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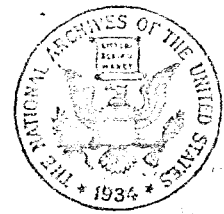
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# Registered Federal

WEDNESDAY, AUGUST 28, 1974

WASHINGTON, D.C.

Volume 39 ■ Number 168



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PART I

## HIGHLIGHTS OF THIS ISSUE

This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.

<b>NATIONAL DAM SAFETY PROGRAM</b> —Engineers Corps issues proposed inspection procedures; comments by 10-1-74 .....	31334
<b>NATIONAL FOREST MINERAL RESOURCES</b> —USDA rules on prospecting, exploration and mining procedures; effective 9-1-74.....	31317
<b>LOW RENT PUBLIC HOUSING</b> —HUD amends prototype cost schedules; effective 8-28-74.....	31309
<b>DOMESTIC FINANCIAL POLICY</b> —Federal Open Market Committee publishes directive of 5-21-74.....	31365
<b>FRUIT JELLY AND PRESERVES</b> —FDA revises standards; effective 10-29-74.....	31304
<b>AUTOMATIC DATA PROCESSING</b> —NBS proposal on bibliographic information interchange on magnetic tape; comments by 11-26-74.....	31353
<b>MEETINGS</b> —	
Federal Mediation and Conciliation Service: Arbitration Services Advisory Committee, 9-19 and 9-20-74.....	31362
Telecommunications Policy Office: Frequency Management Advisory Council, 9-6-74.....	31368
SESA: Census Advisory Committee of the American Statistical Association, 9-19 and 9-20-74.....	31354
HEW: Tropical Medicine and Parasitology Study Division, 9-16 to 9-18-74.....	31354
FCC: Cable Television Technical Advisory Committee Panels 4 and 6 (2 documents), 9-17-74.....	31362
GSA: Public Advisory Panel on Architectural and Engineering Services for Office of Operating Programs, 9-5-74 .....	31365
CSC: Federal Employees Pay Council, 9-25-74.....	31360
DoD: Armed Forces Epidemiological Board, 10-4-74.....	31347
State Department: Advisory Committee on Voluntary Foreign Aid, 9-16-74.....	31333
AEC: Special Laser Fusion Advisory Panel, 9-16-74.....	31358

### PART II:

<b>MEAT PRODUCTS POINT SOURCE CATEGORY</b> —EPA proposes effluent limitations and guidelines; comments by 9-27-74.....	31485
--	-------

### PART III:

<b>WATER QUALITY</b> —EPA proposal on pollutant source monitoring in state and interstate programs; comments by 10-15-74.....	31499
---	-------

### PART IV:

<b>CHILD ABUSE AND NEGLECT</b> —HEW proposes prevention and treatment program; comments by 9-27-74 .....	31507
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August 28, 1974 - Page 31287-31512

Signed at Washington, D.C., this 23rd day of August, 1974.

BETTY SOUTHWARD MURPHY,  
Administrator, Wage and Hour  
Division, U.S. Department of  
Labor.

(FR Doc. 74-19835 Filed 8-27-74; 8:45 am)

**Title 35—Parks, Forests, and Public Property**

**CHAPTER II—FOREST SERVICE,  
DEPARTMENT OF AGRICULTURE**

**NATIONAL FORESTS SURFACE USE  
UNDER U.S. MINING LAWS**

Regulations are hereby adopted concerning the use of the surface of National Forest System lands by persons operating under the United States mining laws of 1872, as amended. Parts 251 and 293 are amended and a new Part 252 is added.

The public was afforded an opportunity to comment on proposed rulemaking published on December 19, 1973 (36 FR 34617) and on July 16, 1974 (39 FR 26938). Respondents included Government agencies (National, State, and local), conservation organizations, mining associations, United States Senators and Congressmen, and individuals directly or indirectly concerned with mineral operations. The proposed regulations were also the subject of oversight hearings by the Public Lands Subcommittee of the Committee on Interior and Insular Affairs of the House of Representatives.

Comments ranged from total opposition to unqualified support of the proposals. Critical comments were in the majority. Many persons suggested changes or improvements in both wording and substance.

Although many respondents objected to the operating plan requirement, the essence of adequate regulation is development of operating plans which reflect both the necessities for environmental protection and for the use of surface resources in connection with mineral operations. A provision for operating plans is part of the regulations.

