

## SUBCHAPTER A—GENERAL

### PART 700—GENERAL

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AUTHORITY: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100-34.

SOURCE: 44 FR 15313, Mar. 13, 1979, unless otherwise noted.

#### §700.1 Scope.

The regulations in chapter VII of 30 CFR, consisting of parts 700 through 899, establish the procedures through which the Secretary of the Interior will implement the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*)). Chapter VII is divided into 13 subchapters.

(a) Subchapter A contains introductory information intended to serve as a guide to the rest of the chapter and to the regulatory requirements and definitions generally applicable to the programs and persons covered by the Act.

(b) Subchapter B contains regulations covering the initial regulatory program which apply before the applicability of permanent program regulations to persons conducting surface coal mining and reclamation operations and other persons covered by the Act.

(c) Subchapter C sets forth regulations covering applications for and decisions on permanent State programs; the process to be followed for substituting a Federal program for an approved State program, if necessary; the process for assuming temporary Federal enforcement of an approved State program; and the process for implementing a Federal program in a State when required by the Act.

(d) Subchapter D of this chapter identifies the procedures that apply to sur-

face coal mining and reclamation operations conducted on Federal lands rather than State or private lands and incorporates by reference the requirements of the applicable regulatory program and the inspection and enforcement requirements of subchapter L of this chapter.

(e) Subchapter E of this chapter contains regulations that apply to surface coal mining and reclamation operations conducted on Indian lands.

(f)(1) Subchapter F implements the requirements of the Act for—

(i) Designating lands which are unsuitable for all or certain types of surface coal mining operations;

(ii) Terminating designations no longer found to be appropriate; and

(iii) Prohibiting surface coal mining and reclamation operations on those lands or areas where the Act states that surface coal mining operations should not be permitted or should be permitted only after specified determinations are made.

(2) Subchapter F does not include regulations governing designation of areas unsuitable for noncoal mining under the terms of section 601 of the Act or the designation of Federal lands under the Federal lands review provisions of section 522(b) of the Act. The Bureau of Land Management of the Department of the Interior is responsible for these provisions which will be implemented when promulgated by regulations in title 43 of the Code of Federal Regulations.

(g) Subchapter G governs applications for and decisions on permits for surface coal mining and reclamation operations on non-Indian and non-Federal lands under a State or Federal program. It also governs coal exploration and permit application and decisions on permits for special categories of coal mining on non-Indian and non-Federal lands under a State or Federal program. Regulations implementing the experimental practices provision of the Act are also included in subchapter G.

(h) Subchapter J sets forth requirements for performance bonds and public liability insurance for both surface

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mining and underground mining activities.

(i) Subchapter K sets forth the environmental and other performance standards which apply to coal exploration and to surface coal mining and reclamation operations during the permanent regulatory program. The regulations establish the minimum requirements for operations under State and Federal programs. Performance standards applicable to special mining situations such as anthracite mines, steep slope mining, alluvial valley floors, and prime farmlands are included.

(j) Subchapter L sets forth the inspection, enforcement, and civil penalty provisions that apply to a State, Federal, or Federal lands program.

(k) Subchapter M sets forth the requirements for the training, examination, and certification of blasters.

(l) Subchapter P sets forth the provisions for protection of employees who initiate proceedings under the Act or testify in any proceedings resulting from the administration or enforcement of the Act.

(m) Subchapter R sets forth the regulations for the abandoned mine land reclamation program. These regulations include the fee collection requirements and the mechanisms for implementing the State and Federal portions of the abandoned mine land reclamation program.

(n) Subchapter S sets forth the regulations that apply to grants for mining and mineral research institutes and grants for mineral research projects.

[44 FR 15313, Mar. 13, 1979, as amended at 48 FR 6934, Feb. 16, 1983; 49 FR 38477, Sept. 28, 1984]

### § 700.2 Objective.

The objective of chapter VII is to fulfill the purposes of the Act found in section 102 in a manner which is consistent with the language of the Act, its legislative history, other applicable laws, and judicial interpretations.

### § 700.3 Authority.

The Secretary is authorized to administer the requirements of the Act, except the following:

(a) Provisions of the Act that authorize the Secretary of Agriculture to establish programs for the reclamation of

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rural lands, identification of prime agricultural lands, and other responsibilities described in the Act. Regulations promulgated by the Secretary of Agriculture are in 7 CFR;

(b) Provisions of the Act for which responsibility is specifically assigned to other Federal agencies, including the Department of Labor, the Environmental Protection Agency, the Corps of Engineers, the Council on Environmental Quality, and the Department of Energy; and

(c) Authority retained by the States to enforce State laws or regulations which are not inconsistent with the Act and this chapter, including the authority to enforce more stringent land use and environmental controls and regulations.

### § 700.4 Responsibility.

(a) The Director of the Office of Surface Mining Reclamation and Enforcement, under the general direction of the Assistant Secretary, Energy and Minerals, is responsible for exercising the authority of the Secretary, except for the following:

(1) Approval, disapproval or withdrawal of approval of a State program and implementation of a Federal program. The Director is responsible for exercising the authority of the Secretary to substitute Federal enforcement of a State program under section 521(b) of the Act.

(2) Designation of non-Federal lands or Federal lands without the concurrence of the Federal surface managing agency as unsuitable for all or certain types of surface coal mining operations under section 522 of the Act and as unsuitable for non-coal mining under section 601 of the Act; and

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

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

(c) The States are responsible for the regulation of surface coal mining and

reclamation operations under the initial regulatory program and surface coal mining and reclamation operations and coal exploration under an approved State program and the reclamation of abandoned mine lands under an approved State Reclamation Plan on non-Federal and non-Indian lands in accordance with procedures in this chapter.

(d) The Secretary may delegate to a State through a cooperative agreement certain authority relating to the regulation of surface coal mining and reclamation operations on Federal lands in accordance with 30 CFR part 745.

(e) The Director, Office of Hearings and Appeals, U.S. Department of the Interior, is responsible for the administration of administrative hearings and appeals required or authorized by the Act pursuant to the regulations in 43 CFR part 4.

[44 FR 15313, Mar. 13, 1979; 44 FR 49684, Aug. 24, 1979]

#### § 700.5 Definitions.

As used throughout this chapter, the following terms have the specified meaning except where otherwise indicated—

*Act* means the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87).

*Anthracite* means coal classified as anthracite in ASTM Standard D 388-77. Coal classifications are published by the American Society of Testing and Materials under the title, *Standard Specification for Classification of Coals by Rank*, ASTM D 388-77, on pages 220 through 224. Table 1 which classifies the coals by rank is presented on page 223. This publication is hereby incorporated by reference as it exists on the date of adoption of these regulations. Notices of changes made to this publication will be periodically published by the Office of Surface Mining in the FEDERAL REGISTER. This ASTM Standard is on file and available for inspection at the OSM Office, U.S. Department of the Interior, South Interior Building, Washington, DC 20240, at each OSM Regional Office, District Office and Field Office, and at the central office of the applicable State Regulatory Authority, if any. 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 National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). Incorporation by reference provisions approved by the Director of the Federal Register February 7, 1979. The Director's approval of this incorporation by reference expires on July 1, 1981.

*Coal* means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77, referred to and incorporated by reference in the definition of *Anthracite* immediately above.

*Department* means the Department of the Interior.

*Director* means the Director, Office of Surface Mining Reclamation and Enforcement, or the Director's representative.

*Federal lands* means 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. It does not include Indian lands. However, lands or mineral interests east of the 100th meridian west longitude owned by the United States and entrusted to or managed by the Tennessee Valley Authority are not subject to sections 714 (surface owner protection) and 715 (Federal lessee protection) of the Act.

*Federal lands program* means a program established by the Secretary pursuant to section 523 of the Act to regulate surface coal mining and reclamation operations on Federal lands.

*Fund* means the Abandoned Mine Reclamation Fund established pursuant to section 401 of the Act.

*Indian lands* means 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.

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*Indian tribe* means any Indian tribe, band, group, or community having a governing body recognized by the Secretary.

*Office* means the Office of Surface Mining Reclamation and Enforcement established under title II of the Act.

*OSM* and *OSMRE* mean the Office of Surface Mining Reclamation and Enforcement established under title II of the Act.

*Person* means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agency, unit, or instrumentality of Federal, State or local government including any publicly owned utility or publicly owned corporation of Federal State or local government.

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

(a) Who uses any resource of economic, recreational, esthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the State regulatory authority; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the State regulatory authority.

*Public office* means 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.

*Regional Director* means a Regional Director of the Office or a Regional Director's representative.

*Regulatory authority* means the department or agency in each State which has primary responsibility at the State level for administering the Act in the initial program, or the State regulatory authority where the State is administering the Act under a State regulatory program, or the Secretary in the initial or permanent program

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where the Secretary is administering the Act, or the Secretary when administering a Federal program or Federal lands program or when enforcing a State program pursuant to section 521(b) of the Act.

*Regulatory program* means any approved State or Federal program or, in a State with no approved State or Federal program and coal exploration and surface coal mining and reclamation operations are on Federal lands, the requirements of subchapters A, F, G, J, K, L, M, and P of this chapter.

*Secretary* means the Secretary of the Interior or the Secretary's representative.

*State regulatory authority* means the department or agency in each State which has primary responsibility at the State level for administering the initial or permanent State regulatory program.

*Surface coal mining operations* mean—

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of section 516 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountain top removal, box cut, open pit, and area mining; the use of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. *Provided*, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16% percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to section 512 of the Act; and, *Provided further*, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) The areas upon which the activities described in paragraph (a) of this

definition occur or where such activities disturb the natural land surface. These 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 those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

*Surface coal mining and reclamation operations* means 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.

*Ton* means 2000 pounds avoirdupois (.90718 metric ton).

[44 FR 15313, Mar. 13, 1979; 44 FR 49684, Aug. 24, 1979, as amended at 45 FR 54753, Aug. 18, 1980; 48 FR 6934, Feb. 16, 1983; 48 FR 20400, May 5, 1983; 50 FR 28189, July 10, 1985; 52 FR 17729, May 11, 1987; 52 FR 39407, Oct. 21, 1987]

#### § 700.10 Information collection.

The collection of information, and recordkeeping requirements, contained in 30 CFR 700.11(d), 700.12(b) and 700.13 has approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0094. The information collected in § 700.11(d) is used by OSMRE and States to establish standards for determining when a mine site is no longer a surface coal mining and reclamation operation and thereby when regulatory jurisdiction may end. The information collection under § 700.12(b) is used by OSMRE to consider need, costs, and benefits of a proposed regulatory change in order to grant or deny a petition that has been submitted. Information collected in § 700.13 identifies the person and nature of a citizen's suit, so that OSMRE or a state can respond appropriately.

