



CODE OF FEDERAL REGULATIONS

Title 30

Mineral Resources

Part 700 to End

Revised as of July 1, 2017

Containing a codification of documents
of general applicability and future effect

As of July 1, 2017

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Table of Contents

Explanation	<i>Page</i> v
Title 30:	
Chapter VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior	3
Chapter XII—Office of Natural Resources Revenue, Department of the Interior	791
Finding Aids:	
Table of CFR Titles and Chapters	1031
Alphabetical List of Agencies Appearing in the CFR	1051
List of CFR Sections Affected	1061

Cite this Code: CFR

*To cite the regulations in
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part and section num-
ber. Thus, 30 CFR 700.1
refers to title 30, part
700, section 1.*

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Title 1 through Title 16.....	as of January 1
Title 17 through Title 27.....	as of April 1
Title 28 through Title 41.....	as of July 1
Title 42 through Title 50.....	as of October 1

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An index to the text of “Title 3—The President” is carried within that volume. The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the “Contents” entries in the daily Federal Register.

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OLIVER A. POTTS,
Director,
Office of the Federal Register.
July 1, 2017.

THIS TITLE

Title 30—MINERAL RESOURCES is composed of three volumes. The parts in these volumes are arranged in the following order: parts 1—199, parts 200—699, and part 700 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 2017.

For this volume, Gabrielle E. Burns was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen J. Frattini.

Title 30—Mineral Resources

(This book contains part 700 to End)

	<i>Part</i>
CHAPTER VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior	700
CHAPTER XII—Office of Natural Resources Revenue, Department of the Interior	1201

CHAPTER VII—OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR

EDITORIAL NOTE: Nomenclature changes to chapter VII appear at 69 FR 18803, Apr. 9, 2004.

SUBCHAPTER A—GENERAL

<i>Part</i>		<i>Page</i>
700	General	9
701	Permanent regulatory program	17
702	Exemption for coal extraction incidental to the ex- traction of other minerals	35
705	Restriction on financial interests of State employ- ees	41
706	Restriction on financial interests of Federal em- ployees	48
707	Exemption for coal extraction incident to govern- ment-financed highway or other construction	54

SUBCHAPTER B—INITIAL PROGRAM REGULATIONS

710	Initial regulatory program	56
715	General performance standards	62
716	Special performance standards	92
717	Underground mining general performance stand- ards	100
721	Federal inspections	111
722	Enforcement procedures	113
723	Civil penalties	118
724	Individual civil penalties	123
725	Reimbursements to States	125

SUBCHAPTER C—PERMANENT REGULATORY PROGRAMS FOR NON- FEDERAL AND NON-INDIAN LANDS

730	General requirements	132
731	Submission of State programs	133
732	Procedures and criteria for approval or disapproval of State program submissions	135

30 CFR Ch. VII (7–1–17 Edition)

<i>Part</i>		<i>Page</i>
733	Maintenance of State programs and procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs	141
735	Grants for program development and administration and enforcement	143
736	Federal program for a State	151
	SUBCHAPTER D—FEDERAL LANDS PROGRAM	
740	General requirements for surface coal mining and reclamation operations on Federal lands	156
745	State-Federal cooperative agreements	164
746	Review and approval of mining plans	167
	SUBCHAPTER E—INDIAN LANDS PROGRAM	
750	Requirements for surface coal mining and reclamation operations on Indian lands	169
755	Tribal-Federal intergovernmental agreements	174
756	Indian tribe abandoned mine land reclamation programs	174
	SUBCHAPTER F—AREAS UNSUITABLE FOR MINING	
761	Areas designated by Act of Congress	179
762	Criteria for designating areas as unsuitable for surface coal mining operations	189
764	State processes for designating areas unsuitable for surface coal mining operations	191
769	Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations	196
	SUBCHAPTER G—SURFACE COAL MINING AND RECLAMATION OPERATIONS PERMITS AND COAL EXPLORATION SYSTEMS UNDER REGULATORY PROGRAMS	
772	Requirements for coal exploration	200
773	Requirements for permits and permit processing ...	204
774	Revision; renewal; transfer, assignment, or sale of permit rights; post-permit issuance requirements	218
775	Administrative and judicial review of decisions	223
777	General content requirements for permit applications	225
778	Permit applications—minimum requirements for legal, financial, compliance, and related information	226

Surface Mining Reclamation and Enforcement, Interior

<i>Part</i>		<i>Page</i>
779	Surface mining permit applications—minimum requirements for information on environmental resources and conditions	231
780	Surface mining permit applications—minimum requirements for operation and reclamation plans	235
783	Underground mining permit applications—minimum requirements for information on environmental resources and conditions	274
784	Underground mining permit applications—minimum requirements for operation and reclamation plans	279
785	Requirements for permits for special categories of mining	320
	SUBCHAPTER H—SMALL OPERATOR ASSISTANCE	
795	Permanent regulatory program—small operator assistance program	334
	SUBCHAPTER I [RESERVED]	
	SUBCHAPTER J—PERFORMANCE BOND, FINANCIAL ASSURANCE, AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS	
800	Performance bond, financial assurance, and insurance requirements for surface coal mining and reclamation operations	338
	SUBCHAPTER K—PERMANENT PROGRAM PERFORMANCE STANDARDS	
810	Permanent program performance standards—general provisions	357
815	Permanent program performance standards—coal exploration	358
816	Permanent program performance standards—surface mining activities	359
817	Permanent program performance standards—underground mining activities	404
819	Special permanent program performance standards—auger mining	451
820	Special permanent program performance standards—anthracite mines in Pennsylvania	453
822	Special permanent program performance standards—operations in alluvial valley floors	453
823	Special permanent program performance standards—operations on prime farmland	454
824	Special permanent program performance standards—mountaintop removal mining operations ...	456

30 CFR Ch. VII (7–1–17 Edition)

<i>Part</i>		<i>Page</i>
825	Special permanent program performance standards—special bituminous coal mines in Wyoming	457
827	Permanent program performance standards—coal preparation plants not located within the permit area of a mine	458
828	Special permanent program performance standards—in situ processing	458
SUBCHAPTER L—PERMANENT PROGRAM INSPECTION AND ENFORCEMENT PROCEDURES		
840	State regulatory authority: Inspection and enforcement	460
842	Federal inspections and monitoring	464
843	Federal enforcement	469
845	Civil penalties	477
846	Individual civil penalties	482
847	Alternative enforcement	484
SUBCHAPTER M—TRAINING, EXAMINATION, AND CERTIFICATION OF BLASTERS		
850	Permanent regulatory program requirements—standards for certification of blasters	486
SUBCHAPTERS N–O [RESERVED]		
SUBCHAPTER P—PROTECTION OF EMPLOYEES		
865	Protection of employees	489
SUBCHAPTER R—ABANDONED MINE LAND RECLAMATION		
870	Abandoned mine reclamation fund—fee collection and coal production reporting	492
872	Moneys available to eligible States and Indian tribes	503
873	Future reclamation set-aside program	510
874	General reclamation requirements	510
875	Certification and noncoal reclamation	515
876	Acid mine drainage treatment and abatement program	519
877	Rights of entry	520
879	Acquisition, management, and disposition of lands and water	521
880	Mine fire control	524
881	Subsidence and strip mine rehabilitation, Appalachia	526
882	Reclamation on private land	531
884	State reclamation plans	533
885	Grants for certified States and Indian tribes	536

Surface Mining Reclamation and Enforcement, Interior

<i>Part</i>		<i>Page</i>
886	Reclamation grants for uncertified States and Indian tribes	538
887	Subsidence insurance program grants	544

SUBCHAPTER S [RESERVED]

SUBCHAPTER T—PROGRAMS FOR THE CONDUCT OF SURFACE MINING OPERATIONS WITHIN EACH STATE

900	Introduction	546
901	Alabama	547
902	Alaska	554
903	Arizona	557
904	Arkansas	564
905	California	567
906	Colorado	575
910	Georgia	584
912	Idaho	590
913	Illinois	595
914	Indiana	604
915	Iowa	615
916	Kansas	617
917	Kentucky	619
918	Louisiana	630
920	Maryland	632
921	Massachusetts	634
922	Michigan	639
924	Mississippi	645
925	Missouri	647
926	Montana	650
931	New Mexico	660
933	North Carolina	671
934	North Dakota	678
935	Ohio	687
936	Oklahoma	694
937	Oregon	703
938	Pennsylvania	709
939	Rhode Island	717
941	South Dakota	723
942	Tennessee	728
943	Texas	739
944	Utah	742
946	Virginia	752
947	Washington	760
948	West Virginia	767
950	Wyoming	776
955	Certification of blasters in Federal program States and on Indian lands	785
956–999	[Reserved]	

SUBCHAPTER A—GENERAL

PART 700—GENERAL

Sec.

700.1 Scope.

700.2 Objective.

700.3 Authority.

700.4 Responsibility.

700.5 Definitions.

700.10 Information collection.

700.11 What coal exploration and coal mining operations are subject to our rules?

700.12 Petitions to initiate rulemaking.

700.13 Notice of citizen suits.

700.14 Availability of records.

700.15 Computation of time.

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

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 surface 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.

§ 700.2

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

30 CFR Ch. VII (7–1–17 Edition)

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

Surface Mining Reclamation and Enforcement, Interior

§ 700.5

(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).

AML means abandoned mine land(s).

AML inventory means OSM's listing of abandoned mine land problems eligible to be reclaimed using moneys from the Abandoned Mine Reclamation Fund or the Treasury as appropriate.

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. 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.

Eligible lands and water means lands and water eligible for expenditures under title IV of SMCRA and this chapter. Eligible lands and water for reclamation or drainage abatement expenditures under the Abandoned Mine Land program contained in this chapter are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes and left or abandoned in either an unreclaimed or inadequately reclaimed condition prior to August 3, 1977, and for which there is no continuing reclamation responsibility. However, lands and water damaged by coal mining operations after that date and on or before November 5, 1990, may also be eligible for reclamation if they meet the requirements specified in § 874.12(d) and (e) of this chapter. Following certification of the completion of all known coal problems,

§ 700.5

30 CFR Ch. VII (7–1–17 Edition)

eligible lands and water for noncoal reclamation purposes are those sites that meet the eligibility requirements specified in § 875.14 of this chapter. For additional eligibility requirements for water projects, see § 874.14 of this chapter, and for lands affected by reining operations, see section 404 of SMCRA.

Emergency means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures.

Expended means that moneys have been obligated, encumbered, or committed by contract by the State, Tribe, or us for work to be accomplished or services to be rendered.

Extreme danger means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.

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 on the books of the U.S. Treasury for the purpose of accumulating revenues designated for reclamation of abandoned mine lands and other activities authorized by section 401 of SMCRA.

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.

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.

Left or abandoned in either an unreclaimed or inadequately reclaimed condition means, for Abandoned Mine Land programs, lands and water:

(1) Which were mined or which were affected by such mining, wastebanks, processing or other mining processes prior to August 3, 1977, or between August 3, 1977, and November 5, 1990, as authorized pursuant to section 402(g)(4) of SMCRA, and on which all mining has ceased;

(2) Which continue, in their present condition, to degrade substantially the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public; and

(3) For which there is no continuing reclamation responsibility under State or Federal laws, except as provided in sections 402(g)(4) and 403(b)(2) of SMCRA.

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

Surface Mining Reclamation and Enforcement, Interior

§ 700.5

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.

Project means a delineated area containing one or more abandoned mine land problems. A project may be a group of related reclamation activities with a common objective within a political subdivision of a State or within a logical, geographically defined area, such as a watershed, conservation district, or county planning area.

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.

Reclamation activity means the reclamation, abatement, control, or prevention of adverse effects of past mining by an Abandoned Mine Land program.

Reclamation program means a program established by a State or an Indian tribe in accordance with Title IV of SMCRA for reclamation of lands and water adversely affected by past mining, including the reclamation plan and annual applications for grants under the plan.

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 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.

SMCRA means the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, as amended.

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 16⅔ 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

§ 700.10

30 CFR Ch. VII (7–1–17 Edition)

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; 73 FR 67629, Nov. 14, 2008; 80 FR 6446, Feb. 5, 2015]

§ 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 What coal exploration and coal mining operations are subject to our rules?

(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% 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.

(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) *Termination and reassertion of jurisdiction*—(1) *Termination of jurisdiction for initial regulatory program sites.* A regulatory authority may terminate its jurisdiction under the initial regulatory program over a completed surface coal mining and reclamation operation, or portion thereof, when the regulatory authority determines in writing that all requirements imposed under subchapter B of this chapter have been successfully completed.

(2) *Termination of jurisdiction for permanent regulatory program sites.* A regulatory authority may terminate its jurisdiction under the permanent regulatory program over a completed surface coal mining and reclamation operation, or portion thereof, when—

(i) The regulatory authority determines in writing that all requirements imposed under the applicable regulatory program have been successfully completed; or

(ii) Where a performance bond or financial assurance was required, the regulatory authority has made a final decision in accordance with the applicable regulatory program to release the performance bond or financial assurance fully.

(3) *Reassertion of jurisdiction.* Following a termination under paragraph

§ 700.12

30 CFR Ch. VII (7–1–17 Edition)

(d)(1) or (2) of this section, the regulatory authority must reassert jurisdiction under the regulatory program over a site or operation whenever—

(i) Conditions develop after termination of jurisdiction that would constitute a violation of the reclamation requirements of the applicable regulatory program;

(ii) The conditions described in paragraph (d)(3)(i) of this section are the result of surface coal mining operations for which jurisdiction was terminated; and

(iii) The written determination or bond release referred to in paragraph (d)(1) or (2) of this section was based upon fraud, collusion, or the intentional or unintentional misrepresentation of a material fact. The intentional or unintentional misrepresentation of a material fact includes the discovery of a discharge requiring treatment after termination of jurisdiction, provided that the conditions creating the need for treatment are the result of the mining operation.

(4) *Exception for certain underground mining requirements.* The provisions of paragraphs (d)(1) and (2) of this section do not apply to the domestic water supply replacement requirements of § 817.40 of this chapter or to the structural damage repair or compensation requirements of § 817.121(d) of this chapter.

[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; 81 FR 93319, Dec. 20, 2016]

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, Depart-

ment 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:

(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.

701.1 Scope.

701.2 Objective.

701.3 Authority.

701.4 Responsibility.

701.5 Definitions.

701.11 Applicability.

701.16 How will the stream protection rule apply to existing and future permits and permit applications?

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

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

§ 701.2

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 211¹ and that part 769 and other parts incorporated therein are applicable to the initial Federal lands program under 30 CFR part 211;¹

(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

(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 regula-

30 CFR Ch. VII (7–1–17 Edition)

tions 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

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

Surface Mining Reclamation and Enforcement, Interior

§ 701.5

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 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 respon-

sibilities 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 or *acid mine drainage* means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity that is discharged from an active, inactive, or abandoned surface coal mining 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—

(1) *Basic definition for all operations and all resources.* (i) Except as provided in paragraph (1)(ii) of this definition, the adjacent area includes those areas outside the proposed or actual permit area within which there is a reasonable probability of adverse impacts from surface coal mining operations or underground mining activities, as determined by the regulatory authority. The area covered by this term will vary with the context in which a regulation uses this term; *i.e.*, the nature of the resource or resources addressed by a regulation in which the term “adjacent area” appears will determine the size and other dimensions of the adjacent area for purposes of that regulation.

(ii) In the context of the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, the term *adjacent area* includes those areas outside the proposed or actual permit area where surface coal mining operations or underground mining activities may affect a species listed or proposed for listing as endangered or threatened under that Act or designated or proposed critical habitat under that Act.

(2) *Underground mines.* For underground mines, the adjacent area includes, at a minimum, the area overlying the underground workings plus

the area within a reasonable angle of dewatering from the perimeter of the underground workings.

(3) *Underground mine pools.* For all operations, the adjacent area also includes the area that might be affected physically or hydrologically by the dewatering of existing mine pools as part of surface or underground mining operations, plus the area that might be affected physically or hydrologically by mine pools that develop after cessation of mining activities.

Administratively complete application means an application for permit approval 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 pub-

lic 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.

Angle of dewatering means the angle created from a vertical line drawn from the outer edge or boundary of high-extraction underground mining workings and an oblique line drawn from terminus of the vertical line at the mine floor to the farthest expected extent that the mining will cause dewatering of groundwater or surface water.

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 area so that the reclaimed area closely resembles the general surface configuration of the land within the permit area prior to any mining activities or related disturbances and blends into and complements the drainage pattern of the surrounding terrain. All highwalls and spoil piles must be eliminated to meet the terms of the definition, but that requirement does not prohibit the approval of terracing under § 816.102 or § 817.102 of this chapter, the retention of access roads in accordance with § 816.150 or § 817.151 of this chapter, or the approval of permanent water impoundments that comply with §§ 816.49, 816.55, and 780.24(b) or §§ 817.49, 817.55, and 784.24(b) of this chapter. For purposes of this definition, the term “mined area” does not include excess spoil fills and coal refuse piles.

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.

Backfill, when used as a noun, means the spoil and waste materials used to fill the void resulting from an excavation created for the purpose of extracting coal from the earth. When used as a verb, the term refers to the process of filling that void. The term also includes all spoil and waste materials used to restore the approximate original contour.

Bankfull stage means the water level at which a stream, river, or lake begins to overflow its natural banks and enter the active floodplain, with the exception of an entrenched stream, river, or lake, in which case bankfull stage is the highest scour line, bench, or top of the point bar.

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

Biological condition refers to the type, diversity, distribution, and abundance of aquatic organisms and communities found in surface water bodies, including streams.

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 program 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 an area that includes the—

(1) Actual or proposed permit area.

(2) HUC-12 (U.S. Geological Survey 12-digit Watershed Boundary Dataset) watershed or watersheds in which the actual or proposed permit area is located or a differently-sized watershed adequate for purposes of preparation of the cumulative hydrologic impact assessment, as determined by the regulatory authority.

(3) Any other area within which impacts resulting from an actual or proposed surface or underground coal mining operation may interact with the impacts of all existing and anticipated surface and underground coal mining on surface-water and groundwater systems, including the impacts that existing and anticipated mining will have during mining and reclamation until final bond release. At a minimum, existing and anticipated mining must include:

(i) The proposed operation;

(ii) All existing surface and underground coal mining operations;

(iii) Any proposed surface or underground coal mining operation for which a permit application has been submitted to the regulatory authority;

(iv) Any proposed surface or underground coal mining operation for which a request for an authorization, certification, or permit has been submitted under the Clean Water Act; and

(v) All existing and proposed coal mining operations that are required to meet diligent development requirements for leased federal coal and for

which a resource recovery and protection plan has been either approved or submitted to and reviewed by the authorized officer of the Bureau of Land Management under 43 CFR 3482.1(b).

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.

Ecological function of a stream means the species richness, diversity, and extent of plants, insects, amphibians, reptiles, fish, birds, mammals, and other organisms for which the stream provides habitat, food, water, or shelter. The biological condition of a stream is one way to describe its ecological function.

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 or part of a stream that has flowing water only during, and for a short duration after, precipitation and snowmelt events in a typical year. Ephemeral streams include only those conveyances with channels that display both a bed-and-bank configuration and an

ordinary high water mark, and that have streambeds located above the water table year-round. Groundwater is not a source of water for streamflow. Runoff from rainfall events and snowmelt is the primary source of water for streamflow.

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 permanently disposed of within the permit area in a location other than the mined-out area. This term also includes all spoil material placed on the mined-out area in excess of the amount necessary to restore the approximate original contour when the spoil placement is part of an excess spoil fill with a toe located outside the mined-out area. This term does not include—

(1) Spoil used to restore the approximate original contour;

(2) Spoil used to blend the final configuration of the mined-out area with the surrounding terrain in non-steep slope areas in accordance with §816.102(b)(3) or §817.102(b)(2) of this chapter;

(3) Spoil placed outside the mined-out area as part of a re-mining operation under §816.106 or §817.106 of this chapter;

(4) Spoil placed within the mined-out area in accordance with the thick overburden provisions of §816.105(b)(1) of this chapter, with the exception of spoil material placed on the mined-out area as part of an excess spoil fill with a toe located outside the mined-out area; or

(5) Any temporary stockpile of material that will be subsequently transported to another location.

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

§ 701.5

30 CFR Ch. VII (7–1–17 Edition)

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.

Fill means a permanent, non-impounding structure constructed under §§ 816.71 through 816.83 or §§ 817.71 through 817.83 of this chapter for the purpose of disposing of excess spoil or coal mine waste generated by surface coal mining operations or underground mining activities.

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.

Form, as used in §§ 780.28, 784.28, 800.42, 816.57, and 817.57 of this chapter, means the physical characteristics, pattern, profile, and dimensions of a stream channel. The term includes, but is not limited to, the ratio of the flood-prone area to the bankfull width (entrenchment), the ratio of the channel width

to channel depth, channel slope, sinuosity, bankfull depth, dominant in-stream substrate particle size, and capacity for riffles and pools.

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.

Groundwater means subsurface water located in soils and geologic formations that are fully saturated with water, including regional, local, and perched aquifers. This term does not include water in soil horizons that are temporarily saturated by precipitation events.

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.

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 storage of groundwater and surface water, as well as interactions that result in changes in the chemical composition or physical characteristics of groundwater and surface water.

Hydrologic function, as used in §§ 780.28, 784.28, 800.42, 816.57, and 817.57 of this chapter, means the role that streams play in the transport of water and the flow of water within the stream channel and floodplain. The term includes total flow volume, seasonal variations in streamflow and base flow, and provision of the water needed to maintain floodplains and wetlands associated with the stream.

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 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 stream or part of a stream that has flowing water during certain times of the year when groundwater provides water for streamflow. The water table is located above the streambed for only part of the year, which means that intermittent streams may not have flowing water during dry periods. Runoff from rainfall events and snowmelt is a supplemental source of water for streamflow. Intermittent streams include only those conveyances with channels that display both a bed-and-bank configuration and an ordinary high water mark.

Invasive species means an alien species (a species that is not native to the region or area), the introduction of which has caused or is likely to cause economic or environmental harm or harm to human health.

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. Each land use category includes land used for facilities that support the land use. For purposes of this chapter, the following land use categories apply:

(1) *Cropland*. Land used for the production of crops for harvest, either alone or in rotation with grasses and legumes. Crops include row crops, small grains, hay, commercial nursery plantings, vegetables, fruits, nuts, crops, and other plants typically cultivated for commercial purposes in fields, orchards, vineyards, and similar settings.

(2) *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.

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

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

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

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

(i) 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.

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

(7) *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.

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

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

(10) *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 §§ 784.30 and 817.121 of this chapter, which pertain to subsidence from underground mining operations, means:

(1) Any functional impairment of surface lands, surface features (including wetlands, streams, and bodies of water), structures, or facilities;

(2) Any physical change that—

(i) Has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses; or

(ii) Causes a significant loss in production or income; or

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

Material damage to the hydrologic balance outside the permit area means an adverse impact, as determined in accordance with the rest of this definition, resulting from surface coal mining and reclamation operations, underground mining activities, or subsidence associated with underground mining activities, on the quality or quantity of

surface water or groundwater, or on the biological condition of a perennial or intermittent stream. The determination of whether an adverse impact constitutes material damage to the hydrologic balance outside the permit area will be based on consideration of the baseline data collected under § 780.19 or § 784.19 of this chapter and the following reasonably anticipated or actual effects of the operation:

(1) For a surface water located outside the permit area, effects that cause or contribute to a violation of applicable state or tribal water quality standards, including, but not limited to, state or tribal water quality standards established under section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), or, for a surface water for which water quality standards have not been established, effects that cause or contribute to non-attainment of any premining use of that surface water outside the permit area;

(2) Effects that cause or contribute to a violation of applicable state or tribal water quality standards for groundwater located outside the permit area, or effects that preclude a premining use of groundwater located outside the permit area; or

(3) Effects that result in a violation of the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*

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.

Native species means, with respect to a particular ecosystem, a species that historically occurred or currently occurs in that ecosystem. This term does not include alien species that occur in that ecosystem or species introduced to that ecosystem.

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 §§ 784.30 and 817.121 of this chapter, 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 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, garages; 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. This term does not include any structure used only for commercial agricultural, industrial, retail or other commercial purposes.

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.

Ordinary high water mark means that line on the bank established by the fluctuations of water and indicated by physical characteristics such as a

clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

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.

Parameters of concern means those chemical or physical characteristics and properties of surface water or groundwater that could be altered by surface or underground mining activities, including discharges associated with those activities, in a manner that would adversely impact the quality of groundwater or surface water, including adverse impacts on aquatic life.

Perennial stream means a stream or part of a stream that has flowing water year-round during a typical year. The water table is located above the streambed for most of the year. Groundwater is the primary source of water for streamflow. Runoff from rainfall events and snowmelt is a supplemental source of water for streamflow. Perennial streams include only those conveyances with channels that display both a bed-and-bank configuration and an ordinary high water mark.

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

Premining refers to the conditions and features that exist on a site at the time of application for a permit to conduct surface coal mining operations.

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 and associated disturbed areas to a condition in which the site is capable of supporting

the uses it was capable of supporting prior to any mining or any higher or better uses approved by the regulatory authority. The site also must meet all other requirements of the permit and regulatory program that pertain to restoration of the site. For sites with discharges that require treatment, this term also includes those actions taken to eliminate, remediate, or treat those discharges, including both discharges from the mined area and all other discharges that are hydrologically connected to either the mined area or the operation, regardless of whether those discharges are located within the disturbed area.

Reclamation plan means the plan for reclamation of surface coal mining operations under parts 780, 784, and 785 of this chapter.

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.

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, aquifer recharge areas, recharge areas for other subsurface water, watersheds for surface water bodies that function as a water supply, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

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.

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 reparable.

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, 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 channel constructed to convey streamflow or overland flow away from the site of actual or proposed coal exploration or surface coal mining and reclamation operations or to convey those flows to a siltation structure or other treatment facility. The term includes only those channels 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.

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—

Surface Mining Reclamation and Enforcement, Interior

§ 701.11

(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 requirement 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 NOTES: 1. 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 at www.fdsys.gov.

2. At 81 FR 93319, Dec. 20, 2016, § 701.5 was amended; however, the revision of the definition “Mountaintop removal mining” could not be incorporated due to inaccurate amendatory instruction.

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) 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 permit 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 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

Surface Mining Reclamation and Enforcement, Interior

§ 702.1

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.

§ 701.16 How will the stream protection rule apply to existing and future permits and permit applications?

(a) *General applicability.* The revisions to parts 701 through 827 of this chapter that became effective on January 19, 2017 (hereafter referred to as the stream protection rule) apply as provided therein or, if there is no specific applicability provision in the revisions, to—

(1) Any application for a new permit submitted to the regulatory authority after the effective date of the stream protection rule under the applicable regulatory program.

(2) Any application for a new permit pending a decision under § 773.7 of this chapter or its state program counterpart as of the effective date of the stream protection rule under the applicable regulatory program, unless the regulatory authority has determined the application to be administratively complete under § 777.15 of this chapter or its state program counterpart before the effective date of the stream protection rule under the applicable regulatory program.

(3) Any application for the addition of acreage to an existing permit submitted to the regulatory authority after the effective date of the stream protection rule under the applicable regulatory program, with the exception of applications for incidental boundary revisions that do not propose to add acreage for coal removal.

(4) Any application for the addition of acreage to an existing permit pend-

ing a decision under § 773.7 of this chapter or its state program counterpart as of the effective date of the stream protection rule under the applicable regulatory program, with two exceptions:

(i) Applications for incidental boundary revisions that do not propose to add acreage for coal removal; and

(ii) Applications that the regulatory authority has determined to be administratively complete before the effective date of the stream protection rule under the applicable regulatory program.

(5) Any application for a permit revision submitted on or after the effective date of the stream protection rule under the applicable regulatory program, or pending a decision as of that date, that proposes a new excess spoil fill, coal mine waste refuse pile, or coal mine waste slurry impoundment or that proposes to move or expand the location of an approved excess spoil fill or coal mine waste facility.

(b) [Reserved]

[81 FR 93323, Dec. 20, 2016]

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

Sec.

702.1 Scope.

702.5 Definitions.

702.10 Information collection.

702.11 Application requirements and procedures.

702.12 Contents of application for exemption.

702.13 Public availability of information.

702.14 Requirements for exemption.

702.15 Conditions of exemption and right of inspection and entry.

702.16 Stockpiling of minerals.

702.17 Revocation and enforcement.

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 16 $\frac{2}{3}$

§ 702.5

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 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.

30 CFR Ch. VII (7–1–17 Edition)

(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 Collection 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;

(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 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 16½ 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.

§ 702.17

30 CFR Ch. VII (7–1–17 Edition)

(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 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 regu-

latory 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 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

Surface Mining Reclamation and Enforcement, Interior

§ 705.2

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 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

Sec.	
705.1	Purpose.
705.2	Objectives.
705.3	Authority.
705.4	Responsibility.
705.5	Definitions.
705.6	Penalties.
705.10	Information collection.

705.11	Who shall file.
705.13	When to file.
705.15	Where to file.
705.17	What to report.
705.18	Gifts and gratuities.
705.19	Resolving prohibited interests.
705.21	Appeals procedures.

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

30 CFR Ch. VII (7–1–17 Edition)

§ 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 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 re-

sponsible 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;

Surface Mining Reclamation and Enforcement, Interior

§ 705.5

(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

(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

§ 705.6

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 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

30 CFR Ch. VII (7-1-17 Edition)

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 information 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

Surface Mining Reclamation and Enforcement, Interior

§ 705.13

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 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 in-

clusion 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

§ 705.15

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, 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

30 CFR Ch. VII (7-1-17 Edition)

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

Surface Mining Reclamation and Enforcement, Interior

§ 705.19

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, 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 or-

dinary 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 to 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

§ 705.21

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 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.