A major concern expressed by the mining industry, and noted by the Public Lands Subcommittee of the House Committee on Interior and Insular Affairs, is the possibility of unreasonable enforcement of the regulations, with resulting cost increases that could make otherwise viable mineral operations prohibitively expensive. The Forest Service recognizes that prospectors and miners have a statutory right, not mere privilege, under the 1872 mining law and the Act of June 4, 1897, to go upon and use the open public domain lands of the National Forest System for the purposes of mineral exploration, development and production. Exercise of that right may not be unreasonably restricted. Specific provision has been made in the operating plan approval section of the regulations charging Forest Service administrators with the responsibility to consider the economics of operations, along with the other factors, in determining the rea-

sonableness of the requirements for surface resource protection.

Many comments objected to the time provided for Forest Service response to proposed operating plans. No change has been made in these provisions since the time allowances are reasonable as outside limits. Even so, Forest Service administrators are expected to process operating plans promptly with the objective of responding, on the average, in half of the time allowed.

The requirement for a minimum bond of \$2,000 for any activities subject to operating plans was the provision most heavily criticized. Many respondents pointed to the discriminatory effect and negative impact on small miners and prospectors having relatively limited means. The bond provision has been changed to reduce discriminatory effects and to be more specific as to coverage, but remain responsive to the need to maintain the responsibilities of operators for reclamation and mitigation of the effects of surface disturbing operations.

Some respondents felt that all information and data submitted on proposed operations should be subject to full public disclosure. The rule of reasonableness is particularly applicable since proprietary data and competitive rights are involved. The section on availability of information to the public recognizes these factors.

Language has been modified to make more clear that the intent of these regulations is protection of the surface resources on National Forest System lands.

A number of comments noted the lack of a provision for a "notice of intent to operate." Such a provision has been included in the regulations.

The provision concerning data to be furnished in an operating plan has been simplified and is clarified to state that the Forest Service, rather than the operator, has the responsibility for analyzing the environmental impacts that may be expected from proposed operations.

Many respondents criticized the language about environmental impact statements and appeals procedures. Those sections have been clarified. The number of levels of appeal provided is small in order to allow aggrieved parties quick access to the courts to seek redress.

Seasonal factors in most of the western mountains preclude prospecting and exploration during winter and early spring. A 120-day grace period is provided within which to file required operating plans in the case of operations underway on the effective date of the regulations. Under the circumstances, the regulations should not have significant effect on ongoing operations during the remainder of this operating season.

A Final Environmental Statement, prepared in accordance with section 102(2)(c) of the National Environmental Policy Act of January 1, 1970 (42 U.S.C. 4332(2)(C)), was filed with the Council on Environmental Quality on July 16, 1974. The statement discussed the environmental impact of issuing the regulations as proposed.

The regulations will be effective September 1, 1974.

The amendment of Chapter II follows:

**PART 251—LAND USES**

**§ 251.12 [Revoked]**

1. Part 251 is amended by revoking § 251.12.

**PART 252—MINERALS**

2. A new Part 252 is added to read as follows:

Sec.	Purpose.
252.1	Purpose.
252.2	Scope.
252.3	Definitions.
252.4	Plan of operations—notice of intent—requirements.
252.5	Plan of operations—approval.
252.6	Availability of information to the public.
252.7	Inspection, noncompliance.
252.8	Requirements for environmental protection.
252.9	Maintenance during operations, public safety.
252.10	Cessation of operations, removal of structures and equipment.
252.11	Prevention and control of fire.
252.12	Access.
252.13	Bonds.
252.14	Appeals.
252.15	Operations within National Forest Wilderness.

**AUTHORITY:** 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 651), unless otherwise noted.

**§ 252.1 Purpose.**

It is the purpose of these regulations to set forth rules and procedures through which use of the surface of National Forest System lands in connection with operations authorized by the United States mining laws (30 U.S.C. 21-54), which confer a statutory right to enter upon the public lands to search for minerals, shall be conducted so as to minimize adverse environmental impacts on National Forest System surface resources. It is not the purpose of these regulations to provide for the management of mineral resources; the responsibility for managing such resources is in the Secretary of the Interior.

**§ 252.2 Scope.**

These regulations apply to operations hereafter conducted under the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 et seq.), as they affect surface resources on all National Forest System lands under the jurisdiction of the Secretary of Agriculture to which such laws are applicable; *Provided, however*, That any area of National Forest lands covered by a special Act of Congress (16 U.S.C. 482a-482e) is subject to the provisions of this part and the provisions of the special act, and in the case of conflict the provisions of the special act shall apply.

