XX eligibility will also be used when Community Respite Services are being considered. The client shall be the primary source of information and shall present information regarding his family composition and his family monthly gross income.

DHHR Form 4, Application and Eligibility Determination, shall be used to gather and record the necessary information. Form 4 is being revised to reflect recent changes. In the meantime include in Part III, B under comments, the amount of state and federal income tax paid by the family during the previous calendar year.

When the case coordinator has reason to doubt the applicant's statements because they are conflicting or insufficient, he may require verification of the issue in question.

In securing information from the applicant, the case coordinator shall inquire about the receipt of each type of income identified on the application Form 4. The careful consideration of all sources of applicable income is important in order to establish and maintain a valid assessment of the client/parent/guardian's ability to pay.

C. Steps in the Determination of the Fees to be Assessed.

1. Determine the family size, see definition of family (13-309.1) of the responsible person's family, using Form 4 and 4-H.

2. Determine the gross income of the family unit, using Form 4 and 4-H.

3. Refer to the fee schedule for the various Community Respite Care Services, and record the rate per hour for services on Form 4-H. Explain to the client/family that whenever the various kinds of service are received from the provider, they will be charged at the rate shown for services.

4. Officially notify the responsible person of their responsibility to pay fees as billed and the rate to be charged by sending or giving them a copy of Form 4-H. The provider shall be notified that his is a fee-related case by completion of Section III (Eligibility and Fee Information) of Form 800 RC.

5. After the case coordinator has been notified by the provider that the client has been accepted for Community Respite Care Services, notify DES State Office of the rate at which fees must be charged by submitting a copy of Respite Care Fee Assessment Form 4-H to the DES State Office, Attention: Respite Care Fee Section.

6. Providers will be responsible for reporting to DES State Office the services used by the client/family on a monthly basis, using Form 801 RC (Provider Monthly Service Report).

7. Each month the DES State Office shall multiply the rate for service times the amount of service reported delivered by the provider, deduct any payments received from the responsible person, and send a monthly bill at the end of month following the month in which services were received.

8. Exceptions to the payment of fees can only be made with the approval of the DES State Office, and then only for documented reasons such as excessive emergency or medical costs, or family hardships resulting in unusual and unexpected expenses.

13-309.4—Maximum Amounts of Fees. In no case can the fee for any given service exceed the cost of the service being purchased or provided.

13-310—Priorities for Service.

In many cases, the number of applications for services will exceed the availability of services. Priorities have been established to follow in determining who will receive services based on the greatest need for service. Emergent situations shall have the greatest priority. In addition, a more severely handicapped person will be given priority for services.

The following is an outline of the three general Community Respite Care Service areas. Under each service area is a partial listing of client/family situations which may require Community Respite Services, in order of the priority which shall be assigned to them by a worker deciding which situations shall receive services first:

Service: Respite Care Out-of-Home.

1. Crisis or emergency with the family or handicapped person. Examples are an illness, a hospitalization, or a death

in the family.

2. A family who is requesting or considering placement of a handicapped person in setting more restrictive than their own home.

3. A planned rest, activity or vacation for a family with a handicapped person living in the home.

Service: Family Aide Services.

1. Crisis or emergency with the family or handicapped person. Examples are an illness, a hospitalization, or a death in the family.

2. A family who is requesting or considering placement of a handicapped person in setting more restrictive than their own home.

3. A planned rest, activity or vacation for a family with a handicapped person living in the home.

Service: Family Education and Training. (If the service is available to the client or family through another community resource, the client or family will be referred to that service.)

1. Prevention or delay of an imminent placement in a setting more restrictive than the person's own home.

2. To prevent a deterioration of the handicapped person's condition or family situation due to the lack of appropriate care.

3. To provide services to the client and the family when a handicapped person is returning home from a restrictive setting.

4. To provide services at or near the time of the diagnosis of a handicapping condition.

13-311—Limit on Service Usage.

Respite care out of home services shall not extend beyond thirty consecutive days of service under ordinary circumstances.

It shall be the responsibility of the Provider-of-Respite-Services to make certain that this limit on service usage is not violated.

The DES case coordinator shall advise the client/family of this limit, and shall not make any service plan which exceeds the thirty consecutive day limit.

In exceptional circumstances, services may be extended beyond the thirty consecutive day limit with prior state office approval.

13-312—Division of Responsibilities.

A. OHD-DES Worker's Responsibilities.

1. Explaining the Community Respite Services which are available to handicapped persons and helping the family determine whether they are interested in receiving respite services.

2. Determining the client and family's eligibility for Title XX services, and establishing their eligibility for Community Respite Services.

3. Determining the amount of the fee for services for families which are responsible to pay a fee for the services.

4. Informing the family, the provider, and state office of the family's responsibility for and amount of the fee per unit of service.

5. Interpreting to the family the agency's policies and procedures regarding Community Respite Services.

6. Referring eligible families to the Community Respite Services provider in their region.

7. Developing a service plan with the handicapped person and his/her family in terms of the use of Community Respite Services and any additional services for which the family is eligible and which will support the handicapped person and his/her family in their effort to maintain themselves as a family unit.

8. Certifying the client for social services in the SSMS by Form 14-F or Form 14-M and reporting the services delivered to the clients by the worker.

9. Maintaining the service case record on a current basis. The service plan along with information regarding service delivery, documentation of eligibility, and pertinent information regarding work with the handicapped person and his/her family shall be recorded in the service case record.

10. Re-determination of eligibility for Title XX Community Respite Services annually or when client or the family's situation changes.

11. Notifying the client and the family by Form 19-S if they are no longer eligible for Community Respite Care Services.

B. Client and Family's Responsibilities:

1. Cooperating with the eligibility determination process of OHD/DES.

2. Contacting the Community Respite Services provider to request services once eligibility has been established.

3. Cooperating with the intake process and procedures with the Community Respite Care Services provider.

4. Paying fees for services received (when applicable).

C. Community Respite Services Providers Responsibilities:

1. Referring non-emergent requests for Community Respite Services to OHD/DES for determination of Title XX eligibility.

2. Assessing requests for Community Respite Services from Title XX eligible clients and families referred to them by OHD/DES in terms of their capacity to provide adequate care to the handicapped person.

3. Informing applicants for Community Respite Services regarding their decision as to whether their services will be available to the applicant.

4. Informing OHD/DES regarding their acceptance or denial of Community Respite Services to clients and families referred by OHD/DES.

5. Maintaining records with pertinent information regarding the handicapped person and his/her family, and information regarding the dates, the units of service and the types of Community Respite Services delivered to each client.

6. Reporting to the Social Service Management System the units and dates of service delivered to each client.

7. Reporting to OHD/DES the dates, the units of service, and the types of service delivered to clients with the responsibility to pay fees for the services.

8. Developing a plan for the delivery of Community Respite Services with each handicapped person and his/her family.

9. Providing adequate care and services to each handicapped person and his/her family which the provider accepts for services.

10. Maintaining licensing and/or certification standards which may be required by the Office of Licensing and Regulation.

11. Assessing potential eligibility for Title XX Community Respite Services in emergency situations with follow-up by referring the family to OHD/DES for the final determination of eligibility and fees.

12. Complying with all Title XX contract requirements.

Part III:

Appendix I—Fee Schedule

Respite Care: Out of Home, Family Aide Services, and Family Education and Training Services Fee Schedule Rate per Hour

The following fee schedule applies to the persons eligible by category income status and the geogrphic area is statewide.

Yearly Gross Income	FAMILY SIZE					
	1	2	3	4	5	6
4957- 5981	.05					
59-82- 6491	.05					
6492- 7000	.06	.05				
7001- 8015	.07	.06				
8016- 9032	.08	.07	.06			
9033- 9539	.08	.07	.06			
9540- 9876	.09	.08	.07	.06		
9877-10,048		.08	.07	.06		
10,049-11,063		.09	.08	.07		
10,064-11.572		.09	.08	.07	.06	
10,573-12,080		.10	.09	.08	.07	
12,081-12-587		.10	.09	.08	.07	
12,588-12,912		.11	.10	.09	.08	.07
12,913-13,096			.10	.09	.08	.07
13,097-14,112			.11	.10	.09	.08
14,113-15,125			.12	.11	.10	.09
15,126-15,948			.13	.12	.11	.10
15,949-16,144				.12	.11	.10
16,145-17,160				.13	.12	.11
17,161-18,176				.14	.13	.12
18,177-18,984				.15	.14	.13
18,985-19,192					.14	.13
19,193-20,208					.15	.14
20,209-21,224					.16	.15
21,225-22,020					.17	.16
22,021-22,240						.16
22,241-23,256						.17
23,257-24,272						.18
24,273-25,056						.19

For every increment of $1,016 in additional income, the fee for the service increases $ .01 per hour. If the number of dependents exceeds six, decrease the appropriate figure in column six by $ .01 for each extra dependent. In any case, Title XX eligibility for this service ceases when the income level reaches 115 percent of the state median income adjusted for family size.

Appendix II
Providers and Services List

Region	Provider	Type Service
VII Shreveport	Caddo-Bossier Association for Retarded Citizens	1) Family Aide Services 2) Respite Care Out of Home
II Baton Rouge	Baton Rouge Association for Retarded Citizens	1) Respite Care Out of Home

William A. Cherry, M.D., Secretary
Department of Health and Human Resources

Department of Natural Resources
Office of Conservation

Editor's Note: The Office of Conservation has reserved several subchapter, part, and section numbers which the Department of the State Register has omitted from the text of these rules. The reserved numbers are

Subchapter A,
Part 100, Sections 100.1, 100.2, 100.12.
Part 101, Sections 101.1, 101.2, 101.4, 101.5.
Part 105, Sections 105.1, 105.2, 105.5.
Part 107, Sections 107.1, 107.5.
Subchapter B, (all).
Subchapter C,
Part 133, (all).
Subchapter D,
Parts 140, 141, 142, 143, 144, 145.
Subchapter E, (all).
Subchapter F,
Part 160, Sections 160.1, 160.2.
Part 161, Sections 161.1, 161.2, 161.5.
Part 162, Sections 162.1, 162.5.
Part 164, Sections 164.1, 164.2.
Part 165, (all).
Part 169, (all).
Subchapter G,
Part 170, Sections 170.1, 170.2, 170.5, 170.6.
Part 171, Sections 171.1, 171.2, 171.13, 171.17.
Part 176, Section 176.1.
Part 178, Sections 178.1, 178.2.
Part 179, Sections 179.1, 179.2.
Part 180, Sections 180.1, 180.2.
Part 182, (all).
Part 183, (all).
Part 184, (all).
Part 185, Sections 185.1, 185.2, 185.11, 185.12, 185.14, 185.18, 185.19, 185.20, 185.22.
Part 186, Sections 186.1, 186.2, 186.5.
Part 188, Sections 188.1, 188.2, 188.5.
Subchapter H, (all).
Subchapter I, (all).
Subchapter J,
Part 200, Sections 200.1, 200.2, 200.5.
Part 205, Section 205.1.
Part 206, Section 206.1.
Part 207, Section 207.1.
Part 208, Section 208.1.
Part 209, (all).
Subchapter K,
Part 210, Sections 210.1, 210.2, 210.11.
Part 215, Sections 215.1, 215.2.
Part 216, Sections 216.1, 216.2, 216.55, 216.79, 216.88.
Part 217, (all).
Part 218 (all).
Part 219, (all).
Part 222, (all).
Part 223, Section 223.1, 223.2.
Part 227, Section 227.1.
Part 228, (all).
Part 240, (all).
Part 242, Section 242.1.
Part 243, Section 243.1.
Subchapters L, M, N, O, P, Q, R, (all).
Part 245, Sections 245.1, 245.2.

Surface Mining Regulations
Subchapter A—General
Part 100—General

100.3 Authority. The Commissioner is authorized to administer the requirements of the Act and regulations promulgated thereunder.

100.4 Responsibility.

(a) The Commissioner is responsible for exercising the authority delegated to him under the Act, including the following:

(1) Designation of lands as unsuitable for all or certain types of surface coal mining operation under Section 922 of the Act and as unsuitable for noncoal mining under Section 601 of the federal act; and

(2) Authority to approve or disapprove mining plans to conduct surface coal mining and reclamation operations on state lands.

(b) The Commissioner is responsible for consulting with state land-managing agencies and agencies with responsibility for natural and historic resources on public lands on actions which may have an effect on their responsibilities.

100.5 Definitions. As used in these regulations, the following terms have the specified meaning, except where otherwise indicated:

(1) Acid drainage—Water with a pH value of less than 6.0, and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation, or from an area affected by surface coal mining and reclamation operations.

(2) Acid-forming materials—Earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) Act—The Louisiana Surface Mining and Reclamation Act, R.S. 30:901-32.

(4) Adjacent area—Land located outside the affected area, permit area, or mine plan area, depending on the context in which "adjacent area" is used, where air, surface or ground water, fish, wildlife, vegetation, or resources protected by the Act may be adversely impacted by surface coal mining and reclamation operations.

(5) Affected area—With respect to surface mining activities, any land or water upon or in which those activities are conducted or located.

(6) Agricultural use—The use of any tract of land for the production of animal or vegetable life.

(7) Applicant—A person applying for a permit.

(8) Application—The documents and other information filed with the Commissioner of Conservation for the issuance of an exploration, development operations, or surface mining and reclamation operations permit.

(9) Approximate original contour—That surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the Commissioner determines that they are in compliance with Section 915(b)(8) of this Chapter.

(10) Aquifer—A zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

(11) Best technology currently available—Equipment, devices, systems, methods, or techniques which will:

(a) Prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state or federal laws.

(b) Minimize, to the extent possible, disturbances and ad-

verse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Commissioner, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with Section 216.46 of these regulations. Within the constraints of the permanent program, the Commissioner shall have the discretion to determine the best technology currently available on a case-by-case basis.

(12) Cemetery—Any area of land where human bodies are interred.

(13) Coal—Includes all forms of coal, including lignite.

(14) Coal Exploration, or Exploration Operations—The drilling of test holes or core holes for the purpose of, or related to, the determining of the location, quantity or quality of a coal deposit under a permit to be issued by the Commissioner; and any other coal exploration operations that will substantially disturb the surface and are not otherwise covered by the Act.

(15) Coal mining operations—The business of developing producing, preparing and loading bituminous coal, subbituminous coal, or lignite, or of reclaiming the areas upon which such activities occur.

(16) Coal processing plant—A collection of facilities where run-of-the-mine coal is subjected to chemical or physical processing and separated from its impurities. The processing plant may consist of, but need not be limited to, the following facilities: loading facilities; storage and stockpile facilities; sheds, shops and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas; roads, railroads and other transport facilities.

(17) Coal processing waste—Earth materials which are combustible, physically unstable, or acid-forming or toxic-forming, which are wasted or otherwise separated from product coal, and slurried or otherwise transported from coal preparation plants, after physical or chemical processing, cleaning, or concentrating of coal.

(18) Commissioner—The Commissioner of Conservation of the State of Louisiana, or such other person or persons who may, from time to time, be designated by the Commissioner to administer and enforce the provisions of the Act and these regulations.

(19) Community or Institutional Building—Any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

(20) Compaction—Increasing the density of a material by reducing the voids between the particles, and generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

(21) Cropland—Land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(22) (a) Development operations—All or any part of the process of removing, by power earthmoving equipment, coal or overburden for the purpose of determining coal quality or quantity or coal mining feasibility; provided that, if more than twenty-five thousand tons of coal or ten surface acres of overburden will be removed, then such operations shall be considered coal mining operations.

(22) (b) Development operations permit—The certification by the Commissioner that the named person may conduct the development operations described in the certification during the term of the development operations permit and in the manner established in the certification.

(23) Director—The Director of the Federal Office of Surface Mining Reclamation and Enforcement.

(24) Disturbed area—An area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is completed and the performance bond or other assurance of performance required by Subchapter J of this Chapter is released.

(25) Diversion—A channel, embankment, or other manmade structure constructed to divert water from one area to another.

(26) Downslope—The land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

(27) Embankment—An artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

(28) Employee:

(a) Any person employed by the Office of Conservation who performs any function or duty under the Act.

(b) Advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decision-making functions for the Office of Conservation under the authority of state law or regulations. However, members of advisory boards or commissions established in accordance with state law or regulations to represent multiple interests are not considered to be employees.

(29) Ephemeral stream—A stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(30) Exploration operations permit—A permit issued by the Commissioner to an applicant to conduct coal exploration as that term is defined in these regulations.

(31) Extraction of coal—The extraction of coal which is necessary to enable the construction to be accomplished. For the purposes of this Part, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the Act and the regulations.

(32) Federal Act—The Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87).

(33) Federal lands—Any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands, but does not include Indian lands.

(34) Federal land program—A program established by the Secretary pursuant to Section 523 of the federal Act to regulate surface coal mining and reclamation operations on federal lands.

(35) Federal Office—The Office of Surface Mining Reclamation and Enforcement established under Title II of the federal Act.

(36) Fragile lands—Geographic areas containing natural, ecologic, scientific or aesthetic resources that could be damaged

or destroyed by surface coal mining operations. Examples of fragile lands include: valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, national natural landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and aesthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under Section 922 of the Act and Section 161 of these regulations.

(37) Fugitive dust—That particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both and is carried beyond the boundaries of the area of mining or related activities. During surface coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.

(38) Fund—The Abandoned Mine Reclamation Fund established pursuant to Section 401 of the federal Act.

(39) General area—With respect to hydrology, the topographic and ground water basin surrounding a mine plan area which is of sufficient size, including areal extent and depth, to include one or more watersheds containing perennial streams and ground water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins.

(40) Government financing agency—A federal, state, parish, municipal, or local unit of government, or a department, bureau, agency or office of the unit which directly, or through another unit of government, finances construction.

(41) Government financed construction—Construction funded fifty percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in kind payments.

(42) Ground water—Subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(43) Half-shrub—A perennial plant with a woody base whose annually produced stems die back each year.

(44) Head-of-hollow fill—A fill structure consisting of any material, other than coal-processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than twenty degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten degrees. In fills with less than 250,000 cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

(45) Highwall—The face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

(46) Historic lands—Historic or cultural districts, places, as defined by the Department of Interior, Office of Surface Mining Regulations in effect on September 1, 1979, structures or objects, including archaeological and paleontological sites, National Historic Landmark sites, sites listed on or eligible for listing on a state or national register of historic places, sites having religious or cultural significance to native Americans or religious groups, or sites for which historic designation is pending.

(47) Historically used for cropland:

A. Lands that have been used for cropland for any five or more years out of the ten years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease or option the conduct of surface coal mining and reclamation operations.

B. Lands that the regulatory authority determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five-year-in-ten criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved.

C. Lands that would likely have been used as cropland for any five out of the last ten years immediately preceding such acquisition, but for the same fact of ownership or control of the land unrelated to the productivity of the land.

(48) Hydrologic balance—The relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(49) Hydrologic regime—The entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transportation.

(50) Imminent danger to the health and safety of the public—The existence of any condition or practice, or any violation of a permit or other requirement of this Chapter in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

(51) Impoundment—A closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(52) Indian lands—All lands, including mineral interests, within the exterior boundaries of any federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.

(53) Indian tribe—Any Indian tribe, band, group, or community located within the State of Louisiana having a governing body recognized by the Secretary.

(54) Indirect financial interest—The same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

(55) In situ processes—Activities conducted on the surface or underground in connection with in-place processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(56) Intermittent stream—A stream or reach of a stream that drains a watershed of at least one square mile or a stream or reach of a stream that is below the local water table for at least some part of the year and obtains its flow from surface runoff and ground water discharge.

(57) Irreparable damage to the environment—Any damage to the environment that cannot be corrected by actions of the applicant.

(58) Land use—Specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one category to another shall be considered as a change to an alternative land use which is subject to approval by the Commissioner.

(59) Materially damage the quantity or quality of water—With respect to valley floors, changes in the quality or quantity of the water supply to any portion of a valley floor where such changes are caused by surface coal mining and reclamation operations and result in changes that significantly and adversely affect the composition, diversity, or productivity of vegetation dependent on subirrigation, or which result in changes that would limit the adequacy of the water for flood irrigation of the irrigable land acreage existing prior to mining.

(60) Mine plan area—The area of land and water within the boundaries of all permit areas during the life of the surface coal mining and reclamation operations. At a minimum, it includes all areas which are or will be affected during the entire life of those operations. Other terms defined in this Section which relate closely to mine plan area are: (a) permit area, which will always be within or the same as the mine plan area; (b) affected area, which will always be within or the same as the permit area and (c) adjacent area, which may surround or extend beyond the affected area, permit area, or mine plan area.

(61) Moist bulk density—The weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (one third bar moisture tension). Weight is determined after drying the soil at 105°C.

(62) Mulch—Vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(63) Natural hazard lands—Geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches and areas of unstable geology.

(64) Noxious plants—Species that have been included on official Louisiana state lists of noxious plants.

(65) Occupied dwelling—Any building that is currently being used on a regular or temporary basis for human habitation.

(66) Office of Conservation, or Office—Office of Conservation of the Louisiana Department of Natural Resources.

(67) Operator—Any person, partnership, or corporation engaged in coal mining who removes or intends to remove more than two hundred and fifty tons of coal from the earth by surface coal mining methods within twelve consecutive calendar months in any one location.

(68) Outslope—The face of the spoil or embankment sloping downward from the highest elevation to the toe.

(69) Overburden—Material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

(70) Perennial stream—A stream or part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

(71) Performance Bond—A surety bond, collateral bond or self-bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Act, these regulations, this program, and the requirements of the permit and reclamation plan.

(72) Permanent diversion—A diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the Office of Conservation.

(73) Permit—A permit to conduct surface coal mining and reclamation operations issued by the Office of Conservation pursuant to the Act, but does not include exploration and development permits.

(74) Permit area—The area of land and water within the boundaries of the permit which are designated on the permit application maps, as approved by the Office. This area shall include, at a minimum, all areas which are or will be affected by the surface coal mining and reclamation operations during the term of the permit.

(75) Permittee—A person holding a permit.

(76) (a) Person—An individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization.

(b) Person having an interest which is or may be adversely affected or person with a valid legal interest shall include any person—

(1) Who lawfully uses any resources of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration, development operations, or surface coal mining and reclamation operations or any regulated action of the Commissioner or the Office; or

(2) Whose property is or may be adversely affected by coal exploration, development operations, or surface coal mining and reclamation operations or any related action of the Commissioner or the Office.

(77) Precipitation event—A quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in these regulations, precipitation event also includes that quantity of water emanating from snow cover as snow-melt in a limited period of time.

(78) Prime farmland—Shall have the meaning prescribed by the Secretary of the United States Department of Agriculture on the basis of such factors as moisture, availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, and erosion characteristics, and which historically has been used for intensive agricultural purposes, and as published in the ***Federal Register***.

(79) Principal shareholder—Any person who is the record or beneficial owner of ten percent or more of any class of voting stock.

(80) Prohibited financial interest—Any direct or indirect financial interest in any coal mining operation.

(81) Property to be mined—Both the surface and on subsurface areas and underneath lands which are within the permit area.

(82) Public building—Any structure that is owned by a public agency or used principally for public business, meetings, or other group gathering.

(83) Public office—A facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(84) Public park—An area dedicated or designated by a federal, state, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

(85) Public road—Any thoroughfare open to the public for passage of vehicles.

(86) Rangeland—Land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs, valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

(87) Recharge capacity—The ability of the soils and underlying minerals to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(88) Reclamation—Those actions taken to restore mined land as required by these regulations to a postmining land use approved by the Commissioner.

(89) Recurrence interval—The interval of time in which a precipitation event is expected to occur once, on the average. For example, a ten-year, twenty-four-hour precipitation event would be that twenty-four-hour precipitation event expected to occur on the average once in ten years.

(90) Reference area—A land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally by crop production methods approved by the Office of Conservation. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

(91) Regional Director—A Regional Director of the Federal Office or a Regional Director's representative.

(92) Renewable resource lands—Aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(93) Roads—A surface right-of-way for purposes of travel by land vehicles used in coal exploration, development, or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and such contiguous appendages as are necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration, development, or surface coal mining and reclamation operations, including use by coal-hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a Class I, Class II, or Class III road located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(94) Safety factor—The ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(95) Secretary—The Secretary of the Louisiana Department of Natural Resources.

(96) Secretary of Interior—The Secretary of the United States Department of the Interior.

(97) Sedimentation pond—A primary sediment control structure designed, constructed, and maintained in accordance with Section 216.46 of the regulations and including, but not limited to, a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment to the extent that such secondary sedimentation structures drain to a sedimentation pond.

(98) Self-bond—An indemnity agreement in a sum certain payable to the Commissioner executed by the permittee and each individual and business organization capable of influencing or controlling the investment or financial practices of the permittee by virtue of his authority as an officer or ownership of all or a significant part of the permittee, and supported by agreements granting the Commissioner a security interest in the real or personal property pledged to secure performance by the permittee.

(99) Significant, imminent environmental harm to land, air, or water resources:

A. An adverse impact on land, air, or water resources which include plant and animal life.

B. A condition, practice, or violation which is causing harm or may reasonably be expected to cause harm before the end of the reasonable abatement time that would be set under Section 921(A)(3) of the Act.

C. A harm which is appreciable and not immediately reparable.

(100) Significant forest cover—An existing plant community consisting predominantly of trees and other woody vegetation.

(101) Slope—Average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

(102) Soil horizons—Contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are:

A. A horizon—The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

B. B horizon—The layer that typically is immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizon.

C. C horizon—The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(103) Soil survey—A field and other investigation, resulting in a map showing the different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in Section 185.17(a)(1).

(104) Spoil—Overburden that has been removed during surface coal mining operations.

(105) Stabilize—To control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(106) State regulatory authority—The Louisiana Office of Conservation.

(107) Steep slope—Any slope of more than twenty degrees or such lesser slope as may be designated by the Commissioner after consideration of soil, climate, and other characteristics of a region.

(108) Substantial legal and financial commitments — Significant investments that have been made on the basis of a long-term coal contract in power plants; railroads; coal-handling, preparation, extraction or storage facilities; and other capital intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of operational completion prior to production. Costs of acquiring the coal in place of the right to mine it without an existing mine, as described in the above example, alone, are not sufficient to constitute substantial legal and financial commitments.

(109) Successor in interest—Any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(110) Surety bond—An indemnity agreement in a sum cer-

tain payable to the Commissioner executed by the permittee which is supported by the performance guarantee of a corporation licensed to do business as a surety in this state.

(111) Surface coal mining—All surface coal mining operations which are being conducted on August 3, 1977.

(112) Surface coal mining operations:

A. Activities conducted on the surface of lands in connection with a surface coal mine, the products of which enter commerce or the operations of which directly or indirectly affect commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distallation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site; provided, however, that such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale or coal exploration or development subject to Section 912 of the Act.

B. The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, cutaways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incidental to such activities.

(113) Surface coal mining and reclamation operations—Surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term surface coal mining operations.

(114) Surface mining activities—Those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

(115) Suspended solids, or nonfilterable residue, expressed as milligrams per liter—Organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water analyses (40 CFR 136).

(116) Temporary diversion—A diversion of a stream or overland flow which is used during coal exploration or development operations and not approved by the Office of Conservation to remain after reclamation as part of the approved post-mining land use.

(117) Ton—Two thousand pounds avoirdupois (.90718 metric ton).

(118) Topsoil—The A soil horizon layer of the three major horizons.

(119) Toxic-forming materials—Earth minerals or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(120) Toxic-mine drainage—Water that is discharged from active or abandoned mines or other areas affected by coal exploration or development operations or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(121) Transfer, assignment, or sale of rights—A change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the Office of Conservation.

(122) Unwarranted failure to comply—The failure of a permittee to prevent or abate the occurrence of any violation of his permit or any requirement of this Chapter due to indifference, lack of diligence, or lack of reasonable care.

(123) Valley fill—A fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten degrees.

(124) Violation notice—Any written notification from a governmental entity of a violation of the law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

(125) Water table—The upper surface of zone saturation, where the body of ground water is not confined by an overlying impermeable zone.

(126) Willful violation—An act or omission which violates the Act, state, federal laws or regulations, or individual permit conditions, committed by a person who intends the result which actually occurs.

100.11 Applicability. This Part applies to all coal exploration, development operations, and surface coal mining and reclamation operations, except:

(a) The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by the landowner. Noncommercial use does not include the extraction of coal by one unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants.

(b) The extraction of coal for commercial purposes where the surface coal mining and reclamation operation affects two acres or less, but not any such operation conducted by a person who affects or intends to affect more than two acres at physically related sites, or any such operation conducted by a person who affects or intends to affect more than two acres at physically unrelated sites within one year.

(c) The extraction of two hundred fifty tons of coal or less by a person conducting a surface coal mining and reclamation operation. A person who intends to remove more than two hundred fifty tons is not exempted.

(d) The extraction of coal as an incidental part of federal, state, or local governmental-financed highway or other construction in accordance with Part 107.

(e) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the mineral tonnage removed for commercial use or sale.

(f) The extraction of coal on Indian lands in accordance with 25 CFR 177, Subpart B.

(g) Coal exploration on federal lands outside a permit area.

100.13 Notice of citizen suits.

(a) A person who intends to initiate a civil action on his or her own behalf under Section 920 of the Act shall give notice of intent to do so, in accordance with this Section.

(b) Notice shall be given by certified mail to the Secretary, the Director and the Commissioner in all cases. A copy of the notice shall be sent by first class mail to the Regional Director if the complaint involves or relates to surface coal mining and reclamation operations in a specific region of the Federal Office.

(c) Notice shall be given by certified mail to the alleged violator, if the complaint alleges a violation of the Act or any regulation, order, or permit issued under the Act.

(d) Service of notice under this Section is complete upon

mailing to the last known address of the person being notified.

(e) A person giving notice regarding an alleged violation shall state, to the extent known:

(1) Sufficient information to identify the provision of the Act, regulation, order, or permit allegedly violated.

(2) The act or omission alleged to constitute a violation.

(3) The name, address, and telephone numbers of the person or persons responsible for the alleged violation.

(4) The date, time, and location of the alleged violation.

(5) The name, address, and telephone number of the person giving notice.

(6) The name, address, and telephone number of legal counsel, if any, of the person giving notice.

(f) A person giving notice of an alleged failure by the Commissioner to perform a mandatory act or duty under the Act shall state, to the extent known:

(1) The provision of the Act containing the mandatory act or duty allegedly not performed.

(2) Sufficient information to identify the omission alleged to constitute the failure to perform a mandatory act or duty under the Act.

(3) The name, address, and telephone number of the person giving notice.

(4) The name, address, and telephone number of legal counsel, if any, of the person giving notice.

100.14 Availability of records. Records required by the Act to be made available to the public shall be retained at the Office of Conservation.

100.15 Computation of time.

(a) Except as otherwise provided, computation of time under these regulations is based on calendar days.

(b) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday on which the Office of Conservation is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(c) Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of prescribed time is seven days or less.

Part 101—Permanent Regulatory Program

101.3 Authority. The Commissioner is authorized to administer he requirements of the permanent regulatory program.

101.11 Applicability.

(a) Any person who conducts surface coal mining and reclamation operations on non-Indian or non-federal lands shall have a permit issued pursuant to these regulations.

(b) The requirements of these regulations shall be effective and shall apply to each surface coal mining and reclamation operation which is required to obtain a permit under the Act, on the earliest date upon which these regulations require a permit to be obtained, except as is provided in paragraph (c) of this Section.

(c) (1) Each structure used in connection with or to facilitate a coal exploration, development, or surface coal mining and reclamation operation shall comply with the performance standards and the design requirements of these regulations.

(i) An existing structure which meets the performance standards of these regulations but does not meet the design requirements of these regulations may be exempted from meeting those design requirements by the Office. The Office may grant this exemption on non-Indian and non-federal lands only as part of the permit application process after obtaining the information required by 180.12 and after making the findings required in 186.21.

(ii) An existing structure which meets the performance standards of Subchapter B may be exempted by the Office from meeting the design requirements of these regulations. The Office may grant this exemption on non-Indian and non-federal lands only as part of the permit application process after obtaining the information required by 180.12 and after making the findings required in 186.21.

(iii) An existing structure which meets a performance standard of Subchapter K or which does not meet a performance standard of Subchapter K for which there was no equivalent performance standard in Subchapter B shall be modified or reconstructed to meet the design standard of these regulations pursuant to a compliance plan approved by the Office on non-Indian and non-federal lands only as part of the permit application as required in 180.12 and according to the findings required by 186.21.

(iv) An existing structure which does not meet the performance standards of Subchapter B and which the applicant proposes to use in connection with or to facilitate exploration, development, or surface coal mining and reclamation operation shall be modified or reconstructed to meet the design standards of these regulations prior to issuance of the permit.

(2) The exemptions provided in Paragraph (c)(1)(i) and (c)(1)(ii) shall not apply to:

(i) The requirements for existing and new waste piles used either temporarily or permanently as dams or embankments.

(ii) The requirements to restore the approximate original contour of the land.

(d) (1) Any person conducting coal exploration or development operations on non-federal and non-Indian lands on or after the date on which the Louisiana state program is approved shall file a notice of intention to explore or develop and obtain approval of the Office as required by Part 176.

(2) Coal exploration and development performance standards in these regulations shall apply to coal exploration or development operations on non-federal and non-Indian lands which substantially disturbs the natural land surface.

Part 105—Restriction of Financial Interests of Employees.

105.3 Authority. The Commissioner is authorized to establish, monitor, and enforce the regulations contained in this Part. The Governor or the Commissioner is authorized to expand the provisions in this Part in order to meet the particular needs within the state.

105.4 Responsibility.

(a) The Commissioner shall:

(1) Provide advice, assistance, and guidance to all state employees required to file statements pursuant to 105.11.

(2) Promptly review the statement of employment and financial interests and supplements, if any, filed by each employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in any surface coal mining operation.

(3) Resolve prohibited financial interest situations by ordering or initiating remedial action or by reporting the violations to the Director who is responsible for initiating action to impose the penalties of the Federal Act.

(4) Certify on each statement that review has been made, that prohibited financial interests, if any, have been resolved, and that no other prohibited interests have been identified from the statement.

(5) Submit to the Director such statistics and information as he or she may request to enable preparation of the required annual report to Congress.

(6) Submit to the Director the initial listing and the subsequent annual listings of positions as required by 30 CFR 705.11 (b), (c), and (d).

(7) Furnish a blank statement forty-five days in advance of the filing date established by Section 105.13 (a) to each state employee required to file a statement.

(8) Inform annually each state employee required to file a statement with the Commissioner of the name, address, and

telephone number of the person whom they may contact for advice and counseling.

(b) Office employees performing any duties or functions under the Act shall:

(1) Have no direct or indirect financial interest in coal mining operations.

(2) File a fully completed statement of employment and financial interest one hundred twenty days after these regulations become effective or upon entrance to duty, and annually thereafter on the specified filing date.

(3) Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

105.6 Penalties.

(a) Criminal penalties are imposed by Section 917 (F) of the Act. Section 917 (F) prohibits each employee of the Office who performs any function or duty under the Act from having a direct or indirect financial interest in any surface coal mining operation. The Act provides that whoever knowingly violates the provisions of Section 917 (F) shall, upon conviction, be punished by a fine of not more than two thousand five hundred dollars or by imprisonment of not more than one year, or by both.

(b) Regulatory penalties are imposed by this Part. The provisions in Section 917 (F) of the Act make compliance with the financial interest requirements a condition of employment for employees of the Office who perform any functions or duties under the Act. Accordingly, an employee who fails to file the required statement will be considered in violation of the intended employment provisions of Section 917 (F) and will be subject to removal from his or her position.

105.11 Who shall file.

(a) Any employee who performs any function or duty under the Act is required to file a statement of employment and financial interests. An employee who occupies a position which has been determined by the Commissioner not to involve performance of any function or duty under the Act or who is no longer employed by the Office at the time a filing is due, is not required to file a statement.

(b) The Commissioner shall prepare a list of those positions within the Office that do not involve performance of any functions or duties under the Act. Only those employees who are employed in a listed organizational unit or who occupy a listed position will be exempted from the filing requirements of Section 917 (F) of the Act.

(c) The Commissioner shall prepare and submit to the Director an initial listing of positions that do not involve performance of any functions or duties under the Act within sixty days of the effective date of these regulations.

(d) The Commissioner shall annually review and update this listing. For monitoring and reporting reasons, the listing must be submitted to the Director and must contain a written justification for inclusion of the provisions listed. Proposed revisions or a certification that revision is not required shall be submitted to the Director by no later than September 30 of each year. The Commissioner may revise the listing by the addition or deletion of positions at any time he or she determines such revisions are required to carry out the purpose of the law or the regulations of this part. Additions to and deletions from the listing of positions are effective upon notification to the incumbents of the positions added or deleted.

105.13 When to file.

(a) Employees performing functions or duties under the Act shall file within one hundred twenty days of the effective date of these regulations; and annually on February 1 of each year, or at such other date as may be agreed to by the Director, provided that such alternative date will allow sufficient time to obtain information needed by the Director for his or her annual report to the Congress.

(b) New employees hired, appointed, or transferred to perform functions or duties under the Act will be required to file at the time of entrance to duty.

(c) New employees are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after their initial statement was filed. For example, an employee entering duty on December 1, 1978 would file a statement on that date. Because December 1 is within two months of February 1 the employee would not be required to file his or her next annual statement until February 1, 1980.

105.15 Where to file. The Commissioner shall file his or her statement with the Director. All other employees, as provided in 105.11, shall file their statement with the Commissioner.

105.17 What to report.

(a) Each employee shall report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children or other relatives who are fulltime residents of the employee's home. The report shall be on forms as provided by the Office. The statement consists of three major parts, a listing of all financial interests, including employment, security, real property, creditor and other financial interests held during the course of the preceding year; a certification that none of the listed financial interests represent a direct or indirect financial interest in any surface coal mining operation except as specifically identified and described by the employee as part of the certificate; and a certification by the reviewer that the form was reviewed, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.

(b) Listing of all financial interests. The statement will set forth the following information regarding any financial interest:

(1) Employment. Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary or other income arrangement as a result of prior or current employment. The employee, his or her spouse or other resident relative is not required to report a retirement plan from which he or she will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the Office.

(2) Securities. Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities or other arrangements including trusts. An employee is not required to report holdings in widely diversified mutual funds, investments clubs or regulated investment companies not specializing in surface coal mining operations.

(3) Real Property. Ownership, lease, royalty or other interests or rights in land or minerals. Employees are not required to report lands developed and occupied for a personal residence.

(4) Creditors. Debts owed to business entities and nonprofit organizations. Employees are not required to report debts owed to financial institutions (banks, savings and loan associations, credit unions, and the like) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short term debts for current and ordinary household and living expenses.

(c) Employee certification, and, if applicable, a listing of exceptions.

(1) The statement will provide for a signed certification by the employee that, to the best of his or her knowledge: none of the listed financial interests represent an interest in an underground or surface coal mining operation except as specifically identified and described as exceptions by the employee as part of the certificate; and the information shown on the statement is true, correct, and complete.

(2) An employee is expected to: have complete know-

ledge of his or her personal involvement in business enterprises such as a sole proprietorship or partnership, his or her outside employment and the outside employment of the spouse and other covered relatives; and be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.

(3) The exceptions shown in the employee certification of the form must provide enough information for the Commissioner to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should: list the financial interests; show the number of shares, estimated value or annual income of the financial interests; and include any other information which the employee believes should be considered in determining whether or not the interest represents a prohibited interest.

(4) Employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification. Signing the certification without listing known prohibited financial interests may be cause for imposing the penalties prescribed in 105.6 (a).

105.18 Gifts and gratuities.

(a) Except as provided in paragraph (b) of this section, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value, from a coal company which:

(1) Conducts or is seeking to conduct, operations or activities that are regulated by the Office.

(2) Has interests that may be substantially affected by the performance or non-performance of the employee's official duty.

(b) The prohibitions in paragraph (a) of this section do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the person concerned which are the motivating factors. An employee may accept:

(1) Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance.

(2) Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value.

(c) Employees found guilty of violating the provisions of this section will be subject to administrative remedies in accordance with existing or adopted state regulations or policies.

105.19 Resolving prohibited interests.

(a) Actions to be taken by the Commissioner:

(1) Remedial action to effect resolution. If an employee has a prohibited financial interest, the Commissioner shall promptly advise the employee that remedial action which will resolve the prohibited interest is required within ninety days.

(2) Remedial action may include: reassignment of the employee to a position which performs no function or duty under the Act; divestiture of the prohibited financial interest; other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict.

(3) Reports of noncompliance. If ninety days after an employee is notified to take remedial action that employee is not in compliance with the requirements of the Act and these regulations, the Commissioner shall notify the Director of his determination and shall provide a report to the Director, including the original or a certified true copy of the employee's statement and any other pertinent information.

(b) Actions to be taken by the Director:

(1) Remedial action to effect resolution. Violations of the regulations in this part by the Commissioner, will be cause for remedial action by the Governor or other appropriate state official based on recommendations from the Director on behalf of the Secretary. The Governor or other appropriate state official shall promptly advise the Commissioner there at remedial action which will resolve the prohibited interest is required within ninety days.

(2) Remedial action should be consistent with the procedures prescribed for other state employees by 105.19 (a) (2).

(3) Reports of noncompliance. If ninety days after the Commissioner is notified to take remedial action, the Governor or other appropriate state official notifies the Director that the Commissioner is not in compliance with the Act and these regulations, the Director shall take such action as may be appropriate under federal law.

105.21 Appeals procedures. Employees have the right to appeal an order for remedial action under 105.19, and shall have thirty days to exercise this right before disciplinary action is initiated.

(a) Employees other than the Commissioner may file their appeal, in writing, through procedures established by the Department of Natural Resources.

(b) The Commissioner may file his or her appeal, in writing, with the Director who will refer it to the Conflict of Interest Appeals Board within the United States Department of the Interior.

Part 107—Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction

107.4 Responsibility.

(a) The Office is responsible for enforcing the requirements of this Part.

(b) Any person conducting coal extraction as an incidental part of government-financed construction is responsible for possessing, on the site of the extraction operation, the documentation required by 107.12.

107.11 Applicability.

(a) Coal extraction which is an incidental part of government-financed construction is exempt from the Act and these regulations.

(b) Any person who conducts or intends to conduct coal extraction which does not satisfy Paragraph (a) of this Section shall not proceed until a permit has been obtained from the Office.

107.12 Information to be maintained on site. Any person extracting coal incident to government-financed highway or other construction who extracts more than two hundred fifty tons of coal or affects more than two acres shall maintain, on the site of the extraction operation and available for inspection, documents which show:

(a) A description of the construction project.

(b) The exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction.

(c) The government agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

Subchapter F—Areas Unsuitable for Mining

Part 160—General

160.3 Authority.

(a) The Office is authorized, under Section 922 of the Act to establish a data base and inventory system and a petition process to designate any non-federal and non-Indian land areas of the state as unsuitable for all or certain types of surface coal mining operations.

(b) The Commissioner is authorized to

(1) Conduct a review of public lands to determine shether any area on these lands is unsuitable for all or certain types of surface coal mining operations.

(2) Establish a process for the public to petition to have an area of public lands designated as unsuitable for all or certain types of surface coal mining operations.

160.4 Responsibility.

(a) The Commissioner shall establish a process that includes a data base and inventory system for designating lands unsuitable for surface coal mining operations which shall be available to the public.

(b) The Office shall integrate as closely as possible decisions to designate lands as unsuitable for surface coal mining operations with present and future land-use planning and regulatory processes at the federal, state, and local levels.

(c) The Office shall establish a process that allows any person, having an interest which is or may be adversely affected, to petition to have an area designated as unsuitable for all or certain types of surface coal mining operations, or to have a designation terminated.

(d) The Office shall prohibit or limit surface coal mining operations on certain lands and in certain locations designated by Congress in Section 522(e) of the Federal Act, 30 U.S.C. 1272 (e).

Part 161—Areas Designated by Act of Congress

161.3 Authority. The Office is authorized by Section 922 of the Act to prohibit or limit surface coal mining operations on or near certain private, federal, and other public lands.

161.4 Responsibility. The Office shall comply with Parts 170 to 195; and, determine whether an application for a permit must be denied because surface coal mining operations on those lands are prohibited or limited by Section 522 (3) of the Federal Act, 30 U.S.C. 127 (e), 922 of the Act, and this Part.

161.11 Areas where mining is prohibited or limited. No surface coal mining operations shall be conducted.

(a) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under Section 5 (a) of the Wild and Scenic Rivers Act, 16 U.S.C. 1276 (a), and National Recreation Areas designated by Act of Congress.

(b) On any state or federal lands within the boundaries of any state or national forest; provided, however, that surface coal mining operations may be permitted on state lands, if the Commissioner finds that there are no significant recreational, timber, economic, or other values which may be incompatible with surface coal mining operations.

(c) On any land which will adversely affect any publicly owned park or any included on, or eligible for listing on the National Register of Historic Places, unless approved jointly by the regulatory authority and the federal, state or local agency with jurisdiction over the park or places.

(d) Within one hundred feet measured horizontally of the outside right-of-way line of any public road, except

(1) Where mine access roads or haulage roads join such right-of-way line.

(2) Where the Office allows the public road to be relocated or the area affected to be within one hundred feet of such road, after public notice and opportunity for a public hearing in accordance with Section 161.12(d); and, making a written finding that the interests of the affected public and landowners will be protected.

(e) Within three hundred feet measured horizontally from any occupied dwelling, unless the owner thereof has provided a written waiver consenting to surface coal mining operations closer than three hundred feet.

(f) Within three hundred feet measured horizontally of any public building, school, church, community or institutional building or public park.

(g) Within one hundred feet measured horizontally of a cemetery.

161.12 Procedures.

(a) Upon receipt of a complete application for a surface coal mining and reclamation operation permit, the Office shall review the application to determine whether surface coal mining operations are limited or prohibited under Section 161.11 on the lands which would be disturbed by the proposed operation.

(b) Where the proposed operation would be located on any lands listed in Section 161.11 (a), (f), or (g), the Office shall reject the application. If the Office is unable to determine whether the proposed operation is located closer than the limits provided in Section 161.11 (f) and (g), the Office shall transmit a copy of the relevant portions of the permit application to the appropriate federal, state or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it must respond within thirty days of receipt of the request.

(c) Where the proposed operation would include federal lands within the boundaries of any national forest, and the applicant seeks a determination that mining is permissible under Section 161.11(b), the applicant shall submit a permit application to the Regional Director for processing under 30 CFR Subchapter D.

(d) Where the proposed mining operation is to be conducted within one hundred feet measured horizontally of the outside right-of-way line of any public road (except where mine access roads or haulage roads join such right-of-way line) or where the applicant proposes to relocate any public road, the Office shall

(1) Require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road.

(2) Provide notice in a newspaper of general circulation in the affected locale of a public hearing at least two weeks before the hearing.

(3) Provide an opportunity for a public hearing at which any member of the public may participate in the locality of the proposed mining operations for the purpose of determining whether the interests of the public and affected landowners will be protected.

(4) Make a written finding based upon information received at the public hearing within thirty days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operation.

(e) Where the proposed surface coal mining operations would be conducted within three hundred feet measured horizontally of any occupied dwelling, the applicant shall submit with the application a written waiver from the owner of the dwelling, consenting to such operations within a closer distance of the dwelling as specified in the waiver. The waiver must be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver.