[53 FR 44363, Nov. 2, 1988]

#### § 700.11 Applicability.

(a) Except as provided in paragraph (b) of this section, this chapter applies to all coal exploration and surface coal mining and reclamation operations, except:

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

(2) The extraction of 250 tons of coal or less by a person conducting a surface coal mining and reclamation operation. A person who intends to remove more than 250 tons is not exempted;

(3) The extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction in accordance with part 707 of this chapter;

(4) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 $\frac{2}{3}$  percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale in accordance with part 702 of this chapter.

(5) Coal exploration on lands subject to the requirement of 43 CFR parts 3480-3487.

(b) This chapter does not apply to the extraction of coal for commercial purposes where the surface coal mining and reclamation operation, together with any related operations, has or will have an affected area of two acres or less. For purposes of this paragraph:

(1) Where a segment of a road is used for access or coal haulage by more than one surface coal mining operation, the entire segment shall be included in the affected area of each of those operations; provided, that two or more operations which are deemed related pursuant to paragraph (b)(2) of this section shall be considered as one operation for purposes of this paragraph.

(2) Except as provided in paragraph (b)(3) of this section, surface coal mining operations shall be deemed related if they occur within twelve months of each other, are physically related, and are under common ownership or control.

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(i) Operations shall be deemed physically related if drainage from both operations flows into the same watershed at or before a point within five aerial miles of either operation.

(ii) Operations shall be deemed under common ownership or control if they are owned or controlled, directly or indirectly, by or on behalf of:

(A) The same person;

(B) Two or more persons, one of whom controls, is under common control with, or is controlled by the other; or

(C) Members of the same family and their relatives, unless it is established that there is no direct or indirect business relationship between or among them;

(iii) For purposes of this paragraph, *control* means: ownership of 50 percent or more of the voting shares of, or general partnership in, an entity; any relationship which gives one person the ability in fact or law to direct what the other does; or any relationship which gives one person express or implied authority to determine the manner in which coal at different sites will be mined, handled, sold or disposed of.

(3) Notwithstanding the provisions of paragraph (b)(2) of this section, the regulatory authority may determine, in accordance with the procedures applicable to requests for determination of exemption pursuant to paragraph (c) of this section, that two or more surface coal mining operations shall not be deemed related if, considering the history and circumstances relating to the coal, its location, the operations at the sites in question, all related operations and all persons mentioned in paragraph (b)(2)(ii) of this section, the regulatory authority concludes in writing that the operations are not of the type which the Act was intended to regulate and that there is no intention on the part of such operations or persons to evade the requirements of the Act or the applicable regulatory program.

(4) The exemption provided by paragraph (b) of this section applies only to operations with an affected area of less than two acres where coal is being extracted for commercial purposes and to surface coal mining operations within

that affected area incidental to such operations.

(c) The regulatory authority may on its own initiative and shall, within a reasonable time of a request from any person who intends to conduct surface coal mining operations, make a written determination whether the operation is exempt under this section. The regulatory authority shall give reasonable notice of the request to interested persons. Prior to the time a determination is made, any person may submit, and the regulatory authority shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption. If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption and relied upon the determination, shall not be cited for violations which occurred prior to the date of the reversal.

(d)(1) A regulatory authority may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, when:

(i) The regulatory authority determines in writing that under the initial program, all requirements imposed under subchapter B of this chapter have been successfully completed; or

(ii) The regulatory authority determines in writing that under the permanent program, all requirements imposed under the applicable regulatory program have been successfully completed or, where a performance bond was required, the regulatory authority has made a final decision in accordance with the State or Federal program counterpart to part 800 of this chapter to release the performance bond fully.

(2) Following a termination under paragraph (d)(1) of this section, the regulatory authority shall reassert jurisdiction under the regulatory program over a site if it is demonstrated that the bond release or written determination referred to in paragraph (d)(1) of this section was based upon fraud,

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collusion, or misrepresentation of a material fact.

[47 FR 33431, July 2, 1982, as amended at 48 FR 40634, Sept. 8, 1983; 48 FR 44779, Sept. 30, 1983; 49 FR 38477, Sept. 28, 1984; 53 FR 44363, Nov. 2, 1988; 54 FR 52120, 54 FR 52120, Dec. 20, 1989]

EFFECTIVE DATE NOTE: At 52 FR 21229, June 4, 1987, paragraph (b) of § 700.11 was suspended insofar as it excepts from the applicability of 30 CFR chapter VII:

- (1) Any surface coal mining operations commencing on or after June 6, 1987; and
- (2) Any surface coal mining operations conducted on or after November 8, 1987.

### § 700.12 Petitions to initiate rule-making.

(a) Any person may petition the Director to initiate a proceeding for the issuance, amendment, or repeal of any regulation under the Act. The petition shall be submitted to the Office of the Director, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, DC 20240.

(b) The petition shall be a concise statement of the facts, technical justification, and law which require issuance, amendment, or repeal of a regulation under the Act and shall indicate whether the petitioner desires a public hearing.

(c) Upon receipt of the petition, the Director shall determine if the petition sets forth facts, technical justification and law which may provide a reasonable basis for issuance, amendment or repeal of a regulation. Facts, technical justification or law previously considered in a petition or rulemaking on the same issue shall not provide a reasonable basis. If the Director determines that the petition has a reasonable basis, a notice shall be published in the FEDERAL REGISTER seeking comments from the public on the proposed change. The Director may hold a public hearing, may conduct an investigation or take other action to determine whether the petition should be granted.

(d) Within 90 days from receipt of the petition, the Director shall issue a written decision either granting or denying the petition. The Director's decision shall constitute the final decision for the Department.

(1) If the petition is granted, the Director shall initiate a rulemaking proceeding.

(2) If the petition is denied, the Director shall notify the petitioner in writing, setting forth the reasons for denial.

### § 700.13 Notice of citizen suits.

(a) A person who intends to initiate a civil action on his or her own behalf under section 520 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 and the Director in all cases and to the head of the State regulatory authority, if a complaint involves or relates to a specific State. 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 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; and

(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 Secretary or a State regulatory authority to perform a mandatory act or duty under the Act shall state, to the extent known:

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(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; and

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

### § 700.14 Availability of records.

(a) Records required by the Act to be made available locally to the public shall be retained at the geographically closest office of the State or Federal regulatory authority having jurisdiction over the area involved.

(b) Other records or documents in the possession of the Office may be requested under 43 CFR part 2, which implements the Freedom of Information Act and the Privacy Act.

### § 700.15 Computation of time.

(a) Except as otherwise provided, computation of time under this chapter 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 regulatory authority 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 7 days or less.

## PART 701—PERMANENT REGULATORY PROGRAM

Sec.

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701.5 Definitions.

701.11 Applicability.

AUTHORITY: 30 U.S.C. 1201 *et seq.*

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SOURCE: 44 FR 15316, Mar. 13, 1979, unless otherwise noted.

### § 701.1 Scope.

(a) This part provides general introductory material for the permanent regulatory program required by the Act.

(b) The following regulations apply to the permanent regulatory program:

(1) Subchapter C on State program application, approval, withdrawal, and grants, and Federal program implementation;

(2) Subchapter D on surface coal mining and reclamation operations on Federal lands;

(3) Subchapter E on surface coal mining and reclamation operations on Indian lands.

(4) Subchapter F on criteria for designating lands unsuitable for surface coal mining operations and the process for designating these lands or withdrawing the designation by the regulatory authority; *Provided*, That, part 761 is applicable during the initial regulatory program under subchapter B of this chapter and 30 CFR part 211<sup>1</sup> and that part 769 and other parts incorporated therein are applicable to the initial Federal lands program under 30 CFR part 211;<sup>1</sup>

(5) Subchapter G on the process for application, approval, denial, revision, and renewal of permits for surface coal mining and reclamation operations, including the small operator assistance program, requirements for special categories of these operations, and requirements for coal exploration;

(6) Subchapter J on public liability insurance and performance bonds or other assurances of performance for surface coal mining and reclamation operations;

(7) Subchapter K on performance standards which apply to coal exploration, surface coal mining and reclamation operations, and special categories of these operations;

(8) Subchapter L on inspection and enforcement responsibilities and civil penalties; and

<sup>1</sup>EDITORIAL NOTE: 30 CFR part 211 was redesignated as 43 CFR part 3480 at 48 FR 41589, Sept. 16, 1983.



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(9) Subchapter M on the training, examination, and certification of blasters.

[44 FR 15316, Mar. 13, 1979; 44 FR 49685, Aug. 24, 1979, as amended at 44 FR 77445, Dec. 31, 1979; 49 FR 38477, Sept. 28, 1984]

### § 701.2 Objective.

The regulations in this part give—

(a) A general overview of the regulatory program to be implemented by the State or Federal regulatory authority;

(b) The applicability of that program to coal exploration and surface coal mining and reclamation operations; and

(c) The definitions that apply to the regulation of coal exploration and surface coal mining and reclamation operations.

### § 701.3 Authority.

The Secretary is required by section 501(b) of the Act to promulgate regulations which establish the permanent regulatory program; by section 523 of the Act to promulgate regulations which establish the Federal lands programs; and is authorized by section 710 of the Act to promulgate regulations which establish a Federal program for Indian lands.

[49 FR 38477, Sept. 28, 1984]

### § 701.4 Responsibility.

(a) A State regulatory authority shall assume primary responsibility for regulation of coal exploration and surface coal mining and reclamation operations during the permanent regulatory program upon submission to and approval by the Secretary of a State program meeting all applicable requirements of the Act and this chapter. After approval of the State program, the State regulatory authority has responsibility for review of and decisions on permits and bonding for surface coal mining and reclamation operations, approval of coal exploration which substantially disturbs the natural land surface and removes more than 250 tons of coal from the earth in any one location, inspection of coal exploration and surface coal mining and reclamation operations for compliance with the Act, this chapter, the State program,

permits and exploration approvals, and for enforcement of the State program.

(b) While a State regulatory program is in effect, the Office's responsibility includes, but is not limited to—

(1) Evaluating the administration of the State program through such means as periodic inspections of coal exploration and surface coal mining and reclamation operations in the State and review of exploration approvals, permits, inspection reports, and other documents required to be made available to the Office;

(2) Referring to the State regulatory authority information which creates reasonable belief that a person is in violation of the Act, this chapter, the State regulatory program, a permit condition, or coal exploration approval condition, and initiating an inspection when authorized by the Act or this chapter;

(3) Issuing notices of violation when a State regulatory authority fails to take appropriate action to cause a violation to be corrected; and

(4) Issuing cessation orders, including imposing affirmative obligations, when a condition, practice, or violation exists which creates an imminent danger to the health or safety of the public, or is causing or could reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(c) The Office shall implement a Federal program in a State, if that State does not have an approved State program by June 3, 1980. The Office shall not implement a Federal program in a State for a period of up to 1 year following that date if the State's failure to have an approved program by that date is due to an injunction imposed by a court of competent jurisdiction.