**§ 252.3 Definitions.**

For the purposes of this part the following terms, respectively, shall mean:

(a) *Operations.* All functions, work, and activities in connection with prospecting, exploration, development, mining or processing of mineral resources

and all uses reasonably incident there-  
to, including roads and other means of  
access on lands subject to the regula-  
tions in this part, regardless of whether  
said operations take place on or off min-  
ing claims.

(b) *Operator.* A person conducting or  
proposing to conduct operations.

(c) *Person.* Any individual, partner-  
ship, corporation, association, or other  
legal entity.

(d) *Mining claim.* Any unpatented  
mining claim or unpatented millsite au-  
thorized by the United States mining  
laws of May 10, 1872, as amended (30  
U.S.C. 22 et seq.).

(e) *Authorized officer.* The Forest  
Service officer to whom authority to re-  
view and approve operating plans has  
been delegated.

**§ 252.4 Plan of Operations—Notice of  
Intent—Requirements.**

(a) Except as provided in paragraph  
(2) of this section, a notice of intention  
to operate is required from any person  
proposing to conduct operations which  
might cause disturbance of surface re-  
sources. Such notice of intention shall be  
submitted to the District Ranger having  
jurisdiction over the area in which the  
operations will be conducted. If the Dis-  
trict Ranger determines that such opera-  
tions will likely cause significant dis-  
turbance of surface resources, the oper-  
ator shall submit a proposed plan of  
operations to the District Ranger.

(1) The requirements to submit a plan  
of operations shall not apply (i) to oper-  
ations which will be limited to the use  
of vehicles on existing public roads or  
roads used and maintained for National  
Forest purposes, (ii) to individuals de-  
siring to search for and occasionally  
remove small mineral samples or speci-  
mens, (iii) to prospecting and sampling  
which will not cause significant surface  
resource disturbance and will not involve  
removal of more than a reasonable  
amount of mineral deposit for analysis  
and study, (iv) to marking and moni-  
toring a mining claim and (v) to sub-  
surface operations which will not cause  
significant surface resource disturbance.

(2) A notice of intent need not be filed  
(i) where a plan of operations is sub-  
mitted for approval in lieu thereof, (ii)  
for operations excepted in paragraph  
(1) of this section from the requirement  
to file a plan of operations, (iii) for op-  
erations which will not involve the use  
of mechanized earthmoving equipment  
such as bulldozers or backhoes and will  
not involve the cutting of trees. Each no-  
tice of intent to operate shall provide  
information sufficient to identify the  
area involved, the nature of the proposed  
operations, the route of access to the  
area of operations and the method of  
transport. If a notice of intent is filed,  
the District Ranger will, within 15 days  
of receipt thereof, notify the operator  
whether a plan of operations is required.

(3) Any person conducting operations  
on the effective date of these regula-  
tions, who would have been required to  
submit a plan of operations under § 252.4  
(a), may continue operations but shall

within 120 days thereafter submit a plan  
of operations to the District Ranger hav-  
ing jurisdiction over the area within  
which operations are being conducted;  
*Provided, however,* That upon a showing  
of good cause the authorized officer will  
grant an extension of time for submis-  
sion of a plan of operations, not to ex-  
ceed an additional 6 months. Operations  
may continue according to the submitted  
plan during its review, unless the au-  
thorized officer determines that the oper-  
ations are unnecessarily or unreasonably  
causing irreparable damage to surface  
resources and advises the operator of  
those measures needed to avoid such  
damage. Upon approval of a plan of  
operations, operations shall be conducted  
in accordance with the approved plan.  
The requirement to submit a plan of  
operations shall not apply (1) to opera-  
tions excepted in § 252.4(a) or (2) to  
operations concluded prior to the effec-  
tive date of the regulations in this part.

(c) The plan of operations shall in-  
clude:

(1) The name and legal mailing ad-  
dress of the operators (and claimants if  
they are not the operators) and their  
lessees, assigns, or designees.

(2) A map or sketch showing informa-  
tion sufficient to locate the proposed area  
of operations on the ground, existing  
and/or proposed roads or access routes  
to be used in connection with the opera-  
tions as set forth in § 252.12 and the ap-  
proximate location and size of areas  
where surface resources will be disturbed.

(3) Information sufficient to describe  
or identify the type of operations pro-  
posed and how they would be conducted,  
the type and standard of existing and  
proposed roads or access routes, the  
means of transportation used or to be  
used as set forth in § 252.12, the period  
during which the proposed activity will  
take place, and measures to be taken to  
meet the requirements for environmental  
protection in § 252.8.