30 CFR Ch. VII (7-1-17 Edition)

PART 706—RESTRICTION ON FINANCIAL INTERESTS OF FEDERAL EMPLOYEES

Sec.

- 706.1 Purpose.
- 706.2 Objectives.
- 706.3 Definitions.
- 706.4 Authority.
- 706.5 Responsibility.
- 706.6 Penalties.
- 706.11 Who shall file.
- 706.13 When to file.
- 706.15 Where to file.
- 706.17 What to report.
- 706.18 Gifts and gratuities.
- 706.19 Resolving prohibited interests.
- 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.

§ 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.

Surface Mining Reclamation and Enforcement, Interior

§ 706.4

§ 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.

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

§ 706.5

30 CFR Ch. VII (7-1-17 Edition)

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 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

Surface Mining Reclamation and Enforcement, Interior

§ 706.11

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 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

§ 706.13

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.

§ 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

30 CFR Ch. VII (7-1-17 Edition)

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

Surface Mining Reclamation and Enforcement, Interior

§ 706.19

(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 inter-

ests 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.

§ 706.21

(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 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.

30 CFR Ch. VII (7-1-17 Edition)

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.

§ 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

Surface Mining Reclamation and Enforcement, Interior

§ 707.12

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]

§ 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.

SUBCHAPTER B—INITIAL PROGRAM REGULATIONS

PART 710—INITIAL REGULATORY PROGRAM

Sec.

710.1 Scope.

710.2 Objectives.

710.3 Authority.

710.4 Responsibility.

710.5 Definitions.

710.10 Information collection.

710.11 Applicability.

710.12 Special exemption for small operators.

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

SOURCE: 42 FR 62677, Dec. 13, 1977, unless otherwise noted.

§ 710.1 Scope.

(a) This part provides general introductory and applicability material for the initial regulatory program required by section 502 and other sections of the Act which require early implementation. The initial regulatory program is effective until permanent programs are approved in accordance with sections 503, 504, or 523 of the Act.

(b) The initial regulatory program which this part introduces includes—

(1) Environmental performance standards of parts 715 through 718 of this chapter.

(2) Inspection and enforcement procedures of parts 720 through 723 of this chapter; and

(3) Reimbursements to States of part 725 of this chapter.

§ 710.2 Objectives.

The objectives of the initial regulatory program are to—

(a) Protect the health and safety of the public and minimize the damage to the environment resulting from surface coal mining operations during the interval between enactment of the Act and adoption of a permanent State or Federal regulatory program; and

(b) Coordinate the State and Federal regulatory programs to accomplish the purposes of the Act.

§ 710.3 Authority.

(a) The Secretary is directed to implement an initial regulatory program

within six months after the date of enactment of the Act in each State which regulates any aspect of surface coal mining under one or more State laws until a State program has been approved or until a Federal program has been implemented.

(b) The Secretary is also authorized to regulate surface coal mining and reclamation operations on Federal Lands by the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181-287) and the Minerals, Leasing Act for Acquired Lands (30 U.S.C. 351-359) and on Indian lands by various Indian lands acts. Additional regulations under these Acts are in 30 CFR part 211,¹ 43 CFR part 3041 and 25 CFR part 177.

§ 710.4 Responsibility.

(a) Under the general direction of the Assistant Secretary, Energy and Minerals, the Director is responsible for administering the initial regulatory program established by the Secretary.

(b) The States are responsible for issuing permits and inspection and enforcement on lands on which operations are regulated by a State to insure compliance with the initial performance standards in parts 715 through 718 of this chapter. States are required to file copies of inspection reports with the Office. States are also responsible for assuring that permits are not issued which would be in conflict with the restriction on mining found in section 510 of the Act, particularly in regard to alluvial valley floors and prime farm lands, and section 522(e) of the Act in regard to prohibitions of mining on certain lands.

§ 710.5 Definitions.

As used throughout the initial regulatory program the following terms have the specified meanings unless otherwise indicated:

Acid drainage means water with a pH of less than 6.0 discharged from active

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

or abandoned mines and from areas affected by coal mining operations.

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

Alluvial valley floors means unconsolidated stream-laid deposits holding streams where water availability is 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 by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and wind-blown deposits.

Approximate original contour means that surface configuration achieved by backfilling and grading of the mined area 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 and spoil piles eliminated; water impoundments may be permitted where the regulatory authority determines that they are in compliance with § 715.17.

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

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

Compaction means the reduction of pore spaces among the particles of soil or rock, generally done by running heavy equipment over the earth materials.

Disturbed area means those lands that have been affected by surface coal mining and reclamation operations.

Diversion means a channel, embankment, or other manmade structure constructed for the purpose of diverting water from one area to another.

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

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 other similar purposes.

Essential hydrologic functions means, with respect to alluvial valley floors, the role of the valley floor in collecting, storing, and regulating the natural flow of surface water and ground water, and in providing a place for irrigated and subirrigated farming, by reason of its position in the landscape and the characteristics of its underlying material.

Flood irrigation means irrigation through natural overflow or the temporary diversion of high flows in which the entire surface of the soil is covered by a sheet of water.

Ground water means subsurface water that fills available openings in rock or soil materials such that they may be considered water-saturated.

Head-of-hollow fill means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the fill measured at the steepest point are greater than 20° or the profile of the hollow from the toe of the fill to the top of the fill is greater than 10°. In fills with less than 250.00 cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other 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.

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

Hydrologic balance means the relationship between the quality and quantity of inflow to, outflow from, and storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake,

or reservoir. It encompasses the quantity and quality relationships between precipitation, runoff, evaporation, and the change 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 and falls as precipitation, moves thence along or into the ground surface, and returns to the atmosphere a vapor by means of evaporation and transpiration.

Impoundment means a closed basin formed naturally or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

Intermittent or perennial stream means a stream or part of a stream that flows continuously during all (perennial) or for at least one month (intermittent) of the calendar year as a result of ground-water discharge or surface runoff. The term does not include an ephemeral stream which is one that flows for less than one month of a calendar year and only in direct response to precipitation in the immediate watershed and whose channel bottom is always above the local water table.

Leachate means a liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.

Noxious plants means species that have been included on official State lists of noxious plants for the State in which the operation occurs.

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

Outslope means the exposed area sloping away from a bench or terrace being constructed as a part of a surface coal mining and reclamation operation.

Productivity means the vegetative yield produced by a unit area for a unit of time.

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

Roads means access and haul roads constructed, used, reconstructed, improved, or maintained for use in sur-

face coal mining and reclamation operations, including use by coal-hauling vehicles leading to transfer, processing, or storage areas. The term includes any such road used and not graded to approximate original contour within 45 days of construction other than temporary roads used for topsoil removal and coal haulage roads within the pit area. Roads maintained with public funds such as all Federal, State, county, or local roads are excluded.

Recurrence interval means the precipitation event expected to occur, on the average, once in a specified interval. For example, the 10-year 24-hour precipitation event would be that 24-hour precipitation event expected to be exceeded on the average once in 10 years. Magnitude of such events are as defined by the National Weather Service Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.," May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.

Runoff means precipitation that flows overland before entering a defined stream channel and becoming streamflow.

Safety factor means the ratio of the available shear strength to the developed shear stress on a potential surface of sliding determined by accepted engineering practice.

Sediment means undissolved organic and inorganic material transported or deposited by water.

Sedimentation pond means any natural or artificial structure or depression used to remove sediment from water and store sediment or other debris.

Slope means average inclination of a surface, measured from the horizontal. Normally expressed as a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v to 5h = 20 percent = 11.3 degrees).

Soil horizons means contrasting layers of soil lying one below the other, parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are—

(a) *A horizon*. The uppermost layer in the soil profile often called the surface soil. It is the part of the soil in which organic matter is most abundant, and

Surface Mining Reclamation and Enforcement, Interior

§ 710.11

where leaching of soluble or suspended particles is the greatest.

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

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

Spoil means overburden that has been removed during surface mining.

Stabilize means any method used to control movement of soil, spoil piles, or areas of disturbed earth and includes increasing bearing capacity, increasing shear strength, draining, compacting, or revegetating.

Subirrigation means irrigation of plants with water delivered to the roots from underneath.

Surface water means water, either flowing or standing, on the surface of the earth.

Suspended solids means organic or inorganic materials carried or held in suspension in water that will remain on a 0.45 micron filter.

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 and other areas affected by coal mining operations and which contains a substance which 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.

Valley fill means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the fill measured at the steepest point are greater than 20° or the profile of the hollow from the toe of the fill to the top of the fill is greater than 10°.

Waste means earth materials, which are combustible, physically unstable, or acid-forming or toxic-forming, wasted or otherwise separated from product coal and are slurried or otherwise transported from coal processing facili-

ties or preparation plants after physical or chemical processing, cleaning, or concentrating of coal.

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

[42 FR 62677, Dec. 13, 1977, as amended at 44 FR 30628, May 25, 1979]

§ 710.10 Information collection.

The collections of information contained in §§ 710.4, 710.11, and 710.12 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0095. The information will be used in administering the Initial Regulatory Program. Response is required to obtain a benefit in accordance with 30 U.S.C. 1201 *et seq.* 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 Collection 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 (1029-0095), OMB, Washington, DC 20503.

[56 FR 6227, Feb. 14, 1991]

§ 710.11 Applicability.

(a) *Operations on lands on which such operations are regulated by a State.* (1) The requirements of the initial regulatory program do not apply to surface mining and reclamation operations which occur on lands within a State which does not regulate any part of such operations.

(2) *General obligations.* (i) A person conducting coal mining operations shall have a permit if required by the State in which he is mining and shall comply with State laws and regulations that are not inconsistent with the Act and this chapter.

§710.11

(ii) A person conducting coal mining operations shall not engage in any operations which result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public.

(iii) A person conducting coal mining operations shall not engage in any operations which result in a condition or constitute a practice that causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(3) *Performance standards obligations.*

(i) A person who conducts any coal mining operations under an initial permit issued by a State on or after February 3, 1978, shall comply with the requirements of the initial regulatory program. Such permits shall contain terms that comply with the relevant performance standards of the initial regulatory program.

(ii) On and after May 3, 1978, any person conducting coal mining operations shall comply with the initial regulatory program, except as provided in §710.12 of this part.

(iii) A person shall comply with the obligations of this section until he has received a permit to operate under a permanent State or Federal regulatory program.

(b) *Operations on Indian lands.* Any person who conducts surface coal mining and reclamation operations on Indian lands on or after December 16, 1977, in accordance with section 750.11(c) of this chapter, or who was otherwise subject to 25 CFR part 216, subpart B prior to September 22, 1994; shall comply with the performance standards of this subchapter.

(c) *Operations on Federal lands.* (1) A person conducting coal mining operations on Federal lands under a permit approved on or after February 3, 1978, shall comply with the performance standards of this chapter.

(2) Any person conducting coal mining operations on Federal lands on and after May 3, 1978, shall comply with the performance standards of this chapter.

(d) *Operations on all lands.* (1) The requirements of this chapter apply to operations conducted after the effective date of these regulations on lands from which the coal has not yet been removed and to any other lands used, dis-

30 CFR Ch. VII (7-1-17 Edition)

turbed, or redisturbed in connection with or to facilitate mining or to comply with the requirements of the Act or these regulations.

(2) Any pre-existing, nonconforming structure or facility which is used in connection with or to facilitate mining after the effective date of these regulations shall comply with the requirements of the regulations, unless—

(i) The permittee submits to the regulatory authority by March 1, 1978, a statement in writing demonstrating that it is physically impossible to bring the structure or facility into compliance by May 4, 1978. The statement shall include the steps to be taken to reconstruct the structure or facility in conformance with applicable performance standards and a schedule for reconstruction including the estimated date of completion;

(ii) The regulatory authority finds in writing that it is physically impossible to bring the structure or facility into compliance by May 4, 1978;

(iii) The construction work is to be performed in accordance with plans designed by a professional engineer; and

(iv) The construction work is to be started and completed as soon as possible and in no event is to be started later than May 4, 1978 and completed later than November 4, 1978.

(3) Notwithstanding paragraph (d)(2) of this section, any sedimentation pond, or related pre-existing, nonconforming structure or facility which is used in connection with or to facilitate mining after the effective date of these regulations shall comply with the requirements of the regulations unless—

(i) The permittee submits to the regulatory authority and to the Director by May 3, 1978, a statement in writing demonstrating that it is physically impossible to bring the structure or facility into compliance by May 3, 1978. The statement shall include the steps to be taken to reconstruct the structure or facility in conformance with applicable performance standards and a schedule for reconstruction including the estimated date of completion;

(ii) The regulatory authority finds in writing that it is physically impossible to bring the structure or facility into compliance by May 3, 1978;

Surface Mining Reclamation and Enforcement, Interior

§ 710.12

(iii) The construction work is to be performed in accordance with plans designed by a professional engineer;

(iv) The construction work is to be started and completed as soon as possible and in no event is to be started later than June 3, 1978 and completed later than November 4, 1978; and

(v) The Director approves of any schedules which contain an estimated date of completion beyond October 3, 1978.

(4) The Director shall be deemed to have approved such schedules referred to in paragraph (d)(3)(v) of this section, unless written disapproval is received by the operator on or before June 3, 1978.

(e) *Satisfying Permanent Program Performance Standards in lieu of Initial Program Performance Standards.* Where there is a counterpart Permanent Program performance standard in subchapter K of this chapter that corresponds to an Initial Program performance standard in subchapter B of this chapter, meeting either performance standard will satisfy the requirements of subchapter B of this chapter.

[42 FR 62677, Dec. 13, 1977; 43 FR 2721, Jan. 19, 1978, as amended at 43 FR 5001, Feb. 7, 1978; 43 FR 8091, Feb. 27, 1978; 49 FR 38477, Sept. 28, 1984; 56 FR 6227, Feb. 14, 1991; 59 FR 43419, Aug. 23, 1994]

§ 710.12 Special exemption for small operators.

(a) As used in this section—

(1) *Permittee* means a person holding a permit under State law and to whom the permit was originally issued.

(2) *Renewed permit* means any extension of the original area of duration of a permit.

(b) If a person is an eligible permittee under paragraph (c) of this section and intends to conduct surface coal mining operations on or after May 3, 1978, that permittee may receive from the Director a limited exemption from the performance standards of this chapter. The exemption shall not—

(1) Include the Special Performance Standard of § 716.2(a)(1) of this chapter regarding the handling of spoil;

(2) Apply to surface coal mining operations to be conducted under a permit or renewed permit issued on or after August 3, 1977;

(3) Include any general or special performance standard with which a permittee is required to comply by a State;

(4) Relieve the permittee of the general obligations imposed by § 710.11(a) of this part regarding conditions or practices creating imminent danger or causing significant, imminent environmental harm; or

(5) Relieve the permittee of any obligations under State law, regulation or permit.

(c) A permittee is eligible for an exemption under this section—

(1) If the actual and attributed production of that permittee is estimated by the Director not to exceed 100,000 tons of coal during the year ending on December 31, 1978; and

(2) If that permittee—

(i) Was in existence on July 31, 1976, and during the year ending on July 31, 1977, the actual and attributed production of that permittee was 100,000 tons of coal or less from all surface and underground coal mining operations; or

(ii) Came into existence after July 31, 1976, and prior to May 2, 1977, and the actual and attributed production from all surface and underground coal mining operations of that permittee in the average calendar month was an amount of coal which when multiplied by 12 yields a product of 100,000 tons or less.

(iii) And, in the case of a business organization, has not undergone a substantial change in ownership since May 2, 1977, other than a substantial change due to the death of an owner.

(d) Application for an exemption under this section shall be submitted to the Director of the Office by March 1, 1978 with a copy to the State regulatory authority.

(e) The request for exemption shall be in the form of an affidavit under oath and shall include—

(1) The name and address of the permittee and of persons who control the permittee by reason of stock ownership or otherwise.

(2) The name, location, Mining Enforcement and Safety Administration identification numbers, and permit numbers of the surface coal mining operations for which exemption is sought, including a statement of the dates each

permit was issued or renewed and will expire.

(3) The date and method by which the permittee was created if the permittee is not an individual.

(4) A listing of all surface and underground coal mining operations showing—

(i) Actual production for the year ending July 31, 1977, attributed to the permittee and the inclusive dates of operation.

(ii) Estimated production for the year ending December 31, 1978, attributed to the permittee and the anticipated dates of operation.

(5) A copy of coal severance tax returns for coal produced during the year ending on July 31, 1977.

(6) A copy of a notice the permittee has published in a local newspaper of general circulation in the area of each mine for which an exemption is sought once a week for two weeks stating—

(i) That an application for a small operator exemption will be filed, which if granted would exempt the operator from certain environmental protection performance standards in the Act;

(ii) The name and address of the permittee;

(iii) The location of the surface coal mining operations to which the exemption will apply; and

(iv) That public comments may be submitted to the Director, Office of Surface Mining Reclamation and Enforcement.

(f) Production from the following operations shall be attributed to the permittee—

(1) All coal produced by operations beneficially owned entirely by the permittee, or controlled by reasons of ownership, direction of the management, or in any other manner by the permittee.

(2) The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the permittee owns more than a 5-percent interest.

(3) All coal produced by persons who own more than 5 percent of the permittee or who directly or indirectly control the permittee by reason of stock ownership, direction of the management or in any other manner.

(4) The pro rata share of coal produced by operations owned or controlled by the person who owns or controls the permittee.

(g) The Director shall grant the request for an exemption if, upon the basis of the request and any State regulatory authority or public comments, or any other information, he finds that—

(1) The permittee has satisfied his burden of proof by demonstrating eligibility for the exemption; and

(2) The exemption will not be inconsistent with State law, regulation or permit terms.

(h) Any person aggrieved by the decision of the Director under this section may appeal within 20 days from receipt of that decision to The Office of Hearing and Appeals under 43 CFR part 4. The Office of Hearings and Appeals and the Secretary shall have the authority to stay the exemption pending the outcome of the appeal.

(i) The exemption shall be effective on the date approved. It shall remain in effect until expiration or renewal of the State permit to which it applies, December 31, 1978, or until revoked, whichever is earlier.

(j) The Director shall revoke the exemption upon finding that the exemption was erroneously issued or that the exempted operation has or will produce more than 100,000 tons of coal per year.

[42 FR 62677, Dec. 13, 1977; 43 FR 2721, Jan. 19, 1978, as amended at 43 FR 5001, Feb. 7, 1978]

PART 715—GENERAL PERFORMANCE STANDARDS

Sec.

715.10 Information collection.

715.11 General obligations.

715.12 Signs and markers.

715.13 Postmining use of land.

715.14 Backfilling and grading.

715.15 Disposal of excess spoil.

715.16 Topsoil handling.

715.17 Protection of the hydrologic system.

715.18 Dams constructed of or impounding waste material.

715.19 Use of explosives.

715.20 Revegetation.

715.200 Interpretative rules related to general performance standards.

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

Surface Mining Reclamation and Enforcement, Interior

§ 715.11

SOURCE: 42 FR 62680, Dec. 13, 1977, unless otherwise noted.

§ 715.10 Information collection.

The information collection requirements contained in 30 CFR 715.13(d); 715.17 (b)(1)(v) and (j)(3); 715.18(b) (2) and (6); and 715.19 (b), (c), (d) and (e)(4) have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0007. The information is being collected to meet the performance standards in section 515(b)(2) of P.L. 95-87 and are applicable during the initial regulatory program. This information will be used by OSM in measuring compliance with the performance standards until permanent programs are in effect in the States. The obligation to respond is mandatory.

[47 FR 33685, Aug. 4, 1982]

§ 715.11 General obligations.

(a) *Compliance.* All surface coal mining and reclamation operations conducted on lands where any element of the operations is regulated by a State shall comply with the initial performance standards of this part according to the time schedule specified in § 710.11. Part 717 of this chapter establishes performance standards for surface effects of underground coal mines. Initial regulations regarding the special Initial Performance Standards are established by part 716 of this chapter for—

- (1) Surface coal mining operations on steep slopes;
- (2) Surface coal mining operations involving mountaintop removal;
- (3) Special bituminous coal mines;
- (4) Anthracite surface coal mining operations;
- (5) Surface coal mining operations in Alaska; and
- (6) Surface coal mining operations on prime farmlands.

Where State environmental protection standards are adopted for a specific State because they are more stringent than the standards of parts 715, 716, and 717, they will be published in part 718 of this chapter.

(b) *Authorizations to operate.* A copy of all current permits, licenses, approved plans, or other authorizations to oper-

ate the mine shall be available for inspection at or near the mine site.

(c)(1) *Mine maps.* Any person conducting surface coal mining and reclamation operations on and after May 3, 1978, shall submit two copies of an accurate map of the mine and permit area at a scale of 1:6000 or larger. The map shall show as of May 3, 1978, the lands from which coal has not yet been removed and the lands and structures which have been used or disturbed to facilitate mining. One copy of the mine map shall be submitted to the State regulatory authority and one copy shall be submitted to the Regional Director, OSM, before July 3, 1978.

(2) In addition to the requirements of paragraph (c)(1) of this section, any person who conducted surface coal mining and reclamation operations pursuant to a small operator's exemption shall submit before March 15, 1979, two copies of an accurate map of each mine showing the permit area at a scale of 1:6000 or larger. One copy shall be submitted to the state regulatory authority and one copy to the appropriate Regional Director, OSM. The map shall show as of December 31, 1978 or the expiration date of the exemption (whichever is earlier) the lands from which coal had not yet been removed, the lands and structures which had been used or disturbed to facilitate mining, and the lands which had not been disturbed. The map need not be submitted if these areas have already been shown on mine maps submitted to the state regulatory authority, if a copy is available to the appropriate Regional Director pursuant to paragraph (c)(1) of this section or 30 CFR 720.13(b).

(d) *Indian lands—(1) Mine maps.* Any person conducting surface coal mining and reclamation operations on Indian lands under this part shall submit no fewer than 7 copies of an accurate map of the mine and authorized mining areas at a scale of 1:6000 or larger. The map shall show, as of December 16, 1977, the lands where coal has not yet been removed and the lands and structures that have been used or disturbed to facilitate surface coal mining operations.

(2) *Consultation with tribal governments.* Any requirement in this part for consultation with or notification to

§ 715.12

State and local governments shall be interpreted as requiring, in like manner, consultation with or notification to tribal governments. OSM shall consult with the Bureau of Indian Affairs with respect to special requirements relating to the protection of noncoal resources and with the Bureau of Land Management with respect to the requirements relating to the development, production, and recovery of mineral resources on Indian lands.

[42 FR 62680, Dec. 13, 1977, as amended at 44 FR 6682, Feb. 1, 1979; 59 FR 43419, Aug. 23, 1994]

§ 715.12 Signs and markers.

(a) *Specifications.* All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material. The signs and other markers shall be maintained during all operations to which they pertain and shall conform to local ordinances and codes.

(b) *Mine and permit identification signs.* Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways. Signs shall show the name, business address, and telephone number of the permittee and identification numbers of current mining and reclamation permits or other authorizations to operate. Such signs shall not be removed until after release of all bonds.

(c) *Perimeter markers.* The perimeter of the permit area shall be clearly marked by durable and easily recognized markers, or by other means approved by the regulatory authority.

(d) *Buffer zone markers.* Buffer zones as defined in § 715.17 shall be marked in a manner consistent with the perimeter markers along the interior boundary of the buffer zone.

(e) *Blasting signs.* If blasting is necessary to conduct surface coal mining operations, signs reading "Blasting Area" shall be displayed conspicuously at the edge of blasting areas along access and haul roads within the mine property. Signs reading "Blasting Area" and explaining the blasting warning and all-clear signals shall be posted at all entrances to the permit area.

30 CFR Ch. VII (7-1-17 Edition)

(f) *Topsoil markers.* Where topsoil or other vegetation-supporting material is segregated and stockpiled according to § 715.16(c), the stockpiled material shall be marked. Markers shall remain in place until the material is removed.

§ 715.13 Postmining use of land.

(a) *General.* All disturbed areas shall be restored in a timely manner (1) to conditions that are capable of supporting the uses which they were capable of supporting before any mining, or (2) to higher or better uses achievable under criteria and procedures of paragraph (d) of this section.

(b) *Determining premining use of land.* The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported if the land had not been previously mined and had been properly managed.

(1) The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the highest and best use that can be achieved and is compatible with surrounding areas.

(2) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

(3) If the premining use of the land was changed within 5 years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

(c) *Land-use categories.* Land use is categorized in the following groups. Change from one to another land use category in premining to postmining constitutes an alternate land use and the permittee shall meet the requirements of paragraph (d) of this section and all other applicable environmental protection performance standards of this chapter.

(1) *Heavy industry.* Manufacturing facilities, powerplants, airports or similar facilities.

(2) *Light industry and commercial services.* Office buildings, stores, parking facilities, apartment houses, motels, hotels, or similar facilities.

(3) *Public services.* Schools, hospitals, churches, libraries, water-treatment facilities, solid-waste disposal facilities, public parks and recreation facilities, major transmission lines, major pipelines, highways, underground and surface utilities, and other servicing structures and appurtenances.

(4) *Residential.* Single- and multiple-family housing (other than apartment houses) with necessary support facilities. Support facilities may include commercial services incorporated in and comprising less than 5 percent of the total land area of housing capacity, associated open space, and minor vehicle parking and recreation facilities supporting the housing.

(5) *Cropland.* Land used primarily for the production of cultivated and close-growing crops for harvest alone or in association with sod crops. Land used for facilities in support of farming operations are included.

(6) *Rangeland.* Includes rangelands and forest lands which support a cover of herbaceous or scrubby vegetation suitable for grazing or browsing use.

(7) *Hayland or pasture.* Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or cut and cured for livestock feed.

(8) *Forest land.* Land with at least a 25 percent tree canopy or land at least 10 percent stocked by forest trees of any size, including land formerly having had such tree cover and that will be naturally or artificially reforested.

(9) *Impoundments of water.* Land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, recreation, or water supply.

(10) *Fish and wildlife habitat and recreation lands.* Wetlands, fish and wildlife habitat, and areas managed primarily for fish and wildlife or recreation.

(11) *Combined uses.* Any appropriate combination of land uses where one land use is designated as the primary land use and one or more other land uses are designated as secondary land uses.

(d) *Criteria for approving alternative postmining use of land.* An alternative postmining land use shall be approved by the regulatory authority, after consultation with the landowner or the land-management agency having juris-

diction over State or Federal lands, if the following criteria are met. Proposals to remove an entire coal seam running through the upper part of a mountain, ridge, or hill must also meet these criteria in addition to the requirements of § 716.3 of this chapter.

(1) The proposed land use is compatible with adjacent land use and, where applicable, with existing local, State or Federal land use policies and plans. A written statement of the views of the authorities with statutory responsibilities for land use policies and plans shall accompany the request for approval. The permittee shall obtain any required approval of local, State or Federal land management agencies, including any necessary zoning or other changes necessarily required for the final land use.

(2) Specific plans have been prepared which show the feasibility of the proposed land use as related to needs, projected land use trends, and markets and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and be sustained. The regulatory authority may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(3) Provision of any necessary public facilities is assured as evidenced by letters of commitment from parties other than the permittee, as appropriate, to provide them in a manner compatible with the permittee's plans.

(4) Specific and feasible plans for financing attainment and maintenance of the postmining land use including letters of commitment from parties other than the permittee as appropriate, if the postmining land use is to be developed by such parties.

(5) The plans are designed under the general supervision of a registered professional engineer, or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, and vegetative cover, and aesthetic design appropriate for the postmining use of the site.

(6) The proposed use or uses will neither present actual or probable hazard

to public health or safety nor will they pose any actual or probable threat of water flow diminution or pollution.

(7) The use or uses will not involve unreasonable delays in reclamation.

(8) Necessary approval of measures to prevent or mitigate adverse effects on fish and wildlife has been obtained from the regulatory authority and appropriate State and Federal fish and wildlife management agencies.

(9) Proposals to change premining land uses of range, fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable Federal, State, and local laws, shall be reviewed by the regulatory authority to assure that—

(i) There is a firm written commitment by the permittee or by the landowner or land manager to provide sufficient crop management after release of applicable performance bonds to assure that the proposed postmining cropland use remains practical and reasonable;

(ii) There is sufficient water available and committed to maintain crop production; and

(iii) Topsoil quality and depth are shown to be sufficient to support the proposed use.

(10) The regulatory authority has provided by public notice not less than 45 days nor more than 60 days for interested citizens and local, State and Federal agencies to review and comment on the proposed land use.

[42 FR 62680, Dec. 13, 1977; 43 FR 2721, Jan. 19, 1978]

§715.14 Backfilling and grading.

In order to achieve the approximate original contour, the permittee shall, except as provided in this section, transport, backfill, compact (where advisable to ensure stability or to prevent leaching of toxic materials), and grade all spoil material to eliminate all highwalls, spoil piles, and depressions. Cut-and-fill terraces may be used only in those situations expressly identified in this section. The postmining graded slopes must approximate the

premining natural slopes in the area as defined in paragraph (a).

(a) *Slope measurements.* (1) To determine the natural slopes of the area before mining, sufficient slopes to adequately represent the land surface configuration, and as approved by the regulatory authority in accordance with site conditions, must be accurately measured and recorded. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed; or, where this is impractical, at locations specified by the regulatory authority. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances as determined by the regulatory authority to be representative of the premining configuration of the land. Slope measurements shall take into account natural variations in slope so as to provide accurate representation of the range of natural slopes and shall reflect geomorphic differences of the area to be disturbed. Slope measurements may be made from topographic maps showing contour lines, having sufficient detail and accuracy consistent with the submitted mining and reclamation plan.