(d) Under a Federal program, the Office shall be the regulatory authority for all coal exploration and surface coal mining and reclamation operations in that State and shall perform the functions that a State regulatory authority would perform under an approved State program.

(e) During the period in which a State program is in effect, the Office shall assume responsibility for enforcing permit conditions, issuing new or revised permits, and issuing necessary

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notices and orders, when required by 30 CFR part 733.

(f) The Secretary shall substitute a Federal program under 30 CFR part 736 for an approved State program, when required by 30 CFR part 733.

(g) The Secretary shall have the responsibility for administration of the Federal lands program. The Director and other Federal authorities shall have the responsibilities under a Federal lands program as are provided for under subchapter D of this chapter. In addition, State regulatory authorities shall have responsibilities to administer the Federal lands program as provided for under cooperative agreements approved by the Secretary in accordance with 30 CFR part 745.

(h) The Secretary shall have the responsibility for the administration of the Federal program for Indian lands, as provided for under subchapter E of this chapter. The Director and other Federal authorities have the responsibilities under the Indian lands program as are provided for under subchapter E of this chapter.

[44 FR 15316, Mar. 13, 1979, as amended at 49 FR 38477, Sept. 28, 1984]

### § 701.5 Definitions.

As used in this chapter, the following terms have the specified meanings, except where otherwise indicated:

*Acid drainage* means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

*Acid-forming materials* means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

*Adjacent area* means the area outside the permit area where a resource or resources, determined according to the context in which *adjacent area* is used, are or reasonably could be expected to be adversely impacted by proposed mining operations, including probable impacts from underground workings.

*Administratively complete application* means an application for permit ap-

proval or approval for coal exploration where required, which the regulatory authority determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

*Affected area* means any land or water surface area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road (a) was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) there is substantial (more than incidental) public use.

*Agricultural activities* means, with respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, based on regional agricultural practices, where the use is enhanced or facilitated by subirrigation or flood irrigation. These uses include, but are not limited to, farming and the pasturing or grazing of

livestock. These uses do not include agricultural activities which have no relationship to the availability of water from subirrigation or flood irrigation practices.

*Agricultural use* means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

*Alluvial valley floors* means the unconsolidated stream-laid deposits holding streams with water availability sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits formed by unconcentrated runoff or slope wash, together with talus, or other mass-movement accumulations, and windblown deposits.

*Applicant* means any person seeking a permit, permit revision, renewal, and transfer, assignment, or sale of permit rights from a regulatory authority to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

*Applicant/Violator System* or *AVS* means an automated information system of applicant, permittee, operator, violation and related data OSM maintains to assist in implementing the Act.

*Application* means the documents and other information filed with the regulatory authority under this chapter for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

*Approximate original contour* means that surface configuration achieved by backfilling and grading of the mined areas 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, spoil piles and coal refuse piles eliminated. Permanent water impoundments

may be permitted where the regulatory authority has determined that they comply with 30 CFR 816.49 and 816.56, 816.133 or 817.49, 817.56, and 817.133.

*Aquifer* means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

*Arid and semiarid area* means, in the context of alluvial valley floors, an area of the interior western United States, west of the 100th meridian west longitude, experiencing water deficits, where water use by native vegetation equals or exceeds that supplied by precipitation. All coalfields located in North Dakota west of the 100th meridian west longitude, all coalfields in Montana, Wyoming, Utah, Colorado, New Mexico, Idaho, Nevada, and Arizona, the Eagle Pass field in Texas, and the Stone Canyon and the Ione fields in California are in arid and semiarid areas.

*Auger mining* means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

*Best technology currently available* means equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable State or Federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Director, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 30 CFR parts 816 and 817. Within the constraints of the permanent program, the regulatory authority shall have the discretion to determine the

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best technology currently available on a case-by-case basis, as authorized by the Act and this chapter.

*Coal exploration* means the field gathering of: (a) surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or (b) the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of this chapter.

*Coal mine waste* means coal processing waste and underground development waste.

*Coal preparation* means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

*Coal preparation plant* means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds; shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

*Coal processing waste* means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

*Combustible material* means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

*Compaction* means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

*Complete and accurate application* means an application for permit approval or approval for coal exploration where required, which the regulatory authority determines to contain all information required under the Act, this subchapter, and the regulatory pro-

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gram that is necessary to make a decision on permit issuance.

*Control* or *controller*, when used in parts 773, 774, and 778 of this chapter, refers to or means—

(a) A permittee of a surface coal mining operation;

(b) An operator of a surface coal mining operation; or

(c) Any person who has the ability to determine the manner in which a surface coal mining operation is conducted.

*Cropland* means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

*Cumulative impact area* means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface- and ground-water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond releases of: (a) The proposed operation, (b) all existing operations, (c) any operation for which a permit application has been submitted to the regulatory authority, and (d) all operations required to meet diligent development requirements for leased Federal coal for which there is actual mine development information available.

*Disturbed area* means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as *disturbed* until reclamation is complete and the performance bond or other assurance of performance required by subchapter J of this chapter is released.

*Diversion* means a channel, embankment, or other manmade structure constructed to divert water from one area to another.

*Downslope* means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

*Drinking, domestic or residential water supply* means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

*Embankment* means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

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

*Essential hydrologic functions* means the role of an alluvial valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape, and the physical properties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation.

*Excess spoil* means spoil material disposed of in a location other than the mined-out area; provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with §§ 816.102(d) and 817.102(d) of this chapter in non-steep slope areas shall not be considered excess spoil.

*Existing structure* means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of a State program or implementation of a Federal program or Federal lands program, whichever occurs first.

*Farming* means, with respect to alluvial valley floors, the primary use of those areas for the cultivation, cropping or harvesting of plants which benefit from irrigation, or natural sub-

irrigation, that results from the increased moisture content in the alluvium of the valley floors. For purposes of this definition, harvesting does not include the grazing of livestock.

*Federal program* means a program established by the Secretary pursuant to section 504 of the Act to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within a State in accordance with the Act and this chapter.

(a) *Complete Federal program* means a program established by the Secretary pursuant to section 504 of the Act before June 3, 1980, or upon the complete withdrawal of a State program after June 3, 1980, by which the Director regulates all coal exploration and surface coal mining and reclamation operations.

(b) *Partial Federal program* means a program established by the Secretary pursuant to sections 102, 201 and 504 of the Act upon the partial withdrawal of a State program, by which the Director may regulate appropriate portions of coal exploration and surface coal mining and reclamation operations.

*Flood irrigation* means, with respect to alluvial valley floors, supplying water to plants by natural overflow or the diversion of flows, so that the irrigated surface is largely covered by a sheet of water.

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

*Gravity discharge* means, with respect to underground mining activities, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a mine to the level of the discharge is not gravity discharge.

*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.

*Ground water* means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

*Half-shrub* means a perennial plant with a woody base whose annually produced stems die back each year.

*Head-of-hollow fill* means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow, measured at the steepest point, are greater than 20 degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10 degrees. In 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.

*Higher or better uses* means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

*Highwall* means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

*Highwall remnant* means that portion of highwall that remains after backfilling and grading of a remining permit area.

*Historically used for cropland* means (a) lands that have been used for cropland for any 5 years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease or option the conduct of surface coal mining and reclamation operations; (b) lands that the 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 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to

increase the prime farmland acreage to be preserved; or (c) lands that would likely have been used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

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

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

*Imminent danger to the health and safety of the public* means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the 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 condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

*Impounding structure* means a dam, embankment or other structure used to impound water, slurry, or other liquid or semi-liquid material.

*Impoundments* means all water, sediment, slurry or other liquid or semi-liquid holding structures and depressions, either naturally formed or artificially built.

*In situ processes* means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other

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chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

*Intermittent stream* means—

(a) A stream or reach of a stream that drains a watershed of at least one square mile, or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

*Irreparable damage to the environment* means any damage to the environment, in violation of the Act, the regulatory program, or this chapter, that cannot be corrected by actions of the applicant.

*Knowing* or *knowingly* means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation.

*Land use* means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. Changes of land use from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the regulatory authority.

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

(b) *Pastureland or land occasionally cut for hay*. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(c) *Grazingland*. Land used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.

(d) *Forestry*. Land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

(e) *Residential*. Land used for single- and multiple-family housing, mobile home parks, or other residential lodgings.

(f) *Industrial/Commercial*. Land used for—

(1) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(2) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(g) *Recreation*. Land used for public or private leisure-time activities, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(h) *Fish and wildlife habitat*. Land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(i) *Developed water resources*. Land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

(j) *Undeveloped land or no current use or land management*. Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

*Lands eligible for reining* means those lands that would otherwise be eligible for expenditures under section 404 or under section 402(g)(4) of the Act.

*Material damage*, in the context of §§ 784.20 and 817.121 of this chapter, means:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

*Materially damage the quantity or quality of water* means, with respect to alluvial valley floors, to degrade or reduce by surface coal mining and reclamation operations the water quantity or quality supplied to the alluvial valley floor to the extent that resulting changes would significantly decrease the capability of the alluvial valley floor to support farming.

*MSHA* means the Mine Safety and Health Administration.

*Moist bulk density* means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at 105 °C.

*Mulch* means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

*Non-commercial building* means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in § 761.5 of this chapter. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

*Noxious plants* means species that have been included on official State lists of noxious plants for the State in which the surface coal mining and reclamation operation occurs.

*Occupied residential dwelling and structures related thereto* means, for purposes of §§ 784.20 and 817.121, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, ga-

rages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

*Operator* means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

*Other treatment facilities* mean any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and are utilized:

(a) To prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area, or

(b) To comply with all applicable State and Federal water-quality laws and regulations.

*Outslope* means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

*Overburden* means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

*Own, owner, or ownership*, as used in parts 773, 774, and 778 of this chapter (except when used in the context of ownership of real property), means being a sole proprietor or owning of record in excess of 50 percent of the voting securities or other instruments of ownership of an entity.

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

*Performance bond* means a surety bond, collateral bond or self-bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Act, this chapter, a State, Federal or Federal



lands program, and the requirements of the permit and reclamation plan.