(d) The plan of operations shall cover  
the requirements set forth in paragraph

(c) of this section, as foreseen for the  
entire operation for the full estimated  
period of activity; *Provided, however,*  
That if the development of a plan for an  
entire operation is not possible at the  
time of preparation of a plan, the oper-  
ator shall file an initial plan setting forth  
his proposed operation to the degree rea-  
sonably foreseeable at that time, and  
shall thereafter file a supplemental plan  
or plans whenever it is proposed to  
undertake any significant surface dis-  
turbance not covered by the initial plan.

(e) At any time during operations  
under an approved plan of operations,  
the authorized officer may ask the oper-  
ator to furnish a proposed modification of  
the plan detailing the means of minimiz-  
ing unforeseen significant disturbance of  
surface resources. If the operator does  
not furnish a proposed modification  
within a time deemed reasonable by the  
authorized officer, the authorized officer  
may recommend to his immediate super-  
ior that the operator be required to sub-  
mit a proposed modification of the plan.

The recommendation of the authorized  
officer shall be accompanied by a state-  
ment setting forth in detail the support-  
ing facts and reasons for his recommen-  
dations. In acting upon such recommen-  
dations, the immediate superior of the  
authorized officer shall determine (1)  
whether all reasonable measures were  
taken by the authorized officer to predict  
the environmental impacts of the pro-  
posed operations prior to approving the  
operating plan, (2) whether the disturb-  
ance is or probably will become of such  
significance as to require modification of  
the operating plan in order to meet the  
requirements for environmental protec-  
tion specified in § 252.8 and (3) whether  
the disturbance can be minimized using  
reasonable means. Lacking such deter-  
mination that unforeseen significant dis-  
turbance of surface resources is occurring  
or probable and that the disturbance can  
be minimized using reasonable means, no  
operator shall be required to submit a  
proposed modification of an approved  
plan of operations. Operations may con-  
tinue in accordance with the approved  
plan until a modified plan is approved,  
unless the immediate superior of the au-  
thorized officer determines that the op-  
erations are unnecessarily or unreason-  
ably causing irreparable injury, loss or  
damage to surface resources and advises  
the operator of those measures needed to  
avoid such damage.

(f) Upon completion of an environ-  
mental analysis in connection with each  
proposed operating plan, the authorized  
officer will determine whether an envi-  
ronmental statement is required. Not  
every plan of operations, supplemental  
plan or modification will involve the  
preparation of an environmental state-  
ment. Environmental impacts will vary  
substantially depending on whether the  
nature of operations is prospecting, ex-  
ploration, development, or processing,  
and on the scope of operations (such as  
size of operations, construction required,  
length of operations and equipment re-  
quired), resulting in varying degrees of  
disturbance to vegetative resources, soil,  
water, air, or wildlife. The Forest Ser-  
vice will prepare any environmental  
statements that may be required.

**§ 252.5 Plan of Operations—Approval.**

(a) Operations shall be conducted in  
accordance with an approved plan of  
operations, except as provided in section  
(b) of this section and in § 252.4(a), (b),  
and (e). A proposed plan of operation  
shall be submitted to the District  
Ranger, who shall promptly acknowl-  
edge receipt thereof to the operator. The  
authorized officer shall, within thirty  
(30) days of such receipt, analyze the  
proposal, considering the economics of  
the operation along with the other  
factors in determining the reasonable-  
ness of the requirements for surface re-  
source protection, and;

(1) Notify the operator that he has  
approved the plan of operations, or

(2) Notify the operator that the pro-  
posed operations are such as not to re-  
quire an operating plan; or

(3) Notify the operator of any changes or additions to the plan of operations deemed necessary to meet the purpose of the regulations in this part; or

(4) Notify the operator that the plan is being reviewed, but that more time, not to exceed an additional sixty (60) days, is necessary to complete such review, setting forth the reasons why additional time is needed; *Provided, however,* that days during which the area of operations is inaccessible for inspection shall not be included when computing the sixty (60) day period; or

(5) Notify the operator that the plan cannot be approved until a final environmental statement has been prepared and filed with the Council on Environmental Quality as provided in § 252.4(f).

(b) Pending final approval of the plan of operations, the authorized officer will approve such operations as may be necessary for timely compliance with the requirements of Federal and State laws, so long as such operations are conducted so as to minimize environmental impacts as prescribed by the authorized officer in accordance with the standards contained in § 252.8.