(2) After the disturbed area has been graded, the final graded slopes shall be measured at the beginning and end of lines established on the prevailing slope at locations representative of premining slope conditions and approved by the regulatory authority. These measurements must not be made so as to allow unacceptably steep slopes to be constructed.

(b) *Final graded slopes.* (1) The final graded slopes shall not exceed either the approximate premining slopes as determined according to paragraph (a)(1) and approved by the regulatory authority or any lesser slope specified by the regulatory based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform. The requirements of this paragraph may be modified by the regulatory authority where the mining is re-affecting previously mined lands that have not been restored to the

standards of this section and sufficient spoil is not available to return to the slope determined according to paragraph (a)(1). Where such modifications are approved, the permittee shall, as a minimum, be required to—

(i) Retain all overburden and spoil on the solid portion of existing or new benches; and

(ii) Backfill and grade to the most moderate slope possible to eliminate the highwall which does not exceed the angle of repose or such lesser slopes as is necessary to assure stability.

(2) On approval by the regulatory authority and in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed if the terraces are compatible with the postmining land use approved under § 715.13, and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(i) Where specialized grading, foundation conditions, or roads are required for the approved postmining land use, the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land use plan.

(ii) The vertical distance between terraces shall be as specified by the regulatory authority to prevent excessive erosion and to provide long-term stability.

(iii) The slope of the terrace outslope shall not exceed $1v:2h$ (50 percent). Out-slopes which exceed $1v:2h$ (50 percent) may be approved if they have a minimum static safety factor of more than 1.5 and provide adequate control over erosion and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(iv) Culverts and underground rock drains shall be used on the terrace only when approved by the regulatory authority.

(3) All operations on steep slopes of 20 degrees or more or on such lesser slopes as the regulatory authority defines as a steep slope shall meet the provisions of § 716.2 of this chapter.

(c) *Mountaintop removal.* The requirements of this paragraph and of § 716.3

shall apply to surface mining operations which remove entire coal seams in the upper part of a mountain, ridge, or hill by removing all of the overburden, and where the requirements for achieving the approximate original contour of this section cannot be met. Final graded top plateau slopes on the mined area shall be less than $1v:5h$ so as to create a level plateau or gently rolling configuration and the out-slopes of the plateau shall not exceed $1v:2h$, except where engineering data substantiates and the regulatory authority finds that a minimum static safety factor of 1.5 (or higher factors specified by the regulatory authority) will be attained. Although the area need not be restored to approximate original contour, all highwalls, spoil piles, and depressions except as provided in paragraphs (d) and (e) of this section shall be eliminated. All mountaintop removal operations shall in addition meet the provisions of § 716.3 of this chapter.

(d) *Small depressions.* The requirement of this section to achieve approximate original contour does not prohibit construction of small depressions if they are approved by the regulatory authority to minimize erosion, conserve soil moisture or promote revegetation. These depressions shall be compatible with the approved postmining land use and shall not be inappropriate substitutes for construction of lower grades on the reclaimed lands. Depressions approved under this section shall have a holding capacity of less than 1 cubic yard of water or, if it is necessary that they be larger, shall not restrict normal access throughout the area or constitute a hazard. Large, permanent impoundments shall be governed by paragraph (e) of this section and by § 715.17.

(e) *Permanent impoundments.* Permanent impoundments may be retained in mined and reclaimed areas provided all highwalls are eliminated by grading to appropriate contour and the provisions for postmining land use (§ 715.13) and protection of the hydrologic balance (§ 715.17) are met. No impoundments shall be constructed on top of areas in which excess materials are deposited pursuant to § 715.15 of this part. Impoundments shall not be used to meet

the requirements of paragraph (j) of this section.

(f) *Definition of thin and thick restored overburden.* The thin overburden provisions of paragraph (g) of this section may apply only where the final thickness is less than 0.8 of the initial thickness. The thick overburden provisions of paragraph (h) of this section may apply only where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness. Final thickness is the product of the overburden thickness times the bulking factor to be determined for each mine area. The provisions of paragraphs (g) and (h) apply only when operations cannot be carried out to comply with the requirements of paragraph (a) of this section to achieve the approximate original contour.

(g) *Thin overburden.* In surface coal mining operations carried out continuously in the same limited pit area for more than 1 year from the day coal-removal operations begin and where the volume of all available spoil and suitable waste materials is demonstrated to be insufficient to achieve approximate original contour, surface coal mining operations shall be conducted to meet, at a minimum, the following standards:

(1) Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire mine area, to attain the lowest practicable stable grade, which may not exceed the angle of repose, and to provide adequate drainage and long-term stability of the regraded areas.

(2) Eliminate highwalls by grading or backfilling to stable slopes not exceeding 1v:2h (50 percent), or such lesser slopes as the regulatory authority may specify to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use.

(3) Transport, backfill, grade, and revegetate to achieve an ecologically sound land use compatible with the prevailing land use in unmined areas surrounding the permit area.

(4) Transport, backfill, and grade to ensure the impoundments are constructed only where it has been demonstrated to the regulatory authority's satisfaction that all requirements of

§715.17 have been met and that the impoundments have been approved by the regulatory authority as meeting the requirements of this part and all other applicable Federal and State regulations.

(h) *Thick overburden.* In surface coal mining operations where the volume of spoil is demonstrated to be more than sufficient to achieve the approximate original contour surface coal mining operations shall be conducted to meet at a minimum the following standards:

(1) Transport, backfill, and grade all spoil and wastes not required to achieve approximate original contour in the surface mining area to the lowest practicable grade.

(2) Deposit, backfill, and grade excess spoil and wastes only within the permit area and dispose of such materials in conformance with this part.

(3) Transport, backfill, and grade excess spoil and wastes to maintain the hydrologic balance in accordance with this part and to provide long-term stability.

(4) Transport, backfill, grade, and revegetate wastes and excess spoil to achieve an ecologically sound land use compatible with the prevailing land uses in unmined areas surrounding the permit area.

(5) Eliminate all highwalls and depressions except as stated in paragraph (e) of this section by backfilling with spoil and suitable waste materials.

(i) *Regrading or stabilizing rills and gullies.* When rills or gullies deeper than 9 inches form in areas that have been regraded and the topsoil replaced but vegetation has not yet been established the permittee shall fill, grade, or otherwise stabilize the rills and gullies and reseed or replant the areas according to §715.20. The regulatory authority shall specify that rills or gullies of lesser size be stabilized if the rills or gullies will be disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

(j) *Covering coal and acid-forming, toxic-forming, combustible, and other waste materials; stabilizing backfilled materials; and using waste material for fill—*

(1) *Cover.* All exposed coal seams remaining after mining and any acid-forming, toxic-forming, combustible

Surface Mining Reclamation and Enforcement, Interior

§ 715.15

materials, or any other waste materials identified by the regulatory authority that are exposed, used, or produced during mining shall be covered with a minimum of 4 feet of nontoxic and noncombustible material; or, if necessary, treated to neutralize toxicity in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land uses. Where necessary to protect against upward migration of salts, exposure by erosion, to provide an adequate depth for plant growth, or to otherwise meet local conditions, the regulatory authority shall specify thicker amounts of cover using nontoxic material. Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution or otherwise violate the provisions of § 715.17 of this part.

(2) *Stabilization.* Backfilled materials shall be selectively placed and compacted wherever necessary to prevent leaching of toxic-forming materials into surface or subsurface waters in accordance with § 715.17 and wherever necessary to ensure the stability of the backfilled materials. The method of compacting material and the design specifications shall be approved by the regulatory authority before the toxic materials are covered.

(3) *Use of waste materials as fill.* Before waste materials from a coal preparation or conversion facility or from other activities conducted outside the permit area such as municipal wastes are used for fill material, it must be demonstrated to the regulatory authority by hydrogeological means and chemical and physical analyses that use of these materials will not adversely affect water quality, water flow, and vegetation; will not present hazards to public health and safety; and will not cause instability in the backfilled area.

(k) *Grading along the contour.* All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil, in accordance with § 715.16, shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation or placement along the

contour would be hazardous to equipment operators then grading, preparation or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

[42 FR 62680, Dec. 13, 1977; 43 FR 2721, Jan. 19, 1978, as amended at 47 FR 18553, Apr. 29, 1982]

§ 715.15 Disposal of excess spoil.

(a) *General requirements.* (1) Spoil not required to achieve the approximate original contour within the area where overburden has been removed shall be hauled or conveyed to and placed in designated disposal areas within a permit area, if the disposal areas are authorized for such purposes in the approved permit application in accordance with paragraphs (a) through (d) of this section. The spoil shall be placed in a controlled manner to ensure—

(i) That leachate and surface runoff from the fill will not degrade surface or ground waters or exceed the effluent limitations of § 715.17(a)

(ii) Stability of the fill; and

(iii) That the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(2) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the regulatory authority.

(3) All vegetative and organic materials shall be removed from the disposal area and the topsoil shall be removed, segregated, and stored or replaced under § 715.16. If approved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(4) Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of § 715.17(c). All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

§715.15

30 CFR Ch. VII (7–1–17 Edition)

(5) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the regulatory authority. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.

(6) The spoil shall be hauled or conveyed and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long-term static safety factor of 1.5.

(7) The final configuration of the fill must be suitable for postmining land uses approved in accordance with §715.13, except that no depressions or impoundments shall be allowed on the completed fill.

(8) Terraces may be utilized to control erosion and enhance stability if approved by the regulatory authority and consistent with §715.14(b)(2).

(9) Where the slope in the disposal area exceeds $1v:2.8h$ (36 percent), or such lesser slope as may be designated by the regulatory authority based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed to determine the size of rock toe buttresses and key way cuts.

(10) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist experienced in the construction of earth and rockfill embankments at least quarterly throughout construction and during the following critical construction periods: (i) Removal of all organic material and topsoil, (ii) placement of underdrainage systems, (iii) installation of surface drainage systems, (iv) placement and compaction of fill materials, and (v) revegetation. The registered engineer or other qualified professional specialist shall provide to the regulatory authority a certified report within 2 weeks after each inspection that the fill has been constructed as

specified in the design approved by the regulatory authority. A copy of the report shall be retained at the minesite.

(11) Coal processing wastes shall not be disposed of in head-of-hollow or valley fills, and may only be disposed of in other excess spoil fills, if such waste is—

(i) Demonstrated to be nontoxic and nonacid forming; and

(ii) Demonstrated to be consistent with the design stability of the fill.

(12) If the disposal area contains springs, natural or manmade watercourses, or wet-weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.

(13) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall be performed in order to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(14) Excess spoil may be returned to underground mine workings, but only in accordance with a disposal program approved by the regulatory authority and MSHA.

(15) Disposal of excess spoil from an upper actively mined bench to a lower pre-existing bench by means of gravity transport is permitted provided that:

(i) The operator receives the prior written approval of the regulatory authority upon demonstration by the operator that the spoil to be disposed of by gravity transport is not necessary for elimination of the highwall and return of the upper bench to approximate original contour;

(ii) The following conditions and performance standards in addition to the environmental performance standards of this part are met:

(A) The highwall of the lower bench intersects (meets) the upper actively

Surface Mining Reclamation and Enforcement, Interior

§ 715.15

mined bench with no natural slope between them;

(B) The gravity transport points are determined on a site specific basis by the operator and approved by the regulatory authority to minimize hazards to health and safety and to ensure that damage will be minimized should spoil accidentally move down-slope of the lower bench;

(C) The excess spoil is placed only on solid portions of the lower pre-existing bench;

(D) All excess spoil on the lower solid bench, including that spoil immediately below the gravity transport points, is rehandled and placed in a controlled manner to eliminate as much of the lower highwall as practicable. Rehandling and placing the excess spoil on the lower solid bench shall consist of placing the excess spoil in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings to ensure a long term static safety factor of 1.3. Spoil on the bench prior to the current mining operation need not be rehandled except to ensure stability of the fill.

(E) A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm. The safety berm must be removed by the operator by final grading operations;

(F) The area of the lower bench used to facilitate the disposal of excess spoil is considered a disturbed area.

(b) *Valley fills.* Valley fills shall meet all of the requirements of paragraph (a) of this section and the additional requirements of this section.

(1) The fill shall be designed to attain a long-term static safety factor of 1.5 based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

(2) A subdrainage system for the fill shall be constructed in accordance with the following:

(i) A system of underdrains constructed of durable rock shall meet the requirements of paragraph (2)(iv) of this section and:

(A) Be installed along the natural drainage system;

(B) Extend from the toe to the head of the fill; and

(C) Contain lateral drains to each area of potential drainage or seepage.

(ii) A filter system to insure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(iii) In constructing the underdrains, no more than 10 percent of the rock may be less than 12 inches in size and no single rock may be larger than 25 percent of the width of the drain. Rock used in underdrains shall meet the requirements of paragraph (2)(iv) of this section. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd ³	Sandstone	10	4
Do	Shale	16	8
More than 1,000,000 yd ³	Sandstone	16	8
Do	Shale	16	16

(iv) Underdrains shall consist of non-degradable, non-acid or toxic forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or shale.

(3) Spoil shall be hauled or conveyed and placed in a controlled manner and concurrently compacted as specified by the regulatory authority, in lifts no greater than 4 feet or less if required by the regulatory authority to—

(i) Achieve the densities designed to ensure mass stability;

(ii) Prevent mass movement;

(iii) Avoid contamination of the rock underdrain or rock core; and

(iv) Prevent formation of voids.

(4) Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a 100-year, 24-hour precipitation event or larger

event specified by the regulatory authority. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the runoff from a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of §715.17(c).

(5) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1v:20h (5 percent). The vertical distance between terraces shall not exceed 50 feet.

(6) Drainage shall not be directed over the outslope of the fill.

(7) The outslope of the fill shall not exceed 1v:2h (50 percent). The regulatory authority may require a flatter slope.

(c) *Head-of-hollow fills.* Disposal of spoil in the head-of-hollow fill shall meet all standards set forth in paragraphs (a) and (b) and the additional requirements of this section.

(1) The fill shall be designed to completely fill the disposal site to the approximate elevation of the ridgeline. A rock-core chimney drain may be utilized instead of the subdrain and surface diversion system required for valley fills. If the crest of the fill is not approximately at the same elevation as the low point of the adjacent ridgeline, the fill must be designed as specified in paragraph (b), with diversion of runoff around the fill. A fill associated with contour mining and placed at or near the coal seam, and which does not exceed 250,000 cubic yards may use the rock-core chimney drain.

(2) The alternative rock-core chimney drain system shall be designed and incorporated into the construction of head-of-hollow fills as follows:

(i) The fill shall have, along the vertical projection of the main buried stream channel or rill a vertical core of durable rock at least 16 feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of paragraph (b)(2)(iv).

(ii) A filter system to ensure the proper functioning of the rock core shall be designed and constructed using standard geotechnical engineering methods.

(iii) The grading may drain surface water away from the outslope of the fill and toward the rock core. The maximum slope of the top of the fill shall be 1v:33h (3 percent). Instead of the requirements of paragraph (a)(7) of this section, a drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a 3- to 5-percent grade toward the fill and a 1-percent slope toward the rock core.

(3) The drainage control system shall be capable of passing safely the runoff from a 100-year, 24-hour precipitation event, or larger event specified by the regulatory authority.

(d) *Durable rock fills.* In lieu of the requirements of paragraphs (b) and (c) of this section the regulatory authority may approve alternate methods for disposal of hard rock spoil, including fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of this paragraph and paragraph (a) are met. For this section, hard rock spoil shall be defined as rockfill consisting of at least 80 percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the regulatory authority.

(1) Spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.

(i) The method of spoil placement shall be designed to ensure mass stability and prevent mass movement in

Surface Mining Reclamation and Enforcement, Interior

§ 715.15

accordance with the additional requirements of this section.

(ii) Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a controlled manner to limit on a unit basis concentrations of noncemented clay shale and clay in the fill. Such materials shall comprise no more than 20 percent of the fill volume as determined by tests performed by a registered engineer and approved by the regulatory authority.

(2)(i) Stability analyses shall be made by the registered professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations, including borings, and laboratory tests.

(ii) The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the following factors of safety:

Case	Design condition	Minimum factor of safety
I	End of construction	1.5
II	Earthquake	1.1

(3) The design of a head-of-hollow fill shall include an internal drainage system which will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(i) Anticipated discharge from springs and seeps and due to precipitation shall be based on records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(ii) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not slake in water.

(iii) The internal drain shall be protected by a properly designed filter system.

(4) Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to pass safely the runoff from a 100-year, 24-

hour precipitation event. Diversion design shall comply with the requirements of § 715.17(c).

(5) The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1v:20h (5 percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill.

(6) Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will pass safely a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of § 715.17(c).

(7) Terraces shall be constructed on the outslope if required for control of erosion or for roads included in the approved postmining land use plan. Terraces shall meet the following requirements:

(i) The slope of the outslope between terrace benches shall not exceed 1v:2h (50 percent.).

(ii) To control surface runoff, each terrace bench shall be graded to a slope of 1v:20h (5 percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.

(iii) Terrace ditches shall have a 5-percent slope toward the channels specified in paragraph (d)(6) of this section, unless steeper slopes are necessary in conjunction with approved roads.

(e) *Preexisting benches.* (1) The regulatory authority may approve the disposal of excess spoil through placement on preexisting benches: *Provided*, That the standards set forth in paragraphs (a)(1)–(a)(5) and (a)(7)–(a)(14) of this section and the requirements of this paragraph (e) are met.

(2) All spoil shall be placed on the solid portion of the preexisting bench.

(3) The fill shall be designed, using standard geotechnical analysis, to attain a long-term static safety factor of 1.3 for all portions of the fill.

(4) The preexisting bench shall be backfilled and graded to—

(i) Achieve the most moderate slope possible which does not exceed the angle of repose, and

§ 715.16

30 CFR Ch. VII (7-1-17 Edition)

(ii) Eliminate the highwall to the extent practicable.

[44 FR 30628, May 25, 1979, as amended at 46 FR 37233, July 17, 1981; 47 FR 18555, Apr. 29, 1982]

§ 715.16 Topsoil handling.

To prevent topsoil from being contaminated by spoil or waste materials, the permittee shall remove the topsoil as a separate operation from areas to be disturbed. Topsoil shall be immediately redistributed according to the requirements of paragraph (b) of this section on areas graded to the approved postmining configuration. The topsoil shall be segregated, stockpiled, and protected from wind and water erosion and from contaminants which lessen its capability to support vegetation if sufficient graded areas are not immediately available for redistribution.

(a) *Topsoil removal.* All topsoil to be salvaged shall be removed before any drilling for blasting, mining, or other surface disturbance.

(1) All topsoil shall be removed unless use of alternative materials is approved by the regulatory authority in accordance with paragraph (a)(4) of this section. Where the removal of topsoil results in erosion that may cause air or water pollution, the regulatory authority shall limit the size of the area from which topsoil may be removed at any one time and specify methods of treatment to control erosion of exposed overburden.

(2) All of the A horizon of the topsoil as identified by soil surveys shall be removed according to paragraph (a) and then replaced on disturbed areas as the surface soil layers. Where the A horizon is less than 6 inches, a 6-inch layer that includes the A horizon and the unconsolidated material immediately below the A horizon (or all unconsolidated material if the total available is less than 6 inches) shall be removed and the mixture segregated and replaced as the surface soil layer.

(3) Where necessary to obtain soil productivity consistent with postmining land use, the regulatory authority may require that the B horizon or portions of the C horizon or other underlying layers demonstrated to have comparable quality for root de-

velopment be segregated and replaced as subsoil.

(4) Selected overburden materials may be used instead of, or as a supplement to, topsoil where the resulting soil medium is equal to or more suitable for vegetation, and if all the following requirements are met:

(i) The permittee demonstrates that the selected overburden materials or an overburden-topsoil mixture is more suitable for restoring land capability and productivity by the results of chemical and physical analyses. These analyses shall include determinations of pH, percent organic material, nitrogen, phosphorus, potassium, texture class, and water-holding capacity, and such other analyses as required by the regulatory authority. The regulatory authority also may require that results of field-site trials or greenhouse tests be used to demonstrate the feasibility of using such overburden materials.

(ii) The chemical and physical analyses and the results of field-site trials and greenhouse tests are accompanied by a certification from a qualified soil scientist or agronomist.

(iii) The alternative material is removed, segregated, and replaced in conformance with this section.

(b) *Topsoil redistribution.* (1) After final grading and before the topsoil is replaced, regraded land shall be scarified or otherwise treated to eliminate slippage surfaces and to promote root penetration.

(2) Topsoil shall be redistributed in a manner that—

(i) Achieves an approximate uniform thickness consistent with the postmining land uses;

(ii) Prevents excess compaction of the spoil and topsoil; and

(iii) Protects the topsoil from wind and water erosion before it is seeded and planted.

(c) *Topsoil storage.* If the permit allows storage of topsoil, the stockpiled topsoil shall be placed on a stable area within the permit area where it will not be disturbed or be exposed to excessive water, wind erosion, or contaminants which lessen its capability to support vegetation before it can be redistributed on terrain graded to final contour. Stockpiles shall be selectively placed and protected from wind and

Surface Mining Reclamation and Enforcement, Interior

§ 715.17

water erosion, unnecessary compaction, and contamination by undesirable materials either by a vegetative cover as defined in § 715.20(g) or by other methods demonstrated to provide equal protection such as snow fences, chemical binders, and mulching. Unless approved by the regulatory authority, stockpiled topsoil shall not be moved until required for redistribution on a disturbed area.

(d) *Nutrients and soil amendments.* Nutrients and soil amendments in the amounts and analyses as determined by soil tests shall be applied to the surface soil layer so that it will support the postmining requirements of § 715.13 and the revegetation requirements of § 715.20.

§ 715.17 Protection of the hydrologic system.

The permittee shall plan and conduct coal mining and reclamation operations to minimize disturbance to the prevailing hydrologic balance in order to prevent long-term adverse changes in the hydrologic balance that could result from surface coal mining and reclamation operations, both on- and off-site. Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized such that the postmining land use of the disturbed land is not adversely affected and applicable Federal and State statutes and regulations are not violated. The permittee shall conduct operations so as to minimize water pollution and shall, where necessary, use treatment methods to control water pollution. The permittee shall emphasize surface coal mining and reclamation practices that will prevent or minimize water pollution and changes in flows in preference to the use of water treatment facilities. Practices to control and minimize pollution include, but are not limited to, stabilizing disturbed areas through grading, diverting runoff, achieving quick growing stands of temporary vegetation, lining drainage channels with rock or vegetation, mulching, sealing acid-forming and toxic-forming materials, and selectively placing waste materials in back-fill areas. If pollution can be controlled only by treatment, the permittee shall

operate and maintain the necessary water-treatment facilities for as long as treatment is required.

(a) *Water quality standards and effluent limitations.* All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded, or planted, shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area. Sedimentation ponds shall be retained until drainage from the disturbed areas has met the water quality requirements of this section and the revegetation requirements of § 715.20 have been met. The regulatory authority may grant exemptions from this requirement only when the disturbed drainage area within the total disturbed area is small and if the permittee shows that sedimentation ponds are necessary to meet the effluent limitations of this paragraph and to maintain water quality in downstream receiving waters. For purpose of this section only, disturbed area shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this section and the upstream area is not otherwise disturbed by the permittee. Sedimentation ponds required by this paragraph shall be constructed in accordance with paragraph (e) of this section in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water in accordance with this paragraph. Discharges from areas disturbed by surface coal mining and reclamation operations must meet all applicable Federal and State laws and regulations and, at a minimum, the following numerical effluent limitations:

EFFLUENT LIMITATIONS, IN MILLIGRAMS PER LITER, MG/L, EXCEPT FOR PH

Effluent characteristics	Maximum allowable ¹	Average of daily values for 30 consecutive discharge days ¹
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
Total suspended solids ²	70.0	35.0
pH ³	(4)	(4)

¹ Based on representative sampling.

²In Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, and Wyoming, total suspended solids limitations will be determined on a case-by-case basis, but they must not be greater than 45 mg/l (maximum allowable) and 30 mg/l (average of daily value for 30 consecutive discharge days) based on a representative sampling.

³Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitation set forth, the regulatory authority may allow the pH level in the discharge to exceed to a small extent the upper limit of 9.0 in order that the manganese limitations will be achieved.

⁴Within the range 6.0 to 9.0.

(1) Any overflow or other discharge of surface water from the disturbed area within the permit area demonstrated by the permittee to result from a precipitation event larger than a 10-year, 24-hours frequency event will not be subject to the effluent limitations of paragraph (a).

(2) The permittee shall install, operate, and maintain adequate facilities to treat any water discharged from the disturbed area that violates applicable federal or State laws or regulations or the limitations of paragraph (a). If the pH of waters to be discharged from the disturbed area is normally less than 6.0, an automatic line feeder or other neutralization process approved by the regulatory authority shall be installed, operated, and maintained. If, the regulatory authority finds (i) that small and infrequent treatment requirements to meet applicable standards do not necessitate use of an automatic neutralization process, and (ii) that the mine normally produces less than 500 tons of coal per day, then the regulatory authority may approve the use of a manual system if the permittee ensures consistent and timely treatment.

(3) The effluent limitations for manganese shall be applicable only to acid drainage.

(b) *Surface-water monitoring.* (1) The permittee shall submit for approval by the regulatory authority a surface-water monitoring program which meets the following requirements:

(i) Provides adequate monitoring of all discharge from the disturbed area.

(ii) Provides adequate data to describe the likely daily and seasonal variation in discharges from the disturbed area in terms of water flow, pH, total iron, total manganese, and total suspended solids and, if requested by the regulatory authority, any other parameter characteristic of the discharge.

(iii) Provides monitoring at appropriate frequencies to measure normal and abnormal variations in concentrations.

(iv) Provides an analytical quality control system including standard methods of analysis such as those specified in 40 CFR 136.

(v) Within sixty (60) days of the end of each sixty (60) day sample collection period, a report of all samples shall be made to the regulatory authority, unless the discharge for which water monitoring reports are required is subject to regulation by a National Pollution Discharge Elimination System (NPDES) permit issued in compliance with the Clean Water Act of 1977 (33 U.S.C. 1251-1378), (A) which includes equivalent reporting requirements, and (B) which requires filing of the water monitoring report within 90 days or less of sample collection. For such discharges, the reporting requirements of this paragraph may be satisfied by submitting to the regulatory authority on the same time schedule as required by the NPDES permit or within ninety (90) days following sample collection, whichever is earlier, either (1) a copy of the completed reporting form filed to meet the NPDES permit requirements, or (2) a letter identifying the State or Federal government official with whom the reporting form was filed to meet the NPDES permit requirements and the date of filing. In all cases in which analytical results of the sample collections indicate a violation of a permit condition or applicable standard has occurred, the operator shall notify the regulatory authority immediately. Where an NPDES permit effluent limitation requirement has been violated, the permittee should forward a copy of the Discharge Monitoring Report, EPA Form 3320-1, concurrently with notification of the violation.

(2) After disturbed areas have been regraded and stabilized in accordance with this part, the permittee shall monitor surface water flow and quality. Data from this monitoring shall be used to demonstrate that the quality and quantity of runoff without treatment will be consistent with the requirement of this section to minimize

disturbance to the prevailing hydrologic balance and with the requirements of this part to attain the approved postmining land use. These data shall provide a basis for approval by the regulatory authority for removal of water quality or flow control systems and for determining when the requirements of this section are met. The regulatory authority shall determine the nature of data, frequency of collection, and reporting requirements.

(3) Equipment, structures, and other measures necessary to accurately measure and sample the quality and quantity of surface water discharges from the disturbed area of the permit area shall be properly installed, maintained, and operated and shall be removed when no longer required.

(c) *Diversion and conveyance of overland flow away from disturbed areas.* In order to minimize erosion and to prevent or remove water from contacting toxic-producing deposits, overland flow from undisturbed areas may, if required or approved by the regulatory authority, be diverted away from disturbed areas by means of temporary or permanent diversion structures. The following requirements shall be met:

(1) Temporary diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a one year recurrence interval, or a larger event as specified by the regulatory authority. The design criteria must assure adequate protection of the environment and public during the existence of the temporary diversion structure.

(2) Permanent diversion structures are those remaining after mining and reclamation and approved for retention by the regulatory authority and other appropriate State and Federal agencies. To protect fills and property and to avoid danger to public health and safety, permanent diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a 100-year recurrence interval, or a larger event as specified by the regulatory authority. Permanent diversion structures shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall not be used unless specifically required to

prevent seepage or to provide stability and are approved by the regulatory authority.

(3) Diversions shall be designed, constructed, and maintained in a manner to prevent additional contributions of suspended solids to streamflow or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable State or Federal law. Appropriate sediment control measures for these diversions shall include, but not be limited to, maintenances of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

(d) *Stream channel diversions.* (1) Flow from perennial and intermittent streams within the permit area may be diverted only when the diversions are approved by the regulatory authority and they are in compliance with local, State, and Federal statutes and regulations. When streamflow is allowed to be diverted, the new stream channel shall be designed and constructed to meet the following requirements:

(i) The average stream gradient shall be maintained and the channel designed, constructed, and maintained to remain stable and to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable State or Federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used only when approved by the regulatory agency for temporary diversions where necessary or for permanent diversions where they are stable and will require only infrequent maintenance.

(ii) Channel, bank, and flood-plain configurations shall be adequate to safely pass the peak runoff of a precipitation event with a 10-year recurrence interval for temporary diversions and a 100-year recurrence interval for permanent diversions, or larger events as specified by the regulatory authority.

(iii) Fish and wildlife habitat and water and vegetation of significant

value for wildlife shall be protected in consultation with appropriate State and Federal fish and wildlife management agencies.

