

§ 23.3 Definitions.

As used in the regulations in this part:

(a) *Mineral leasing acts* means the Mineral Leasing Act of February 25, 1920, as amended and supplemented (30 U.S.C. 181-287) and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359);

(b) *Mining Supervisor* means the Area Mining Supervisor, or his authorized representative, of the Geological Survey authorized as provided in 30 CFR 211.3 and 231.2 to supervise operations on the land covered by a permit or lease;

(c) *District manager* means the manager of the district office or other authorized officer of the Bureau of Land Management having administrative jurisdiction of and responsibility for the land covered by a permit, lease, contract, application, or offer;

(d) *Overburden* means all the earth and other materials which lie above a natural deposit of minerals and such earth and other materials after removal from their natural state in the process of mining;

(e) *Area of land to be affected or area of land affected* means the area of land from which overburden is to be or has been removed and upon which the overburden or waste is to be or has been deposited, and includes all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to an operation and for haulage;

(f) *Operation* means all of the premises, facilities, roads, and equipment used in the process of determining the location, composition or quality of a mineral deposit, or in developing, extracting, or onsite processing of a mineral deposit in a designated area;

(g) *Method of operation* means the method or manner by which a cut or open pit is made, the overburden is placed or handled, water is controlled or affected and other acts performed by the operator in the process of exploring or uncovering and removing or onsite processing of a mineral deposit;

(h) *Holder or Operator* means the permittee, leasee, or contractor designated in a permit, lease, or contract;

(i) *Reclamation* means measures undertaken to bring about the necessary

reconditioning or restoration of land or water that has been affected by exploration or mineral development, mining or onsite processing operations, and waste disposal, in ways which will prevent or control onsite and offsite damage to the environment.

[34 FR 852, Jan. 18, 1969, as amended at 38 FR 10009, Apr. 23, 1973; 48 FR 27016, June 10, 1983]

§ 23.4 Application for permission to conduct exploration operations.

No person shall, in any manner or by any means which will cause the surface of lands to be disturbed, explore, test, or prospect for minerals (other than oil and gas) subject to disposition under the mineral leasing acts without first filing an application for, and obtaining, a permit, lease or contract which authorizes such exploring, testing, or prospecting.

[34 FR 852, Jan. 18, 1969, as amended at 48 FR 27016, June 10, 1983]

§ 23.5 Technical examination of prospective surface exploration and mining operations.

(a)(1) In connection with an application for a permit or lease under the mineral leasing acts, the district manager shall make, or cause to be made, a technical examination of the prospective effects of the proposed exploration or surface mining operations upon the environment. The technical examination shall take into consideration the need for the preservation and protection of other resources, including recreational, scenic, historic, and ecological values; the control of erosion, flooding, and pollution of water; the isolation of toxic materials; the prevention of air pollution; the reclamation by revegetation, replacement of soil, or by other means, of lands affected by the exploration or mining operations; the prevention of slides; the protection of fish and wildlife and their habitat; and the prevention of hazards to public health and safety.

(2) A technical examination of an area should be made with the recognition that actual potential mining sites and mining operations vary widely with respect to topography, climate, surrounding land uses, proximity to densely used areas, and other environmental influences and that mining and

§ 23.5

reclamation requirements should provide sufficient flexibility to permit adjustment to local conditions.

(b) Based upon the technical examination, the district manager shall formulate the general requirements which the applicant must meet for the protection of nonmineral resources during the conduct of exploration or mining operations and for the reclamation of lands or waters affected by exploration or mining operations. The general requirements shall be made known in writing to the applicant before the issuance of a permit or lease or the making of a contract, and upon acceptance thereof by the applicant, shall be incorporated in the permit, lease, or contract. If an application or offer is made under the Mineral Leasing Act for Acquired Lands and if the lands are under the jurisdiction of an agency other than the Department of the Interior, the requirements must incorporate provisions prescribed by that agency. If the application or offer is made under the Mineral Leasing Act of February 25, 1920, and if the lands are under the jurisdiction of an agency other than the Department of the Interior, the district manager shall consult representatives of the agency administering the land and obtain their recommendations for provisions to be incorporated in the general requirements. If the district manager does not concur in the recommendations, the issues shall be referred for resolution to the Under Secretary of the Department of the Interior and the comparable officer of the agency submitting the recommendations. In the case of disagreement on the issues which are so referred, the Secretary of the Interior shall make a determination on the recommendations which shall be final and binding.