(c) A supplemental plan or plans of operations provided for in § 252.4(d) and a modification of an approved operating plan as provided for in § 252.4(e) shall be subject to approval by the authorized officer in the same manner as the initial plan of operations; *Provided, however,* that a modification of an approved plan of operations under § 252.4(e) shall be subject to approval by the immediate superior of the authorized officer in cases where it has been determined that a modification is required.

(d) In the provisions for review of operating plans, the Forest Service will arrange for consultation with appropriate agencies of the Department of the Interior with respect to significant technical questions concerning the character of unique geologic conditions and special exploration and development systems, techniques, and equipment, and with respect to mineral values, mineral resources, and mineral reserves. Further, the operator may request the Forest Service to arrange for similar consultations with appropriate agencies of the Department of the Interior for a review of operating plans.

**§ 252.6 Availability of information to the public.**

Except as provided herein, all information and data submitted by an operator pursuant to the regulations in this part shall be available for examination to the public at the Office of the District Ranger in accordance with the provisions of 7 CFR 1.1-1.6 and 36 CFR 200.5-10. Specifically identified information and data submitted by the operator which is confidential concerning trade secrets, privileged commercial or financial information will not be available for public examination. Information and data to be withheld from public examination may include, but is not limited to, an estimated outline of the min-

eral deposits and their location, attitude, extent, outcrops, and content, and the known or planned location of exploration pits, drill holes, excavations pertaining to location and entry pursuant to the United States mining laws, and other commercial information which relates to competitive rights of the operator.

**§ 252.7 Inspection, noncompliance.**

(a) Forest Officers shall periodically inspect operations to determine if the operator is complying with the regulations in this part and an approved plan of operations.

(b) If an operator fails to comply with the regulations or his approved plan of operations and the noncompliance is unnecessarily or unreasonably causing injury, loss or damage to surface resources the authorized officer shall serve a notice of noncompliance upon the operator or his agent in person or by certified mail. Such notice shall describe the noncompliance and shall specify the action to comply and the time within which such action is to be completed, generally not to exceed thirty (30) days; *Provided, however,* that days during which the area of operations is inaccessible shall not be included when computing the number of days allowed for compliance.

**§ 252.8 Requirements for Environmental Protection.**

All operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest surface resources, including the following requirements:

(a) *Air Quality.* Operator shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.).

(b) *Water Quality.* Operator shall comply with applicable Federal and State water quality standards, including regulations issued pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 et seq.).

(c) *Solid Wastes.* Operator shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste, shall either be removed from National Forest lands or disposed of or treated so as to minimize, so far as is practicable, its impact on the environment and the forest surface resources. All tailings, dumpage, deleterious materials or substances and other waste produced by operations shall be deployed, arranged, disposed of or treated so as to minimize adverse impact upon the environment and forest surface resources.

(d) *Scenic Values.* Operator shall, to the extent practicable, harmonize operations with scenic values through such measures as the design and location of operating facilities, including roads and other means of access, vegetative screening of operations, and construction of structures and improvements which blend with the landscape.

(e) *Fisheries and Wildlife Habitat.* In addition to compliance with water quality and solid waste disposal standards required by this section, operator shall take all practicable measures to maintain and protect fisheries and wildlife habitat which may be affected by the operations.

(f) *Roads.* Operator shall construct and maintain all roads so as to assure adequate drainage and to minimize or, where practicable, eliminate damage to soil, water, and other resource values. Unless otherwise approved by the authorized officer, roads no longer needed for operations (1) shall be closed to normal vehicular traffic, (2) bridges and culverts shall be removed, (3) cross drains, dips, or water bars shall be constructed, and (4) the road surface shall be shaped to as near a natural contour as practicable and be stabilized.

(g) *Reclamation.* Upon exhaustion of the mineral deposit or at the earliest practicable time during operations, or within 1 year of the conclusion of operations, unless a longer time is allowed by the authorized officer, operator shall, where practicable, reclaim the surface disturbed in operations by taking such measures as will prevent or control on-site and off-site damage to the environment and forest surface resources including:

- (1) Control of erosion and landslides;
- (2) Control of water runoff;
- (3) Isolation, removal or control of toxic materials;
- (4) Reshaping and revegetation of disturbed areas, where reasonably practicable; and
- (5) Rehabilitation of fisheries and wildlife habitat.

(h) Certification or other approval issued by State agencies or other Federal agencies of compliance with laws and regulations relating to mining operations will be accepted as compliance with similar or parallel requirements of these regulations.