(2) All temporary diversion structures shall be removed and the affected land regraded and revegetated consistent with the requirements of §§715.14 and 715.20. At the time such diversions are removed, the permittee shall ensure that downstream water treatment facilities previously protected by the diversion are modified or removed to prevent overtopping or failure of the facilities.

(3) *Buffer zone.* No land within 100 feet of an intermittent or perennial stream shall be disturbed by surface coal mining and reclamation operations unless the regulatory authority specifically authorizes surface coal mining and reclamation operations through such a stream. The area not to be disturbed shall be designated a buffer zone and marked as specified in §715.12.

(e) *Sedimentation ponds*—(1) *General requirements.* Sedimentation ponds shall be used individually or in series and shall—

(i) Be constructed before any disturbance of the undisturbed area to be drained into the pond;

(ii) Be located as near as possible to the disturbed area and out of perennial streams; unless approved by the regulatory authority;

(iii) Meet all the criteria of this section.

(2) *Sediment storage volume.* Sedimentation ponds shall provide a minimum sediment storage volume.

(3) *Detention time.* Sedimentation ponds shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a 10-year, 24-hour precipitation event (design event).

(4) *Dewatering.* The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the regulatory authority. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sedimentation storage volume.

(5) Each person who conducts surface mining activities shall design, construct, and maintain sedimentation

ponds to prevent short-circuiting to the extent possible.

(6) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this section shall not relieve the person from compliance with applicable effluent limitations as contained in paragraph (a) of this section.

(7) There shall be no out-flow through the emergency spillway during the passage of the runoff resulting from the 10-year, 24-hour precipitation event or lesser events through the sedimentation pond.

(8) Sediment shall be removed from sedimentation ponds.

(9) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff from a 25-year, 24-hour precipitation event, or larger event specified by the regulatory authority. The elevation of the crest of the emergency spillway shall be a minimum of 1.0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the regulatory authority.

(10) The minimum elevation at the top of the settled embankment shall be 1.0 foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum elevation requirement shall apply at all times, including the period after settlement.

(11) The constructed height of the dam shall be increased a minimum of 5 percent over the design height to allow for settlement, unless it has been demonstrated to the regulatory authority that the material used and the design will ensure against all settlement.

(12) The minimum top width of the embankment shall not be less than the quotient of $(H + 35)/5$, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(13) The combined upstream and downstream side slopes of the settled embankment shall not be less than 1v:5h, with neither slope steeper than 1v:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

Surface Mining Reclamation and Enforcement, Interior

§ 715.17

(14) The embankment foundation areas shall be cleared of all organic matter, all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified.

(15) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.

(16) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirements of this section. Compaction shall be conducted as specified in the design approved by the regulatory authority.

(17) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met:

(i) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff resulting from a 100-year, 24-hour precipitation event, or a larger event specified by the regulatory authority.

(ii) The embankment shall be designed and constructed with a static safety factor of at least 1.5, or a higher safety factor as designated by the regulatory authority to ensure stability.

(iii) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(iv) The criteria of the Mine Safety and Health Administration as published in 30 CFR 77.216 shall be met.

(18) Each pond shall be designed and inspected during construction under the supervision of, and certified after construction by, a registered professional engineer.

(19) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be im-

pounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with § 715.20.

(20) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions, and reports and modifications shall be made to the regulatory authority, in accordance with 30 CFR 77.216-3. With the approval of the regulatory authority, dams not meeting these criteria (30 CFR 77.216(a)) shall be examined four times per year.

(21) Sedimentation ponds shall not be removed until the disturbed area has been restored, and the vegetation requirements of § 715.20 are met and the drainage entering the pond has met the applicable State and Federal water quality requirements for the receiving stream. When the sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with §§ 715.14, 715.16, and 715.20, unless the pond has been approved by the regulatory authority for retention as being compatible with the approved postmining land use. If the regulatory authority approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments of paragraph (k) of this section.

(22)(i) Where surface mining activities are proposed to be conducted on steep slopes, as defined in § 716.2 of this chapter, special sediment control measures may be followed if the person has demonstrated to the regulatory authority that a sedimentation pond (or series of ponds) constructed according to paragraph (e) of this section—

(A) Will jeopardize public health and safety; or

(B) Will result in contributions of suspended solids to streamflow in excess of the incremental sediment volume trapped by the additional pond size required.

(ii) Special sediment control measures shall include but not be limited to—

(A) Designing, constructing, and maintaining a sedimentation pond as near as physically possible to the disturbed area which complies with the

§715.17

30 CFR Ch. VII (7–1–17 Edition)

design criteria of this section to the maximum extent possible.

(B) A plan and commitment to employ sufficient onsite sedimentation control measures including bench sediment storage, filtration by natural vegetation, mulching, and prompt revegetation which, in conjunction with the required sediment pond, will achieve and maintain applicable effluent limitations. The plan submitted pursuant to this paragraph shall include a detailed description of all onsite control measures to be employed, a quantitative analysis demonstrating that onsite sedimentation control measures, in conjunction with the required sedimentation pond, will achieve and maintain applicable effluent limitations, and maps depicting the location of all onsite sedimentation control measures.

(f) *Discharge structures.* Discharges from sedimentation ponds and diversions shall be controlled, where necessary, using energy dissipators, surge ponds, and other devices to reduce erosion and prevent deepening or enlargement of stream channels and to minimize disturbances to the hydrologic balance.

(g) *Acid and toxic materials.* Drainage from acid-forming and toxic-forming mine waste materials and soils into ground and surface water shall be avoided by—

(1) Identifying, burying, and treating where necessary, spoil or other materials that, in the judgment of the regulatory authority, will be toxic to vegetation or that will adversely affect water quality if not treated or buried. Such material shall be disposed of in accordance with the provision of §715.14(j);

(2) Preventing or removing water from contact with toxic-producing deposits;

(3) Burying or otherwise treating all toxic or harmful materials within 30 days, if such materials are subject to wind and water erosion, or within a lesser period designated by the regulatory authority. If storage of such materials is approved, the materials shall be placed on impermeable material and protected from erosion and contact with surface water. Coal waste ponds and other coal waste materials shall be

maintained according to paragraph (g)(4) of this section, and §715.18 shall apply;

(4) Burying or otherwise treating waste materials from coal preparation plants no later than 90 days after the cessation of the filling of the disposal area. Burial or treatment shall be in accordance with §715.14(j);

(5) Casing, sealing or otherwise managing boreholes, shafts, wells, and auger holes or other more or less horizontal holes to prevent pollution of surface or ground water and to prevent mixing of ground waters of significantly different quality. All boreholes that are within the permit area but are outside the surface coal mining area or which extend beneath the coal to be mined and into water bearing strata shall be plugged permanently in a manner approved by the regulatory authority, unless the boreholes have been approved for use in monitoring;

(6) Taking such other actions as required by the regulatory authority.

(h) *Ground water—(1) Recharge capacity of reclaimed lands.* The disturbed area shall be reclaimed to restore approximate premining recharge capacity through restoration of the capability of the reclaimed areas as a whole to transmit water to the ground water system. The recharge capacity should be restored to support the approved postmining land use and to minimize disturbances to the prevailing hydrologic balance at the mined area and in associated offsite areas. The permittee shall be responsible for monitoring according to paragraph (h)(3) of this section to ensure operations conform to this requirement.

(2) *Ground water systems.* Backfilled materials shall be placed to minimize adverse effects on ground water flow and quality, to minimize offsite effects, and to support the approved postmining land use. The permittee shall be responsible for performing monitoring according to paragraph (h)(3) of this section to ensure operations conform to this requirement.

(3) *Monitoring.* Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a

manner approved by the regulatory authority to determine the effects of surface coal mining and reclamation operations on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems at the mine area and in associated offsite areas. When operations are conducted in such a manner that may affect the ground water system, ground water levels and ground water quality shall be periodically monitored using wells that can adequately reflect changes in ground water quantity and quality resulting from such operations. Sufficient water wells must be used by the permittee. The regulatory authority may require drilling and development of additional wells if needed to adequately monitor the ground water system. As specified and approved by the regulatory authority, additional hydrologic tests, such as infiltration tests and aquifer tests, must be undertaken by the permittee to demonstrate compliance with paragraph (h) (1) and (2) of this section.

(i) *Water rights and replacement.* The permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from surface coal mine operation by the permittee.

(j) *Alluvial valley floors west of the 100th meridian west longitude.* (1) Surface coal mining operations conducted in or adjacent to alluvial valley floors shall be planned and conducted so as to preserve the essential hydrologic functions of these alluvial valley floors throughout the mining and reclamation process. These functions shall be preserved by maintaining or reestablishing those hydrologic and biologic characteristics of the alluvial valley floor that are necessary to support the functions. The permittee shall provide information to the regulatory authority as required in paragraph (j)(3) of this section to allow identification of essential hydrologic functions and demonstrate that the functions will be preserved. The characteristics of an al-

luvial valley floor to be considered include, but are not limited to—

(i) The longitudinal profile (gradient), cross-sectional shape, and other channel characteristics of streams that have formed within the alluvial valley floor and that provide for maintenance of the prevailing conditions of surface flow;

(ii) Aquifers (including capillary zones and perched water zones) and confining beds within the mined area which provide for storage, transmission, and regulation of natural ground water and surface water that supply the alluvial valley floors;

(iii) Quantity and quality of surface and ground water that supply alluvial valley floors;

(iv) Depth to and seasonal fluctuations of ground water beneath alluvial valley floors;

(v) Configuration and stability of the land surface in the flood plain and adjacent low terraces in alluvial valley floors as they allow or facilitate irrigation with flood waters or subirrigation and maintain erosional equilibrium; and

(vi) Moisture-holding capacity of soils (or plant growth medium) within the alluvial valley floors, and physical and chemical characteristics of the subsoil which provide for sustained vegetation growth or cover through dry months.

(2) Surface coal mining operations located west of the 100th meridian west longitude shall not interrupt, discontinue, or preclude farming on alluvial valley floors and shall not materially damage the quantity or quality of surface or ground water that supplies these valley floors unless the premining land use has been undeveloped rangeland which is not significant to farming on the alluvial valley floors or unless the area of affected alluvial valley floor is small and provides negligible support for the production from one or more farms. This paragraph (j)(2) does not apply to those surface coal mining operations that—

(i) Were in production in the year preceding August 3, 1977, were located in or adjacent to an alluvial valley floor, and produced coal in commercial quantities during the year preceding August 3, 1977; or

(ii) Had specific permit approval by the State regulatory authority before August 3, 1977, to conduct surface coal mining operations for an area within an alluvial valley floor.

(3)(i) Before surface mining and reclamation operations authorized under paragraph (j)(2) of this section may be issued a new revised or amended permit, the permittee shall submit, for regulatory authority approval, detailed surveys and baseline data to establish standards against which the requirements of paragraph (j)(1) of this section may be measured and from which the degree of material damage to the quantity and quality of surface and ground water that supply the alluvial valley floors may be assessed. The surveys and data shall include—

(A) A map at a scale determined by the regulatory authority, showing the location and configuration of the alluvial valley floor;

(B) Baseline data covering a full water year for each of the hydrologic functions identified in paragraph (j)(1) of this section;

(C) Plans showing how the operation will avoid, during mining and reclamation, interruption, discontinuance, or preclusion of farming on the alluvial valley floors and will not materially damage the quantity or quality of water in surface and ground water systems that supply such valley floors;

(D) Historic land use data for the proposed permit area and for farms to be affected; and

(E) Such other data as the regulatory authority may require.

(ii) Surface mining operations which qualify for the exceptions in paragraph (j)(2) of this section are not required to submit the plans prescribed in paragraph (j)(3)(i)(C) of this section.

(4) The holder of a Federal coal lease or the fee holder of any coal deposit located within or adjacent to an alluvial valley floor west of the 100th meridian west from which coal was not produced in commercial quantities between August 3, 1976, and August 3, 1977, and for which no specific permit by the appropriate State or Federal regulatory authority to conduct surface coal mining operations in the alluvial valley floors has been obtained, may be entitled to an exchange of the Federal coal lease

for a lease of other Federal coal deposits under section 510(b)(5) of the Act, or to the conveyance by the Secretary of fee title to other available Federal coal deposits in exchange for the fee title to such deposits under section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743), if the Secretary determines that substantial financial and legal commitments were made by the operator prior to January 1, 1977, in connection with surface coal mining operations on such lands.

(k) *Permanent impoundments.* The permittee may construct, if authorized by the regulatory agency pursuant to this paragraph and § 715.13, permanent water impoundments on mining sites as a part of reclamation activities only when they are adequately demonstrated to be in compliance with §§ 715.13 and 715.14 in addition to the following requirements:

(1) The size of the impoundment is adequate for its intended purposes.

(2) The impoundment dam construction is designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Pub. L. 83-566 (16 U.S.C. 1006).

(3) The quality of the impounded water will be suitable on a permanent basis for its intended use and discharges from the impoundment will not degrade the quality of receiving waters below the water quality standards established pursuant to applicable Federal and State law.

(4) The level of water will be reasonably stable.

(5) Final grading will comply with the provisions of § 715.14 and will provide adequate safety and access for proposed water users.

(6) Water impoundments will not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(l) *Hydrologic impact of roads*—(1) *General.* Access and haul roads and associated bridges, culverts, ditches, and road rights-of-way shall be constructed, maintained, and reclaimed to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the

extent possible, using the best technology currently available. In no event shall the contributions be in excess of requirements set by applicable State or Federal law. All access and haul roads shall be removed and the land affected regraded and revegetated consistent with the requirements of §§715.14 and 715.20, unless retention of a road is approved as part of a postmining land use under §715.13 as being necessary to support the postmining land use or necessary to adequately control erosion and the necessary maintenance is assured.

(2) *Construction.* (i) All roads, insofar as possible, shall be located on ridges or on the available flatter and more stable slopes to minimize erosion. Stream fords are prohibited unless they are specifically approved by the regulatory authority as temporary routes across dry streams that will not adversely affect sedimentation and that will not be used for coal haulage. Other stream crossings shall be made using bridges, culverts or other structures designed and constructed to meet the requirements of this paragraph. Roads shall not be located in active stream channels nor shall they be constructed or maintained in a manner that increases erosion or causes significant sedimentation or flooding. However, nothing in this paragraph will be construed to prohibit relocation of stream channels in accordance with paragraph (d) of this section.

(ii) In order to minimize erosion and subsequent disturbances of the hydrologic balance, roads shall be constructed in compliance with the following grade restrictions or other grades determined by the regulatory authority to be necessary to control erosion:

(A) The overall sustained grade shall not exceed 1v:10h (10 percent).

(B) The maximum grade greater than 10 percent shall not exceed 1v:6.5h (15 percent) for more than 300 feet.

(C) There shall not be more than 300 feet of grade exceeding 10 percent within each 1,000 feet.

(iii) All access and haul roads shall be adequately drained using structures such as, but not limited to, ditches, water barriers, cross drains, and ditch relief drains. For access and haul roads

that are to be maintained for more than 1 year, water-control structures shall be designed with a discharge capacity capable of passing the peak runoff from a 10-year, 24-hour precipitation event. Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets. Drainage ditches shall be provided at the toe of all cut slopes formed by construction of roads. Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment control structures. Ditch relief and cross drains shall be spaced according to grade. Effluent limitations of paragraph (a) of this section shall not apply to drainage from access and haul roads located outside the disturbed area as defined in this section unless otherwise specified by the regulatory authority.

(iv) Access and haul roads shall be surfaced with durable material. Toxic or acid-forming substances shall not be used. Vegetation may be cleared only for the essential width necessary for road and associated ditch construction and to serve traffic needs.

(3) *Maintenance.* (i) Access and haul roads shall be routinely maintained by means such as, but not limited to, wetting, scraping or surfacing.

(ii) Ditches, culverts, drains, trash racks, debris basins and other structures serving to drain access and haul roads shall not be restricted or blocked in any manner that impedes drainage or adversely affects the intended purpose of the structure.

(m) *Hydrologic impacts of other transport facilities.* Railroad loops, spurs, sidings and other transport facilities shall be constructed, maintained and reclaimed to control diminution or degradation of water quality and quantity and to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall contributions be in excess of requirements set by applicable State or Federal law.

§715.18

(n) *Discharge of waters into underground mines.* Surface and ground waters shall not be discharged or diverted into underground mine workings.

(Secs. 101, 102, 201, 501, 503-510, 515-517, 523, and 701, Surface Mining Act of 1977, Pub. L. 95-87), 30 U.S.C. 1201, 1202, 1211, 1251-1260, 1265-1267, 1273, 1291))

[42 FR 62680, Dec. 13, 1977; 43 FR 2721, Jan. 19, 1978; 43 FR 3705, Jan. 27, 1978, as amended at 43 FR 8091, Feb. 27, 1978; 43 FR 21458, May 18, 1978; 44 FR 30631, May 25, 1979; 44 FR 36887, June 22, 1979; 44 FR 77451, Dec. 31, 1979; 45 FR 6913, Jan. 30, 1980]

EFFECTIVE DATE NOTE: A document published at 44 FR 77451, Dec. 31, 1979, temporarily suspended §715.17(a)(1) insofar as it applies to total suspended solids (TSS) discharges.

§715.18 Dams constructed of or impounding waste material.

(a) *General.* No waste material shall be used in or impounded by existing or new dams without the approval of the regulatory authority. The permittee shall design, locate, construct, operate, maintain, modify, and abandon or remove all dams (used either temporarily or permanently) constructed of waste materials, in accordance with the requirements of this section.

(b) *Construction of dams.* (1) Waste shall not be used in the construction of dams unless demonstrated through appropriate engineering analysis, to have no adverse effect on stability.

(2) Plans for dams subject to this section, and also including those dams that do not meet the size or other criteria of §77.216(a) of this title, shall be approved by the regulatory authority before construction and shall contain the minimum plan requirements established by the Mining Enforcement and Safety Administration pursuant to §77.216-2 of this title.

(3) Construction requirements are as follows:

(i) Design shall be based on the flood from the probable maximum precipitation event unless the permittee shows that the failure of the impounding structure would not cause loss of life or severely damage property or the environment, in which case depending on site conditions, a design based on a precipitation event of no less than 100-

30 CFR Ch. VII (7-1-17 Edition)

year frequency may be approved by the regulatory authority.

(ii) The design freeboard distance between the lowest point on the embankment crest and the maximum water elevation shall be at least 3 feet to avoid overtopping by wind and wave action.

(iii) Dams shall have minimum safety factors as follows:

Case	Loading condition	Minimum safety factor
I	End of construction	1.3
II	Partial pool with steady seepage saturation.	1.5
III	Steady seepage from spillway or decant crest.	1.5
IV	Earthquake (cases II and III with seismic loading).	1.0

(iv) The dam, foundation, and abutments shall be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the factors of safety of the dam for all loading conditions in paragraph (b)(3)(iii) of this section and for all increments of construction.

(v) Seepage through the dam, foundation, and abutments shall be controlled to prevent excessive uplift pressures, internal erosion, sloughing, removal of material by solution, or erosion of material by loss into cracks, joints, and cavities. This may require the use of impervious blankets, pervious drainage zones or blankets, toe drains, relief wells, or dental concreting of jointed rock surface in contact with embankment materials.

(vi) Allowances shall be made for settlement of the dams and the foundation so that the freeboard will be maintained.

(vii) Impoundments created by dams of waste materials shall be subject to a minimum drawdown criteria that allows the facility to be evacuated by spillways or decants of 90 percent of the volume of water stored during the design precipitation event within 10 days.

(viii) During construction of dams subject to this section, the structures shall be periodically inspected by a

registered professional engineer to ensure construction according to the approved design. On completion of construction, the structure shall be certified by a registered professional engineer experienced in the field of dam construction as having been constructed in accordance with accepted professional practice and the approved design.

(ix) A permanent identification marker, at least 6 feet high that shows the dam number assigned pursuant to § 77.216-1 of this title and the name of the person operating or controlling the dam, shall be located on or immediately adjacent to each dam within 30 days of certification of design pursuant to this section.

(4) All dams, including those not meeting the size or other criteria of § 77.216 (a) of this title, shall be routinely inspected by a registered professional engineer, or someone under the supervision of a registered professional engineer, in accordance with Mining Enforcement and Safety Administration regulations pursuant to § 77.216-3 of this title.

(5) All dams shall be routinely maintained. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible materials present on the surface, other than that used for surface stability such as mulch or dry vegetation, shall be removed and any other appropriate maintenance procedures followed.

(6) All dams subject to this section shall be certified annually as having been constructed and modified in accordance with current prudent engineering practices to minimize the possibility of failures. Any changes in the geometry of the impounding structure shall be highlighted and included in the annual certification report. These certifications shall include a report on existing and required monitoring procedures and instrumentation, the average and maximum depths and elevations of any impounded waters over the past year, existing storage capacity of impounding structures, any fires occurring in the material over the past year and any other aspects of the structures affecting their stability.

(7) Any enlargements, reductions in size, reconstruction or other modification of the dams shall be approved by the regulatory authority before construction begins.

(8) All dams shall be removed and the disturbed areas regraded, revegetated, and stabilized before the release of bond unless the regulatory authority approves retention of such dams as being compatible with an approved postmining land use (§ 715.13).

§ 715.19 Use of explosives.

(a) *General.* (1) The permittee shall comply with all applicable local, State, and Federal laws and regulations and the requirements of this section in the storage, handling, preparation, and use of explosives.

(2) Blasting operations that use more than the equivalent of 5 pounds of TNT shall be conducted according to a time schedule approved by the regulatory authority.

(3) All blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved. Persons working with explosive materials shall—

(i) Have demonstrated a knowledge of, and a willingness to comply with, safety and security requirements;

(ii) Be capable of using mature judgment in all situations;

(iii) Be in good physical condition and not addicted to intoxicants, narcotics, or other similar types of drugs;

(iv) Possess current knowledge of the local, State and Federal laws and regulations applicable to his work; and

(v) Have obtained a certificate of completion of training and qualification as required by State law or the regulatory authority.

(b) *Preblasting survey.* (1) On the request to the regulatory authority of a resident or owner of a manmade dwelling or structure that is located within one-half mile of any part of the permit area, the permittee shall conduct a preblasting survey of the dwelling or structure and submit a report of the survey to the regulatory authority.

(2) Personnel approved by the regulatory authority shall conduct the survey to determine the condition of the dwelling or structure and to document any preblasting damage and other

physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems shall be limited to surface condition and other readily available data. Special attention shall be given to the preblasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(3) A written report of the survey shall be prepared and signed by the person or persons who conducted the survey and prepared the written report. The report shall include recommendations of any special conditions or proposed adjustments to the blasting procedures outlined in paragraph (e) of this section which should be incorporated into the blasting plan to prevent damage. Copies of the report shall be provided to the person requesting the survey and to the regulatory authority.

(c) *Public notice of blasting schedule.* At least 10 days, but not more than 20 days before beginning a blasting program in which explosives that use more than the equivalent of 5 pounds of TNT are detonated, the permittee shall publish a blasting schedule in a newspaper of general circulation in the locality of the proposed site. Copies of the schedule shall be distributed by mail to local governments and public utilities and to each residence within one-half mile of the blasting sites described in the schedule. The permittee shall republish and redistribute the schedule by mail at least every 3 months. Blasting schedules shall not be so general as to cover all working hours but shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur. The blasting schedule shall contain at a minimum—

(1) Identification of the specific areas in which blasting will take place. The specific blasting areas described shall not be larger than 300 acres with a generally contiguous border;

(2) Dates and times when explosives are to be detonated expressed in not more than 4-hour increments;

(3) Methods to be used to control access to the blasting area;

(4) Types of audible warnings and all-clear signals to be used before and after blasting; and

(5) A description of possible emergency situations (defined in paragraph (e)(1)(ii) of this section), which have been approved by the regulatory authority, when it may be necessary to blast at times other than those described in the schedule.

(d) *Public notice of changes to blasting schedules.* Before blasting in areas not covered by a previous schedule or whenever the proposed frequency of individual detonations are materially changed, the permittee shall prepare a revised blasting schedule in accordance with the procedures in paragraph (c) of this section. If the change involves only a temporary adjustment of the frequency of blasts, the permittee may use alternate methods to notify the governmental bodies and individuals to whom the original schedule was sent.

(e) *Blasting procedures—(1) General.* (i) All blasting shall be conducted only during the daytime hours, defined as sunrise until sunset. Based on public requests or other considerations, including the proximity to residential areas, the regulatory authority may specify more restrictive time periods.

(ii) Blasting may not be conducted at times different from those announced in the blasting schedule except in emergency situations where rain, lightning, other atmospheric conditions, or operator or public safety requires unscheduled detonation.

(iii) Warning and all-clear signals of different character that are audible within a range of one-half mile from the point of the blast shall be given. All persons within the permit area shall be notified of the meaning of the signals through appropriate instructions and signs posted as required by §715.12.

(iv) Access to the blasting area shall be regulated to protect the public and livestock from the effects of blasting. Access to the blasting area shall be controlled to prevent unauthorized entry at least 10 minutes before each blast and until the permittee's authorized representative has determined that no unusual circumstances such as imminent slides or undetonated charges exist and access to and travel

Surface Mining Reclamation and Enforcement, Interior

§ 715.19

in or through the area can safely resume.

(v) Areas in which charged holes are awaiting firing shall be guarded, barricaded and posted, or flagged against unauthorized entry.

(vi) Airblast shall be controlled such that it does not exceed 128 decibel linear-peak at any manmade dwelling or structure located within one-half mile of the permit area.

(vii) Except where lesser distances are approved by the regulatory authority (based upon a preblasting survey or other appropriate investigations) blasting shall not be conducted within—

(A) 1,000 feet of any building used as a dwelling, school, church, hospital, or nursing facility;

(B) 500 feet of facilities including, but not limited to, disposal wells, petroleum or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines; and

(C) 500 feet of an underground mine not totally abandoned except with the concurrence of the Mining Enforcement and Safety Administration.

(2) *Blasting standards.* (i) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.

(ii) *Ground vibration.*—(A) *General.* In all blasting operations, except as otherwise authorized in paragraph (e)(2)(iii) of this section, the maximum ground vibration shall not exceed a value approved by the regulatory authority. It shall be established in accordance with the maximum peak-particle-velocity limit of paragraph (e)(2)(ii)(B), the scaled-distance equation of paragraph (e)(2)(ii)(C), or the blasting-level chart of paragraph (e)(2)(ii)(D), or such other standard established under paragraph (e)(2)(ii)(E), of this section. All structures in the vicinity of the blasting area, not listed in paragraph (e)(2)(ii)(B), of this section, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines, shall be protected from damage by es-

tablishment of a maximum allowable limit on the ground vibration, submitted by the operator and approved by the regulatory authority before the initiation of blasting.

(B) *Maximum peak-particle velocity.* (1) The maximum ground vibration shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area.

Distance (<i>D</i>) from blasting site, in feet	Maximum allowable peak particle velocity (<i>V</i> max) for ground vibration, in inches/second ¹	Scaled-distance factor to be applied without seismic monitoring ²
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

¹ Ground vibration shall be measured as particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

² Applicable to the scaled-distance equation of paragraph (e)(2)(ii)(C)(1) of this section.

(2) A seismographic record shall be provided for each blast.

(C) *Scaled-distance equation.* (1) The operator may use the scaled-distance equation, $W = (D/D_s)^2$, to determine the allowable charge weight of explosives to be detonated in any 8-millisecond period without seismic monitoring; where W = the maximum weight of explosives, in pounds; D = the distance, in feet, from the blasting site to the nearest protected structure; and D_s = the scaled-distance factor, which may initially be approved by the regulatory authority using the values for scaled-distance factor listed in paragraph (e)(2)(ii)(B)(1), of this section.

(2) The development of a modified scaled-distance factor may be authorized by the regulatory authority on receipt of a written request by the operator, supported by seismographic records of blasting at the minesite. The modified scaled-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of paragraph (e)(2)(B)(1) of this section at a 95-percent confidence level.

(D) *Blasting-level chart.* (1) An operator may use the ground-vibration limits in Figure 1 to determine the maximum allowable ground vibration.

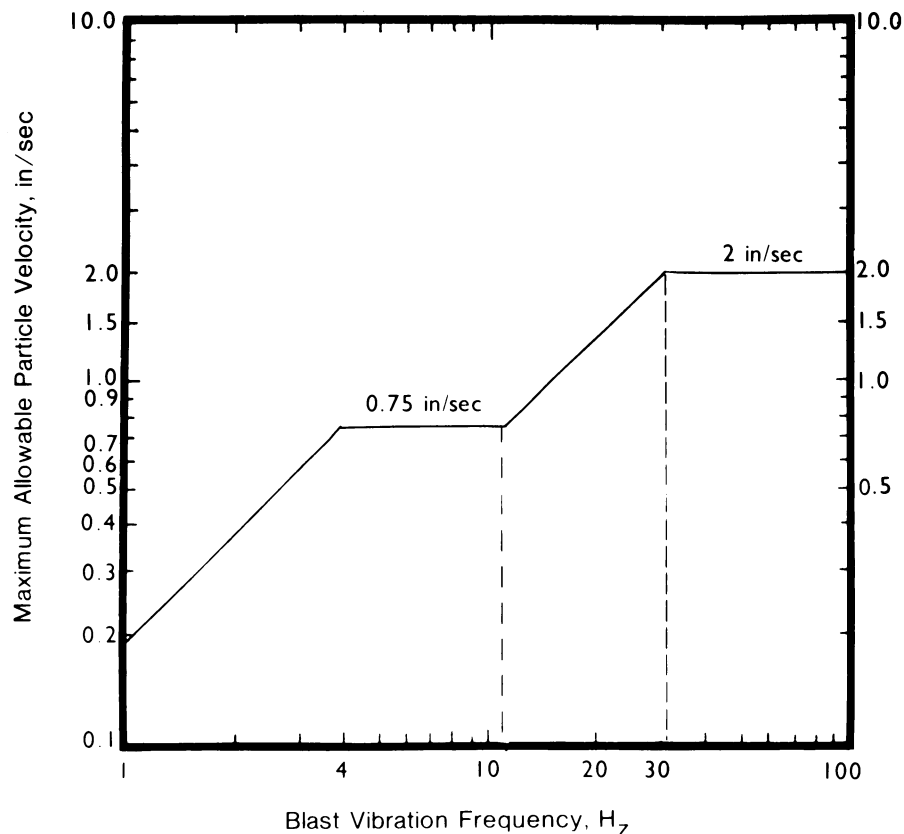


Figure 1. Alternative blasting level criteria.