*Permanent diversion* means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the regulatory authority and other appropriate State and Federal agencies.

*Permanent impoundment* means an impoundment which is approved by the regulatory authority and, if required, by other State and Federal agencies for retention as part of the postmining land use.

*Permit* means a permit to conduct surface coal mining and reclamation operations issued by the State regulatory authority pursuant to a State program or by the Secretary pursuant to a Federal program. For purposes of the Federal lands program, permit means a permit issued by the State regulatory authority under a cooperative agreement or by OSM where there is no cooperative agreement.

*Permit area* means the area of land, indicated on the approved map submitted by the operator with his or her application, required to be covered by the operator's performance bond under subchapter J of this chapter and which shall include the area of land upon which the operator proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit may be excluded from the permit area.

*Permittee* means a person holding or required by the Act or this chapter to hold a permit to conduct surface coal mining and reclamation operations issued by a State regulatory authority pursuant to a State program, by the Director pursuant to a Federal program, by the Director pursuant to a Federal lands program, or, where a cooperative agreement pursuant to section 523 of the Act has been executed, by the Director and the State regulatory authority.

*Precipitation event* means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in these regulations, *precipitation event* also in-

cludes that quantity of water emanating from snow cover as snowmelt in a limited period of time.

*Previously mined area* means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 30 CFR chapter VII.

*Prime farmland* means those lands which are defined by the Secretary of Agriculture in 7 CFR part 657 (FEDERAL REGISTER Vol. 4 No. 21) and which have historically been used for cropland as that phrase is defined above.

*Principal shareholder* means any person who is the record or beneficial owner of 10 percent or more of any class of voting stock.

*Property to be mined* means both the surface estates and mineral estates within the permit area and the area covered by underground workings.

*Rangeland* means 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.

*Reasonably available spoil* means spoil and suitable coal mine waste material generated by the remining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

*Recharge capacity* means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

*Reclamation* means those actions taken to restore mined land as required by this chapter to a postmining land use approved by the regulatory authority.

*Recurrence interval* means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in 10 years.

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*Reference area* means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the regulatory authority. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

*Refuse pile* means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

*Remining* means conducting surface coal mining and reclamation operations which affect previously mined areas.

*Renewable resource lands* means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazinglands.

*Replacement of water supply* means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

*Road* means a surface right-of-way for purposes of travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

*Safety factor* means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

*Sedimentation pond* means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

*Significant, imminent environmental harm to land, air or water resources* means—

(a) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life.

(b) An environmental harm is imminent, if a condition, practice, or violation exists which—

(1) Is causing such harm; or,

(2) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under section 521(a)(3) of the Act.

(c) An environmental harm is significant if that harm is appreciable and not immediately repairable.

*Siltation structure* means a sedimentation pond, a series of sedimentation ponds, or other treatment facility.

*Slope* means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given

number of units of horizontal distance (e.g., 1v: 5h). It may also be expressed as a percent or in degrees.

*Soil horizons* means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four master 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) *E horizon*. The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties;

(c) *B horizon*. The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons; and

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

*Soil survey* means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in 30 CFR 785.17(c)(1).

*Special bituminous coal mines* means those mines in existence on January 1, 1972, or mines adjoining or having a common boundary with those mines for which development began after August 3, 1977, that are located in the State of Wyoming and that are being mined or will be mined according to the following criteria:

(a) Surface mining takes place on a relatively limited site for an extended

period of time. The surface opening of the excavation is at least the full size of the excavation and has a continuous border.

(b) Excavation of the mine pit follows a coal seam that inclines 15° or more from the horizontal, and as the excavation proceeds downward it expands laterally to maintain stability of the pitwall or as necessary to accommodate the orderly expansion of the total mining operation.

(c) The amount of material removed from the pit is large in comparison to the surface area disturbed.

(d) There is no practicable alternative to the deep open-pit method of mining the coal.

(e) There is no practicable way to reclaim the land as required in subchapter K.

*Spoil* means overburden that has been removed during surface coal mining operations.

*Stabilize* means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

*State program* means a program established by a State and approved by the Secretary pursuant to section 503 of the Act to regulate surface coal mining and reclamation operations on non-Indian and non-Federal lands within that State, according to the requirements of the Act and this chapter. If a cooperative agreement under part 745 has been entered into, a State program may apply to Federal lands, in accordance with the terms of the cooperative agreement.

*Steep slope* means any slope of more than 20° or such lesser slope as may be designated by the regulatory authority after consideration of soil, climate, and other characteristics of a region or State.

*Subirrigation* means, with respect to alluvial valley floors, the supplying of water to plants from underneath or from a semisaturated or saturated subsurface zone where water is available for use by vegetation.

*Substantially disturb* means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation,

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topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

*Successor in interest* means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

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

*Suspended solids* or nonfilterable residue, expressed as milligrams per liter, means 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 and analyses (40 CFR part 136).

*Temporary diversion* means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the regulatory authority to remain after reclamation as part of the approved postmining land use.

*Temporary impoundment* means an impoundment used during surface coal mining and reclamation operations, but not approved by the regulatory authority to remain as part of the approved postmining land use.

*Topsoil* means the A and E soil horizon layers of the four master soil horizons.

*Toxic-forming materials* means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

*Toxic mine drainage* means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill,

injure, or impair biota commonly present in the area that might be exposed to it.

*Transfer, assignment, or sale of permit rights* means a change of a permittee.

*Unanticipated event or condition*, as used in §773.13 of this chapter, means an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for re-mining and was not contemplated by the applicable permit.

*Underground development waste* means waste-rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with underground mining activities.

*Underground mining activities* means a combination of—

(a) Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

*Undeveloped rangeland* means, for purposes of alluvial valley floors, lands where the use is not specifically controlled and managed.

*Upland areas* means, with respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

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*Valley fill* means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

*Violation*, when used in the context of the permit application information or permit eligibility requirements of sections 507 and 510(c) of the Act and related regulations, means—

(1) A failure to comply with an applicable provision of a Federal or State law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or

(2) A noncompliance for which OSM has provided one or more of the following types of notice or a State regulatory authority has provided equivalent notice under corresponding provisions of a State regulatory program—

(i) A notice of violation under § 843.12 of this chapter.

(ii) A cessation order under § 843.11 of this chapter.

(iii) A final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under part 845 or 846 of this chapter.

(iv) A bill or demand letter pertaining to delinquent reclamation fees owed under part 870 of this chapter.

(v) A notice of bond forfeiture under § 800.50 of this chapter when—

(A) One or more violations upon which the forfeiture was based have not been abated or corrected;

(B) The amount forfeited and collected is insufficient for full reclamation under § 800.50(d)(1) of this chapter, the regulatory authority orders reimbursement for additional reclamation costs, and the person has not complied with the reimbursement order; or

(C) The site is covered by an alternative bonding system approved under § 800.11(e) of this chapter, that system requires reimbursement of any reclamation costs incurred by the system above those covered by any site-specific bond, and the person has not complied with the reimbursement require-

ment and paid any associated penalties.

*Violation, failure or refusal*, for purposes of parts 724 and 846 of this chapter, means—

(1) A failure to comply with a condition of a Federally-issued permit or of any other permit that OSM is directly enforcing under section 502 or 521 of the Act or the regulations implementing those sections; or

(2) A failure or refusal to comply with any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act, except an order incorporated in a decision issued under section 518(b) or section 703 of the Act.

*Violation notice* means any written notification from a regulatory authority or other governmental entity, as specified in the definition of *violation* in this section.

*Water table* means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

*Willful or willfully* means that a person who authorized, ordered or carried out an act or omission that resulted in either a violation or the failure to abate or correct a violation acted—

(1) Intentionally, voluntarily, or consciously; and

(2) With intentional disregard or plain indifference to legal requirements.

[44 FR 15316, Mar. 13, 1979]

EDITORIAL NOTE: For Federal Register citations affecting § 701.5, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

EFFECTIVE DATE NOTE: In § 701.5, the definition of *Affected area*, insofar as it excludes roads which are included in the definition of *Surface coal mining operations*, was suspended at 51 FR 41960, Nov. 20, 1986.

### § 701.11 Applicability.

(a) Any person who conducts surface coal mining operations on non-Indian or non-Federal lands on or after 8 months from the date of approval of a State program or implementation of a Federal program shall have a permit issued pursuant to the applicable State or Federal program. However, under conditions specified in 30 CFR 773.4(b)

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of this chapter, a person may continue operations under a previously issued permit after 8 months from the date of approval of a State program or implementation of a Federal program.

(b) Any person who conducts surface coal mining operations on Federal lands on or after 8 months from the date of approval of a State program or implementation of a Federal program for the State in which the Federal lands are located shall have a permit issued pursuant to part 740 of this chapter. However, under conditions specified in § 740.13(a)(3) of this chapter, a person may continue such operations under a mining plan previously approved pursuant to 43 CFR part 3480 or a permit issued by the State under the interim State program after 8 months after the date of approval of a State program or implementation of a Federal program.

(c) Any person who conducts surface coal mining operations on Indian lands on or after eight months from the effective date of the Federal program for Indian lands shall have a permit issued pursuant to part 750 of this chapter. However, a person who is authorized to conduct surface coal mining operations may continue to conduct those operations beyond eight months from the effective date of the Federal program for Indian lands if the following conditions are met:

(1) An application for a permit to conduct those operations has been made to the Director within two months after the effective date of the Federal program for Indian lands and the initial administrative decision on that application has not been issued; and

(2) Those operations are conducted in compliance with all terms and conditions of the existing authorization to mine, the requirements of the Act, 25 CFR part 216, and the requirements of all applicable mineral agreements, leases or licenses.

(d) The requirements of subchapter K of this chapter shall be effective and shall apply to each surface coal mining and reclamation operation for which the surface coal mining operation is required to obtain a permit under the Act, on the earliest date upon which the Act and this chapter require a per-

mit to be obtained, except as provided in paragraph (e) of this section.