**§ 252.9 Maintenance during operations, public safety.**

During all operations operator shall maintain his structures, equipment, and other facilities in a safe, neat and workmanlike manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced or otherwise identified to protect the public in accordance with Federal and State laws and regulations.

**§ 252.10 Cessation of operations, removal of structures and equipment.**

Unless otherwise agreed to by the authorized officer, operator shall remove within a reasonable time following cessation of operations all structures, equipment and other facilities and clean up the site of operations. Other than seasonally, where operations have ceased temporarily, an operator shall file a statement with the District Ranger which includes (1) verification of intent to maintain the structures, equipment and other facilities, (2) the expected re-opening date, and (3) an estimate of ex-



tended duration of operations. A statement shall be filed every year in the event operations are not reactivated. Operator shall maintain the operating site, structures, equipment and other facilities in a neat and safe condition during nonoperating periods.

#### § 252.11 Prevention and control of fire.

Operator shall comply with all applicable Federal and State fire laws and regulations and shall take all reasonable measures to prevent and suppress fires on the area of operations and shall require his employees, contractors and subcontractors to do likewise.

#### § 252.12 Access.

An operator is entitled to access in connection with operations, but no road, trail, bridge, landing area for aircraft, or the like, shall be constructed or improved, nor shall any other means of access, including but not limited to off-road vehicles, be used until the operator has received approval of an operating plan in writing from the authorized officer when required by § 252.4(a). Proposals for construction, improvement or use of such access as part of a plan of operations shall include a description of the type and standard of the proposed means of access, a map showing the proposed route of access, and a description of the means of transportation to be used. Approval of the means of such access as part of a plan of operations shall specify the location of the access route, design standards, means of transportation, and other conditions reasonably necessary to protect the environment and forest surface resources, including measures to protect scenic values and to insure against erosion and water or air pollution.

#### § 252.13 Bonds.

(a) Any operator required to file a plan of operations shall, when required by the authorized officer, furnish a bond conditioned upon compliance with § 252.6(g), prior to approval of such plan of operations. In lieu of a bond, the operator may deposit into a Federal depository, as directed by the Forest Service, and maintain therein, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having market value at the time of deposit of not less than the required dollar amount of the bond. A blanket bond covering nationwide or statewide operations may be furnished if the terms and conditions thereof are sufficient to comply with the regulations in this part.

(b) In determining the amount of the bond, consideration will be given to the estimated cost of stabilizing, rehabilitating, and reclaiming the area of operations.

(c) In the event that an approved plan of operations is modified in accordance with § 252.4 (a) and (e) of this part, the authorized officer will review the initial bond for adequacy and, if necessary, will adjust the bond to con-

form to the operations plan as modified.

(d) When reclamation has been completed in accordance with § 252.3(g), the authorized officer will notify the operator that performance under the bond has been completed; *Provided, however,* That when the Forest Service has accepted as completed any portion of the reclamation, the authorized officer shall notify the operator of such acceptance and reduce proportionally the amount of bond thereafter to be required with respect to the remaining reclamation.

#### § 252.14 Appeals.

(a) Any operator aggrieved by a decision of the authorized officer in connection with the regulations in this part may file with the authorized officer a written statement setting forth in detail the respects in which the decision complained of is contrary to, or in conflict with, the facts, the law, or the regulations of the Secretary, or is otherwise in error. No such appeal will be considered unless it is filed with the authorized officer within thirty (30) days after the date of notification to the operator of the action or decision complained of. Upon receipt of appellant's statement, the authorized officer shall promptly prepare his own statement explaining his decision and the reasons therefor and forward the statements and record to his immediate superior for review and decision. The decision of the Regional Forester shall be the final administrative appeal decision.

(b) At the time appellant files his written statement of appeal he may request and shall be afforded an opportunity to present his views orally to the reviewing Forest Service officer.

(c) If the reviewing Forest Service officer considers the record inadequate to support a decision on the appeal, he may provide for the production of such additional evidence or information as may be appropriate or may remand the case with appropriate instructions for further action.

(d) The official files of the Forest Service relating to these appeals and any testimony and documents submitted by the parties on which the decision of the authorized officer was based constitute the record in the appeal. The authorized officer shall maintain the record under separate cover and shall certify that it is the record on which his decision was based at the time it is forwarded to his immediate superior for review. The Forest Service shall make the record available to the appellant upon request.