(f) (1) Where the proposed surface coal mining operation may adversely affect any public park or any places included on, or eligible for listing on the National Register of Historic Places, the Office shall transmit to the federal, state or local agencies with jurisdiction over or a statutory or regulatory responsibility for the park or historic place a copy of the completed permit application containing the following:

(i) A request for that agency's approval or disapproval of the operation.

(ii) A notice to the appropriate agency that it must respond within thirty days from receipt of the request.

(2) A permit for the operation shall not be issued unless jointly approved by all affected agencies.

(g) If the Office determines that the proposed surface coal mining operation is not prohibited under Section 522(e) of the Federal Act, 30 U.S.C. 1272(e), and this Part, it may nevertheless, pursuant to appropriate petitions, designate such lands as suitable for all or certain types of surface coal mining operations pursuant to Parts 162 or 164.

Part 162—Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations

162.4 Responsibility. The Office shall use the criteria in this part for the evaluation of each petition for the designation of areas as unsuitable for surface coal mining operations.

162.11 Criteria for designating lands as unsuitable.

(a) Upon petition an area shall be designated as unsuitable for all or certain types of surface coal mining operations, if the Office determines that reclamation is not technologically and economically feasible under the Act or these regulations.

(b) Upon petition an area may be, but is not required to be, designated as unsuitable for certain types of surface coal mining operations, if the operations will

(1) Be incompatible with existing state or local land use plans or programs.

(2) Affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or aesthetic values or natural systems.

(3) Affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products.

(4) Affect natural hazard lands in which the operations could substantially endanger property, such lands to include areas subject to frequent flooding and areas of unstable geology.

162.12 Additional Criteria.

(a) The Office may establish additional or more stringent criteria for determining whether lands within the state should be designated as unsuitable for surface coal mining operations.

(b) Additional criteria will be determined to be more stringent on the basis of whether they provide for greater protection of the public health, safety and welfare or the environment, such that areas beyond those specified in the criteria of this Part would be designated as unsuitable for surface coal mining operations.

162.13 Land exempt from designation as unsuitable for surface coal mining operations. The requirements of this part do not apply to lands covered by a permit issued under the Act.

162.14 Exploration or development on land designated as unsuitable for surface coal mining operations. Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to Section 922 of the Act and regulations of this Subchapter does not prohibit coal exploration or development operations in the area, if conducted in accordance with the Act, these regulations or a federal program, and other applicable requirements. Exploration or development operations on any lands designated unsuitable for surface coal mining operations must be approved by the Office under Section 176, to insure that exploration or development does not interfere with any value for which the area has been designated unsuitable for surface coal mining.

Part 164—State Process for Designating Areas Unsuitable for Surface Coal Mining Operations

164.3 Authority. The Commissioner has authority to develop procedures and standards, consistent with this Part, to designate lands unsuitable for all or certain types of surface coal mining operations and to terminate such designations.

164.11 Procedures: General process requirements. The Office shall establish a process enabling objective decisions to be made on which, if any, land areas of the state are unsuitable for all or certain types of surface coal mining operations. These decisions shall be based on competent, scientifically sound data and other relevant information. This process shall include the requirements listed in Section 164.13-164.35.

164.13 Procedures: Petitions.

(a) Right to petition. Any person having an interest which is or may be adversely affected has the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated.

(b) Designation. The only information that a petitioner need provide is: The location and size of the area covered by the petition; allegations of facts and supporting evidence which would tend to establish that the area is unsuitable for all or certain types of surface coal mining operations; a description of how mining of the area has affected or may adversely affect people, land, air, water or other resources; the petitioner's name, address and telephone number; and identification of the petitioner's interest which is or may be adversely affected.

(c) Termination. The only information that a petitioner need provide to terminate a designation is

(1) The location and size of the area covered by the petition.

(2) Allegations of facts, with supporting evidence, not contained in the record of the proceeding in which the area was designated unsuitable, which would tend to establish the statements or allegations, and which statements or allegations indicate that the designation should be terminated based on

(i) The nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in 162.11(b).

(ii) Reclamation now being technologically and economically feasible, if the designation was based on the criteria found in 162.11(a).

(iii) The resources or condition not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on the criteria found in 162.11(b).

(3) The petitioner's name, address and telephone number.

(4) Identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation.

164.15 Procedures: Initial processing, recordkeeping, and notification requirements.

(a) (1) Within thirty days of receipt of a petition, the Office shall notify the petitioner by certified mail whether or not the petition is complete under Section 164.13 (b) or (c).

(2) The Office shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the Office finds there are not any identified coal resources in that area, it shall return the petition to the petitioner with a statement of the findings.

(3) The Office may reject petitions for designations or terminations of designations which are frivolous. Once the requirements of Section 164.13 are met, no party shall bear any burden of proof, but each accepted petition shall be considered and acted upon by the Office pursuant to the procedures of this Part.

(4) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the Office shall determine if the new petition presents new allegations of fact. If the petition does not contain new allegations of fact, the Office shall not consider the petition and shall return the petition to the petitioner, with a statement of its findings and a reference to the record of the previous designation proceedings where the facts were considered.

(5) If the Office determines that the petition is incomplete or frivolous, it shall return the petition to the petitioner, with a written statement of the reasons for the determination and the categories of information needed to make the petition complete.

(6) The Office shall notify the person who submits a petition of any application for a permit received which proposed to include any area covered by the petition.

(7) Any petitions received after the close of the public

comment period on a permit application relating to the same mine plan area shall not prevent the Office from issuing a decision on that permit application. The Office may return any petition received thereafter to the petitioner with a statement why the Office cannot consider the petition. For the purposes of this Section, close of the public comment period shall mean the close of any informal conference held under 186.14, or, if no conference is requested, at the close of the period for filing written comments and objections under 186.12-13.

(b) (1) Within three weeks after the determination that a petition is complete, the Office shall circulate copies of the petition to, and request submissions of relevant information from, other interested government agencies, the petitioner, intervenors, persons with an ownership interest of record in the property, and other persons known to the Office to have an interest in the property.

(2) Within three weeks after the determination that a petition is complete, the Office shall notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in the locale of the area covered by the petition, in the newspaper of largest circulation in the state, and in any official state register of public notices.

(c) Until three days before the Office holds a hearing under Section 164.17, any person may intervene in the proceeding by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address, and telephone number.

(d) Beginning immediately after a complete petition is filed, the Office shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the Office. The Office shall make the record available for public inspection, free of charge; and copying, at reasonable cost, during all normal business hours at a central location of the parish or multi-parish area in which the land petition is located, and at the Office.

164.17 Procedures: Hearing Requirements.

(a) Within ten months after receipt of a complete petition, the Office shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The hearing shall be legislative and factfinding in nature, without cross-examination of witnesses. The Office shall make a transcript of the hearing.

(b) (1) The Office shall give notice of the date, time, and location of the hearing to

(i) Local, state, and federal agencies which may have an interest in the decision on the petition.

(ii) The petitioner and the intervenors.

(iii) Any person with an ownership or other interest known to the Office in the area covered by the petition.

(2) Notice of the hearing shall be sent by certified mail and postmarked not less than thirty days before the scheduled date of the hearing.

(c) The Office shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for two consecutive weeks in the locale of the area covered by the petition and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisement must begin between four and five weeks before the scheduled date of the public hearing.

(d) The Office may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(e) Prior to designating any land areas as unsuitable for surface coal mining operations, the Office shall prepare a detailed statement, using existing and available information on the potential coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

(f) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

164.19 Procedures: Decision.

(a) In reaching its decision, the Office shall use

(1) The information contained in the data base and inventory system.

(2) Information provided by other governmental agencies.

(3) The detailed statement prepared under Section 164.17(e).

(4) Any other relevant information submitted during the comment period.

(b) A final written decision shall be issued by the Office, including a statement of reasons, within sixty days of completion of the public hearing, or, if no public hearing is held, then within twelve months after receipt of the complete petition. The Office shall simultaneously send the decision by certified mail to the petitioner, every other party to the proceeding, and to the Regional Director for the region in which the state is located.

(c) The decision of the Office with respect to a petition, or the failure of the Office to act within the time limits set forth in this Section, shall be subject to judicial review by a court of competent jurisdiction in accordance with state law under Section 926(e) of the Act and 187.12.

164.21 Data base and inventory system requirements.

(a) The Office shall develop a data base and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

(b) The Office shall include in the system information relevant to the criteria in 162.11.

(c) The Office shall add to the data base and inventory system information

(1) On potential coal resources of the state, demand for those resources, the environment, the economy and the supply of coal, sufficient to enable the Office to prepare the statements required by Section 164.17(e).

(2) That becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

164.23 Public information. The Office shall

(a) Make the information and data base system developed under Section 164.21 available to the public for inspection free of charge and for copying at reasonable cost, subject to confidentiality requirements of Section 176.16(b)(1).

(b) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

164.25 Office of Conservation responsibility for implementation.

(a) The Office shall not issue permits which are inconsistent with designations made pursuant to 160, 161, 162, or 164.

(b) The Office shall maintain a map of areas designated as unsuitable for all or certain types of surface coal mining.

(c) The Office shall make available to any person any information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment but excepting proprietary information on the chemical and physical properties of the coal.

Subchapter G—Surface Coal Mining and Reclamation Operations Permits and Coal Exploration and Development Procedures Systems

Part 170—General Requirements for Permit, Exploration and Development Procedure Systems

170.4 Responsibilities.

(a) Persons seeking to engage in surface coal mining and reclamation operations must submit an application for and obtain a permit for those operations in accordance with this Subchapter. Persons seeking to conduct coal exploration or development operations must first file the notice of intention or obtain approval of the regulatory authority as required under Part 176.

(b) The Office shall review each application for exploration approval and for a permit, approve or disapprove each permit application or exploration application, and issue, condition, suspend, or revoke exploration approval, permits, renewals, or revised permits.

170.11 Applicability.

(a) This Subchapter applies to each person who applies for a permit for surface coal mining and reclamation operation or conducts surface coal mining and reclamation operations pursuant to a permit under these regulations and to persons who seek to conduct coal exploration or development under these regulations.

(b) This Subchapter applies to the Office and, where specifically provided, to the Commissioner.

170.12 Coordination with requirements under other laws. The Office shall provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with any other federal or state permit process applicable to those operations.

Part 171—General Requirements for Permits and Permit Applications

171.11 General requirements for permits—Operators. No person shall engage in or carry out surface coal mining and reclamation operations on non-federal or non-Indian lands within the state, unless that person has first obtained a valid permit issued by the Office.

171.15 Continue operation under Federal program permits. A permit issued by the Regional Director pursuant to a federal program shall be valid under these regulations.

(a) The federal permittee shall have the right to apply to the Office for a state permit to supercede the federal permit.

(b) The Office may review a permit issued pursuant to the superceded federal program, to determine that the requirements of the Act and these regulations are not violated by the federal permit.

(c) To the extent that these regulations contain additional requirements not contained in the federal program, the Office shall

(1) Promptly issue an order requiring the permittee to comply with such additional requirements within sixtydays of the issuance of the order, unless the permittee demonstrates to the Office that it is physically impossible to meet those additional requirements within sixty days, or unless the Office agrees to a longer period under an established time schedule.

(2) Notify the permittee, in writing, of the right to a hearing with respect to the order, in the manner and time provided for in these regulations.

171.19 Compliance with permits. All persons shall conduct surface coal mining and reclamation operations under permits issued pursuant to the Act and these regulations and shall comply with the terms and conditions of the permit and the requirements of the Act and these regulations.

171.21 Permit application filing deadlines.

(a) General. Each person who conducts or expects to conduct new surface coal mining and reclamation operations shall file a complete application for a permit for those operations not less than one hundred twenty days prior to the anticipated commencement of operations.

(b) Renewal of valid permits. An application for renewal of a permit shall be filed with the Office at least one hundred twenty days before the expiration of the permit involved.

(c) Revisions of permits. Any application for revision of a permit shall be filed with the Office before thedate on which the permittee expects to revise surface coal mining or reclamation operations. The Office shall determine the time by which that application shall be filed, based on the time required for review of the application and public participation in the process of review, but in no case shall the application be filed later than sixty days prior to the date of expected revision of operations.

(d) Succession to rights granted under prior permits. Any application for a new permit required for a person succeeding by transfer, sale, or assignment of rights granted under a permit shall be filed with the Office not later than thirty days after that succession is approved by the Office.

171.23 Permit applications—General requirements for format and contents.

(a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the format required by the Office. The application shall be complete and include, at a minimum: for surface mining activities, all the applicable information required under 178, 179, and 180; and, for special types of surface coal mining and reclamation operations, all the information required under 185.

(b) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the Office.

(c) All technical data submitted in the application shall be accompanied by: names of persons or organizations which collected and analyzed such data; dates of the collection and analyses; and descriptions of methodology used to collect and analyze the data.

(d) The application shall state the name, address, and position of officials of each or academic research organization or governmental agency consulted by the applicant in preparation of the application for information on land uses, soils geology, vegetation, fish and wildlife, quantity and quality, air quality, and archeological, cultural, and historic features.

(e) Maps and plans—General requirements.

(1) Maps submitted with application shall be presented in a consolidated format, to the extent possible, and shall include all the types of information that are set forth on topographic maps of the United States Geological Survey of the one-to-twenty-four thousand scale series. Maps of the permit area shall be at a scale of one-to-six thousand or larger. Maps of the remainder of the mine plan area and the adjacent areas shall clearly show the lands and waters within those areas and be in a scale determined by the Office, but in no event smaller than one-to-twenty-four thousand.

(2) All maps and plans submitted with the application shall distinguish among each of the phases during which surface coal mining operations were or will be conducted at any place within the mine plan area.

171.25 Permit fees. Each application for a surface coal mining and reclamation permit pursuant to a regulatory program shall be accompanied by a fee determined by the Office. Such fee may be less than, but shall not exceed, the actual or anticipated cost of reviewing, administering and enforcing the permit. The Office may develop procedures to allow the fee to be paid over the term of the permit.

171.27 Verification of application. Applications for permits shall be verified under oath, by a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief.

Part 176—Coal Exploration and Development

176.2 General requirements: Coal Exploration.

(a) Any person desiring to conduct exploration operations, as defined herein, shall

(1) File with the Commissioner an application, in triplicate, upon forms furnished by the Commissioner, for an area permit to engage in exploration operations. Such application

shall be filed at least thirty days prior to the requested date of issuance.

(2) Submit a permit fee of fifty dollars for each application filed. Each application shall be restricted to a township.

(3) Submit a bond in the amount of three thousand dollars for each township affected; provided, the number of test holes and core holes shall not exceed seventy-two. In the event test holes or core holes are to exceed seventy-two, the bond shall be increased by thirty dollars for each additional test or core hole; provided that the number of test or core holes for a township is first approved by the Office.

(4) Describe the nature of the exploration operations for which applications are made, which shall include a general description of the exploration areas, the methods of ingress and egress to be utilized, verification of permission to conduct the explorations from the owners of the land affected, and further attesting that any substantial disturbances to the surface of the land shall be reported to the Commissioner and reclaimed in accordance with 915 of the Act and these regulations.

(b) The exploration operations permit shall be valid for a period of one year from the date of issuance and the bond may be increased at any time during this period if the Commissioner should deem it necessary. Within six months after expiration of the area permit, the applicant shall submit a report to the Commissioner, setting forth a record of the location of each test or core hole drilled; the location of each site, if any, of substantial disturbance to the surface, together with a description of the disturbance and the reclamation done; an affidavit attesting that each test or core hole has been properly plugged and abandoned, and that each site of substantial disturbance has been reclaimed according to the standards of 915 of the Act and the regulatory program.

(c) The required bond shall be released after the Commissioner has

(1) Determined that the test or core holes have been properly plugged; and

(2) Determined that each area of substantial disturbance has been properly reclaimed; and

(3) Been furnished with the core analysis and the logs of each test or core hole drilled, where available. Core analyses and logs shall be due within six months after expiration of the permit and shall be considered confidential if request is made in accordance with Section 176.16(b)(1).

176.3 General requirements. Coal development operations: Any operator proposing to undertake development operations which involve the removal of substantial quantities of overburden with explosives or power earthmoving equipment primarily in order to determine quality, boiler design criteria, the feasibility of removing lignite or coal, and other testing purposes, shall submit an application for a development operations permit to the Commissioner prior to commencing any such operations. A permit fee of seventy-five dollars shall accompany each application.

176.11 Development operations involving removal of two hundred fifty tons or less.

(a) If the development operation will involve the removal of two hundred fifty tons or less of coal, the application shall contain the following:

(1) The name, address, and telephone number of the person seeking to develop.

(2) The name, address, and telephone number of the representative who will be present at and responsible for conducting the development activities.

(3) A precise description and map, at a scale of one to twenty-four thousand or larger, of the development area.

(4) A statement of the period of intended development.

(5) If the surface is owned by a person other than the person who intends to develop, a description of the basis upon which the person who will develop claims the right to enter such area for the purpose of conducting development and reclamation.

(6) A description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the development activities.

(b) Any person who conducts coal development activities pursuant to this Section which substantially disturb the natural land surface shall reclaim the affected areas in accordance with 915 of the Act and these regulations.

(c) The Commissioner shall, except as otherwise provided in Section 176.16 of this Part, place such applications on public file and make them available for public inspection and copying.

(d) The application shall contain a bond in an amount determined by the Commissioner to be sufficient to insure performance of the duty to reclaim affected areas as required by the provision of the Act and these regulations.

176.12 General requirements—Development operations involving removal of more than two hundred fifty tons.

(a) If the development operation will involve the removal of more than two hundred fifty tons of coal, but in no event to exceed the removal of more than twenty-five thousand tons of coal or ten surface acres of overburden, the application shall contain the following:

(1) The name, address, and telephone number of the applicant.

(2) The name, address, and telephone number of the representative of the applicant who will be present at and be responsible for conducting the development.

(3) A development and reclamation operations plan, including

(i) A narrative description of the proposed development area, cross-referenced to the map required under Paragraph (a)(5) of this Section, including surface topography; geological, surface water, and other physical features; vegetative cover, the distribution and important habitats of fish, wildlife, and plants, including, but not limited to, any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (U.S.C. Sec. 1531 et seq.); districts, sites, buildings, structures or objects listed on or for listing on the National Register of Historic Places; and known archeological resources within the proposed exploration area.

(ii) A narrative description of the methods to be used to conduct coal development and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities.

(iii) An estimated timetable for conducting and completing each phase of the development and reclamation.

(iv) The estimated amounts of coal to be removed and a description of the methods to be used to determine those amounts.

(v) A description of the measures to be used to comply with the applicable requirements of 915 of the Act and these regulations.

(4) The name and address of the owner of record of the surface and subsurface area to be developed.

(5) A map at a scale of one to twenty-four thousand or larger, showing the areas of land to be substantially disturbed by the proposed development and reclamation. The map shall specifically show existing roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; the location of land excavations to be conducted, water or coal exploratory holes and wells to be drilled or altered, earth or debris disposal areas; existing bodies of surface water; historic, topographic, cultural and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(6) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting development and reclamation.

(7) A bond in an amount determined by the Commissioner to be sufficient to insure performance of the duty to reclaim as otherwise determined from the disclosures in this Section.

(b) Public notice and opportunity to comment. Public notice of the application and opportunity to comment shall be provided as follows:

(1) Within one week after filing, public notice of the filing of the application with the Commissioner shall be posted by the applicant at the courthouse or other public office designated by the Commissioner in the vicinity of the proposed development area.

(2) The public notice shall state the name and business address of the person seeking approval, the date of filing of the application, the address of the Commissioner at which written comments on the application may be submitted, the closing date of the comment period, and a description of the general area of development.

(3) Any person with an interest which is or may be adversely affected shall have the right to file written comments on the application within thirty days of the date of public notice set forth in 176.12(b)(1).

176.13 Applications: Approval or disapproval of development of more than two hundred fifty tons.

(a) The Commissioner shall initiate action upon a completed application for approval within thirty days of receipt.

(b) The Commissioner shall approve a complete application filed in accordance with this Part, if he finds, in writing, that the applicant has demonstrated that the development and reclamation described in the application

(1) Will be conducted in accordance with the regulatory program.

(2) Will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species.

(3) Will not adversely affect any cultural resources or districts, sites, buildings, structures, or objects listed or eligible for listing on the National Register of Historic Places, unless the proposed exploration has been approved by both the Office and the agency with jurisdiction over such matters.

(c) Terms of approval. Each approval issued by the Commissioner shall contain conditions necessary to ensure that the development and reclamation will be in compliance with the regulatory program.

176.14 Applications: Notice and hearing for development of more than two hundred fifty tons.

(a) The Commissioner shall notify the applicant and the appropriate local government officials, in writing, of his decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. The Commissioner shall provide public notice of approval or disapproval of each application, by publication in a newspaper of general circulation in the general vicinity of the proposed operations.

(b) Any persons with interests which are or may be adversely affected by a decision of the Commissioner pursuant to Paragraph (a) above, shall have the opportunity for administrative and judicial review as are set forth in 925 and 926 of the Act or these regulations.

176.15 Coal exploration and development compliance duties.

(a) All coal exploration and development operations and the reclamation operations attendant thereto shall be conducted in accordance with the requirements of 912 of the Act, these regulations, and conditions on approval for exploration, development and reclamation operations imposed by the Commissioner.

(b) Any person who conducts any coal exploration or development operations in violation of 912 of the Act of these regulations shall be subject to the provisions of 918 and 921 of the Act.

176.16 Public availability of information.

(a) Except as provided in Paragraph (b) of this Section, all information submitted to the Commissioner under this Part shall be made available for public inspection and copying at the district office of the Office of Conservation closest to the exploration or development area.

(b)

(1) The Commissioner shall not make information available for public inspection if the person submitting it requests in writing, at the time of submission, that it not be disclosed and the Commissioner determines that the information is confidential.

(2) The Commissioner shall determine that information is confidential only if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration or development.

(3) Information requested to be held as confidential under this Section shall not be publicly available until after notice and opportunity to be heard is afforded all persons either seeking or opposing disclosure of the information.

Part 178—Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information

178.4 Responsibility. It is the responsibility of the permit applicant to provide to the Office all of the information required by this Part.

178.11 Applicability. This Part applies to any person who applies for a permit to conduct surface mining activities.

178.13 Identification of interests.

(a) Each application shall contain the names and addresses of

(1) The permit applicant, including his or her telephone number.

(2) Every legal or equitable owner of record of the property to be mined.

(3) The holders of record of any leasehold interest in the property to be mined.

(4) Any purchaser of record under a real estate contract of the property to be mined.

(5) The operator, if the operator is a person different from the applicant, including his or her telephone number.

(6) The resident agent of the applicant who will accept service of process, including his or her telephone number.

(b) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association or other business entity. For businesses other than single proprietorships, the application shall contain the following information, where applicable:

(1) Names and addresses of every officer, partner, director, or other person performing a function similar to a director of the applicant.

(2) Name and address of any person who is a principal shareholder of the applicant.

(3) Names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation in the United States within the five years preceding the date of application.

(c) If any owner, holder, purchaser, or operator, identified under Paragraph (a) of this Section, is a business entity other than a single proprietor, the application shall contain the names and addresses of their respective principals, officers, and resi-

dent agents.

(d) Each application shall contain a statement of any current or previous coal mining permits in the United States held by the applicant subsequent to 1970 and by any person identified in Paragraph (b)(3) of this Section, and of any pending permit application to conduct surface coal mining and reclamation operations in the United States. The information shall be listed by permit or application number and identify the regulatory authority for each of those coal mining operations.

(e) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(f) Each application shall contain the name of the proposed mine and the Mine Safety and Health Administration identification number for the mine and all Sections, if any.

(g) Each application shall contain a statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

178.14 Compliance information. Each statement shall contain

(a) A statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has had a federal or state mining permit suspended or revoked in the last five years; or, forfeited a mining bond or similar security deposited in lieu of bond.

(b) If any such suspension, revocation, or forfeiture has occurred, a statement of the facts involved, including

(1) Identification number and date of issuance of the permit or date and amount of bond or similar security.

(2) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action.

(3) The current status of the permit, bond, or similar security involved.

(4) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture.

(5) The current status of these proceedings.

(c) A listing of each violation notice received by the applicant in connection with any surface coal mining operation during the three-year period before the application date, for violations of any law, rule, regulation of the United States, or of any state law, rule, or regulation enacted pursuant to federal law, rule, or regulation, or of any provision of the Act pertaining to air or water environmental protection. The application shall also contain a statement regarding each violation notice, including

(1) The date of issuance and indentity of the issuing regulatory authority, department, or agency.

(2) A brief description of the particular violation alleged in the notice.

(3) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the violations.

(4) The current status of the proceedings and of the violation notice.

(5) The actions, if any, taken by the applicant to abate the violation.

178.15 Right of entry and operation information.

(a) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(b) Nothing in this Section shall be construed to afford the Office the authority to adjudicate property title disputes.

178.16 Relationship to areas designated unsuitable for mining.

(a) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under Part 164 or under study for designation in an administrative proceeding under that Part.

(b) If an applicant proposes to conduct surface mining activities within three hundred feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required by 161.12(d).

178.17 Permit term information.

(a) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(b) If the applicant proposes to conduct the surface mining operations in excess of five years, the application shall contain the information needed for the showing required under 186.25(a).

178.18 Personal injury and property damage insurance information. Each permit application shall contain either a certificate of liability insurance or evidence that the self-insurance requirements in 206.14 are satisfied.

178.19 Identification of other licenses and permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by

(a) Type of permit or license;

(b) Name and address of issuing authority.

(c) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses.

(d) If a decision has been made, the date of approval or disapproval by each issuing authority.

178.20 Identification of location of public office for filing of application. Each application shall identify, by name and address, the public office where the applicant will simultaneously file a copy of the application for public inspection under 186.11(d).

178.21 Newspaper advertisement and proof of publication. A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the Office and make a part of the complete application, not later than four weeks after the last date of publication required under 186.11(a).

Part 179—Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources

179.4 Responsibilities.

(a) It is the responsibility of the applicant to provide, except where specifically exempted in this Part, all information required by this Part in the application.

(b) It is the responsibility of state and federal government agencies to provide information for applications as specifically required by this Part.

179.11 General requirements. Each permit application shall include a description of the existing, premining environmental resources within the proposed mine plan area and adjacent areas that may be affected or impacted by the proposed surface mining activities.

179.12 General environmental resources information. Each application shall describe and identify

(a) The size, sequence, and timing of the subareas of the mine plan area for which it is anticipated that individual permits for mining will be requested over the estimated total life of the proposed surface mining activities.

(b) The nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archeological features within the proposed mine plan

and adjacent areas. The description shall be based on all available information, including, but not limited to, data of state and local archeological, historical, and cultural preservation agencies.

179.13 Description of hydrology and geology: General requirements. Each application shall contain a description of the geology, hydrology, and water quality and quantity of all lands within the proposed mine plan area, the adjacent area, and the general area. The description shall include information on the characteristics of all surface and ground waters within the general area, and any water which will flow into or receive discharges of water from the general area. The description shall be prepared according to Sections 179.13-179.17 and conform to the following:

(b) (1) Information on hydrology, water quality and quantity, and geology related to hydrology of areas outside the proposed mine plan area and within the general area shall be provided by the Office, to the extent that this data is available from an appropriate federal or state agency.

(2) If this information is not available from those agencies, the applicant may gather and submit this information to the Office as part of the permit application.

(3) The permit shall not be approved by the Office until this information is made available in the application.

(c) The use of modeling techniques may be included as part of the permit application, but the same surface and ground water information may be required for each site as when models are not used.

179.14 Geology description.

(a) The description shall include a general statement of the geology within the proposed mine plan area down to and including the first aquifer to be affected below the lowest coal seam to be mined.

(b) (1) Test borings or core samples from the proposed permit area shall be collected and analyzed down to and including the stratum immediately below the lowest coal seam to be mined to provide the following data in the description:

(i) Location of subsurface water, if encountered.

(ii) Logs of drill holes showing the lithologic characteristics and thickness of each stratum and each coal seam.

(iii) Physical properties of each stratum within the overburden including compaction and erodibility.

(iv) Chemical analyses of each stratum within the overburden and the stratum immediately below the lowest coal seam to be mined to identify, at a minimum, those horizons which contain potential acid forming, toxic-forming, or alkalinity producing materials.

(v) Analyses of the coal seam, including but not limited to, an analysis of the sulfur, pyrite, and marcasite content.

(2) If required by the Office, test borings or core samplings shall be collected and analyzed to greater depths within the proposed permit area, or for areas outside the proposed permit area to provide for evaluation of the impact of the proposed activities on the hydrologic balance.

(3) An applicant may request that the requirement for a statement of the results of the test borings or core samplings be waived by the Office. The waiver may be granted only if the Office makes a written determination that the statement is unnecessary because other equivalent information is accessible to it in a satisfactory form.

179.15 Ground water information.

(a) The application shall contain a description of the ground water hydrology for the proposed mine plan and adjacent area, including, at a minimum

(1) The depth below the surface and the horizontal extent of the water table and aquifers.

(2) The lithology and thickness of the aquifers.

(3) Known uses of the water in the aquifers and water table.

(4) The quality of subsurface water, if encountered.

(b) The application shall contain additional information which describes the recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground water, according to the parameters and in the detail required by the Office.

179.16 Surface water information.

(a) Surface water information shall be described, including the name of the watershed which will receive water discharges, the location of all surface water bodies such as streams, lakes, ponds, and springs, the location of any water discharge into any surface body of water, and descriptions of surface drainage systems sufficient to identify, in detail, the seasonal variations in water quantity and quality within the proposed mine plan and adjacent areas.

(b) Surface water information shall include

(1) Minimum, maximum, and average discharge conditions which identify critical low flow and peak discharge rates of streams sufficient to identify seasonal variations.

(2) Water quality data to identify the characteristics of surface waters in, discharging into, or which will receive flows from surface or ground water from affected areas within the proposed mine plan area, sufficient to identify seasonal variations, showing: total dissolved solids in milligrams per liter; total suspended solids in milligrams per liter; acidity; pH in standard units; total and dissolved iron in milligrams per liter; total manganese in milligrams per liter; and such other information as the Office determines is relevant.

179.17 Alternative water supply information. The application shall identify the extent to which the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed mine plan or adjacent areas for domestic, agricultural, industrial, or other legitimate use. If contamination, diminution, or interruption may result, then the description shall identify the alternative sources of water supply that could be developed to replace the existing sources.

179.18 Climatological information.

(a) When requested by the Office, the application shall contain a statement of the climatological factors that are representative of the proposed mine plan area, including

(1) The average seasonal precipitation.

(2) The average direction and velocity of prevailing winds.

(3) Seasonal temperature ranges.

(b) The Office may request such additional data as deemed necessary to ensure compliance with the requirements of this Subchapter.

179.19 Vegetation information.

(a) The permit application shall contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(b) Sufficient adjacent areas shall be included on the map or aerial photograph to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and wildlife identified under 179.20.

179.20 Fish and wildlife resources information.

(a) Each application shall include a study of fish and wildlife and their habitats within the proposed mine plan area and the portions of the adjacent areas where effects on such resources may reasonably be expected to occur.

(b) Prior to initiating such studies, the applicant shall contact the Office to determine what fish and wildlife resources information will be required.

(c) The Office, in consultation with the appropriate state and federal fish and wildlife management, conservation, or land management agencies having responsibilities for fish and wildlife or their habitats, shall determine the level of detail and the

areas of such studies, according to published data and other information; site-specific information obtained by the applicant; and written guidance obtained from agencies consulted.

179.21 Soil resources information

(a) The applicant shall provide adequate soil survey information of the permit area consisting of the following: a map delineating different soils; soil identification; soil description; and present and potential productivity of existing soils.

(b) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials, and tests required under 216.22.

179.22 Land-use information.

(a) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including

(1) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described.

(2) A narrative of land capability and productivity, which analyzes the land-use description under Paragraph (a) of this Section in conjunction with other environmental resources information required under this Part. The narrative shall provide analyses of

(i) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the proposed permit area.

(ii) The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the United States Department of Agriculture, state agricultural universities or appropriate state natural resource or agricultural agencies.

(b) The application shall state whether the proposed mine plan area has been previously mined, and, if so, the following information, if available

(1) The type of mining method used.

(2) The coal seams or other mineral strata mined.

(3) The extent of coal or other minerals removed.

(4) The approximate dates of past mining.

(5) The uses of the land preceding mining.

(c) The application shall contain a description of the existing land uses and land use classifications under local law, if any, of the proposed mine plan and adjacent areas.

179.24 Maps: General requirements. The permit application shall include maps showing

(a) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area.

(b) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities.

(c) The boundaries of all areas proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of size, sequence, and timing of the mining of subareas for which it is anticipated that additional permits will be sought.

(d) The location of all buildings on and within one thousand feet of the proposed permit area, with identification of the current use of the buildings.

(e) The location of surface and subsurface man-made features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields.

(f) The location and boundaries of any proposed reference areas for determining the success of revegetation.

(g) The locations of water supply intakes for current users of water flowing into, out of, and within a hydrologic area defined by the Office, and those surface waters which will receive discharges from affected areas in the proposed mine plan area.

(h) Each public road located in or within one hundred feet of the proposed permit area.

(i) The boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the mine plan or adjacent areas.

(j) Each public or private cemetery or Indian burial ground located in or within one hundred feet of the proposed permit area.

(k) Any land within the proposed mine plan area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act or the Louisiana Scenic Rivers Act.

(l) Other relevant information required by the Office.

179.25 Cross sections, maps, and plans. The application shall include cross sections, maps, and plans showing

(a) Elevations and locations of test borings and core samplings.

(b) Elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application.

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined.

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed mine plan area.

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed mine plan to adjacent areas.

(f) Location and extent of subsurface water, if encountered, within the proposed mine plan to adjacent areas.

(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed to natural drains, and irrigation ditches within the proposed mine plan and adjacent areas.

(h) Location and extent of existing or previously surface-mined areas within the proposed mine plan area.

(i) Location and dimensions of existing areas of spoil, waste, and non-coal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area.

(j) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the mine plan area and adjacent area.

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:

(1) Each measurement shall consist of an angle of inclination along the prevailing slope extending one hundred linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations specified by the Office.

(2) Where the area has been previously mined, the measurements shall extend at least one hundred feet beyond the limits of mining disturbances, or any other distance determined by the Office to be representative of the premining configuration of the land.

(3) Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(l) Maps, plans, and cross sections included in a permit application which are required by this Section shall be prepared by or under the direction of and certified by a qualified registered professional engineer or professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture and shall be updated as required by the Office.

179.27 Prime farmland investigation.

(a) The applicant shall conduct a pre-application investigation of the proposed mine plan area to determine whether lands within the area may be prime farmland.

(b) Land shall not be considered prime farmland where the applicant can demonstrate one of the following:

(1) The land has not been historically used as cropland.

(2) The slope of the land is ten percent or greater.

(3) Other factors exist, such as a very rocky surface, or the land is frequently flooded during the growing season, more often than once in two years, and the flooding has reduced crop yields.

(4) On the basis of a soil survey of lands within the mine plan area, there are no soil map units that have been designated prime farmland by the United States Soil Conservation Service.

(c) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination which shows that the land for which the negative determination is sought meets one of the criteria of Paragraph (b) of this Section.

(d) If the investigation indicates that lands within the proposed mine plan area may be prime farmlands, the applicant shall contact the United States Soil Conservation Service to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed mine plan area, the applicant shall cause such a survey to be made.

(1) When a soil survey of lands within the proposed mine plan area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 185.17 for such designated land.

(2) When a soil survey for lands within the proposed mine plan area contains soil map units which have not been designated as prime farmland after review by the United States Soil Conservation Service, the applicant shall submit a request for negative determination for non-designated land with the permit application establishing compliance with Paragraph (b) of this Section.

Part 180—Surface Mining Permit Application—Minimum Requirement for Reclamation and Operation Plan

180.4 Responsibilities.

(a) It is the responsibility of the applicant to provide to the Office the information required by this Part, except where specifically exempted in this Part.

(b) It is the responsibility of state and federal governmental agencies to provide information to the Office where specifically required in this Part.

180.11 Operation plan: General requirements. Each application shall contain a description of the mining operations proposed to be conducted during the life of the mine within the proposed mine plan area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations.

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is necessary for postmining land use as specified in Section 216.133).

(1) Dams, embankments, and other impoundments.

(2) Overburden and topsoil handling and storage areas and structures.

(3) Coal removal, handling, storage, cleaning, and transportation areas and structures.

(4) Spoil, coal processing waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures.

(5) Mine facilities.

(6) Water and air pollution control facilities.

180.12 Operation plan: Existing structures.

(a) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include

(1) Location.

(2) Plans of the structure which describe its current condition.

(3) Approximate dates on which construction of the existing structure was begun and completed.

(4) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of Subchapter K (Permanent Program Standards).

(b) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include

(1) Design specifications for the modification or reconstruction of the structure to meet the design and performance standards of Subchapter K.

(2) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction.

(3) Provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards of Subchapter K are met.

(4) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

180.13 Operation plan: Blasting. Each application shall contain a blasting plan for the proposed permit area, explaining how the applicant intends to comply with the requirements of 216.61-216.68 and including the following:

(a) Types and approximate amounts of explosives to be used for each type of blasting operation to be conducted.

(b) Description of procedures and plans for recording and retention of information on the following during blasting.

(1) Drilling patterns, including size, number, depths, and spacing of holes.

(2) Charge and packing of holes.

(3) Types of fuses and detonation controls.

(4) Sequence and timing of firing holes.

(c) Description of blasting warning and site access control equipment and procedures.

(d) Description of types, capabilities, sensitivities, and locations of use of any blast monitoring equipment and procedures proposed to be used.

(e) Description of plans for recording and reporting to the regulatory authority the results of preblasting surveys, if required.

(f) Description of unavoidable hazardous conditions for which deviations from the blasting schedule will be needed under 216.65(b).

180.14 Operation plan: Maps and plans. Each application shall contain maps and plans of the proposed mine plan and adjacent areas as follows:

(a) The maps and plans shall show the lands proposed to be

affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under 179.24-179.25.

(b) The following shall be shown for the proposed permit area unless specifically required for the mine plan area or adjacent area by the requirements of this Section:

(1) Buildings, utility corridors and facilities to be used.

(2) The area of land to be affected within the proposed mine plan area, according to the sequence of mining and reclamation.

(3) Each area of land for which a performance bond or other equivalent guarantee will be posted under Subchapter J.

(4) Each coal storage, cleaning and loading area.

(5) Each topsoil, spoil, coal waste, and non-coal waste storage area.

(6) Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used.

(7) Each air pollution collection and control facility.

(8) Each source of waste and each waste disposal facility relating to coal processing or pollution control.

(9) Each facility to be used to protect and enhance fish and wildlife and related environmental values.

(10) Each explosive storage and handling facility.

(11) Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with 180.25, and fill area for the disposal of excess spoil in accordance with 180.35.

(c) Maps, plans and cross-sections required under paragraphs (b)(4), (5), (10), and (11) of this Section shall be prepared by, or under the direction of and certified by a qualified registered professional engineer, or professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture, except that maps, plans, and cross-sections for sedimentation ponds may only be prepared by a qualified registered professional engineer; and spoil disposal facilities, maps, plans, and cross-sections may only be prepared by a qualified registered professional engineer.

180.15 Air pollution control plan. The application shall contain an air pollution control plan which includes the following:

(a) An air quality monitoring program, if required by the Office, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under Paragraph (b) of this Section to comply with applicable federal and state air quality standards.

(b) A plan for fugitive dust control practices, as required under 216.95.

180.16 Fish and wildlife plan.

(a) Each application shall contain a fish and wildlife plan, consistent with 216.97 which provides

(1) A statement of how the plan will minimize disturbances and adverse impacts on fish and wildlife and related environmental values during surface coal mining and reclamation operations, and how enhancement of these resources will be achieved, where practicable. The plan shall cover the mine plan area and portions of adjacent areas as determined by the Office pursuant to Section 179.20(c).

(2) If the applicant states that it will not be practicable, in accordance with Paragraph (1), to achieve a condition which clearly shows a trend toward enhancement of fish and wildlife resources at the time revegetation has been successfully completed under 216.111-216.117, a statement shall be provided which establishes, to the satisfaction of the Office, why it is not practicable to achieve such a condition.

(b) A statement explaining how the applicant will utilize impact control measures, management techniques, and monitoring methods to protect or enhance the following, if they are to be affected by the proposed activities:

(1) Threatened or endangered species of plants or animals listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. Sec. 1531 et seq.) and their critical habitats.

(2) Species such as eagles, migratory birds or other animals protected by state or federal law, and their habitats; or other species identified through the consultation process pursuant to Section 179.20.

(3) Habitats of unusually high value for fish and wildlife, such as wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.

180.18 Reclamation plan: General requirements.

(a) Each application shall contain a plan for reclamation of the lands within the proposed permit area, showing how the applicant will comply with Section 915 of the Act, Subchapter K of these regulations, and the environmental protection performance standards of the regulatory program. The plan shall include, at a minimum, all information required under 180.18-180.37.

(b) Each plan shall contain the following information for the proposed permit area:

(1) A detailed timetable for the completion of each major step in the reclamation plan.

(2) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under Subchapter J with supporting calculations for the estimates.

(3) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 216.101-216.106.

(4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 216.21-216.25.

(5) A plan for revegetation as required in 216.111-216.117, including, but not limited to, descriptions of the

(i) Schedule of revegetation.

(ii) Species and amounts per acre of seeds and seedlings to be used.

(iii) Methods to be used in planting and seeding.

(iv) Mulching techniques.

(v) Irrigation, if appropriate, and pest and disease control measures, if any.

(vi) Measures proposed to be used to determine the success of revegetation as required in 216.116.

(vii) A soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation.

(6) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 216.59.

(7) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 216.89 and 216.103 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials.

(8) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 216.13-216.15.

(9) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards.

180.21 Reclamation plan: Protection of hydrologic balance.

(a) Each plan shall contain a detailed description, with appropriate maps and cross section drawings, of the measures to be taken during and after the proposed surface mining activities, in accordance with Part 216, to ensure the protection of

(1) The quality of surface and ground water systems, both within the proposed mine plan and adjacent areas, from the adverse effects of the proposed surface mining activities.

(2) The rights of present users of surface and ground water.

(3) The quantity of surface and ground water both within the proposed mine plan area and adjacent area from adverse effects of the proposed surface mining activities, or to provide alternative sources of water in accordance with 179.17 and 216.54, where the protection of quantity cannot be ensured.

(b) The description shall include

(1) A plan for the control, in accordance with Part 216, of surface and ground water drainage into, through and out of the proposed mine plan area.

(2) A plan for the treatment, where required under these regulations, of surface and ground water drainage from the area to be disturbed by the proposed activities, and proposed quantitative limits on pollutants in discharges subject to 216.42, according to the more stringent of the following: subchapter K; or other applicable state and federal laws.

(3) A plan for the restoration of the approximate recharge capacity of the mine plan area in accordance with 216.51.

(4) A plan for the collection, recording, and reporting of ground and surface water quality and quantity data, according to 216.52.

(c) The description shall include a determination of the probable hydrologic consequences of the proposed surface mining activities, on the proposed mine plan area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions, including the contents of dissolved and total suspended solids, total iron, pH, total manganese, and other parameters required by the Office.

180.23 Reclamation plan: Postmining land uses.

(a) Each plan shall contain a detailed description of the proposed use, following reclamation of the land within the proposed permit area including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain

(1) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use.

(2) Where range or grazing is the proposed postmining use, the detailed management plans to be implemented.

(3) Where a land use different from the pre-mining land use is proposed, all materials needed for approval of the alternative use under 216.133.

(4) The consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs.

(b) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

180.25 Reclamation plan: Ponds, impoundments, banks, dams, and embankments.

(a) General. Each application shall include a general plan for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed mine plan area.

(1) Each general plan shall

(i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or by a professional geologist with assistance from experts in related fields such as land surveying and landscape architecture.

(ii) Contain a description map, and cross-section of the structure and its location.

(iii) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure.

(iv) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred.

(v) Contain a certification statement which includes a schedule setting forth the dates that any detailed design plans for structures that are not submitted with the general plan will be submitted to the Office. The Office shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a), shall

(i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture.

(ii) Include any geotechnical investigation, design, and construction requirements for the structure.

(iii) Describe the operation and maintenance requirements for each structure.

(iv) Describe the timetable and plans to remove each structure, if appropriate.

(3) Each detailed design plan for a structure that does not meet the size or other criteria of 30 CFR 77.216(a) shall

(i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer or registered land surveyor except that all coal processing waste dams and embankments covered by 216.91-216.93 shall be certified by a qualified registered professional engineer.

(ii) Include any design and construction requirements for the structure, including any required geotechnical information.

(iii) Describe the operation and maintenance requirements for each structure.

(iv) Describe the timetable and plans to remove each structure, if appropriate.

(b) Sedimentation ponds. Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 216.46. Any sedimentation pond or earthen structure which will remain on the proposed mine plan area as a permanent water impoundment shall also be designed to comply with the requirements of 216.49. Each plan shall, at a minimum, comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2.

(c) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 216.49. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2.

(d) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 216.81-216.85.

(e) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 216.91-216.93. Each plan shall comply with the requirements of the Mine Safety and

Health Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(1) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(f) If the structure is twenty feet or higher or impounds more than twenty acre-feet, each plan under Paragraphs (b), (c), and (e) of this Section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions, the plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

180.27 Reclamation plan: Surface mining near underground mining. For surface mining activities within the proposed permit area to be conducted within five hundred feet of an underground mine, the application shall describe the measures to be used to comply with 216.79.

180.29 Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions to be constructed within the proposed permit area to achieve compliance with 216.43-216.44.

180.31 Protection of public parks and historic places. For any public parks or historic places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the Office and other agencies as required in 161.12(e).

180.33 Relocation or use of public roads. Each application shall describe, with appropriate maps and cross-sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 161.12(c), the applicant seeks to have the Office approve conduction of the proposed surface mining activities within one hundred feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or relocating a public road.

180.35 Disposal of excess Spoil.

(a) Each application shall contain descriptions, including appropriate maps and cross section drawings of the proposed disposal site and design of the spoil disposal structures according to 216.71-216.74. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the site and structures.

(b) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

(1) The character of bedrock and any adverse geologic conditions in the disposal area.

(2) A survey identifying all springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the disposal site.

(3) A survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations.

(4) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket.

(5) A stability analysis including, but not limited to, strength parameters, pore parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(c) If, under 216.71(i), rock-toe buttresses or key-way cuts are required, the application shall include the following:

(1) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions.

(2) Engineering specifications utilized to design the rock-toe buttress or key-way cuts which shall be determined in accordance with paragraph (b)(5) of this Section.

180.37 Transportation facilities. Each application shall contain a detailed description of each road, conveyor, or rail to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the Office is required for alternative specifications, or for steep cut slopes under 216.150(d), 216.152(c), 216.160(d) or 216.162(c).

(c) A description of measures to be taken to obtain approval of the Office for alteration or relocation of a natural drainageway under 216.153(d), 216.163(d) or 216.173(c).

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the Office under 216.153(c)(2)(vi) and 216.163(c)(2)(vi).

(e) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed mine plan area.