(Source Modified from figure B-1, Bureau of Mines RI8507)

(2) If the Figure 1 limits are used, a seismographic record including both particle-velocity and vibration-frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the regulatory authority before application of this alternative blasting criterion.

(E) The maximum allowable ground vibration shall be reduced by the regulatory authority beyond the limits otherwise provided by this section, if de-

termined necessary to provide damage protection.

(F) The regulatory authority may require an operator to conduct seismic monitoring of any or all blasts and may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(iii) If blasting is conducted in accordance with paragraph (e)(2)(i) of this section, the maximum ground-vibration and airblast standards shall not apply at the following locations:

(A) At structures owned by the permittee and not leased to another person.

(B) At structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the regulatory authority before blasting.

(3) *Records of blasting operations.* A record of each blast, including seismograph reports, shall be retained for at least 3 years and shall be available for inspection by the regulatory authority and the public on request. The record shall contain the following data—

- (i) Name of permittee, operator, or other person conducting the blast;
- (ii) Location, date, and time of blast;
- (iii) Name, signature, and license number of blaster-in-charge;
- (iv) Direction and distance, in feet, to nearest dwelling, school, church, or commercial or institutional building neither owned or leased by the permittee;
- (v) Weather conditions;
- (vi) Type of material blasted;
- (vii) Number of holes, burden, and spacing;
- (viii) Diameter and depth of holes;
- (ix) Types of explosives used;
- (x) Total weight of explosives used;
- (xi) Maximum weight of explosives detonated within any 8 millisecond period;
- (xii) Maximum number of holes detonated within any 8 millisecond period;
- (xiii) Methods of firing and type of circuit;
- (xiv) Type and length of stemming;
- (xv) If mats or other protections were used;
- (xvi) Type of delay detonator used, and delay periods used;
- (xvii) Seismograph records, where required, including—

(A) Seismograph reading, including exact location of seismograph and its distance from the blast;

(B) Name of person taking the seismograph reading; and

(C) Name of person and firm analyzing the seismograph record.

[42 FR 62680, Dec. 13, 1977; 43 FR 2722, Jan. 19, 1978, as amended at 48 FR 9805, Mar. 8, 1983]

§ 715.20 Revegetation.

(a) *General.* (1) The permittee shall establish on all land that has been disturbed, a diverse, effective, and permanent vegetative cover of species native to the area of disturbed land or species that will support the planned postmining uses of the land approved according to § 715.13. For areas designated as prime farmland, the reclamation procedures of § 716.7 shall apply.

(2) Revegetation shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with approved land uses. The vegetative cover shall be capable of stabilizing the soil surface with respect to erosion. All disturbed lands, except water areas and surface areas of roads that are approved as a part of the postmining land use, shall be seeded or planted to achieve a vegetative cover of the same seasonal variety native to the area of disturbed land. If both the pre- and postmining land use is intensive agriculture, planting of the crops normally grown will meet the requirement. Vegetative cover will be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the intended land use when compared with the utility of naturally occurring vegetation during each season of the year.

(3) On Federal lands, the surface management agency shall be consulted for approval prior to revegetation regarding what species are selected, and following revegetation, to determine when the area is ready to be used.

(b) *Use of introduced species.* Introduced species may be substituted for native species only if appropriate field trials have demonstrated that the introduced species are of equal or superior utility for the approved postmining land use, or are necessary to achieve a quick, temporary, and stabilizing cover. Such species substitution shall be approved by the regulatory authority. Introduced species shall meet applicable State and Federal seed or introduced species statutes, and shall not include poisonous or potentially toxic species.

(c) *Timing of revegetation.* Seeding and planting of disturbed areas shall be

conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected to meet specific site conditions and climate. Any disturbed areas, except water areas and surface areas or roads that are approved under § 715.13 as part of the postmining land use, which have been graded shall be seeded with a temporary cover of small grains, grasses, or legumes to control erosion until an adequate permanent cover is established. When rills or gullies, that would preclude the successful establishment of vegetation or the achievement of the postmining land use, form in regraded topsoil and overburden materials as specified in § 715.14, additional regrading or other stabilization practices will be required before seeding and planting.

(d) *Mulching.* Mulch shall be used on all regraded and topsoiled areas to control erosion, to promote germination of seeds, and to increase the moisture retention of the soil. Mulch shall be anchored to the soil surface where appropriate, to insure effective protection of the soil and vegetation. 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, and do not interfere with the postmining use of the land. Annual grains such as oats, rye and wheat may be used instead of mulch when it is shown to the satisfaction of the regulatory authority that the substituted grains will provide adequate stability and that they will later be replaced by species approved for the postmining use.

(e) *Methods of revegetation.* (1) The permittee shall use technical publications or the results of laboratory and field tests approved by the regulatory authority to determine the varieties, species, seeding rates, and soil amendment practices essential for establishment and self-regeneration of vegetation. The regulatory authority shall approve species selection and planting plans.

(2) Where hayland, pasture, or range is to be the postmining land use, the species of grasses, legumes, browse, trees, or forbes for seeding or planting and their pattern of distribution shall be selected by the permittee to provide a diverse, effective, and permanent vegetative cover with the seasonal variety, succession, distribution, and regenerative capabilities native to the area. Livestock grazing will not be allowed on reclaimed land until the seedlings are established and can sustain managed grazing. The regulatory authority, in consultation with the permittee and the landowner or in concurrence with the governmental landmanaging agency having jurisdiction over the surface, shall determine when the revegetated area is ready for livestock grazing.

(3) Where forest is to be the postmining land use, the permittee shall plant trees adapted for local site conditions and climate. Trees shall be planted in combination with an herbaceous cover of grains, grasses, legumes, forbs, or woody plants to provide a diverse, effective, and permanent vegetation cover with the seasonal variety, succession, and regeneration capabilities native to the area.

(4) Where wildlife habitat is to be included in the postmining land use, the permittee shall consult with appropriate State and Federal wildlife and land management agencies and shall select those species that will fulfill the needs of wildlife, including food, water, cover, and space. Plant groupings and water resources shall be spaced and distributed to fulfill the requirements of wildlife.

(f) *Standards for measuring success of revegetation.* (1) Success of revegetation shall be measured on the basis of reference areas approved by the regulatory authority. Reference areas mean land units of varying size and shape identified and maintained under appropriate management for the purpose of measuring ground cover, productivity and species diversity that are produced naturally. The reference areas must be representative of geology, soils, slope, aspect, and vegetation in the permit area. Management of the reference area shall be comparable to that which will be required for the approved

postmining land use of the area to be mined. The regulatory authority shall approve the estimating techniques that will be used to determine the degree of success in the revegetated area.

(2) The ground cover of living plants on the revegetated area shall be equal to the ground cover of living plants of the approved reference area for a minimum of two growing seasons. The ground cover shall not be considered equal if it is less than 90 percent of the ground cover of the reference area for any significant portion of the mined area. Exceptions may be authorized by the regulatory authority for—

(i) Previously mined areas that were not reclaimed to the standards required by this chapter prior to the effective date of these regulations. The ground cover of living plants for such areas shall not be less than required to control erosion, and in no case less than that existing before redisturbance.

(ii) Areas to be developed immediately for industrial or residential use. The ground cover of living plants shall not be less than required to control erosion. As used in this paragraph, *immediately* means less than 2 years after regrading has been completed for the area to be used; and

(iii) Areas to be used for agricultural cropland purposes. Success in revegetation of cropland shall be determined on the basis of crop production from the mined area compared to the reference area. Crop production from the mined area shall be equal to that of the approved reference area for a minimum of two growing seasons. Production shall not be considered equal if it is less than 90 percent of the production of the reference area for any significant portion of the mined area.

(3) Species diversity, distribution, seasonal variety, and vigor shall be evaluated on the basis of the results which could reasonably be expected using the methods of revegetation approved under paragraph (e) of this section.

(g) *Seeding of stockpiled topsoil.* Topsoil stockpiled in compliance with § 715.16 must be seeded or planted with an effective cover of nonnoxious, quick growing annual and perennial plants during the first normal period for fa-

vorable planting conditions or protected by other approved measures as specified in § 715.16.

§ 715.200 Interpretative rules related to general performance standards.

The following interpretations of rules promulgated in part 715 of this chapter have been adopted by the Office of Surface Mining Reclamation and Enforcement.

(a)–(b) [Reserved]

(c) *Interpretation of § 715.16(a)(4)—Topsoil Removal.* (1) Results of physical and chemical analyses of topsoil and selected overburden materials to demonstrate that the selected overburden materials or overburden materials/topsoil mixture is more suitable for restoring land capability and productivity than the available topsoil, provided the analyses, trials, or tests are certified by a qualified soil scientist or agronomist, may be obtained from any one or a combination of the following sources:

(i) U.S. Department of Agriculture Soil Conservation Service published data based on established soil series;

(ii) U.S. Department of Agriculture Soil Conservation Service Technical Guides;

(iii) State agricultural agency, university, Tennessee Valley Authority, Bureau of Land Management or U.S. Department of Agriculture Forest Service published data based on soil series properties and behavior; or

(iv) Results of physical and chemical analyses, field site trials, or greenhouse tests of the topsoil and overburden materials (soil series) from the permit area.

(2) If the operator demonstrates through soil survey or other data that the topsoil and unconsolidated material are insufficient and substitute materials will be used, only the substitute materials must be analyzed in accordance with 30 CFR 715.16(a)(4)(i).

(Sec. 501, 502, 504, 508, 515, 516, Pub. L. 95-87, 91 Stat. 467, 468, 471, 478, 492, 496 (30 U.S.C. 1251, 1252, 1254, 1258, 1265, 1266))

[45 FR 26000, Apr. 16, 1980 and 45 FR 39447, June 10, 1980, as amended at 45 FR 73946, Nov. 7, 1980]

PART 716—SPECIAL PERFORMANCE STANDARDS

Sec.

- 716.1 General obligations.
- 716.2 Steep-slope mining.
- 716.3 Mountaintop removal.
- 716.4 Special bituminous coal mines.
- 716.5 Anthracite coal mines.
- 716.6 Coal mines in Alaska.
- 716.7 Prime farmland.
- 716.10 Information collection.

AUTHORITY: Secs. 201, 501, 527 and 529, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62691, Dec. 13, 1977, unless otherwise noted.

§ 716.1 General obligations.

(a) This part establishes special initial performance standards that apply in the following special circumstances—

- (1) § 716.2 applies to surface coal mining operations on steep slopes.
- (2) § 716.3 applies to surface coal mining operations involving mountaintop removal.
- (3) § 716.4 applies to special bituminous coal mines.
- (4) § 716.5 applies to anthracite surface coal mining operations.
- (5) § 716.6 applies to surface coal mining operations in Alaska.
- (6) § 716.7 applies to surface coal mining operations on prime farmlands.

(b) All surface coal mining and reclamation operations subject to this part shall comply with the applicable special performance standards in this part. Such operations shall also comply with all general performance standards in part 715 of this chapter unless specifically exempted *in this part* from the requirements of part 715.

§ 716.2 Steep-slope mining.

The permittee conducting surface coal mining and reclamation operations on natural slopes that exceed 20 degrees, or on lesser slopes that require measures to protect the area from disturbance, as determined by the regulatory authority after consideration of soils, climate, the method of operation, geology, and other regional characteristics, shall meet the following performance standards. The standards of this section do not apply where mining is done on a flat or gently rolling ter-

rain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area; or where the mining is governed by § 716.3.

(a) Spoil, waste materials or debris, including that from clearing and grubbing, and abandoned or disabled equipment, shall not be placed or allowed to remain on the downslope.

(b) The highwall shall be completely covered with spoil and the disturbed are a graded to comply with the provisions of § 715.14 of this chapter. Land above the highwall shall not be disturbed unless the regulatory authority finds that the disturbance will facilitate compliance with the requirements of this section.

(c) Material in excess of that required to meet the provisions of § 715.14 of this chapter shall be disposed of in accordance with the requirements of § 715.15 of this chapter.

(d) Woody materials may be buried in the backfilled area only when burial does not cause, or add to, instability of the backfill. Woody materials may be chipped and distributed through the backfill when approved by the regulatory authority.

(e) *Variances from approximate original contour restoration requirements.* (1) This section applies to surface coal mining operations on steep slopes where the operation is not to be reclaimed to achieve the approximate original contour and is not a mountaintop removal operation.

(2) The objective of this subsection is to allow for a variance from the approximate original contour restoration requirements on steep slopes to—

(i) Improve watershed control of the area; and

(ii) Allow the land to be used for an industrial, commercial, residential, or public use, including recreational facilities.

(3) The regulatory authority may grant a variance from the requirement for restoration of the affected lands to their approximate original contour only if it first finds, in writing, on the basis of a showing made by the permittee, that all of the following requirements are met:

(i) The permittee has demonstrated that the purpose of the variance is to

make the lands to be affected within the permit area suitable for an industrial, commercial, residential, or public use postmining land use and that the proposed industrial, commercial, residential, or public use is likely to occur.

(ii) The proposed use, after consultation with the appropriate land-use planning agencies, if any, constitutes an equal or better economic or public use.

(iii) The permittee has demonstrated that compliance with the requirements for acceptable alternative postmining industrial, commercial, residential or public land uses of 30 CFR 715.13 has been achieved except for the requirement at § 715.13(d)(3) and (4) to provide letters of commitment. The permittee must demonstrate to the regulatory authority that necessary public facilities are likely to be provided and that the plan is financially feasible.

(iv) The permittee has demonstrated that the watershed of the area will be improved as compared to the condition of the watershed before mining. The watershed will be deemed improved only if—

(A) There will be a reduction in the amount of total suspended solids or other pollutants discharged to ground or surface waters from the area as compared to such discharges; or, there will be reduced flood hazards or more even flow within the watershed containing the area due to reduction of the peak flow discharges from precipitation events or thaws; or any other criterion authority in the granting of the variance. While improving one or more variables, the permittee must also at least maintain the variables not improved at their premining levels;

(B) The total volume of flows from the proposed affected lands, during every season 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

(C) The appropriate State environmental agency approves the plan.

(v) The permittee has demonstrated that the owner of the surface of the lands within the permit area has knowingly requested, in writing, as a part of the application, that a variance be

granted. The request shall be made separately from any surface owner consent given for the operation and shall show an understanding that the variance could not be granted without the surface owner's request.

(vi) The proposal is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

(vii) All other requirements of the Act and these regulations will be met by the proposed operations.

(4) Every permittee who obtains a variance under this subsection shall:

(i) Backfill completely the highwall with spoil material, in a manner which results in a static factor of safety of at least 1.3 using general geotechnical analysis.

(ii) Improve the watershed control of the area by reducing the peak flow from precipitation or thaw or reducing the total suspended solids or other pollutants in the surface water discharge during precipitation or thaw or by attaining the criteria approved by the regulatory authority in the granting of the variance. While improving one or more variables, the permittee must also at least maintain the variables not improved at their premining levels. The total volume of flow during every season of the year shall not vary in a way that adversely affects the ecology of any surface or ground water.

(iii) Disturb land above the highwall only to the extent that the regulatory authority deems appropriate and approves as necessary to facilitate compliance with the provisions of this section. The regulatory authority may authorize such a disturbance above the highwall if it finds the disturbance is necessary to—

(A) Blend the solid highwall and the backfilled material; or

(B) Control surface runoff; or

(C) Provide access to the area above the highwall.

(iv) Place off the mine bench no more than the amount of spoil necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the Act and parts 710 through

§716.3

725 of this chapter. All spoil not retained on the bench shall be placed in accordance with the Act and these regulations.

(5) The regulatory authority shall review every variance granted pursuant to this subsection not more than three years from the date of issuance of the permit to ensure that the proposed alternative postmining use is proceeding in accordance with the terms of the approved plan, unless the permittee affirmatively so demonstrates.

[42 FR 62691, Dec. 13, 1977, as amended at 45 FR 83168, Dec. 17, 1980]

§716.3 Mountaintop removal.

(a) Surface coal mining and reclamation operations that remove entire coal seams running through the upper fraction of a mountain, ridge, or hill by removing all of the overburden and creating a level plateau or gently rolling contour with no highwalls remaining are exempt from the requirements of §715.14 of this chapter for achieving approximate original contour, if the following requirements are met:

(1) An industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed for the affected land.

(2) The alternative land use criteria in §715.13(d) of this chapter are met and the proposal is approved by the regulatory authority.

(3) All other applicable requirements of part 715 of this chapter can be met.

(b) Surface coal mining and reclamation operations conducted under this section shall comply with the following standards:

(1) An outcrop barrier of sufficient width consisting of the toe of the lowest coal seam, and its associated overburden shall be retained to prevent slides and erosion.

(2) The final graded top plateau slopes on the mined area shall be less than 1v:5h so as to create a level plateau or gently rolling configuration and the outcrops of the plateau shall not exceed 1v:2h, except where engineering data substantiates and the regulatory authority finds that a minimum static safety factor of 1.5 will be attained.

(3) The resulting level or gently rolling contour shall be graded to drain in-

30 CFR Ch. VII (7-1-17 Edition)

ward from the outslope except at specific points where it drains over the outslope in protected stable channels.

(4) Damage to natural watercourses below the area to be mined shall be prevented.

(5) Spoil shall be placed on the mountaintop bench as is necessary to achieve the postmining land use approved under §715.13 of this chapter. All excess spoil material not retained on the mountaintop shall be placed in accordance with the standards of §715.15 of this chapter.

(c)(1) All permits giving approval for mountaintop removal shall be reviewed not more than 3 years from the date of issuance of the permit, unless the permittee affirmatively demonstrates and the regulatory authority finds that all operations are proceeding in accordance with the terms of the permit and applicable requirements of the Act and the regulations of this part. The terms of the permit shall be in accordance with the requirements of the Act and the regulations of this part.

(2) The terms of a permit for mountaintop removal may be modified by the regulatory authority if it determines that more stringent measures are necessary to prevent or control slides and erosion, prevent damage to natural water courses, avoid water pollution, or to assure successful revegetation.

§716.4 Special bituminous coal mines.

(a) *Definition.* Special bituminous coal surface mines as used in this section means those bituminous coal surface mines that are located in the State of Wyoming and that are being mined or will be mined according to the following criteria:

(1) Excavation of the mine pit takes place on a relatively limited site for an extended period of time. For the purposes of this section, mine pit means an open-pit mine in which the surface opening is at least the full size of the excavation and has a contiguous border. The pit generally is quite deep and is formed by the removal of relatively large amounts of overburden to obtain lesser amounts of coal. The term as used in this section applies only to mining operations that extract coal

Surface Mining Reclamation and Enforcement, Interior

§ 716.4

from seams dipping 15 degrees or more from the horizontal.

(2) Excavation of the mine pit follows a coal seam that inclines 15 degrees 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 operations.

(3)(i) Surface coal mining operations in the mine pit have taken place since January 1, 1972, and

(A) Operations in the mine pit are removing more than one coal seam, and

(B) Mining has begun on the deepest coal seam scheduled to be mined; or

(ii) Surface coal mining operations which may be developed after August 3, 1977, and are conducted on lands immediately adjacent to operations meeting the criteria of paragraph (a)(3)(i) of this section.

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

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

(6) There is no practicable way to entirely reclaim the land as required by part 715 of this chapter.

(b) *Requirements for special bituminous coal mines operating prior to July 1, 1973.* Those portions of a special bituminous coal mine approved for operation prior to July 1, 1973, including the orderly expansion of such a mine pit to the extent authorized by State law, shall at a minimum meet the general performance standards of part 715 of this chapter for all operations conducted on the permit area outside the mine pit and for those operations associated with spoil storage areas. The standards of part 715 also apply to the mine pit with the exception of § 715.14, which relates to backfilling and grading. Special requirements for backfilling and grading the mine pit area are as follows:

(1) In the final mine area, highwalls will be allowed to remain and benches will be allowed. Details of the benches shall be included in the mine plans submitted to the regulatory authority for approval.

(2) The exposed pit floors will be sloped and graded to provide access to the area, and topsoil shall be applied

and the floor area seeded according to the requirements of §§ 715.16 and 715.20. Where water impoundments are included as part of the mine plan, riprap may be used if necessary to prevent erosion.

(3) Spoil piles will be graded and contoured with no more than overall slope of 17 degrees allowed, and terraces may be used to break the slope when it can be shown that terraces will accomplish the required reclamation. For the postmining land use, steeper slopes may be permitted upon approval of the regulatory authority, provided it can be demonstrated that such method will provide the required results.

(c) *Requirements for other special bituminous coal mines.* Those portions of a special bituminous coal mine which do not meet the criteria of paragraph (b) of this section shall, at minimum meet the general performance standards of part 715 of this chapter for all operations conducted on the permit area outside the mine pit and for these operations associated with spoil storage areas. The standards of part 715 also apply to the mine pit with the exception of § 715.14, which relates to backfilling and grading. Special requirements for backfilling and grading the mine pit area are as follows:

(1) *Slope specifications.* Slope specifications for the postmining land use shall be based on an average of the natural slopes measured in the immediate area of the mine site, and the maximum inclination of the slopes in the reclaimed area shall not be greater than this average slope. However, slopes steeper than the average of the natural slopes may be approved by the regulatory authority if it can be demonstrated that returning the mined area to a slope equal to or less than the average natural slope would greatly increase the amount of disturbed land. Measurements of individual slopes, locations at which measurements are made, and the average natural slope as determined from the individual slope measurements shall be submitted for approval to the regulatory authority. The regulatory authority may make an independent slope survey to verify the average natural slope.

(2) *Postmining land uses that do not include permanent water impoundments.* (i)

§ 716.5

The final mine area shall be backfilled, graded, and contoured to the extent necessary to return the land to the use approved by the regulatory authority.

(ii) All backfilling, grading, and contouring shall be done in a manner to preserve the original drainage system or to provide substitute drainage systems approved by the regulatory authority.

(iii) Terraces or benches may be used only if it can be demonstrated that contouring methods will not provide the required results. Detailed plans of dimensions and design of the terraces or benches, check dams, erosion prevention techniques, and slopes of the terraces or benches and their intervals shall be submitted to the regulatory authority for approval before construction.

(iv) Depressions that will accumulate water shall not be allowed unless they are approved under paragraph (3).

(3) *Postmining land uses that include permanent water impoundments.* (i) The exposed mine pit area shall be sloped, graded, and contoured to blend with the topography of the surrounding terrain and to provide for access to the area. Where necessary to prevent erosion, riprap shall be used.

(ii) Under certain conditions where it can be demonstrated by the permittee that the pitwall can be stabilized by terracing or other techniques it may be permissible to leave one-half the proposed shoreline, as measured along the circumference, composed of the stabilized pitwall. The remaining part of the shoreline shall be graded and contoured to blend with the topography of the surrounding terrain and to provide access to the area. Detailed explanations of the techniques to be used to stabilize the pitwalls shall be submitted for approval to the regulatory authority. The regulatory authority may verify the effectiveness of the proposed stabilization techniques from a study made by an independent engineering company and based on this information and an onsite inspection, the regulatory authority will then determine the acceptability of the proposed stabilization techniques.

(d) In the event of an amendment or revision to the State of Wyoming's regulatory program, regulations, or deci-

30 CFR Ch. VII (7-1-17 Edition)

sions made thereunder governing special bituminous coal mines, the Secretary shall issue such additional regulations as necessary to meet the purposes of the Act.

§ 716.5 Anthracite coal mines.

(a) Permittees of anthracite surface coal mining and reclamation operations in those States where the mines are regulated by State environmental protection standards shall be subject to the environmental protection standards of the State regulatory program in existence on August 3, 1977, instead of part 715 and part 717 of this chapter.

(b) The environmental protection provisions of Title 25, Rules and Regulations, part 1, Department of Environmental Resources, Commonwealth of Pennsylvania, shall apply to reclamation of anthracite surface coal mining and reclamation operations in the Commonwealth of Pennsylvania instead of part 715 and part 717 of this chapter. In addition, the regulations of the Commonwealth of Pennsylvania pertaining to standards for air and water quality shall apply instead of the regulations of part 715 and part 717 of this chapter.

(c) If a State's regulatory program or regulations for anthracite surface coal mining and reclamation operations in force at the time of this Act are amended, the Secretary, upon receipt of a notice of amendment, shall issue additional regulations as necessary to meet the purposes of this Act.

[45 FR 61259, Sept. 15, 1980]

§ 716.6 Coal mines in Alaska.

(a) Permittees of surface coal mining operations in Alaska from which coal has been mined on or after August 3, 1977, shall conduct operations in a manner that, at a minimum, meets the performance standards of this chapter.

(b) The Secretary, after consultation with the Governor of Alaska, may modify the applicability of any environmental protection standard to any surface coal mining operation if he determines that it is necessary to ensure the continued operation of the mine.

(c) Any person may petition the Secretary to modify the applicability of a performance standard to a coal mine in Alaska. No particular form of petition

is required. However, the petition shall be in writing and shall identify clearly—

(1) The performance standard involved;

(2) The alternative methods to be used to protect the environment and public health and safety;

(3) The reasons why a modification is requested with full descriptions of the impacts continued requirements for compliance with the performance standard to be modified would have on mining and reclamation and of the impacts the proposed method would have on the environment and public health and safety; and

(4) The location of the mine.

(d) If the Secretary determines that the petition presents reasonable justification for modifying the performance standard, he may grant a temporary suspension of enforcement of the performance standard, and he shall publish a notice of intention to modify the applicability of the performance standard in the FEDERAL REGISTER and in a newspaper of general circulation in the area of Alaska where the affected coal mine is located. A public hearing shall be held in Alaska and any person may testify for or against the proposed modification. The Secretary, after considering the public comments, and consulting with the Governor of Alaska, shall publish his decision in the FEDERAL REGISTER and in the same newspaper in which the original notice was published.

§ 716.7 Prime farmland.

(a) *Applicability.* (1) Permittees of surface coal mining and reclamation operations conducted on prime farmland shall comply with the general performance standards of part 715 of this chapter in addition to the special requirements of this section.

(2) Except as otherwise provided in this paragraph, the requirements of the section are applicable to any lands covered by a permit application filed on or after August 3, 1977. This section does not apply to:

(i) Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977; or

(ii) Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977; or

(iii) 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:

(A) Such lands are part of a single continuous surface coal mining operation begun under a permit issued before August 3, 1977; and

(B) The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract, or lease but not including an option to buy, lease, or contract; and

(C) The lands contain part of a 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 continuous surface coal mining operation) begun under a permit issued prior to August 3, 1977.

(3) 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 contiguous parcels were part of a single permitted operation. For the purposes of this paragraph, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other

properly executed legal documents (not including options) that specifically treat physically separate parcels as one surface coal mining operation.

(b) *Definitions.* For purposes of this section, the following definitions are applicable.

(1) *Prime farmland* means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been historically used for cropland.

(2) *Historically used for cropland* means (i) 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; (ii) 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, or (iii) lands that would likely have been used as cropland for any 5 out of the last 10 years immediately preceding such acquisition but for some fact of ownership or control of the land unrelated to the productivity of the land, 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 protected.

(3) *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.

(4) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow food, feed, fiber, forage, and oilseed crops common to the area to be grown.

(5) The soils can be managed so that in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep, during part of each year the conductivity of saturation extract is less than 4

mmhos/cm and the exchangeable sodium percentage (ESP) is less than 15.

(6) The soils are not flooded frequently during the growing season (less often than once in 2 years).

(7) The soils have a product of K (erodibility factor) $\times$ percent slope of less than 2.0 and a product of I (soil erodibility) $\times C$ (climatic factor) not exceeding 60.

(8) The soils have a permeability rate of at least 0.06 inch per hour in the upper 20 inches and the mean annual soil temperature at a depth of 20 inches is less than 59 degrees F.; the permeability rate is not a limiting factor if the mean annual soil temperature is 59 degrees F. or higher.

(9) Less than 10 percent of the surface layer (upper 6 inches) in these soils consists of rock fragments coarser than 3 inches.

(c) *Indentification of prime farmland.* Prime farmland shall be identified on the basis of soil surveys submitted by the applicant. The regulatory authority also may require data on irrigation, drainage, flood control, and subsurface water management. The requirement for submission of soil surveys may be waived by the regulatory authority, if the applicant can demonstrate according to the procedures in paragraph (d) of this section that no prime farmlands are involved. Soil surveys shall be conducted according to standards of the National Cooperative Soil Survey, which include the procedures set forth in U.S. Department of Agriculture Handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual), and shall include—

(1) Data on moisture availability, temperature regime, flooding, water table, erosion characteristics, permeability, or other information that is needed to determine prime farmland in accordance with paragraph (b) of this section;

(2) A map designating the exact location and extent of the prime farmland; and

(3) A description of each soil mapping unit.

(d) *Negative determination of prime farmland.* The land shall not be considered as prime farmland where the applicant can demonstrate one or more of the following situations—

(1) Lands within the proposed permit boundaries have not been historically used for cropland.