(e) On or before the expiration of forty-five (45) days after his receipt of the record the reviewing officer shall make his decision: *Provided, however,* That if more than forty-five (45) days are required for a decision after the record is received, the reviewing officer shall notify the parties to the appeal and specify the reason for delay. The decisions of reviewing officers shall include (1) a statement of facts, (2) conclusions, and (3) reasons upon which the conclusions are based.

(f) A decision of the authorized officer from which an appeal is taken shall not be automatically stayed by the filing of a statement of appeal. A request for a stay may accompany the statement of appeal or may be directed to the reviewing officer. The reviewing officer shall promptly rule on requests for stays. The decision of the Regional Forester on requests for stays shall constitute the final administrative appeal decision.

#### § 252.15 Operations within national forest wilderness.

(a) The United States mining laws shall extend to each National Forest Wilderness for the period specified in the Wilderness Act and subsequent establishing legislation to the same extent they were applicable prior to the date the Wilderness was designated by Congress as a part of the National Wilderness Preservation System. Subject to valid existing rights, no person shall have any right or interest in or to any mineral deposits which may be discovered through prospecting or other information-gathering activity after the legal date on which the United States mining laws cease to apply to the specific Wilderness.

(b) Holders of unpatented mining claims validly established on any National Forest Wilderness prior to inclusion of such unit in the National Wilderness Preservation System shall be accorded the rights provided by the United States mining laws as then applicable to the National Forest land involved. Persons locating mining claims in any National Forest Wilderness on or after the date on which said Wilderness was included in the National Wilderness Preservation System shall be accorded the rights provided by the United States mining laws as applicable to the National Forest land involved and subject to provisions specified in the establishing legislation. Persons conducting operations as defined in § 252.3 in National Forest Wilderness shall comply with the regulations in this part. Operations shall be conducted so as to protect National Forest surface resources in accordance with the general purposes of maintaining the National Wilderness Preservation System unimpaired for future use and enjoyment as wilderness and to preserve its wilderness character, consistent with the use of the land for mineral location, exploration, development, drilling, and production and for transmission lines, water lines, telephone lines, and processing operations, including, where essential, the use of mechanized transport, aircraft or motorized equipment.

(c) Persons with valid mining claims wholly within National Forest Wilderness shall be permitted access to such surrounded claims by means consistent with the preservation of National Forest Wilderness which have been or are being customarily used with respect to other such claims surrounded by National Forest Wilderness. No operator shall construct roads across National Forest Wild-

unless authorized in writing by the Forest Supervisor in accordance with § 293.12.

(d) On all mining claims validly established on lands within the National Wilderness Preservation System, the operator shall take all reasonable measures to remove any structures, equipment and other facilities no longer needed for mining purposes in accordance with the provisions in § 292.10 and restore the surface in accordance with the requirements in § 293.8(g).

(e) The title to timber on patented claims validly established after the land was included within the National Wilderness Preservation System remains in the United States, subject to a right to cut and use timber for mining purposes. So much of the mature timber may be cut and used as is needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available. The cutting shall comply with the requirements for sound principles of forest management as defined by the National Forest rules and regulations and set forth in stipulations to be included in the plan of operations, which as a minimum incorporate the following basic principles of forest management:

(1) Harvesting operations shall be so conducted as to minimize soil movement and damage from water runoff; and

(2) Slash shall be disposed of and other precautions shall be taken to minimize damage from forest insects, disease, and fire.

(f) The Chief, Forest Service, shall allow any activity, including prospecting, for the purpose of gathering information about minerals in National Forest Wilderness except that any such activity for gathering information shall be carried on in a manner compatible with the preservation of the wilderness environment as specified in the plan of operations.

(78 Stat. 890) (16 U.S.C. 1131-1136))

**PART 293—WILDERNESS-PRIMITIVE AREAS**

The regulations of Part 293 were transferred from Part 251 on March 5, 1972 (38 FR 5551). The new Part 293 is further amended by revising §§ 293.12, 293.14 and 293.15. Regulations applicable to activities under the 1872 mining law in National Forest Wilderness now appear in Part 252 rather than Part 293.

Sections 293.12-293.15 are revised to read as follows:

**293.12 Access to valid occupancies.**

Persons with valid occupancies wholly within National Forest Wilderness shall be permitted access to such surrounded occupancies by means consistent with the preservation of National Forest Wilderness which have been or are being administered with respect to other valid occupancies surrounded by National Forest Wilderness. The Forest Service shall, when appropriate, issue permits which shall describe the routes of travel from the surrounded occupancies,

the mode of travel, and other conditions reasonably necessary to preserve the National Forest Wilderness.