Part 185—Requirements for Permits for Special Categories of Mining

185.13 Experimental practices mining.

(a) Paragraphs (b)-(i) of this Section apply to any person who conducts or intends to conduct surface coal mining and reclamation operations under a permit authorizing the use of alternative mining practices on an experimental basis if the practices require a variance from the environmental protection performance standards of these regulations.

(b) The purpose of this Section is to provide requirements for the permitting of surface coal mining and reclamation operations that encourage advances in mining and reclamation practices, or allow postmining land use for industrial, commercial, residential or public use (including recreational facilities) on an experimental basis.

(c) Experimental practice, as used in this Section, means the use of alternative surface coal mining and reclamation practices for experimental or research purposes. Experimental practices need not comply with specific environmental protection performance standards of these regulations, if approved pursuant to this Section.

(d) No person shall engage in or maintain any experimental practice, unless that practice is first approved in a permit by the Office.

(e) Each person who desires to conduct an experimental practice shall submit a permit application for the approval of the Office. The permit application shall contain appropriate descriptions, maps and plans which show

(1) The nature of the experimental practice.

(2) How use of the experimental practice

(i) Encourages advances in mining and reclamation technology; or,

(ii) Allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities), on an experimental basis, when the results are not otherwise attainable under these regulations.

(3) That the mining and reclamation operations proposed for usingan experimental practice are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice.

(4) That the experimental practice

(i) Is potentially more or at least as environmentally protective during and after the proposed mining and reclamation operations, as those required under these regulations.

(ii) Will not reduce the protection afforded public health and safety below that provided by the requirements of these regulations.

(5) That the applicant will conduct special monitoring with respect to the experimental practice during and after the operations involved. The monitoring program shall

(i) Insure the collection and analysis of sufficient and reliable data to enable the office to make adequate comparisons with other surface coal mining and reclamation operations employing similar experimental practices.

(ii) Include requirements designed to identify, as soon as possible, potential risks to the environment and public health and safety from the use of the experimental practice.

(f) Each application shall set forth the environmental protection performance standards of Subchapter K which will be implemented in the event the objective of the experimental practice is a failure.

(g) All experimental practices for which variances are sought shall be specifically identified through newspaper advertisements by the applicant and the written notifications by the Office required under 186.11.

(h) No permit authorizing an experimental practice shall be issued, unless the Office first finds, in writing, upon the basis of a complete application filed in accordance with the requirements of this Section that

(1) The experimental practice meets all of the requirements of paragraphs (e)(2) through (e)(5) of this Section.

(2) The experimental practice is based on a clearly defined set of objectives which can reasonable by expected to be achieved.

(3) The experimental practice has been specifically approved, in writing, by the Office, based on findings that all of the requirements of paragraphs (e)(1) through (e)(5) of this Section will be met.

(4) The permit contains conditions which specifically

(i) Limit the experimental practice authorized to that granted by the Office.

(ii) Impose enforceable alternative environmental protection requirements.

(iii) Require the person to conduct the periodic monitoring, recording and reporting program set forth in the application, with such additional requirements as the Office may require.

(i) Each permit which authorizes the use of an experimental practice shall be reviewed in its entirety at least every three years by the Office, or at least once prior to the middle of the permit term. After review, the Office shall require by order, supported by written findings, any reasonable revision or modification of the permit provisions necessary to ensure that the operations involved are conducted to protect fully the environment and public health and safety. Any person who is or may be adversely affected by the order shall be provided with an opportunity for a hearing as established in the regulatory program.

185.15 Steep slope mining.

(a) This Section applies to any person who conducts or intends to conduct steep slope surface coal mining and reclamation operations, except

(1) Where an operator proposes to conduct surface coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the mining operation proceeds.

(2) To the extent that a person obtains a permit incorporating a variance under 185.16.

(b) Any application for a permit for surface coal mining and reclamation operations covered by this Section shall contain sufficient information to establish that the operations will be conducted in accordance with the requirements of 226.12.

(c) No permit shall be issued for any operations covered by this Section, unless the Office finds, in writing, that in addition to meeting all other requirements of this Subchapter, the operation will be conducted in accordance with the requirements of 226.12.

185.16 Permits incorporating variances from approximate original contour restoration requirements for steep slope mining.

(a) This Section applies to steep slope surface coal mining and reclamation operations under a regulatory program where the operation is not to be reclaimed to achieve the approximate original contour required by 216.101-216.106 and 226.12(b).

(b) The objective of this Section is to allow for a variance from approximate original contour restoration requirements on steep slopes for surface coal mining and reclamation operations to

(1) Improve watershed control of lands within the permit area and on adjacent lands.

(2) Make land within the permit area, after reclamation, suitable for an industrial, commercial, residential, or public use, including recreational facilities.

(c) The Office may issue a permit for surface mining activities incorporating a variance from the requirement for restoration of the affected lands to their approximate original contour only if it first finds, in writing, on the basis of a complete application, that all of the following requirements are met:

(1) The applicant has demonstrated that the purpose of the variance is to make the lands to be affected within the permit area suitable for an industrial, commercial, residential, or public use postmining land use.

(2) The proposed use, after consultation with the appropriate land-use planning agencies, if any, constitutes an equal or better economic or public use.

(3) The applicant has demonstrated compliance with the requirements for acceptable alternative postmining land uses of 216.133.

(4) The applicant has demonstrated that the watershed of lands within the proposed permit area and adjacent areas will be improved by the operations. The watershed will only be deemed improved if

(i) There will be a reduction in the amount of total suspended solids or other pollutants discharged to ground or surface waters from the permit area as compared to such discharges prior to mining, so as to improve public or private uses or the ecology of such waters; or, there will be reduced flood hazards within the watershed containing the permit area by reduction of the peak flow discharges from precipitation events or thaws.

(ii) The total volume of flows from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water.

(iii) The appropriate state environmental agency approves the plan.

(5) The applicant has demonstrated that the owner of the surface of the lands within the permit area has knowingly requested, in writing, as part of the application, that a variance be granted. The request shall be made separately from any surface owner consent given for the operations under 178.15 and shall show an understanding that the variance could not be granted without the surface owner's request.

(6) The applicant has demonstrated that the proposed operations will be conducted in compliance with the requirements of 226.15.

(7) All other requirements of the Act and these regulations will be met by the proposed operations.

(d) If a variance is granted under this Section

(1) The requirements of 226.15 shall be made a specific condition of the permit.

(2) The permit shall be specifically marked as containing a variance from approximate original contour.

(e) Any permits incorporating a variance issued under this Section shall be reviewed by the Office to evaluate the progress and development of the mining activities, to establish that the operator is proceeding in accordance with the terms of the variance

(1) Within the sixth month preceding the third year from the date of its issuance.

(2) Before each permit renewal.

(3) Not later than the middle of each permit term.

(f) If the permittee demonstrates to the Office at any of the times specified in paragraph (e) of this Section that the operations involved have been and continue to be conducted in compliance with the terms and conditions of the permit, the requirements of the Act and these regulations, the review required at that time need not be held.

(g) The terms and conditions of a permit incorporating a variance under this Section may be modified at any time by the Office, if it determines that more stringent measures are necessary to ensure that the operations involved are conducted in compliance with the requirements of this Act and these regulations.

185.17 Prime farmlands.

(a) Application contents for prime farmland. If land within the proposed permit area is identified as prime farmland under 179.27, the applicant shall submit a plan for the mining and restoration of the land. Each plan shall contain, as a minimum

(1) A soil survey of the permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in the United States Department of Agriculture Handbooks 436 (Soil Taxonomy, 1975) and 18 (Soil Survey Manual, 1951).

(i) These publications are hereby incorporated by reference as they exist on the date of adoption of this Part. Notices of changes made to these publications will be periodically published by the Office of Surface Mining (OSM) in the ***Federal Register.*** Agriculture Handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual) are on file and available for inspection at the OSM Central Office, United States Department of the Interior, South Interior Building, Washington, D.C. 20240, at each OSM Regional Office, District Office, and Field Office and at the Baton Rouge office of the Office of Conservation. Copies of these publications may also be obtained by written request to the above locations. Copies of these documents are also available from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402, Stock Number 001-000-02597-0 and Stock Number 10100-0688-6. In addition, these documents are available for inspection at the national, state, and local offices of the Soil Conservation Service, United States Department of Agriculture and at the Federal Register Library, 1100 L Street, Northwest, Washington, D.C.

(ii) The soil survey shall include a map unit and representative soil profile description for each prime farmland soil within the permit area unless other representative descriptions from the locality, prepared in conjunction with the National Cooperative Soil Survey, are available and their use is approved by the Office.

(2) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil in accordance with 223.

(3) The moist bulk density of each major horizon of each prime farmland soil in the permit area. The moist bulk density shall be determined by laboratory tests of samples taken from within the permit area according to procedures set forth in Soil Survey Laboratory Methods and Procedures for Collecting Soil Samples (Soil Survey Investigations Report No. 1, United States Department of Agriculture, Soil Conservation Service, 1972). Other standard on-site methods of estimating moist bulk density may be used where these methods correct for particle size distribution and moisture content and are approved by the Soil Conservation Service of the Office. In lieu of laboratory data from samples taken within the permit area, the Office may permit use of moist bulk density values representing the soil series where such values have been established by the Soil Conservation Service.

(4) The location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution.

(5) If applicable, documentation, such as agricultural school studies or other specific data from comparable areas, that supports the use of other suitable material, instead of the A, B, or C soil horizon, to obtain on the restored area equivalent or higher levels of yield as non-mined prime farmlands in the surrounding area under equivalent levels of management.

(6) Plans for seeding or cropping the final graded disturbed land and the conservation practices to be used to adequately control erosion and sedimentation and restoration of an adequate soil moisture regime, during the period from completion of regrading until release of the performance bond or equivalent guarantee under Subchapter J. Proper adjustments for seasons must be proposed so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions.

(7) Available agricultural school studies or other scientific data for areas with comparable soils, climate, and management (including water management) that demonstrate that the proposed method of reclamation will achieve, within a reasonable time, equivalent or higher levels of yield after mining as existed before mining.

(8) Current estimated yields under a high level of management for each soil map unit from the United States Department of Agriculture (USDA) for each crop to be used in determining success of revegetation (Section 223.15). These yield estimates shall be used by the Office as the predetermined target level for determining success of revegetation. The target yields may be adjusted by the Office in consultation with the Secretary of Agriculture before approval of the permit application.

(9) In all cases, soil productivity for prime farmlands shall be returned to equivalent levels of yield as nominated land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to Section 185.17(b)(1).

(b) Consultation with Secretary of Agriculture. Before any permit is issued for areas that include prime farmlands, the Office shall consult with the Secretary of Agriculture.

(c) Issuance of permit. A permit for the mining and reclamation of prime farmland may be granted by the Office, if it first finds, in writing, upon the basis of a complete application, that

(1) The approved proposed postmining land use of these prime farmlands will be cropland.

(2) The permit incorporates as specific conditions the contents of the plan submitted under paragraph (b) of this Section, after consideration of any revisions to that plan suggested by the Secretary of Agriculture under paragraph (c) of this Section.

(3) The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management.

(4) The proposed operations will be conducted in compliance with the requirements of 223 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the regulatory program.

185.21 Coal processing plants or support facilities not located within the permit area of a specified mine.

(a) This Section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing coal processing plants or support facilities not within a permit area of a specific mine. Any person who operates such a processing plant or support facility shall have obtained a permit from the Office in accordance with the requirements of this Section.

(b) Any application for a permit for operations covered by this Section shall contain in the mining and reclamation plan, specific plans, including descriptions, maps and cross-sections of the construction, operation, maintenance and removal of the processing plants and associated support facilities. The plan shall demonstrate that those operations will be conducted in compliance with 227.

(c) No permit shall be issued for any operation covered by this Section, unless the Office finds, in writing, that, in addition to meeting all other applicable requirements of this Subchapter, the operations will be conducted in compliance with the requirements of 227.

Part 186—Public Participation Approval of Permit Applications and Permit Terms and Conditions

186.4 Responsibilities.

(a) The Office has the responsibility to approve or disapprove permits.

(b) The Office and persons applying for permits under regulatory programs shall involve the public throughout the permit process of regulatory programs.

(c) The Office shall assure implementation of the requirements of this Part.

(d) This applicant shall provide all information in a complete permit application for review by the Office in accordance with this Part.

186.11 Public notices of filing of permit applications.

(a) An applicant for a permit shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operations at least once a week for four consecutive weeks. The applicant shall place the advertisement in the newspaper at the same time the complete permit application is filed with the Office. The advertisement shall contain, at a minimum, the following information:

(1) The name and business address of the applicant.

(2) A map or description which shall

(i) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area.

(ii) Clearly show or describe the exact location and boundaries of the proposed permit area.

(iii) State the name of the United States Geological Survey 7.5-minutes quadrangle map(s) which contains the area shown or described.

(iv) If a map is used, indicate the north point.

(3) The location where a copy of the application is available for public inspection under paragraph (c) of this Section.

(4) The name and address of the Office in order that written comments, objections, or requests for informal conferences on the application may be submitted under Section 186.12-186.14.

(5) If an applicant seeks a permit to mine within one hundred feet of the outside right-of-way of a public road or to relocate a public road, a concise statement describing the public road, the particular part to be relocated, where the relocation is to occur, and the duration of the relocation.

(b) Upon receipt of a complete application for a permit, the Office shall issue written notification of

(1) The applicant's intention to surface mine a particularly described tract of land.

(2) The application number.

(3) Where a copy of the application may be inspected.

(4) Where comments on the application may be submitted under Section 186.12 of this Part.

(c) The written notifications shall be sent to

(1) Federal, state and local government agencies with jurisdiction over or an interest in the area of the proposed operations, including, but not limited to, general governmental entities and fish and wildlife and historic preservation agencies.

(2) Governmental planning agencies with jurisdiction to act with regard to land use, air, or water quality planning in the area of the proposed operations.

(3) Sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas.

(4) The federal or state governmental agencies with authority to issue all other permits and licenses needed by the applicant in connection with operations proposed in the application.

(d)(1) The applicant shall make a full copy of his or her complete application for a permit available for the public to inspect and copy. This shall be done by filing a copy of the application submitted to the Office with the recorder at the courthouse of the parish where the mining is proposed to occur, or if approved by the Office, at another equivalent public office, if it is determined that that Office, at another equivalent public office, will be more accessible to local residents than the parish courthouse.

(2) The applicant shall file the copy of the complete application under paragraph (d)(1) of this Section by the first date of newspaper advertisement of the application. The applicant shall file any subsequent revision of the application with the public office at the same time the revision is submitted to the Office.

186.12 Opportunity for submission of written comments on permit application.

(a) Written comments on permit applications may be submitted to the Office by the public entities to whom notification is provided under Section 186.11(b) and (c) with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(b) These comments shall be submitted to the Office in writ-

ten form within thirty days of notice.

(c) The Office shall immediately transmit a copy of all such comments for filing and public inspection at the public office where the applicant filed a copy of the application for permit under Section 186.11(d). A copy shall also be transmitted to the applicant.

186.13 Right to file written objections.

(a) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority shall have the right to file written objections to an initial or revised application for a permit with the Office, within thirty days after the last publication of the newspaper notice required by Section 186.11(a).

(b) The Office shall, immediately upon receipt of any written objections

(1) Transmit a copy of them to the applicant.

(2) File a copy for public inspection at the public office where the applicant filed a copy of the application for permit under Section 186.11(d).

186.14 Informal conferences.

(a) Procedure for requests. Any person, whose interests are, or may be, adversely affected by the issuance of the permit, or the officer or head of any federal, state or local government agency or authority may, in writing, request that the Office hold an informal conference on any application for a permit. The request shall

.(1) Briefly summarize the issues to be raised by the requestor at the conference.

(2) State whether the requestor desires to have the conference conducted in the locality of the proposed mining operations.

(3) Be filed with the Office not later than thirty days after the last publication of the newspaper advertisement placed by the application under Section 186.11(a).

(b) Except as provided in (c) below, if an informal conference is requested in accordance with paragraph (a) of this Section, the Office shall hold an informal conference within a reasonable time following the receipt of the request. The informal conference shall be conducted according to the following:

(1) If requested under paragraph (a)(2) of this Section, it shall be held in the locality of the proposed mining.

(2) The date, time, and location of the informal conference shall be advertised by the Office in a newspaper of general circulation in the locality of the proposed mine at least two weeks prior to the scheduled conference.

(3) If requested, in writing, by a conference requestor in a reasonable time prior to the conference, the Office may arrange with the applicant to grant parties to the conference access to the mine plan area for the purpose of gathering information relevant to the conference.

(4) Neither the requirements of Section 5 of the Administrative Procedures Act, as amended (5 U.S.C. 554), nor the requirements of the Louisiana Administrative Procedures Act, shall apply to the conduct of the informal conference. The conference shall be conducted by a representative of the Office, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference proceeding, unless waived by the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to Subchapter J.

(c) If all parties requesting the informal conference stipulate agreement before the requested informal conference and withdraw their request, the informal conference need not be held.

(d) Informal conferences held in accordance with this Section may be used by the Office as the public hearing required under 161.12(d) on proposed uses or relocation of public roads.

186.15 Public availability of information in permit applications on file with the Office.

(a) Information contained in permit applications on file with the Office shall be open, upon written request, for public inspection and copying at reasonable times.

(1) Information pertaining to coal seams, test borings, core samplings, or soil samples in permit applications shall be made available for inspection and copying to any person with an interest which is or may be adversely affected.

(2) Information in permit applications which pertains only to the analysis of the chemical and physical properties of the coal to be mined (excepting information regarding mineral or elemental contents of such coal, which are potentially toxic in the environment) shall be kept confidential and not made a matter of public record.

(3) Information in the reclamation-plan portions of the application, which is required to be filed with the Office only under Section 508 of the Federal Act and which is not on public file pursuant to state law, shall be held in confidence by the Office upon the written request of the applicant.

(b) The Office shall provide for procedures to maintain information required to be kept confidential under paragraph (a) separately from other portions of the permit application. This information shall be clearly identified by the applicant and submitted separately from other portions of the application.

186.17 Review of permit applications.

(a) Process

(1) The Office shall review the complete application and written comments, written objections submitted, and records of any informal conference held under 186.12-186.14.

(2) The Office shall determine the adequacy of the fish and wildlife plan submitted pursuant to 180.16 or 184.20, in consultation with state and federal fish and wildlife management and conservation agencies having responsibilities for the management and protection of fish and wildlife or their habitats which may be affected or impacted by the proposed surface coal mining and reclamation operations.

(b) If the Office decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of Subchapter J of this Chapter.

(c) If the Office determines from either the schedule submitted as part of the application under 178.14(c) or 182.14(c), or from other available information, that any surface mining operation owned or controlled by the applicant is currently in violation of any law, rule, or regulation of the United States, or of any state law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection, or of any provision of the Act, the Office shall require the application, before the issuance of the permit, to either

(1) Submit to the Office reviewing the application, proof which is satisfactory to the Office, department, or agency which has jurisdiction over such violation, that the violation

(i) Has been corrected, or

(ii) Is in the process of being corrected.

(2) Establish to the Office reviewing such application that the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. If the administrative or judicial hearing authority either denies a stay applied for in the appeal or affirms the violation, then any surface coal mining operations being conducted under a permit issued according to this paragraph shall be immediately terminated, unless and until the provisions of paragraph (c)(1) above are satisfied.

(d) Before any final determination by the Office that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violation of the Act of such nature, duration, and with such resulting irreparable damage to the environment that indi-

cates an intent not to comply with the provisions of the Act, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination. Such hearing shall be conducted pursuant to Section 187.11.

186.19 Criteria for permit approval or denial. No permit or revision application shall be approved, unless the application affirmatively demonstrates and the Office finds, in writing, on the basis of information set forth in the application, or from information otherwise available, which is documented in the approval and made available to the applicant, that

(a) The permit application is accurate and complete and that all requirements of the Act and these regulations have been complied with.

(b) The applicant has demonstrated that surface coal mining and reclamation operations, as required by the Act and these regulations, can be feasibly accomplished under the mining and reclamation operations plan contained in the application.

(c) The assessment of the probable cumulative impacts of all anticipated coal mining in the general area on the hydrologic balance, as described in 180.21(c), has been made by the Office, and the operations proposed under the application have been designed to prevent damage to the hydrologic balance outside the proposed mine plan area.

(d) The proposed permit area is

(1) Not included within an area designated unsuitable for surface coal mining operations under 164; or

(2) Not on any lands subject to the prohibitions or limitations of 161.11(e) or (f); or

(3) Not within one hundred feet of the outside right-of-way line of any public road, except as provided for in 161.12(c); or

(4) Not within three hundred feet from any occupied dwelling, except as provided for in 161.11(d) and 161.12(d).

(e) The proposed operations will not adversely affect any publicly-owned parks or places included or eligible for listing in the National Register of Historic Places, except as provided for in 161.11(b).

(f) The applicant has either

(1) Submitted the proof required by Section 186.17(c)(1); or

(2) Made the demonstration required by Section 186.17(c)(2).

(g) The applicant has submitted proof that all reclamation fees otherwise applicable have been paid.

(h) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of the Act of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the Act.

(i) Surface coal mining and reclamation operations to be performed under the permit will not be inconsistent with other such operations anticipated to be performed in areas adjacent to the proposed permit area.

(j) The applicant will submit the performance bond or other equivalent guarantee required under Subchapter J prior to the issuance of the permit.

(k) The applicant has, with respect to prime farmland, obtained either a negative determination or satisfied the requirements of 185.17.

(l) The proposed postmining land use of the permit area has been approved by the Office in accordance with the requirements of 216.133.

(m) The Office has made all specific approvals required under Subchapter K.

(n) The Office has found that the activities would not affect the continued existence of endangered or threatened species or result in the descriptions or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.).

186.23 Permit approval or denial actions.

(a) The Office shall approve, require modification of, or deny all applications for permits under regulatory programs on the basis of

(1) Complete applications for permits and revisions or renewals thereof.

(2) Public participation as provided for in this Subchapter.

(3) Compliance with any applicable provisions of 185.

(4) Processing and review of applications as required by this Part.

(b) The Office shall take action as required under paragraph (a) of this Section, within the following times:

(1) Except as provided for in paragraph (b)(3) of this Section, a complete application submitted to the Office after the time required in 171.21(a)(1) and in accordance with 171.21(b) shall be processed by the Office, so that an application is approved or denied within the following times:

(i) If an informal conference has been held under Section 186.14, within sixty days of the close of the conference; or

(ii) If no informal conference has been held under 186.14, then within thirty days after the receipt by the Office of all comments or objections to the permit. The Office may allow additional time for processing, taking into account

(A) The time needed for proper investigation of the proposed permit and adjacent areas.

(B) The complexity of the application.

(C) Whether written objections to or comments on the complete application have been filed with the Office.

(2) Notwithstanding any of the foregoing provisions of this Section, no time limit under the Act or this Section requiring the Office to act shall be considered expired from the time the Office initiates a proceeding under 186.17(d) until the final decision of the hearing body.

(c) If an informal conference is held under Section 186.14, the Office shall give its written findings to the permit applicant and to each person who is a part to the conference, approving modifying or denying the application in whole, or in part, and stating the specific reasons therefor in the decision.

(d) If no such informal conference has been held, the Office shall give its written findings to the permit applicant, approving, modifying or denying the application in whole, or in part, and stating the specific reasons in the decision.

(e) Simultaneously, the Office shall

(1) Give a copy of its decision to each person and government official who filed a written objection or comment with respect to the application; and the Regional Director together with a copy of any permit issued.

(2) Publish a summary of its decision in a newspaper or similar periodical of general circulation in the general area of the proposed operation.

(f) Within ten days after the granting of a permit, including the filing of the performance bond or other equivalent guarantee which complies with Subchapter J, the Office shall notify the local government officials, in the local political subdivision in which the area of land to be affected is located, that a permit has been issued and shall describe the location of the lands within the permit area.

186.25 Permit terms.

(a) Each permit shall be issued for a fixed term not to exceed five years. A longer fixed permit term may be granted, if

(1) The application is full and complete for the specified longer term.

(2) The applicant shows that a specifiedlonger term is reasonably needed to allow the applicant to obtain necessary financing of equipment and the opening of the operation, and this need is confirmed, in writing, by the applicant's proposed source for the financing.

(b) Termination, extension.

(1) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three years of the issuance of the permit.

(2) The Office may grant reasonable extensions of time for commencement of these operations, upon receipt of a written statement showing that such extensions of time are necessary, if litigation precludes the commencement or threatens substantial economic loss to the permittee, or there are conditions beyond the control and without the fault or negligence of the permittee.

(3) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.

(4) Extensions of time granted by the Office under this paragraph shall be specifically set forth in the permit and notice of the extension shall be made to the public.

(c) Permits may be suspended, revoked, or modified by the Office, in accordance with 185.13, 185.15, or 188.11.

186.27 Conditions of permits: General and right of entry. Each permit issued by the Office shall ensure that:

(a) Except to the extent that the Office otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the complete application.

(b) The permittee shall allow the authorized representatives of the Secretary of the Interior, including, but not limited to, inspectors and fee compliance officers, and the Office, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay, to have the rights of entry provided for in 240.12 and 242.13; and be accompanied by private persons for the purpose of conducting an inspection in accordance with 242, when the inspection is in response to an alleged violation reported to the Office by the private person.

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated on the maps submitted under 179-180 and approved for the term of the permit and which are subject to the performance bond or other equivalent guarantee in effect pursuant to Subchapter J.

186.29 Conditions of permits: Environment, public health, and safety. Each permit issued by the Office shall ensure and contain specific conditions requiring that the

(a) Permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to

(1) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance.

(2) Immediate implementation of measures necessary to comply.

(3) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by Subchapter K of this Chapter, the regulatory program, and which prevents violation of any other applicable state or federal law.

(c) The permittee shall conduct the operations

(1) In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public.

(2) Utilizing any methods specified in the permit by the Office in approving alternative methods of compliance with the performance standards of the Act and the regulatory program, in accordance with the provisions of the Act, 186.19(m) and Subchapter K.

Part 187—Administrative and Judicial Review of Decisions by the Office of Conservation on Permit Applications

187.1 Scope.

187.2 Objectives.

187.11 Administrative review.

(a) Within thirty days after the applicant or permittee is notified of the final decision of the Office concerning the application for the permit, revision or renewal thereof, permit, application for transfer, sale, or assignment of rights, or concerning an application for coal exploration under 176.14, the applicant, permittee or any person with an interest which is or may be adversely affected, may request a hearing on the reasons for the final decision in accordance with this Section.

(1) The Office shall commence the hearing within thirty days of such request. This hearing shall be of record, adjudicatory in nature, and no person who presided at an informal conference under 186.14 shall either preside at the hearing, or participate in the decision following the hearing, or in any administrative appeal therefrom.

(2) The Office may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if

(i) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief.

(ii) The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding.

(iii) The relief is not to affect adversely the public health or safety, or cause significant, imminent environmental harm to land, air or water resources.

(iv) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the Office.

(3) Hearing Authority.

(i) For the purpose of such hearing, the hearing authority may administer oaths and affirmations, subpoena witnesses, written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence, including, but not limited to, site inspections of the land to be affected and other surface coal mining and reclamation operations carried on by the applicant in the general vicinity of the proposed operations.

(ii) A verbatim record of each public hearing required by this Section shall be made, and a transcript made available on the motion of any party or by order of the hearing authority.

(iii) Ex parte contacts between representatives of the parties before the hearing authority and the hearing authority shall be prohibited.

(4) Within sixty days after the close of the record, the hearing authority shall issue and furnish the applicant, and each person who participated in the hearing, with the written findings of fact, conclusions of law, and order of the hearing authority with respect to the appeal.

(5) The burden of proof at such hearings shall be on the party seeking to reverse the decision of the Office.

187.12 Judicial review.

(a) Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative proceedings as an objector shall have the right to appeal as provided in paragraph (b) of this Section, if

(1) The applicant or person is aggrieved by the decision of the hearing authority in an administrative review proceeding conducted pursuant to Section 187.11; or

(2) Either the Office or the hearing authority for administrative review under Section 187.11 fails to act within time limits specified in the Act, or these regulations, whichever applies.

(b) State programs. Action of the Office or hearing authority identified in paragraph (a) of this Section shall be subject to judicial review by a court of competent jurisdiction, but the availability of such review shall not be construed to limit the operation of the rights established in Section 920 of the Act.

Part 188—Permit Reviews and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits

188.3 Responsibilities. The Office shall

(a) Ensure that permits are revised prior to changes in surface coal mining and reclamation operations.

(b) Ensure that all permits are regularly reviewed to determine that surface coal mining and reclamation operations under these permits are conducted in compliance with the Act and these regulations.

(c) Effectively review and act on applications to renew existing permits, in a timely manner, to ensure that surface coal mining and reclamation operations continue, if they comply with the Act and these regulations.

(d) Ensure that no person conducts surface coal mining and reclamation operations through the transfer, sale, or assignment of rights granted under permits without the prior approval of the Office.

188.11 Office of Conservation review of outstanding permits.

(a) The Office shall review each permit issued and outstanding under an approved regulatory program during the term of the permit. This review shall occur not later than the middle of the permit term and as required by 185.13, and 185.16. For permits of longer than five year terms, a review of the permit shall be no less frequent than the permit midterm or every five years, whichever is more frequent.

(b) After this review, the Office may, by order, require reasonable revision or modification of the permit provisions to ensure compliance with the Act and these regulations.

(c) Copies of the decision of the Office shall be sent to the permittee.

(d) Any order of the Office requiring revision or modification or permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 187.

188.12 Permit revisions.

(a) A revision to a permit shall be obtained

(1) For changes in the surface coal mining and reclamation operations described in the original application and approved under the original permit, when such changes constitute a significant departure from the method of conduct of mining or reclamation operations contemplated by the original permit. The Office shall provide parameters in the regulatory program to determine what changes shall constitute significant departures as used herein.

(2) When required by an order issued under 188.11.

(3) In order to continue operation after the cancellation or material reduction of the liability insurance policy, capability of self-insurance, performance bond, or other equivalent guarantee upon which the original permit was issued.

(4) As otherwise required under the regularity program.

(b) The application for revision shall be filed in accordance with the following:

(1)The permittee shall submit the application to the Office within the time provided for by 171.21(b)(3).

(2) The scale or extent of permit application information requirements and procedures, including notice and hearings, applicable to revision requests shall be as provided in the particular regulatory program. Any application for a revision which proposes significant alterations in the operations described in the materials submitted in the application for the original permit under 178, 179, 180, 181, or 185 or in the conditions of the original permit, shall, at a minimum, be subject to the requirements of 186 and 187.

(c) The Office shall approve or disapprove the complete application for revision, in accordance with the requirements of 186, within a reasonable time as established in the regulatory program.

(d) Any extensions to the area covered by the permit, except for incidental boundary revisions, shall be made by application for a new permit and shall not be approved under this Part.

188.13 Permit renewals: General requirements.

(a) Any valid, existing permit issued pursuant to a regulatory program shall carry with it the right of successive renewal upon expiration of the term of the permit, in accordance with Sections 188.14-188.16. Successive renewal shall be available only for those areas which were specifically approved by the Office on the application for the existing permit as within the boundaries of the permit.

(b) Permit renewal shall not be available for conducting surface coal mining and reclamation operations of the permit area approved under the existing permit. Approval of permits to conduct operations on these lands, including, but not limited to, any remainder of the mine plan area described in the application for the existing permit, shall be obtained in accordance with Section 188.14(b)(2).

188.14 Permit renewals: Completed applications.

(a) Contents. Complete applications for renewals of a permit shall be made within the time prescribed by 171.21(b)(2). Renewal applications shall be: in a form, and with contents required by the Office, and in accordance with paragraph (b)(2) of this Section, including, at a minimum, the following:

(1) A statement of the name and address of the permittee, the term of the renewal requested, the permit number, and a description of any changes to the matters set forth in the original application for a permit or prior renewal.

(2) A copy of the newspaper notice and proof of publication of same under 186.11(a).

(3) Evidence that liability insurance policy or adequate self-insurance under 206.14 will be provided by the applicant for the proposed period of renewal.

(b) Processing and review.

(1) Complete applications for renewal shall be subject to the requirements of public notification and participation contained in 186.11-186.14.

(2) If a complete application for renewal of a permit includes a proposal to extend the mining and reclamation operation beyond the boundaries authorized in the existing permit, the portion of the complete application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new permit applications under the Act. 171, 178, 179, 180, 182, 183, 184, 185, 186, 187, 188, and 189, and any other applicable portion of these regulations.

(4) Before finally acting to grant the permit renewal, the Office shall require any additional performance bond needed by the permittee to comply with the requirements of Section 188.16(a)(4) to be filed with the Office.

188.15 Permit renewals: Terms. Any permit renewal shall be for a term not to exceed the period of the original permit established under 186.25.

188.16 Permit renewals: Approval or denial.

(a) The Office shall, upon the basis of a complete application for renewal and completion of all procedures required under Sections 188.14-188.15, issue a renewal of a permit, unless it is established and written findings by the Office are made that

(1) The terms and conditions of the existing permit are not being satisfactorily met;

(2) The present surface coal mining and reclamation oper-

ations are not in compliance with the environmental protection standards under the Act and these regulations;

(3) The requested renewal substantially jeopardizes the operator's continuing responsibility to comply with the Act and these regulations on existing permit areas;

(4) The operator has not provided evidence that any performance bond required to be in effect for the operations will continue in full force and effect for the proposed period of renewal, as well as any additional bond the regulatory authority might require pursuant to Subchapter J; or,

(5) Any additional revised or updated information required by the Office has not been provided by the applicant.

(b) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.

(c) The Office shall send copies of its decision to the applicant, any person who filed objections or comments to the renewal, and to any persons who were parties to any informal conference held on the permit renewal.

(d) Any person having an interest which is or may be adversely affected by the decision of the Office shall have the right to administrative and judicial review set forth in 187.

188.17 Transfer, assignment, or sale of permit rights: General requirements. No transfer, assignment, or sale of the rights granted under any permit issued pursuant to a regulatory program shall be made without the prior written approval of the Office, in accordance with Sections 188.17-188.19.

188.18 Transfer, assignment, or sale of permit rights: Obtaining approval.

(a) Any person seeking to succeed by transfer, assignment, or sale to the rights granted by a permit issued under this regulatory program shall, prior to the date of such trnasfer, assignment or sale

(1) Obtain the performance bond coverage of the original permittee by

(i) Obtaining transfer of the original bond;

(ii) Obtaining a written agreement with the original permittee and all subsequent successors in interest (if any) that the bond posted by the original permittee and all successors shall continue in force on all areas affected by the original permittee and all successors, and supplementing such previous bonding with such additional bond as may be required by the Office. If such an agreement is reached, the Office may authorize for each previous successor and the original permittee the release of any remaining amount of bond in excess of that required by the agreement;

(iii) Providing sufficient bond to cover the original permit in its entiretyfrom inception to completion of reclamation operations; or,

(iv) Such other methods as would provide that reclamation of all areas affected by the original permittee is assured under bonding coverage at least equal to that of the original permittee.

(2) Provide the Office with an application for approval of such proposed transfer, assignment, or sale, including

(i) The name and address of the existing permittee;

(ii) The name and address of the person proposing to succeed by such transfer, assignment, or sale and the name and address of that persons's resident agent;

(iii) For surface mining activities, the same information as is required by 178.13, 178.14, 178.15, 178.16(c), 178.18 and 178.19 for applications for new permits for those activities; or

(3) Obtain the written approval of the Office for transfer, assignment, or sale of rights, according to paragraph (c) of this Section.

(b)(1) The person applying for approval of such transfer, assignment, or sale of rights granted by a permit shall advertise the filing of the application in the newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the original permittee, the number and particular geographic location of the permit, and the address to which written comments may be sent under this paragraph.

(2) Any person whose interests are or may be adversely affected, including, but not limited to, the head of any local, state or federal government agency may submit written comments on the application for approval to the Office, within the time required by the regulations of the particular regulatory program.

(c) The Office may, upon the basis of the applicant's compliance with the requirements of paragraphs (a) and (b) of this Section, grant written approval for the transfer, sale, or assignment of rights under a permit, if it first finds, in writing, that

(1) The person seeking approval will conduct the operations covered by the permit in accordance with the criteria specified in 185 and 186.19-186.21 and the requirements of the Act and these regulations.

(2) The applicant has, in accordance with 188.18(a)(1), submitted a performance bond or other guarantee as required by Subchapter J and at least equivalent to the bond or other guarantee of the original permittee.

(3) The applicant will continue to conduct the operations involved in full compliance with the terms and conditions of the original permit, unless and until it has obtained a new permit in accordance with this Subchapter as required in Section 188.19.

188.19 Requirements for new permits for persons succeeding to rights.

(a) A successor in interest to a permittee who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee.

(b) Pursuant to Section 188.18(c)(3), any successor in interest seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit shall

(1) Make application for a new permit under 171-187, if the change involves conducting operations outside the original permit area; or

(2) Make application for a revised permit under Section 188.12.

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

Part 200 — General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Program

200.11 Requirement to file a bond.

(a) After an application for a new revised or renewed permit to conduct surface coal mining and reclamation operations has been approved under Subchapter G, but before such permit is issued, the applicant shall file with the Office a performance bond payable to the Office. The performance bond will be conditioned upon the faithful performance of all the requirements of the Act, these regulations and the provisions of the reclamation plan and permit. The amount, duration, form, conditions and terms of the performance bond shall conform to Parts 205 and 206.

(b) An operator shall not disturb surface acreage or extend any operations prior to receipt of approval from the Office of the performance bond covering the surface acreage to be affected.

(1) Liability on the performance bond shall cover all surface coal mining and reclamation operations to be conducted within the permit area during the life of the mine. After

the amount of the bond has been determined for the permit area in accordance with Part 205, the permittee or applicant may either file

(i) The entire performance bond required during the term of the permit; or

(ii) An incremental bond schedule and the new performance bond required for the first increment in the schedule.

(2) When the operator elects to increment the amount of the performance bond during the term of the permit, he shall identify the initial and successive incremental areas for bonding on the permit application map submitted for approval as provided in Section 180.14, and shall specify the proportion of the total bond amount required for the term of the permit which will be filed prior to commencing operations on each incremental area. The schedule amount of each performance bond increment shall be filed in the sequence approved in the permit, and shall be filed with the Office at least thirty days prior to the commencement of surface coal mining and reclamation operations in the next incremental area.

(c) The amount, duration, form, conditions and terms of the performance bond shall conform to Parts 205 and 206.

200.12 Requirement to file a certificate of liability insurance. Each applicant for a permit shall submit to the Office, as part of the permit application

(a) A certificate issued by an insurance company authorized to do business in the United States. The amount, duration, form, conditions and terms of this insurance shall conform to Section 206.14; or,

(b) Evidence that it satisfies applicable state or federal self-insurance requirements and that self-insurance for liability is otherwise consistent with Section 206.14.

200.13 Office of Conservation responsibilities.

(a) The Office shall prescribe and furnish the form for filing a performance bond.

(b) The Office shall prescribe terms and conditions for performance bonds and insurance by regulations which meet, at a minimum, the requirements of Parts 205 and 206.

(c) The Office shall determine the amount of the performance bond required for the permit area, including adjustments to the initial amount from time-to-time as land acreages in the permit area are revised, or when other relevant conditions change according to the minimum requirements of Section 205.11(a).

(d) The Office may not accept a self-bond in lieu of a surety or collateral bond, unless the permittee meets the requirements of Section 206.11(b) and any additional requirements in the program.

(e) The Office shall release the permittee from his bond and insurance requirements consistent with Part 207.

(f) The Office shall cause all or part of a bond to be forfeited consistent with Part 208.

Part 205 — Amount and Duration of Performance Bond

205.11 Determination of bond amount. The standard applied by the Office in determining the amount of performance bond shall be the estimated cost to the Office if it had to perform the reclamation, restoration, and abatement work of a person who conducts surface coal mining and reclamation operations under the Act, these regulations, and the permit, and such additional work as would be required to achieve compliance with the general standards for revegetation in Section 216.116(b)(3) or 217.116(b)(3) in the event the permittee fails to implement an approved alternative postmining land use plan within the two years required by Section 216.116(b)(3)(ii) or 217.116(b)(3)(ii). This amount shall be based on, but not be limited to

(a) The estimated costs submitted by the permittee in accordance with Sections 180.18 and 184.13.

(b) The additional estimated costs to the Office which may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the permittee to perform reclamation, restoration, and abatement work.

(c) All additional estimated costs necessary, expedient, and incident to the satisfactory completion of the requirements identified in this paragraph.

(d) An additional amount based on factors of cost changes during the preceding five years for the types of activities associated with the reclamation to be performed.

(e) Such other cost information as may be required by or available to the Office.

205.12 Minimum amount. The amount of the bond for surface coal mining and reclamation operations shall be ten thousand dollars at a minimum, for the entire area under one permit and be sufficient to assure performance of reclamation, restoration and abatement work required of a person who conducts surface coal mining and reclamation operations under the Act, these regulations, and the provisions of the permit, if the work had to be performed by the Office in the event of forfeiture.

205.13 Period of liability.

(a) Liability under performance bond(s) applicable to a permit shall continue until all reclamation, restoration and abatement work required of persons who conduct surface coal mining and reclamation operations under requirements of the Act, this Chapter, the regulatory program and the provisions of the permit has been completed, and the permit terminated by release of the permittee from any further liability in accordance with Part 207.

(b) In addition to the period necessary to achieve compliance with all requirements of the Act, this chapter, the regulatory program and the permit including the standards for the success of revegetation as required by Section 216.116 the period of liability under performance bond shall continue for a minimum period beginning with the last year of augmented seeding, fertilizing, irrigation or other work. The minimum period of liability shall continue for not less than five years. The period of liability shall begin again whenever augmented seeding, fertilizing, irrigation or other work is required or conducted on the site prior to bond release.

(c) If the Office approves a long-term intensive agricultural postmining land use, in accordance with Section 216.133, the applicable five- or ten-year period of liability shall commence at the date of initial planting for such long-term intensive agricultural land use.

(d) The Office may, upon a written finding, after approving a long-term intensive agricultural land use, grant an exception to the revegetation requirements of Section 216, but shall not grant exception to the period of liability in this Section.

205.14 Adjustment of amount.

(a) The amount of the performance bond liability applicability to a permit shall be adjusted by the Office as the acreage in the permit area is revised, methods of mining operation change, standards of reclamation change or when the cost of future reclamation, restoration or abatement work changes. The Office shall notify the permittee of any proposed bond adjustment and provide the permittee an opportunity for an informal conference on the adjustment. The Office shall review each outstanding performance bond at the time that permit reviews are conducted under Section 188.11, and re-evaluate those performance bonds in accordance with the standards in Section 205.11.

(b) A permittee may request reduction of the required performance bond amount upon submission of evidence to the Office proving that the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the Office to complete the reclamation responsibilities and therefore warrant a reduction of the bond amount. The request shall be considered as a request for partial bond release in accordance

with the procedures of Part 207 of these regulations.

Part 206 — Form, Conditions, and Terms of Performance Bonds and Liability Insurance

206.11 Form of the performance bond.

(a) The form for the performance bond shall be prescribed by the Office in accordance with this Section. The Office shall allow for either a surety bond, or a collateral bond.

(b) The Office may accept a selfbond from the applicant under the following conditions:

(1) The applicant shall designate the name and address of a suitable agent to receive service of process in the state where the surface coal mining operation is located.

(2) The applicant, or the applicant's parent organization in the event the applicant is a subsidiary corporation, has a net worth, certified by a certified public accountant, of no less than six times the total amount of selfbond obligations on all permits issued to the applicant in the United States for surface coal mining and reclamation operations.

(3) The applicant grants the Office a mortgage or security interest in immovable or movable property located in the state which shall have a fair market value equal to or greater than the obligation created under the indemnity agreement.

(4) The instrument creating such mortgage shall grant to the Office all of the rights possible under Louisiana law, including, but not limited to, executory process.

The immovable property subject to the mortgage may not be subject to any conflicting or prior mortgages, liens or encumbrances. The instrument creating the mortgage shall be recorded in the public records of the proper parish in the state.

The instrument creating the mortgage in movable property shall be recorded in accordance with and otherwise conform to the requirements of the applicable laws of Louisiana. In order for the Office to evaluate the adequacy of the property offered to satisfy this requirement, the applicant shall submit a schedule of the immovable or movable property which will be pledged to secure the obligations under the indemnity agreement. The schedule shall include

(i) A description of the property.

(ii) The value of the property. The property shall be valued at fair market value as determined by an appraisal conducted by appraisers appointed by the Office. The appraisal shall be expeditiously made, and a copy thereof furnished to the Office and the permittee. The reasonable expense of the appraisal shall be borne by the permittee.

(iii) Proof of the mortgagor's possession of and title to the unencumbered real property within the state which is offered to secure the obligations under the bond. Such proof shall include.

(A) If the interest arises under a federal or state lease, a status report prepared by an attorney, satisfactory to the Office as disinterested and competent to so evaluate the asset, and an affidavit from the owner in fee establishing that the leasehold could be transferred to the Office upon forfeiture.

(B) If title is complete, a title opinion prepared by an attorney licensed to practice in Louisiana and acceptable to the Office.

(C) The property shall not include any lands in the process of being mined, reclaimed, or the subject of this application. The operator may offer any lands for which the bonds have been released. In addition, any land used as security shall not be mined while it is security.

(iv) Proof that the person granting the mortgage holds possession of and title to property within the state which is offered to secure the obligation of the permittee under the bond. Evidence of such ownership shall be submitted in that form satisfactory to the Office. The property offered shall not include

(A) Property in which a mortgage is held by any person.

(B) Goods which the operator sells in the ordinary course of his business.

(C) Fixtures.

(D) Securities which are not negotiable bonds of the United States Government or general revenue bonds of the state.

(E) Certificates of deposit which are not federally insured or where the depository is unacceptable to the Office.

(5) The applicant, or the applicant's parent organization in the event the applicant is a subsidiary corporation, shall have demonstrated to the satisfaction of the Office a history of financial solvency and continuous operation as a business entity for a reasonable period prior to filing the application. For purposes of this paragraph, such demonstration shall include a financial statement in sufficient detail to allow the Office to determine whether it is reasonable to predict from the ownership patterns and financial history of the applicant that it will be financially capable of completing all reclamation requirements throughout the life of the surface coal mining and reclamation operations. Such statement shall include at the minimum

(i) Identification of operator by

(A) For corporations, name, address, telephone number, state of incorporation, principal place of business, principal office in the state where the operations is located, the name, title and authority of persons signing the application, and a statement of authority to do business in Louisiana.

(B) For all other forms of business enterprises, name, address and telephone number and statement of how the enterprise is organized, law of the state under which it is formed, place of business, and relationship and authority of the person signing the application, and principal office in Louisiana.

(ii) Estimated amount of bond likely to be required after approval of the permit which will be determined in accordance with Part 205, and the estimated maximum liability likely to be required during the life of the mine.

(iii) History of other bonds procured by operator for mining operations in any state, including

(A) Names of sureties, if any, for outstanding bonds.

(B) Amounts of outstanding bonds.

(C) Name of any surety which denied any bond.

(D) Unsatisfied claims against any bond.

(iv) Brief chronological history of business operations conducted within the last ten years including information showing continuous operations; and the jurisdiction within which each such operation has been conducted.

