(4) The surface area of surface mining activities proposed for the variance has been shown by the applicant to be necessary for implementing the proposed underground mining activities;

(5) No substantial adverse environmental damage, either onsite or offsite, will result from the delay in completion of reclamation otherwise required by section 515(b)(16) of the Act, part 816 of this chapter, and the regulatory program;

(6) The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of §816.79 of this chapter and the regulatory program;

(7) Provisions for offsite storage of spoil will comply with the requirements of section 515(b)(22) of the Act, §§816.71 through 816.74 of this chapter, and the regulatory program;

(8) Liability under the performance bond required to be filed by the applicant with the regulatory authority pursuant to subchapter J of this chapter and the regulatory program will be for the duration of the underground mining activities and until all requirements of subchapter J and the regulatory program have been complied with; and

(9) The permit for the surface mining activities contains specific conditions—

(i) Delineating the particular surface areas for which a variance is authorized;

(ii) Identifying the applicable provisions of section 515(b) of the Act, part 816 of this chapter, and the regulatory program; and

(iii) Providing a detailed schedule for compliance with the provisions of this section.

(d) Review of permits containing variances. Variances granted by permits issued under this section shall be reviewed by the regulatory authority no later than 3 years from the dates of issuance of the permit and any permit renewals.

(48 FR 24651, June 1, 1983)
§ 785.19 Application of statutory exclusions.

(a)(2) of this section, no further consideration of this section is required.

(b) Applicability of statutory exclusions.

(1) If an alluvial valley floor is identified pursuant to paragraph (a)(2) of this section and the proposed surface coal mining operation may affect this alluvial valley floor or waters that supply the alluvial valley floor, the applicant may request the regulatory authority, as a preliminary step in the permit application process, to separately determine the applicability of the statutory exclusions set forth in paragraph (b)(2) of this section. The regulatory authority may make such a determination based on the available data, may require additional data collection and analysis in order to make the determination, or may require the applicant to submit a complete permit application and not make the determination until after the complete application is evaluated.

(2) An applicant need not submit the information required in paragraphs (d)(2)(ii) and (iii) of this section and a regulatory authority is not required to make the findings of paragraphs (e)(2)(i) and (ii) of this section when the regulatory authority determines that one of the following circumstances, hereafter called statutory exclusions, exist:

(i) The premining land use is undeveloped rangeland which is not significant to farming;

(ii) Any farming on the alluvial valley floor that would be affected by the surface coal mining operation is of such small acreage as to be of negligible impact on the farm’s agricultural production. Negligible impact of the proposed operation on farming will be based on the relative importance of the affected farmland areas of the alluvial valley floor area to the farm’s total agricultural production over the life of the mine; or

(iii) The circumstances set forth in §822.12(b)(3) or (4) of this chapter exist.

(3) For the purpose of this section, a farm is one or more land units on which farming is conducted. A farm is generally considered to be the combination of land units with acreage and boundaries in existence prior to August 3, 1977, or if established after August 3, 1977, with those boundaries based on enhancement of the farm’s agricultural productivity and not related to surface coal operations.

(c) Summary denial. If the regulatory authority determines that the statutory exclusions are not applicable and that any of the required findings of paragraph (e)(2) of this section cannot be made, the regulatory authority may, at the request of the applicant:

(1) Determine that mining is precluded on the proposed permit area and deny the permit without the applicant filing any additional information required by this section; or

(2) Prohibit surface coal mining and reclamation operations in all or parts of the area to be affected by mining.

(d) Application contents for operations affecting designated alluvial valley floors.

(1) If land within the permit area or adjacent area is identified as an alluvial valley floor and the proposed surface coal mining operation may affect an alluvial valley floor or waters supplied to an alluvial valley floor, the applicant shall submit a complete application for the proposed surface coal mining and reclamation operations to be used by the regulatory authority together with other relevant information as a basis for approval or denial of the permit. If an exclusion of paragraph (b)(2) of this section applies, then the applicant need not submit the information required in paragraphs (d)(2)(ii) and (iii) of this section.

(2) The complete application shall include detailed surveys and baseline data required by the regulatory authority for a determination of—

(i) The essential hydrologic functions of the alluvial valley floor which might be affected by the mining and reclamation process. The information required by this subparagraph shall evaluate those factors which contribute to the collecting, storing, regulating and making the natural flow of water available for agricultural activities on the alluvial valley floor and shall include, but are not limited to:

(A) Factors contributing to the function of collecting water, such as amount, rate and frequency of rainfall and runoff, surface roughness, slope and vegetative cover, infiltration, and evapotranspiration, relief, slope and density of drainage channels;
§ 785.20 Augering.

(a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing augering operations.

(b) Any application for a permit for operations covered by this section shall contain, in the mining and reclamation plan, a description of the augering methods to be used and the measures to be used to comply with 30 CFR part 819.

(c) No permit shall be issued for any operations covered by this section unless the regulatory authority finds in writing, that in addition to meeting all other applicable requirements of this subchapter, the operation will be conducted in compliance with 30 CFR part 819.

§ 785.21 Coal preparation plants not located within the permit area of a mine.

(a) This section applies to any person who operates or intends to operate a coal preparation plant in connection with a coal mine but outside the permit area for a specific mine. Any person who operates such a preparation plant shall obtain a permit from the regulatory authority in accordance with the requirements of this section.

(b) Any application for a permit for operations covered by this section shall contain an operation and reclamation plan which specifies plans, including descriptions, maps, and cross sections, of the construction, operation, maintenance, and removal of the preparation plant and support facilities operated incident thereto or resulting therefrom. The plan shall demonstrate that those operations will be conducted in compliance with part 827 of this chapter.

(c) No permit shall be issued for any operation covered by this section, unless the regulatory authority finds in