(e)(1) Each structure used in connection with or to facilitate a coal exploration or surface coal mining and reclamation operation shall comply with the performance standards and the design requirements of subchapter K of this chapter, except that—

(i) An existing structure which meets the performance standards of subchapter K of this chapter but does not meet the design requirements of subchapter K of this chapter may be exempted from meeting those design requirements by the regulatory authority. The regulatory authority may grant this exemption only as part of the permit application process after obtaining the information required by 30 CFR 780.12 or 784.12 and after making the findings required in 30 CFR 773.15;

(ii) If the performance standard of subchapter B of this chapter is at least as stringent as the comparable performance standard of subchapter K of this chapter, an existing structure which meets the performance standards of subchapter B of this chapter may be exempted by the regulatory authority from meeting the design requirements of subchapter K of this chapter. The regulatory authority may grant this exemption only as part of the permit application process after obtaining the information required by 30 CFR 780.12 or 784.12 and after making the findings required in 30 CFR 773.15;

(iii) An existing structure which meets a performance standard of subchapter B of this chapter which is less stringent than the comparable performance standards of subchapter K of this chapter or which does not meet a performance standard of subchapter K of this chapter, for which there was no equivalent performance standards in subchapter B of this chapter, shall be modified or reconstructed to meet the performance and design standard of subchapter K of this chapter pursuant to a compliance plan approved by the regulatory authority only as part of the permit application as required in 30 CFR 780.12 or 784.12 and according to the findings required by 30 CFR 773.15;

(iv) An existing structure which does not meet the performance standards of subchapter B of this chapter and which

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the applicant proposes to use in connection with or to facilitate the coal exploration or surface coal mining and reclamation operation shall be modified or reconstructed to meet the performance and design standards of subchapter K prior to issuance of the permit.

(2) The exemptions provided in paragraphs (e)(1)(i) and (e)(1)(ii) of this section shall not apply to—

(i) The requirements for existing and new coal mine waste disposal facilities; and

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

(f)(1) Any person conducting coal exploration on non-Federal and non-Indian lands on or after the date on which a State program is approved or a Federal program implemented, shall either file a notice of intention to explore or obtain approval of the regulatory authority, as required by 30 CFR part 772.

(2) Coal exploration performance standards in 30 CFR part 815 shall apply to coal exploration on non-Federal and non-Indian lands which substantially disturbs the natural land surface 2 months after approval of a State program or implementation of a Federal program.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[44 FR 15316, Mar. 13, 1979, as amended at 44 FR 77446, Dec. 31, 1979; 48 FR 6935, Feb. 16, 1983; 48 FR 44391, Sept. 28, 1983; 48 FR 44779, Sept. 30, 1983; 49 FR 38477, Sept. 28, 1984; 54 FR 13822, Apr. 5, 1989; 65 FR 79663, Dec. 19, 2000]

EFFECTIVE DATE NOTE: A document published at 44 FR 67942, Nov. 27, 1979, temporarily suspended § 701.11(d) (1) and (2), which were redesignated as paragraphs (e) (1) and (2) at 49 FR 38477, Sept. 28, 1984, insofar as it may be read to retain discretion in the regulatory authority to grant an exemption from reconstruction of existing structures after making the findings in 30 CFR 773.15.

### PART 702—EXEMPTION FOR COAL EXTRACTION INCIDENTAL TO THE EXTRACTION OF OTHER MINERALS

Sec.

702.1 Scope.

702.5 Definitions.

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702.18 Reporting requirements.

AUTHORITY: 30 U.S.C. 1201 *et seq.*, as amended.

SOURCE: 54 FR 52120, Dec. 20, 1989, unless otherwise noted.

#### § 702.1 Scope.

This part implements the exemption contained in section 701(28) of the Act concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale.

#### § 702.5 Definitions.

As used in this part, the following terms have the meaning specified, except where otherwise indicated:

(a) *Cumulative measurement period* means the period of time over which both cumulative production and cumulative revenue are measured.

(1) For purposes of determining the beginning of the cumulative measurement period, subject to regulatory authority approval, the operator must select and consistently use one of the following:

(i) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977, or

(ii) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.

(2) For annual reporting purposes pursuant to § 702.18 of this part, the end of the period for which cumulative production and revenue is calculated is either

(i) For mining areas where coal or other minerals were extracted prior to

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April 1, 1990, March 31, 1990, and every March 31 thereafter; or

(ii) For mining areas where extraction of coal or other minerals commenced on or after April 1, 1990, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter.

(b) *Cumulative production* means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by § 702.16.

(c) *Cumulative revenue* means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

(d) *Mining area* means an individual excavation site or pit from which coal, other minerals and overburden are removed.

(e) *Other minerals* means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

## § 702.10 Information collection.

The collections of information contained in §§ 702.11, 702.12, 702.13, 702.15 and 702.18 of this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0089. The information will be used to determine the initial and continuing applicability of the incidental mining exemption to a particular mining operation. Response is required to obtain and maintain the incidental mining exemption in accordance with section 701(28) of the Act.

Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Col-

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lection Clearance Officer, OSM Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; and to the Office of Management and Budget, Paperwork Reduction Project (1029-0089), OMB, Washington, DC 20503.

## § 702.11 Application requirements and procedures.

(a)(1) Any person who plans to commence or continue coal extraction after April 1, 1990, under a Federal program or on Indian lands, or after the effective date of counterpart provisions in a State program, in reliance on the incidental mining exemption shall file a complete application for exemption with the regulatory authority for each mining area.

(2) Following incorporation of an exemption application approval process into a regulatory program, a person may not commence coal extraction based upon the exemption until the regulatory authority approves such application, except as provided in paragraph (e)(3) of this section.

(b) Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to April 1, 1990, in a State with a Federal program or on Indian lands, or prior to the effective date of counterpart provisions in a State program, may continue mining operations for 60 days after such effective date. Coal extraction may not continue after such 60-day period unless that person files an administratively complete application for exemption with the regulatory authority. If an administratively complete application is filed within 60 days, the person may continue extracting coal in reliance on the exemption beyond the 60-day period until the regulatory authority makes an administrative decision on such application.

(c) Additional information. The regulatory authority shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.

(d) Public comment period. Following publication of the newspaper notice required by § 702.12(g), the regulatory authority shall provide a period of no less than 30 days during which



time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections.

(e) Exemption determination. (1) No later than 90 days after filing of an administratively complete application, the regulatory authority shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this part, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

(2) The determination of exemption shall be based upon information contained in the application and any other information available to the regulatory authority at that time.

(3) If the regulatory authority fails to provide an applicant with the determination as specified in paragraph (e)(1) of this section, an applicant who has not begun may commence coal extraction pending a determination on the application unless the regulatory authority issues an interim finding, together with reasons therefor, that the applicant may not begin coal extraction.

(f) Administrative review. (1) Any adversely affected person may request administrative review of a determination under paragraph (e) of this section within 30 days of the notification of such determination in accordance with procedures established under 43 CFR 4.1280 when OSM is the regulatory authority or under corresponding State procedures when a State is the regulatory authority.

(2) A petition for administrative review filed under 43 CFR 4.1280 or under corresponding State procedures shall not suspend the effect of a determination under paragraph (e) of this section.

**§ 702.12 Contents of application for exemption.**

An application for exemption shall include at a minimum:

- (a) The name and address of the applicant;
- (b) A list of the minerals sought to be extracted;

- (c) Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;

- (d) Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;

- (e) Where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;

- (f) The basis for all annual production, revenue, and fair market value estimates;

- (g) A description, including county, township if any, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;

- (h) An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation;

- (i) Evidence of publication, in a newspaper of general circulation in the county of the mining area, of a public notice that an application for exemption has been filed with the regulatory authority (The public notice must identify the persons claiming the exemption and must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation.);

- (j) Representative stratigraphic cross-section(s) based on test borings or other information identifying and showing the relative position, approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities;

- (k) A map of appropriate scale which clearly identifies the mining area;

- (l) A general description of mining and mineral processing activities for the mining area;

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(m) A summary of sales commitments and agreements for future delivery, if any, which the applicant has received for other minerals to be extracted from the mining area, or a description of potential markets for such minerals;

(n) If the other minerals are to be commercially used by the applicant, a description specifying the use;

(o) For operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required above, the following information must also be submitted:

(1) Any relevant documents the operator has received from the regulatory authority documenting its exemption from the requirements of the Act;

(2) The cumulative production of the coal and other minerals from the mining area; and

(3) Estimated tonnages of stockpiled coal and other minerals; and

(p) Any other information pertinent to the qualification of the operation as exempt.

### § 702.13 Public availability of information.

(a) Except as provided in paragraph (b) of this section, all information submitted to the regulatory authority under this part shall be made immediately available for public inspection and copying at the local offices of the regulatory authority having jurisdiction over the mining operations claiming exemption until at least three years after expiration of the period during which the subject mining area is active.

(b) The regulatory authority may keep information submitted to the regulatory authority under this part confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this part.

(c) Information requested to be held as confidential under paragraph (b) of this section shall not be made publicly available until after notice and opportunity to be heard is afforded persons

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both seeking and opposing disclosure of the information.

### § 702.14 Requirements for exemption.

(a) Activities are exempt from the requirements of the Act if all of the following are satisfied:

(1) The cumulative production of coal extracted from the mining area determined annually as described in this paragraph does not exceed 16 $\frac{2}{3}$  percent of the total cumulative production of coal and other minerals removed during such period for purposes of bona fide sale or reasonable commercial use.

(2) Coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.

(3) The cumulative revenue derived from the coal extracted from the mining area determined annually shall not exceed 50 percent of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

(b) Persons seeking or that have obtained an exemption from the requirements of the Act shall comply with the following:

(1) Each other mineral upon which an exemption under this part is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard.

(2) If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

**§ 702.15 Conditions of exemption and right of inspection and entry.**

A person conducting activities covered by this part shall:

(a) Maintain on-site or at other locations available to authorized representatives of the regulatory authority and the Secretary information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the regulatory authority;

(b) Notify the regulatory authority upon the completion of the mining operation or permanent cessation of all coal extraction activities; and

(c) Conduct operations in accordance with the approved application or when authorized to extract coal under § 702.11(b) or § 702.11(e)(3) prior to submittal or approval of an exemption application, in accordance with the standards of this part for Federal programs and on Indian lands or in accordance with counterpart provisions when included in State programs.

(d) Authorized representatives of the regulatory authority and the Secretary shall have the right to conduct inspections of operations claiming exemption under this part.

(e) Each authorized representative of the regulatory authority and the Secretary conducting an inspection under this part:

(1) Shall have a right of entry to, upon, and through any mining and reclamation operations 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 relevant to the exemption; and

(3) Shall have a right to gather physical and photographic evidence to document conditions, practices or violations at a site.

(f) No search warrant shall be required with respect to any activity under paragraphs (d) and (e) of this section, except that a search warrant may be required for entry into a building.

**§ 702.16 Stockpiling of minerals.**

(a) *Coal.* Coal extracted and stockpiled may be excluded from the calculation

of cumulative production until the time of its sale, transfer to a related entity or use:

(1) Up to an amount equaling a 12-month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or

(2) For a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a 12-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.