(v) A financial statement.

(A) The Office shall have the right to challenge, prohibit, or prescribe the inclusion of any specific item or the value thereof within any statement. If the value is challenged, the Office shall appoint an appraiser or appraisers to value the item. Any such appraisal shall be expeditiously made, and a copy thereof furnished to the Office and the permittee. The reasonable expense of the appraisers shall be borne by the operator. The findings of the appraisal shall be final and binding.

(B) A final determination by an independant Certified Public Accountant regarding the operator's ability to satisfactorily meet all obligations and costs under the proposed reclamation plan for the life of the mine.

(C) If the Office deems necessary, evidence of finan-

cial responsibility through letters of credit, or a rating of securities issued to the applicant by a recognized national securities rating company.

(vi) A statement listing any liens filed on the assets of the permittee or applicant in any jurisdiction in the United States, actions pending or judgments rendered within the last ten years against the permittee or applicant but not satisfied, and petitions or actions in bankruptcy including actions for reorganization. Each such lien, action, petition, or judgment shall be identified by the named parties, the jurisdiction in which the matter was filed, the case, file or docket number, the date of filing and final disposition or current status of any action still pending.

(vii) A statement listing any notices issued by the Securities and Exchange Commission or proceedings initiated by any party alleging a failure to comply with any public disclosure or reporting requirement under the securities laws of the United States. Such statement shall include a summary of each such allegation, including the date, the requirement alleged to be violated, the party making the allegation, and the disposition or current status thereof.

(6)(i) The indemnity agreement has been executed by the applicant, said agreement has also been executed by,

(A) If a corporation, two corporate officers who are authorized to sign the agreement by a resolution of the board of directors, a copy of which shall be provided.

(B) To the extent the history or assets of a parent organization are relied upon to make the showings of this Part, the parent organization and every parent organization of which it is a subsidiary, whether first-tier, second-tier, or further removed, in the form of (A) above.

(C) If the applicant is a partnership, all of its general partners and their parent organization or principal investors.

(D) If the applicant is a married individual, the applicant's spouse.

(ii) The name of each person who signs the indemnity agreement shall be typed or printed beneath the signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he or she signs the indemnity agreement.

(iii) The indemnity agreement shall be a binding obligation, jointly, severally, and in solido on all who execute it.

(iv) For purposes of this paragraph, principal investor or parent organization means anyone with a ten percent or more beneficial ownership interest, directly or indirectly, in the applicant.

(7) If, at any time, the conditions upon which the self-bond was approved no longer prevail, the Office shall require the posting of a surety or collateral bond before mining operations may continue.

(c) The Commissioner may approve an alternative bonding system if it will achieve the following objectives and purposes of the bonding program:

(1) The alternative must assure that the Office will have available sufficient money to complete the reclamation, restoration and abatement provisions for all permit areas which may be in default at any time.

(2) The alternative must provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

206.12 Terms and conditions of the bond.

(a) The performance bond shall be in an amount determined by the Office as provided in Sections 205.11 and 205.12.

(b) The performance bond shall be payable to the Office.

(c) The performance bond shall be conditioned upon faithful performance of all of the requirements of the Act, these regulations, and the conditions of the permit and shall cover the entire permit area.

(d) The duration of the bond shall be for the time period provided in Section 205.13.

(e) Surety bonds shall be subject to the following conditions:

(1) The Office shall not accept the bond of a surety company unless the bond shall not be cancellable by the surety at any time for any reason including, but not limited to nonpayment of premium or bankruptcy of the permittee during the period of liability. Surety bond coverage for permitted lands not disturbed may be cancelled with the consent of the Office; provided, the surety gives at least sixty days notice to both the permittee and the Office of the intent to cancel prior to cancellation. Such notice shall be by certified mail and shall not be effective until received by both the permittee and Office. Cancellation shall not be effective for lands subject to bond coverage which are disturbed after receipt of notice, but prior to approval by the Office. The Office may approve such cancellation only if a replacement bond is filed by the permittee prior to the cancellation date, or the permit is amended so that the surface coal mining operations approved under the permit are reduced to the degree necessary to cover all the costs attributable to the completion of reclamation operations on the reduced permit area in accordance with Section Part 205 and the remaining performance bond liability.

(2) The Office shall not accept surety bonds in excess of ten percent of the surety company's capital surplus account as shown on the balance sheet certified by a Certified Public Accountant, unless otherwise provided by law.

(3) The Office shall not accept surety bonds from a surety company for any person, on all permits held by that person, in excess of three times the company's maximum single obligation as provided by state law, or, in the absence of state law, as provided in paragraph (e) (2) of this Section.

(4) The Office may provide in the bond that the amount shall be confessed to judgment upon forfeiture.

(5) The bond shall provide that the surety and the permittee shall be liable jointly, severally and in solido.

(6) The bond shall provide that

(i) The surety will give prompt notice to the permittee and the Office of any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's license to do business.

(ii) In the event the surety becomes unable to fulfill its obligations under the bond for any reason, notice shall be given immediately to the permittee and the Office.

(iii) Upon the incapacity of a surety by reason of bankruptcy, insolvency or suspension or revocation of its license, the permittee shall be deemed to be without bond coverage in violation of Section 200.11(b) and shall discontinue surface coal mining operations until new performance bond coverage is approved.

(f) Collateral bonds, except for letters of credit, shall be subject to the following conditions:

(1) The Office shall obtain possession of and keep in custody all collateral deposited by the applicant, until authorized for release or replacement as provided in this Subchapter.

(2) The Office shall value collateral at their current market value, not face value.

(3) The Office shall require that certificates of deposit be assigned to the Office, in writing, and upon the books of the bank issuing such certificates.

(4) The Office shall not accept an individual certificate for a denomination in excess of forty thousand dollars, or maximum insurable amount as determined by F.D.I.C. and F.S.L.I.C.

(5) The Office shall require the banks issuing these certificates to waive all rights to setoff, or liens, which it has, or might have, against those certificates.

(6) The Office shall only accept automatically renewable certificates of deposit.

(7) The Office shall require the applicant to deposit sufficient amount of certificates of deposit, to assure that the Office will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required by this Subchapter.

(g) Letters of credit shall be subject to the following conditions:

(1) The letter may only be issued by a bank organized or authorized to do business in the United States.

(2) The letter must be irrevocable prior to a release by the Office in accordance with Part 207.

(3) The letter must be payable to the Office in part or in full upon demand and receipt from the Office of a notice of forfeiture issued in accordance with Part 208.

(4) The Office shall not accept a letter of credit in excess of ten percent of the bank's capital surplus account as shown on a balance sheet certified by a Certified Public Accountant.

(5) The Office shall not accept letters of credit from a bank for any person, on all permits held by that person, in excess of three times the company's maximum single obligation as provided by state law or, in the absence of state law, as provided in paragraph (e) (2) of this Section.

(6) The Office may provide in the indemnity agreement that the amount shall be confessed to judgment upon forfeiture.

(7) The bond shall provide that

(i) The bank will give prompt notice to the permittee and the Office of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business.

(ii) In the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the Office.

(iii) Upon the incapacity of a bank by reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the permittee shall be deemed to be without performance bond coverage in violation of Section 200.11(b) and shall discontinue surface coal mining operations until new performance bond coverage is approved.

206.13 Replacement of bonds.

(a) The Office may allow permittees to replace existing surety or collateral bonds with other surety or collateral bonds, if the liability which has accrued against the permittee on the permit area is transferred to such replacement bonds.

(b) The Office may allow the permittee to replace existing surety or collateral bonds with a selfbond, provided that the permittee meets the requirements of self-bonding as provided in Section 206.11(b).

(c) The Office shall not release existing performance bonds until the permittee has submitted and the Office has approved acceptable replacement performance bonds. A replacement of performance bonds pursuant to this Section shall not constitute a release of bond under Part 207.

206.14 Terms and conditions for liability insurance.

(a) The Office shall require the applicant to submit at the time of permit application, a certificate certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought. The certificate shall provide for personal injury and property damage protection in an amount adequate to compensate all persons injured or property damaged as a result of surface coal mining and reclamation operations, including use of explosives and damage to water wells, and entitled to compensation under the applicable provisions of state law. Minimum insurance coverage for bodily injury shall be three hundred thousand dollars for each occurrence and five hundred thousand dollars aggregate; and minimum insurance coverage for property damage shall be three hundred thousand dollars for each occurence and five hundred thousand dollars aggregate.

(b) The policy shall be maintained in full force during the life of the permit or any renewal thereof, including completion of all reclamation operations under these regulations.

(c) The policy shall include a rider requiring that the insurer notify the Office whenever substantive changes are made in the policy, including any termination or failure to renew.

(d) The Office may accept from the applicant, in lieu of a certificate for a public liability insurance policy, satisfactory evidence from the applicant that it satisfies applicable state self-insurance requirements.

Part 207 — Procedures, Criteria and Schedule for Release of Performance Bond

207.11 Procedures for seeking release of performance bond.

(a) Bond release application and contents. The permittee or any person authorized to act on his behalf, may file an application with the Office for release of all or part of the performance bond liability applicable to a particular permit after all reclamation, restoration and abatement work in a reclamation phase as defined in Section 207.12(3) of this Part has been completed on the entire permit area or on an area approved pursuant to Section 200.11(b) (2) for the incremental filing and release of bond liability.

(1) Applications may only be filed at times or seasons that allow the Office to evaluate property the reclamation operations alleged to have been completed. The times or seasons appropriate for the evaluation of certain types of reclamation shall be identified in the mining and reclamation operations plan required in Subchapter G of these regulations and approved by the Office.

(2) The application shall include copies of letters sent to adjoining property owners, surface owners, local government bodies, planning agencies, and sewage and water treatment facilities or water companies in the locality of the permit area, notifying them of the permittee's intention to seek release of performance bond(s). These letters shall be sent before the permittee files the application for release.

(3) Within thirty days after filing the application for release the permittee shall submit proof of publication of the advertisement required by paragraph (b) of this Section. Such proof of publication shall be considered part of the bond release application.

(b) Newspaper advertisement of application. At the time of filing an application under this Section, the permittee shall advertise the filing of the application in a newspaper of general circulation in the locality of the permit area. The advertisement shall

(1) Be placed in the newspaper at least once a week for four consecutive weeks.

(2) Show the name of the permittee, including the number and date of issuance or renewal of the permit.

(3) Show the precise location and the number of acres of the lands subject to the application.

(4) Show the total amount of bond in effect for the permit area and the amount for which release is sought.

(5) Summarize the reclamation, restoration or abatement work done, including, but not limited to, backstowing or mine sealing, if applicable, and give the dates of completion of that work.

(6) Describe the reclamation results achieved, as they relate to compliance with the Act, these regulations, and the approved mining and reclamation plan and permit.

(7) State that written comments, objections, and requests for a public hearing or informal conference may be submitted to the Office, provide the address of the Office, and the closing

date by which comments, objections, and requests must be received.

(c) Objections and requests for hearing. Written objections to the proposed bond release and requests for an informal conference may be filed with the Office by any affected person within thirty days following the last advertisement of the filing of the application. For the purpose of this Section, an affected person is

(1) Any person with a valid legal interest which might be adversely affected by bond release.

(2) The responsible officer or head of any federal, state or local government agency which has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved, or is authorized to develop and enforce environmental standards with respect to surface coal mining and reclamation operations.

(d) Inspection by Office of Conservation. The Office shall inspect and evaluate the reclamation work involved within thirty days after receiving a completed application for bond release, or as soon thereafter as weather conditions permit. The surface owner, or agent, or lessee shall be given notice of such inspection and may participate with the regulatory authority in making the bond release inspection.

(e) Informal conference. Under the regulations providing for an informal conference on proposed bond releases, the Office shall schedule a conference if written objections are filed and a conference is requested. The conference shall be held in the locality of the permit area for which bond release is sought.

(1) Notice of an informal conference shall be published in the official state publication, and in a newspaper of general circulation in the locality of the conference, at least two weeks before the date of the conference.

(2) The informal conference shall be held within thirty days from the date of the notice.

(3) Neither the requirements of Section 5 of the Administrative Procedures Act (5 U.S.C. Sec. 554) nor the requirements of the Louisiana Administrative Procedures Act shall apply to the conduct of the informal conference.

(4) An electronic or stenographic record shall be made of the conference and the record maintained for access by the parties, until final release of the bond, unless recording is waived by all of the parties to the conference.

(f) Office of Conservation review and decision.

(1) The Office shall consider, during inspection evaluation, hearing and decision

(i) Whether the permittee has met the criteria for release of the bond under Section 207.12.

(ii) The degree of difficulty in completing any remaining reclamation, restoration or abatement work.

(iii) Whether pollution of surface and subsurface water is occurring, the probability of future pollution or the continuance of any present pollution, and the estimated cost of abating any pollution.

(2) If no informal conference has been held under paragraph (3), the Office shall notify the permittee and any other interested parties in writing of its decision to release or not to release all or part of the performance bond or deposit within sixty days from the receipt of the completed application, or within thirty days from the close of the public comment period if comments were received, whichever occurs last.

(3) If there has been an informal conference held under paragraph (3), the notification of the decision shall be made to the permittee and all interested parties within thirty days after conclusion of the conference.

(4) The notice of the decision shall state the reasons for the decision, recommend any corrective actions necessary to secure the release, and notify the permittee and all interested parties of their right to request a public hearing in accordance with paragraphs (g) and (h) of this Section.

(5) The Office shall not release the bond until

(i) The town, city of other municipality nearest to, or the parish in which the surface coal mining and reclamation operation is located, has received at least thirty days notice of the release by certified mail.

(ii) The right to request a public hearing pursuant to paragraph (g) of this Section has not been exercised, or a final decision by the hearing authority approving the release has been issued pursuant to paragraph (h) of this Section.

(g) Administrative review-public hearings. Following receipt of the decision of the Office under paragraph (f), the permittee or any affected person may request a public hearing on the reasons for that decision. Requests for hearings shall be filed within thirty days after the permittee and other parties are notified of the decision of the Office under paragraph (f).

(h) Public hearings. Public hearings required under this Section shall be conducted as follows: The Office shall inform the permittee, local government and the objecting party of the time, date, and place of the hearing and publish notice of the hearing in the official state publication, if any, and in a newspaper of general circulation in the locality of the permit area twice a week for two consecutive weeks before the hearing. The hearing shall be adjudicatory in nature and be held within thirty days of the receipt of the request, in the town or city nearest the permit area, or the state capital, at the option of the objector. The Office may subpoena witnesses and printed materials and compel the attendance of witnesses and production of the materials at the hearing. A verbatim record of the hearing shall be made and the transcript made available on the motion of any party or by order of the Office. The decision of the hearing authority shall be made within thirty days of the hearing. Parties seeking to reverse the decision or any part of the decision of the Office which is the subject of the hearing shall have the burden of presenting a preponderance of evidence, to persuade the hearing authority that the decision cannot be supported by the reasons given in the notification of the Office's decision.

207.12 Criteria and schedule for release of performance bond.

(a) The Office shall not release any liability under performance bonds until it finds that the permittee has met the requirements of the applicable reclamation phase as defined in paragraph (e) of this Section. The Office may release portions of the liability under performance bonds applicable to a permit following completion of reclamation phases on the entire permit area or on incremental areas within the permit area which have been designated in the approved reclamation plan.

(b) The maximum liability under performance bonds applicable to a permit which may be released at any time prior to the release of all acreage from the permit area shall be calculated by multiplying the ratio between the acreage on which a reclamation phase has been completed and the total acreage in the permit area, times the total liability under performance bonds applicable to a permit, times

(1) Six-tenths, if reclamation phase I has been completed.

(2) One-fourth, if reclamation phase II has been completed.

(c) Acreage may be released from the permit area only after reclamation phase III has been completed. The maximum performance bond liability applicable to a permit which may be released at any time prior to the completion of reclamation phase III on the entire permit area shall be calculated by multiplying the ratio between the acreage on which reclamation phase III has been completed and the total acreage in the permit area, times the total liability under performance bonds applicable to a permit, times 0.15.

(d) The Office shall not release any liability under the performance bonds applicable to a permit if such release would reduce the total remaining liability under performance bonds to an amount less than that necessary for the Office to complete the

approved reclamation plan, achieve compliance with the requirements of the Act, these regulations, or the permit, and abate any significant environmental harm to air, water or land resources or danger to the public health and safety which might occur prior to the release of all lands from the permit area. Where the permit includes an alternative postmining land use plan approved pursuant to Section 216.133 or 217.133, the regulatory authority shall also retain sufficient liability for the regulatory authority to complete any additional work which would be required to achieve compliance with the general standards for revegetation in Section 216.116(b) (3) or 217.166(b) (3) in the event the permittee fails to implement the approved alternative postmining land use plan within the two years required by Section 216.116(b) (3) (ii), or 217.116(b) (3) (ii).

(e) For the purposes of this Part

(1) Reclamation phase I shall be deemed to have been completed when the permittee completes backfilling, topsoil replacement, regrading, and drainage control in accordance with the approved reclamation plan.

(2) Reclamation phase II shall be deemed to have been completed when

(i) Revegetation has been established in accordance with the approved reclamation plan and the standards for the success of revegetation are met.

(ii) The lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of Section 215(b) (10) of or the permit.

(iii) With respect to prime farmlands, soil productivity has been returned to the level of yield as required by Section 185.17 and Part 223 when compared with nonmined prime farmland in the surrounding area as determined from the soil survey performed under Section 207(b) (16) of the Act and the plan approved under Section 185.17.

(iv) The provisions of a plan approved by the Office for the sound future management of any permanent impoundment by the permittee or landowner have been implemented to the satisfaction of the Office.

(3) Reclamation phase III will be deemed to have been completed when the permittee has successfully completed all surface coal mining and reclamation operations in accordance with the approved reclamation plan, including the implementation of any alternative land use plan approved pursuant to Section 216.133 or 217.133 and achieve compliance with the requirements of the Act, this Chapter, the regulatory program, the permit, and the applicable liability period under Section 215 (b) (20) of the Act and Section 205.13(b) of this Subchapter has expired.

Part 208 — Performance Bond Forfeiture Criteria and Procedures

208.11 General.

(a) The Office shall forfeit all or part of a bond for any permit where required or authorized by Section 208.13.

(b) The Office may withhold forfeiture, if the permittee and surety, if applicable, agree to a compliance schedule to comply with the violations of the permit or bond conditions.

208.12 Procedures.

(a) In the event forfeiture of the bond is required by Sections 208.11 and 208.13, the Office shall

(1) Send written notification by certified mail, return receipt requested, to the permittee, and the surety on the bond, if applicable, of the Office's determination to forfeit all or part of the bond and the reasons for the forfeiture, including a finding of the amount to be forfeited.

(2) Advise the permittee and surety, if applicable, of any rights of appeal that may be available from that determination under state law.

(3) Proceed in an action for collection on the bond as provided by applicable laws for the collection of defaulted bonds or other debts, consistent with this section, for the amount forfeited, if an appeal is not filed within a time established by the Office and a stay of collection issued by the hearing authority or such appeal is unsuccessful.

(4) If an appeal is filed, defend the action.

(b) The written determination to forfeit all or part of the bond, including the reasons for forfeiture and the amount to be forfeited, shall be a final decision by the Office.

(c) The Office may forfeit any or all bond deposited for an entire permit area, in order to satisfy Sections 208.11-208.14. Liability under any bond, including separate bond increments or indemnity agreements applicable to a single operation shall extend to the entire permit area with respect to protection of the hydrologic balance.

208.13 Criteria for forfeiture.

(a) A bond shall be forfeited, if the Office finds that

(1) The permittee has violated any of the terms or conditions of the bond; or

(2) The permittee has failed to conduct the surface mining and reclamation operations in accordance with the Act, the conditions of the permit or these regulations within the time required by the Act, these regulations, and the permit; or

(3) The permit for the area under bond has been revoked, unless the operator assumes liability for completion of reclamation work; or

(4) The permittee has failed to comply with a compliance schedule approved pursuant to Section 208.11(b).

(b) A bond may be forfeited, if the regulatory authority finds that

(1) The permittee has become insolvent, failed in business, been adjudicated a bankrupt, filed a petition in bankruptcy or for a receiver, or had a receiver appointed by any court; or a creditor of the permittee has attached or executed a judgment against the permittee's equipment, materials, facilities at the permit area or on the collateral pledged to the Office.

(2) The permittee cannot demonstrate or prove the ability to continue to operate in compliance with the Act, these regulations, and the permit.

208.14 Determination of forfeiture amount. The Office shall either

(a) Determine the amount of the bond to be forfeited on the basis of the estimated cost to the Office or its contractor to complete the reclamation plan and other regulatory requirements in accordance with the Act, these regulations, and the requirements of the permit; or

(b) Forfeit the entire amount of the bond for which liability is outstanding and deposit the proceeds thereof in an interest-bearing escrow account for use in the payment of all costs and administrative expenses associated with the conduct of reclamation, restoration or abatement activities by the Office.

Subchapter K — Permanent Program Performance Standards

Part 210 — Permanent Program Performance Standards General Provisions

210.3 Authority. The Commissioner shall promulgate minimum coal exploration and surface mining and reclamation operations performance standards and design requirements.

210.4 Responsibility.

(a) The Commissioner shall ensure that performance standards and design requirements are implemented and enforced.

(b) Each person conducting coal exploration or surface coal mining and reclamation operations is responsible for complying with performance standards and design requirements.

Part 215 — Permanent Program Performance Standards — Coal Exploration

215.11 General responsibility of persons conducting coal exploration or development.

(a) Each person who conducts coal exploration or development which substantially disturbs the natural land surface and in which two hundred fifty tons or less of coal are removed shall file the notice of intention to explore required under Section 176.12 and shall comply with Section 215.15 of this Part.

(b) Each person who conducts coal exploration or development which substantially disturbs the natural land surface and in which more than two hundred fifty tons of coal are removed in the area described by the written approval from the Office, shall comply with the procedures described in the exploration or development and reclamation operations plan approved under Section 176.13 and shall comply with Section 215.15 of this Part.

215.13 Required documents. Each person who conducts coal exploration or development which substantially disturbs the natural land surface and which removes more than two hundred fifty tons of coal shall, while in the exploration or development area, possess written approval of the Office for the activities granted under Section 176.12. The written approval shall be available for review by the authorized representative of the Office upon request.

215.15 Performance standards for coal exploration or development. The performance standards in this Section are applicable to coal exploration or development which substantially disturbs land surface.

(a) Habitats of unique value for fish, wildlife, and other related environmental values and areas identified in Section 180.16(b) shall not be disturbed during coal exploration or development.

(b) The person who conducts coal exploration or development shall, to the extent practicable, measure important environmental characteristics of the exploration or development area during the operations, to minimize environmental damage to the area and to provide supportive information for any permit application that person may submit under subchapter G.

(c) Roads.

(1) Vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts coal exploration or development to that absolutely necessary to conduct the exploration or development. Travel shall be confined to graded and surfaced roads during periods when excessive damage to vegetation or rutting of the land surface could result.

(2) Any new road in the exploration or development area which is used less than six months shall comply with the provisions of Section 216.176. If the road will be used longer than six months, it shall comply with the provisions of Sections 216.150-216.166.

(3) Existing roads may be used for exploration or development in accordance with the following:

(i) All applicable federal, state, and local requirements shall be met.

(ii) If the road is significantly altered for exploration or development, including, but not limited to, change of grade, widening, or change of route, or if use of the road for exploration or development contributes additional suspended solids to streamflow or runoff, then paragraph (g) of this Section shall apply to all areas of the road which are altered or which result in such additional contributions.

(iii) If the road is significantly altered for exploration or development activities and will remain as a permanent road after exploration or development activities are completed, the person conducting exploration or development shall ensure that the requirements of Section 216.150-216.166, as appropriate, are met for the design, construction, alteration, and maintenance of the road.

(4) Promptly after exploration or development activities are completed, existing roads used during exploration or development shall be reclaimed either

(i) To a condition equal to or better than their pre-exploration or pre-development condition; or

(ii) To the condition required for permanent roads under Sections 216.150-216.166, as appropriate.

(d) If excavations, artificial flat areas, or embankments are created during exploration or development, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration or development.

(e) Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by the Office.

(f) Revegetation of areas disturbed by coal exploration or development shall be performed by the person who conducts the exploration or development, or his or her agent. If more than two hundred fifty tons of coal are removed from the exploration or development area, all revegetation shall be in compliance with the plan approved by the Office and carried out in a manner that encourages prompt vegetative cover and recovery of productivity levels compatible with approved post-exploration or post-development land use and in accordance with the following:

(1) All disturbed lands shall be seeded or planted to the same seasonal variety native to the disturbed area. If both the pre-exploration or pre-development and post-exploration or post-development land uses are intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph.

(2) The vegetative cover shall be capable of stabilizing the soil surface in regards to erosion.

(g) With the exception of small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities, no ephemeral, intermittent or perennial stream shall be diverted during coal exploration or development activities. Overland flow of water shall be diverted in a manner that

(1) Prevents erosion.

(2) To the extent possible using the best technology currently available, prevents additional contributions of suspended solids to streamflow or runoff outside the exploration or development area.

(3) Complies with all other applicable state or federal requirements.

(h) Each exploration or development hole, borehole, well, or other exposed underground opening created during exploration or development must meet the requirements of Sections 216.13, 216.14, and 126.15.

(i) All facilities and equipment shall be removed from the exploration or development area promptly when they are no longer needed for exploration or development, except for those facilities and equipment that the Office determines may remain to

(1) Provide additional environmental quality data;

(2) Reduce or control the on- and off-site effects of the exploration or development activities; or

(3) Facilitate future surface mining and reclamation operations by the person conducting the exploration or development, under an approved permit.

(j) Coal exploration or development shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance, and shall include sediment control measures such as those listed in Section 216.45 or sedimentation ponds which comply with Section 216.46. The Office may specify additional measures which shall be adopted by the person engaged in coal exploration or development.

(k) Toxic- or acid-forming materials shall be handled and disposed of in accordance with Sections 216.48 and 216.103. If specified by the Office, additional measures shall be adopted by the person engaged in coal exploration or development.

215.17 Requirement for a permit. Any person who extracts coal for commercial sale during coal exploration or development operations must obtain a permit for those operations from the Office under Subchapter G. No permit is required if the Office makes a prior determination that the sale is to test for coal properties necessary for the development of surface coal mining and reclamation operations for which a permit application is to be submitted at a later time.

Part 216 — Permanent Program Performance Standards Surface Mining Activities

216.11 Signs and markers.

(a) Specifications. Signs and markers required under this Part shall

(1) Be posted and maintained by the person who conducts the surface mining acitivites.

(2) Be of a uniform design throughout the operation that can be easily seen and read.

(3) Be made of durable material.

(4) Conform to local ordinances and codes.

(b) Duration of maintenance. Signs and markers shall be maintained during the conduct of all activities to which they pertain.

(c) Mine and permit identification signs.

(1) Identification signs shall be displayed at each point of access to the permit area from public roads.

(2) Signs shall allow the name, business address, and telephone number of the person who conducts the surface mining activities and the identification number of the current permit authorizing surface mining activities.

(3) Signs shall be retained and maintained until after the release of all bonds for the permit area.

(d) Perimeter markers. The perimeter of a permit area shall be clearly marked before the beginning of surface mining activities.

(e) Buffer zone markers. Buffer zones shall be marked along their boundaries as required under Section 216.57.

(f) Blasting signs. If blasting is conducted incident to surface mining activities, the person who conducts these activities shall

(1) Conspicuously display signs reading 'Blasting Area' along the edge of any blasting area that comes within fifty feet of any road within the permit area, or within one hundred feet of any public road right of way.

(2) Conspicuously flag, or post within the blasting area, the immediate vicinity of charged holes as required by Section 216.65(e).

(3) Place at all entrances to the permit area from public roads or highways conspicuous signs which state "Warning — Explosives in Use", which clearly explain the blast warning and all clear signals that are in use and which explain the marking of blast areas and charged holes within the permit area.

(g) Topsoil markers. Where topsoil or other vegetation-supporting material is segregated and stockpiled as required under Section 216.23, the stockpiled material shall be clearly marked.

216.13 Casing and sealing of drilled holes: General requirements. Each exploration hole, other drill or borehole, well, or other exposed underground opening shall be cased, sealed, or otherwise managed, as approved by the Office, to prevent acid or other toxic drainage from entering ground or surface waters, to minimize disturbance to the prevailing hydrologic balance, and to ensure the safety of people, livestock, fish and wildlife, and machinery in the mine plan and adjacent area. If these openings are uncovered or exposed by surface mining activities within the permit area they shall be permanently closed, unless approved for water monitoring, or otherwise managed in a manner approved by the Office. Use of a drilled hole or borehole or monitoring well as a water well must meet the provisions of Section 216.53 of this Part. This Section does not apply to holes solely drilled and used for blasting.

216.14 Casing and sealing of drilled holes: Temporary. Each exploration or development hole, other than drill or boreholes, wells and other exposed underground openings which have been identified in the approved permit application for use to return coal processing waste or water to underground workings, or to be used to monitor ground water conditions, shall be temporarily sealed by barricades, or fences, or other protective devices approved by the Office. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the surface mining activities.

216.15 Casing and sealing of drilled holes: Permanent. When no longer needed for monitoring or other use approved by the regulatory authority upon a finding of no adverse environmental or health and safety effect, or unless approved for transfer as a water well under Section 216.53, each exploration hole, other drilled hole or borehole, well, and other exposed underground opening shall be capped, sealed, backfilled, or otherwise properly managed, as required by the Office, under Section 216.13 and consistent with 30 CFR 75.1711. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery, and to keep acid or other toxic drainage from entering ground or surface waters.

216.21 Topsoil: General requirements.

(a) Before disturbance of an area, topsoil and subsoils to be saved under Section 216.22 shall be separately removed and segregated from other material.

(b) After removal, topsoil shall either be immediately redistributed as required under Section 216.24 or stockpiled pending redistribution as required under Section 216.23.

216.22 Topsoil: Removal.

(a) Timing. Topsoil shall be removed after vegetative cover that would interfere with the use of the topsoil is cleared from the areas to be disturbed, but before any drilling, blasting, mining, or other surface disturbance.

(b) Materials to be removed. All topsoil shall be removed in a separate layer from the areas to be disturbed, unless use of substitute or supplemental materials is approved by the Office in accordance with paragraph (e) of this Section. If use of substitute or supplemental materials is approved, all materials to be redistributed shall be removed.

(c) Materials to be removed in thin topsoil situations. If the topsoil is less than six inches, a six-inch layer that includes the A horizon and the unconsolidated materials immediately below the A horizon or the A horizon and all unconsolidated material if the total available is less than six inches, shall be removed and the mixture segregated and redistributed as the surface soil layer, unless topsoil substitutes are approved by the Office pursuant to paragraph (e) of this Section.

(d) Subsoil segregation. The B horizon and portions of the C horizon, or other underlying layers demonstrated to have qualities for comparable root development shall be segregated and replaced as subsoil, if the Office determines that either of these is necessary or desirable to ensure soil productivity consistent with the approved postmining land use.

(e) Topsoil substitutes and supplements.

(1) Selected overburden materials may be substituted for or used as a supplement to, topsoil, if the Office determines that the resulting soil medium is equal to or more suitable for sustaining revegetation than is the available topsoil and the substitute material is the best available to support revegetation. This determination shall be based on.

(i) The results of chemical and physical analyses of overburden and topsoil. These analyses shall include determinations of pH, net acidity or alkalinity, phosphorus, potassium, texture class, and other analyses as required by the Office. The Office may also require that results of fieldsite trials or greenhouse tests be used to demonstrate the feasibility of using these overburden materials.

(ii) Results of analyses, trials, and tests shall be submitted to the Office. Certification of trials and tests shall be made by a laboratory approved by the Office stating that

(A) The proposed substitute material is equal to or more suitable for sustaining the vegetation than is the available topsoil.

(B) The substitute material is the best available material to support the vegetation.

(C) The trials and tests were conducted using standard testing procedures.

(2) Substituted or supplemental material shall be removed, segregated, and replaced in compliance with the requirements for topsoil under this Section.

(f) Limits on topsoil removal area. Where the removal of vegetative material, topsoil, or other materials may result in erosion which may cause air or water pollution

(1) The size of the area from which topsoil is removed at any one time shall be limited.

(2) The surface soil layer shall be redistributed at a time when the physical and chemical properties of topsoil can be protected and erosion can be minimized.

(3) Such other measures shall be taken as the Office may approve or require to control erosion.

216.23 Topsoil: Storage.

(a) Topsoil and other materials removed under Section 216.22 shall be stockpiled only when it is impractical to promptly redistribute such materials on regraded areas.

(b) Stockpiled materials shall be selectively placed on a stable area within the permit area, not disturbed, and protected from wind and water erosion, unnecessary compaction, and contaminants which lessen the capability of the materials to support vegetation when redistributed.

(1) Protection measures shall be accomplished either by

(i) An effective cover of nonnoxious, quick-growing annual and perennial plants, seeded or planted during the first normal period after removal for favorable planting conditions; or

(ii) Other methods demonstrated to and approved by the Office to provide equal protection.

(2) Unless approved by the Office, stockpiled topsoil and other materials shall not be moved until required for redistribution on a regraded area.

216.24 Topsoil: Redistribution.

(a) After final grading and before the replacement of topsoil and other materials segregated in accordance with Section 216.23, regraded land shall be scarified or otherwise treated as required by the Office to eliminate slippage surfaces and to promote root penetration. If the person who conducts the surface mining activities shows, through appropriate tests, and the Office approves, that no harm will be caused to the topsoil and vegetation, scarification may be conducted after topsoiling.

(b) Topsoil and other materials shall be redistributed in a manner that

(1) Achieves an approximate uniform, stable thickness consistent with the approved postmining land uses, contours, and surface water drainage system.

(2) Prevents excess compaction of the topsoil.

(3) Protects the topsoil from wind and water erosion before and after it is seeded and planted.

216.25 Topsoil: Nutrients and soil amendments. Nutrients and soil amendments in the amounts determined by soil tests shall be applied to the redistributed surface soil layer, so that it supports the approved postmining land use and meets the revegetation requirements of Sections 216.11-216.117. All soil tests shall be performed by a qualified laboratory using standard methods approved by the Office.

216.41 Hydrologic balance: General requirements.

(a) Surface mining activities shall be planned and conducted to minimize changes to the prevailing hydrologic balance in both the mine plan and adjacent areas, in order to prevent long-term adverse changes in that balance that could result from those activities.

(b) Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.

(c) In no case shall federal and state water quality statutes, regulations, standards, or effluent limitations be violated.

(d) Operations shall be conducted to minimize water pollution and, where necessary, treatment methods shall be used to control water pollution.

(1) Each person who conducts surface mining activities shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow of drainage shall be used in preference to the use of water treatment facilities.

(2) Acceptable practices to control and minimize water pollution include, but are not limited to

(i) Stabilizing disturbed areas through land shaping.

(ii) Diverting runoff.

(iii) Achieving quickly germinating and growing stands of temporary vegetation.

(iv) Regulating channel velocity of water.

(v) Lining drainage channels with rock or vegetation.

(vi) Mulching.

(vii) Selectively placing waste materials in backfill areas.

(3) If the practices listed at paragraph (d) (2) of this Section are not adequate to meet the requirements of this Part, the person who conducts surface mining activities shall operate and maintain the necessary water treatment facilities for as long as treatment is required under this Part.

216.42 Hydrologic balance: Water quality standards and effluent limitations.

(a) Discharge treatment facilities.

(1) All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded, or planted, shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area.

(2) Sedimentation ponds and other treatment facilities shall be maintained until the disturbed area has been restored and the vegetation requirements of Sections 216.111-216.117 are met and the quality of the untreated drainage from the disturbed area meets the applicable state and federal water quality standards requirements for the receiving stream.

(3) The Office may grant exemptions from these requirements only when

(A) The disturbed drainage area within the total disturbed area is small

(B) The person who conducts the surface mining activities demonstrates that sedimentation ponds and treatment facilities are not necessary for drainage from the disturbed drainage areas to meet the effleunt limitations in the table below and the applicable state and federal water quality standards for downstream receiving waters.

(4) For the purposes of this Section only, disturbed area shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this Part and the upstream area is not otherwise disturbed

by the person who conducts the surface mining activities.

(5) Sedimentation ponds required by this Section shall be constructed in accordance with Section 216.46, in appropriate locations before beginning any surface mining activities in the drainage area to be affected.

(6) Where the sedimentation pond or series of sedimentation ponds is used so as to result in the mixing of drainage from the disturbed areas with drainage from other areas not disturbed by current surface coal mining and reclamation operations, the permittee shall achieve the effluent limitations set forth below for all of the mixed drainage when it leaves the permit area.

(7) Discharges of water from areas disturbed by surface mining activities shall be made in compliance with all federal and state laws and regulations and, at a minimum, the following numerical effluent limitations.

Effluent limitations, in milligrams per liter (mg/l) except for pH

Effluent characteristics[1]	Maximum allowable[2]	Average of daily values for thirty consecutive discharge days[2]
Iron, total[6]	7.0	3.5
Manganese, total[3]	4.0	2.0
Total suspended solids[4]	70.0	35.0
pH[5]	Within range of 6.0 to 9.0	

[1] To be determined according to collection and analytical procedures adopted by the Environmental Protection Agency's regulations for wastewater analyses (40 CFR 136)

[2] Based on representative sampling.

[3] The manganese limitations shall not apply to untreated discharges which are alkaline as defined by the Environmental Protection Agency (40 CFR 434).

[4] Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations set forth above, the Office may allow the pH level in the discharge to exceed, to a small extent, the upper limit of 9.0 in order that the manganese limitations will be achieved.

[5] Discharges of iron from new sources, as defined under 40 CFR Section 434.11(i), shall be limited to six mg to one (maximum allowable) and three mg to one (average of daily values for thirty consecutive discharge days).

(b) A discharge from the disturbed areas is not subject to the effluent limitations of this Section, if

(1) The discharge is demonstrated by the discharger to have resulted from a precipitation event equal to or larger than a ten-year 24-hour precipitation event.

(2) The discharge is from facilities designed, constructed, and maintained in accordance with the requirements of this Part.

(c) Adequate facilities shall be installed, operated, and maintained to treat any water discharged from the disturbed area so that it complies with all federal and state laws and regulations and the limitations of this Section. If the pH of water to be discharged from the disturbed area is less than 6.0, an automatic lime feeder or other automatic neutralization process approved by the Office shall be installed, operated, and maintained. The Office may authorize the use of a manual system, if it finds that

(1) Flow is infrequent and presents small and infrequent treatment requirements to meet applicable standards which do not require use of an automatic neutralization process.

(2) Timely and consistent treatment is ensured.

216.43 Hydrologic balance: Diversions and conveyance of overland flow and shallow ground water flow, and ephemeral streams. Overland flow, including flow through litter, and shallow ground water flow from undisturbed area, and flow in ephemeral streams, may be diverted away from disturbed areas by means of temporary or permanent diversions, if required or approved by the Office as necessary to minimize erosion, to reduce the volume of water to be treated, and to prevent or remove water from contact with acid-forming or toxic-forming materials. The following requirements shall be met for all diversions and for all collection drains that are used to transport water into water-treatment facilities and for all diversions of overland and shallow ground water flow and ephermeral streams:

(a) Temporary diversions shall be constructed to pass safely the peak runoff from a precipitation event with a two-year recurrence interval, or a larger event as specified by the Office.

(b) To protect fills and property and to avoid danger to public health and safety, permanent diversions shall be constructed to pass safely the peak runoff from a precipitation event with a ten-year recurrence interval, or a larger event as specified by the Office. Permanent diversions shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall be used only when approved by the Office to prevent seepage or to provide stability.

(c) Diversions shall be designed, constructed, and maintained in a manner which prevents additional contributions of suspended solids to streamflow and to runoff outside the permit area, to the extent possible using the best technology currently available. Appropriate sediment control measures for these diversions may include, but not be limited to, maintenance of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

(d) No diversion shall be located as to increase the potential for land slides. No diversions shall be constructed on existing land slides, unless approved by the Office.

(e) When no longer needed, each temporary diversion shall be removed and the affected land regraded, topsoiled, and revegetated in accordance with Sections 216.24, 216.25, 216.101-216.106, and 216.111-216.117.

(f) Diversion design shall incpororate 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 Section 216.72(b) (5), 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 regulatory authority, 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 Sections 216.71-216.74.

(5) Topsoil shall be handled in compliance with Section 216.21-216.25.

216.44 Hydrologic balance: Stream channel diversion.

(a) Flow from perennial and intermittent streams within the permit area may be diverted, if the diversions

(1) Are approved by the Office after making the findings called for in Section 216.57(a).

(2) Comply with other requirements of this Subchapter.

(3) Comply with local, state and federal statutes and regulations.

(b) When streamflow is allowed to be diverted, the stream channel diversion shall be designed, constructed, and removed, in accordance with the following:

(1) The longitudinal profile of the stream, the channel, and the floodplain shall be designed and constructed to remain stable and to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or to runoff outside the permit area. These contributions shall not be in excess of requirements of state or federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used in diversions only when approved by the Office as being necessary to control erosion. These structures shall be approved for permanent diversions only where they are stable and will require infrequent maintenance.

(2) The combination of channel, bank, and floodplain configurations shall be adequate to pass safely the peak runoff of a ten-year, 24-hour precipitation event for temporary diversions, a one hundred-year, 24-hour precipitation event for permanent diversions, or larger events specified by the Office. However, the capacity of the channel itself should be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.

(c) When no longer needed to achieve the purpose for which they were authorized, all temporary stream channel diversions shall be removed and the affected land regraded and revegetated, in accordance with Sections 216.24, 216.25, 216.101-216.105, and 216.111-216.117. At the time diversions are removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed to prevent overtopping or failure of the facilities. This requirement shall not relieve the person who conducts the surface mining activities from maintenance of a water treatment facility otherwise required under this Part or the permit.

(d) When permanent diversions are constructed or string channels restored, after temporary divisions, the operator shall

(1) Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of the stream.

(2) Establish or restore the stream to its natural meandering shape of an environmentally acceptable gradient, as determined by the Office.

(3) Establish or restore the stream to a longitudinal profile and cross section, including aquatic habitats (usually a pattern of ripples, pools, and drops rather than uniform depth) that approximate premining stream channel characteristics.

216.45 Hydrologic balance: Sediment control measures.

(a) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to

(1) prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area.

(2) meet the more stringent of applicable state or federal effluent limitations.

(3) minimize erosion to the extent possible.

(b) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed area shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to

(1) Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in Section 216.111(b).

(2) Stabilizing the backfill material to promote a reduction in the rate and volume of runoff, in accordance with the requirements of Section 216.101.

(3) Retaining sediment within disturbed areas.

(4) Diverting runoff away from disturbed areas.

(5) Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion.

(6) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment.

(7) Treating with chemicals.

216.46 Hydrologic balance: Sedimentation ponds.

(a) General requirements. Sedimentation ponds shall be used individually or in series and shall

(1) Be constructed before any disturbance of the undisturbed area to be drained into the pond.

(2) Be located as near as possible to the disturbed area and out of perennial streams; unless approved by the Office.

(3) Meet all the criteria of this Section

(b) Sediment storage volume. Sedimentation ponds shall provide a minimum sediment storage volume equal to

(1) The accumulated sediment volume from the drainage area to the pond for a minimum of three years. Sediment storage volume shall be determined using the Universal Soil Loss Equation, gully erosion rates, and the sediment delivery ratio converted to sediment volume, using either the sediment density or other empirical methods derived from regional sediment pond studies if approved by the Office; or

(2) One-tenth acre-foot for each acre of disturbed area within the upstream drainage area or a greater amount if required by the Office based upon sediment yield to the pond. The Office may approve a sediment storage volume of not less than 0.035 acre-foot for each acre of disturbed area within the upstream drainage area, if the person who conducts the surface mining activities demonstrates that sediment removed by other sediment control measures is equal to the reduction in sediment storage volume.

(c) Detention time. Sedimentation ponds shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a ten-year, twenty-four-hour precipitation event (design event). Theoretical detention time is defined as the average time that the design flow is detained in the pond; and is further defined as the time difference between the centroid of the inflow hydrograph and the centroid of the outflow hydrograph for the design event. Runoff diverted under Section 216.43 and 216.44, away from the disturbed drainage areas and not passed through the sedimentation pond need not be considered in sedimentation pond design. In determining the runoff volume, the characteristics of the mine site, reclamation procedures, and onsite sediment control practices shall be considered. Sedimentation ponds shall provide a theoretical detention time of not less than twenty-four hours, or any higher amoung required by the Office, except as provided under Subparagraphs (1), (2), or (3) of this paragraph.

(1) The Office may approve a theoretical detention time of not less than ten hours, when the person who conducts the surface mining activities demonstrates that

(i) The improvement in sediment removal efficiency is equivalent to the reduction in detention time as a result of pond design. Improvements in pond design may include but are not limited to pond configuration, in-flow and outflow facility locations, baffles to decrease in-flow velocity and short-circuiting, and surface areas.

(ii) The pond effluent is shown to achieve and maintain applicable effluent limitations.

(2) The Office may approve a theoretical detention time of not less than ten hours when the person who conducts the surface mining activities demonstrates that the size distribution or the specific gravity of the suspended matter is such that applicable effluent limitations are achieved and maintained.

(3) The Office may approve a theoretical detention time of

less than twenty-four hours to any level of detention time, when the person who conducts the surface mining activities demonstrates to the regulatory authority that the chemical treatment process to be used

(i) Will achieve and maintain the effluent limitations

(ii) Is harmless to fish, wildlife, and related environmental values.

(4) The calculated theoretical detention time and all supporting documentation and drawings used to establish the required detention times under subparagraphs (c)(1)-(3) of this Section shall be included in the permit application.

(d) Dewatering. The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the Office and shall have a discharge rate to achieve and maintain the required theoretical detention time. The dewatering device shall not be located at a lower elevation than the maximum storage volume.

(e) Each person who conducts surface mining activities shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.

(f) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this Section shall not relieve the person from compliance with applicable effluent limitations as contained in Section 216.42.

(g) There shall be no out-flow through the emergency spillway during the passage of the runoff resulting from the ten-year, twenty-four-hour precipitation event or lesser events through the sedimentation pond.

(h) Sediment shall be removed from sedimentation ponds when the volume of sediment accumulates to sixty percent of the design sediment storage volume. With the approval of the Office, additional permanent storage may be provided for sediment and/or water above that required for the design sediment storage Upon the approval of the Office for those cases where additional permanent storage is provided above that required for sediment under paragraph (b) of this Section, sediment removal may be delayed until the remaining volume of permanent storage has decreased to forty percent of the total sediment storage volume provided the theoretical detention time is maintained.

(i) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff from a twenty-five-year, twenty-four-hour precipitation event, or larger event specified by the Office. The elevation of the crest of the emergency spillway shall be a minimum of one foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the Office.

(j) The minimum elevation at the top of the settled embankment shall be one foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this one foot minimum elevation requirement shall apply at all times, including the period after settlement.

(k) The constructed height of a dam shall be increased a minimum of five percent over the design height to allow for settlement, unless it has been demonstrated to the Office that the material used and the design will ensure against all settlement.

(l) The minimum top width of the embankment shall not be less than the quotient of (h +35)/5, where h is the height, in feet, of the embankment as measured from the up stream tow of the embankment.