(2) The slope of all land within the permit area is 10 percent or greater.

(3) Land within the permit area is not irrigated or naturally subirrigated, has no developed water supply that is dependable and of adequate quality, and the average annual precipitation is 14 inches or less.

(4) Other factors exist, such as a very rocky surface, or the land is frequently flooded, which clearly place all land within the area outside the purview of prime farmland.

(5) A written notification based on scientific findings and soil surveys that land within the proposed mining area does not meet the applicability requirements in paragraph (a) of this section is submitted to the regulatory authority by a qualified person other than the applicant, and is approved by the regulatory authority.

(e) *Plan for restoration of prime farmland.* The applicant shall submit to the regulatory authority a plan for the mining and restoration of any prime farmland within the proposed permit boundaries. This plan shall be used by the regulatory authority in judging the technological capability of the applicant to restore prime farmlands. The plan shall include—

(1) A description of the original undisturbed soil profile, as determined from a soil survey, showing the depth and thickness of each of the soil horizons that collectively constitute the root zone of the locally adapted crops and are to be removed, stored, and replaced;

(2) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil in accordance with paragraph (g) of this section;

(3) The location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution;

(4) If applicable, documentation such as agricultural school studies or other scientific data from comparable areas that supports the use of other suitable material, instead of the A, B or C soil horizon to obtain on the restored area equivalent or higher levels of yield as

non-mined prime farmlands in the surrounding area under equivalent levels of management; and

(5) Plans for seeding or cropping the final graded mine land and the conservation practices to control erosion and sedimentation during the first 12 months after regrading is completed. Proper adjustments for seasons must be made so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions; and

(6) Available agricultural school studies, company data, or other scientific data for comparable areas that demonstrate that the applicant using his proposed method of reclamation will achieve, within a reasonable time equivalent or higher levels of yield after mining as existed before mining.

(f) *Consultation with Secretary of Agriculture and issuance of permit.* (1) The regulatory authority may grant a permit which shall incorporate the plan submitted under paragraph (e) of this section, if it finds in writing that the applicant—

(i) Has the technological capability to restore the prime farmland within the proposed permit area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management; and

(ii) Will achieve compliance with the standards of paragraph (g) of this section.

(2) Before any permit is issued for areas that include prime farmlands, the regulatory authority shall consult with the Secretary of Agriculture. The Secretary of Agriculture will provide a review of the proposed method of soil reconstruction and comment on possible revisions that will result in a more complete and adequate restoration. The Secretary of Agriculture has assigned his responsibilities under this paragraph to the Administrator of the U.S. Soil Conservation Service and the U.S. Soil Conservation Service will carry out the consultation and review through their State Conservationist, located in each State.

(g) *Special requirements.* For all prime farmlands to be mined and reclaimed,

§ 716.10

30 CFR Ch. VII (7–1–17 Edition)

the applicant shall meet the following special requirements:

(1) All soil horizons to be used in the reconstruction of the soil shall be removed before drilling, blasting, or mining to prevent contaminating the soil horizons with undesirable materials. Where removal of soil horizons result in erosion that may cause air and water pollution, the regulatory authority shall specify methods of treatment to control erosion of exposed overburden. The permittee shall—

(i) Remove separately the entire A horizon or other suitable soil materials which will create a final soil having an equal or greater productive capacity than that which existed prior to mining in a manner that prevents mixing or contamination with other material before replacement;

(ii) Remove separately the B horizon of the natural soil or a combination of B horizon and underlying C horizon or other suitable soil material that will create a reconstructed root zone of equal or greater productivity capacity than that which existed prior to mining in a manner that prevents mixing or contamination with other material; and

(iii) Remove separately the underlying C horizons or other strata, or a combination of such horizons or other strata, to be used instead of the B horizon that are of equal or greater thickness and that can be shown to be equal or more favorable for plant growth than the B horizon, and that when replaced will create in the reconstructed soil a final root zone of comparable depth and quality to that which existed in the natural soil.

(2) If stockpiling of soil horizons is allowed by the regulatory authority in lieu of immediate replacement, the A horizon and B horizon must be stored separately from each other. The stockpiles must be placed within the permit area and where they will not be disturbed or exposed to excessive erosion by water or wind before the stockpiled horizons can be redistributed on terrain graded to final contour. Stockpiles in place for more than 30 days must meet the requirements of § 715.16(c).

(3) Scarify the final graded land before the soil horizons are replaced.

(4) Replace the material from the B horizon, or other suitable material specified in paragraph (g)(1)(ii) or (g)(1)(iii) of this section in such a manner as to avoid excessive compaction of overburden and to a thickness comparable to the root zone that existed in the soil before mining.

(5) Replace the A horizon or other suitable soil materials, which will create a final soil having an equal or greater productive capacity than existed prior to mining, as the final surface soil layer to the thickness of the original soil as determined in paragraph (g)(1)(i) of this section in a manner that—

(i) Prevents excess compaction of both the surface layer and underlying material and reduction of permeability to less than 0.06 inch per hour in the upper 20 inches of the reconstructed soil profile; and

(ii) Protects the surface layer from wind and water erosion before it is seeded or planted.

(6) Apply nutrients and soil amendments as needed to establish quick vegetative growth.

[42 FR 62691, Dec. 13, 1977; 43 FR 2722, Jan. 19, 1978, as amended at 46 FR 47529, Sept. 28, 1981; 46 FR 47721, Sept. 29, 1981]

§ 716.10 Information collection.

The Office of Management and Budget has determined that the information collection requirements contained in 30 CFR part 716 do not require approval under the Paperwork Reduction Act.

[59 FR 43420, Aug. 23, 1994]

PART 717—UNDERGROUND MINING GENERAL PERFORMANCE STANDARDS

Sec.

717.10 Information collection.

717.11 General obligations.

717.12 Signs and markers.

717.13 [Reserved]

717.14 Backfilling and grading of road cuts, mine entry area cuts, and other surface work areas.

717.15 Disposal of excess rock and earth materials on surface areas.

717.16 [Reserved]

717.17 Protection of the hydrologic system.

717.18 Dams constructed of or impounding waste material.

717.19 [Reserved]

Surface Mining Reclamation and Enforcement, Interior

§ 717.14

717.20 Topsoil handling and revegetation.

AUTHORITY: Secs. 201 and 501, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62695, Dec. 13, 1977, unless otherwise noted.

§ 717.10 Information collection.

The Office of Management and Budget has determined that the information collection requirements contained in 30 CFR part 717 do not require approval under the Paperwork Reduction Act.

[59 FR 43420, Aug. 23, 1994]

§ 717.11 General obligations.

(a) *Compliance.* All underground coal mining and associated reclamation operations conducted on lands where any element of the operations is regulated by a State shall comply with the initial performance standards of this part according to the time schedule specified in § 710.11.

(1) For the purposes of this part, *underground coal mining and associated reclamation operations* mean a combination of *surface operations* and *underground operations*. *Surface operations* include construction, use, and reclamation of new and existing access and haul roads, aboveground repair areas, storage areas, processing areas, shipping areas, and areas upon which are sited support facilities including hoist and ventilating ducts, and on which materials incident to underground mining operations are placed. *Underground operations* include underground construction, operation, and reclamation of shafts, adits, underground support facilities, underground mining, hauling, storage, and blasting.

(2) For the purpose of this part the term *permittee* means the person permitted to conduct underground mining operations by a State or if no permit is issued in the State, the person operating a mine.

(3) For the purpose of this part, *Disturbed areas* means surface work areas and lands affected by surface operations including, but not limited to, roads, mine entry excavations, above ground (surface) work areas, such as tipples, coal processing facilities and other operating facilities, waste work and spoil disposal areas, and mine waste impoundments or embankments.

(4) Where State environmental protection standards are adopted for a specific State because they are more stringent than the standards of this part, they will be published in part 718 of this chapter.

(b) *Authorizations to operate.* A copy of all current permits, licenses, approved plans or other authorizations to operate the mine shall be available for inspection at or near the mine site.

§ 717.12 Signs and markers.

(a) *Specifications.* All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material, and shall conform to local ordinances and codes. The signs and other markers shall be maintained during all operations to which they pertain.

(b) *Mine and permit identification signs.* Signs identifying the mine area shall be displayed at all points of access to the permit area from public highways. Signs shall show the name, business address, and telephone number of the permittee and identification numbers of current mining and reclamation permits or other authorizations to operate. Such signs shall not be removed until after release of all bonds.

§ 717.13 [Reserved]

§ 717.14 Backfilling and grading of road cuts, mine entry area cuts, and other surface work areas.

(a) Upon completion of underground mining, surface work areas which are involved in excavation, disposal of materials, or otherwise affected, shall be regraded to approximate original contour. The permittee shall transport, backfill and compact fill material to assure stability or to prevent leaching of toxic pollutants. Barren rock or similar materials excess to the mining operations and which are disposed on the land surface shall be subject to the provision of § 717.15 of this part. Roads and support facility areas existing prior to the effective date of this part and used in support of underground mining operations which are subject to this part shall be regraded to the extent deemed feasible by the regulatory authority based on the availability of

§717.14

30 CFR Ch. VII (7-1-17 Edition)

backfill material and resulting stability of the affected lands after reclamation. As a minimum, the permittee shall be required to:

(1) Retain all earth, rock and other mineral nonwaste materials on the solid portion of existing or new benches, except that the regulatory authority may permit placement of such material at the site of the faceup as a means of disposing of excavated spoil when additional working space is needed to facilitate operations. Such placement of material shall be limited to minimize disturbance of land and to the hydrologic balance. Such fills shall be stabilized with vegetation and shall achieve a minimum static safety factor of 1.5. In no case shall the outslope exceed the angle of repose.

(2) Backfill and grade to the most moderate slope possible to eliminate any highwall along roads, mine entry faces or other areas. Slopes shall not exceed the angle of repose or such lesser slopes as required by the regulatory authority to maintain stability.

(b) On approval by the regulatory authority and in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed if the terraces are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(1) The width of the individual terrace bench shall not exceed 20 feet unless specifically approved by the regulatory authority as necessary for stability erosion control, or roads.

(2) The vertical distance between terraces shall be as specified by the regulatory authority to prevent excessive erosion and to provide long-term stability.

(3) The slope of the terrace outslope shall not exceed 1v:2h (50 percent). Outslopes which exceed 1v:2h (50 percent) may be approved if they have a minimum static safety factor of 1.5 or more and provide adequate control over erosion and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(4) Culverts and underground rock drains shall be used on the terrace only

when approved by the regulatory authority.

(c) All surface operations on steep slopes of 20 degrees or more or on such lesser slopes as the regulatory authority define as a *steep slope* shall be conducted so as not to place any material on the downslope below road cuts, mine working or other benches, other than in conformance with paragraph (a)(1) of this part.

(d) *Regrading or stabilizing rills and gullies.* When rills or gullies deeper than 9 inches form in areas that have been regraded and the topsoil replaced but vegetation has not yet been established, the permittee shall fill, grade, or otherwise stabilize the rills and gullies and reseed or replant the areas according to §717.20. The regulatory authority shall specify that erosional features of lesser size be stabilized if they result in additional erosion and sedimentation.

(e) *Covering coal and acid-forming, toxic-forming, combustible, and other waste materials; stabilizing backfilled materials; and using waste material for fill.* Any acid-forming, toxic-forming, combustible materials, or any other waste materials as identified by the regulatory authority that are exposed, used, or produced during underground mining and which are deposited on the land surface shall, after placement in accordance with §717.15 of this part, be covered with a minimum of 4 feet of nontoxic and noncombustible material; or, if necessary, treated to neutralize toxicity, in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land uses. Where necessary to protect against upward migration of salts, exposure by erosion, to provide an adequate depth for plant growth, or to otherwise meet local conditions, the regulatory authority shall specify thicker amount of cover using nontoxic material. Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution or otherwise violate the provisions of §717.17 of this part.

(f) *Grading along the contour.* All final grading, preparation of earth, rock and other nonwaste materials before replacement of topsoil, and placement of

topsoil in accordance with § 717.20, shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation or placement along the contour would be hazardous to equipment operators, grading, preparation or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

§ 717.15 Disposal of excess rock and earth materials on surface areas.

Excess rock and earth materials produced from an underground mine and not disposed in underground workings or used in backfilling and grading operations shall be placed in surface disposal areas in accordance with requirements of § 715.15. Where the volume of such material is small and its chemical and physical characteristics do not pose a threat to either public safety or the environment, the regulatory authority may modify the requirements of § 715.15 in accordance with § 717.14(a)(1).

§ 717.16 [Reserved]

§ 717.17 Protection of the hydrologic system.

The permittee shall plan and conduct underground coal mining and reclamation operations to minimize disturbance of the prevailing hydrologic balance in order to prevent long-term adverse changes in the hydrologic balance that could result from underground coal mining operations, both on and off site. changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized and applicable Federal and State statutes and regulations shall not be violated. The permittee shall conduct operations so as to minimize water pollution and shall, where necessary, use treatment methods to control water pollution. The permittee shall emphasize underground coal mining and reclamation practices that will prevent or minimize water pollution and changes in flows in preference to the use of

water treatment facilities prior to discharge to surface waters. Practices to control and minimize pollution include, but are not limited to, diverting water from underground workings or preventing water contact with acid- or toxic-forming materials, and minimizing water contact time with waste materials, maintaining mine barriers to enhance postmining inundation and sealing, establishing disturbed areas through grading, diverting runoff, achieving quick growing stands of temporary vegetation, and lining drainage channels. If treatment is required to eliminate pollution of surface or ground waters, the permittee shall operate and maintain the necessary water treatment facilities as set forth in this section.

(a) *Water quality standards and effluent limitations.* (1) All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded or planted and which remain subject to the requirements of this section, except for drainage from disturbed areas that have met the requirements of § 717.20 shall be passed through a sedimentation pond or a series of sedimentation ponds prior to leaving the permit area. All waters which flow or are removed from underground operations or underground waters which are removed from other areas to facilitate mining and which discharge to surface waters must be passed through appropriate treatment facilities prior to discharge where necessary to meet effluent limitations.

(2) For purposes of this section only, disturbed areas shall include areas of surface operations but shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this section and the upstream area is not otherwise disturbed by the permittee. Disturbed areas shall not include those surface areas overlying the underground working unless those areas are also disturbed by surface operations such as fill (disposal) areas, support facilities areas, or other major activities which create a risk of pollution.

(3) The regulatory authority may grant exemptions from this requirement only when the disturbed drainage

§717.17

area within the total disturbed area is small and if the permittee shows that sedimentation ponds are not necessary to meet effluent limitations of this paragraph and to maintain water quality in downstream receiving waters. Sedimentation ponds required by this paragraph shall be constructed in accordance with paragraph (e) of this section in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water in accordance with this paragraph. Discharges from areas disturbed by underground operation and by surface operation and reclamation activities conducted thereon, must meet all applicable Federal and State regulations and, at a minimum, the following numerical effluent limitations:

EFFLUENT LIMITATIONS, IN MILLIGRAMS PER LITER, MG/L EXCEPT FOR PH

Effluent characteristics	Maximum allowable ¹	Average of daily values for 30 consecutive discharge days ¹
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
Total suspended solids ²	70.0	35.0
pH ³	(⁴)	(⁴)

¹ Based on representative sampling.

² In Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, and Wyoming, total suspended solids limitations will be determined on a case-by-case basis, but they must not be greater than 45/mg/l (maximum allowable) and 30 mg/l (average of daily value for 30 consecutive discharge days) based on a representative sampling.

³ Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations set forth, the regulatory authority may allow the pH level in the discharge to exceed to a small extent the upper limit of 9.0 in order that the manganese limitations will be achieved.

⁴ Within the range 6.0 to 9.0.

(i) Any overflow or other discharge of surface water from the disturbed area within the permit area demonstrated by the permittee to result from a precipitation event larger than the 10-year 24-hour frequency event will not be subject to the effluent limitations of paragraph (a).

(ii) The permittee shall install, operate, and maintain adequate facilities to treat any water discharged from the disturbed area that violates applicable Federal or State regulations or the limitations of paragraph (a). If the pH of waters to be discharged from the disturbed area is normally less than 6.0,

30 CFR Ch. VII (7-1-17 Edition)

an automatic lime feeder or other neutralization process approved by the regulatory authority shall be installed, operated, and maintained. If the regulatory authority finds that small and infrequent treatment requirements to meet applicable standards do not necessitate use of an automatic neutralization process, and the mine normally produces less than 500 tons of coal per day, the regulatory authority can approve the use of a manual system if the permittee agrees to insure that consistent and timely treatment is carried out.

(iii) The effluent limitations for manganese shall be applicable only to acid drainage.

(b) *Surface water monitoring.* (1) The permittee shall submit for approval by the regulatory authority a surface water monitoring program which meets the following requirements:

(i) Provides adequate monitoring of all discharge from the disturbed area and from the underground operations.

(ii) Provides adequate data to describe the likely daily and seasonal variation in discharges from the disturbed area in terms of flow, pH, total iron, total manganese, and total suspended solids and, as requested by the regulatory authority, any other parameter characteristic of the discharge.

(iii) Provides monitoring at appropriate frequencies to measure normal and abnormal variations in concentration.

(iv) Provides an analytical quality control system including standard methods of analysis such as those specified in 40 CFR part 136.

(v) Within sixty (60) days of the end of each sixty (60) day sample collection period, a report of all samples shall be made to the regulatory authority, unless the discharge for which water monitoring reports are required is subject to regulation by a National Pollution Discharge Elimination System (NPDES) permit issued in compliance with the Clean Water Act of 1977 (33 U.S.C. 1251-1378), (A) which includes equivalent reporting requirements, and (B) which requires filing of the water monitoring reports within 90 days or less of sample collection.

For such discharges, the reporting requirements of this paragraph may be

satisfied by submitting to the regulatory authority on the same time schedule as required by the NPDES permit or within ninety (90) days following sample collection, whichever is earlier, either (1) a copy of the completed reporting form filed to meet the NPDES permit requirements, or (2) a letter identifying the State or Federal government official with whom the reporting form was filed to meet the NPDES permit requirements and the date of filing. In all cases in which analytical results of the sample collections indicate a violation of a permit condition or applicable standard has occurred, the operator shall notify the regulatory authority immediately. Where an NPDES permit effluent limitation requirement has been violated, the permittee should forward a copy of the Discharge Monitoring Report, EPA Form 3320-1, concurrently with notification of the violation.

(2) Equipment, structures, or other measures necessary to accurately measure and sample the quality and quantity of surface water discharges from the disturbed area of the permit area shall be properly installed, maintained and operated and shall be removed when no longer required.

(c) *Diversion and conveyance of overland flow away from disturbed areas.* In order to minimize erosion and to prevent or remove water from contacting toxic-producing deposits, overland flow from undisturbed areas may, as required or approved by the regulatory authority, be diverted away from disturbed areas by means of temporary or permanent diversion structures. The following requirements shall be met for such diversions:

(1) Temporary diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a one year recurrence interval, or a larger event as specified by the regulatory authority. The design criteria must assure adequate protection of the environment and public during the existence of the temporary diversion structure.

(2) Permanent diversion structures are those remaining after mining and reclamation and approved for retention by the regulatory authority and other appropriate State and Federal agen-

cies. To protect fills and property, to prevent water from contacting toxic-producing deposits, and to avoid danger to public health and safety, permanent diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a 100-year recurrence interval or a larger event as specified by the regulatory authority. Permanent diversion structures shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall not be used unless specifically required to prevent seepage or to provide stability and they are approved by the regulatory authority.

(3) Diversions shall be designed, constructed, and maintained in a manner so as to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable State or Federal law. Appropriate sediment control measures for these diversions shall include, but not be limited to, maintenance of appropriate gradients, channel lining, vegetation, and roughness structures and detention basins.

(d) *Stream channel diversions.* In the event that the regulatory authority permits diversion of streams, the regulations of § 715.17(d) shall apply.

(e) *Sedimentation ponds—(1) General requirements.* Sedimentation ponds shall be used individually or in series and shall:

(i) Be constructed before any disturbance of the undisturbed area to be drained into the pond and prior to any discharge of water to surface waters from underground mine workings;

(ii) Be located as near as possible to the disturbed area and out of perennial streams, unless approved by the regulatory authority,

(iii) Meet all the criteria of the section.

(2) *Sediment storage volume.* Sedimentation ponds shall provide a minimum sediment storage volume.

(3) *Detention time.* Sedimentation ponds shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a

§717.17

10-year, 24-hour precipitation event (design event), plus the average inflow from the underground mine.

(4) *Dewatering.* The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the regulatory authority. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sedimentation storage volume.

(5) Each person who conducts underground mining activities shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.

(6) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this section shall not relieve the person from compliance with applicable effluent limitations as contained in paragraph (a) of this section.

(7) There shall be no out-flow through the emergency spillway during the passage of the runoff resulting from the 10-year, 24-hour precipitation events and lesser events through the sedimentation pond, regardless of the volume of water and sediment present from the underground mine during the runoff.

(8) Sediment shall be removed from sedimentation ponds.

(9) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff from a 25-year, 24-hour precipitation event, or larger event specified by the regulatory authority, plus any inflow from the underground mine. The elevation of the crest of the emergency spillway shall be a Minimum of 1.0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the regulatory authority.

(10) The minimum elevation of the top of the settled embankment shall be 1.0 foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum elevation requirement shall apply at all times, including the period after settlement.

(11) The constructed height of the dam shall be increased a minimum of 5

30 CFR Ch. VII (7-1-17 Edition)

percent over the design height to allow for settlement, unless it has been demonstrated to the regulatory authority that the material used and the design will ensure against all settlement.

(12) The minimum top width of the embankment shall not be less than the quotient of $(H + 35)/5$, where H , in feet, is the height of the embankment as measured from the upstream toe of the embankment.

(13) The combined upstream and downstream side slopes of the settled embankment shall not be less than 1v:5h, with neither slope steeper than 1v:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(14) The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified.

(15) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.

(16) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirement of this section. Compaction shall be conducted as specified in the design approved by the regulatory authority.

(17) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream top of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met:

(i) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a 100-year, 24-hour precipitation event, or a larger event specified by the regulatory authority, plus any in-flow from the underground mine.

(ii) The embankment shall be designed and constructed with an acceptable static safety factor of at least 1.5, or a higher safety factor as designated by the regulatory authority to ensure stability.

(iii) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(iv) The criteria of the Mine Safety and Health Administration as published in 30 CFR 77.216 shall be met.

(18) Each pond shall be designed and inspected during construction under the supervision of, and certified after construction by, a registered professional engineer.

(19) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water is being impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated, in accordance with § 717.20.

(20) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions and reports and notifications shall be made to the regulatory authority, in accordance with 30 CFR 77.216-3. With the approval of the regulatory authority, dams not meeting these criteria (30 CFR 77.216(a)) shall be examined four times per year.

(21) Sedimentation ponds shall not be removed until the disturbed area has been restored and the vegetation requirements of § 715.20 are met and the drainage entering the pond has met the applicable State and Federal water quality requirements for the receiving stream. When the sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with §§ 717.14 and 717.20, unless the pond has been approved by the regulatory authority for retention as compatible with the approved post-mining land use paragraph (k) of this section. If the regulatory authority approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments of paragraph (k).

(22)(i) Where surface mining activities are proposed to be conducted on steep slopes, as defined in § 716.2 of this chapter, special sediment control

measures may be followed if the person has demonstrated to the regulatory authority that a sedimentation pond (or series of ponds) constructed according to paragraph (e) of this section—

(A) Will jeopardize public health or safety; or

(B) Will result in contributions of suspended solids to streamflow in excess of the incremental sediment volume trapped by the additional pond size required.

(ii) Special sediment control measures shall include but not be limited to—

(A) Designing, constructing, and maintaining a sedimentation pond as near as physically possible to the disturbed area which complies with the design criteria of this section to the maximum extent possible.

(B) A plan and commitment to employ sufficient onsite sedimentation control measures including bench sediment storage, filtration by natural vegetation, mulching, and prompt revegetation which, in conjunction with the required sediment pond, will achieve and maintain applicable effluent limitations. The plan submitted pursuant to this paragraph shall include a detailed description of all onsite control measures to be employed, a quantitative analysis demonstrating that onsite sedimentation control measures, in conjunction with the required sedimentation pond, will achieve and maintain applicable effluent limitations, and maps depicting the location of all onsite sedimentation control measures.

(f) *Discharge structures.* Discharges from sedimentation ponds and diversion structures shall be controlled, where necessary, using energy dissipators, surge ponds, and other devices to reduce erosion and prevent deepening or enlargement of stream channels and to minimize disturbances to the hydrologic balance.

(g) *Acid and toxic materials.* Drainage to ground and surface waters which emanates from acid-forming or toxic-forming mine waste materials and spoils placed on the land surface shall be avoided by—

§ 717.17

30 CFR Ch. VII (7–1–17 Edition)

(1) Identifying, burying, and treating where necessary, spoil or other materials that, in the judgment of the regulatory authority, will be toxic to vegetation or that will adversely affect water quality if not treated or buried. Such material shall be disposed in accordance with the provision of § 717.14(e);

(2) Preventing or removing water from contact with toxic-producing deposits;

(3) Burying or otherwise treating all toxic or harmful materials within 30 days if such materials are subject to wind and water erosion, or within a lesser period designated by the regulatory authority. If storage of such materials is approved, the materials shall be placed on impermeable material and protected from erosion and contact with surface water. Coal waste ponds and other coal waste materials shall be maintained according to paragraph (g)(4) of this section and § 717.18 shall apply;

(4) Burying or otherwise treating waste materials from coal preparation plants no later than 90 days after the cessation of the filling of the disposal area. Burial or treatment shall be in accordance with § 717.14(e) of this part;

(5) Casing, sealings, or otherwise managing boreholes, shafts, wells, and auger holes or other more or less horizontal holes to prevent pollution of surface or ground water and to prevent mixing of ground waters of significantly different quality. All boreholes that are within the permit area but are outside the surface coal mining area or which extend beneath the coal to be mined and into water-bearing strata shall be plugged permanently in a manner approved by the regulatory authority, unless boreholes have been approved for use in monitoring.

(h) *Ground water systems.* (1) Underground operations shall be conducted to minimize adverse effects on ground water flow and quality, and to minimize offsite effects. The permittee will be responsible for performing monitoring according to paragraph (h)(2) of this section to ensure operations conform to this requirement.

(2) Ground water levels, subsurface flow and storage characteristics, and the quality of ground water shall be

monitored in a manner approved by the regulatory authority to determine the effects of underground coal mining operations on the quantity and quality of water in ground water systems at the mine area and in associated offsite areas. When operations are conducted in such a manner that may affect the ground water system, ground water levels and ground water quality shall be periodically monitored using wells which can adequately reflect changes in ground water quantity and quality resulting from such operations. Sufficient water wells must be used by the permittee. The regulatory authority may require drilling and development of additional wells if needed to adequately monitor the ground water system. As specified and approved by the regulatory authority, additional hydrologic tests, such as aquifer tests, must be undertaken by the permittee to demonstrate compliance with paragraph (h)(1) of this section.

(i) *Water rights and replacement.* The permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from surface coal mine operation by the permittee.

(j) *Hydrologic impact of roads—(1) General.* Access and haul roads and associated bridges, culverts, ditches, and road rights-of-way shall be constructed, maintained, and reclaimed so as to the extent possible, using the best technology currently available, prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall the contributions be in excess of requirements set by applicable State or Federal law. All haul and access roads shall be removed and the land affected shall be regraded and revegetated consistent with the requirements of §§ 717.14 and 717.20, unless retention of a road is approved and assured of necessary maintenance to adequately control erosion.

(2) *Construction.* (i) All roads, insofar as possible, shall be located on ridges or on flatter and more stable slopes to minimize erosion. Stream fords are prohibited unless they are specifically approved by the regulatory authority as temporary routes across dry streams that will not adversely affect sedimentation and that will not be used for coal haulage. Other stream crossings shall be made using bridges, culverts, or other structures designed and constructed to meet the requirements of this paragraph. Roads shall not be located in active stream channels nor shall they be constructed or maintained in a manner that increases erosion or causes significant sedimentation or flooding. However, nothing in this paragraph will be construed to prohibit relocation of stream channels in accordance with paragraph (d) of this section.

(ii) In order to minimize erosion and subsequent disturbances of the hydrologic balance, roads shall be constructed in compliance with the following grade restrictions or other grades determined by the regulatory authority to be necessary to control erosion:

(A) The overall sustained grade shall not exceed 1v:10h (10 percent).

(B) The maximum grade greater than 10 percent shall not exceed 1v:6.5h (15 percent) for more than 300 feet.

(C) There shall not be more than 300 feet of grade exceeding 10 percent within each 1,000 feet.

(iii) All access and haul roads shall be adequately drained using structures such as, but not limited to, ditches, water barriers, cross drains, and ditch relief drains. For access and haul roads that are to be maintained for more than 1 year, water-control structures shall be designed with a discharge capacity capable of passing the peak runoff from a 10-year, 24-hour precipitation event. Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets. Drainage ditches shall be provided at the toe of all cut slopes formed by construction of roads. Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment

control structures. Ditch relief and cross drains shall be spaced according to grade. Effluent limitations of paragraph (a) of this section shall not apply to drainage from access and haul roads located outside the disturbed area as defined in this section unless otherwise specified by the regulatory authority.

(iv) Access and haul roads shall be surfaced with durable material. Toxic- or acid-forming substances shall not be used. Vegetation may be cleared only for the essential width necessary for road and associated ditch construction and to serve traffic roads.

(3) *Maintenance.* (i) Access and haul roads shall be routinely maintained by means such as, but not limited to, wetting, scraping, or surfacing.