**§ 293.14 Mineral leases and mineral permits.**

(a) All laws pertaining to mineral leasing shall extend to each National Forest Wilderness for the period specified in the Wilderness Act or subsequent establishing legislation to the same extent they were applicable prior to the date the Wilderness was designated by Congress as a part of the National Wilderness Preservation System. No person shall have any right or interest in or to any mineral deposits which may be discovered through prospecting or other information-gathering activity after the legal date on which the laws pertaining to mineral leasing cease to apply to the specific Wilderness, nor shall any person after such date have any preference in applying for a mineral lease, license, or permit.

(b) Mineral leases, permits, and licenses covering lands within National Forest Wilderness will contain reasonable stipulations for the protection of the wilderness character of the land consistent with the use of the land for purposes for which they are leased, permitted, or licensed. The Chief, Forest Service, shall specify the conditions to be included in such stipulations.

(c) Permits shall not be issued for the removal of mineral materials commonly known as "common varieties" under the Minerals Act of July 31, 1947, as amended and supplemented (30 U.S.C. 601-604).

**§ 293.15 Gathering Information about Resources other than Minerals.**

(a) The Chief, Forest Service, shall allow any activity, for the purpose of gathering information about resources, other than minerals, in National Forest Wilderness, except that any such activity for gathering information shall be carried on in a manner compatible with the preservation of the wilderness environment. Prospecting for minerals or any activity for the purpose of gathering information about minerals in National Forest Wilderness is subject to the regulations in Part 252 of this title.

(b) No overland motor vehicle or other form of mechanical overland transport may be used in connection with any activity for the purpose of gathering information about resources, other than minerals, except as authorized by the Chief, Forest Service.

(c) Any person desiring to use motorized equipment, to land aircraft, or to make substantial excavations for the purpose of gathering information about resources, other than minerals, shall apply in writing to the Office of the Forest Supervisor or District Ranger having jurisdiction over the land involved. Excavations shall be considered "substantial" which singularly or collectively exceed 200 cubic feet within any area which can be bounded by a rectangle containing 20 surface acres. Such use or excavation may be authorized by a permit issued by the Forest

Service. Such permits may provide for the protection of National Forest resources, including wilderness values, protection of the public, and restoration of disturbed areas, including the posting of performance bonds.

(d) Prospecting for water resources and the establishment of new reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest and the subsequent maintenance of such facilities, all pursuant to section (4)(d)(4)(1) of the Wilderness Act, will be permitted when and as authorized by the President.

(30 Stat. 35, as amended (16 U.S.C. 551); 78 Stat. 890 (16 U.S.C. 1131-1136)).

PAUL A. VANDER MYDE,  
Deputy Assistant Secretary for  
Conservation, Research and  
Education.

AUGUST 23, 1974.

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Title 40—Protection of Environment  
CHAPTER I—ENVIRONMENTAL  
PROTECTION AGENCY  
SUBCHAPTER C—AIR PROGRAMS  
[FRL 249-3]

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

**Approval of Plan Revision: West Virginia**

On June 28, 1973, the West Virginia Air Pollution Control Commission passed amendments to sub-sections 3.01(b)(1) and 3.02(a), and added a new sub-section entitled 6.02(b) to Regulation X—"To Prevent and Control Air Pollution from the Emission of Sulfur Oxides." These amendments were made following a public hearing in Charleston, West Virginia on March 5, 1973. This revision allows the John E. Amos Plant of Appalachian Power Company to burn not more than 1 percent sulfur coal in a Priority III Region. It also provides clarification to Section 6 of the Regulation—"Reports and Testing."

These amendments constitute a proposed revision to the approved West Virginia Implementation Plan. On January 17, 1974 (39 FR 2108), the public was afforded 30 days to comment on the proposed revision. Comments were received from American Electric Power and Monongahela Power Company. Both sets of comments urged approval of the revision on the general bases that it would not interfere with the attainment and maintenance of national ambient air quality standards and that it was in accordance with EPA's policy of minimizing fuel switching except where primary standards are jeopardized.

An analysis, submitted to EPA by the West Virginia Air Pollution Control Commission, indicates that this revision will not interfere with the attainment or maintenance of the national ambient air quality standards for sulfur dioxide. The Administrator's separate diffusion modeling analysis confirms the West Virginia Air Pollution Control Commission demonstration. Copies of the Adminis-