(b) *Other minerals.* (1) The regulatory authority shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

(2) The regulatory authority may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if:

(i) The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

(ii) Except as provided in paragraph (b)(3) of this section, the stockpiled other minerals do not exceed a 12-month supply of the mineral required for future sales as approved by the regulatory authority on the basis of the exemption application.

(3) The regulatory authority may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12-month limit established in paragraph (b)(2) of this section if the operator can demonstrate to the regulatory authority's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

(4) The regulatory authority may periodically revise the other mineral stockpile tonnage limits in accordance

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with the criteria established by paragraphs (b) (2) and (3) of this section based on additional information available to the regulatory authority.

### § 702.17 Revocation and enforcement.

(a) Regulatory authority responsibility. The regulatory authority shall conduct an annual compliance review of the mining area, utilizing the annual report submitted pursuant to § 702.18, an on-site inspection and any other information available to the regulatory authority.

(b) If the regulatory authority has reason to believe that a specific mining area was not exempt under the provisions of this part or counterpart provisions of the State regulatory program at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the regulatory authority shall notify the operator that the exemption may be revoked and the reason(s) therefor. The exemption will be revoked unless the operator demonstrates to the regulatory authority within 30 days that the mining area in question should continue to be exempt.

(c)(1) If the regulatory authority finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the regulatory authority shall revoke the exemption and immediately notify the operator and intervenors. If a decision is made not to revoke an exemption, the regulatory authority shall immediately notify the operator and intervenors.

(2) Any adversely affected person may request administrative review of a decision whether to revoke an exemption within 30 days of the notification of such decision in accordance with procedures established under 43 CFR 4.1280 when OSM is the regulatory authority or under corresponding State procedures when a State is the regulatory authority.

(3) A petition for administrative review filed under 43 CFR 4.1280 or under corresponding State procedures shall not suspend the effect of a decision whether to revoke an exemption.

(d) Direct enforcement. (1) An operator mining in accordance with the

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terms of an approved exemption shall not be cited for violations of the regulatory program which occurred prior to the revocation of the exemption.

(2) An operator who does not conduct activities in accordance with the terms of an approved exemption and knows or should know such activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of the regulatory program which occur during the period of such activities.

(3) Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of the applicable regulatory program with regard to conditions, areas and activities existing at the time of revocation or denial.

### § 702.18 Reporting requirements.

(a)(1) Following approval by the regulatory authority of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the regulatory authority containing the information specified in paragraph (b) of this section.

(2) The report shall be filed no later than 30 days after the end of the 12-month period as determined in accordance with the definition of *Cumulative measurement period* in § 702.5 of this part.

(3) The information in the report shall cover:

(i) Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding 12-month period, and

(ii) The cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.

(b) For each period and mining area covered by the report, the report shall specify:

(1) The number of tons of extracted coal sold in bona fide sales and total revenue derived from such sales;

(2) The number of tons of coal extracted and used or transferred by the

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operator or related entity and the estimated total fair market value of such coal;

(3) The number of tons of coal stockpiled;

(4) The number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from such sales;

(5) The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of such minerals; and

(6) The number of tons of other commercially valuable minerals removed and stockpiled by the operator.

### PART 705—RESTRICTION ON FINANCIAL INTERESTS OF STATE EMPLOYEES

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AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 42 FR 56060, Oct. 20, 1977, unless otherwise noted.

#### § 705.1 Purpose.

This part sets forth the minimum policies and procedures that States must establish and use to implement section 517(g) of the Act in order to eligible for reimbursement of costs of enforcing and administering the initial regulatory program under section 502, or for grants for developing, administering and enforcing a State regulatory program under section 705 of the Act, or to assume primary regulatory authority under section 503 of the Act (Pub. L. 95-87). Compliance with the policies and procedures in this part will satisfy the requirements of section 517(g) of the Act. Section 517(g) prohibits certain employees of the State

Regulatory Authority from having any direct or indirect financial interest in any underground or surface coal mining operation. The regulations in this part are applicable to employees of the State Regulatory Authority as defined in § 705.5.

#### § 705.2 Objectives.

The objectives of this part are:

(a) To ensure that the States adopt a standard program for implementing the provisions in section 517(g) of the Act.

(b) To establish methods which will ensure, as required by section 517(g) of the Act, that each employee of the State Regulatory Authority who performs any function or duty under the Act does not have a direct or indirect financial interest in any underground or surface coal mining operation.

(c) To establish the methods by which the monitoring, enforcing and reporting responsibilities of the Secretary of the Interior as stated in section 517(g) will be accomplished.

#### § 705.3 Authority.

(a) The Secretary of the Interior is authorized by Pub. L. 95-87 to:

(1) Establish the methods by which he or she and State officials will monitor and enforce the provisions contained in section 517(g) of the Act;

(2) Establish appropriate provisions for employees of the State Regulatory Authority who perform any function or duty under the Act to file a statement and supplements thereto in order to identify any financial interest which may be affected by section 517(g), and

(3) Report annually to the Congress the actions taken and not taken during the preceding calendar year under section 517(g) of the Act.

(b) The Governor of the State, the Head of the State Regulatory Authority, or such other State official designated by State law, is authorized to expand the provisions in this part in order to meet the particular needs within the State.

(c) The Office of Inspector General, U.S. Department of the Interior, is authorized to conduct on behalf of the Secretary periodic audits related to the provisions contained in section 517(g) of the Act and related to the provisions

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in this part. These audits will be conducted on a cyclical basis or upon request of the Secretary or the Director.

[42 FR 56060, Oct. 20, 1977, as amended at 56 FR 46987, Sept. 17, 1991]

##### § 705.4 Responsibility.

(a) The Head of each State Regulatory Authority shall;

(1) Provide advice, assistance, and guidance to all State employees required to file statements pursuant to § 705.11;

(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 an underground or 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 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 § 705.11 (b), (c), and (d);

(7) Furnish a blank statement 45 days in advance of the filing date established by § 705.13(a) to each State employee required to file a statement; and

(8) Inform annually each State employee required to file a statement with the Head of the State Regulatory Authority, or such other official designated by State law or regulation, of the name, address, and telephone number of the person whom they may contact for advice and counseling.

(b) The Director, Office of Surface Mining Reclamation and Enforcement, shall:

(1) Provide advice, assistance, and counseling to the Heads of all State

Regulatory Authorities concerning implementation of these regulations;

(2) Promptly review the statement of employment and financial interests and supplements, if any, filed by each Head of the State Regulatory Authority. The Director will review the statement to determine if the Head of the State Regulatory Authority has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in an underground or surface coal mining operation;

(3) Recommend to the State Attorney General, or such other State official designated by State law or the Governor of the State, the remedial action to be ordered or initiated, recommend to the Secretary that action be taken to impose the penalties of the Act, or recommend to the Secretary that other appropriate action be taken with respect to reimbursements, grants, or State programs;

(4) Certify on each statement filed by the Head of the State Regulatory Authority that the State has completed the review of the statement, that prohibited financial interests have been resolved, and that no other prohibited interests have been identified from the statement;

(5) Monitor the program by using reports requested from Heads of State Regulatory Authorities and by using periodic audits performed by the Office of Inspector General, U.S. Department of the Interior;

(6) Prepare for the Secretary of the Interior a consolidated report to the Congress as part of the annual report submitted under section 706 of the Act, on the actions taken and not taken during the preceding calendar year under section 517(g);

(7) Designate if so desired other qualified Office of Surface Mining Reclamation and Enforcement employees as assistant counselors to assist with the operational duties associated with filing and reviewing the statements from the Heads of each State Regulatory Authority;

(8) Furnish a blank statement by December 15 of each year, to the Head of each State Regulatory Authority; and

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(9) Inform annually, the head of each State Regulatory Authority of the requirement to file his or her statement with the Director and supply the name, address, and telephone number of the person whom they may contact for advice and counseling.

(c) State Regulatory Authority 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 120 days after these regulations become effective or upon entrance to duty, and annually thereafter on the specified filing date; and

(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.

(d) Members of advisory boards and commissions established in accordance with State laws or regulations to represent multiple interests, who perform a function or duty under the Act, shall recuse themselves from proceedings which may affect their direct or indirect financial interests.

[42 FR 56060, Oct. 20, 1977, as amended at 51 FR 37122, Oct. 17, 1986; 56 FR 46987, Sept. 17, 1991]

### § 705.5 Definitions.

*Act.* Means the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87.

*Coal mining operation.* Means the business of developing, producing, preparing or loading bituminous coal, sub-bituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.

*Direct financial interest.* Means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

*Director.* Means the Director or Acting Director of the Office of Surface Mining Reclamation and Enforcement

within the U.S. Department of the Interior.

*Employee.* Means (a) any person employed by the State Regulatory Authority who performs any function or duty under the Act, and (b) advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decisionmaking functions for the State Regulatory Authority 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. State officials may through State law or regulations expand this definition to meet their program needs.

*Indirect financial interest.* Means 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.

*Office.* Means the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

*Performing any function or duty under this Act.* Means those decisions or actions, which if performed or not performed by an employee, affect the programs under the Act.

*Prohibited financial interest.* Means any direct or indirect financial interest in any coal mining operation.

*Secretary.* Means the Secretary of the Interior.

*State Regulatory Authority.* Means that office in each State which has primary responsibility at the State level for administering this Act. Until an office is established under the provisions of section 503 or section 504 of the Act, this term shall refer to those existing State offices having primary jurisdiction for regulating, enforcing, and inspecting any surface coal mining and reclamation operations within the

## § 705.6

State during the interim period between the effective date of the Act and the establishment of the State Regulatory Authority under section 503 or section 504.

### § 705.6 Penalties.

(a) Criminal penalties are imposed by section 517(g) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87. Section 517(g) prohibits each employee of the State Regulatory Authority who performs any function or duty under the Act from having a direct or indirect financial interest in any underground or surface coal mining operation. The Act provides that whoever knowingly violates the provisions of section 517(g) shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment of not more than one year, or by both.

(b) Regulatory penalties are imposed by this part. The provisions in section 517(g) of the Act make compliance with the financial interest requirements a condition of employment for employees of the State Regulatory Authority 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 517(g) and will be subject to removal from his or her position.

### § 705.10 Information collection.

The collections of information contained in §§ 705.11 and 705.17 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0067. The information is being collected on OSM Form 23 and will be used to meet the requirements of section 517(g) of the Surface Mining Control and Reclamation Act of 1977, which provides that no employee of the State regulatory authority shall have direct or indirect financial interests in any underground or surface coal mining operation. This information will be used by officials of the state regulatory authority to determine whether each State employee complies with the financial interest provisions of section 517(g). The obligation to respond is mandatory in accordance with section 517(g). Public reporting burden for this informa-

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tion is estimated to average 20 minutes per response per state employee and 30 minutes per response per State regulatory authority, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Office of Surface Mining, 1951 Constitution Avenue NW., room 5415-L, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project 1029-0067, Washington, DC 20503.