(m) The combined upstream and downstream side slopes of the settled embankment shall not be less than 1v:5h, with neither slope steeper than 1v:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(n) The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified.

(o) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.

(p) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirements of this Section. Compaction shall be conducted as specified in the design approved by the Office.

(q) If a sedimentation pond has an embankment that is more than twenty feet high, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of twenty acre-feet or more, the following additional requirement shall be met:

(1) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff resulting from a one hundred-year, twenty-four-hour precipitation event, or a larger event specified by the Office.

(2) The embankment shall be designed and constructed with static safety factor of at least 1.5, or a higher safety factor as designated by the Office to insure stability.

(3) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(4) The criteria of the Mine Safety and Health Administration as published in the 30 CFR 77.216 shall be met.

(r) Each pond shall be designed and inspected during construction under the supervision of, and certified after construction by, a registered professional engineer.

(s) The entire embankment including the surrounding areas disturbed by construction shall be stablilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream fact of the embankment where water will be empounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with Section 216.106.

(t) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a) shall be examined for structural weakness, erosion, and other hazardous conditions, and reports and modifications shall be made to the Office in accordance with 30 CFR 77.216-3. With the approval of the Office dams not meeting these criteria (30 CFR 77.216(a)) shall be examined four times per year.

(u) Sedimentation ponds shall not be removed until the disturbed area has been restored, and the vegetation requirement of Sections 216.111-216.117 are met and the drainage entering the pond has met the applicable state and federal water quality requirements for the receiving stream. When the sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with Sections 216.101-216.106 and 216.111-216.117, unless the pond has been approved by the Office for retention as being compatible with the approved postmining land use under Section 216.133. If the Office approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments of Section 216.49 and 216.56.

216.47 Hydrologic balance: Discharge structures. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering-design procedures.

216.48 Hydrologic balance: Acid-forming and toxic-forming

spoil. Drainage from acid-forming and toxic-forming spoil into ground and surface water shall be avoided by

(a) Identifying, burying, and treating where necessary, spoil which, in the judgment of the Office, may be detrimental to vegetation or may adversely affect water quality if not treated or buried.

(b) Preventing water from coming into contact with acid-forming and toxic-forming spoil in accordance with Section 216.103, and other measures as required by the Office.

(c) Burying or otherwise treating all acid-forming or toxic-forming spoil within thirty days after it is first exposed on the mine site, or within a lesser period required by the Office. Temporary storage of the spoil may be approved by the regulatory authority upon a finding that burial or treatment within thirty days is not feasible and will not result in any material risk or water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

216.49 Hydrologic balance: Permanent and temporary impoundments.

(a) Permanent impoundments are prohibited unless authorized by the Office, upon the basis of the following demonstration:

(1) The quality of the impounded water shall be suitable on a permanent basis for its intended use, and discharge of water from the impoundment shall not degrade the quality of receiving waters to less than the water quality standards established pursuant to applicable State and Federal laws.

(2) The level of water shall be sufficiently stable to support the intended use.

(3) Adequate safety and access to the impounded water shall be provided for proposed water users.

(4) Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(5) The design, construction, and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P. L. 83-566 (16 U.S.C. 1006). Requirements for impoundments that meet the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.126(a), are contained in United States Soil Conservation Service Technical Release Number 60, ***Earth Dams and Reservoirs,*** June 1976. Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are contained in United States Soil Conservation Service Practice Standard 378, ***Ponds,*** October 1978. The technical release and practice standard are hereby incorporated by reference as they exist on the date of adoption of this Part. Notices of changes made in these publications will be periodically published by Office of Surface Mining in the ***Federal Register.*** Technical Release Number 60 and Practice Standard 378 are on file and available for inspection at the OSM Central Office, United States Department of the Interior, South Interior Building, 1951 Constitution Avenue, Northwest, Washington, D.C. 20240, at each OSM Regional Office, District Office, and Field Office and at the Central Office of the Office of Conservation. Copies of these publications may also be obtained by writing to the above locations. Copies of these publications will also be on file for public inspection at the Federal Register Library, 1100 L Street, Northwest, Washington, D.C. Incorporation by reference provisions have been approved by the Director of the Federal Register, February 7, 1979.

(6) The size of the impoundment is adequate for its intended purposes.

(7) The impoundment will be suitable for the approved postmining land use.

(b) Temporary impoundments of water in which the water is impounded by a dam shall meet the requirements of Section 216.46(e)-(u).

(c) Excavations that will impound water during or after the mining operation shall have perimeter slopes that are stable and shall not be steeper than 2v:1h. Where surface runoff enters the impoundment area, the side slope shall be protected against erosion.

(d) Slope protection shall be provided to minimize surface erosion at the site and sediment control measures shall be required where necessary to reduce the sediment leaving the site.

(e) All embankments of temporary and permanent impoundments, and the surrounding areas and diversion ditches disturbed or created by construction, shall be graded, fertilized, seeded, and mulched to comply with the requirements of Sections 216.111-216.117 immediately after the embankment is completed, provided that the active, upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated to comply with the requirements of Section 216.106 and Sections 216.111-216.117.

(f) All dams and embankments meeting the size or other criteria of 30 CFR 77.216(a) shall be routinely inspected by a qualified registered professional engineer, or by someone under the supervision of a qualified registered professional engineer, in accordance with 30 CFR 77.216-3.

(g) All dams and embankments shall be routinely maintained during the mining operations. Vegetative growth shall be cut where necessary to facilitate inspection and repair. Ditches and spillways shall be cleaned. Any combustible material present on the surface, other than material such as mulch or dry vegetation used for surface stability, shall be removed and all other appropriate maintenance procedures followed.

(h) All dams and embankments that meet or exceed the size or other criteria of 30 CFR 77.216(a) shall be certified to the Office by a qualified registered professional engineer, immediately after construction and annually thereafter, as having been constructed and/or maintained to comply with the requirements of this Section. All dams and embankments that do not meet the size or other criteria of 30 CFR 77.216(a) shall be certified by either a qualified registered professional engineer or a registered land surveyor, except that all coal processing waste dams and embankments covered by Section 216.91-216.93 shall be certified by a qualified registered professional engineer. Certification reports shall include statements on

(1) Existing and required monitoring procedures and instrumentation.

(2) The design depth and elevation of any impounded waters at the time of the initial certification report or the average and maximum depths and elevations of any impounded waters over the past year for the annual certification reports.

(3) Existing storage capacity of the dam or embankment.

(4) Any fires occurring in the construction material up to the date of the initial certification or over the past year for the annual certification reports.

(5) Any other aspects of the dam or embankment affecting stability.

(i) Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the Office and shall comply with the requirements of this Section. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the Office shall approve the plans before modification begins.

216.50 Hydrologic balance: Ground water protection.

(a) Backfilled materials shall de placed so as to minimize contamination of ground water systems with acid, toxic, or otherwise harmful mine drainage, to minimize adverse effects of mining on ground water systems outside the permit area, and to support approved postmining land uses.

(b) To control the effects of mine drainage, pits, cuts, and other mine excavation or disturbances shall be located, designed, constructed, and utilized in such manner as to prevent or control discharge of acid, toxic, or otherwise harmful mine drainage waters into ground water systems and to prevent adverse impacts on such ground water systems or on approved postmining land uses.

216.51 Hydrologic balance: Protection of ground water recharge capacity. Surface mining activities shall be conducted in a manner that facilitates reclamation which will restore approximate premining recharge capacity, through restoration of the capability of the reclaimed areas as a whole, excluding coal processing waste and underground development waste disposal areas and fills, to transmit water to the ground water system. The recharge capacity shall be restored to a condition which

(a) Supports the approved postmining land use.

(b) Minimizes disturbances to the prevailing hydrologic balance in the mine plan area and in adjacent areas.

(c) Provides a rate of recharge that approximates the premining recharge rate.

216.52 Hydrologic balance: Surface and ground water monitoring.

(a) Ground water.

(1) Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the Office, to determine the effects of surface mining activities on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems in the mine plan and adjacent areas.

(2) When surface mining activities may affect the ground water systems which serve as aquifers which significantly ensure the hydrologic balance of water use on or off the mine plan area, ground water levels and ground water quality shall be periodically monitored. Monitoring shall include measurements from a sufficient number of wells and mineralogical and chemical analyses of aquifer, overburden, and spoil that are adequate to reflect changes in ground water quantity and quality resulting from those activities. Montoring shall be adequate to plan for modification of surface mining activities, if necessary, to minimize disturbance of the prevailing hydrologic balance.

(3) As specified and approved by the Office, the person who conducts surface mining activities shall conduct additional hydrologic tests, including drilling, infiltration tests, and aquifer tests and shall submit the results to the Office, to demonstrate compliance with Sections 216.50-216.52.

(b) Surface water.

(1) Surface water monitoring shall be conducted in accordance with the monitoring program submitted under Section 180.21(b)(4) and approved by the Office. The Office shall determine the nature of data, frequency of collection, and reporting requirements. Monitoring shall

(i) Be adequate to measure accurately and record water quantity and quality of the discharges from the permit area.

(ii) In all cases in which analytical results of the sample collections indicate noncompliance with a permit condition or applicable standard has occurred, shall result in the person who conducts the surface mining activities notifying the Office within five days. Where a National Pollutant Discharge Elimination System (NPDES) permit-effluent-limitation noncompliance has occurred, the person who conducts surface mining activities shall forward the analytic results concurrently with the written notice of noncompliance.

(iii) Result in quarterly reports to the Office, to include analytical results from each sample taken during the quarter. Any sample results which indicate a permit violation will be reported immediately to the Office. In those cases where the discharge for which water monitoring reports are required is also subject to regulation by an NPDES permit issued under the Clean Water Act of 1977 (30 U.S.C. Sec. 1251-1378) and where such permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within ninety days or less of sample collection, the following alternative procedure shall be used. The person who conducts the surface mining activities shall submit to the Office on the same time schedule as required by the NPDES permit or within ninety days following sample collection, whichever is earlier, either

(A) A copy of the completed reporting form filed to meet NPDES permit requirements; or

(B) A letter identifying the State or Federal government official with whom the reporting form was filed to meet NPDES permit requirements and the date of filing.

(2) After disturbed areas have been regraded and stabilized according to this Part, the person who conducts surface mining activities shall monitor surface water flow and quality. Data from this monitoring may be used to demonstrate that the quality and quantity of runoff without treatment is consistent with the requirements of this Part to minimize disturbance to the prevailing hydrologic balance and attain the approved postmining land use. These data may also provide a basis for approval by the Office for removal of water quality or flow control systems.

(3) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area shall be properly installed, maintained, and operated and shall be removed when no longer required.

216.53 Hydrologic balance: Transfer of wells.

(a) An exploratory or monitoring well may only be transferred by the person who conducts surface mining activities for further use as a water well with the prior approval of the Office. That person and the surface owner of the lands where the well is located shall jointly submit a written request to the Office for that approval.

(b) Upon an approved transfer of a well, the transferee shall

(1) Assume primary liability for damages to persons or property from the well.

(2) Plus the well when necessary, but in no case later than abandonment of the well.

(3) Assume primary responsibility for compliance with Sections 216.13-216.15 with respect to the well.

(c) Upon an approved transfer of a well, the transferor shall be secondarily liable for the transferee's obligations under paragraph (b) of this Section, until release of the bond or other equivalent guarantee required by Subchapter J for the area in which the well is located.

216.54 Hydrologic balance: Water rights and replacement. Any person who conducts surface mining activities shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been affected by contamination, diminution, or interruption proximately resulting from the surface mining activities.

216.56 Hydrologic balance: Postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities. Before abandoning the permit area, the person who

conducts the surface mining activities shall renovate all permanent sedimentation ponds, diversions, impoundments, and treatment facilities to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

216.57 Hydrologic balance: Stream buffer zones.

(a) No land within one hundred feet of a perennial stream or a stream with a biological community determined according to paragraph (c) below shall be disturbed by surface mining activities, except in accordance with Sections 216.43-216.44, unless the Office specifically authorizes surface mining activities closer to or through such a stream upon finding

(1) That the original stream channel will be restored.

(2) During and after the mining, the water quantity and quality from the stream section within one hundred feet of the surface mining activities shall not be adversely affected.

(b) The area not to be disturbed shall be designated a buffer zone and marked as specified in Section 216.11.

(c) A stream with a biological community shall be determined by the existence in the stream at any time of an assemblage of two or more species of arthropods or mulluscan animals which are

(1) Adapted to flowing water for all or part of their life cycle.

(2) Dependent upon a flowing water habitat.

(3) Reproducing or can reasonably be expected to reproduce in the water body where they are found.

(4) Longer than two millimeters at some stage of the part of their life cycle spent in the flowing water habitat.

216.59 Coal recovery. Surface mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal mining operations is minimized.

216.61 Use of explosives: General requirements.

(a) Each person who conducts surface mining activities shall comply with all applicable state and federal laws in the use of explosives.

(b) Blasts that use more than five pounds of explosive or blasting agent shall be conducted according to the schedule required by Section 216.64.

(c) All blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved. Each person responsible for blasting operations shall possess a valid certification as required by Section 259.

216.62 Use of explosives: Pre-blasting survey.

(a) On the request to the Office by a resident or owner of a dwelling or structure that is located within one-half mile of any part of the permit area, the person who conducts the surface mining activities shall promptly conduct a pre-blasting survey of the dwelling or structure and promptly submit a report of the survey to the Office and to the person requesting the survey. If a structure is renovated or added to, subsequent to a pre-blast survey, then upon request to the regulatory authority, a survey of such additions and renovations shall be performed in accordance with this Section.

(b) The survey shall determine the condition of the dwelling or structure and document any pre-blasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems shall be limited to surface condition and readily available data. Special attention shall be given to the pre-blasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(c) A written report of the survey shall be prepared and signed by the person who conducted the survey. The report may include recommendations of any special conditions or proposed adjustments to the blasting procedure which should be incorporated into the blasting procedure which should be incorporated into the blasting plan to prevent damage. Copies of the report shall be provided to the person requesting the survey and to the Office. If the person requesting the survey disagrees with the results of the survey, he or she may notify, in writing, both the permittee and the Office of the specific areas of disagreement.

216.64 Use of explosives: Public notice of blasting shcedule.

(a) Blasting schedule publication.

(1) Each person who conducts surface mining activities shall publish a blasting schedule at least ten days, but no more than twenty days, before beginning a blasting program in which blasts that use more than five pounds of explosive or blasting agent are detonated. The blasting schedule shall be published in a newspaper of general circulation in the locality of the blasting site.

(2) Copies of the schedule shall be distributed by mail to local governments and public utilities and by mail or delivered to each residence within one-half mile of the permit area described in the schedule. For the purposes of this Section, the permit area does not include haul or access roads, coal preparation and loading facilities, and transportation facilities between coal excavation areas and coal preparation or loading facilities, if blasting is not conducted in these areas. Copies sent to residences shall be accompanied by information advising the owner or resident how to request a pre-blasting survey.

(3) The person who conducts the surface mining activities shall republish and redistribute the schedule by mail at least every twelve months.

(b) Blasting schedule contents.

(1) A blasting schedule shall not be so general as to cover the entire permit area or all working hours, but shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur.

(2) The blasting shcedule shall contain at a minimum

(i) Identification of the specific areas in which blasting will take place. Each specific blasting area described shall be reasonably compact and not larger than three hundred acres.

(ii) Dates and time periods when explosives are to be detonated. These periods shall not exceed an aggregate of four hours in any one day.

(iii) Methods to be used to control access to the blasting area.

(iv) Types of audible warnings and all-clear signals to be used before and after blasting.

(v) A description of unavoidable hazardous situations referred to in Section 216.65(b) which have been approved by the Office for blasting at times other than those described in the schedule.

(c) Public notice of changes to blasting schedules.

(1) Before blasting in areas or at times not in a previous schedule, the person who conducts the surface mining activities shall prepare a revised blasting schedule according to the procedures in Paragraphs (a) and (b) of this Section. Where notice has previously been mailed to the owner or residents under Paragraph (a)(2) of this Section with advice on requesting a pre-blast survey, the notice of change need not include information regarding pre-blast surveys.

(2) If there is a substantial pattern of non-adherence to the published blasting schedule as evidenced by the absence of blasting during scheduled periods, the Office may require that the person who conducts the surface mining activities prepare a revised blasting schedule according to the procedures in Paragraph (c)(1) of this Section.

216.65 Use of explosives: Surface blasting requirements.

(a) All blasting shall be conducted between sunrise and sun-

set.

(1) The Office may specify more restrictive time periods, based on pubilic requests or other releavant information, according to the need to adequately protect the public from adverse noise.

(2) Blasting may, however, be conducted between sunset and sunrise if

(i) a blast that has been prepared during the afternoon must be delayed due to the occurrence of an unavoidable hazardous condition and cannot be delayed until the next day because a potential safety hazard could result that cannot be adequately miitigated.

(ii) in addition to the required warning signals, oral notices are provided to persons within one-half mile of the blasting site.

(iii) a complete written report of blasting at night is filed by the person conducting the surface mining activities with the Office not later than three days after the night blasting. The reporter shall include a description in detail of the reasons for the delay in blasting including why the blast could not be held over to the next day, when the blast was actually conducted, the warning notices given, and a copy of the blast report required by Section 216.68.

(b) Blasting shall be conducted at times announced in the blasting schedule, except in those unavoidable hazardous situations, previously approved by the Office in the permit application, where operator or public safety require unscheduled detonation.

(c) Warning and all-clear signals of different character that are audible within a range of one-half mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within one-half mile of the permit area shall be notified of the meaning of the signals through appropriate instructions. These instructions shall be periodically delivered or otherwise communicated in a manner which can be reasonably expected to inform such persons of the meaning of the signals. Each person who conducts surface mining activities shall maintain signs in accordance with Section 216.11(f).

(d) Access to an area possibly subject to flyrock from blasting shall be regulated to protect the public and livestock. Access to the area shall be controlled to prevent the presence of livestock or unauthorized personnel during blasting and until an authorized representative of the person who conducts the surface mining activities has reasonably determined

(1) That no unusual circumstances, such as imminent slides or undetonated charges, exist.

(2) That access to and travel in or through the area can be safely resumed.

(3)(i) Airblast shall be controlled so that it does not exceed the values specified below at any dwelling, public building, school, church, or commercial or institutional structure, unless such structure is owned by the person who conducts the surface mining activities and is not leased to any other person. If a building owned by the person conducting surface mining activities is leased to another person, the lessee may sign a waiver relieving the operator from meeting the airblast limitations of this paragraph.

Lower Frequency limit of measuring system, H_2 (±3dB)	Maximum Level in dB
0.1 Hz or lower-flat response	135 peak.
2 Hz or lower-flat response	132 peak.
6 Hz or lower-flat response	130 peak.
C-weighted, slow response	109 C.

(ii) In all cases except the C-weighted, slow-response, the measuring systems used shall have a flat frequency response of at least two hundred Hz at the upper end. The C-weighted shall be measured with a Type 1 sound level meter that meets the standard American National Standards Institute (ANSI) S1.4-1971 specifications. The ANSI S1.4-1971 is hereby incorporated by reference as it exists on the date of adoption of this Part. Notices of changes made to this publication will be periodically published by OSM in the ***Federal Register.*** ANSI S1.4-1971 is on file and available for inspection at the OSM Central Office, United States Department of the Interior, South Interior Building, Washington, D. C. 20240, at each OSM Regional Office, District Office, and Field Office and at the central office of the Office of Conservation. Copies of this publication may also be obtained by writing to the above locations. A copy of this publication will also be on file for public inspection at the Federal Register Library, 100 L Street, Northwest, Washington, D.C., incorporation by reference provisions approved by the Director of the Federal Register February 7, 1979.

(iii) The person who conducts blasting may satisfy the provisions of this Section by meeting any of the four specifications in the chart in paragraph (e)(1) of this Section.

(iv) The Office may require an airblast measurement of any or all blasts, and may specify the location of such measurements.

(e) Except where lesser distances are approved by the Office, based upon a pre-blasting survey, seismic investigation, or other appropriate investigation, blasting shall not be conducted within

(1) One thousand feet of any building used as a dwelling, school, church, hospital, or nursing facility.

(2) Five hundred feet of facilities including, but not limited to, disposal wells, petroleum or gas-storage facilities, fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines.

(f) Flyrock, including blasted material traveling along the ground, shall not be cast from the blasting vicinity more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the line of property owned or leased by the permittee, or beyond the area of regulated access required under paragraph (d) of this Section.

(g) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or unavailability of ground or surface waters outside the permit area.

(h) In all blasting operations, except as otherwise authorized in this Section, the maximum peak particle velocity shall not exceed one inch per second at the location of any dwelling, public building, school, church or commercial or institutional building. Peak particle velocities shall be recorded in three mutually perpendicular directions. The maximum peak particle velocity shall be the largest of any of the three measurements. The Office may reduce the maximum peak particle velocity allowed, if it determines that a lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts, or other factors.

(i) If blasting is conducted to prevent adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area, then the maximum peak particle velocity limitation of paragraph (h) of this section shall not apply at the following locations:

(1) At structures owned by the person conducting the mining activity, and not leased to another party.

(2) At structures owned by the person conducting the mining activity, and leased to another party, if a written waiver by the lessee is submitted to the regulatory authority prior to

blasting.

(j) An equation for determining the maximum weight of explosives that can be detonated within any eight-millisecond period is in Paragraph (k) of this Section. If the blasting is conducted in accordance with this equation, the peak particle velocity shall be deemed to be within the one-inch-per-second limit.

(k)(1) The maximum weight of explosives to be detonated within any eight-millisecond period may be determined by the formula $W = (d/60)^2$ where 2 = the maximum weight of explosives, in pounds, that can be detonated in any eight-millisecond period, and D = the distance in feet, from the blast to the nearest dwelling, school, church, or commercial or institutional building.

(2) For distances between three hundred and five thousand feet, solution of the equation results in the following maximum weight:

Distance, in feet (D)	Maximum weight in pounds (W)
300	25
350	24
400	44
500	69
600	100
700	136
800	178
900	225
1,000	278
1,100	336
1,200	400
1,300	469
1,400	544
1,500	625
1,600	711
1,700	803
1,800	900
1,900	1,002
2,000	1,111
2,500	1,736
3,000	2,500
3,500	3,403
4,000	4,444
4,500	5,625
5,000	6,944

216.67 Use of explosives: Seismographic measurements.

(a) Where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit of one inch per second is not exceeded, the equation in Section 216.65(k) need not be used. If that equation is not used by the person conducting the surface mining activities a seismograph record shall be obtained for each shot.

(b) The use of a modified equation to determine maximum weight of explosives per delay for blasting operations at a particular site, may be approved by the Office, on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. In no case shall the Office approve the use of a modified equation where the peak particle velocity of one inch per second required in Section 216.65(k) would be exceeded.

(c) The Office may require a seismograph record of any or all blasts and may specify the location at which such measurements are taken.

216.68 Use of explosives: Records of blasting operations. A record of each blast, including seismograph reports, shall be retained for at least three years and shall be available for inspection by the Office and the public on request. The record shall contain the following data:

(a) Name of the operator conducting the blast.

(b) Location, date, and time of blast.

(c) Name, signature, and license number of blaster-in-charge.

(d) Direction and distance, in feet, to the nearest dwelling, school, church, or commercial or institutional building either

(1) Not located in the permit area.

(2) Not owned nor leased by the person who conducts the surface mining activities.

(e) Weather conditions, including temperature, wind direction, and approximate velocity.

(f) Type of material blasted.

(g) Number of holes, burden and spacing.

(h) Diameter and depth of holes.

(i) Types of explosives used.

(j) Total weight of explosives used.

(k) Maximum weight of explosives detonated within any eight-millisecond period.

(l) Maximum number of holes detonated within any eight-millisecond period.

(m) Initiation system.

(n) Type and length of stemming.

(o) Mats or other protections used.

(p) Type of delay detonator and delay periods used.

(q) Sketch of the delay pattern.

(r) Number of persons in the blasting crew.

(s) Seismographic records, where required, including the calibration signal of the gain setting and

(1) Seismographic reading, including exact location of seismograph and its distance from the blast.

(2) Name of the person taking the seismograph reading.

(3) Name of the person and firm analyzing the seismographic record.

216.71 Disposal of excess spoil: General requirements.

(a) Spoil not required to achieve the approximate original contour within the area where overburden has been removed shall be hauled ot conveyed to and placed in designated disposal areas within a permit area, if the disposal areas are authorized for such purposes in the approved permit application in accordance with Sections 216.71-216.74. The spoil shall be placed in a controlled manner to ensure

(1) That leachate and surface runoff from the fill will not degrade surface or ground waters or exceed the effluent limitations of Section 216.42.

(2) Stability of the fill.

(3) That the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(b) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the regulatory authority.

(c) All vegetative and organic materials shall be removed from the disposal area and the topsoil shall be removed, segregated, and stored or replaced under Sections 216.21-216.25. If approved by the Office, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(d) Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of Section 216.43. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(e) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the regulatory authority. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench,

or berm.

(f) The spoil shall be hauled or conveyed and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long-term static safety factor of 1.5.

(g) The final configuration of the fill must be suitable for postmining land uses approved in accordance with Section 216.133, except that no depressions or impoundments shall be allowed on the completed fill.

(h) Terraces may be utilized to control erosion and enhance stability if approved by the regulatory authority and consistent with Section 216.102(b)

(i) Where the slope in the disposal area exceeds 1v:2.8h (thirty-six percent), or such lesser slope as may be designated by the Office based on local conditions, key way cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with Section 180.35(c) to determine the size of rock-toe buttresses and key-way cuts.

(j) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist experienced in the construction of earth and rockfill embankments at least quarterly throughout construction and during the following critical construction periods: (1) removal of all organic material and topsoil, (2) placement of underdrainage systems, (3) installation of surface drainage systems, (4) placement and compaction of fill materials, and (5) revegetation. The registered engineer or other qualified professional specialist shall provide to the Office a certified report within two weeks after each inspection that the fill has been approved by the Office. A copy of the report shall be retained at the minesite.

(k) Coal processing wastes shall not be disposed of in head-of-hollow or valley fills, and may only be disposed of in other excess spoil fills, if such waste is

(1) Placed in accordance with Section 216.85.

(2) Demonstrated to be nontoxic and nonacid forming.

(3) Demonstrated to be consistent with the design stability of the fill

(l) If the disposal area contains springs, natural or man-made watercourses, or wetweather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.

(m) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall be performed in order to determine the design requirements for stability of the foundation.

216.72 Disposal of excess spoil: Valley fills. Valley fills shall meet all of the requirements of Section 216.71 and the additional requirements of this Section.

(a) The fill shall be designed to attain a long-term static safety factor of 1.5 based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

(b) A subdrainage system for the fill shall be constructed in accordance with the following:

(1) A system of underdrains constructed of durable rock shall meet the requirements of Paragraph (b)(4) of this Section, and

(i) Be installed along the natural drainage system.

(ii) Extend from the toe to the head of the fill.

(iii) Contain lateral drains to each area of potential drainage or seepage.

(2) A filter system to insure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(3) In constructing the underdrains, no more than ten percent of the rock may be less than twelve inches in size and no single rock may be larger than twenty-five percent of the width of the drain. Rock used in underdrains shall meet the requirements of paragraph (b)(4) of this Section. The minimum size of the main underdrain shall be

Total amount of fill material	Predominant type of fill Material	Minimum size of drain, in feet Width	Height
Less than 1,000,000 yd³	Sandstone	10	4
Do	Shale	16	8
More than 1,000,000 yd³	Sandstone	16	8
Do	Shale	16	16

216.73 Disposal of excess spoil: Head-of-hollow fills. Disposal of spoil in the head-of-hollow fill shall meet all standards set forth in Sections 216.71 and 216.72 and the additional requirements of this Section.

(a) The fill shall be designed to completely fill the disposal site to the approximate elevation of the ridgeline. A rock-core chimney drain may be utilized instead of the subdrain and surface diversion system required for valley fills. If the crest of the fill is not approximately at the same elevation as the low point of the adjacent ridgeline, the fill must be designed as specified in Section 216.72 with diversion of runoff around the fill. A fill associated with contour mining and placed at or near the coal seam, and which does not exceed two hundred fifty thousand cubic yards may use the rock-core chimney drain.

(b) The alternative rock-core chimney drain system shall be designed and incorporated into the construction of head-of-hollow fills as follows:

(1) The fill shall have, along the vertical projection of the main buried stream channel or rill a vertical core of durable rock at least sixteen feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of Section 216.72(b).

(2) A filter system to ensure the proper functioning of the rock core shall be designed and constructed using standard geotechnical engineering methods.

(3) The grading may drain surface water away from the outslope of the fill and toward the rock core. The maximum slope of the top of the fill shall be 1v:33h (three percent). Instead of the requirements of Section 216.71(g), a drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential for impounding more than ten thousand cubic feet of water. Terraces on the fill shall be graded with a three to five percent grade toward the fill and a one percent slope toward the rock core.

(c) The drainage control system shall be capable of passing safely the runoff from a one hundred-year, twenty-four-hour precipitation event, or larger event specified by the Office

216.74 Disposal of excess spoil: Durable rock fills. In lieu of the requirements of 216.72 and 216.73, the Office may approve alternate methods for disposal of hard rock spoil, including fill

placement of dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of this Section and Section 216.71 are met. For this Section, hard rock spoil shall be defined as rockfill consisting of at least eighty percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the Office.

(a) Spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.

(1) The method of spoil placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of this Section.

(2) Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a controlled manner to limit on a unit basis concentrations of noncemented clay shale and clay in the fill. Such materials shall comprise no more than twenty percent of the fill volume as determined by tests performed by a registered engineer and approved by the Office.

(b)(1) Stability analyses shall be made by the registered professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations, including borings, and laboratory tests.

(2) The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the following factors of safety:

Case	Design condition	Minimum factor of safety
I	End of construction	1.5
II	Earthquake	1.1

(c) The design of a head-of-hollow fill shall include an internal drainage system which will insure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(1) Anticipated discharge from springs and seeps and due to precipitation shall be based on records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(2) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not slake in water.

(3) The internal drain shall be protected by a properly designed filter system.

(d) Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to pass safely the runoff from a one hundred-year, twenty-four-hour precipitation event. Diversion design shall comply with the requirements of Section 216.43(f).

(e) The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1v:20h (five percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill.

(f) Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will pass safely a 100-year, twenty-four hour precipitation event. Diversion design shall comply with the requirements of 216.43(f).

(g) Terraces shall be constructed on the outslope if required for control of erosion or for roads included in the approved postmining land, use plan. Terraces shall meet the following requirements:

(1) The slope of the outslope between terrace benches shall not exceed 1v:2h (fifty percent).

(2) To control surface runoff, each terrace bench shall be graded to a slope of 1v:20h (five percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.

(3) Terrace ditches shall have a five-percent slope toward the channel specified in paragraph (f) above, unless steeper slopes are necessary in conjunction with approved roads.

216.81 Coal processing waste banks: General requirements.

(a) All coal processing waste shall be hauled or conveyed and placed in new and existing disposal areas approved by the Office for this purpose. These areas shall be within a permit area. The disposal area shall be designed, constructed, and maintained in accordance with Sections 216.71 and 216.72, this Section, and Sections 216.82-216.88; and to prevent combustion.

(b) Coal processing waste materials from activities located outside a permit area, such as those activities at other mines or abandoned mine waste piles may be disposed of in the permit area only if approved by the Office. Approval shall be based on the showing by the person who conducts surface mining activities in the permit area, using hydrologic, geotechnical, physical, and chemical analysis, that disposal of these materials does not

(1) Adversely affect water quality, water flow, or vegetation;

(2) Create public health hazards; or

(3) Cause instability in the disposal areas.

216.82 Coal processing waste banks: Site inspection.

(a) All coal processing waste banks shall be inspected, on behalf of the person conducting surface mining activities, by a qualified registered engineer or other person approved by the Office.

(1) Inspection shall occur at least quarterly, beginning within seven days after preparation of the disposal area begins. The Office may require more frequent inspection based upon an evaluation of the potential danger to the health or safety of the public and the potential harm to land, air and water resources. Inspections may terminate when the coal processing waste bank has been graded, covered in accordance with Section 216.85, topsoil has been distributed on the bank in accordance with Section 216.24, or at such a later time as the Office may require.

(2) Inspections shall include such observations and tests as may be necessary to evaluate the potential hazard to human life and property, to ensure that all organic material and topsoil have been removed and that proper construction and maintenance are occurring in accordance with the plan submitted under 180.25 and approved by the Office.

(3) The engineer or other approved inspector shall consider steepness of slopes, seepage, and other visible factors which could indicate potential failure, and the results of failure with respect to the threat to human life and property.

(4) Copies of the inspection findings shall be maintained at the mine site.

(b) If any inspection discloses that a potential hazard exists, the Office shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Office shall be notified immediately. The Office shall then notify the appropriate emergency agencies that other emergency procedures are required to protect the public from the coal processing waste area.

216.83 Coal processing waste banks: Water control measures.

(a) A properly designed subdrainage system shall be provided, which shall

(1) Intercept all ground water sources.

(2) Be protected by an adequate filter.

(3) Be covered so as to protect against the entrance of surface water or leachate from the coal processing waste.

(b) All surface drainage from the area above the coal processing waste bank and from the crest and face of the waste bank disposal area shall be diverted, in accordance with Section 216.72(d).

(c) Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion ditches that are not riprapped shall be vegetated upon completion of construction.

(d) All water discharge from a coal processing waste bank shall comply with Sections 216.41, 216.42, 216.45, 216.46, 216.52, and 216.55.

216.85 Coal processing waste banks: Construction requirements.

(a) Coal processing waste banks shall be constructed in compliance with Sections 216.71 and 216.72, except to the extent that the requirements of those Sections are varied in this Section.

(b) Coal processing waste banks shall have a minimum static safety factor of 1.5.

(c) Compaction requirements during construction or modification of all coal processing waste banks shall meet the requirements of this paragraph, instead of those specified in Section 216.72(c). The coal processing waste shall be

(1) Spread in layers no more than twenty-four inches in thickness.

(2) Compacted to attain ninety percent of the maximum dry density to prevent spontaneous combustion and to provide the strength required for stability of the coal processing waste bank. Dry densities shall be determined in accordance with the American Association of State Highway and Transportation Officials (AASHTO) specification T99-74 (twelfth edition) (July 1978) or an equivalent method. AASHTO T99-74 is hereby incorporated by reference as it exists on the date of adoption of this Part. Notices of changes made to this publication will be periodically published by OSM in the ***Federal Register.*** AASHTO T99-74 is on file and available for inspection at the OSM Central Office, United States Department of the Interior, South Interior Building, Washington, D.C. 20240, at each OSM Regional Office, District Office, and Field Office, and at the central office of the Office of Conservation. Copies of this publication may also be obtained by writing to the above locations. A copy of this publication will also be on file for public inspection at the Federal Register Library, 1100 L Street, Northwest, Washington, D.C. Incorporation by reference provisions approved by the Director of the Federal Register, February 7, 1979.

(3) Variations may be allowed in these requirements for the disposal of dewatered fine coal waste (minus twenty-eight sieve size) with approval of the Office.

(d) Following grading of the coal processing waste bank, the site shall be covered with a minimum of four feet of the best available non-toxic and non-combustible material, in accordance with Section 216.22(e), and in a manner that does not impede flow from subdrainage systems. The coal processing waste bank shall be revegetated in accordance with Sections 216.111-216.117. The Office may allow less than four feet of cover material based on physical and chemical analyses which show that the requirements of Sections 216.111-216.117 will be met.

216.86 Coal processing waste: Burning. Coal processing waste fires shall be extinguished by the person who conducts the surface mining activities in accordance with a plan approved by the Office and the Mines Safety and Health Administration. The plan shall contain, at a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.

216.87 Coal processing waste: Burned waste utilization. Before any burned coal processing waste, other materials, or refuse is removed from a disposal area, approval shall be obtained from the Office. A plan for the method of removal, with maps and appropriate drawings to illustrate the proposed sequence of the operation and method of compliance with this Part, shall be submitted to the Office. Consideration shall be given in the plan to potential hazards which may be created by removal to persons working or living in the vicinity of the structure. The plan shall be certified by a qualified engineer.

216.89 Disposal of noncoal wastes.

(a) Noncoal wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustibles generated during surface mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall insure that leachate and surface runoff do not degrade surface or ground water, fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(b) Final disposal of noncoal wastes shall be in a designated disposal site in the permit area. Disposal sites shall be designed and constructed with appropriate water barriers on the bottom and sides of the designated site. Wastes shall be routinely compacted and covered to prevent combustion and wind-born waste. When the disposal is completed a minimum of two feet of soil cover shall be placed over the site, slope stabilized, and revegetation accomplished in accordance with Section 216.111-216.117. Operation of the disposal site shall be conducted in accordance with all local, state, and federal requirements.

(c) At no time shall any solid waste material be deposited at refuse embankments or impoundment sites, nor shall any excavation for solid waste disposal be located within eight feet of any coal outcrop or coal storage area.

216.91 Coal processing waste: Dams and embankments: General requirements.

(a) Sections 216.91-216.93 apply to dams and embankments, constructed of coal processing waste or intended to impound coal processing waste, whether they were completed before adoption of the regulatory program or are intended to be completed thereafter.

(b) Waste shall not be used in the construction of dams and embankments unless it has been demonstrated to the Office that the stability of such a structure conforms with the requirements of Section 216.93(a). It shall also be demonstrated that the use of waste material shall not have a detrimental effect on downstream water quality or the environment due to acid seepage through the dam or embankment. All demonstrations shall be submitted to and approved by the Office.

216.92 Coal processing waste: Dams and embankments: Site preparation. Before coal processing waste is placed at a dam or embankment site.

(a) All trees, shrubs, grasses, and other organic material shall be cleared and grubbed from the site, and all combustibles shall be removed and stockpiled in accordance with the requirements of this Part.

(b) Surface drainage that may cause erosion to the embankment area or the embankment features, whether during construction or after completion, shall be diverted away from the embankment by diversion ditches that comply with the requirements of Section 216.43. Adequate outlets for discharge from these diversions shall be in accordance with Section 216.47. Diversions that are designed to divert drainage from the upstream area away from the impoundment area shall be designed to carry the peak runoff from a one hundred-year,

twenty-four-hour precipitation event. The diversion shall be maintained to prevent blockage, and the discharge shall be in accordance with Section 216.47. Sediment control measure shall be provided at the discharge of each diversion ditch before entry into natural watercourses in accordance with Sections 216.41-216.46.

216.93 Coal processing waste: Dams and embankments: Design and construction.

(a) The design of each dam and embankment constructed of coal processing waste or intended to impound such waste shall comply with the requirements of Section 216.49(a)(5), (e), (f), (g), (h), and (i), modified as follows:

(1) The design freeboard between the lowest point on the embankment crest and the maximum water elevation shall be at least three feet. The maximum water elevation shall be that determined by the freeboard hydrograph criteria contained in the United States Soil Conservation Service criteria referenced in Section 216.49.

(2) The dam and embankment shall have a minimum safety factor of 1.5 for the partial pool with steady seepage saturation conditions, and the seismic safety factor shall be at least 1.2.

(3) The dam or embankment foundation and abutments shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the safety factors of the dam or embankment for all loading conditions appearing in paragraph (a)(2) of this Section or the publications referred to in Section 216.49 and for all increments of construction.

(b) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(c) Dams or embankments constructed of or impounding waste materials shall be designed so that at least ninety percent of the water stored during the design precipitation event shall be removed within a ten-day period.

216.95 Air resources protection.

(a) Fugitive dust. Each person who conducts surface mining activities shall plan and employ fugitive dust control measures as an integral part of site preparation, coal mining, and reclamation operations. The Office shall approve the control measures appropriate for use in planning, according to applicable federal and state air qualify standards, climate, existing air quality in the area affected by mining, and the available control technology.

(b) Control measures. The fugitive dust control measures to be used, depending on applicable federal and state air quality standards, climate, existing air quality, size of operation, and type of operation, shall include, as necessary, but not be limited to

(1) Periodic watering of unpaved roads, with the minimum frequency of watering approved by the Office.

(2) Chemical stabilization of unpaved roads with proper application of nontoxic soil cement or dust palliatives.

(3) Paving of roads.

(4) Prompt removal of coal, rock, soil, and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface.

(5) Restricting the speed of vehicles to reduce fugitive dust caused by travel.

(6) Revegetating, mulching, or otherwise stabilizing the surface of all areas adjoining roads that are sources of fugitive dust.

(7) Restricting the travel of unauthorized vehicles on other than established roads.

(8) Enclosing, covering, watering, or otherwise treating loaded haul trucks and railroad cars to reduce loss of material to wind and spillage.

(9) Substituting of conveyor systems for haul trucks and covering of conveyor systems when conveyed loads are subjected to wind erosion.

(10) Minimizing the area of disturbed land.

(11) Prompt revegetation of regraded lands.

(12) Use of alternatives for coal handling methods, restriction of dumping procedures, wetting of disturbed materials during handling, and compaction of disturbed areas.

(13) Planting of special windbreak vegetation at critical points in the permit area.

(14) Control of dust from drilling, using water sprays, hoods, dust collectors, or other controls.

(15) Restricting the areas to be blasted at any one time to reduce fugitive dust.

(16) Restricting activities causing fugitive dust during periods of air stagnation.

(17) Extinguishing any areas of burning or smoldering coal and periodically inspecting for burning areas whenever the potential for spontaneous combustion is high.

(18) Reducing the period of time between initially disturbing the soil and revegetating or other surface stabilization.

(19) Restricting fugitive dust at spoil and coal transfer and loading points with water sprays, negative pressure systems and baghouse filters, chemicals, or other practices.

(c) Additional measures. Where the Office determines that application of fugitive dust control measures listed in paragraph (b) of this Section is inadequate, the Office may require additional measures and practices as necessary.

(d) Monitoring. Air monitoring equipment shall be installed and monitoring shall be conducted in accordance with the air monitoring plan required under 180.15 and approved by the Office.

216.97 Protection of fish, wildlife, and related environmental values.

(a) Any person conducting surface mining activities shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impact of the activities on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable.

(b) A person who conducts surface mining activities shall promptly report to the Office the presence in the permit area of any critical habitat of a threatened or endangered species listed by the Secretary of the Interior, any plant or animal listed as threatened or endangered by the State, or any bald or golden eagle, of which that person becomes aware and which was not previously reported to the Office by that person.

(c) A person who conducts surface mining activities shall insure that the design and construction of electric power lines and other transmission facilities used for or incidental to the surface mining activities on the permit area are in accordance with the guidelines set forth in Environmental Criteria for Electric Transmission System (USDI, USDA (1970)), or in alternative guidance manuals approved by the Office. Distribution lines shall be designed and constructed in accordance with ERA Bulletin 61-10, Powerline Contacts by Eagles and Other Large Birds, or in alternative guidance manuals approved by the Office. For information purposes, these two documents are available at the OSM Office, United States Department of the Interior, South Interior Building, Washington, D.C. 20240, at each OSM Regional Office, District Office, and Field Office, and at the Central Office of the Office of Conservation.

(d) Each person who conducts surface mining activities shall, to the extent possible using the best technology currently available

(1) Locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state and federal laws.

(2) Fence roadways where specified by the Office to guide locally important wildlife to roadway underpasses. No new barrier shall be created in known and important wildlife migra-

tion routes.

(3) Fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials.

(4) Restore, enhance where practicable or avoid disturbance to habitats of unusually high value for fish and wildlife.

(5) Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetland areas.

(6) Afford protection to aquatic communities by avoiding stream channels as required in Section 216.57 or restoring stream channels as required in Section 216.44.

(7) Not use persistent pesticides on the area during surface mining and reclamation activities, unless approved by the Office.

(8) To the extent possible prevent, control, and supress range, forest, and coal fires which are not approved by the Office as part of a management plan.

(9) If fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall in addition to the requirements of Sections 216.111-216.117

(i) Select plant species to be used on reclaimed areas, based on the following criteria:

(A) Their proven nutritional value for fish and wildlife.

(B) Their uses as cover for fish and wildlife.

(C) Their ability to support and enhance fish and wildlife habitat after release of bonds.

(ii) Distribute plant groupings to maximize benefit to fish and wildlife. Plants should be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits for fish and wildlife.

(10) Where cropland is to be the alternative postmining land use on lands diverted from a fish and wildlife premining land use and where appropriate for wildlife and crop management practices, intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. Wetlands shall be perserved or created rather than drained or otherwise permanently abolished.

(11) Where the primary land use is to be residential, public service, or industrial land use, intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs and trees useful as food and cover for birds and small animals, unless such greenbelts are inconsistent with the approved postmining land use.

216.99 Slides and other damage.

(a) An undisturbed natural barrier shall be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as may be determined by the Office as is needed to assure stability. The barrier shall be retained in place to prevent slides and erosion.

(b) At any time a slide occurs which may have a potential adverse affect on public property, health, safety, or the environment, the person who conducts the surface mining activities shall notify the Office by the fastest available means and comply with any remedial measures required by the Office.

216.100 Contemporaneous reclamation. Reclamation efforts, including, but not limited to, backfilling, grading, topsoil replacement and revegetation, of all land disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations.

216.101 Backfilling and grading: General requirements.

(a) Timing of backfilling and grading.

(1) Contour mining. Rough backfilling and grading shall follow coal removal by not more than sixty days or one thousand five hundred linear feet. The Office may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under Section 180.18(b)(3), 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 Section 180.18(b)(3), 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 one hundred eighty 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 a detailed written analysis under Section 180.18(b)(3), that additional time is necessary.

(b) Method for backfilling and grading.

(1) Except as specifically exempted in this Subchapter, all disturbed areas shall be returned to their approximate original contour. All spoil shall be transported, backfilled, compacted (where advisable to insure stability or to prevent leaching) and graded to eliminate all highwalls, spoil piles, and depressions.

(2) Open pit mining with thin overburden. Rough backfilling and grading shall occur in accordance with the time support the approved postmining land use.

(3) The postmining graded slopes need not be of uniform slope.

(4) Cut-and-fill terraces may be used only in those situations expressly identified in Section 216.102.

216.102 Backfilling and grading: General grading requirements.

(a) The final graded slopes shall not exceed in grade either the approximate premining slopes, or any lesser slopes approved by the Office based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform but shall approximate the general nature of the premining topography. The requirements of this Section may be modified by the Office where the surface mining activities are reaffecting previously mined lands that have not been restored to the standards of this Part and sufficient spoil is not available to otherwise comply with this Section. The person who conducts surface mining activities shall, at a minimum

(1) Retain all overburden and spoil on the solid portion of existing or new benches.

(2) Backfill and grade to the most moderate slope possible to eliminate the highwall which does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum static safety factor of 1.3. In all cases the highwall shall be eliminated.

(b) On approval by the Office in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed, if the terraces are compatible with the approved postmining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(1) The width of the individual terrace bench shall not exceed twenty feet, unless specifically approved by the regulatory authority as necessary for stability, erosion control, or roads included in the approved postmining land use plan.

(2) The vertical distance between terraces shall be as specified by the Office, to prevent excessive erosion and to provide long-term stability.

(3) The slope of the terrace outslope shall not exceed 1v:2h (fifty percent). Outslopes which exceed 1v:2h (fifty percent) may be approved, if they have a minimum static safety factor of more than 1.3, provide adequate control over erosion, and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(4) Culverts and underground rock drains shall be used on

the terrace only when approved by the Office.