(c) In each instance in which an application or offer is made under the mineral leasing acts, the mining supervisor shall participate in the technical examination and in the formulation of the general requirements. If the lands covered by an application or offer are under the jurisdiction of a bureau of the Department of the Interior other than the Bureau of Land Management, the district manager shall consult representatives of the bureau admin-

43 CFR Subtitle A (10-1-10 Edition)

istering the land. If the lands covered by the application or offer are under the jurisdiction of an agency other than the Department of the Interior and that agency makes a technical examination of the type provided for in paragraph (a) of this section, district managers and mining supervisors are authorized to participate in that examination.

(d) Whenever it is determined that any part of the area described in an application or offer for a permit, lease, or contract is such that previous experience under similar conditions has shown that operations cannot feasibly be conducted by any known methods or measures to avoid—

(1) Rock or landslides which would be a hazard to human lives or endanger or destroy private or public property; or

(2) Substantial deposition of sediment and silt into streams, lakes, reservoirs; or

(3) A lowering of water quality below standards established by the appropriate State water pollution control agency, or by the Secretary of the Interior; or

(4) A lowering of the quality of waters whose quality exceeds that required by the established standards—unless and until it has been affirmatively demonstrated to the State water pollution control agency and to the Department of the Interior that such lowering of quality is necessary to economic and social development and will not preclude any assigned uses made of such waters; or

(5) The destruction of key wildlife habitat or important scenic, historical, or other natural or cultural features; the district manager may prohibit or otherwise restrict operations on such part of an area.

(e) If, on the basis of a technical examination, the district manager determines that there is a likelihood that there will be a lowering of water quality as described in paragraphs (d) (3) and (4) of this section caused by the operation, no lease or permit shall be issued or contract made until after consultation with the Federal Water Pollution Control Administration and a finding by the Administration that the proposed operation would not be in

violation of the Federal Water Pollution Control Act, as amended (33 U.S.C. section 466 *et seq.*) or of Executive Order No. 11288 (31 FR 9261). Where a permit or lease is involved the district manager's determination shall be made in consultation with the mining supervisor.

(f) Each notice of a proposed appropriation of a materials site filed by the Department of Transportation under 23 U.S.C. 317 shall be transmitted to the proper district manager. The district manager shall cause a technical examination to be made as provided in paragraph (a) of this section and shall formulate the requirements which the State highway department or its nominee must meet. If the land covered by the proposed appropriation is under the jurisdiction of a bureau of the Department other than the Bureau of Land Management, the district manager shall consult representatives of the bureau administering the land. If the district manager determines, or, in an instance in which the land is administered by another bureau, a representative of that bureau determines that the proposed appropriation is contrary to the public interest or is inconsistent with the purposes for which such land or materials are reserved, the district manager shall promptly submit the matter to the Secretary of the Interior for his decision. In other instances, the district manager shall notify the Department of Transportation of the requirements and conditions which the State highway department or its nominee must meet.

[34 FR 852, Jan. 18, 1969, as amended at 48 FR 27016, June 10, 1983]

§ 23.6 Basis for denial of a permit, lease, or contract.

An application or offer for a permit, lease, or contract to conduct exploratory or extractive operations may be denied any applicant or offeror who has forfeited a required bond because of failure to comply with an exploration or mining plan. However, a permit, lease, or contract may not be denied an applicant or offeror because of the forfeiture of a bond if the lands disturbed under his previous permit, lease, or contract have subsequently been re-

claimed without cost to the Federal Government.

§ 23.7 Approval of exploration plan.

(a) Before commencing any surface disturbing operations to explore, test, or prospect for minerals covered by the mineral leasing acts the operator shall file with the mining supervisor a plan for the proposed exploration operations. The mining supervisor shall consult with the district manager with respect to the surface protection and reclamation aspects before approving said plan.

(b) Depending upon the size and nature of the operation and the requirements established pursuant to § 23.5 the mining supervisor or the district manager may require that the exploration plan submitted by the operator include any or all of the following:

(1) A description of the area within which exploration is to be conducted;

(2) Two copies of a suitable map or aerial photograph showing topographic, cultural and drainage features;

(3) A statement of proposed exploration methods, i.e. drilling, trenching, etc., and the location of primary support roads and facilities;

(4) A description of measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, and hazards to public health and safety both during and upon abandonment of exploration activities.

(c) The mining supervisor or the district manager shall promptly review the exploration plan submitted to him by the operator and shall indicate to the operator any changes, additions, or amendments necessary to meet the requirements formulated pursuant to § 23.5, the provisions of the regulations in this part, and the terms of the permit.

(d) The operator shall comply with the provisions of an approved exploration plan. The mining supervisor and the district manager may, with respect to such a plan, exercise the authority provided by paragraphs (f) and (g) of § 23.8 respecting a mining plan.

[34 FR 852, Jan. 18, 1969, as amended at 48 FR 27016, June 10, 1983]