[56 FR 46988, Sept. 17, 1991]

### § 705.11 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. Members of advisory boards and commissions established in accordance with State laws or regulations to represent multiple interests, who perform a function or duty under the Act, must file a statement of employment and financial interests. An employee who occupies a position which has been determined by the Head of the State Regulatory Authority not to involve performance of any function or duty under the Act or who is no longer employed by the State Regulatory Authority at the time a filing is due, is not required to file a statement.

(b) The Head of each State Regulatory Authority shall prepare a list of those positions within the State Regulatory Authority that do not involve performance of any functions or duties under the Act. State Regulatory Authorities may be organized to include more activities than are covered by the Act. For example, if a State has identified its Department of Natural Resources as the State Regulatory Authority there may be only one or two offices within that Department which have employees who perform any functions, or duties under the Act. In those cases, the Head of the State Regulatory Authority shall list the title of boards, offices, bureaus or divisions



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within the State Regulatory Authority which do not perform any functions or duties under the Act and list the positions not performing functions or duties under the Act for only those boards, offices, bureaus or divisions that do have some employees performing 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 517(g) of the Act.

(c) The Head of each State Regulatory Authority 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 60 days of the effective date of these regulations.

(d) The Head of each State Regulatory Authority 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 positions 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 Head of each State Regulatory Authority 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.

(e) The Secretary or the Director may modify the listing at any time one or both of them determines that the listing submitted by the Head of a State Regulatory Authority indicates that coverage is not sufficient to carry out the purpose of the law or the regulations of this part.

[42 FR 56060, Oct. 20, 1977, as amended at 51 FR 37122, Oct. 17, 1986]

### § 705.13 When to file.

(a) Employees and members of advisory boards and commissions representing multiple interests performing functions or duties under the Act shall file:

(1) Within 120 days of the effective date of these regulations; and

(2) 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 and new members of advisory boards and commissions representing multiple interest 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 and new members of advisory boards and commissions representing multiple interests 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 2, 1986 would file a statement on that date. Because December 2 is within two months of February 1 the employee would not be required to file his or her next annual statement until February 1, 1988.

[51 FR 37122, Oct. 17, 1986]

### § 705.15 Where to file.

The head of the State Regulatory Authority shall file his or her statement with the Director. All other employees and members of advisory boards and commissions representing multiple interests, as provided in § 705.11, shall file their statements with the head of the State Regulatory Authority or such other official as may be designated by State law or regulation.

[51 FR 37122, Oct. 17, 1986]

### § 705.17 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 OSM Form 23 as provided by the Office. The statement consists of three major parts, (1) a listing of all financial interests, including employment, security,

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real property, creditor and other financial interests held during the course of the preceding year, (2) a certification that none of the listed financial interests represent a direct or indirect financial interest in an underground or surface coal mining operation except as specifically identified and described by the employee as part of the certificate and (3) 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 State Regulatory Authority.

(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 mutual funds, investment clubs or regulated investment companies not specializing in underground and surface coal mining operations.

(3) *Real Property.* Ownership, lease, royalty or other interests or rights in lands 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, (i) 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 (ii) the information shown on the statement is true, correct, and complete.

(2) An employee is expected to (i) have complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the spouse and other covered relatives, and (ii) 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 Head of the State Regulatory Authority to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

(i) List the financial interests;

(ii) Show the number of shares, estimated value or annual income of the financial interests; and

(iii) 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 § 705.6(a).

[42 FR 56060, Oct. 20, 1977, as amended at 56 FR 46988, Sept. 17, 1991]

**§ 705.18 Gifts and gratuities.**

(a) Except as provided in paragraph (b) of this section, employees shall not solicit or accept, directly or indirectly,

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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 State Regulatory Authority; or

(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 persons 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; and

(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.

### § 705.19 Resolving prohibited interests.

(a) Actions to be taken by the Head of the State Regulatory Authority:

(1) Remedial action to effect resolution. If an employee has a prohibited financial interest, the Head of the State Regulatory Authority shall promptly advise the employee that remedial action which will resolve the prohibited interest is required within 90 days.

(2) Remedial action may include:

(i) Reassignment of the employee to a position which performs no function or duty under the Act, or

(ii) Divestiture of the prohibited financial interest, or

(iii) Other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict.

(3) Reports of noncompliance. If 90 days after an employee is notified of

take remedial action that employee is not in compliance with the requirements of the Act and these regulations, the Head of the State Regulatory Authority shall report the facts of the situation to the Director who shall determine whether action to impose the penalties prescribed by the Act should be initiated. The report to the Director shall include the original or a certified true copy of the employee's statement and any other information pertinent to the Director's determination, including a statement of actions being taken at the time the report is made.

(b) Actions to be taken by the Director:

(1) Remedial action to effect resolution. Violations of the regulations in this part of the Head of a State Regulatory Authority, will be cause for remedial action by the Governor of the State 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 Head of the State Regulatory Authority that remedial action which will resolve the prohibited interest is required within 90 days.

(2) Remedial action should be consistent with the procedures prescribed for other State employees by § 705.19(a)(2).

(3) Reports on noncompliance.

(i) If 90 days after the Head of State Regulatory Authority is notified to take remedial action the Governor or other appropriate State official notifies the Director that the Head of the State Regulatory Authority is not in compliance with the Act and these regulations, the Director shall report the facts of the situation to the Secretary who shall determine whether the action to impose the penalties prescribed by the Act, or to impose the eligibility restrictions prescribed by § 705.1 should be initiated.

(ii) Within 30 days of receipt of a non-compliance report from the Head of a Regulatory Authority under § 705.19(a)(3), the Director shall notify the Head of the State Regulatory Authority and the employee involved of additional action to be taken. Actions which the Director may take include but are not limited to the granting of

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additional time for resolution or the initiation of action to impose the penalties prescribed by the Act.

### § 705.21 Appeals procedures.

Employees have the right to appeal an order for remedial action under § 705.19, and shall have 30 days to exercise this right before disciplinary action is initiated.

(a) Employees other than the Head of the State Regulatory Authority, may file their appeal, in writing, through established procedures within their particular State.

(b) The Head of the State Regulatory Authority may file his or her appeal, in writing, with the Director who will refer it to the Conflict of Interest Appeals Board within the U.S. Department of the Interior.

## PART 706—RESTRICTION ON FINANCIAL INTERESTS OF FEDERAL EMPLOYEES

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706.18	Gifts and gratuities.
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706.21	Appeals procedures.

AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 42 FR 56060, Oct. 20, 1977, unless otherwise noted.

### § 706.1 Purpose.

This part sets forth the minimum policies and procedures to be followed by Federal employees to satisfy the requirements of section 201(f) of the Act. The requirements of this part are in addition to Executive Order 11222 of May 8, 1965, and other applicable regulations related to conflict of interest. Section 201(f) prohibits certain Federal employees from having any direct or indirect financial interest in underground or surface coal mining operations. The regulations of this part are applicable to Federal employees as defined in § 706.3.

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### § 706.2 Objectives.

The objectives of this part are:

(a) To ensure that affected Federal agencies adopt a standard program for implementing the provisions in section 201(f) of the Act.

(b) To establish methods which will ensure, as required by section 201(f) of the Act, that each Federal employee who performs any function or duty under the Act does not have a direct or indirect financial interest in an underground or surface coal mining operation.

(c) To establish the methods by which the monitoring, enforcing and reporting responsibilities of the Director and the Secretary of the Interior under section 201(f) will be accomplished.

### § 706.3 Definitions.

*Act.* Means the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87.

*Coal mining operation.* Means the business of developing, producing, preparing or loading bituminous coal, sub-bituminous coal, anthracite or lignite or of reclaiming the areas upon which such activities occur.

*Direct financial interest.* Means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

*Director.* Means the Director or Acting Director of the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

*Employee.* Means any person employed by the Office of Surface Mining Reclamation and Enforcement within the U.S. Department of the Interior and any other person employed by the Federal Government who performs functions or duties under the Act without regard to the duration or nature of his or her appointment.

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*Indirect financial interest.* Means 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 inlaws, 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.

*Office.* Means the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

*Other Federal agency.* Means any executive Federal agency or office or part thereof not a part of the U.S. Department of the Interior, and includes but is not limited to, the following agencies: The Department of Agriculture, the Department of Justice, the Corps of Engineers, the Environmental Protection Agency, the Council on Environmental Quality and the Energy Research and Development Administration.

*Performing any function or duty under this act.* Means those decisions or actions, which if performed or not performed by an employee, affect the programs under the Act.

*Prohibited financial interest.* Means any direct or indirect financial interest in any coal mining operation.

*Secretary.* Means the Secretary of the Interior.

### § 706.4 Authority.

(a) The Director is authorized by Pub. L. 95-87 to:

(1) Establish the methods by which the provisions in section 201(f) of the Act will be monitored and enforced;

(2) Establish appropriate provisions for all employees who perform any function or duty under the Act to file a statement and supplements thereto concerning their financial interests which may be affected by section 201(f); and

(3) Report annually to the Congress on the actions taken and not taken during the preceding calendar year under section 201(f) of the Act.

(b) Other Federal agencies with employees who perform functions or duties under the Act may adopt financial interest regulations pursuant to the Act which are consistent with the requirements in this part. If any such agency does not adopt regulations pursuant to this part, that agency shall enter into a memorandum of understanding with the Director, to have the employees of that agency who perform functions or duties under the Act file their statements with the Director. The Director will review statements filed with him or her, applying the regulations of the Department of the Interior. Where the Director determines that remedial action is necessary, he or she will refer the case to the employing agency with a recommendation as to the action to be taken.

(c) The Office of Inspector General within the U.S. Department of the Interior, will conduct periodic audits of Interior's compliance with the provisions contained in section 201(f) of the Act and the provisions of this part. The Office of Inspector General will arrange for such periodic audits of other Federal agencies to be performed by the audit unit of each such agency. The audits will be conducted on a cyclical basis or upon request of the Secretary of the Interior or the Director. Copies of all audit reports and related responses on corrective actions will be provided to the Director.