(c) Small depressions may be constructed, if they

(1) Are approved by the Office to minimize erosion, conserve soil moisture, or promote vegetation.

(2) Do not restrict normal access.

(3) Are not inappropriate substitutes for lower grades on the reclaimed lands.

(d) All surface mining activities on slopes above twenty degrees, or on lesser slopes that the Office defines as steep slopes shall meet the provisions of Part 226.

(e) All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil, shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation, or placement along the contour is hazardous to equipment operators, then grading, preparation, or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

216.103 Backfilling and grading: Covering coal and acid- and toxic-forming materials.

(a) Cover.

(1) A person who conducts surface mining activities shall cover, with a minimum of four feet of the best available nontoxic and noncombustible material, all exposed coal seams remaining after mining, and all acid-forming materials, toxic-forming materials, combustible materials, or any other materials identified by the Office, as exposed, used or produced during mining.

(2) If necessary, these materials shall be treated to neutralize toxicity, in order to prevent water pollution and sustained combustion and minimize adverse effects on plant growth and land uses.

(3) Where necessary to protect against upward migration of salts, exposure by erosion, formation of acid or toxic seeps, to provide an adequate depth for plant growth, or otherwise to meet local conditions, the Office shall specify thicker amounts of cover using nontoxic material, or special compaction and isolation from ground water contact.

(4) Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.

(b) Stabilization. Backfilled materials shall be selectively hauled or conveyed, and compacted, wherever necessary to prevent leaching of acid-forming and toxic-forming materials into surface or ground waters and wherever necessary to insure stability of the backfilled materials. The method and design specifications of compacting material shall be approved by the Office before acid-forming or toxic-forming materials are covered.

216.104 Backfilling and grading: Thin overburden.

(a) The provisions of this Section apply only where the final thickness is less than 0.8 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal, times the bulking factor to be determined for each mine plan area. The provisions of this Section apply only when surface mining activities cannot be carried out to comply with Section 216.101 to achieve the approximate original contour.

(b) In surface mining activities carried out continuously in the same limited pit area for more than 1 year from the day coal removal operations begin and where the volume of all available spoil and suitable waste materials over the mine plan area is demonstrated to be insufficient to achieve the approximate original contour of the lands disturbed, surface mining activities shall be conducted to meet, at a minimum, the following standards:

(1) Haul or convey, backfill, and grade, using all available spoil and suitable waste materials from the entire mine area, to attain the lowest practicable stable grade, to achieve a static safety factor of 1.3, and to provide adequate drainage and long-term stability of the regraded areas and cover all acid-forming and toxic-forming materials.

(2) Eliminate highwalls by grading or backfilling to stable slopes by exceeding 1v:2h (fifty percent), or such lesser slopes as the Office may specify to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use.

(3) Haul or convey, backfill, grade, and revegetate in accordance with Sections 216.111-216.117, to achieve an ecologically sound land use compatible with the prevailing use in unmined areas surrounding the mine plan area; and

(4) Haul or convey, backfill and grade, to ensure impoundments are constructed only where

(i) It has been demonstrated to the satisfaction of the Office that all requirements of Sections 216.41-216.56 have been met.

(ii) The impoundments have been approved by the Office as suitable for the approved postmining land use and as meeting the requirements of this Part and all other applicable federal and state laws and regulations.

216.105 Backfilling and grading: Thick overburden.

(a) The provisions of this Section apply only where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal times the bulking factor to be determined for each mine plan area. The provisions of this Section apply only when surface mining activities cannot be carried out to comply with Section 216.101 to achieve the approximate original contour.

(b) In surface mining activities where the volume of spoil over the mine plan area is demonstrated to be more than sufficient to achieve the approximate original contour, surface mining activities shall be conducted to meet, at a minimum, the following standards

(1) Haul or convey, backfill, and grade all spoil and wastes, not required to achieve the approximate original contour of the mine plan area, to the lowest practicable grade, to achieve a static factor of safety of 1.3 and cover all acid-forming and other toxic-forming materials.

(2) Haul or convey, backfill, and grade excess spoil and wastes only within the permit area and dispose of such materials in accordance with Sections 216.71-216.74.

(3) Haul or convey, backfill, and grade excess spoil and wastes to maintain the hydrologic balance, in accordance with Sections 216.41-216.57 and to provide long-term stability by preventing slides, erosion and water pollution.

(4) Haul or convey, backfill, grade, and revegetate wastes and excess spoil to achieve an ecologically sound land use approved by the Office as compatible with the prevailing land uses in unmined areas surrounding the mine plan area.

(5) Eliminate all highwalls and depressions by backfilling with spoil and suitable waste materials; and

(6) Meet the revegetation requirements of Section 216.111-216.117 for all disturbed areas.

216.106 Regrading or stabilizing rills and gullies. When rills and gullies deeper than nine inches form in areas that have been regraded and topsoiled, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded or replanted according to Sections 216.111-216.117. The Office shall specify that rills or gullies of lesser size be stabilized and the area reseeded or replanted if the rills or gullies are disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

216.111 Revegetation: General requirements.

(a) Each person who conducts surface mining activities shall establish on all affected land a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of disturbed land or species that supports the approved postmining land use. For areas designated as prime farmland, the requirements of Section 223 shall apply.

(b) All revegetation shall be in compliance with the plans submitted under Section 180.18 and 180.23, as approved by the Office in the permit, and carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.

(1) All disturbed land, and water areas and surface areas of roads that are approved as a part of the postmining land use, shall be seeded or planted to achieve a permanent vegetative cover of the same seasonal variety native to the area of disturbed land.

(2) The vegetative cover shall be capable of stabilizing the soil surface from erosion.

(3) Vegetative cover shall be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the approved postmining land use, when compared with the utility of naturally occurring vegetation during each season of the year.

(4) If both the premining and postmining land uses are cropland, planting of the crops normally grown will meet the requirements of paragraph (b)(1) of this Section.

216.112 Revegetation: Use of introduced species. Introduced species, may be substituted for native species only if approved by the Office under the following conditions:

(a) After appropriate field trials have demonstrated that the introduced species are desirable and necessary to achieve the approved postmining land use.

(b) The species are necessary to achieve a quick, temporary, and stabilizing cover that aids in controlling erosion; and measures to establish permanent vegetation are included in the approved plan submitted under Sections 180.18(b)(3) and 180.23.

(c) The species are compatible with the plant and animal species of the region.

(d) The species meet the requirements of applicable state and federal seed or introduced species statutes and are not poisonous or noxious.

(e) The species utilized are not Kudzu, pueraria lobata, or any vine of the Kudzu family.

216.113 Revegetation: Timing. Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected. When necessary to effectively control erosion, any disturbed area shall be seeded and planted, as contemporaneously as practicable with the completion of backfilling and grading, with a temporary cover of small grains, grasses, or legumes until a permanent cover is established.

216.114 Revegetation: Mulching and other soil stabilizing practices.

(a) Suitable mulch and other soil stabilizing practices shall be used on all regraded and topsoiled areas to control erosion, promote germination of seeds, or increase the mositure retention capacity of the soil. The Office may, on a case-by-case basis, suspend the requirement for mulch, if the permittee can demonstrate that alternative procedures will achieve the requirements of 216.116 and do not cause or contribute to air or water pollution.

(b) When required by the Office, mulches shall be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation.

(c) Annual grasses and grains may be used alone, as in situ mulch, or in conjunction with another mulch, when the Office determines that they will provide adequate soil erosion control and will later be replaced by perennial species approved for the postmining land use.

(d) Chemical soil stabilizers alone, or in combination with appropriate mulches, may be used in conjunction with vegetative covers approved for the postmining land use.

216.115 Revegetation: Grazing. When the approved postmining land use is range or pasture land, the reclaimed land shall be used for livestock grazing at a grazing capacity approved by the Office approximately equal to that for similar non-mined lands, for at least the last two full years of liability required under Section 216.116(b).

216.116 Revegetation: Standards for success.

(a) Success of revegetation shall be measured by techniques approved by the Office after consultation with appropriate state and federal agencies. Comparison of ground cover and productivity may be made on the basis of reference areas or through the use of technical guidance procedures published by USDA or USDI for assessing ground cover and productivity. Management of the reference area, if applicable, shall be comparable to that which is required for the approved postmining land use of the permit area.

(b) Ground cover.

(1) Ground cover and productivity of living plants on the revegetated area within the permit area shall be equal to the ground cover and productivity of living plants on the approved reference area or to the standards in other technical guides approved by the Commissioner. The period of extended responsibility under the performance bond requirements of Subchapter J initiates when ground cover equals the approved standard after the last year of augmented seeding, fertilizing, irrigation or other work which insures success.

(2) The ground cover and productivity of the revegetated area shall be considered equal if they are at least ninety percent of the ground cover and productivity of the reference area with ninety percent statistical confidence, or with eighty percent statistical confidence on shrublands, or ground cover and productivity are at least ninety percent of the standards in a technical guide approved pursuant to Section 216.116(b)(1). Exceptions may be authorized by the Office under the following standards:

(i) For previously mined areas that were not reclaimed to the requirements of this Subchapter, as a minimum the ground cover of living plants shall not be less than can be supported by the best available topsoil or other suitable material in the reaffected area, shall not be less than the ground cover existing before redisturbance, and shall be adequate to control erosion.

(ii) For areas to be developed for industrial or residential use less than two years after regrading is completed, the ground cover of living plants shall not be less than required to control erosion.

(iii) For areas to be used for cropland, success in revegetation of cropland shall be determined on the basis of crop production from the mined area as compared to approved reference areas or other technical guidance procedures. Crop production from the mined area shall be equal to or greater than that of the approved standard for the last two consecutive growing seasons of the five year liability period established in (b)(1) of this Section. The applicable five year period responsibility for revegetation shall commence at the date of initial planting of the crop being grown. Production shall not be considered equal if it is less than ninety percent of the production of the approved standard with ninety percent statistical confidence.

(iv) On areas to be developed for fish and wildlife management or forestland, success of vegetation shall be determined on the basis of tree, shrub, or halfshrub stocking and ground cover. The tree, shrub, or halfshrub stocking

shall meet the standards described in Section 216.117. The area seeded to a ground cover shall be considered acceptable if it is at least seventy percent of the ground cover of the reference areas with ninety percent statistical confidence or if the ground cover is determined to be adequate to control erosion by the Office. Section 216.116(b) shall determine the responsibility period and the frequency of ground cover measurement.

(c) The person who conducts surface mining activities shall

(1) Maintain any necessary fences and proper management practices.

(2) Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the Office, to identify conditions during the applicable period of liability specified in paragraph (b) of this Section.

(d) For permit areas forty acres or less in size, the following performance standards, if approved by the Office, may be used instead of reference areas to measure success of revegetation on sites that are disturbed. These standards shall be met for a minimum of five full consecutive years.

(1) Areas planted only in herbaceous species shall sustain a vegetative ground cover of seventy percent for five full consecutive years.

(2) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover of seventy percent for five full consecutive years and four hundred woody plants per acre after five years. On steep slopes, the minimum number of woody plants shall be six hundred per acre.

(3) For purposes of this Section, herbaceous species means grasses, legumes, and nonleguminous herbs; woody plants means woody shrubs, trees and vines; and ground cover means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.

216.117 Revegetation: Tree and shrub stocking for forest land. This Section sets forth forest resource conservation standards for reforestation operations to ensure that a cover of commercial tree species, noncommercial tree species, shrubs or halfshrubs, sufficient for adequate use of the available growing space, is established after surface mining activities.

(a) Stocking, i.e., the number of stems per unit area, will be used to determine the degree to which space is occupied by well distributed, countable trees, shrubs or halfshrubs.

(1) Root crown or root sprouts over one foot in height shall count as one toward meeting the stocking requirements. Where multiple stems occur only the tallest stem will be counted.

(2) A countable tree or shrub means a tree that can be used in circulating the degree of stocking under the following criteria:

(i) The tree or shrub shall be in place at least two growing seasons.

(ii) The tree or shrub shall be alive and healthy.

(iii) The tree or shrub shall have at least one-third of its length in live crown.

(3) Rock areas, permanent road and surface water drainage ways on the revegetated area shall not require stocking.

(b) The following are the minimum performance standards for areas where commerical forest land is the approved postmining land use:

(1) The area shall have a minimum stocking of four hundred fifty trees or shrubs per acre.

(2) A minimum of seventy-five percent of countable trees or shrubs shall be commercial trees species.

(3) The number of trees or shrubs and the ground cover shall be determined using procedures described in Sections 216.116(b)(2)(iv) and 216.117(a), and the sampling method approved by the Office; when the stocking is equal to or greater than four hundred fifty trees or shrubs per acre and there is acceptable groundcover, the five year responsibility period required in Section 216.116(b) shall begin.

(4) Upon expiration of the five year responsibility period, and at the time of request for bond release, each permittee shall provide documentation showing that the stocking of trees and shrubs and the groundcover on the revegetated area satisfy Sections 216.116(b)(2)(iv) and 216.117(c)(i).

(c) The following are the minimum performance standards for areas where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

(1) An inventory of trees, halfshrubs and shrubs shall be conducted on established reference areas according to methods approved by the Office, this inventory shall contain, but not be limited to site quality; stand size; stand condition; site and species relations; and appropriate forest land utilization considerations.

(2) The stocking of trees, shrubs, halfshrubs and the groundcover established on the revegetated area shall approximate the stocking and groundcover on the reference area and shall utilize local and regional recommendations regarding species composition, spacing and planting arrangement. The stocking of live woody plants shall be equal to or greater than ninety percent of the stocking of woody plants of the same life form on the reference area. When this requirement is met and acceptable ground cover is achieved, the five year responsibility period required in Section 216.116(b) shall begin.

(3) Upon expiration of the five year responsibility period and at the time of request for bond release, each permittee shall provide documentation showing that

(i) The woody plants established on the revegetated site are equal to or greater than ninety percent of the stocking of live woody plants of the same life form of the approved reference areas with eighty percent statistical confidence.

(ii) The groundcover on the revegetated area satisfies Section 216.116(b)(2)(iv). Species diversity, seasonal variety and regenerative capacity of the vegetation of the revegetated area shall be evaluated on the basis of the results which could reasonably be expected using the revegetation methods described in the mining and reclamation plan.

216.131 Cessation of operations: Temporary.

(a) Each person who conducts surface mining activities shall effectively secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a person of their obligation to comply with any provisions of the approved permit.

(b) Before temporary cessation of mining and reclamation operations for a period of thirty days or more, or as soon as it is known that a temporary cessation will extend beyond thirty days, persons who conduct surface mining activities shall submit to the Office a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of acres which will have been affected in the permit area, prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation.

216.132 Cessation of operations: Permanent.

(a) Persons who cease surface mining activities permanently shall close or backfill or otherwise permanently reclaim all affected areas, in accordance with these regulations and the permit approved by the Office.

(b) All underground openings, equipment, structures, or

other facilities not required for monitoring, unless approved by the Office as suitable for the postmining land use or environmental monitoring, shall be removed and the affected land reclaimed.

216.133 Postmining land use.

(a) General. All affected areas shall be restored in a timely manner to conditions that are capable of supporting the uses which they were capable of supporting before any mining; or to higher or better uses achievable under criteria and procedures of this Section.

(b) Determining premining use of land. The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land had not been previously mined and had been properly managed.

(1) The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the highest and best use that can be achieved and is compatible with surrounding areas.

(2) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

(3) If the premining use of the land was changed within five years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

(c) Prior to the release of lands from the permit area. In accordance with 207.12(c) the permit area shall be restored in a timely manner, either to conditions capable of supporting the uses they were capable of supporting before any mining or to conditions capable of supporting approved alternative land uses. Alternative land uses may be approved by the Office after consultation with the landowner or the land management agency having jurisdiction over the lands, if the following criteria are met:

(1) The proposed postmining land use is compatible with adjacent land use and, where applicable, with existing local, state or federal land use policies and plans: A written statement of the views of the authorities with statutory responsibilities for land use policies and plans is submitted to the Office within sixty days of notice by the Office and before surface mining activities begin. Any required approval, including any necessary zoning or other changes required for land use by local, state, or federal land management agencies, is obtained and remains valid throughout the surface mining activities.

(2) Specific plans are prepared and submitted to the Office which show the feasibility of the postmining land use as related to projected land use trends and markets and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and will be sustained. The Office may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(3) Provision of any necessary public facilities is ensured as evidenced by letters of commitment from parties other than the person who conducts surface mining activities, as appropriate, to provide the public facilities in a manner compatible with the plans submitted under Section 180.23. The letters shall be submitted to the Office before surface mining activities begin.

(4) Specific and feasible plans are submitted to the Office which show that financing, attainment and maintenance of the postmining land use are feasible and, if appropriate, are supported by letters of commitment from parties other than the person who conducts the surface mining activities.

(5) Plans for the postmining land use are designed under the general supervision of a registered professional engineer, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, vegetative cover, and esthetic design appropriate for the postmining use of the site.

(6) The proposed use will neither present actual or probable hazard to public health or safety nor will it pose any actual or probable threat of water flow diminution or pollution.

(7) The use will not involve unreasonable delays in reclamation.

(8) Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered plants is obtained from the Office and appropriate state and federal fish and wildlife management agencies have been provided a sixty day period in which to review the plan before surface mining activities begin.

(9) Proposals to change premining land uses of range, fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable federal, state, and local laws, are reviewed by the Office to insure that

(i) There is a firm written committment by the person who conducts surface mining activities or by the landowner or land manager to provide sufficient crop management after release of applicable performance bonds under Subchapter J and Sections 216.111-216.117, to assure that the proposed postmining cropland use remains practical and reasonable.

(ii) There is sufficient water available and committed to maintain crop production.

(iii) Topsoil quality and depth are sufficient to support the proposed use.

216.150 Roads: Class I — General.

(a) Each person who conducts surface mining activities shall design, construct or reconstruct, utilize, and maintain Class I Roads and restore the area to meet the requirements of Section 216.151-216.156 and to control or minimize erosion and siltation, air and water pollution, and damage to public or private property.

(b) To the extent possible using the best technology currently available, Class I Roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to runoff outside the permit area. Any such contributions shall not be in excess of limitations of state or federal law.

(c) All Class I Roads shall be removed and the land affected regraded and revegetated in accordance with the requirements of Section 216.156 unless

(1) Retention of the road is approved as part of the approved postmining land use or as being necessary to control erosion adequately.

(2) The necessary maintenance is assured.

(3) All drainage is controlled according to Section 216.153.

(d)(1) The design and construction or reconstruction of Class I Roads shall be certified by a registered qualified professional engineer in accordance with Section 216.151-216.154, except to the extent that alternative specifications are used. Alternative specifications may be used only after approval by the Office upon a demonstration by a registered qualified professional engineer that they will result in performance equal to or better than that resulting from Class I Roads complying with Section 216.151-216.156.

(2) The design shall incorporate the demand for mobility and travel efficiency, based on geometric criteria, both horizontal and vertical, appropriate for the anticipated volume of

traffic and weight and speed of vehicles to be used.

216.151 Roads: Class I — Location.

(a) Class I Roads shall be located, insofar as possible, on ridges or on the most stable available slopes to minimize erosion.

(b) No part of any Class I Road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Office.

(c) Stream fords are prohibited unless they are specifically approved by the Office as temporary routes during periods of construction. The fords shall ,not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using bridges, culverts, or other structures designed, constructed, and maintained to meet the requirements of Section 216.153.

(d) Class I Roads shall be located to minimize downstream sedimentation and flooding.

216.152 Roads: Class I — Design and construction. Class I Roads shall be designed and constructed or reconstructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance:

(a) Vertical alignment. Except where lesser grades are necessary to control site specific conditions, maximum road grades shall be as follows:

(1) The overall grade shall not exceed 1v:10h (ten percent).

(2) The maximum pitch grade shall not exceed 1v:6.5h (fifteen percent).

(3) There shall be not more than three hundred feet of pitch grade exceeding ten percent within any consecutive one thousand feet of Class I Roads, but in no case shall there be any pitch grade over fifteen percent.

(b) Horizontal alignment. Class I Roads shall have horizontal alignment as consistent with the existing topography as possible, and shall provide the alignment required to meet the performance standards of Section 216.150-216.156. The alignment shall be determined in accordance with the anticipated volume of traffic and weight and speed of vehicles to be used. Horizontal and vertical alignment shall be coordinated to ensure that one will not adversely affect the other and to ensure that the road will not cause environmental damage.

(c) Road cuts.

(1) Cut slopes shall not be steeper than specifically authorized by the Office which shall not authorize slopes steeper than 1v:.5h in unconsolidated materials or 1v:0.25h in rock, except that steeper slopes may be specifically authorized by the Office if geotechnical analysis demonstrates that a minimum safety factor of 1.5 can be maintained.

(2) Topsoil or other materials suitable under Section 216.22 shall be placed on all cut slopes of 1v:1.5h or flatter to aid in establishing vegetation and to minimize erosion. Topsoil depth shall be adequate to support vegetation necessary to control erosion.

(3) Temporary erosion control measures shall be implemented during construction to minimize sedimentation and erosion until permanent control measures can be established.

(d) Road embankments. Embankment sections shall be constructed in accordance with the following provisions:

(1) All vegetative material and topsoil shall be removed from the embankment foundation during construction to increase stability, and no vegetative material or topsoil shall be placed beneath or in any Class I Road embankment.

(2) Where an embankment is to be placed on side slopes exceeding 1v:5h (twenty percent), the existing ground shall be plowed, stepped, or, if in bedrock, keyed in a manner which increases the stability of the fill. The keyway shall be a minimum of ten feet in width and shall extend a minimum of two feet below the toe of the fill.

(3) Material containing by volume less than twenty-five percent of rock larger than six inches in greatest dimension shall be spread in successive uniform layers not exceeding twelve inches in thickness before compaction.

(4) Where the material for an embankment consists of large-size rock, broken stone, or fragmented material that makes placing it in twelve-inch layers impossible under paragraph (d)(3) of this Section, the embankment shall be constructed in uniform layers not exceeding in thickness the approximate average size of the rock used, but the layers shall not exceed thirty-six inches in thickness. Rock shall not be dumped in final position, but shall be distributed by blading or dozing in a manner that will ensure proper placement in the embankment, so that voids, pockets, and bridging will be reduced to a minimum. The final layer of the embankment shall meet the requirements of paragraph (d)(3) of this Section.

(5) Each layer of the embankment shall be completed, leveled, and compacted before the succeeding layer is placed. Loads of material shall be leveled as placed and kept smooth. The successive layers shall be compacted evenly by routing the hauling and leveling equipment over the entire width of the embankment. This procedure shall be continued until no visible horizontal movement of the embankment material is apparent.

(6) Embankment layers shall be compact as necessary to ensure that the embankment is adequate to support the anticipated volume of traffic and weight and speed of vehicles to be used. In selecting the method to be used for placing embankment material, consideration shall be given in the design to such factors as the foundation, geological structure, soils, type of construction, and equipment to be used. A structural and foundation analysis shall be performed to establish design standards for embankment stability appropriate to the site. Publications of the American Association of State Highway and Traffic Officers (AASHTO), including AASHTO T-99, T-180, T-91, and the modified AASHTO test, or other specifications generally recognized by transportation engineers as adequate for design of highway embankments, shall be used to determine the degree of compaction required on the basis of soil type and the anticipated volume of traffic and weight and speed vehicles to be used. Compaction effort shall be adequate to achieve the degree of compaction required. No life shall be placed on a layer until the design density is achieved throughout the layer. AASHTO specifications such as T-99, T-180, the modified AASHTO test, or other comparable specifications approved by the Office shall be used as guidelines for the determination of the maximum dry density for granular materials.

(7) Material shall be placed in an embankment only when its moisture content is within acceptable levels to achieve design compaction.

(8) Embankment slopes shall not be steeper than 1v:2h, except that where the embankment material is a minimum of 85 percent rock, slopes shall not be steeper than 1v:1.35h if it has been demonstrated to the Office that embankment stability will result. Where rock embankments are constructed, they shall meet the requirements of paragraph (d)(4) of this Section.

(9) The minimum safety factor for all embankments shall be 1.25, or such higher factor as the Office may specify.

(10) The road surface shall be sloped toward the ditch line at a minimum rate of one-quarter inch per foot of surface width, or crowned at a minimum rate of one-quarter inch per foot of surface width as measured from the centerline of the road.

(11) All material used in embankments shall be suitable for use under paragraphs (d)(1)-(8) of this Section. The material shall be reasonably free of organic material, coal or coal blossom, frozen materials, wet or peat material, natural soils

containing organic matter, or any other material considered unsuitable by the Office for use in embankment construction.

(12) Excess or unsuitable material from excavations, as defined in paragraph (d)(11) of this Section, shall be disposed of in accordance with Section 216.71. Acid and toxic-forming material shall be disposed of in accordance with Section 216.48, 216.81, and 216.103.

(13) Acid-producing materials shall be permitted for constructing embankments for only those Class I Roads constructed or reconstructed on coal processing waste banks and only if it has been demonstrated to the Office that no additional acid will leave the confines of the coal processing waste bank. In no case shall acid-bearing refuse material be used outside the confines of the coal processing waste bank. Restoration of the road shall be in accordance with the requirements of Section 216.103-216.117.

(14) Topsoil or other material suitable under Section 216.22 shall be placed on all embankment slopes of 1v:1.5h or flatter to aid in establishing vegetation and to minimize erosion. Topsoil material depth shall be adequate to support vegetation and to prevent erosion.

(15) Temporary erosion control measures shall be incorporated during construction to control sedimentation and minimize erosion until permanent control measures can be established.

(e) Topsoil removal. Before initiation of construction or reconstruction of a Class I Road, topsoil and other materials as determined under Section 216.22, shall be removed from the design roadbed, shoulders, and surfaces where associated structures will be placed and shall be stored in accordance with Section 216.23.

216.153 Roads: Class I — Drainage.

(a) General.

(1) Each Class I Road shall be designed, constructed or reconstructed, and maintained to have adequate drainage, using structures such as, but not limited to, ditches, cross drains, and ditch relief drains. The water control system shall be designed to safely pass the peak runoff from a ten-year, twenty-four-hour precipitation event or a greater event if required by the Office.

(2) Sediment control shall comply with Section 216.42 and 216.45.

(3) Vegetation shall not be cleared for more than the width necessary for road and associated ditch construction to serve traffic needs and for utilities.

(b) Ditches.

(1) A ditch shall be provided on both sides of a through-cut on the inside shoulder of a cut-and-fill section, with ditch relief erosion drains spaced according to grade. Water shall be intercepted before reaching a switchback or large fill and drained safely away in accordance with this Section. Water from a fill or switchback shall be released below the fill, through conduits or in riprapped channels, and shall not be discharged onto the fill. Drainage ditches shall be placed at the toe of all cut slopes formed by the construction of roads.

(2) On flat sections of Class I Roads where rolling topography is insufficient to provide natural ditch drainage, the road grade should be undulated to provide for free flow of water in the ditch section. Road sections may be constructed to elevate the road surface above the original ground surface to facilitate drainage.

(c) Culverts and bridges.

(1)(i) Culverts with an end area of thirty-five square feet or less shall be designed to safely pass the ten-year, twenty-four-hour precipitation event without a head of water at the entrance. Culverts with an end area of greater than thirty-five square feet or less, shall be designed to safely pass the twenty-year, twenty-four-hour precipitation event. Bridges with spans of more than thirty feet shall be designed to safely pass the one hundred-year, twenty-four-hour precipitation event or a larger event as specified by the Office.

(ii) Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets.

(iii) Trash racks and debris basins shall be installed in the drainage area wherever debris from the drainage area could impair the functions of drainage and sediment control structures.

(iv) All culverts shall be covered by compacted fill to a minimum depth of 1 foot.

(v) Culverts shall be designed, constructed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles to be used.

(2) Culverts for road surface drainage only shall be constructed in accordance with the following:

(i) Unless otherwise authorized or required under paragraphs (ii) or (iii), culverts shall be spaced as follows:

(A) Spacing shall nor exceed one thousand feet on grades of zero to three percent.

(B) Spacing shall not exceed eight hundred feet on grades of three to six percent.

(C) Spacing shall not exceed five hundred feet on grades of six to ten percent.

(D) Spacing shall not exceed three hundred feet on grades of ten percent or greater.

(ii) Culverts at closer intervals than the maximum in paragraph (c) (2) (i) of this Section shall be installed if required by the Office as appropriate for the erosive properties of the soil or to accomodate flow from small intersecting drainages.

(iii) Culverts may be constructed at greater intervals than the maximum indicated in paragraph (c) (2) (i) of this Section if authorized by the Office upon a finding that greater spacing will not increase erosion.

(iv) Culverts shall cross the road at not less than a thirty degree angle downgrade.

(v) Culverts may be designed to carry less than the peak runoff from a ten-year, twenty-four-hour precipitation event if the ditch will not overtop and will remain stable.

(vi) The inlet end shall be protected by a rock headwall or other material approved by the Office as adequate protection against erosion of the headwall. The water shall be discharged below the toe of the fill through conduits or in riprapped channels and shall not be discharged onto the fill.

(d) Natural drainage. Natural channel drainageways shall not be altered or relocated for road construction or reconstruction without the prior approval of the Office in accordance with Sections 216.43 and 216.44. The Office may approve alterations and relocations only if

(1) The natural channel drainage is not blocked.

(2) No significant damage occurs to the hydrologic balance.

(3) There is no adverse impact on adjoining landowners.

(e) Stream crossings. Drainage structures are required for stream channel crossings. Drainage structures shall not affect the normal flow or gradient of the stream, or adversely affect fish migration and aquatic habitat or related environmental values.

216.154 Roads: Class I — Surfacing.

(a) Class I Roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the Office as sufficiently durable for the anticipated volume of traffic and weight and speed of vehicles to be used.

(b) Acid or toxic-forming substances shall not be used in road surfacing.

216.155 Roads: Class I — Maintenance.

(a) Class I Roads shall be maintained in such a manner that the required or approved design standards are met throughout the life of the entire transportation facility including surface,

shoulders, parking and side areas, approach structures, erosion control devices, cut-and-fill sections, and such traffic control devices as are necessary for safe and efficient utilization of the road.

(b) Class I Road maintenance shall include repairs to the road surface, blading, filling of potholes, and replacement of gravel or asphalt. It shall include revegetating, brush removal, watering for dust control, and minor reconstruction of road segments as necessary.

(c) Class I Roads damaged by catastrophic events such as floods or earthquakes shall not be used until reconstruction of damaged road elements. The reconstruction shall be completed as soon as practicable after the damage has occurred.

216.156 Roads: Class I — Restoration.

(a) Unless the Office approves retention of a Class I Road as suitable for the approved postmining land use, immediately after the road is no longer needed for operations, reclamation, or monitoring

(1) The road shall be closed to vehicular traffic.

(2) The natural drainage patterns shall be restored.

(3) All bridges and culverts shall be removed.

(4) Roadbeds shall be ripped, plowed, and scarified.

(5) Fill slopes shall be rounded or reduced and shaped to conform the site to adjacent terrain and to meet natural drainage restoration standards.

(6) Cut slopes shall be shaped to blend with the natural contour.

(7) Cross drains, dikes, and water bars shall be constructed to minimize erosion.

(8) Terraces shall be constructed as necessary to prevent excessive erosion and to provide long-term stability in cut-and-fill slopes.

(9) Road surfaces shall be covered with topsoil in accordance with Section 216.24(b) and revegetated in accordance with Sections 216.111-216.117.

(b) Unless otherwise authorized by the Office, all road surfacing materials shall be removed, hauled or conveyed, and disposed of under Section 216.89.

216.160 Roads: Class II — General.

(a) Each person who conducts surface mining activities shall design, construct, or reconstruct, utilize, and maintain Class II Roads and restore the area to meet the requirements to Sections 216.161-216.166 and to control or minimize erosion and siltation, air and water pollution, and damage to public or private property.

(b) To the extent possible using the best technology currently available, Class II Roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to runoff outside the permit area in excess of limitations of state or federal law.

(c) All Class II Roads shall be removed and the land affected regraded and revegetated in accordance with the requirements of Section 216.166, unless

(1) Retention of the road is approved as part of the approved postmining land use or as being necessary to control erosion adequately.

(2) The necessary maintenance is assured.

(3) All drainage is controlled according to Section 216.163.

(d)(1) Class II Roads shall be designed and constructed in accordance with Sections 216.161-216.164, except to the extent that alternative specifications may only be used after approval by the Office upon a demonstration by a qualified professional engineer that they will result in performance equal to or better than that resulting from Class II Roads complying with Sections 216.161-216.166.

(2) The design shall incorporate consideration of the needs of the specific uses of the road in addition to travel efficiency. To the extent that the anticipated volume of traffic or weight or speed of vehicles to be used requires higher standards than those set forth in Sections 216.161-216.166, such higher standards shall be incorporated in the design, construction or reconstruction, and maintenance of Class II Roads.

216.161 Roads: Class II — Location.

(a) Class II Roads shall be located, insofar as possible, on ridges or on the most stable available slopes to minimize erosion.

(b) No part of any Class II Road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Office.

(c) Stream fords are prohibited unless they are specifically approved by the Office as temporary routes during periods of construction. The fords shall not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using bridges, culverts, or other structures, designed, constructed, and maintained to meet the requirements of Section 216.163.

(d) Class II Roads shall be located to minimize downstream sedimentation and flooding.

216.162 Roads: Class II — Design and construction. Class II Roads shall be designed and constructed or reconstructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance:

(a) Vertical alignment. A continuous grade with excessive cuts or embankments shall be avoided. Changes of grade shall be made to conform as closely as possible to the existing terrain, and maximum road grades shall be as follows:

(1) The overall grade shall not exceed 1v:10h (ten percent).

(2) The pitch grade shall not exceed 1v:6.5h (fifteen percent) for any consecutive one thousand feet.

(3) The pitch grade exceeding fifteen percent shall not be longer than three hundred feet within any consecutive one thousand feet of Class II Roads.

(b) Horizontal alignment. Class II Roads shall have horizontal alignment as consistent with the existing natural topography as possible, and shall provide the alignment required for the performance standards of Sections 216.160-216.166. The alignment shall be determined in accordance with the anticipated volume of traffic and weight and speed of vehicles to be used. Horizontal and vertical alignment shall be coordinated to ensure that one will not adversely affect the other and to ensure that the road will not cause environmental damage.

(c) Road cuts. Cut slopes shall not be steeper than specifically authorized by the Office, which shall not authorize slopes steeper than 1v:1.5h in unconsolidated materials or 1v:0.25h in rock, except that steeper slopes may be specifically authorized by the Office if geotechnical analysis demonstrates that a minimum safety factor of 1.5 can be maintained.

(1) Topsoil or other materials suitable under Section 216.22 shall be placed on all cut slopes of 1v:1.5h or flatter to aid in establishing vegetation and to minimize erosion. Topsoil depth shall be adequate to support vegetation necessary to minimize erosion.

(2) Temporary erosion control measures shall be implemented during construction to minimize sedimentation and erosion until permanent control measures can be established.

(d) Road embankments. Embankment sections shall be constructed in accordance with the following provisions:

(1) All vegetative material and topsoil shall be removed from the embankment foundation to increase stability, and no vegetative material or topsoil shall be placed beneath or in any Class II Road embankment.

(2) Where an embankment is to be placed on side slopes exceeding 1v:3h (thirty-three precent), the existing ground shall be plowed, stepped, or if in rock, keyed in a manner

which increases the stability of the fill. The keyway shall be minimum of ten feet in width and shall begin at the toe of fill. No material shall be placed below the toe or be allowed to slide below the toe. For slopes of less than 1v:3h (thirty-three percent), the slopes shall be scarified to ensure bonding of the embankment and natural material.

(3) Material containing by volume less than twenty-five percent of rock larger than six inches in greatest dimension shall be spread in successive uniform layers not exceeding twelve inches in thickness before compaction.

(4) Where the material for an embankment consists of large-size rock, broken stone, or gragmented material that makes placing in 12-inch layers impossible under paragraph (d)(3) of this Section, the embankment shall be constructed in uniform layers not exceeding in thickness the approximate average size of the rock used, but the layers shall not exceed thirty-six inches in thickness. Rock shall not be dumped in final position, but shall be distributed by blading or dozing in a manner that will ensure proper placement in the embankment, so that voids, pockets, and bridging will be reduced to a minimum. The final layer of the embankment shall meet the requirements of paragraph (d)(3) of this Section.

(5) Each layer of the embankment shall be completed, leveled, and compacted before the succeeding layer is placed. Embankment material shall be leveled as placed and kept smooth. The successive layers shall be compacted evenly by routing the hauling and leveling equipment over the entire width of the embankment. This procedure shall be continued until no visible horizontal movement of the embankment material is apparent.

(6) Compaction greater than that specified in paragraph (d)(5) of this Section shall be performed to the extent necessary to ensure stability.

(7) Material shall be placed in an embankment under moisture content conditions which will permit compaction and ensure proper soil cohesion.

(8) Embankment slopes shall not be steeper than 1v:1.5h, except that if the embankment material is a minimum of eighty-five percent rock, slopes shall not be steeper than 1v:1.35h if it has been demonstrated to the Office that embankment stability will result. Where rock embankments are constructed, they shall meet the requirements of paragraph (d)(4) of this Section.

(9) The minimum safety factor for all embankments shall be 1.25, or such higher factor as the Office may specify.

(10) The road surface shall be sloped sufficiently to prevent ponding of water on the surface.

(11) All material used in embankments shall be suitable for use under paragraphs (d)(1)-(8) of this Section. The material shall be reasonably free of organic material, coal or coal blossom, frozen materials, wet or peat material or natural soils containing organic matter, or any other material considered unsuitable for use in embankment construction by the Office.

(12) Excess or unsuitable material from excavations, as defined in paragraph (d)(11) of this Section, shall be disposed of in accordance with Section 216.71. Acid and toxic-forming material shall be disposed of in accordance with Sections 216.48, 216.81, and 216.103.

(13) Topsoil or other material suitable under Section 216.22 shall be placed on all embankment slopes of 1v:1.5h or flatter, to aid in establishing vegetation to minimize erosion. Topsoil material depth shall be adequate to support vegetation and to minimize erosion.

(14) Temporary erosion control measures shall be incorporated during construction to control sedimentation and minimize erosion until permanent control measures can be established.

(e) Topsoil removal. Before initiation of construction or reconstruction of a Class II Road, topsoil and other materials, as determined under Section 216.22, shall be removed from the design roadbed, shoulders, and surfaces where associated structures will be placed and shall be stored in accordance with Section 216.23.

216.163 Roads: Class II — Drainage.

(a) General.

(1) Each Class II Road shall be designed, constructed or reconstructed and maintained to have adequate drainage, using structures such as ditches in wet areas, cross drains in natural drainageways, surface dips, and stream crossings. The water control system shall be designed to safely pass the peak runoff from a ten-year, twenty-four-hour precipitation event or a greater event if required by the Office.

(2) Sediment control shall comply with Sections 216.42 and 216.45.

(b) Ditches and alternative measures for roadbed erosion control. Where required to minimize erosion on the roadbed, ditches shall be designed and constructed in accordance with Section 216.153(b). In wet areas or where there is free water, such ditch sections shall be required. For every segment of a Class II Road without drainage ditches which comply with Section 216.153(b), drainage shall be provided by surface dips. These drainage dips shall be constructed as undulations in the roadway of sufficient height from the hydraulic bottom to the top of the dip to prevent water from running down the surface of the road. Insloped dips shall discharge into a culvert or drop inlet. Outsloped dips shall be rock surfaced to prevent erosion. Dip spacing shall be sufficient to minimize erosion of the road surface.

(c) Culverts and bridges.

(1)(i) Culverts with an end area of thirty-five square feet or less shall be designed to safely pass the ten-year, twenty-four-hour precipitation event without a head of water at the entrance. Culverts with an end area of greater than thirty-five square feet and bridges with spans of thirty feet or less, shall be designed to safely pass the twenty-year, twenty-four-hour precipitation event. Bridges with spans of more than thirty feet shall be designed to safely pass the one hundred-year, twenty-four-hour precipitation event or larger event as specified by the Office.

(ii) Drainage pipes and culverts shall be constructed to avoid plugging or collapse, and erosion at inlets and outlets.

(iii) Culverts shall be covered by compacted fill to a minimum depth of one foot.

(iv) Culverts shall be designed, constructed, and maintained to sustain the vertical soil pressure, the passive resistance of the road foundation, and the weight of vehicles to be used.

(2) Culverts or dips for road surface drainage only, shall be constructed in accordance with the following:

(i) Unless otherwise authorized or required under paragraphs (ii) and (iii) of this Section, culverts and dips shall be spaced as follows:

(A) Spacing shall not exceed one thousand feet on grades of zero to three percent.

(B) Spacing shall not exceed six hundred feet on grades of three to six percent.

(C) Spacing shall not exceed four hundred feet on grades of six to ten percent.

(D) Spacing shall not exceed two hundred feet on grades of ten percent or greater.

(ii) Surface dips or culverts at closer intervals than the maximum indicated in paragraph (c)(2)(i) of this Section shall be installed if required by the Office as appropriate for the erosive properties of the soil or to accommodate flow from small intersecting drainages.

(iii) Surface dips or culverts may be constructed at greater intervals than the maximum indicated in paragraph (c)(2)(i) of this Section if authorized by the Office upon a

finding that greater spacing will not increase erosion.

(iv) Culverts and the bottoms of drainage dips shall cross the road at not less than a thirty degree angle downgrade.

(v) A culvert may be designed to carry less than the peak runoff from a ten-year, twenty-four-hour precipitation event if the ditch will not overtop and will remain stable.

(vi) The inlet end of all culverts shall be protected by a rock headwell or other material approved by the Office as adequate protection against erosion of the headwell. The water shall be discharged below the toe of the fill through conduits or in riprapped channels and shall not be discharged onto the fill.

(d) Natural drainages. Natural channel drainageways shall not be altered or relocated for road construction or reconstruction without the prior approval of the Office in accordance with Sections 216.43 and 216.44. The Office may approve alternations and relocations only if

(1) The natural channel drainage is not blocked.

(2) No significant degredation occurs to the hydrologic balance.

(3) There is no adverse impact on adjoining landowners.

(e) Stream crossings. Drainage structures are required for stream channel crossings. Drainage structures shall not affect the normal flow or gradient of the stream or adversely affect fish migration or aquatic habitat or related environmental values.

216.164 Roads: Class II — Surfacing.

(a) Class II roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the Office as sufficiently durable for the anticipated volume of traffic and weight and speed of vehicles to be used.

(b) Acid- or toxic-forming substances shall not be used in road surfacing.

(c) Vegetation shall not be cleared for more than the width necessary for road and associated ditch construction to serve traffic needs and for utilities.

216.165 Roads: Class II — Maintenance.

(a) Class II Roads shall be maintained in such a manner that the required or approved design criteria are met throughout the life of the facility including surface and shoulders, parking, side areas, approach structures, erosion control devices, and such traffic control devices as are necessary for safe and efficient utilization.

(b) Class II Road maintenance shall include basic custodial care as required to protect the road investment and to prevent damage to adjacent resources. This includes maintenance to control erosion, repair of structures and drainage systems, removal of rocks and debris, replacement of surface and restoration of the road prism.

216.166 Roads: Class II — Restoration.

(a) Unless the Office approves retention of a Class II Road as suitable for the approved postmining land use, immediately after the road is no longer needed for operations, reclamation, or monitoring

(1) The road shall be closed to vehicular traffic.

(2) The natural drainage patterns shall be restored.

(3) All bridges and culverts shall be restored.

(4) Roadbeds shall be ripped, plowed, and scarified.

(5) Fill slopes shall be rounded or reduced and shaped to conform the site to adjacent terrain and to meet natural drainage restoration standards.

(6) Cut slopes shall be reshaped to blend with the natural contour.

(7) Cross drains, dikes, and water bars shall be constructed to minimize erosion.

(8) Terraces shall be constructed as necessary to prevent excessive erosion and to provide long-term stability in cut-and-fill slopes.

(9) Road surfaces shall be covered with topsoil in accordance with Section 216.24(b) and revegetated in accordance with Sections 216.111-216.116.

(b) Unless otherwise authorized by the Office, all road surfacing materials shall be removed, hauled, or conveyed and disposed of under Section 216.80.

216.170 Roads: Class III — General.

(a) Each person who conducts surface mining activities shall design, construct or reconstruct, utilize, and maintain Class III Roads and restore the area to meet the requirements of Sections 216.171-216.176 and to control to minimize erosion and siltation, air and water pollution, and damage to public or private property.

(b) To the extent possible using the best technology currently available, Class III Roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law.

(c) All Class III Roads shall be completely removed and the land affected regraded to the approximate original contour and revegetated in accordance with the requirements of Section 216.176 except where Section 216.272(g) shall apply.

(d) To the extent that the anticipated volume or weight or speed of vehicles to be used requires higher standards than those set forth in Sections 216.171-216.175, such higher standards shall be incorporated in the design, construction, and reconstruction or maintenance of Class III Roads.

216.171 Roads: Class III — Location

(a) Class III Roads shall be located on ridges or on the most suitable available slopes to minimize erosion.

(b) No part of any Class III Road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Office.

(c) Stream fords are prohibited unless they are approved by the Office as temporary routes across ephemeral or intermittent streams that will not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using temporary bridges, culverts, or other structures designed, constructed, and maintained to meet the requirements of Section 216.173.

(d) Class III Roads shall be located to minimize downstream sedimentation and flooding.

(e) Not later than the date a permit application is submitted to the Office for surface mining activities for which a Class III Road is proposed, the location of the proposed road shall be clearly marked in the field by flags or stakes to enable the Office to perform onsite review.

(f) Class III Roads shall not be located in wet, steep, or unstable areas where complete restoration under Section 216.176 cannot be accomplished.

(g) A Class III Road may be constructed in the same alignment as a Class I or Class II Road that is to be constructed on the same location at a later date. This may be permitted if the requirements of the location of the Class I or Class II Road are met, and the Construction begins within six months from the time the Class III Road is constructed.

216.172 Roads: Class III — Design and construction. Field-design methods shall be utilized for Class III Roads.

(a) Vertical alignment. Except where lesser grades are necessary to control sitespecific conditions, maximum road grades shall be as follows:

(1) The overall grade shall not exceed 1v:10h (ten percent)

(2) The pitch grade shall not exceed 1v:5h (twenty percent).

(3) There shall not be more than one thousand consecutive feet of maximum pitch grade.

(b) Horizontal alignment. Class III Roads may meander so as to avoid larger growths of vegetation and other natural obstruc-

tions.

(c) Road cuts. Sidecast construction may be used.

(d) Road embankments. Compaction on embankments shall be required only to the extent necessary to control erosion and maintain the road.

(e) Topsoil removal. Topsoil shall be removed and stockpiled only where excavation would require replacement of material and redistribution of topsoil for proper revegetation.

216.173 Roads: Class III — Drainage.

(a) General.

(1) Class III Road drainage shall consist of temporary culverts in flowing streams, wet areas, and in ephemeral channels as necessary to protect the facility during its life and to minimize disturbance of the hydrologic balance.

(2) Sediment control shall comply with Sections 216.42 and 216.45.

(b) Culverts and bridges. Temporary culverts shall be installed for all flowing drainages and stream crossings. Temporary culverts and bridges shall be sized to safely pass the one-year, six-hour precipitation event.