(ii) Ditches, culverts, drains, trash racks, debris basins, and other structures serving to drain access and haul roads shall not be restricted or blocked in any manner that impedes drainage or adversely affects the intended purpose of the structure.

(4) Access roads constructed for and used only to provide infrequent service to surface facilities, such as ventilators or monitoring devices shall be exempt from the requirements of paragraph (j)(2) of this section provided adequate stabilization to control erosion is achieved through use of alternative measures.

(k) *Hydrologic impacts of other transport facilities.* Railroad loops, spurs, conveyors, or other transport facilities shall be constructed, maintained, and reclaimed to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available and to control other diminution or degradation of water quality and quantity. In no event shall contributions be in excess of requirements set by applicable State or Federal law.

§ 717.18

(1) *Discharge of waters into underground mines.* Surface and ground waters shall not be discharged or diverted into underground mine workings.

(Secs. 101, 102, 201, 501, 503-510, 515-517, 523, and 701, Surface Mining Reclamation Act of 1977; Pub. L. 95-87 (30 U.S.C. 1201, 1202, 1211, 1251-1260, 1265-1267, 1273, 1291))

[42 FR 62695, Dec. 13, 1977, as amended at 43 FR 8092, Feb. 27, 1978; 43 FR 21459, May 18, 1978; 44 FR 30632, May 25, 1979; 44 FR 36887, June 22, 1979; 44 FR 77452, Dec. 31, 1979]

EFFECTIVE DATE NOTE: A document published at 44 FR 77452, Dec. 31, 1979, suspended § 717.17(a)(3)(i) insofar as it applies to total suspended solids (TSS) discharges.

§ 717.18 Dams constructed of or impounding waste material.

(a) *General.* No waste material shall be used in or impounded by existing or new dams without the approval of regulatory authority. The permittee shall design, locate, construct, operate, maintain, modify, and abandon or remove all dams (used either temporarily or permanently) constructed of waste materials, in accordance with the requirements of this section.

(b) *Construction of dams.* (1) Waste shall not be used in the construction of dams unless demonstrated through appropriate engineering analysis, to have no adverse effect on stability.

(2) Plans for dams subject to this section, and also including those dams that do not meet the size or other criteria of § 77.216(a) of this title, shall be approved by the regulatory authority before construction and shall contain the minimum plan requirements established by the Mining Enforcement and Safety Administration pursuant to § 77.216-2 of this title.

(3) Construction requirements are as follows: (i) Design shall be based on the flood from the probable maximum precipitation event unless the permittee shows that the failure of the impounding structure would not cause loss of life or severely damage property or the environment, in which case, depending on site conditions, a design based on a precipitation event of no less than 100-year frequency may be approved by the regulatory authority.

(ii) The design freeboard distance between the lowest point on the embankment crest and the maximum water

30 CFR Ch. VII (7-1-17 Edition)

elevation shall be at least 3 feet to avoid overtopping by wind and wave action.

(iii) Dams shall have minimum safety factors as follows:

Case	Loading condition	Minimum safety factor
I	End of construction	1.3
II	Partial pool with steady seepage saturation.	1.5
III	Steady seepage from spillway or decant crest.	1.5
IV	Earthquake (cases II and III with seismic loading).	1.0

(iv) The dam, foundation, and abutment shall be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the factors of safety of the dam for all loading conditions in paragraph (b)(3)(iii) of this section and for all increments of construction.

(v) Seepage through the dam, foundation, and abutments shall be controlled to prevent excessive uplift pressures, internal erosion, sloughing, removal of material by solution, or erosion of material by loss into cracks, joints, and cavities. This may require the use of impervious blankets, pervious drainage zones or blankets, toe drains, relief wells, or dental concreting of jointed rock surface in contact with embankment materials.

(vi) Allowances shall be made for settlement of the dams and the foundation so that the freeboard will be maintained.

(vii) Impoundments created by dams of waste materials shall be subject to a minimum drawdown criteria that allows the facility to be evacuated by spillways or decants of 90 percent of the volume of water stored during the design precipitation event within 10 days.

(viii) During construction of dams subject to this section, the structures shall be periodically inspected by a registered professional engineer to ensure construction according to the approved design. On completion of construction, the structure shall be certified by a registered professional engineer experienced in the field of dam

Surface Mining Reclamation and Enforcement, Interior

§ 721.11

construction as having been constructed in accordance with accepted professional practice and the approved design.

(ix) A permanent identification marker, at least 6 feet high that shows the dam number assigned pursuant to § 77.216-1 of this title and the name of the person operating or controlling the dam, shall be located on or immediately adjacent to each dam within 30 days of certification of design pursuant to this section.

(4) All dams including those not meeting the size or other criteria of § 77.216(a) of this title, shall be routinely inspected by a registered professional engineer, or someone under the supervision of a registered professional engineer, in accordance with Mining Enforcement, and Safety Administration regulations pursuant to § 77.216-3 of this title.

(5) All dams shall be routinely maintained. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible materials present on the surface, other than that used for surface stability such as mulch or dry vegetation, shall be removed and any other appropriate maintenance procedures followed.

(6) All dams subject to this section shall be recertified annually as having been constructed and modified in accordance with current prudent engineering practices to minimize the possibility of failures. Any changes in the geometry of the impounding structure shall be highlighted and included in the annual recertification report. These certifications shall include a report on existing and required monitoring procedures and instrumentation, the average and maximum depths and elevations of any impounded waters over the past year, existing storage capacity of impounding structures, any fires occurring in the material over the past year and any other aspects of the structures affecting their stability.

(7) Any enlargements, reductions in size, reconstruction or other modification of the dams shall be approved by the regulatory authority before construction begins.

(8) All dams shall be removed and the disturbed areas regraded, revegetated,

and stabilized before the release of bond unless the regulatory authority approves retention of such dams as being compatible with an approved postmining land use (§ 715.13).

§ 717.19 [Reserved]

§ 717.20 Topsoil handling and revegetation.

(a) Topsoil shall be removed as a separate operation from areas to be disturbed by surface operations, such as roads and areas upon which support facilities are to be sited. Selected overburden materials may be used instead of, or as a substitute for topsoil where the resulting soil medium is determined by the regulatory authority to be equal to or more suitable for revegetation. Topsoil shall be segregated, stockpiled, and protected from wind and water erosion, or contaminants. Disturbed areas no longer required for the conduct of mining operations shall be regraded, topsoil distributed, and revegetated.

(b) The permittee shall establish on all land that has been disturbed by mining operations a diverse, effective, and permanent vegetative cover capable of self-regeneration and plant succession, and adequate to control soil erosion. Introduced species may be substituted for native species if approved by the regulatory authority. Introduced species shall meet applicable State and Federal seed or introduced species statutes, and may not include poisonous or potentially toxic species.

PART 721—FEDERAL INSPECTIONS

Sec.

721.11 Extent.

721.12 Right of entry.

721.13 Inspections based on citizen requests.

721.14 Failure to give notice and lack of reasonable belief.

AUTHORITY: Secs. 201, 501, and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62700, Dec. 13, 1977, unless otherwise noted.

§ 721.11 Extent.

The authorized representative of the Secretary shall conduct inspections of surface coal mining and reclamation

§ 721.12

30 CFR Ch. VII (7–1–17 Edition)

operations subject to regulation under the Act—

(a) On the basis of not less than two consecutive State inspection reports indicating a violation of the Act, regulations or permit conditions required by the Act;

(b) On the basis of information provided by a State or any person which gives rise to a reasonable belief that the provisions of the Act, regulations or permit conditions required by the Act are being violated, or that a condition or practice exists which creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources; and

(c) On a random basis of at least one complete inspection each 6 months. A complete inspection is an onsite review of the operator's compliance with all applicable standards in these regulations within the entire area disturbed or affected by mining.

§ 721.12 Right of entry.

(a) Authorized representatives of the Secretary, without advance notice and upon presentation of appropriate credentials and without a search warrant, shall have the right of entry to, upon, or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained are located.

(b) The authorized representatives may at reasonable times, and without delay, have access to and copy any records, and inspect any monitoring equipment or method of operation required under this Act, the regulations or the permit.

§ 721.13 Inspections based on citizen requests.

(a) *Citizens reports.* (1) Any person who believes that there is a violation of the Act, regulations or permit conditions required by the Act or that any imminent danger or harm exists may report this information to the Office of Surface Mining Reclamation and Enforcement. Written reports must be signed and include a phone number where the reporting party can be contacted. Oral reports will be accepted but must be followed by a written and

signed statement including the information reported. The complaint or other information shall be considered as having a reasonable basis if it alleges facts which, if proven to be true, would be sufficient to show a violation of the Act, regulations or permit. Unless the Office has reason to believe that the information is incorrect, or determines that even if true it would not constitute a violation, the Office shall conduct an inspection within 15 days of receipt of the complaint. If the complaint alleges an imminent danger or harm, the inspection shall be conducted promptly.

(2) The identity of any person supplying information to the Office relating to possible violations or imminent dangers or harms shall remain confidential with the Office, if requested by the person supplying the information, unless disclosure is required under the Freedom of Information Act (5 U.S.C. 552) or by other Federal law.

(b) *Right to accompany the authorized representative of the Secretary.* (1) If a Federal inspection is conducted as a result of information provided to the Office, the person who provided the information shall be notified when the inspection is to occur and the person will be allowed to accompany the authorized representative of the Secretary during the inspection.

(2) Any person accompanying an authorized representative of the Secretary has a right of entry to, upon and through the mining and reclamation operations about which he supplied information, only if he is in the presence of and is under the control, direction and supervision of the authorized representative while on the mine property.

(c) *Notification of results of investigation.* Within 10 days of the inspection or, if no inspection, within 15 days of the complaint, the Office shall notify the person in writing of the following—

(1) The results of the investigation, including a description of any inspection which occurred and any enforcement action taken; copies of Federal inspection reports, notices of violation, and cessation orders may be forwarded to the person in satisfaction of this requirement;

(2) If no inspection was conducted, an explanation of the reason for not inspecting;

(3) A statement as to the person's right to informal review of the actions or inactions of the Office.

(4) The permittee shall receive copies of all such reports which have not already been given to the permittee, except that the name of the complainant shall be removed.

(d) *Review of action of local offices.* A person who does not agree with the action taken by the Office on their report may request the Regional Director to review the complaint and actions taken. The Regional Director shall advise the person in writing, within 30 days of the results of the review. Informal review under this subsection shall not affect any rights to formal review or a citizen's suit.

§ 721.14 Failure to give notice and lack of reasonable belief.

No notice of violation or cessation order may be vacated by reason of failure to give notice required by the Act or these regulations prior to the inspection; or by reason of a subsequent determination that prior to the inspection the Office did not have information sufficient to create a reasonable belief that a violation had occurred.

PART 722—ENFORCEMENT PROCEDURES

Sec.

722.1 Scope.

722.11 Imminent dangers and harms.

722.12 Non-imminent dangers or harms.

722.13 Failure to abate.

722.14 Service of notices of violation, cessation orders, and orders to show cause.

722.15 Informal public hearing.

722.16 Pattern of violations.

722.17 Inability to comply.

AUTHORITY: Secs. 201, 501, and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62701, Dec. 13, 1977, unless otherwise noted.

§ 722.1 Scope.

The regulations of this part set forth general procedures governing issuance of orders of cessation, notices of violation, and orders to show cause under section 521 of the Act.

§ 722.11 Imminent dangers and harms.

(a) If an authorized representative of the Secretary finds conditions or practices, or violations of any requirement of the Act, or any requirement of this chapter applicable during the interim regulatory program, which create an imminent danger to the health or safety of the public, the authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or that portion of the operation relevant to the condition, practice, or violation.

(b) If an authorized representative of the Secretary finds conditions or practices, or violations of any requirement of the Act, or any requirement of this chapter applicable during the interim regulatory program, which are causing, or can reasonably be expected to cause, significant, imminent environmental harm to land, air, or water resources, the authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or that portion of the operation relevant to the condition, practice, or violation.

(c) Surface coal mining and reclamation operations conducted by any person without a valid surface coal mining permit required by this subchapter constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations.

(d) An authorized representative of the Secretary shall impose affirmative obligations on an operator which the authorized representative deems necessary to abate the condition, practice, or violation if—

(1) A cessation order is issued under paragraph (a) or (b) of this section; and

(2) The cessation of mining or reclamation activities will not completely abate the imminent danger or harm or eliminate the practices or conditions that contributed to the imminent danger or harm.

(e) When imposing affirmative obligations under this section, the authorized representative of the Secretary shall require abatement of the imminent danger or harm in the most expeditious manner physically possible. The affirmative obligation shall include a time by which abatement shall be accomplished and may include, among other things, the use of existing or additional personnel and equipment.

(f) Reclamation operations not directly the subject of the order or affirmative obligation shall continue during any cessation order.

(g) An authorized representative of the Secretary shall terminate a cessation order issued under paragraph (a) or (b) of this section by written notice when the authorized representative determines that the conditions or practices or violations that contributed to the imminent danger to life or the environment have been eliminated.

[42 FR 62701, Dec. 13, 1977, as amended at 45 FR 67501, Oct. 10, 1980; 47 FR 18558, Apr. 29, 1982]

§ 722.12 Non-imminent dangers or harms.

(a) If an authorized representative of the Secretary finds conditions or practices, or violations of any requirement of the Act, or of any requirement of this chapter applicable during the interim regulatory program, but such violations do not create an imminent danger to the health or safety of the public, or are not causing and cannot reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the authorized representative shall issue a notice of violation fixing a reasonable time for abatement.

(b) An authorized representative of the Secretary may extend the time to abate a violation by written notice if the failure to abate within the time set was not caused by the permittee's lack of diligence.

(c) An authorized representative of the Secretary may establish interim steps in an abatement period. If the permittee fails to meet any interim step within the time set, the authorized representative may extend the time set for meeting the interim step, in accordance with this section, or may

issue a cessation order pursuant to § 722.13 of this part.

(d) The total time for abatement as originally fixed and subsequently extended shall not exceed 90 days except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in § 722.12(e). An extended abatement date pursuant to this section shall not be granted when the permittee's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

(e) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

(2) Where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

(3) Where the permittee cannot abate within 90 days due to a labor strike;

(4) Where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly:

(i) Would cause more environmental harm than it would prevent; or

(ii) Requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

(f) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(g) If any of the conditions in paragraphs (e) (1) through (4) exist, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an

abatement period without the concurrence of the Director or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of § 722.12 (d) and (e). In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The inspector's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.

(h) Any determination made under paragraph (g) shall be in writing and shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR 4.1281 and the regulations at 43 CFR part 4.

(i) No extension granted under paragraph (b) may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of paragraph (g).

[42 FR 62701, Dec. 13, 1977; 43 FR 2722, Jan. 19, 1978, as amended at 45 FR 67501, Oct. 10, 1980; 46 FR 41704, Aug. 17, 1981]

§ 722.13 Failure to abate.

An authorized representative of the Secretary shall order cessation of surface coal mining and reclamation operations, or the portion relevant to the violation, when a notice of violation has been issued under § 722.12 of this part and the permittee fails to abate the violation within the time originally fixed or subsequently extended. In a cessation order issued under this section, the authorized representative shall impose affirmative obligations to abate the violation in the manner provided in § 722.11 of this part. Reclamation operations not directly the subject

of the order or affirmative obligation shall continue during any cessation order. A cessation order issued under this section shall be terminated as provided in § 722.11 of this part.

§ 722.14 Service of notices of violation, cessation orders, and orders to show cause.

(a) A notice of violation or cessation order shall be served on the person to whom it is directed or his designated agent promptly after issuance, as follows:

(1) By tendering a copy at the surface coal mining and reclamation operation to the designated agent or to the person to whom it is directed. If no such agent is reasonably available, a copy may be tendered to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the surface coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his or her designated agent, or by any alternative means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice or order or of the certified mail and shall not be deemed incomplete because of refusal to accept.

(b) A show cause order, or a vacation, modification or termination of a notice or order, may be served on the person to whom it is issued in either manner provided in paragraph (a) of this section.

(c) Designation by any person of an agent for service of notices and orders shall be made in a conspicuous, easy-

§ 722.15

30 CFR Ch. VII (7-1-17 Edition)

to-read manner on the mine identification sign, or on the mine bulletin board posted by the minesite office.

(d) The Office shall furnish copies of notices and orders to the State regulatory authority, if any, after their issuance. The Office may furnish copies to any person having an interest in the surface coal mining and reclamation operation or the permit area, such as the owner of the fee, a corporate officer of the permittee, or the bonding company.

(Surface Mining Control and Reclamation Act of 1977, secs. 201, 501, 521(a)(5) (30 U.S.C. 1211, 1251, 1271(a)(5)))

[45 FR 2628, Jan. 11, 1980, as amended at 56 FR 28445, June 20, 1991]

§ 722.15 Informal public hearing.

(a) Except as provided in paragraphs (b) and (c) of this section, a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the minesite so that it may be viewed during the hearing or at any other location acceptable to the Office and the person to whom the notice or order was issued. The Office of Surface Mining office nearest to the minesite shall be deemed to be reasonably close to the minesite unless a closer location is requested and agreed to by the Office. Expiration of a notice or order shall not affect the Office's right to assess civil penalties with respect to the period during which the notice or order was in effect. No hearing will be required where the condition, practice or violation in question has been abated, or the hearing has been waived. For purposes of this section only, mining means (1) extracting coal from the earth or from coal waste piles and transporting it within or from the permit area, and (2) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than at a minesite.

(b) A notice of violation or cessation order shall not expire as provided in paragraph (a) of this section if the informal public hearing has been waived or if, with the consent of the person to

whom the notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of this section:

(1) The informal public hearing will be deemed waived if the person to whom the notice or order is issued:

(i) Is informed, by written notice served in the manner provided in paragraph (b)(2) of this section, that he will be deemed to have waived an informal public hearing unless he requests one within 30 days after service of the notice or order, and

(ii) Fails to request an informal public hearing within that time.

(2) The written notice referred to in paragraph (b)(1)(i) of this section shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than five days after the notice or order is served on such person.

(3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if his request is received on or after the 21st day after the service of the notice of order. The extension of time shall be equal to the number of days elapsed after the 21st day.

(c) The Office shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to the notice or order; and

(3) The State regulatory authority, if any.

(d) The Office shall also post notice of the hearing at the regional district or field office closest to the minesite, and publish it, where practicable, in a newspaper of general circulation in the area of the mine.

(e) Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings, shall not govern the conduct of these informal public hearings. An informal public hearing shall be conducted by a representative of the Office, who may accept oral or written arguments and any other relevant information from any person attending.

(f) Within five business days after the date of the informal public hearing, the Office shall affirm, modify, or vacate the notice or order in writing and send its decision to:

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to the notice or order; and

(3) The State regulatory authority, if any.

(g) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under sections 518(b), 521(a)(4), or 525 of the Act.

(h) The person conducting the hearing for the Office shall determine whether or not the minesite should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the minesite will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or the required remedial action.

(Surface Mining Control and Reclamation Act of 1977, secs. 201, 501, 521(a)(5) (30 U.S.C. 1211, 1251, 1271(a)(5)))

[45 FR 2628, Jan. 11, 1980]

§ 722.16 Pattern of violations.

(a) The regulations of this section set forth the procedures governing the suspension or revocation of State permits and rights to mine under this Act based on a pattern of violations arising during Federal inspections during the initial regulatory program.

(b) *Definitions.* As used in this section—

(1) *Violations of the same or related requirements of the Act, regulations or permit conditions* means noncompliance with any single section of parts 715, 716, or 717 of this chapter.

(2) *Violations of different requirements of the Act, regulations, or permit conditions* means noncompliance with different sections of parts 715, 716, or 717 of this chapter.

(3) *Unwarranted failure to comply* means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of the Act or these regulations due to indifference, lack of diligence, lack of reasonable care; or the failure to abate any violation of such permit, the Act

or regulations due to indifference, lack of diligence, or lack of reasonable care.

(4) *Willful violation* means an intentional action or omission which violates the Act, regulations or permit conditions required under the Act.

(5) *Inspection* as used in this section means any visit to the mine.

(c) *Order to show cause.* (1) If the Director determines that a pattern of violations of any requirements of the Act, the regulations, or a permit condition imposed under the Act or regulations exists, or has existed, and that such violations are caused by the unwarranted failure of the permittee or were willful violations, the Director shall issue an order to the permittee to show cause why the permit should not be suspended or revoked.

(2) The Director may determine that a pattern of violations exists or has existed, after considering the circumstances, including—

(i) The number of willful violations or violations caused by unwarranted failure to comply with the same or related requirements of the Act, regulations, or permit conditions during two or more Federal inspections;

(ii) The number of willful violations or violations caused by unwarranted failure to comply with different requirements of the Act, regulations, or permit conditions; and

(iii) The extent to which the violations were isolated departures from lawful conduct.

(3) Violations of the same or related requirements of the Act, regulations, or permit conditions required by the Act during three or more Federal inspections within any 12-month period which were either caused by the unwarranted failure of the permittee to comply with the Act, the regulations or permit conditions required by the Act, or were willful violations, shall constitute a pattern of violations. A show cause order shall issue unless the Director finds that it would not further enforcement of the performance standards of the Act.

(d) *Suspension or revocation of permit.*

(1) The order to show cause shall be issued and a public hearing, if requested, shall be conducted under the procedures of 43 CFR part 4.

§ 722.17

(2) If the Secretary finds that a pattern of violations exists or has existed, the permit and right to mine under this Act shall be either suspended or revoked and the permittee directed to complete necessary corrective measures and reclamation operations.

(e) Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the Director shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this section, and shall issue an order to show cause as appropriate pursuant to 30 CFR 723.15(b)(2).

[42 FR 62701, Dec. 13, 1977 and 46 FR 58783, Sept. 4, 1980]

§ 722.17 Inability to comply.

(a) Neither a notice of violation nor a cessation order issued under this part may be vacated because of inability to comply.

(b) A permittee may not be deemed to have shown good cause for not suspending or revoking a permit by showing inability to comply.

(c) Unless caused by lack of diligence, inability to comply may be considered in mitigation of the amount of a civil penalty under part 723 of this chapter and of the duration of the suspension of the permit under § 722.16 of this part.

PART 723—CIVIL PENALTIES

Sec.

723.1 Scope.

723.2 Objective.

723.11 How assessments are made.

723.12 When penalty will be assessed.

723.13 Point system for penalties.

723.14 Determination of amount of penalty.

723.15 Assessment of separate violations for each day.

723.16 Waiver of use of formula to determine civil penalty.

723.17 Procedures for assessment of civil penalties.

723.18 Procedures for assessment conference.

723.19 Request for hearing.

723.20 Final assessment and payment of penalty.

AUTHORITY: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

30 CFR Ch. VII (7–1–17 Edition)

SOURCE: 45 FR 58783, Sept. 4, 1980, unless otherwise noted.

§ 723.1 Scope.

This part covers the assessment of civil penalties under section 518 of the Act for violations of a permit condition, any provision of Title V of the Act, or any implementing regulations, except for the assessment of individual civil penalties under section 518(f), which is covered by part 724. This part governs when a civil penalty is assessed and how the amount is determined, and sets forth applicable procedures. This part applies to cessation orders and notices of violation issued under part 722 of this chapter during a Federal inspection.

[53 FR 3674, Feb. 8, 1988]

§ 723.2 Objective.

Civil penalties are assessed under section 518 of the Act and this part to deter violations and to ensure maximum compliance with the terms and purpose of the Act on the part of the coal mining industry.

§ 723.11 How assessments are made.

The Office shall review each notice of violation and cessation order in accordance with the assessment procedures described in §§ 723.12, 723.13, 723.14, 723.15, and 723.16 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

§ 723.12 When penalty will be assessed.

(a) The Office shall assess a penalty for each cessation order.

(b) The Office shall assess a penalty for each notice of violation, if the violation is assigned 31 points or more under the point system described in § 723.13.

(c) The Office may assess a penalty for each notice of violation assigned 30 points or less under the point system described in § 723.13. In determining whether to assess a penalty, the Office shall consider the factors listed in § 723.13(b).

Surface Mining Reclamation and Enforcement, Interior

§ 723.13

§ 723.13 Point system for penalties.

(a) The Office shall use the point system described in this section to determine the amount of the penalty and, in the case of notices of violation, whether a mandatory penalty should be assessed as provided in § 723.12(b).

(b) Points shall be assigned as follows:

(1) *History of previous violations.* The Office shall assign up to 30 points based on the history of previous violations. One point shall be assigned for each past violation contained in a notice of violations. Five points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations for the purpose of assigning points, shall be determined and the points assigned with respect to a particular surface coal mining operation. Points shall be assigned as follows:

(i) A violation shall not be counted if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one year.

(ii) No violation for which the notice or order has been vacated shall be counted; and

(iii) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) *Seriousness.* The Office shall assign up to 30 points based on the seriousness of the violation, as follows:

(i) *Probability of occurrence.* The Office shall assign up to 15 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

PROBABILITY OF OCCURRENCE	
	Points
None	0
Insignificant	1-4
Unlikely	5-9
Likely	10-14
Occurred	15

(ii) *Extent of potential or actual damage.* The Office shall assign up to 15

points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

(A) If the damage or impact which the violated standard is designed to prevent would remain within the permit area, the Office shall assign zero to seven points, depending on the duration and extent of the damage or impact.

(B) If the damage or impact which the violated standard is designed to prevent would extend outside the permit area, the Office shall assign eight to fifteen points, depending on the duration and extent of the damage or impact.

(iii) *Alternative.* In the case of a violation of an administrative requirement, such as a requirement to keep records, the Office shall, in lieu of paragraphs (i) and (ii), assign up to 15 points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) *Negligence.* (i) The Office shall assign up to 25 points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(A) A violation which occurs through no negligence shall be assigned no penalty points for negligence;

(B) A violation which is caused by negligence shall be assigned 12 points or less, depending on the degree of negligence;

(C) A violation which occurs through a greater degree of fault than negligence shall be assigned 13 to 25 points, depending on the degree of fault.

(ii) In determining the degree of negligence involved in a violation and the number of points to be assigned, the following definitions apply:

(A) *No negligence* means an inadvertent violation which was unavoidable by the exercise of reasonable care.

(B) *Negligence* means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act or this chapter due to indifference, lack of

§ 723.14

diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care.

(C) *A greater degree of fault than negligence* means reckless, knowing, or intentional conduct.

(iii) In calculating points to be assigned for negligence, the acts of all persons working on the surface coal mining and reclamation site shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage.

(4) *Good faith in attempting to achieve compliance.* (i) The Office shall add points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows:

DEGREE OF GOOD FAITH	
	Points
Rapid compliance	- 1 to - 10
Normal compliance	0

(ii) The following definitions shall apply under paragraph (b)(4)(i) of this section:

(A) *Rapid compliance* means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

(B) *Normal compliance* means the person to whom the notice or order was issued abated the violation within the time given for abatement.

(iii) If the consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.

§ 723.14 Determination of amount of penalty.

The Office shall determine the amount of any civil penalty by converting the total number of points assigned under 30 CFR 723.13 to a dollar

30 CFR Ch. VII (7-1-17 Edition)

amount, according to the following schedule:

Points	Dollars
1	64
2	129
3	193
4	257
5	321
6	386
7	450
8	514
9	578
10	643
11	707
12	771
13	835
14	900
15	965
16	1,029
17	1,093
18	1,158
19	1,222
20	1,286
21	1,350
22	1,415
23	1,479
24	1,543
25	1,607
26	1,929
27	2,250
28	2,571
29	2,770
30	3,215
31	3,536
32	3,857
33	4,179
34	4,500
35	4,822
36	5,143
37	5,465
38	5,786
39	6,107
40	6,428
41	6,751
42	7,072
43	7,393
44	7,715
45	8,036
46	8,358
47	8,679
48	9,001
49	9,322
50	9,643
51	9,964
52	10,287
53	10,608
54	10,929
55	11,251
56	11,572
57	11,893
58	12,215
59	12,537
60	12,858
61	13,179
62	13,501
63	13,823
64	14,144
65	14,465
66	14,787
67	15,108
68	15,429
69	15,751
70	16,073

Surface Mining Reclamation and Enforcement, Interior

§ 723.17

[45 FR 58783, Sept. 4, 1980, as amended at 62 FR 63276, Nov. 28, 1997; 66 FR 58646, Nov. 21, 2001; 70 FR 70700, Nov. 22, 2005; 74 FR 34492, July 15, 2009; 79 FR 18447, Apr. 2, 2014; 81 FR 44540, July 8, 2016; 82 FR 9353, Feb. 6, 2017]

§ 723.15 Assessment of separate violations for each day.

(a) The Office may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the Office shall consider the factors listed in 30 CFR 723.13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which is assigned more than 70 points under 30 CFR 723.13(b), the Office shall assess a civil penalty for a minimum of two separate days.

(b) In addition to the civil penalty provided for in paragraph (a) of this section, whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to section 521(a) of the Act, 30 U.S.C. 1271(a), a civil penalty of not less than \$2,411 will be assessed for each day during which such failure to abate continues, except that:

(1)(i) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under section 525(c) of the Act, after a determination that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the Office of Hearing and Appeals issues a final order with respect to the violation in question; and

(ii) If the person to whom the notice or order was issued initiates review proceedings under section 526 of the Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to section 526(c) of the Act, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court.

(2) Such penalty for the failure to abate a violation shall not be assessed for more than 30 days for such violation. If the permittee has not abated the violation within the 30-day period, the Office shall take appropriate action pursuant to sections 518(e), 518(f), 521(a)(4) or 521(c) of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a re-occurrence of the failure to abate.

