contour were to be restored. The watershed will be deemed improved only if—
(i) The amount of total suspended solids or other pollutants discharged to
ground or surface water from the permit area will be reduced, so as to improve the public or private uses or the
ecology of such water, or flood hazards
within the watershed containing the
permit area will be reduced by reduc-
tion of the peak flow discharge from precipita-
tion events or thaws;
(ii) The total volume of flow from the
proposed permit area, during every sea-
son of the year, will not vary in a way
that adversely affects the ecology of any
surface water or any existing or
planned use of surface or ground water;
and
(iii) The appropriate State environ-
mental agency approves the plan.
(4) The owner of the surface of the
lands within the permit area has know-
ingly requested, in writing, as part of
the application, that a variance be
granted. The request shall be made sep-
arately from any surface owner con-
sent given for the operations under
§788.15 of this chapter and shall show
an understanding that the variance
could not be granted without the sur-
face owner’s request.
(b) If a variance is granted under this
section—
(1) The requirements of §816.133(d) or
§817.133(d) of this chapter shall be in-
cluded as a specific condition of the
permit; and
(2) The permit shall be specifically
marked as containing a variance from
approximate original contour.
(c) A permit incorporating a variance
under this section shall be reviewed by
the regulatory authority at least every
30 months following the issuance of the
permit to evaluate the progress and de-
velopment of the surface coal mining
and reclamation operations to estab-
lish that the operator is proceeding in
accordance with the terms of the var-
iance.
(d) If the permittee demonstrates to
the regulatory authority that the opera-
tions have been, and continue to be, conducted in compliance with the
terms and conditions of the permit, the
requirements of the Act, this chapter,
and the regulatory program, the review
specified in paragraph (c) of this sec-
tion need not be held.
(e) The terms and conditions of a per-
mit incorporating a variance under
this section may be modified at any
time by the regulatory authority, if it
determines that more stringent meas-
tures are necessary to ensure that the
operations involved are conducted in
compliance with the requirements of
the Act, this chapter, and the regu-
latory program.
(f) The regulatory authority may
grant variances in accordance with this
section only if it has promulgated spe-
cific rules to govern the granting of
variances in accordance with the provi-
sions of this section and any necessary,
more stringent requirements.

§ 785.17 Prime farmland.
(a) This section applies to any person
who conducts or intends to conduct
surface coal mining and reclamation
operations on prime farmlands histori-
cally used for cropland. This section
does not apply to:
(1) Lands on which surface coal min-
ing and reclamation operations are
conducted pursuant to any permit
issued prior to August 3, 1977; or
(2) Lands on which surface coal min-
ing and reclamation operations are
conducted pursuant to any renewal or
revision of a permit issued prior to Au-
gust 3, 1977; or
(3) Lands included in any existing
surface coal mining operations for
which a permit was issued for all or
any part thereof prior to August 3, 1977,
provided that:
(i) Such lands are part of a single
continuous recoverable coal seam that was
being mined in a single continuous
mining pit (or multiple pits if the lands
are proven to be part of a single contin-
uous surface coal mining operation)

[48 FR 39904, Sept. 1, 1983, as amended at 48
FR 4790, Sept. 30, 1983; 56 FR 65635, Dec. 17,
1991]
began under a permit issued prior to August 3, 1977.

(4) For purposes of this section:
   (i) "Renewal" of a permit shall mean a decision by the regulatory authority to extend the time by which the permittee may complete mining within the boundaries of the original permit, and "revision" of the permit shall mean a decision by the regulatory authority to allow changes in the method of mining operations within the original permit area, or the decision of the regulatory authority to allow incidental boundary changes to the original permit;
   (ii) A pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad, or powerline or similar crossing;
   (iii) A single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit under a permit issued prior to August 3, 1977, but may include non-contiguous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the non-contiguous parcels were part of a single permitted operation.

(b) Application contents—Reconnaissance inspection. (1) All permit applications, whether or not prime farmland is present, shall include the results of a reconnaissance inspection of the proposed permit area to indicate whether prime farmland exists. The regulatory authority in consultation with the U.S. Soil Conservation Service shall determine the nature and extent of the required reconnaissance inspection.

   (2) If the reconnaissance inspection establishes that no land within the proposed permit area is prime farmland historically used for cropland, the applicant shall submit a statement that no prime farmland is present. The statement shall identify the basis upon which such a conclusion was reached.