(c) Natural drainage. Natural channel drainageways shall not be altered or relocated for the purposes of Class III Road construction.

(d) Stream crossings. Temporary drainage structures are required for crossing permanent streams. Drainage structures shall not affect the normal flow or gradient of the stream, adversely affect fish migration and aquatic habitat or related environmental values.

216.174 Roads: Class III — Surfacing.

(a) Class III Road surfaces shall be adequate for the use of the road.

(b) Acid or toxic-forming substances shall not be used in road surfacing.

(c) Vegetation shall not be cleared for more than the width necessary to serve traffic needs and for utilities.

216.175 Roads: Class III — Maintenance.

(a) Class III Road maintenance shall be sufficient to ensure minimization of erosion for the life of the road.

(b) Class III Roads shall not be used if climatic conditions are such that usage may cause degradation of water quality.

216.176 Roads: Class III — Restoration. Immediately after a Class III Road is no longer needed for operations, reclamation, or monitoring

(a) The road shall be closed to vehicular traffic.

(b) The natural drainage patterns shall be restored.

(c) All bridges and culverts shall be removed.

(d) Roadbeds shall be ripped, plowed, and scarified.

(e) Fill slopes shall be rounded or reduced and shaped to conform the side to adjust terrain and meet natural-drainage restoration standards.

(f) Cut slopes shall be reshaped to blend with the natural contour.

(g) Cross drains, dikes, and water bars shall be constructed to control erosion.

(h) Road surfaces from which topsoil has been removed shall be covered with topsoil in accordance with Section 216.24(b), and the surface shall be revegetated in accordance with Sections 216.111-216.116.

216.180 Other transportation facilities. Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transportation facilities shall be designed, constructed or reconstructed, and maintained and the area restored, to

(a) Prevent to the extent possible, using the best technology currently available

(1) Damage to fish, wildlife, and related environmental values.

(2) Additional contributions of suspended solids to streamflow of runoff outside the permit area in excess of limitations of State or Federal law.

(b) Control and minimize diminution or degradation of water quality and quantity.

(c) Control and minimize erosion and siltation.

(d) Control and minimize air pollution.

(e) Prevent damage to public or private property.

216.81 Support facilities and utility installations.

(a) Support facilities required for, or used incidentally to, the operation of the mine, including, but not limited to, mine buildings, coal loading facilities at or near the minesite, coal storeage facilities, equipment-storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops, and other buildings, shall be designed, constructed or reconstructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property. Support facilities shall be designed, constructed or reconstructed, maintained, and used in a manner which prevents, to the extent possible using the best technology currently available.

(1) Damage to fish, wildlife, and related environmental values.

(2) Additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of state or federal law.

(b) All surface mining activities shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the Office.

Part 223 — Special Permanent Program Performance Standards — Operations on Prime Farmland

223.11 Prime farmland: Special requirements. Surface coal mining and reclamation operations conducted on prime farmland shall meet the following requirements:

(a) A permit shall be obtained for those operations under Section 185.17.

(b) Soil materials to be used in the reconstruction of the prime farmland soil shall be removed before drilling, blasting, or mining, in accordance with Section 223.12 and in a manner that prevents mixing or contaminating these materials with undesirable material. Where removal of soil materials results in erosion that may cause air and water pollution, the Office shall specify methods to control erosion or exposed overburden.

(c) Revegetation success on prime farmlands shall be measured upon the basis of a comparison of actual crop production from the disturbed area, compared to the predetermined target level of crop production approved by the Office in the permit in accordance with Section 185.17 (d)(3).

223.12 Prime farmland: Soil removal.

(a) Surface coal mining and reclamation operations on prime farmland shall be conducted to

(1) Separately remove the entire A horizon or other suitable soil materials which will create a final soil having an equal or greater productive capacity than that which existed prior to mining.

(2) Separately remove the B horizon of the soil, a combination of B horizon and underlying C horizon, or other suitable soil material that will create a reconstructed soil of equal or greater productive capacity than that which existed before mining.

(3) Separately remove the underlying C horizons, other strata, or a combination of horizons or other strata, to be used instead of the B horizon. When replaced, these combinations shall be equal to, or more favorable for plant growth than, the B horizon.

(b) The minimum depth of soil and soil material to be removed for use in reconstruction of prime farmland soils shall be

sufficient to meet the soil replacement requirements of Section 223.14(a).

223.13 Prime farmland: Soil stockpiling. If not utilized immediately, the A horizon or other suitable soil materials specified in Section 223.12(a)(1) and the B horizon or other suitable soil materials specified in Sections 223.12(a)(2) and 223.12(a)(3) shall be stored separately from each other and from spoil. These stockpiles shall be placed within the permit area where they are not disturbed or exposed to execessive water or wind erosion before the stockpiled horizons can be redistributed. Stockpiles in place for more than thirty days shall meet the requirements of Section 216.23.

223.14 Prime farmland: Soil replacement. Surface coal mining and reclamation operations on prime farmland shall be conducted according to the following:

(a) The minimum depth of soil and soil material to be reconstructed for prime farmland shall be forty-eight inches, or a depth equal to the depth of a subsurface horizon in the natural soil that inhibits root penetration, whichever is shallower. The Office shall specify a depth greater than forty-eight inches, wherever necessary to restore productive capacity due to uniquely favorable soil horizons at greater depths. Soil horizons shall be considered as inhibiting root penetration if their densities, chemical properties, or water supply capacities restrict or prevent penetration by roots of plants common to the vicinity of the permit area and have little or no beneficial effect on soil productive capacity.

(b) Replace soil material only on land which has been first returned to final grade and scarified according to Sections 216.101-216.105 or 217.101-217.105 unless site-specific evidence is provided and approved by the Office showing that scarification will not enhance the capability of the reconstructed soil to achieve equivalent or higher levels of yield.

(c) Replace the soil horizons or other suitable soil material in a manner that avoids excessive compaction. Compaction shall be considered excessive if, on more than ten percent of the replacement area, any layer of reconstructed soil has a moist bulk density of 0.1 gram per cubic centimeter more than the values stated in the approved permit application under Section 185.171(b)(3) for the equivalent layer of the undisturbed soil.

(d) Replace the B horizon or other suitable material specified in Section 223.12(a)(2) and (a)(3) to the thickness needed to meet the requirements of paragraph (a) of this Section.

(e) Replace the A horizon or other suitable soil materials specified in Section 223.12(a)(1) as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original soil, as determined in Section 185.17(b)(i)(ii), and be replaced in a manner that protects the surface layer from wind and water erosion before it is seeded or planted.

(f) Apply nutrients and soil amendments as needed to quickly establish vegetative growth.

223.15 Prime farmland: Revegetation. Each person who conducts surface coal mining and reclamation operations on prime farmland shall meet the following revegetation requirements during reclamation:

(a) Following soil replacement, that person shall establish a vegetative cover capable of stabilizing the soil surface with respect to erosion. All vegetation shall be in compliance with the plan approved by the Office under Section 185.17 and carried out in a manner that encourages prompt vegetative cover and recovery of productive capacity. The timing and mulching provisions of Sections 216.113-216.114 or 217.113-217.114 shall be met.

(b) Within a time period specified in the permit, but not to exceed ten years after completion of backfilling and rough grading, any portion of the permit area which is prime farmland must be used for crops commonly grown, such as corn, soybeans, cotton, grain, hay, sorghum, wheat, oats, barley, or other crops on surrounding prime farmland. The crops may be grown in rotation with hay or pasture crops as defined for cropland. The Office may approve a crop use of perennial plants for hay, where this is a common long-term use of prime farmland soils in the surrounding area. The level of management shall be equivalent to that on which the target yields are based.

(c) Measurement of success in prime farmland revegetation will be determined based upon the techniques approved in the permit by the Office under Section 185.17. As a minimum, the following standards shall be met:

(1) Average annual crop production shall be determined based upon a minimum of three years data. Crop production shall be measured for the three years immediately prior to release of bond according to Part 207.

(2) Adjustment for weather-induced variability in the annual mean crop production may be permitted by the Office.

(3) Revegetation on prime farmland shall be considered a success when the adjusted three year average annual crop production is equivalent to, or higher than, the predetermined target level of crop production specified in the permit in accordance with Section 185.17(d)(3).

Part 226 — Special Permanent Program Performance Standards — Operations on Steep Slopes

226.11 Applicability.

(a) Any surface coal mining and reclamation operations on steep slopes shall meet the requirements of this Part.

(b) The standards of this Part do not apply to mining conducted on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area.

226.12 Steep slopes: Performance standards. Surface coal mining and reclamation operations subject to this Part shall comply with requirements of Subchapter G and the following, except to the extent a varriance is approved under Section 226.15:

(a)(1) The person engaged in surface coal mining and reclamation operations shall prevent the following materials from being placed or allowed to remain on the downslope: spoil; waste materials, including waste mineral matter; debris, including that from clearing and grubbing of haul road construction; and abandoned or disabled equipment.

(2) Nothing in this subsection shall prohibit the placement of material in road embankments located on the downslope, so long as the material used and embankment design comply with the requirements of Sections 216.150-216.180 and the material is moved and placed in a controlled manner.

(b) The highwall shall be completely covered with compacted spoil and the disturbed area graded to comply with the provisions of Sections 216.101-216.106, including, but not limited to, the return of the site to the approximate original contour. The person who conducts the surface coal mining and reclamation operation must demonstrate to the Office, using standard geotechnical analysis, that the minimum static factor of safety for the stability of all portions of the reclaimed land is at least 1.3.

(c) Land above the highwall shall not be disturbed, unless the Office finds that the disturbance facilitates compliance with the requirements of this Part.

(d) Material in excess of that required by the grading and backfilling provisions of paragraph (b) of this Section shall be disposed of in accordance with the requirements of Sections 216.71-216.74.

(e) Woody materials shall not be buried in the backfilled area unless the Office determines that the proposed method for placing woody material beneath the highwall will not deteriorate the stable condition of the backfilled area as required in Section 226.12(b). Woody materials may be chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and approved by the Office.

(f) Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the Office as stable and not subject to erosion.

226.15 Steep slopes: Limited variances. Persons may be granted variances from the approximate original contour requirements of Section 226.12(b) for steep slope surface coal mining and reclamation operations, if the following standards are met and a permit incorporating the variance is approved under Section 185.16:

(a) The highwall shall be completely backfilled with spoil material, in a manner which results in a static factor of safety of at least 1.3 using standard geotechnical analyses.

(b) The watershed control of the area within which the mining occurs shall be improved by reducing the peak flow from precipitation or thaw and reducing the total suspended solids or other pollutants in the surface water discharge during precipitation or thaw. The total volume of flow during every season of the year shall not vary in a way that adversely affects the ecology of any surface water or any existing or planned public or private use of surface or ground water.

(c) Land above the highwall may be disturbed only to the extent that the Office deems appropriate and approves as necessary to facilitate compliance with the provisions of this Part and if the Office finds that the disturbance is necessary to

(1) Blend the solid highwall and the backfilled material;

(2) Control surface runoff; or

(3) Provide access to the area above the highwall.

(d) The landowner of the permit area has requested, in writing, as part of the permit application under Section 185.16, that the variance be granted.

(e) The operations are conducted in full compliance with a permit issued in accordance with Section 185.16.

(f) Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the Act and these regulations shall be placed in accordance with Sections 216.71-216.74 and Sections 216.101-102.

Part 227 — Special Permanent Program Performance Standards — Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine

227.11 Applicability. Each person who conducts surface coal mining and reclamation operations, which includes the operation of a coal processing plant or support facility which is not located within the permit area for a specific mine, shall obtain a permit in accordance with Section 185.21 to conduct those operations and comply with Section 227.12.

227.12 Coal processing plants: Performance standards. Construction, operation, maintenance, modification, reclamation, and removal activities at operations covered by this Part shall comply with the following:

(a) Signs and markers for the coal processing plant, coal processing waste disposal area, and water treatment facilities shall comply with Section 216.11.

(b) Roads, transport, and associated structures shall be constructed, maintained, and reclaimed in accordance with Sections 216.150-216.181.

(c) Any stream or channel realignment shall comply with Section 216.44.

(d) If required by the Office, any disturbed area related to the coal processing plant or associated facilities shall have sediment control structures, in compliance with Sections 216.45 and 216.46, and all discharges from these areas shall meet the requirements of Sections 216.41-216.42 and any other applicable state or federal law.

(e) Permanent impoundments associated with coal processing plants shall meet the requirements of Sections 216.49 and 216.56. Dams constructed of or impounding coal processing waste shall comply with Sections 216.91-216.93.

(f) Use of water wells shall comply with Section 216.53 and water rights shall be protected in accordance with Section 216.54.

(g) Disposal of coal processing waste, solid waste, and any excavated material shall comply with Sections 216.81-216.88, 216.89, and 216.71-216.74, respectively.

(h) Discharge structures for diversions and sediment control structures shall comply with Section 216.47.

(i) Air pollution control measures associated with fugitive dust emissions shall comply with Section 216.95.

(j) Fish, wildlife, and related environmental values shall be protected in accordance with Section 216.97.

(k) Slide areas and other surface areas shall comply with Section 216.99.

(l) Reclamation shall include proper topsoil handling procedures, revegetation, and abandonment, in accordance with Sections 216.56, 216.100-216.106, 216.111-216.117, and 216.131-216.133.

(m) Conveyors, buildings, storage bins or stockpiles, water treatment facilities, water storage facilities, and any structure or system related to the coal processing plant shall comply with Section 216.

(n) Any coal processing plant or associate structures located on prime farmland shall meet the requirements of Section 223.

Part 242 — Inspections

242.11 Inspections.

(a) Authorized representatives of the Commissioner may conduct inspections of surface coal mining and reclamation operations as necessary to enforce the provisions of the Act, these regulations, and any permit; and to determine whether any notice of violation or cessation order issued during an inspection authorized under this Section has been complied with.

(b) Basis for inspections.

(1) An authorized representative of the Commissioner shall immediately conduct an inspection to enforce any requirement of the Act, these regulations, or any condition of a permit or an exploration or development approval imposed under the Act or these regulations; When the authorized representative has reason to believe, on the basis of information available to him or her (other than information resulting from a previous inspection), that there exists a violation of the Act, these regulations, or any condition of a permit or an exploration or development operations approval, or that there exists any condition of a permit or an exploration or development operations approval, or that there exists any condition, practice or violation which creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause a significant, imminent environmental harm to land, air or water resources.

(2) An authorized representative shall have reason to believe that a violation, condition or practice exists if the facts alleged by the informant would, if true, constitute a condition, practice or violation referred to in paragraph (i)(i).

(c) The Office, shall conduct inspections of all coal exploration, development operations, and surface coal mining and reclamation operations under its jurisdiction. These inspections shall average at least

(1) One partial inspection per month of each surface coal mining and reclamation operation. A partial inspection is an onsite review of a person's compliance with some of the permit conditions and requirements imposed under these regulations, during which the inspector collects evidence with respect to every violation of any such condition or requirement observed.

(2) One complete inspection per calendar quarter of each surface coal mining and reclamation operation. A complete inspection is an onsite review of a person's compliance with all permit conditions and requirements imposed under these regulations within the entire area disturbed or affected by surface coal mining and reclamation operations, including the collection of evidence with respect to every violation of any such condition or requirement.

(3) Periodic inspections of all coal exploration or development operations required.to comply in whole or part with the Act, or these regulations, including the collection of evidence with respect to every violation of any condition of the exploration or development operations approval, or any requirement of the Act or these regulations.

(d) The inspections required under paragraph (c) shall

(1) Be carried out on an irregular basis so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays.

(2) Occur without prior notice to the person being inspected or any of his agents or employees, except for necessary onsite meetings.

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of the applicable program, any condition of an exploration or development operations approval or permit imposed under the Act or these regulations.

242.12 Citizens' requests for inspections.

(a) A citizen may request an inspection under Section 242.11(b), by furnishing to an authorized representative of the Commissioner a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation, condition, or practice referred to in Section 242,11(b)(l)(i) exists and setting forth a phone number and address where the citizen can be contacted.

(b) The identity of any person supplying information to the Office relating to a possible violation or imminent danger or harm shall remain confidential with the Office, if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under other state law.

(c) If an inspection is conducted as a result of information provided to the Office by a citizen as described in paragraph (a) of this Section, the citizen shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the Commissioner during the inspection. Such person has a right of entry to, upon and through the coal exploration, development or surface coal mining and reclamation operation about which he or she supplied information, but only if he or she is in the presence of and is under the control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(d) Within ten days of the inspection or, if there is no inspection, within fifteen days of receipt of the citizen's written statement, the Office shall send the citizen the following:

(1) If an inspection was made, a description of the enforcement action taken, which may consist of copies of the inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation of why no enforcement action was taken.

(2) If no inspection was conducted, an explanation of the reason why.

(3) An explanation of the citizen's right, if any, to informal review of the action or inaction of the Office under Section 242.15.

(e) The Office shall give copies of all materials in paragraphs (d)(1) and (2) of this Section within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the citizen shall be removed unless disclosure of the citizen's identity is permitted under paragraph (b) of this Section.

242.13 Right of entry.

(a) Each authorized representative of the Commissioner conducting an inspection under Section 242.11

(1) Shall have a right of entry to, upon, and through any coal exploration, development or surface coal mining and reclamation operation, without advance notice or a search warrant, upon presentation of appropriate credentials.

(2) May, at reasonable times and without delay, have access to and copy any records, and inspect any monitoring equipment or method of operation, required under the Act, these regulations or any condition of an exploration or development operations approval or permit imposed under the Act or these regulations.

(b) No search warrant shall be required with respect to any activity under paragraph (a) except that a search warrant may be required for entry into a building.

242.14 Review of adequacy and completeness of inspection. Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration or development operation may notify the Commissioner in writing of any alleged failure on the part of the Office to make adequate and complete or periodic inspections as provided in Section 242.11(b)(1)(i), (c) and (d). The notification shall include sufficient information to create a reasonable belief that Section 242.11 (b)(1)(i), (c) and (d) are not being complied with and to demonstrate that the person is or may be adversely affected. The Commissioner shall within fifteen days of receipt of the notification determine whether Section 242.11(b)(1)(i), (c) and (d) are being complied with, and if not, shall immediately order an inspection to remedy the noncompliance. The Commissioner shall also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

242.15 Review of decision not to inspect or enforce.

(a) Any person who is or may be adversely affected by a coal exploration, development or surface coal mining and reclamation operation may ask the Commissioner to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for inspection under Section 242.12. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

(b) The Commissioner shall conduct the review and inform the person, in writing, of the results of the review within thirty days of his or her receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the citizen shall not be disclosed unless confidentiality has been waived or disclosure is required under applicable State law.

(c) Informal review under this Section shall not affect any right to formal review under Section 925 of the Act or to a citizen's suit under Section 920 of the Act.

242.16 Availability of records.

(a) Copies of all records, reports, inspection materials, or information obtained by the Office under the Act or these regulations, shall be made immediately available to the public in the area of mining so that they are conveniently available to residents of that area, except that the Office may refuse to make available

(1) Investigatory records compiled for law enforcement purposes.

(2) Information not required to be made available under Sections 176.2(c)(3), 176.17, 186.15 or 240.14(c).

Part 243 — Enforcement

243.11 Cessation orders.

(a)(1) An authorized representative of the Commissioner shall immediately order a cessation of surface coal mining and reclamation operations or of the relevant portion thereof, if he or she finds, on the basis of any inspection, any condition or practice, or any violation of the Act, these regulations, or any condition of an exploration or development operations approval or permit imposed under any such program, the Act, or these regulations, which

(i) Creates an imminent danger to the health or safety of the public; or

(ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(2) If the cessation ordered under paragraph (a)(1) of this Section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative shall impose affirmative obligations on the person to whom it is issued to abate the condition, practice, or violation. The order shall specify the time by which abatement shall be accomplished and may require, among other things, the use of existing or additional personnel and equipment.

(b)(1) An authorized representative of the Commissioner shall immediately order a cessation of coal exploration or development or surface coal mining and reclamation operations, or of the relevant portion thereof, when a notice of violation has been issued under Section 243.12(a) and the person to whom it was issued fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative.

(2) A cessation order issued under this paragraph shall require the person to whom it is issued to take all steps the authorized representative deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) A cessation order issued under paragraphs (a) or (b) of this Section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity

(1) the nature of the violation.

(2) The remedial action of affirmative obligation required, if any, including interim steps, if appropriate.

(3) The time established for abatement, if appropriate, including the time for meeting any interim steps.

(4) A reasonable description of the portion of the coal exploration or development or surface coal mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice or violation has been abated or until vacated, modified or terminated in writing by an authorized representative of the Commissioner.

(d) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(e) An authorized representative of the Commissioner may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(f) An authorized representative of the Commissioner shall terminate a cessation order, by written notice to the person to whom the order was issued, when he or she determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of the Office to assess civil penalties for those violations under Part 245.

243.12 Notice of violation.

(a) An authorized representative of the Commissioner shall issue a notice of violation if, on the basis of an inspection he or she finds a violation of the Act, these regulations, or any condition of a permit or an exploration approval imposed under such program, the Act, or these regulations which does not create an imminent danger or harm for which a cessation order must be issued under Section 243.11.

(b) A notice of violation issued under this Section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity

(1) The nature of the violation.

(2) The remedial action required, which may include interim steps.

(3) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

(c) An authorized representative of the Commission may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom it was issued. The total time for abatement under a notice of violation, including all extensions, shall not exceed ninety days from the date of issuance.

(d) If the person to whom the notice was issued fails to meet any time set for abatement or for accomplishment of an interim step, the authorized representative shall issue a cessation order under Section 243.11(b).

(e) An authorized representative of the Commissioner shall terminate a notice of violation by written notice to the person to whom it was issued, when he or she determines that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the Office to assess civil penalties for those violations under Part 245 (civil penalties).

243.13 Suspension or revocation of permits.

(a)(1) Except as provided in paragraph (b) of this Section, the Commissioner shall issue an order to a permittee requiring him or her to show cause why his permit and right to mine under the Act should not be suspended or revoked, if the Commissioner determines that a pattern of violations of any requirements of the Act, these regulations, or any permit condition required by the Act exists or has existed, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions. Willful violation means an act or omission which violates the Act, these regulations, or any permit condition required by the Act, the Chapter, or the applicable program, committed by a person who intends the result which actually occurs. Unwarranted failure to comply means the failure of the permittee to prevent the occurrence of any violation of the permit or any requirement of the Act, due to indifference, lact of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act, due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act, due to indifference, lack of diligence, or lack of reasonable care. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

(2) The Commissioner may determine that a pattern of violations exists or has existed, based on two or more inspections of the permit area within any twelve-month period, after considering the circumstances, including

(i) The number of violations, cited on more than one occasion, of the same or related requirements of the Act, these regulations or the permit.

(ii) The number of violations, cited on more than one

occasion, of different requirements of the Act, these regulations or the permit.

(iii) The extent to which the violations were isolated departures from lawful conduct.

(3) The Commissioner shall determine that a pattern of violations exists, if he or she finds that there were violations of the same or related requirements of that Act, these regulations or the permit during three or more inspections of the permit area within any twelve-month period.

(b) The Commissioner may decline to issue a show cause order, or may vacate an outstanding show cause order, if he or she finds, taking into account exceptional factors present in the particular case, it would be demonstrably unjust to issue or to fail to vacate the show cause order. The basis for this finding shall be fully explained and documented in the records of case.

(c) At the same time as the issuance of the order, the Commissioner shall

(1) If practicable, publish notice of the order, including a brief statement of the procedure for intervention in the proceeding, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations.

(2) Post the notice at the Conservation Office closest to the area of the surface coal mining and reclamation operations.

(d) If the permittee files an answer to the show cause order and requests a hearing, a public hearing may be provided. The Office shall give thirty days notice of the date, time, and place of the hearing to the Commissioner, the permittee, and any intervenor. Upon receipt of the notice, the Commissioner shall publish it, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations, and shall post it at the Conservation Office closest to those operations.

(e) Within sixty days after the hearing, the Office shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. If the Office revokes or suspends the permit and the permittee's right to mine under the Act, the permittee shall immediately cease surface coal mining operations on the permit area and shall

(1) If the permit and the right to mine under the Act are revoked, complete reclamation within the time specified in the order.

(2) If the permit and the right to mine under the Act are suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order.

243.14 Service of notices of violation and cessation orders.

(a) A notice of violation or cessation order shall be served on the person to whom it is directed or his or her designated agent promptly after issuance, as follows:

(1) By tendering a copy at the coal exploration, development, or surface coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal exploration, development, or surface coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph (a)(1) of this Section, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his or her designated agent. Service shall be complete upon tender of the notice or order or of the mailing and shall not be deemed incomplete because of refusal to accept.

(b) A show cause order may be served on the person to whom it is issued in either manner provided in paragraph (a)(2) of this Section.

(c) Designation by any person of an agent for service of notices and orders shall be made in writing to the Office.

(d) The Office may furnish copies to any person having an interest in the coal exploration, development, surface coal mining and reclamation operation, or the permit area, such as the owner of title, a corporate officer of the permittee or entity conducting coal exploration, or the bonding company.

243.15 Informal public hearing.

(a) Except as provided in paragraphs (b) and (c), a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within thirty days after it is served, unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the Office and the person to whom the notice or order was issued. The Conservation Office nearest to the minesite shall be deemed to be reasonably close to the minesite unless a closer location is requested and agreed to by the Office. Expiration of a notice or order shall not affect the Commissioner's right to assess civil penalties for the violations mentioned in the notice or order under Part 245 (civil penalties). For purposes of this Section, mining means extracting coal from the earth or coal waste piles and transporting it within or from the permit area.

(b) A notice of violation or cessation order shall not expire as provided in paragraph (a) of this Section, if the condition, practice or violation in question has been abated or if the informal public hearing has been waived.

(c) The Office shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to

(1) The person to whom the notice or order was issued.

(2) Any person who filed a report which led to the notice or order.

(d) The Office shall also post notice of the hearing at the Conservation Office closest to the mine site, and publish it, where practicable, in a newspaper of general circulation in the area of the mine.

(e) The Louisiana Administrative Procedures Act provisions regarding requirements for formal adjudicatory hearings shall not govern informal public hearings. An informal public hearing shall be conducted by a representative of the Office, who may accept oral or written arguments and any other relevant information from any person attending.

(f) Within five days after the close of the informal public hearing, the Office shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to

(1) The person to whom the notice or order was issued.

(2) Any person who filed a report which led to the notice or order.

(g) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under Sections 918(b), 921(a)(4), or 925, of the Act. At such formal review proceedings, no evidence as to statements made or evidence produced at an informal public hearing shall be introduced as evidence or to impeach a witness.

243.16 Formal review of citations.

(a) A person issued a notice of violation or cessation order under Sections 243.11 or 243.12, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for hearing, within thirty days after receiving notice of the action.

(b) The filing of an application for review and request for a hearing under this Section shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

243.17 Failure to give notice and lack of information. No notice

of violation, cessation order, show cause order, or order revoking or suspending a permit may be vacated because it is subsequently determined that the Office did not have information sufficient, under Sections 242.11(b)(1) and 242.11(b)(2), to justify an inspection.

243.18 Inability to comply.

(a) No cessation order or notice of violation issued under this Part may be vacated because of inability to comply.

(b) Inability to comply may not be considered in determining whether a pattern of violations exists.

(c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under Section 245 and of the duration of the suspension of a permit under Section 243.13(e).

243.19 Injunctive relief. The Office may request legal counsel or the Attorney General of the state to institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other order, in a State court of competent jurisdiction whenever the person to whom a notice of violation or order has been issued, either

(a) Violates or fails or refuses to comply with any order or decision of the Commissioner or an authorized representative of the Commissioner under the Act, or these regulations.

(b) Interferes with, hinders, or delays the Commissioner or an authorized representative of the Commissioner in carrying out the provisions of the Act or these regulations.

(c) Refuses to admit an authorized representative of the Commissioner to a mine.

(d) Refuses to permit inspection of a mine by an authorized representative of the Commissioner.

(e) Refuses to furnish any required information or report.

(f) Refuses to permit access to or copying of any required records.

(g) Refuses to permit inspection of monitoring equipment.

Part 245 — Civil Penalties

245.11 How assessments are made. The Office shall review each notice of violation and cessation order in accordance with the assessment procedures described in Sections 245.12, 245.13, 245.14, 245.15, and 245.16 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

245.12 When penalty will be assessed.

(a) The Office shall assess a penalty for each cessation order.

(b) The Office shall assess a penalty for each notice of violation, if the violation is assigned thirty-one points or more under the point system described in Section 245.13.

(c) The Office may assess a penalty for each notice of violation assigned thirty points or less under the point system described in Section 245.13. In determining wehther to assess a penalty, the Office shall consider the factors listed in Section 245.13(b).

245.13 Point system for penalties.

(a) The Office shall use the point system described in this Section to determine the amount of the penalty and, in the case of notices of violation, whether a mandatory penalty should be assessed as provided in Section 245.12(b).

(b) Points shall be assigned as follows

(1) History of previous violations. The Office shall assign up to thirty points based on the history of previous violations. One point shall be assigned for each past violation contained in a notice of violation. Five points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration, development, or surface coal mining operation. Points shall be assigned as follows:

(i) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one year.

(ii) No violation for which the notice or order has been vacated shall be counted.

(iii) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) Seriousness. The Office shall assign up to thirty points based on the seriousness of the violation, as follows:

(i) Probability of occurrence. The Office shall assign up to fifteen points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

Probability of occurrence	Points
None	0
Insignificant	1-4
Unlikely	5-9
Likely	10-14
Occurred	15

(ii) Extent of potential or actual damage. The Office shall assign up to fifteen points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

(A) If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration, development, or permit area, the Office shall assign zero to seven points, depending on the duration and extent of the damage or impact.

(B) If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration, development, or permit area, the Office shall assign eight to fifteen points, depending on the duration and extent of the damage or impact.

(iii) Alternative. In the case of violation of an administrative requirement, such as a requirement to keep records, the Office shall, in lieu of paragraphs (i) and (ii), assign up to fifteen points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) Negligence.

(i) The Office shall assign up to twenty-five points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order either through act or omission. Points shall be assessed as follows:

(A) A violation which occurs through no negligence shall be assigned no penalty points for negligence.

(B) A violation which is caused by negligence shall be assigned twelve points or less, depending on the degree of negligence.

(c) A violation which occurs through a greater degree of fault than negligence shall be assigned thirteen to twenty-five points, depending on the degree of fault.

(ii) In determining the degree of negligence involved in a violation and the number of points to be assigned, the following definitions apply.

(A) No negligence means an inadvertent violation which was unavoidable by the exercise of reasonable care.

(B) Negligence means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act or these regulations due to indifference, lack of diligence, or lack of reasona-

ble care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care.

(C) A greater degree of fault than negligence means reckless, knowing, or intentional conduct.

(iii) In calculating points to be assigned for negligence, the acts of all persons working on the coal exploration, development, or surface coal mining, and reclamation site shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage.

(4) Good faith in attempting to achieve compliance.

(i) The Office shall add points on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows:

Degree of good faith	Points
Rapid compliance	1 to 10
Normal compliance	0

(ii) The following definitions shall apply under paragraph (b)(4)(i) of this Section:

(A) Rapid compliance means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

(B) Normal compliance means the person to whom the notice or order was issued abated the violation within the time given for abatement.

(iii) If the consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.

245.14 Determination of amount of penalty.

The Office shall determine the amount of any civil penalty by converting the total number of points assigned under Section 245.13 to a dollar amount, according to the following schedule:

Points	Dollars	Points	Dollars
1	20	37	1,700
2	40	38	1,800
3	60	39	1,900
4	80	40	2,000
5	100	41	2,100
6	120	42	2,200
7	140	43	2,300
8	160	44	2,400
9	180	45	2,500
10	200	46	2,600
11	220	47	2,700
12	240	48	2,800
13	260	49	2,900
14	280	50	3,000
15	300	51	3,100
16	320	52	3,200
17	340	53	3,300
18	360	54	3,400
19	380	55	3,500
20	400	56	3,600
21	420	57	3,700
22	440	58	3,800
23	460	59	3,900
24	480	60	4,000
25	500	61	4,100
26	600	62	4,200
27	700	63	4,300
28	800	64	4,400
29	900	65	4,500
30	1,000	66	4,600
31	1,100	67	4,700
32	1,200	68	4,800
33	1,300	69	4,900
34	1,400	70 and above	5,000
35	1,500		
36	1,600		

245.15 Assessment of separate violations for each day.

(a) The Office may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the Office shall consider the factors listed in Section 245.13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which is assigned more than seventy points under Section 245.13(b), the Office shall assess a civil penalty for a minimum of two separate days.

(b) Whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order, a civil penalty of not less than seven hundred fifty dollars shall be assessed for each day during which such failure continues, except that, if the person to whom the notice or order was issued initiates review proceedings with respect to the violation, the abatement period shall be extended as follows:

(1) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under Section 925C of the Act, after a determination that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the Commissioner issues a final order with respect to the violation in question.

(2) If the person to whom the notice or order was issued initiates review proceedings under Section 926 of the Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to Section 926C of the Act, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court.

245.16 Waiver of use of formula to determine civil penalty.

(a) The Commissioner, upon his own initiative or upon written request received within fifteen days of issuance of a notice of violation or a cessation order, may waive the use of the formula contained in Section 245.13 to set the civil penalty, if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the Commissioner shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the Act, these regulations, or any condition of any permit or exploration approval. The basis for every waiver shall be fully explained and documented in the records of the case.

(b) If the Commissioner waives the use of the formula, he or she shall use the criteria set forth in Section 245.13(b) to determine the appropriate penalty. When the Commissioner has elected to waive the use of the formula, he or she shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

245.17 Procedures for assessment of civil penalties.

(a) Within fifteen days of service of a notice or order, the

person to whom it was issued may submit written information about the violation to the Office and to the inspector who issued the notice of violation or cessation order. The Office shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) The Office shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, within thirty days of the issuance of the notice or order. If the mail is tendered at the address of that person set forth in the sign required under Section 216.11, or at any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

(c) Unless a conference has been requested, the Office shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The Office shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in paragraph (b), within thirty days after the date the violation is abated.

245.18 Procedures for assessment conference.

(a) The Office shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within fifteen days from the date the proposed assessment or reassessment is mailed.

(b)(1) The Office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by the Louisiana Administrative Procedures Act regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within sixty days from the date of the issuance of the proposed assessment or the end of the abatement period, whichever is later.

(2) The Office shall post notice of the time and place of the conference at the Conservation Office closest to the mine at least five days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The conference officer shall consider all relevant information on the violation. Within thirty days after the conference is held, the conference officer shall either

(i) Settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer on behalf of the Office and by the person assessed.

(ii) Affirm, raise, lower, or vacate the penalty.

(4) An increase or reduction of a proposed civil penalty assessment of more than twenty-five percent and more than five hundred dollars shall not be final and binding on the Commissioner until approved by the conference officer's superior.

(c) The conference officer shall promptly serve the person assessed with a notice of his or her action in the manner provided in Section 245.17(b) and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

(d)

(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by the Office within thirty days after the date of signing, the Office may enforce the agreement or rescind it and proceed according to paragraph (b)(3)(ii) within thirty days from the date of the rescission.

(e) The conference officer may terminate the conference when he determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

(f) At formal review proceedings under Sections 918, 921(A)(4), and 925 of the Act, no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.

245.19 Request for hearing.

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Commissioner (to be held in escrow as provided in paragraph (b)) within thirty days from receipt of the proposed assessment or fifteen days from the date of service of the conference officer's action, whichever is later.

(b) The Commissioner shall transfer all funds submitted under paragraph (a) to the Office, which shall hold them in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in Section 245.20.

245.20 Final assessment and payment of penalty.

(a) If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in Section 245.19, the proposed assessment shall become a final order of the Commissioner and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the Commissioner, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to paragraph (c) of this Section, the escrow funds shall be transferred to the Office in payment of the penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this Part, the Office shall within thirty days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the rate of six percent.

(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the Office within fifteen days after the order is mailed to the person.

R. T. Sutton
Commissioner of Conservation

RULES

Department of Natural Resources
Office of Conservation
Nuclear Energy Division

These regulations shall take effect upon publication with the exception of Section E.201, which shall take effect on July 1, 1980, to allow time for all radiographer's assistants to be given training as radiographers. Until July 1, 1980, the requirements of Section E.201 of the April 20, 1977, revision of the Louisiana Radiation Regulations remain effective.

The complete text of the regulations adopted hereunder follows:

Part E
Radiation Safety Requirements for Industrial Radiographic Operations

Sec. E.1 Purpose. The regulations in this part establish radiation safety requirements for persons utilizing sources of radiation for industrial radiography. The requirements of this part are in addition to, and not in substitution for, applicable requirements of Parts A, B, C, D and J of these regulations.

Sec. E.2 Scope. The regulations in this part apply to all licensees or registrants who use sources of radiation for industrial radiography. Except for those regulations of this part clearly applicable only to sealed radioactive sources, both radiation machines and sealed radioactive sources are covered by this part.

Sec. E.3 Definitions. As used in this part, the following definitions apply:

(a) Enclosed radiography means industrial radiography conducted in an enclosed cabinet or room and includes cabinet radiography and shielded-room radiography.

(1) Cabinet radiography means industrial radiography conducted in an enclosure or cabinet so shielded that every location on the exterior meets the conditions specified in Sec. D.105 for an unrestricted area.

(i) Cabinet X-ray system means an X-ray system with the X-ray tube installed in an enclosure (hereinafter termed cabinet) which, independently of existing architectural structures except the floor on which it may be placed, is intended to contain at least that portion of a material being irradiated, provide radiation attenuation and exclude personnel from its interior during generation of X-radiation. Included are all X-ray systems designed primarily for the inspection of carry-on baggage at airline, railroad and bus terminals and in similar facilities. An X-ray tube used within a shielded part of a building, or X-ray equipment which may temporarily or occasionally incorporate portable shielding is not considered a cabinet X-ray system.

(ii) Certified cabinet X-ray system means a cabinet X-ray system which has been certified in accordance with 21 CFR 1010.2 as having been manufactured, assembled and maintained pursuant to the provisions of 21 CFR 1020.40.

(2) Shielded-room radiography means industrial radiography conducted in a room so shielded that every location on the exterior meets the conditions specified in Sec. D.105 for an unrestricted area.

(b) Industrial radiography means the examination of the macroscopic structure of materials by nondestructive methods utilizing sources of radiation.

(c) Instructor means any individual who has been authorized by the Division to provide instruction to radiographer trainees in accordance with Sec. E.201(a).

(d) Personal supervision means guidance and instruction provided to a radiographer trainee by an instructor who is physically present while using sources of radiation.

(e) Radiographer means any individual who performs industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of these regulations and all license or registration conditions.

(f) Radiographer trainee means any individual who, under the personal supervision of an instructor, uses sources of radiation, related handling tools or radiation survey instruments during the course of his instruction.

(g) Radiographic exposure device means any instrument containing a sealed source fastened or contained therein, in which the sealed source or shielding thereof may be moved, or otherwise changed, from a shielded to unshielded position for purposes of making a radiographic exposure.

(h) Shielded position means the location within the radiographic exposure device or storage container which, by manufacturer's design, is the proper location for storage of the sealed source.

(i) Storage container means a device in which one or more sealed sources are transported or stored.

(j) Temporary jobsite means any location where industrial radiography is performed other than an address authorized by specific license.

Sec. E.101 Limits on Levels of Radiation for Radiographic Exposure Devices and Storage Containers. Radiographic exposure devices measuring less than four inches (ten centimeters) from the sealed source storage position to any exterior surface of the device shall have no radiation level in excess of fifty milliroentgens per hour at six inches (fifteen centimeters) from any exterior surface of the device. Radiographic exposure devices measuring a minimum of four inches (ten centimeters) from the sealed source storage position to any exterior surface of the device and all storage containers for sealed sources or outer containers for radiographic exposure devices shall have no radiation level in excess of two hundred milliroentgens per hour at any exterior surface and ten milliroentgens per hour at one meter from any exterior surface. The radiation levels specified are with the sealed source in the shielded position.

Sec. E.102 Locking of Sources of Radiation.

(a) Each source of radiation shall be provided with a lock or lockable outer container designed to prevent unauthorized or accidental production of radiation or removal or exposure of a sealed source and shall be kept locked at all times except when under the direct surveillance of a radiographer or instructor or as may be otherwise authorized pursuant to Sec. E.301. Each storage container likewise shall be provided with a lock and shall be kept locked when containing sealed sources except when the container is under the direct surveillance of a radiographer or instructor.

(b) Radiographic exposure devices and storage containers, prior to being moved from one location to another and also prior to being secured at a given location, shall be locked and surveyed on all sides with an appropriate survey instrument to assure that the sealed source is in the shielded position.

(c) During radiographic operations the sealed source shall be secured in its shielded position by locking the exposure device or securing the remote control each time the sealed source is returned to its shielded position. A survey shall be performed to determine that the sealed source is in the shielded position pursuant to Sec. E.303(b).

Sec. E.103 Storage Precautions. Locked radiographic exposure devices, storage containers and radiation machines shall be physically secured to prevent tampering or removal by unauthorized personnel.

Sec. E.104 Radiation Survey Instruments.

(a) The licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments to make physical radiation surveys as required by this part and Sec. D.201 of these regulations. Instrumentation required by this section shall have a range such that two milliroentgens per hour through one Roentgen per hour can be measured.

(b) Each radiation survey instrument shall be calibrated

(1) At energies appropriate for use and at intervals not to exceed three months and after each instrument servicing.

(2) Such that accuracy with plus or minus twenty percent can be demonstrated.

(3) At a minimum of two widely separated points, other than zero, on each scale.

(c) Records of these calibrations shall be maintained for two years after the calibration date for inspection by the Division.

Sec. E.105 Leak Testing, Repair, Tagging, Opening, Modification and Replacement of Sealed Sources.

(a) The replacement of any sealed source fastened to, or contained in, a radiographic exposure device; and leak testing, repair, tagging, opening or any other modification of any sealed source, shall be performed only by persons specifically authorized to do so by the Division, the United States Nuclear Regulatory Commission or any other agreement state.

(b) Each sealed source shall be tested for leakage at intervals not to exceed six months. In the absence of a certificate from a transferor that a test has been made within six months period prior to the transfer, the sealed source shall not be put into use until tested.

(c) The leak test shall be capable of detecting the presence of 0.005 microcurie of removable contamination on the sealed source. An acceptable leak test for sealed sources in the possession of a radiography licensee would be to test at the nearest accessible point to the sealed source storage position, or other appropriate measuring point, by a procedure which has been approved pursuant to subparagraph C.26(e)(5). Records of leak test results shall be kept in units of microcuries and maintained for inspection by the Division for six months after the next required leak test is performed or until the sealed source is disposed of in accordance with Sec. D.301.

(d) Any test conducted pursuant to paragraphs E.105(b) and (c) which reveals the presence of 0.005 microcurie or more of removable radioactive material shall be considered evidence that the sealed source is leaking. The licensee shall immediately withdraw the equipment involved from use and shall cause it to be decontaminated and repaired or to be disposed of in accordance with regulations of the Division. Within five days after obtaining results of the test, the licensee shall file a report with the Division, describing the equipment involved, the test results and the corrective action taken.

Sec. E.106 Quarterly Inventory. Each licensee shall conduct a quarterly physical inventory to account for all sealed sources received or possessed under his license. The records of the inventories shall be maintained for inspection by the Division for at least two years from the date of the inventory and shall include the quantities and kinds of radioactive material, the location of sealed sources and the date of the inventory.

Sec. E.107 Utilization Logs. Each licensee or registrant shall maintain current logs, which shall be kept available for inspection by the Division for two years from the date of the recorded event, showing for each source of radiation the following information:

(a) A description (or the make and model number) of each source of radiation or storage container in which the sealed source is located.

(b) The identity of the radiographer to whom assigned.

(c) The locations and dates used.

Sec. E.108 Inspection and Maintenance or Radiographic Exposure Devices and Storage Containers.

(a) Each licensee or registrant shall conduct a program of at least quarterly inspection and maintenance of radiographic exposure devices and storage containers to assure proper functioning of components important to safety. All appropriate parts shall be maintained in accordance with manufacturer's specifications. Records of inspection and maintenance shall be maintained for inspection by the Division for two years from the date of the inspection.

(b) If any inspection conducted pursuant to para. E.108(a) reveals damage to components critical to radiation safety, the device shall be removed from service until repairs have been made.

Sec. E.109 Inspection and Maintenance of High Radiation Area Control Devices or Alarm Systems. For any high radiation area equipped with a control device or alarm system as described in subparagraph D.203(c)(2), the control device or alarm system shall be tested for proper operation at least monthly when in use. Records of such tests shall be maintained for inspection by the Division for two years or until disposition is authorized.

Personal Radiation Safety Requirements for Radiographers

Sec. E.201 Limitations.

(a) No licensee or registrant shall permit any individual to act as a radiographer as defined in this part until such individual

(1) Has been instructed in the subjects outlined in Paragraphs I, II and III, Appendix A of this part, has demonstrated understanding thereof and, if deemed necessary by the Division, has successfully completed an examination administered by the Division or its agent.

(2) Has received copies of and instruction in the regulations contained in this part and the applicable sections of Parts D and J, appropriate license(s) and the licensee's or registrant's operating and emergency procedures and has demonstrated understanding thereof.

(3) Has demonstrated competence to use the sources of radiation, radiographic exposure devices, related handling tools and radiation survey instruments which will be employed in his or her assignment.

(b) Each licensee or registrant shall maintain, for inspection by the Division, until disposition is authorized by the Division, records of training and testing which demonstrate that the requirements of para. E.201(a) are met.

(c) Each licensee or registrant shall conduct a program of internal inspection to ensure that the Louisiana Radiation Regulations, Louisiana radioactive material license conditions, and the licensee's or registrant's operating and emergency procedures are followed by each radiographer. These internal inspections shall be performed at least quarterly, and each radiographer shall be inspected at least annually. Records of internal inspection shall be maintained for inspection by the Division for two years from the date of the internal inspection.

(d) Each licensee or registrant shall provide, as a minimum, two person crews when sources of radiation are used at temporary jobsites of the licensee.

Sec. E.202 Operating and Emergency Procedures. The licensee's or registrant's operating and emergency procedures shall include instructions in at least the following:

(a) The handling and use of sources of radiation to be employed such that no individual is likely to be exposed to radiation doses in excess of the limits established in Part D.

(b) Methods and occasions for conducting radiation surveys.

(c) Methods for controlling access to radiography areas.

(d) Methods and occasions for locking and securing sources of radiation.

(e) Personnel monitoring and the use of personnel monitoring equipment.

(f) Transportation to field locations, including packing of sources of radiation in the vehicles, posting of vehicles and control of sources of radiation during transportation.

(g) Minimizing exposure of individuals in the event of an accident.

(h) The procedure for notifying proper personnel in the event of an accident of unusual occurrence.

(i) Maintenance of records.

(j) The daily inspection and maintenance of radiographic exposure devices, storage containers, radiation machines, survey meters, and personnel monitoring devices.

Section E.203 Personnel Monitoring Control.