[42 FR 56060, Oct. 20, 1977, as amended at 56 FR 46988, Sept. 17, 1991]

### § 706.5 Responsibility.

(a) The Director, the Head of each other Federal agency, and the Head of each other bureau or office within the U.S. Department of the Interior, have the following common responsibilities concerning employees within their organizations performing any functions or duties under the Act, and shall:

(1) Provide advice, assistance and counseling to employees concerning financial interest matters related to the Act;

(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

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which constitute a direct or indirect financial interest in an underground or surface coal mining operation;

(3) 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;

(4) Resolve prohibited financial interest situations by promptly notifying and ordering the employee to take remedial action within 90 days, or by initiating action to impose the penalties of the Act;

(5) Furnish a blank statement by December 15 of each year to each employee required to file a statement within his or her employing organization; and

(6) Inform annually each employee required to file a statement within his or her employing organization of the name, address, and telephone number of the person whom they may contact for advice and counseling.

(b) In addition to the common responsibilities in paragraph (a) of this section the Director shall:

(1) Monitor the program by using reports requested from the Heads of other Federal agencies, from the Heads of other bureaus and offices within the U.S. Department of the Interior, and by using periodic audits performed by the Office of Inspector General, U.S. Department of the Interior and by other Federal agencies;

(2) Prepare for the Secretary a consolidated report to the Congress as part of the annual report submitted under section 706 of the Act, on the actions taken and not taken during the preceding calendar year under section 201(f);

(3) Refer recommendations to officials of other Federal agencies concerning those cases requiring remedial action for employees of the other Federal agency who filed with the Director because that other Federal agency did not choose to adopt its own financial interest regulations pursuant to the Act.

(4) Report to the Solicitor, U.S. Department of the Interior, through the Office of Inspector General, U.S. Department of the Interior, cases of knowing violations of the provisions in

section 201(f). The Solicitor will transfer such reports to the U.S. Department of Justice.

(5) Designate, if so desired, other qualified Office employees as assistant counselors to assist with the operational duties associated with filing and reviewing financial statements;

(6) Furnish an adequate supply of blank statements to the Heads of those other Federal agencies which decide to have their employees file with the Director; and

(7) Submit to the Department of the Interior Ethics Counselor such statistics and information he may request in accordance with 43 CFR 20.735-17 as adopted.

(c) In addition to the common responsibilities in paragraph (a) of this section, the Head of each other Federal agency with employees performing any functions or duties under the Act shall:

(1) Decide whether to adopt independent procedures for the filing and review of financial statements or to enter into a memorandum of understanding with the Director that the U.S. Department of the Interior will provide and review the financial statements and recommend any necessary remedial action to the Head of the employing agency;

(2) Submit to the Director such statistics and information the Director may request to enable preparation of the required annual report to the Congress, and to ensure uniform application of the provision in section 201(f) of the Act; and

(3) Report to the Director and the U.S. Department of Justice cases of knowing violations of the provisions in section 201(f).

(d) In addition to the common responsibilities in paragraph (a), the Heads of other bureaus or offices within the U.S. Department of the Interior with employees performing any functions or duties under the Act shall:

(1) Submit to the Director such statistics and information the Director may request to enable preparation of the required annual report to Congress, and to ensure uniform application of provisions in section 201(f) of the Act;

(2) Submit to the Department of the Interior Ethics Counselor such statistics and information he may request in

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accordance with 43 CFR 20.735-17 as adopted, and

(3) Report to the Director cases of knowing violations of the provisions in section 201(f).

(e) Employees shall:

(1) Have no direct or indirect financial interests in coal mining operations;

(2) File a fully completed statement of employment and financial interests 120 days after these regulations become effective or upon entrance to duty, and annually thereafter on the specified filing date, and

(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.

[42 FR 56060, Oct. 20, 1977, as amended at 56 FR 46988, Sept. 19, 1991]

### § 706.6 Penalties.

(a) Criminal penalties are imposed by section 201(f) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, which prohibits each employee of the Office or any other Federal employee who performs any function or duty under the Act from having a direct or indirect financial interest in underground or surface coal mining operations. The Act provides that whoever knowingly violates the provisions of section 201(f) shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment for not more than one year, or both.

(b) Regulatory penalties are imposed by this part. The provisions in section 201(f) of the Act make compliance with the financial interest requirements a condition of employment for all Office employees and for other Federal employees who perform any functions or duties under the Act. Accordingly, an employee who fails to file the required financial statement will be considered in violation of the intended employment provisions of section 201(f) and will be subject to removal from his or her position.

### § 706.11 Who shall file.

(a) Every employee in the Office is required to file a statement of employment and financial interests.

(b) Any other Federal employee who performs any function or duty under the Act is required to file a statement of employment and financial interests. The Head of each other Federal agency and the Heads of other bureaus and offices within the U.S. Department of the Interior shall prepare and submit a report within 60 days of the effective date of these regulations, either listing the Federal positions identified as performing functions or duties under the Act, or listing the organizational unit and showing the total number of employees within the unit who must file a statement. Revision to the listing or certification that revision is not required shall be submitted to the Director by no later than September 30 of each year. The Secretary, the Director, or the Heads of the other affected Federal organizations may revise the list by the addition or deletion of positions at any time such revisions are required to carry out the purpose of the law or regulations of this part. Additions to or deletions from the list of positions are effective upon notification to the incumbents.

### § 706.13 When to file.

(a) Employees performing functions or duties under the Act will be required to file:

(1) Within 120 days of the effective date of these regulations, and

(2) 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.

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### § 706.15 Where to file.

(a) Each Office employee shall file his or her statement of employment and financial interests with the Director.

(b) Each Department of the Interior employee, who is not an Office employee but does perform any function or duty under the Act, shall file a statement of employment and financial interests with his or her appropriate Ethics Counselor as identified in 43 CFR 20.735-22(c).

(c) Each employee of another Federal agency who performs a function or duty under the Act shall file a statement of employment and financial interests with the official designated by the Head of the other Federal agency.

### § 706.17 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 a form provided by the Office or on a similar form adopted by another Federal agency. The statement shall consist of three major parts, (1) a listing of all financial interests, including employment, security, real property, creditor and other financial interests held during the course of the preceding year, (2) a certification that none of the listed financial interests represent a direct or indirect financial interest in an underground or surface coal mining operation except as specifically identified and described by the employee as part of the certificate, and (3) 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 statement 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 Federal Government under the Act.

(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, investment clubs or regulated investment companies not specializing in underground and surface coal mining operations.

(3) *Real property.* Ownership, lease, royalty or other interests or rights in lands 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, (i) 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 (ii) the information shown on the statement is true, correct, and complete.

(2) An employee is expected to (i) have complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the spouse and other covered relatives, and (ii) be aware of the information contained in the annual financial



statements 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 Director, the Head of another Federal agency, or the Head of other bureaus or offices within the U.S. Department of the Interior to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

- (i) List the financial interests;
- (ii) Show the number of shares, estimated value or annual income of the financial interests; and
- (iii) 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 § 706.6(a).

#### § 706.18 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 Federal Government; or

(2) Has interests that may be substantially affected by the performance or nonperformance 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 persons 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, and

(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 Federal regulations or policies.

#### § 706.19 Resolving prohibited interests.

Actions to be taken by the Director, the heads of other Federal agencies, and the heads of other affected bureaus and offices within the U.S. Department of the Interior include:

(a) Remedial action to effect resolution. If an employee has a prohibited financial interest, the head of the organizational entity (Department, bureau, office, etc.) where the employee works shall promptly advise the employee that remedial action which will resolve the prohibited interest is required within 90 days.

(b) Remedial action may include: (1) Reassignment of the employee to a position which performs no function or duty under the Act, or

(2) Divestiture of the prohibited financial interest, or

(3) Other appropriate action which either eliminates the prohibited financial interest or eliminates the situation which creates the conflict.

(c) Reports of noncompliance. If 90 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 official, other than the Director, who ordered the remedial action shall promptly report the facts of the situation to the Director. The reports to the Director shall include the original or a certified true copy of the employee's statement and any other information pertinent to the Director, including a statement of actions being taken at the time the report is made. Within 30 days of receipt of a noncompliance report, the Director shall notify the head of the employing organization and the employee involved of additional action

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to be taken. Actions which the Director may take include but are not limited to the granting of additional time for resolution or the initiation of action to impose the penalties prescribed by the Act.

### § 706.21 Appeals procedures.

Employees have the right to appeal an order for remedial action under § 706.19 and shall have 30 days to exercise this right before disciplinary action is initiated.

(a) Office employees and other Department of the Interior employees may file their appeal, in writing, in accordance with the provisions in 43 CFR 20.735–25(b).

(b) Employees of other Federal agencies may file their appeal, in writing, in accordance with the established procedures of their employing agency.

## PART 707—EXEMPTION FOR COAL EXTRACTION INCIDENT TO GOVERNMENT-FINANCED HIGHWAY OR OTHER CONSTRUCTION

Sec.

707.1 Scope.

707.4 Responsibility.

707.5 Definitions.

707.10 Information collection.

707.11 Applicability.

707.12 Information to be maintained on site.

AUTHORITY: Secs. 102, 201, 501, and 528 of Pub. L. 95-87, 91 Stat. 448, 449, 467, and 514 (30 U.S.C. 1202, 1211, 1251, 1278).

SOURCE: 44 FR 15322, Mar. 13, 1979, unless otherwise noted.

### § 707.1 Scope.

(a) This part establishes the procedures for determining those surface coal mining and reclamation operations which are exempt from the Act and this chapter because the extraction of coal is an incidental part of Federal, State, or local government-financed highway or other construction.

(b) This part exempts the extraction of coal which is incidental to government-financed construction from the requirements of the Act and this Chapter, if that extraction meets specified criteria which ensure that the construction is government-financed and that the extraction of coal is incidental to it.

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### § 707.4 Responsibility.

(a) The regulatory authority 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 30 CFR 707.12.

### § 707.5 Definitions.

As used in this part, the following terms have the specified meaning:

*Extraction of coal as an incidental part* means the extraction of coal which is necessary to enable the construction to be accomplished. For 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 this chapter.

*Government financing agency* means a Federal, State, county, 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.

*Government-financed construction* means construction funded at 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. Government financing at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Title IV of the Act. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments does not qualify as government-financed construction.

[44 FR 15322, Mar. 13, 1979, as amended at 64 FR 7482, Feb. 12, 1999; 68 FR 65625, Nov. 20, 2003]

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### § 707.10 Information collection.

Since the information collection requirement contained in 30 CFR 707.12 consists only of expenditures on information collection activities that would be incurred by persons in the normal course of their activities, it is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and does not require clearance by OMB.

[64 FR 7482, Feb. 12, 1999]

### § 707.11 Applicability.

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

(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 regulatory

authority under a State, Federal or Federal lands program.

### § 707.12 Information to be maintained on site.

Any person extracting coal incident to government-financed highway or other construction who extracts more than 250 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; and

(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.