(c) Application contents—Prime farmland. All permit applications for areas in which prime farmland has been identified within the proposed permit area shall include the following:


   (i) U.S. Department of Agriculture Handbooks 436 and 18 are incorporated by reference as they exist on the date of adoption of this section. Notices of changes made to these publications will be periodically published by OSM.
in the Federal Register. The handbooks are on file and available for inspection at the OSM Central Office, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC, at each OSM Technical Center and Field Office, and at the central office of the applicable State regulatory authority, if any. Copies of these documents are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock Nos. 001–000–02597–0 and 001–000–00688–6, respectively. In addition, these documents are available for inspection at the national, State, and area offices of the Soil Conservation Service, U.S. Department of Agriculture, or 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. Incorporation by reference provisions were approved by the Director of the Federal Register on June 29, 1981.

(ii) The soil survey shall include a description of soil mapping units and a representative soil profile as determined by the U.S. Soil Conservation Service, including, but not limited to, soil-horizon depths, pH, and the range of soil densities for each prime farmland soil unit within the permit area. Other representative soil-profile descriptions from the locality, prepared according to the standards of the National Cooperative Soil Survey, may be used if their use is approved by the State Conservationist, U.S. Soil Conservation Service. The regulatory authority may request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland within the permit area to the soil-reconstruction standards of part 823 of this chapter.

(2) A plan for soil reconstruction, replacement, and stabilization for the purpose of establishing the technological capability of the mine operator to comply with the requirements of part 823 of this chapter.

(3) Scientific data, such as agricultural-school studies, for areas with comparable soils, climate, and management that demonstrate that the proposed method of reclamation, including the use of soil mixtures or substitutes, if any, will achieve, within a reasonable time, levels of yield equivalent to, or higher than, those of nonmined prime farmland in the surrounding area.

(4) The productivity prior to mining, including the average yield of food, fiber, forage, or wood products obtained under a high level of management.

(d) Consultation with Secretary of Agriculture. (1) The Secretary of Agriculture has responsibilities with respect to prime farmland soils and has assigned the prime farmland responsibilities arising under the Act to the Chief of the U.S. Soil Conservation Service. The U.S. Soil Conservation Service shall carry out consultation and review through the State Conservationist located in each State.

(2) The State Conservationist shall provide to the regulatory authority a list of prime farmland soils, their location, physical and chemical characteristics, crop yields, and associated data necessary to support adequate prime farmland soil descriptions.

(3) The State Conservationist shall assist the regulatory authority in describing the nature and extent of the reconnaissance inspection required in paragraph (b)(1) of this section.

(4) Before any permit is issued for areas that include prime farmland, the regulatory authority shall consult with the State Conservationist. The State Conservationist shall provide for the review of, and comment on, the proposed method of soil reconstruction in the plan submitted under paragraph (c) of this section. If the State Conservationist considers those methods to be inadequate, he or she shall suggest revisions to the regulatory authority which result in more complete and adequate reconstruction.

(e) Issuance of permit. A permit for the mining and reclamation of prime farmland may be granted by the regulatory authority, if it first finds, in writing, upon the basis of a complete application, that—
(1) The approved proposed postmining land use of these prime farmlands will be cropland;
(2) The permit incorporates as specific conditions the contents of the plan submitted under paragraph (c) of this section, after consideration of any revisions to that plan suggested by the State Conservationist under paragraph (d)(4) of this section;
(3) The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management; and
(4) The proposed operations will be conducted in compliance with the requirements of 30 CFR part 823 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the regulatory program.
(5) The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained.

§ 785.18 Variances for delay in contemporaneous reclamation requirement in combined surface and underground mining activities.
(a) Scope. This section shall apply to any person or persons conducting or intending to conduct combined surface and underground mining activities where a variance is requested from the contemporaneous reclamation requirements of § 816.100 of this chapter.
(b) Application contents for variances. Any person desiring a variance under this section shall file with the regulatory authority complete applications for both the surface mining activities and underground mining activities which are to be combined. The reclamation and operation plans for these permits shall contain appropriate narratives, maps, and plans, which—
(1) Show why the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the coal;
(2) Show how multiple future disturbances of surface lands or waters will be avoided;
(3) Identify the specific surface areas for which a variance is sought and the sections of the Act, this chapter, and the regulatory program from which a variance is being sought;
(4) Show how the activities will comply with § 816.79 of this chapter and other applicable requirements of the regulatory program;
(5) Show why the variance sought is necessary for the implementation of the proposed underground mining activities;
(6) Provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of surface mining activities is delayed; and
(7) Show how onsite storage of spoil will be conducted to comply with the requirements of the Act, §§ 816.71 through 816.74 of this chapter, and the regulatory program.
(c) Issuance of permit. A permit incorporating a variance under this section may be issued by the regulatory authority if it first finds, in writing, upon the basis of a complete application filed in accordance with this section, that—
(1) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining activities;
(2) The proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple future disturbances of surface land or waters;
(3) The applicant has satisfactorily demonstrated that the applications for the surface mining activities and underground mining activities conform to the requirements of the regulatory program and that all other permits necessary for the underground mining activities have been issued by the appropriate authority;