(a) No licensee or registrant shall permit an individual to act as a radiographer, instructor or radiographer trainee unless, at all times during radiographic operations, each such individual wears a direct-reading pocket dosimeter and either a film badge or a thermoluminescent dosimeter (TLD).

(b) Pocket dosimeters shall have a range of zero to at least two hundred milliroentgens and shall be recharged at least daily or at the start of each shift.

(c) Each film badge or thermoluminescent dosimeter shall be assigned to and worn by only one individual.

(d) Pocket dosimeters shall be read and exposures recorded at least daily with use.

(e) An individual's film badge or thermoluminescent dosimeter shall be immediately processed if his pocket dosimeter is discharged beyond its range (i.e., goes "off-scale").

(f) Records of the pocket dosimeter readings shall be maintained for inspection by the Division until the Division authorizes their disposition.

Precautionary Procedures in Radiographic Operations

Sec. E.301 Security. During each radiographic operation, a radiographer or instructor shall maintain direct, visual surveillance of the operation to protect against unauthorized entry into a radiation area or high radiation area, as defined in Part A, except

(a) Where the high radiation area is equipped with a control device or alarm system as described in subparagraph D.203(c)(2); or

(b) Where the high radiation area is locked to protect against unauthorized or accidental entry.

Sec. E.302 Posting. Notwithstanding any provisions in para. D.204(c), areas in which radiography is being performed shall be conspicuously posted as required by para. D.203(b) and (c)(1).

Sec. E.303 Radiation Surveys and Survey Records.

(a) No radiographic operation shall be conducted unless calibrated and operable radiation survey instrumentation, as described in Sec. E.104, is available and used at each site where radiographic exposures are made.

(b) A physical radiation survey shall be made after each radiographic exposure utilizing radiation machines or sealed sources of radioactive material to determine that the machine is "off" or that the sealed source has been returned to its shielded position.

(c) A physical radiation survey shall be made to determine that each sealed source is in its shielded position prior to securing the radiographic exposure device or storage container as specified in Sec. E.102.

(d) Records shall be kept of the surveys required by para. E.303(c). Such records shall be maintained for inspection by the Division for two years after completion of the survey. If the survey has been used to determine an individual's exposure, the records of the survey shall be maintained until the Division authorizes their disposition.

Sec. E.304 Records Required at Temporary Jobsites. Each licensee or registrant conducting industrial radiography at a temporary jobsite shall have the following documents and records available at that jobsite for inspection by the Division:

(a) Current copy of appropriate license, registration certificate or other authorizing documents.

(b) Operating and emergency procedures.

(c) Applicable regulations.

(d) Survey records required pursuant to Sec. D.401(b) and E.303(d) for the period of operation at the site.

(e) Daily pocket dosimeter records for the period of operation at the site.

(f) The latest instrument calibration and leak test records for specific devices in use at the site.

Sec. E.305 Special Requirements and Exemptions for Enclosed Radiography.

(a) Systems for enclosed radiography designed to allow admittance of individuals shall

(1) Comply with all applicable requirements of this part and Sec. D.105, and if such system is a certified cabinet X-ray system, it shall comply with all applicable requirements of this part and 21 CFR 1020.40.

(2) Be evaluated at intervals not to exceed one year to assure compliance with the applicable requirements as specified in subparagraph E.305(a)(1). Records of these evaluations shall be maintained for inspection by the Division for a period of two years after the evaluation.

(b) Enclosed X-ray systems designed to exclude individuals are exempt from the requirements of this part except that

(1) Operating personnel must be provided with either a film badge or a thermoluminescent dosimeter, and reports of the results must be maintained for inspection by the Division.

(2) No registrant shall permit any individual to operate an enclosed X-ray system until such individual has received a copy of and instructions in the operating procedures for the unit and has demonstrated competence in its use. Records which demonstrate compliance with this subparagraph shall be maintained for inspection by the Division until disposition is authorized by the Division.

(3) Tests for proper operation of high radiation area control devices or alarm systems, where applicable, must be conducted and recorded in accordance with Sec. E.109.

(4) The registrant shall perform an evaluation, at intervals not to exceed one year, to determine conformance with Sec. D.105 of these regulations. If such system is a certified cabinet X-ray system, it shall be evaluated at intervals not to exceed one year to determine conformance with 21 CFR 1020.40. Records of these evaluations shall be maintained for inspection by the Division for a period of two years after the evaluation.

(c) Certified cabinet X-ray systems shall be maintained in compliance with 21 CFR 1020.40 unless prior approval has been granted by the Division pursuant to para. A.3(a) of these regulations.

(d) No registrant may modify a cabinet X-ray system without prior approval of the Division pursuant to para. A.3(a) of these regulations.

Appendix A

Subjects to be Covered During the Instruction of Radiographer Trainees

Training provided to qualify individuals as radiographers in compliance with Section E.201(a) of the Louisiana Radiation Regulations shall be presented on a formal basis.

I. Fundamentals of Radiation Safety.
- A. Characteristics of radiation.
- B. Units of radiation dose (Rem) and quantity of radioactivity (Curie).
- C. Significance of radiation dose.
  1. Radiation protection standards.
  2. Biological effects of radiation dose.
- D. Levels of radiation from sources of radiation.
- E. Methods of controlling radiation dose.
  1. Working time.
  2. Working distances.
  3. Shielding.

II. Radiation Detection Instrumentation to be Used.
- A. Use of radiation survey instruments.
  1. Operation.
  2. Calibration.
  3. Limitations.
- B. Survey techniques.
- C. Use of personnel monitoring equipment.
  1. Film badges.

2. Thermoluminescent dosimeters (TLD).
3. Pocket dosimeters.

III. The Requirements of Pertinent Federal and State Regulations.

IV. The Licensee's or Registrant's Written Operating and Emergency Procedures.

V. Radiographic Equipment to be Used.

A. Remote handling equipment.
B. Radiographic exposure devices and sealed sources.
C. Storage containers.
D. Operation and control of X-ray equipment.
E. Collimators.

R. T. Sutton
Commissioner of Conservation

RULES

Department of Natural Resources
Office of Forestry
and
Office of the Governor
Tax Commission

Timber Stumpage Values
Calendar Year 1980

Listed below are the timber stumpage values set by the Louisiana Tax Commission and the Louisiana Forestry Commission on December 3, 1979, as provided by law. These values are for the Calendar Year 1980.

The unit values were determined by the Commissions following an examination of stumpage price information collected from sawmills, pulpmills, and pulpwood procurement centers.

The sawtimber values are based on accepted Doyle Log Rule standards and the pulpwood values are based on a standard cord (128 cu. ft.).

Pine Sawtimber	$200.00 per thousand board feet
All Hardwoods and Cypress Sawtimber	60.00 per thousand board feet
Pine Pulpwood	9.40 per cord
Hardwood Pulpwood	3.80 per cord

The regular severance tax rate is 2¼ percent of the above sawtimber stumpage values and 5 percent of the above pulpwood values.

The severance tax rate on timber conservation contract lands is 6 percent of all above stumpage values both sawtimber and pulpwood.

Effective date: January 1 — December 31, 1980.

All other forest products (fence posts, ties, poles, piling, etc.) to be computed on basis of accepted Doyle Log Rule standards or standard cords (128 cu. ft.) as applicable.

D. L. McFatter, State Forester
C. Gordon Johnson, Chairman
Tax Commission

RULES

Department of Public Safety
Office of State Fire Protection

Standards for Mobile Homes

Section 7.1 All mobile homes manufactured and/or sold in the State of Louisiana prior to June 15, 1976, shall meet the requirements set forth in the 1974 pamphlet 501B of the National Fire Protection Association or the American National Standards Institute A 119.1.

Section 7.2 On and after June 15, 1976, all mobile homes manufactured and/or sold in the State of Louisiana shall meet the requirements set forth in the National Mobile Home Construction and Safety Standards Act (42 U.S.C. 5401 et seq.) and all federal regulations promulgated pursuant thereto.

Section 7.3 The fees of the Fire Marshal for inspections in accordance with Act 281 of 1974 shall be as follows: manufacturer's license, fifty dollars; dealer's license, twenty-five dollars; inspection of a typical mobile home model plan, sixty dollars.

****

Plans and Specifications for a New Building

Section 4.1. As of January 1, 1980, the plans and specifications for every building constructed or remodeled in the State of Louisiana must be drawn in accordance with the requirements of a 1976 edition of the Life Safety Code of the National Fire Protection Association and Section 518 — Special Provisions for High Rise, of Chapter 4 of the 1974 amendments to the 1973 Southern Standard Building Code.

****

General Provisions

Section 2.2. All inspections of buildings constructed or remodeled after January 1, 1980, will be made utilizing the requirements set forth in the 1976 edition of the Life Safety Code of the National Fire Protection Association and Section 518, Special Provision for High Rise, of Chapter 4 of the 1974 amendments to the 1973 Southern Standard Building Code.

Section 2.3. With regard to buildings constructed or remodeled between January 1, 1975, and January 1, 1980, inspections of those buildings will be made on the basis of requiring that the buildings meet the minimum requirements set forth in the 1973 edition of the Life Safety Code of the National Fire Protection Association and Section 518, Special Provision for High Rise, of Chapter 4 of the 1974 amendments to the 1973 Southern Standard Building Code.

Section 2.4. For buildings constructed or remodeled prior to January 1, 1975, inspections by the Office of State Fire Marshal shall be made utilizing the requirements set forth in the 1967 edition of the Life Safety Code of the National Fire Protection Association.

Daniel L. Kelly
State Fire Marshal

RULES

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Whereas, the cost of boats, equipment, fuel, and material and supplies has been steadily increasing, and

Whereas, the cost for personnel and related benefits for the people performing services for the oyster industry has been increasing, and

Whereas, the Seafood Division's budget has not increased for the past three years because of a lack of funds in the Conservation Fund, and

Whereas, the present rental rate of one dollar per acre per year has been in effect since April 1, 1903, and

Whereas, Section 425 of the Louisiana Revised Statutes of 1950, gives the Commission the authority to fix the rental rate of not less than one dollar nor more than five dollars per acre or fraction of an acre per year.

Now, therefore, be it resolved that the Commission fixes the rental rate for oyster leases at two dollars per acre or fraction of an acre per year.

Be it further resolved that the new oyster rental rate will become effective January 1, 1980.

J. Burton Angele, Secretary
Department of Wildlife and Fisheries

Notices of Intent

NOTICE OF INTENT

Department of Agriculture
Office of Marketing
State Market Commission

The Department of Agriculture, Office of Marketing, State Market Commission intends to adopt changes in paragraphs nine and twelve of the Procedures for Developing and Executing Market Commission Loans and/or Guarantees.

9. The application must include:
   A. A feasibility study of the proposed enterprise.
   B. A credit analysis of the principals.
   C. A three-year projected cash flow statement.
   D. A letter from a Department of Agriculture attorney stating the application is in compliance with the law.
   E. An evaluation of management capability.
   F. Turn-down letters from two area lending institutions. The Market Commission will attempt to obtain participation from local sources.
   G. An explanation of how the proposed marketing facility would enhance and/or benefit the agricultural community in which it would be located.
   H. A financial statement on the principals, corporations, or cooperatives prepared by a public accountant using acceptable accounting principles.
   I. An appraisal, if an existing facility, using market data, cost and earning approaches as the basis of value. Appraisal shall be made by Market Commission staff unless in their judgement an outside qualified appraiser should be employed by applicant.
   J. An affidavit disclosing what relationship, if any, the applicant(s) may have to any state official or employee of the State Department of Agriculture.

12. Upon completion of the facility, the applicant must submit to the Market Commission a copy of the note, the mortgage, and a mortgagee title insurance binder in favor of the Market Commission. Upon approval of these documents by a Department of Agriculture attorney, the Market Commission shall schedule a formal loan closing. On all loans to corporations and/or cooperatives, personal endorsement shall be required unless waived by unanimous vote of the Market Commission. In addition, each corporation and/or cooperative shall furnish on the anniversary date of the loan the following:
   A. Names of all stockholders and the number of shares held by each.
   B. The statement of its operations, including analysis of profits and losses.
   C. A statement of financial condition.

Interested persons may submit comments, in writing, through January 18, 1980, to Dr. John C. Young, Executive Secretary, State Market Commission, Department of Agriculture, Office of Marketing, Box 44184, Baton Rouge, Louisiana 70804. Dr. Young is the person responsible for responding to inquiries about the proposed changes.

John C. Young, Ph.D., Executive Secretary
State Market Commission

NOTICE OF INTENT

Department of Corrections
Office of the Secretary

The Department of Corrections intends to adopt a regulation governing execution of prisoners sentenced to death.

The regulation will set forth guidelines for incarceration, visits and press interviews prior to execution, a selection of witnesses for the execution.

The regulation will also set forth the procedures to be followed in carrying out the execution.

The Department of Corrections further intends to adopt regulations setting forth rules and procedures for the handling of employee disciplinary violations.

Interested persons may comment on the proposed regulations, in writing, through January 4, 1980, at the following address: C. Paul Phelps, Secretary of Corrections, Box 44304, Baton Rouge, Louisiana 70804.

C. Paul Phelps, Secretary
Department of Corrections

NOTICE OF INTENT

Department of Culture, Recreation and Tourism
Office of State Parks

The State Parks and Recreation Commission intends to revise a regulation concerning the overnight camping, lodge and cabin use period at all applicable areas administered by the Office of State Parks at its meeting scheduled for January 4, 1980. The revision will fall under the "Overnight Use" section of the existing rules and regulations and will read as follows:

> Overnight camping, lodge and cabin use is limited to a fourteen-day period within thirty days. No campsite may be vacated for longer than a twenty-four-hour continuous period under any permit agreement.

Written comments may be addressed to Mr. Robert Q. Hanisee Assistant Secretary, Office of State Parks, Department of Culture Recreation and Tourism, Drawer 1111, Baton Rouge, Louisiana 70821 through January 3, 1980.

Robert Q. Hanisee, Assistant Secretary
Office of State Parks

NOTICE OF INTENT

Board of Elementary and Secondary Education

The State Board of Elementary and Secondary Education intends to adopt the following as policy at its January meeting:

1. Policy to grandfather in certification for those people with Competent Authority numbers who are actively employed as educational consultants, and that these people have until October 1, 1980, to make application for certification.
2. Policy amendment to Bulletin 741, Handbook for School Administrators, page 41, paragraph 1.b. to read as follows: A person is considered a "member of the armed forces" if he/she is engaged in active military duty in the Army, Navy, Air Force, Marine Corps, Coast Guard, or is a member of the Army or Air Force National Guard.
3. Policy amendment to Bulletin 741, Handbook for School Administrators, page 41, paragraph 2.a, to read as follows: Two units of credit toward high school graduation may be awarded to any member of the United States Armed Forces or their reserve components, or any honorably discharged veteran who has com-

pleted his/her basic training, upon presentation of a military record attesting to such completion.

Interested persons may comment on the proposed policy changes and/or additions, in writing, until 4:30 p.m., January 9, 1980, at the following address: Mr. James V. Soileau, Executive Director, State Board of Elementary and Secondary Education, Box 44064, Baton Rouge, Louisiana 70804.

James V. Soileau, Executive Director
Board of Elementary and Secondary Education

NOTICE OF INTENT

Board of Supervisors of Louisiana State University

The Board of Supervisors of Louisiana State University and Agricultural and Mechanical College proposes to amend the ***University Regulations,*** to change certain portions of the provisions pertaining to Academic Ranks.

Chapter II, Section 2-6, Academic Ranks, change footnote 5 to read

> The title 'Special Lecturer' is authorized and limited to part-time appointments without rank designation and is restricted to specialists, and professional men and women whose primary occupation is practice of their profession.

Present footnote 5 will become 6; 6 will become 7; 7 will become 8; and 8 will become 9.

In addition, the Board of Supervisors proposes that the superscripts within the table, in Section 2-6 be renumbered in the same manner, to be consistent with the renumbered footnotes.

Interested persons may comment on the proposed amendment to the ***University Regulations***, through January 3, 1980, to the following: Kitty B. Strain, Board of Supervisors Office, Louisiana State University, Box JG, Baton Rouge, Louisiana 70893.

M. D. Woodin, Secretary
Board of Supervisors of Louisiana State University

NOTICE OF INTENT

Department of Health and Human Resources
Office of Family Security

The Department of Health and Human Resources, Office of Family Security, proposes to adopt a rule which will effect an increase in the Aid to Families with Dependent Children (AFDC) and General Assistance (GA) Need Standards.

Act 540 of the 1976 Legislature requires that the Offices of Family Security establish AFDC and GA Need Standards, and that those standards be updated each year effective January 1, to reflect the cost of living increases reported in the Department of Labor's Consumer Price Index.

The current need standards are shown in parentheses. Using a 10.8 percent increase standard, the new AFDC and GA Need Standards are proposed as follows:

AFDC Need Standards

Size of Household	Non-Urban	Urban
1	$ 139 (125)	$ 151 (136)
2	259 (234)	289 (261)
3	366 (330)	402 (363)
4	456 (412)	494 (446)
5	543 (490)	583 (526)
6	622 (561)	664 (599)
7	704 (635)	742 (670)
8	782 (706)	821 (741)
9	856 (773)	896 (809)
10	933 (842)	972 (877)
11	1014 (915)	1054 (951)
12	1098 (991)	1138 (1027)
13	1187 (1071)	1219 (1100)
14	1273 (1149)	1306 (1179)
15	1361 (1228)	1394 (1258)
16	1448 (1307)	1488 (1343)
17	1536 (1386)	1560 (1408)
18	1623 (1465)	1659 (1497)
	For each additional person, add $94 (85)	For each additional person, add $103 (94)

GA Need Standard

1 person - $229 (207)
2 persons - 289 (261)

William A. Cherry, M.D., Secretary
Department of Health and Human Resources

NOTICE OF INTENT

Department of Health and Human Resources
Office of Family Security

The Department of Health and Human Resources, Office of Family Security, proposes to adopt the rule providing for the semiannual adjustments for the coupon allotments and standard deduction in the Food Stamp Program effective January 1, 1980 in accordance with federal regulations as specified in the ***Federal Register*** Volume 44, Number 216, Tuesday, November 6, 1979, pages 64067 - 64069.

The Food Stamp Act of 1977, as amended requires that the semiannual adjustments in the Thrifty Food Plan (coupon allotments) reflect food price changes published by the Bureau of Labor Statistics and that the standard deduction shall be adjusted every July 1, and January 1, to the nearest five dollars for the six months ending the preceding March 31, and September 30, respectively to reflect changes in the Consumer Price Index for items other than food.

The following is the Thrifty Food Plan (TFP) amounts, and the standard deduction.

Household Size	TFP	Household Size	TFP
1	$ 63	11	$517
2	115	12	564
3	165	13	611
4	209	14	658
5	248	15	705
6	298	16	752
7	329	17	799
8	376	18	846
9	423	19	893
10	470	20	940

For each additional person in excess of twenty, add forty-seven dollars

The new standard deduction is seventy-five dollars.

Interested persons may submit written comments on the proposed policy changes through January 4, 1980, at the following

address: Mr. Alvis D. Roberts, Assistant Secretary, Office of Family Security, Box 44065, Baton Rouge, Louisiana 70804. Mr. Roberts is the person responsible for responding to inquiries about this proposed rule.

The Department of Health and Human Resources, Office of Family Security, further proposes to adopt a rule which allows persons sixty years of age or over, and persons who receive Supplemental Security Income (SSI) Benefits under Title XVI of the Social Security Act or Disability Benefits under Title II of the Social Security Act to deduct from the household's income that portion of medical expenses in excess of thirty-five dollars per month excluding special diets. Spouses or other persons receiving benefits as a dependent of the SSI or disability recipient are not eligible to receive this deduction but persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction.

Allowable medical costs are:

A. Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by state law or other qualified health professional.

B. Hospitalization or outpatient treatment, nursing care, and nursing home care including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the state.

C. Prescription drugs when prescribed by a licensed practitioner authorized under state law and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional; in addition, costs of medical supplies, sick room equipment (including rental) or other prescribed equipment are deductible.

D. Health and hospitalization insurance policy premiums. The costs of health and accident policies such as those payable in lump sum settlements for death or dismemberment or income maintenance policies such as those that continue mortgage or loan payments while the beneficiary is disabled are not deductible.

E. Medicare premiums related to coverage under Title XVIII of the Social Security Act; any cost-sharing or spend-down expenses incurred by Medicaid recipients.

F. Dentures, hearing aids, and prosthetics.

G. Securing and maintaining a seeing eye or hearing dog including the cost of dog food and veterinarian bills.

H. Eye glasses prescribed by a physician skilled in eye disease or by an optometrist.

I. Reasonable cost of transportation and lodging to obtain medical treatment or services.

J. Maintaining an attendant, homemaker, home health aide, or child care services, housekeeper, necessary due to age, infirmity, or illness. In addition, an amount equal to the one person coupon allotment shall be deducted if the household furnishes the majority of the attendant's meals. The allotment for this meal-related deduction shall be that in effect at the time of initial certification. The state agency is only required to update the allotment amount at the next scheduled recertification; however, at their option, the state agency may do so earlier. If a household incurs attendant care costs that could qualify under both the medical deduction and dependent care deduction, the state agency shall treat the cost as a medical expense.

Monthly shelter costs is the amount in excess of fifty percent of the household's income after all other deductions have been applied. The Shelter deduction alone or in combination with the dependent care deduction shall not exceed ninety dollars unless the household contains a member who is age sixty or over or who receives SSI (including emergency benefits based on presumptive eligibility) under Title XVI or disability payments under Title II of the Social Security Act. These households shall be given an excess shelter deduction for the monthly cost that exceeds fifty percent of the household's monthly income after all other applicable deductions. That portion of an allowable medical expense which is not reimbursable shall be included as part of the household's medical expenses. Households entitled to the medical deduction shall have the nonreimbursable portion considered at the time the amount of the reimbursement is received or can otherwise be verified.

Households reporting one-time only medical expenses during their certification period may elect to have a one-time deduction or to have the expense averaged over the remaining months of the certification period. Averaging would begin the month the change would become effective.

All of the above policy revisions will be adopted in accordance with federal regulations as specified in the ***Federal Register,*** Volume 44, Number 187, Tuesday, September 25, 1979, page 55160 - 55165.

Interested persons may submit written comments on the proposed policy changes through January 4, 1980, at the following address: Mr. Alvis D. Roberts, Assistant Secretary, Office of Family Security, Box 44065, Baton Rouge, Louisiana 70804. Mr. Roberts is the person responsible for responding to inquiries about this proposed rule.

William A. Cherry, M.D., Secretary
Department of Health and Human Resources

NOTICE OF INTENT

Department of Health and Human Resources
Office of Family Security

The Department of Health and Human Resources, Office of Family Security, proposes to adopt effective February 1, 1980, a rule to implement the Energy Assistance Payment Program to assist low income households with the high cost of energy during the winter of 1979-80.

There shall be a single payment amount in February, 1980, to those families who received Aid to Families with Dependent Children (AFDC) or General Assistance (GA) for the month of December, 1979. This payment is a one-time unrestricted federal money payment, with single person assistance units receiving one-half of the amount of multi-person assistance units.

Interested persons may submit written comments on the proposed rule through January 3, 1980, at the following address: Mr. Alvis D. Roberts, Assistant Secretary, Office of Family Security, Box 44065, Baton Rouge, Louisiana 70804. Mr. Roberts is the person responsible for responding to inquiries about the proposed rule.

William A. Cherry, M.D., Secretary
Department of Health and Human Resources

NOTICE OF INTENT

Department of Health and Human Resources
Office of Human Development

The Department of Health and Human Resources (DHHR) proposes to adopt amendments to the Final Social Services (Title XX) Comprehensive Annual Services Plan (CASP) for the program year July 1, 1979, through June 30, 1980.

Proposed Amendment

DHHR proposes to revise the fees which are presently charged Title XX eligible recipients for the services of Out of Home Respite Care, Family Aide Services, and Family Education and Training Services. In addition, DHHR proposes that a

single fee schedule be utilized for all three services. DHHR believes that proposed single fee schedule is more fairly related to the income of the users of this Title XX services. In addition, the use of a single fee schedule for these Title XX services simplifies the fee collection process for DHHR.

DHHR proposes to remove psychological and psychiatric evaluations as an activity component in Out of Home Respite Care Services because no Title XX monies were allocated for these activities. However, these services are provided with state funds.

Copies of the proposed amendments to the Title XX State Plan (including the proposed fee schedule) are available without charge. Phone 1-800-272-9868, or write, Public Assistance Line, Division of Administration, Box 44095, Capitol Station, Baton Rouge, Louisiana 70804.

The proposed amendments are available for public review at each parish office of the Office of Human Development, Monday through Friday, 8:30 a.m. to 4:00 p.m.

Interested persons may submit written comments on the proposed amendments through January 3, 1980, to Mr. Melvin Meyers, Assistant Secretary, Office of Human Development, Department of Health and Human Resources, 1755 Florida Boulevard, Baton Rouge, Louisiana 70802.

William A. Cherry, M.D., Secretary
Department of Health and Human Resources

NOTICE OF INTENT

Department of Health and Human Resources
Office of Mental Health and Substance Abuse

The Department of Health and Human Resources, Office of Mental Health and Substance Abuse, Division of Substance Abuse proposes to adopt the following rule whereby substance abuse programs, either public or private, may receive state or federal funds through any Office within the Department of Health and Human Resources only when such facilities have been duly licensed by the State of Louisiana, Office of Licensing and Regulation; or, in the case of new programs, when a provisional license has been issued.

The purpose of this rule is to try to assure quality care for patients treated in the Division's facilities and in those facilities receiving funds from the Division.

Interested persons may submit written comments on the proposed policy through January 3, 1980, at the following address: Mr. Cal Bankston, Deputy Assistant Secretary, Division of Substance Abuse, Office of Mental Health and Substance Abuse, 200 Lafayette Street, Baton Rouge, Louisiana 70801.

William A. Cherry, M.D., Secretary
Department of Health and Human Resources

NOTICE OF INTENT

Department of Natural Resources
Office of Conservation

Pursuant to the provisions of R.S. 49:953, the Office of Conservation, Department of Natural Resources, gives notice that it proposes to delete Rule 11; to provide for the regulation of coal or lignite slurry transportation by amendment of Regulations 1, 2, 3, 4, 6, and 7, and by addition of Regulations 10, 11, and 12; to add Regulation 13 to provide for the implementation and administration of an Emergency Natural Gas Shortage Allocation Plan; and to provide for the administration of Act 732 of the 1979 Louisiana Legislature by the addition of Regulation 14 of the rules and regulations of the Commissioner of Conservation applicable to matters arising under the Natural Resources and Energy Act of 1973, as amended, at a hearing to be held in the Mineral Board Auditorium, First floor, State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, Louisiana, at 9:00 a.m., January 8, 1980.

The complete text of the proposed rules and regulations are available for inspection at the Office of Conservation and may be examined during normal business hours.

All interested persons will be afforded a reasonable opportunity to submit data, views, or arguments, orally or in writing. Written comments prior to the hearing should be addressed to: R. T. Sutton, Commissioner of Conservation, Box 44275, Baton Rouge, Louisiana 70804.

R. T. Sutton
Commissioner of Conservation

NOTICE OF INTENT

Department of Public Safety
Office of Motor Vehicles

The Department of Public Safety, Office of Motor Vehicles, proposes to adopt rules relative to the licensing and operation of commercial driving schools.

Interested persons may submit written comments through January 6, 1980, to Mrs. Rolane Clement, Department of Public Safety, Legal Section, 2124 Wooddale Boulevard, Baton Rouge, Louisiana 70806. Copies of the proposed rules may be obtained by writing to Mrs. Clement at the above address.

Colonel Malcolm Millet, Secretary
Department of Public Safety

NOTICE OF INTENT

Department of Public Safety
Office of Motor Vehicles

Notice is hereby given that the Louisiana Department of Public Safety proposes to adopt the following rules relative to the issuance of citizens band (CB) radio operators' license plates, consuls' license plates, and amateur radio operators' license plates. Interested persons may submit their written views and opinions until 4:30 p.m., January 6, 1980, to the following: Margaret Levraea, Department of Public Safety, Vehicle Registration Bureau, Box 66196, Baton Rouge, Louisiana 70896.

Citizens Band (CB) Radio Operators' License Plates

1. Eligibility. Applicants for CB radio operators' license plates shall include any persons possessing a CB radio operator's license issued by the Federal Communications Commission. Such plates shall be issued on personally used private passenger vehicles, private use minimum trucks, private use vans and private busses.

2. Place of Application. Applications for issuance of CB radio operators' license plates shall be made at the Vehicle Registration Bureau, 109 South Foster Drive, Baton Rouge, Louisiana, or through the mail by writing to the Department of Public Safety, Special Services Section, Box 66196, Baton Rouge, Louisiana 70896.

3. Applications. All applications for issuance or transfer of CB plates shall be made on prescribed Department of Public Safety Vehicle Registration (DPSVR) forms. Applications must be accompanied by a photocopy of the CB operator's license issued by the Federal Communications Commission. If the vehicle on which the CB plate will be displayed has been purchased but application for title has not been made, the application for title and the request

Subsequent to the hearing, and appropriate review and comment from the State Policy Advisory Committee for Section 208 Planning, the Louisiana Environmental Control Commission may (providing no substantive changes are required) submit the proposed plan to the Governor for certification to the United States Environmental Protection Agency.

J. Dale Givens, Chief
Division of Water Pollution Control

Errata

Board of Elementary and Secondary Education

An error was made in the rules adopted by the Board of Elementary and Secondary Education and published in the ***Louisiana Register,*** Volume 5, Number 11, November 20, 1979.

The text of item one, beginning on the second line, left column of page 347 should read as follows:

1. A student must be seventeen years of age or older, unless married, in order to be authorized to be administered the GED Test.

Department of Public Safety
Office of State Fire Protection

An incorrect word was used in Section 18.4 of the rules published by the Office of State Fire Protection, in the ***Louisiana Register,*** Volume 5, Number 11, November 20, 1979, on page 364.

In the third sentence of this section, the word "hereafter" should be substituted for the word "heretofore."

Plan under state requirements and the Resource Conservation and Recovery Act.

Interested persons may obtain a copy of the proposed regulations and Emergency Response Plan from: Sergeant James Howard, Explosives Control Unit, Department of Public Safety, State Police Headquarters, 265 South Foster Drive, Baton Rouge, Louisiana 70896, between the hours of 8:00 a.m. and 4:30 p.m.

All interested persons will have an opportunity to submit comments on these proposed regulations, in writing, or verbally. Written comments may be submitted prior to the hearings at the following address and must be postmarked not later than January 30, 1980: Sergeant James Howard, Explosives Control Unit, Department of Public Safety, Box 66614, Baton Rouge, Louisiana 70896, Re: Proposed Hazardous Materials Regulations. Persons desiring to present comments verbally at the hearings should also notify Sergeant Howard at the above address or telephone him at (504) 925-6113. Oral comments may be submitted during the following hearings: Monroe, February 4, 1980, 2:00 p.m., Council Chambers, City Hall, Civic Center Expressway; Shreveport, February 5, 1980, 7:00 p.m., Council Chambers, City Hall, 1234 Texas Street; Alexandria, February 6, 1980, 2:00 p.m., Convention Hall, 915 Third Street; Lake Charles, February 7, 1980, 7:00 p.m., Police Jury Room, Parish Governmental Building, 1015 Pithon Street; New Orleans, February 12, 1980, 7:00 p.m., City Hall, Room 1E04, 1300 Perdido Street; Baton Rouge, February 14, 1980, 2:00 p.m., Conservation Hearing Room, State Land and Natural Resources Building, 625 North Fourth Street.

Colonel Malcolm Millet, Secretary
Department of Public Safety

NOTICE OF INTENT

Department of the Treasury
Bond Commission

In accordance with the applicable provisions of the Administrative Procedures Act, R.S. 49:951 et seq., notice is hereby given that the Louisiana State Bond Commission intends to supplement and amend the Commission's rules as originally adopted on November 20, 1976, and amended as of October 20, 1978, and November 20, 1979.

The amendments and supplements will, (1) update rules to conform to the latest statutes as amended by the Legislature, and the latest Attorney General's opinions and/or final court decisions; and (2) formulate other rules, policies, and regulations related to the Commission's jurisdiction or function, except non-traditional use bond issues.

The proposed rules will be available for public inspection between the hours of 8:00 a.m. and 4:30 p.m., on any working day after December 20, 1979, at the office of the State Bond Commission, Third Floor, State Capitol Building, Baton Rouge, Louisiana.

Interested persons may submit their views and opinions through January 16, 1980, to Mr. Barry W. Karns, Secretary and Director of the State Bond Commission, Third Floor, State Capitol Building, Box 44154, Baton Rouge, Louisiana 70804. Oral or written presentations may be made on January 29, 1980, at which time the State Bond Commission shall consider adopting the supplements and amendments to its rules.

The State Bond Commission shall, prior to the adoption, amendment, or repeal of any rule, afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral presentation or argument shall be granted if requested by twenty-five persons, by a governmental subdivision or agency, by an association having not less than twenty-five members, or by a committee of either house of the Legislature to which the proposed rule change has been referred, as required under the provisions of Section 968 of Title 49.

At least eight working days prior to the meeting of the State Bond Commission at which a rule or rules are proposed to be adopted, amended, or repealed, notice of an intention to make an oral or written presentation shall be given to the Director or Assistant Director of the State Bond Commission. If the presentation is to be oral, such notice shall contain the name or names, telephone numbers, and mailing addresses of the person or persons who will make such oral presentation; who they are representing, the estimated time needed for the presentation, and a brief summary of the presentation. Notice of such oral presentation may be sent to all State Bond Commission members prior to the meeting. If the presentation is to be written, such notice shall contain the name or names of the person or persons submitting such written statement, who they are representing, and a copy of the statement itself. Such written statement will be sent to all State Bond Commission members prior to the meeting.

The Commission shall consider all written and oral submissions concerning the proposed rules. Upon adoption of a rule, the Commission, if requested to do so by an interested person either prior to adoption or within thirty days thereafter, shall issue a concise statement of the principal reasons for or against its adoption.

Barry W. Karns, Secretary
Bond Commission

NOTICE OF INTENT

Department of Wildlife and Fisheries
Stream Control Commission
Division of Water Pollution Control

(Editor's Note: The Stream Control Commission will be abolished and its duties and functions transferred to the Department of Natural Resources, Environmental Control Commission, on January 1, 1980.)

Notice is hereby given that the Louisiana Environmental Control Commission will hold a public hearing in the Conservation Auditorium, on the first floor of the State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, Louisiana, February 21, 1980, beginning at 10 a.m.

The final draft of the Louisiana 208 Water Quality Management Plan prepared in accordance with Section 208 of the Federal Water Pollution Control Act, as amended (P.L. 92-500 and 95-217) and other pertinent federal regulations will be presented. Presented along with the 208 Water Quality Management Plan will be: the eleven Water Quality Basin Plans; the Evaluation of the Non-point Sources of Pollution in Louisiana; the Census Population of Parishes by Basins, 1970; and the Population Projections by Basins, 1970-2000.

The 208 Water Quality Management Plan, and attachments, will form the basis for the state to implement a program directed at improving and/or monitoring the quality of the waters of the state, while taking into consideration the effects of both point and non-point source discharges, and planned or projected development and growth within the water quality management planning basins of the State of Louisiana.

Interested persons may submit comments relative to the proposed 208 Water Quality Management Plan, or the process employed to consider the plan, either orally, or in writing at the public hearing. They may also submit written materials, within ten days after the hearing, to the Environmental Control Commission, Drawer FC, University Station, Baton Rouge, Louisiana 70893. Persons requiring additional information may contact Mr. J. Dale Givens at the above address, or telephone number 504-342-6363. Mr. Givens is the person responsible for responding to inquiries about the proposed 208 Water Quality Management Plan.

Change 6.3 to read: Property upon which Class 1 or Class 2 magazines are located shall be posted with signs reading "EXPLOSIVES—KEEP OFF," legibly printed thereon in letters not less than three inches high. Such signs shall be located so as to minimize the possibility of a bullet traveling in the direction of the magazine if anyone should shoot at the sign. The name of the company who owns the magazine will be metal stamped on the door of the magazine. Portable magazines (trailer type) may be stamped on either the tongue or the door. No other signs or marking of any type are authorized on outside magazines.

Change 6.9 to read: Padlocks shall consist of a steel or brass base of at least 1 1/8 inch thickness, with case hardened steel shackles of 11/32-inch diameter, and two-inch maximum length when in the locked position. Either one twelve pin, or two five pin locks may be used. Key numbers shall be removed from the lock. Padlocks to be enclosed by a hooded metal type enclosure 1/4 inch thick-steel. Hooded enclosure must be constructed to restrict forceable entry from pry bars, hacksaws, and bolt cutters.

Change 6.9(E) to read: When unattended, vehicluar storage facilities and all other types of portable storage magazines shall have wheels removed or shall be otherwise effectively immobilized by king-pins locking devices or other methods approved by the Secretary of the Department of Public Safety.

Change 7.9 to read: The keys to a "USER'S" magazine doors and covers must be available only to the "USER" and one of his "BLASTERS." Variances to this requirement may be requested in writing to the Department of Public Safety. It is the "USER'S" responsibility to keep his magazine locked from all authorized persons.

Delete entire Section 8.

Change 10.2 to read: An accurate inventory of the stock of explosives and caps in magazines must be maintained at each "USER'S" local office. The inventory must reflect the date, date-shift code, pounds on hand, pounds received, pounds issued, pounds returned, and balance on hand at all times of each brand and grade.

Delete 10.3.

Change 12.5 to read: Explosives may be loaded into conveyances and transported in the following: truck, truck with semi-trailer, truck with full trailer, with semi-truck, truck tractor with semi-trailer, full trailer, and station wagons, when explosives are placed in United States Department of Transportation approved shipping containers or a wooden box, a seismograph off-the-road conveyance equipped with proper magazine storage.

Change 12.6 to read: Explosives shall not be transferred from one vehicle to another within the corporate limits of any city or town without informing the local fire and police departments thereof. In the event of breakdown or collision, the local fire and police departments shall be promptly notified to help safeguard such emergencies. In the event of a collision/accident, the Department of Public Safety, Explosives Control Unit, will be notified immediately by telephone. Explosives shall be transferred from the disabled conveyance to another only when proper and qualified supervision is provided.

Change 12.8. to read: Vehicles transporting one thousand pounds or less of Class C explosives or five thousand blasting caps or less as per United States Department of Transportation Regulations, are exempt from the requirements of displaying an "Explosives" sign on said vehicle.

Change 12.9 to read: All vehicles transporting Explosives in or into the State of Louisiana, upon entry into the state shall stop at the nearest public telephone and request permission to proceed by direction to the nearest troop for inspection. The vehicle will be inspected at the troop headquarters and a copy of the inspection permit given to the driver. This copy of inspection will act as a temporary permit until an Explosive Carrier Special Hauling Permit is issued by the Secretary of the Department of Public Safety. This permit is good for six months from the date of issue. The inspection will be conducted as outlined in LAC-11:13. This part does not apply to excepted vehicles under Section 1471.8.

Change 13.1 to read: Conveyances used for transporting explosives at ground level shall be strong enough to carry the load without difficulty and be in good mechanical condition. If vehicles do not have a closed body, the body shall be covered with a flameproof and moisture-proof tarpaulin or other effective protection against moisture and sparks. All conveyances used for the transportation of explosives shall have tight floors, and any exposed spark-producing metal on the inside of the body shall be covered with wood or other non-sparking materials to prevent contact with packages of explosives. In lieu of lining the truck with wood, a wooden box may also be used. Packages of explosives shall not be loaded above the sides of an open-body conveyance.

Change 13.2 to read: Every conveyance used for transporting explosives shall be marked or placarded on both sides, front and rear with the word "Explosives" in letters not less than four inches in height, in contrasting colors, red on white backgrounds. Vehicles in compliance with placarding requirements for Inspection shipment under United States Department of Transportation (DOT) Regulation are exempt. Those vehicles regulated by LAC 17-11:12 preceding page are exempt. Placards are not to be displayed except when vehicles are actually transporting explosives.

Delete entire Section 16.

Change 18.3 to read: If the employment of any licensed individual terminates, that person's license will be retained by the company and returned to the Office of the Seretary of the Department of Public Safety.

Change 18.7 to read: When blasting is done in congested areas or in close proximity to a structure, railway, or highway or any other installation that may be damaged, the blast shall be covered before firing with a mat so constructed that it is capable of preventing fragments from being thrown. When such blasting is being carried out near a highway, the operator may, in lieu of using a mat, and with the permission of local authorities, block the roads adjacent to the firing area while such firing is in progress. The Department of Public Safety must be notified in advance, prior to this type of blasting operation being conducted.

Change 18.17 to read: No explosives shall be abandoned, providing however, in seismic operations when charges anchored in the hole misfire there shall be no requirement that an attempt be made to remove such charge. An attempt to detonate this charge will be made with an additional priming charge. If this attempt to fire fails, blasting cap leads must be cut below the surface of the ground prior to leaving the hole.

Delete entire Section 22.

Interested persons may present their views in writing through January 24, 1980, to: Lieutenant William T. Poe, Supervisor, Explosive Control, Box 66614, Baton Rouge, Louisiana 70896. Also, reasonable opportunity for oral comments will be made available at the hearing.

Malcolm R. Millet, Secretary
Department of Public Safety

NOTICE OF INTENT

Department of Public Safety
Office of State Police

The Department of Public Safety is holding a series of statewide public hearings to discuss, and receive comments on, the proposed state regulations governing the intrastate transportation of hazardous materials, which also includes hazardous waste, acting under the authority of Act 83 of the 1979 Regular Session of the Legislature. In addition, the hearings will present that portion of the Department's responsibility for a statewide Emergency Response

for the special plate will be taken at the same time. A numerical plate will be issued for the vehicle until the special plate has been received, at which time the numerical plate and corresponding registration certificate will be surrendered for cancellation.

4. Fee. The fee for issuance shall be twenty-five dollars a year for the plate plus the regular registration fee of three dollars a year for automobiles, ten dollars a year for pickup trucks and twenty-five dollars a year for private busses. The plates are subject to regular renewal requirements.

5. Cancellation. CB plates displayed on vehicles other than those to which issued are subject to immediate cancellation. If the applicant no longer wishes to display the plate on his vehicle or wishes to transfer the plate to another vehicle registered in his name, the plate shall be returned to this office for cancellation.

6. Replacement. If the CB plate is lost or stolen, the applicant may apply for a replacement plate by executing the prescribed DPSVR form and submitting it along with the current registration certificate and a two dollar fee.

Consuls' License Plates

1. Eligibility. Applicants for consuls' license plates shall include the following:

A. Consul Generals.

B. Consulates (the offices).

C. Honorary Consuls-citizens of the United States who hold an exequatur from the United States to represent another country.

D. Consuls and other office help-attachés.

The plate numbers are assigned by the Dean of the Consul Corps according to protocol.

2. Place of Application. Application for issuance of consuls' license plates shall be made at the Vehicle Registration Bureau, 109 South Foster Drive, Baton Rouge, Louisiana, or through the mail by writing to the Department of Public Safety, Special Services Section, Box 66196, Baton Rouge, Louisiana 70896. Applications shall also be accepted at the Vehicle Registration Bureau, 325 Loyola Avenue, New Orleans, Louisiana. However, all plates will be issued from the headquarters office.

3. Applications. All applications for issuance or transfer of consuls' license plates shall be made on prescribed DPSVR forms. If the vehicle on which the consul plate will be displayed is not presently registered in Louisiana, proper title documentation and fees must be submitted along with the request for the plate.

4. Fee. Fees for consuls' plates are due as follows:

A. Consul General - no charge, free plate.

B. Consulates (the offices) - no charge, free plate.

C. Honorary Consuls - fee will be the same as for regular license plate.

D. Consuls and other office help (attachés) - If they do hold an exequatur, there is no charge for the Consul plate. If they do not hold an exequatur, they can obtain a free private plate. Applicant must be a native of the country he represents.

The plates can be transferred from one consul to another providing the original consul leaves his position and a new one takes over. A plate can also be transferred from one vehicle to another; however, there will be a three dollar transfer fee. Two consul plates can be issued to each qualified official.

5. Cancellation. If the applicant leaves his position and a new representative is not appointed to take his place, the plate must be returned for cancellation. If the applicant no longer wishes to display the plate on his vehicle, it must be surrendered for cancellation.

6. Replacement. If the consul plate is lost or stolen, the applicant may apply for a replacement plate by executing prescribed DPSVR form and submitting it with a copy of the current registration certificate. Another plate number shall be assigned by the Dean of the Consul Corps. No fee will be charged for this replacement.

Amateur Radio Operators' License Plates

1. Eligibility. Applicants for amateur radio operators' license plates shall include any persons possessing a current amateur radio license issued by the Federal Communications Commission. Such plates shall be issued on personally used private passenger vehicles, private use minimum trucks, private use vans and private busses.

2. Place of application. Applications for issuance of amateur radio operators' license plates shall be made at the Vehicle Registration Bureau, 109 South Foster Drive, Baton Rouge, Louisiana, or through the mail by writing to the Department of Public Safety, Special Services Section, Box 66196, Baton Rouge, Louisiana 70896.

3. Application. All applications for issuance or transfer of amateur radio operators' license plates shall be made on prescribed DPSVR forms. Application must be accompanied by a photocopy of the applicant's current amateur radio operator's license issued by the Federal Communications Commission. If the vehicle on which the plate will be displayed has been purchased but application for title has not been made, the application for title and the request for special plate will be taken at the same time. A numerical plate will be issued for the vehicle until the special plate has been received, at which time the numerical plate and corresponding registration certificate will be surrendered for cancellation.

4. Fee. The fee for issuance of an amateur radio operator's license plate shall be one dollar plus the regular registration fee. The plate can be transferred from one vehicle to another upon payment of a three dollar transfer fee. The plates are subject to regular renewal requirements.

5. Cancellation. Amateur radio operators' license plates displayed on vehicles other than those to which issued are subject to immediate cancellation. If the applicant no longer wishes to display the plate on his vehicle or transfer the plate to another vehicle registered in his name, the plate shall be returned to this office for cancellation.

6. Replacement. If the plate is lost or stolen, applicant may apply for a replacement plate by executing prescribed DPSVR form and submitting it along with the registration certificate and a two dollar fee.

Colonel Malcolm Millet, Secretary
Department of Public Safety

NOTICE OF INTENT

Department of Public Safety
Office of State Police

Notice is hereby given that the Secretary of the Louisiana Department of Public Safety will conduct a public hearing at 9:30 a.m., February 1, 1980, in the Orleans Room, Bellemont Motor Hotel, 7370 Airline Highway, Baton Rouge, Louisiana. This hearing will be for the consideration of the following proposed revisions in the rules and regulations relative to the possession, transportation, storage, and use of explosives in the State of Louisiana.

Proposed changes to Rules and Regulations under LAC 17-11

Add 2.23: "Unauthorized Persons"—Those persons not employed by the Licensed Company.

Change 5.1 to read: All explosives, including black powder in excess of five pounds, except when being transported, shall be kept in magazines which meet the requirements of these Rules and Regulations. Blasting agents shall be stored in accordance with the requirements set forth in LAC 17-11:9. Underground mine storage will provide all adequate safety and security procedures necessary to ensure that unlicensed personnel will not have access to the explosives. Such security must be approved by the Secretary of the Department of Public Safety.

Delete 5.15.

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