[45 FR 58783, Sept. 4, 1980, as amended at 62 FR 63276, Nov. 28, 1997; 66 FR 58647, Nov. 21, 2001; 70 FR 70700, Nov. 22, 2005; 81 FR 44540, July 8, 2016; 82 FR 9354, Feb. 6, 2017]

§ 723.16 Waiver of use of formula to determine civil penalty.

(a) The Director, upon his own initiative or upon written request received within 15 days of issuance of a notice of violation or a cessation order, may waive the use of formula contained in 30 CFR 723.13 to set the civil penalty, if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the Director shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the Act, this chapter, any applicable program, or any condition of any permit or exploration approval. The basis for every waiver shall be fully explained and documented in the records of the case.

(b) If the Director waives the use of the formula, he or she shall use the criteria set forth in 30 CFR 723.13(b) to determine the appropriate penalty. When the Director has elected to waive the use of the formula, he or she shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

§ 723.17 Procedures for assessment of civil penalties.

(a) Within 15 days of service of a notice or order, the person to whom it was issued may submit written information about the violation to the Office and to the inspector who issued the notice of violation or cessation order. The Office shall consider any information so submitted in determining the

§ 723.18

30 CFR Ch. VII (7-1-17 Edition)

facts surrounding the violation and the amount of the penalty.

(b) The Office shall serve a copy of the proposed assessment and of the work sheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure, within 30 days of the issuance of the notice or order. If a copy of the proposed assessment and work sheet or the certified mail is tendered at the address of that person set forth in the sign required under 30 CFR 715.12(b) or at any address at which that person is in fact located, and he or she refuses to accept delivery or to collect such documents, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

(c) Unless a conference has been requested, the Office shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The Office shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in paragraph (b) of this section, within 30 days after the date the violation is abated.

[45 FR 58783, Sept. 4, 1980, as amended at 56 FR 28445, June 20, 1991]

§ 723.18 Procedures for assessment conference.

(a) The Office shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within 30 days from the date the proposed assessment or reassessment is received.

(b)(1) The Office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by section 554 of title 5 of the United States Code, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date the conference request is

received or the end of the abatement period, whichever is later.

(2) The Office shall post notice of the time and place of the conference at the regional, district or field office closest to the mine at least 5 days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The conference officer shall consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer shall either:

(i) Settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer on behalf of the Office and by the person assessed; or

(ii) Affirm, raise, lower, or vacate the penalty.

(4) An increase or reduction of a proposed civil penalty assessment of more than 25 percent and more than \$500 shall not be final and binding on the Secretary, until approved by the Director or his designee.

(c) The conference officer shall promptly serve the person assessed with a notice of his or her action in the manner provided in 30 CFR 723.17(b) and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

(d)(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by the Office within 30 days after the date of signing, the Office may enforce the agreement or rescind it and proceed according to paragraph (b)(3)(ii) of this section within 30 days from the date of the rescission.

(e) The conference officer may terminate the conference when he determines that the issues cannot be resolved or that the person assessed is

Surface Mining Reclamation and Enforcement, Interior

§ 724.12

not diligently working toward resolution of the issues.

[45 FR 58783, Sept. 4, 1980, as amended at 53 FR 3674, Feb. 8, 1988; 56 FR 10063, Mar. 8, 1991]

§ 723.19 Request for hearing.

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Office of Hearings and Appeals (to be held in escrow as provided in paragraph (b) of this section) within 30 days from receipt of the proposed assessment or reassessment or 30 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested, if it has been decided in a review proceeding commenced under section 525 of the Act and 43 CFR part 4.

(b) The Office of Hearings and Appeals shall transfer all funds submitted under paragraph (a) of this section to the Office, which shall hold them in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in 30 CFR 723.20.

[45 FR 58783, Sept. 4, 1980, as amended at 56 FR 10063, Mar. 8, 1991]

§ 723.20 Final assessment and payment of penalty.

(a) If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in 30 CFR 723.19, the proposed assessment shall become a final order of the Secretary and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the Secretary, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to paragraph (c) of this section, the escrowed funds shall be transferred to the Office in payment of the penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order or eliminating the proposed

penalty assessed under this part, the Office shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed account, with interest from the date of payment into escrow to the date of the refund at the rate of 6 percent or at the prevailing Department of the Treasury rate, whichever is greater.

(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the Office within 15 days after the order is mailed to such person.

PART 724—INDIVIDUAL CIVIL PENALTIES

Sec.

724.1 Scope.

724.12 When an individual civil penalty may be assessed.

724.14 Amount of individual civil penalty.

724.17 Procedure for assessment of individual civil penalty.

724.18 Payment of penalty.

AUTHORITY: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

SOURCE: 53 FR 3674, Feb. 8, 1988, unless otherwise noted.

§ 724.1 Scope.

This part covers the assessment of individual civil penalties under section 518(f) of the Act.

§ 724.12 When an individual civil penalty may be assessed.

(a) Except as provided in paragraph (b) of this section, the Office may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.

(b) The Office shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the Office to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days.

§ 724.14

30 CFR Ch. VII (7–1–17 Edition)

§ 724.14 Amount of individual civil penalty.

(a) In determining the amount of an individual civil penalty assessed under § 724.12, the Office shall consider the criteria specified in § 518(a) of the Act, including:

(1) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation;

(2) The seriousness of the violation, failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and

(3) The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

(b) The penalty will not exceed \$16,073 for each violation. Each day of a continuing violation may be deemed a separate violation and the Office may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the Secretary, until abatement or compliance is achieved.

[53 FR 3674, Feb. 8, 1988, as amended at 62 FR 63276, Nov. 28, 1997; 70 FR 70701, Nov. 22, 2005; 74 FR 34493, July 15, 2009; 79 FR 18447, Apr. 2, 2014; 81 FR 44541, July 8, 2016; 82 FR 9354, Feb. 6, 2017]

§ 724.17 Procedure for assessment of individual civil penalty.

(a) *Notice.* The Office shall serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

(b) *Final order and opportunity for review.* The notice of proposed individual civil penalty assessment shall become a final order of the Secretary 30 days after service upon the individual unless:

(1) The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203 (Phone: 703-235-3800), in accordance with 43 CFR 4.1300 *et seq.*; or

(2) The Office and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.

(c) *Service.* For purposes of this section, service shall be performed on the individual to be assessed an individual civil penalty, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice of proposed assessment and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept.

[53 FR 3674, Feb. 8, 1988, as amended at 56 FR 28445, June 20, 1991; 67 FR 5204, Feb. 5, 2002]

§ 724.18 Payment of penalty.

(a) *No abatement or appeal.* If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the final order.

(b) *Appeal.* If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with 43 CFR 4.1300 *et seq.*, the penalty shall be due upon issuance of a final administrative order affirming, increasing or decreasing the proposed penalty.

(c) *Abatement agreement.* Where the Office and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the Office stating that the penalty is due on the

Surface Mining Reclamation and Enforcement, Interior

§ 725.10

date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

(d) *Delinquent payment.* Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty shall be subject to interest at the rate established by the U.S. Department of the Treasury for late charges on late payments to the Federal Government. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the FEDERAL REGISTER and on Treasury's Web site. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties may result in one or more of the actions specified in § 870.23(a) through (f) of this chapter. Delinquent penalties are subject to late payment penalties specified in § 870.21(c) of this chapter and processing and handling charges specified in § 870.21(d) of this chapter.

[53 FR 3674, Feb. 8, 1988, as amended at 73 FR 67630, Nov. 14, 2008]

PART 725—REIMBURSEMENTS TO STATES

Sec.

- 725.1 Scope.
- 725.2 Objectives.
- 725.3 Authority.
- 725.4 Responsibility.
- 725.5 Definitions.
- 725.10 Information collection.
- 725.11 Eligibility.
- 725.12 Coverage of grants.
- 725.13 Amount of grants.
- 725.14 Grant periods.
- 725.15 Grant application procedures.
- 725.16 Grant agreement.
- 725.17 Grant amendments.
- 725.18 Grant reduction and termination.
- 725.19 Audit.
- 725.20 Administrative procedures.
- 725.21 Allowable costs.
- 725.22 Financial management.
- 725.23 Reports.
- 725.24 Records.
- 725.25 Disclosure of information.

AUTHORITY: Secs. 201, 501, and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62704, Dec. 13, 1977, unless otherwise noted.

§ 725.1 Scope.

This part sets forth policies and procedures for reimbursements to States for costs of enforcing the initial performance standards set forth in this chapter.

§ 725.2 Objectives.

The objectives of assistance under this part are:

(a) To assist the States in meeting the increased costs of administering the initial performance standards.

(b) To encourage the States to build strong reclamation and enforcement programs.

§ 725.3 Authority.

Section 502(e)(4) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201) authorizes the Secretary to reimburse States for costs of enforcing the performance standards of the initial regulatory program.

§ 725.4 Responsibility.

(a) The Director shall administer the grant program for reimbursement to States for costs of enforcing performance standards during the initial regulatory program.

(b) The Director or his authorized designee shall receive, review and approve grant applications under this part.

[42 FR 62704, Dec. 13, 1977, as amended at 47 FR 38490, Aug. 31, 1982]

§ 725.5 Definitions.

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

Agency means the State agency designated by the Governor to receive and administer grants under this part.

Base program means the State program to regulate surface coal mining prior to August 3, 1977.

§ 725.10 Information collection.

The information collection requirements contained in 30 CFR 725.15, 725.23(a) and 725.24 have fewer than 10 respondents per year, they are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and do not require clearance by OMB.

[47 FR 38490, Aug. 31, 1982]

§ 725.11 Eligibility.

(a) *Assumption of responsibility.* To be eligible for a grant for reimbursements for the cost of enforcing performance standards during the initial regulatory program the State shall assume responsibility for enforcement of the initial regulatory program including the specific responsibilities identified under § 710.4(b) and part 720 of this chapter.

(b) *Designation of State agency.* In order to receive a grant for reimbursements for costs of enforcing performance standards during the initial regulatory program, the Governor of a State shall designate in writing one agency to submit grant applications, receive and administer grants under this part.

(c) *Periods covered by reimbursement grants.* An agency may apply for a reimbursement grant for any period during the initial regulatory program and for a reasonable start-up period beginning no later than August 3, 1977.

§ 725.12 Coverage of grants.

An agency may use grant money under this part to cover costs in excess of the base program for administering and enforcing the initial regulatory program. The Director or his authorized designee shall determine the base program from the State fiscal year budget in effect on August 3, 1977. Costs of the following items are eligible for reimbursement—

(a) Incorporation of the initial performance standards of this chapter in new permits issued by the State.

(b) Modification of existing permits to include the initial performance standards of this chapter.

(c) Additional inspections required to enforce the initial performance standards of this chapter.

(d) Inspections which are more detailed than inspections before the initial regulatory program.

(e) Responses to complaints related to the initial performance standards of this chapter.

(f) Enforcement actions required to secure compliance with the initial performance standards of this chapter.

(g) Additional administrative activities and supporting costs related to hiring additional inspectors and other

personnel, revising permits, conducting inspections, preparing, copying and submitting reports required by part 720, and submitting applications for reimbursement grants under this part.

(h) Additional equipment required for inspection or support of inspections, as follows:

(1) An agency may charge any required item of equipment to the grant on a use bases in accordance with the principles set forth in Federal Management Circular 74-4, "Cost principles applicable to grants and contracts with State and local governments" (34 CFR part 255).

(2) An agency may purchase equipment, with grant funds where cost recovery through use charges is prohibited, made impractical or more costly than purchase by existing State laws or procedures.

[42 FR 62704, Dec. 13, 1977, as amended at 45 FR 34880, May 23, 1980]

§ 725.13 Amount of grants.

The Office shall pay up to 100 percent of the costs to the agency in excess of the base program for administering and enforcing the performance standards during the initial regulatory program.

§ 725.14 Grant periods.

The Director or his authorized designee shall normally approve a grant for a period of one year or less. OSM shall fund a program that extends over more than one year by consecutive annual grants or amendments to the existing grant.

[47 FR 38490, Aug. 31, 1982]

§ 725.15 Grant application procedures.

(a) The agency may submit its application (three copies) for a grant to the Director or his authorized designee at least sixty days prior to the beginning of the intended grant period, or as soon thereafter as possible.

(b) The agency shall use the application forms and procedures applicable to non-construction and/or construction programs specified by OSM in accordance with Office of Management and Budget Circular No. A-102, "Uniform administrative requirements for grants-in-aid to State and local governments" (42 FR 45828). No preapplication

Surface Mining Reclamation and Enforcement, Interior

§ 725.15

is required. Each application must include the following:

(1) Part I, Application Form coversheet, SF 424.

(2) Part II, Project Approval Information.

(i) For non-construction grants use Form OSM-50A, Project Approval Information—Section A.

(ii) For construction grants use Form OSM-50A, Project Approval Information—Section A and Form OSM-50B, Project Approval Information—Section B.

(3) Part III, Budget Information.

(i) For non-construction grants use Form OSM-47, Budget Information Report, with a narrative explanation of computations.

(ii) For construction grants use Form OSM-48, Budget Information—Construction with a narrative explanation of computations.

(4) Part IV, Program Narrative Statement, Form OSM-51, providing the narrative for the goals to be achieved for both construction and non-construction grants.

(i) Form OSM-51 is supplemented by completion of column 5A of Forms OSM-51A and OSM-51B which reports the quantitative program management information of the Interim Regulatory grants.

(ii) Form OSM-51 is supplemented by completion of Column 5A of Form OSM-51C which reports the quantitative program management information of the Small Operator Program Administration and Operational grants.

(5) Part V, The standard assurance for non-construction activities or construction activities as specified in Office of Management and Budget Circular No. A-102, Attachment M.

(c) The agency shall include sufficient information to enable the Director or his authorized designee to determine the agency's base program and increases over the base program eligible for reimbursement grants. The agency shall include the following information, plus any other relevant data:

(1) A summary of the State permit, inspection and enforcement program prior to the addition of the requirements of the Act of 1977, including—

(i) Permit requirements and the system for issuing permits;

(ii) Mining-and-reclamation plan requirements;

(iii) Coverage and frequency of inspections;

(iv) Actions required to enforce mining and reclamation requirements;

(v) The number and nature of responses to complaints; and

(vi) Other regulatory activities and related administrative functions affected by the performance standards of the initial regulatory program of this chapter.

(2) A statement of the number of employees and annual budget required to carry out functions described in paragraph (c)(1) of this section.

(3) A copy of all State constitutional, statutory and regulatory provisions applicable to the enforcement and administration of the initial regulatory program.

(4) An opinion of the State's chief legal officer as to whether and to what extent the State is authorized to enforce and administer the initial regulatory program.

(5) A statement of the additional work required to enforce the initial regulatory program for each of the agency activities described in paragraph (c)(1) of this section.

(6) The additional staff and funds required for the increased workload described in paragraph (c)(5) of this section.

(7) The number and types of major equipment (equipment with a unit acquisition cost of \$500 or more and having a life of more than two years) which the agency plans to purchase with grant funds.

(d) The Director or his authorized designee may waive the resubmission of information required by paragraphs (c) (1), (2), (3) and (4) of this section in applications for the following grants.

(e) The Director or his authorized designee shall notify the agency within thirty days after the receipt of a complete application, or as soon thereafter as possible, whether it is or is not approved. If the application is not approved, the Director or his authorized designee shall set forth in writing the reasons it is not approved, and may propose modifications if appropriate.

§ 725.16

The agency may resubmit the application within thirty days. The Director or his authorized designee shall process the revised application as an original application.

[42 FR 62704, Dec. 13, 1977, as amended at 47 FR 38490, Aug. 31, 1982]

§ 725.16 Grant agreement.

(a) If a Director or his authorized designee approves an agency's grant application, the Director or his authorized designee shall prepare a grant agreement which includes—

(1) The approved scope of the program to be covered by the grant, including functions to be accomplished by other agencies.

(2) The base program budget and estimated costs in excess of the base program.

(3) The amount of the grant.

(4) Commencement and completion dates for the segment of the program covered by this grant and for major phases of the program to be completed during the grant period.

(5) Permissible transfers of funds to other State agencies.

(b) The Director or his authorized designee shall limit grants under this part to the additional costs to an agency for administering and enforcing the initial regulatory program.

(c) The Director or his authorized designee may permit the agency to assign functions and funds to other State agencies. The Director or his authorized designee shall require the grantee agency to retain responsibility for overall administration of the grant, including use of funds, accomplishment of functions and reporting.

(d) Except as may be provided by the grant agreement, costs may not be incurred prior to the execution of the agreement.

(e) The Director or his authorized designee shall transmit four copies of the grant agreement, by certified mail, return receipt requested, to the agency for signature. The agency shall execute the grant agreement and return all copies within 3 calendar weeks after receipt, or within an extension of such time that may be granted by the Director or his authorized designee.

(f) The Director or his authorized designee shall sign the grant agree-

30 CFR Ch. VII (7-1-17 Edition)

ment upon its return from the agency and return one copy to the agency. The grant is effective and constitutes an obligation of Federal funds in the amount and for the purposes stated in the grant agreement at the time the Director or his authorized designee signs the agreement.

(g) Neither the approval of a program nor the award of any grant will commit or obligate the United States to award any continuation grant or to enter into any grant amendment, including grant increases to cover cost overruns.

§ 725.17 Grant amendments.

(a) A grant amendment is a written alteration to the grant amount, grant terms or conditions, budget or period, or other administrative, technical, or financial agreement whether accomplished on the initiative of the agency or the Director or his authorized designee or by mutual action of the agency and the Director or his authorized designee.

(b) The agency shall promptly notify the Director or his authorized designee in writing of events or proposed changes which require a grant amendment, such as:

(1) Rebudgeting;

(2) Changes which may affect the approved scope or objective of a program; or

(3) Changes which may increase or substantially decrease the total cost of a program.

(c) The Director or his authorized designee shall approve or disapprove each proposed amendment within 30 days of receipt, or as soon thereafter as possible, and shall notify the agency in writing of the approval or disapproval of the amendment.

(d) The date the Director or his authorized designee signs the grant amendment establishes the effective date of the action. If no time period is specified in the grant amendment then the amendment applies to the entire grant period.

[42 FR 62704, Dec. 13, 1977, as amended at 47 FR 38490, Aug. 31, 1982]

§ 725.18 Grant reduction and termination.

(a) *Conditions for reduction or termination.* (1) If an agency fails to carry

Surface Mining Reclamation and Enforcement, Interior

§ 725.19

out its responsibilities pursuant to § 710.4(b) and part 720 of this chapter the Director or his authorized designee shall reduce or terminate the grant.

(2) If an agency violates the terms of a grant agreement, the Director or his authorized designee may reduce or terminate the grant.

(3) If an agency fails to enforce the initial performance standards of this chapter the Director or his authorized designee may reduce or terminate the grant.

(4) If an agency is not in compliance with the following nondiscrimination provisions, the Director or his authorized designee shall terminate the grant—

(i) Title VI of the Civil Rights Act of 1964 (78 Stat. 252), Nondiscrimination in Federally Assisted Programs, which provides that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations at 43 CFR 17.

(ii) Executive Order 11246, as amended by Executive Order 11375, Equal Employment Opportunity, requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex or national origin, and the implementing regulations at 41 CFR 60.

(iii) Section 504 of the Rehabilitation Act of 1973, as amended by Executive Order 11914, Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs.

(5) If an agency fails to enforce the financial interest provisions of part 705 of this chapter the Director shall terminate the grant.

(6) If an agency fails to submit reports required by this part or parts 705 and 720 of this chapter the Director shall reduce or terminate the grant.

(b) *Grant reduction and termination procedures.* (1) The Director or his authorized designee shall give at least 10 days written notice to the agency by certified mail, return receipt requested, of intent to reduce or terminate a grant. The Director or his authorized designee shall include in the

notice the reasons for the proposed action and the proposed effective date of the action.

(2) The Director or his authorized designee shall afford the agency opportunity for consultation and remedial action prior to reducing or terminating a grant.

(3) The Director or his authorized designee shall notify the agency of the termination or reduction of the grant in writing by certified mail, return receipt requested.

(4) Upon termination the agency shall refund or credit to the United States that portion of the grant money paid or owed to the agency and allocated to the terminated portion of the grant. However any portion of the grant that is required to meet commitments made prior to the effective date of termination shall be retained by the agency.

(5) Upon termination, the agency shall reduce the amount of outstanding commitments insofar as possible and report to the Director or his authorized designee the uncommitted balance of funds awarded under the grant.

(6) Upon notification of intent to terminate, the agency shall not make any new commitments without the approval of the Director or his authorized designee.

(7) The Director or his authorized designee may allow termination costs as determined by applicable Federal cost principles listed in Federal management Circular 74-4.

(c) *Appeals.* (1) An Agency may appeal the Director or his authorized designee's decision to reduce or terminate a grant to the Director within 30 days of the Director or his authorized designee's decision.

(2) An Agency shall include in an appeal:

(i) The decision being appealed, and

(ii) The facts which the Agency believes justify a reversal or modification of the decision.

(3) The Director shall act on appeals within 30 days of their receipt, or as soon thereafter as possible.

§ 725.19 Audit.

The agency shall arrange for an independent audit no less frequently than once every two years, pursuant to the

§ 725.20

requirements of Office of Management and Budget Circular No. A-102, Attachment P. The audits will be performed in accordance with the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" and the "Guidelines for Financial and Compliance Audits of Federally Assisted Programs" published by the Comptroller General of the United States and guidance provided by the cognizant Federal audit agency.

[48 FR 38490, Aug. 31, 1983]

§ 725.20 Administrative procedures.

The Agency shall follow administrative procedures governing accounting, payment property, and related requirements contained in Office of Management and Budget Circular No. A-102.

§ 725.21 Allowable costs.

(a) The Director or his authorized designee shall determine costs which may be reimbursed according to Office of Management and Budget Circular No. A-87.

(b) Costs must be in conformity with any limitations conditions or exclusions set forth in the grant agreement or this part.

(c) Costs must be allocated to the grant to the extent of benefit properly attributable to the period covered by the grant.

(d) Costs must not be allocated to or included as a cost of any other federally assisted program.

[42 FR 62704, Dec. 13, 1977, as amended at 47 FR 38490, Aug. 31, 1982]

§ 725.22 Financial management.

(a) The agency shall account for grant funds in accordance with the requirements of Office of Management and Budget Circular A-102. An agency shall use generally accepted accounting principles and practices, consistently applied. Accounting for grant funds must be accurate and current.

(b) The agency shall adequately safeguard all funds, property, and other assets and shall assure that they are used solely for authorized purposes.

(c) The agency shall provide a comparison of actual amounts spent with budgeted amounts for each grant.

30 CFR Ch. VII (7-1-17 Edition)

(d) When advances are made by a letter-of-credit method, the agency shall make drawdowns from the U.S. Treasury through its commercial bank as closely as possible to the time of making the disbursements.

(e) The agency shall support accounting records by source documentation.

(f) The agency shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 725.23 Reports.

(a) The agency shall, for each grant made under this part, submit semiannually to the Director or his authorized designee a Financial Status Report, SF 269, for non-construction grant activities in accordance with Office of Management and Budget Circular No. A-102, Attachment H and OSM requirements. This report shall be accompanied by a Performance Report, Form OSM-51, comparing actual accomplishments to the goals established for the period, prepared according to Attachment I of OMB Circular No. A-102 and OSM requirements. The agency shall also submit semiannually a separate Outlay Report and Request for Reimbursement for Construction Programs, SF 271, and accompanying narrative performance report comparing actual accomplishments with planned goals on grant funded construction activities.

(b) The Director or his authorized designee shall require through the grant agreement that semiannual reports also describe the relationship of financial information to performance and productivity data, including unit cost information. This quantitative information will be reported on Forms OSM-51A and OSM-51B or OSM-51C, Quantitative Program Management Information, as applicable.

(c) The Director or his authorized designee shall require that when a grant is closed out in accordance with Attachment L to Office of Management and Budget Circular No. A-102 the following actions are taken:

(1) The grantee shall account for any property acquired with grant funds or received from the Government in accordance with the provisions of Attachment N to Office of Management and

Surface Mining Reclamation and Enforcement, Interior

§ 725.25

Budget Circular No. A-102. This may be accomplished by the submission of the Report of Government Property, Form OSM-60.

(2) The grantee shall submit a final financial report and thus release OSM from obligations under each grant or cooperative agreement that is being closed out.

[47 FR 38491, Aug. 31, 1982]

§ 725.24 Records.

(a) The agency shall maintain complete records in accordance with Office of Management and Budget Circular No. A-102. This includes books, records, documents, maps, and other evidence and accounting procedures and practices, sufficient to reflect properly—

(1) The amount, receipt, and disposition by the agency of all assistance received for the program.

(2) The total costs of the program, including all direct and indirect costs of whatever nature incurred for the performance of the program for which the grant has been awarded.

(b) Subgrantees and contractors, including contractors for professional services, shall maintain books, docu-

ments, papers, maps, and records which are pertinent to a specific grant award.

(c) The agency's records and the records of its subgrantees and contractors, including professional services contracts, shall be subject at all reasonable times to inspection, reproduction, copying, and audit by the Office, the Department of the Interior, the Comptroller General of the United States, the Department of Labor, or any authorized representative.

(d) For completed or terminated grants, the agency, subgrantees and contractors shall preserve and make their records available to the Office, the Department of the Interior, the Comptroller General of the United States, Department of Labor, or any authorized representative pursuant to OMB Circular A-102.

§ 725.25 Disclosure of information.

All grant applications received by the Director or his authorized designee constitute agency records. As such, their release may be requested by any member of the public under the Freedom of Information Act (5 U.S.C. 552), and shall be disclosed unless exempt from disclosure under 5 U.S.C. 552(b).

SUBCHAPTER C—PERMANENT REGULATORY PROGRAMS FOR NON-FEDERAL AND NON-INDIAN LANDS

PART 730—GENERAL REQUIREMENTS

Sec.

730.1 Scope.

730.5 Definitions.

730.11 Inconsistent and more stringent
State laws and regulations.

730.12 Requirements for regulatory pro-
grams in States.

AUTHORITY: Secs. 501(b), 503, 504, 505 and 521
of Pub. L. 95-87 (30 U.S.C. 1251(b), 1253, 1254,
1255 and 1271).

§ 730.1 Scope.

This subchapter sets forth standards and procedures for the submission, review, and approval or disapproval of State programs, for coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal lands. In addition it sets forth criteria and procedures for amending approved programs, substituting Federal enforcement for State enforcement of State programs, and withdrawing approval of those programs not adequately implemented or maintained. Requirements are also included for State program grants and for the adoption of a Federal program in a State which does not have a State program or which has failed to implement, enforce or maintain an approved State program consistent with this subchapter.

[44 FR 15323, Mar. 13, 1979]

§ 730.5 Definitions.

As used in this subchapter unless otherwise indicated *Consistent with* and *in accordance with* mean:

(a) With regard to the Act, the State laws and regulations are no less stringent than, meet the minimum requirements of and include all applicable provisions of the Act.

(b) With regard to the Secretary's regulations, the State laws and regulations are no less effective than the Secretary's regulations in meeting the requirements of the Act.

[44 FR 15323, Mar. 13, 1979, as amended at 46
FR 53384, Oct. 28, 1981]

§ 730.11 Inconsistent and more stringent State laws and regulations.

(a) No State law or regulation shall be superseded by any provision of the Act or the regulations of this chapter, except to the extent that the State law or regulation is inconsistent with, or precludes implementation of, requirements of the Act or this chapter. The Director shall publish a notice of proposed action in the FEDERAL REGISTER setting forth the text or a summary of any State law or regulation initially determined by him to be inconsistent with the Act or this chapter. The notice shall provide 30 days for public comment. Following the close of the public comment period, the Director shall make a final determination which shall be published in the FEDERAL REGISTER.

(b) Any State law or regulation which provides for more stringent land use and environmental controls and regulations of coal exploration and surface coal mining and reclamation operations than do the provisions of the Act and this chapter, or which provides for the control and regulation of coal exploration and surface coal mining and reclamation operations for which no provision is contained in the Act or this chapter, shall not be construed to be inconsistent with the Act or this chapter.

[44 FR 15323, Mar. 13, 1979, as amended at 47
FR 26364, June 17, 1982]

§ 730.12 Requirements for regulatory programs in States.

(a) Not later than January 3, 1981, for each State in which coal exploration and surface coal mining and reclamation operations are or may be conducted on non-Federal and non-Indian land, either a State program or a Federal program adopted under this subchapter shall be in effect. However, the inability of a State to take any action the purpose of which is to prepare, submit or enforce a State program, or any part thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction

Surface Mining Reclamation and Enforcement, Interior

§ 731.14

shall not result in the imposition of a Federal program for regulation of surface coal mining and reclamation operations. Regulation of surface coal mining and reclamation operations covered or to be covered by the State program subject to an injunction shall be conducted by the State pursuant to section 502 of the Act until such time as the injunction terminates or for one year from issuance of the injunction, whichever is shorter, at which time the requirements of sections 503 and 504 shall again be fully applicable. States in which no coal exploration or surface coal mining and reclamation operations are in existence or planned on January 3, 1981, on non-Federal and non-Indian lands but in which such exploration or operations may occur at some later date, shall have a State or Federal program in effect before commencement of any such exploration or operations.

(b) The State shall notify the Director of the issuance of any injunction which prevents or prohibits the State from preparing, submitting or enforcing a State program or portion thereof.

[44 FR 15323, Mar. 13, 1979, as amended at 45 FR 33927, May 20, 1980]

PART 731—SUBMISSION OF STATE PROGRAMS

Sec.

731.1 Scope.

731.12 Submission of State programs.

731.14 Content requirements for program submissions.

AUTHORITY: 30 U.S.C. 1201 *et seq.* and 16 U.S.C. 470 *et seq.*

§ 731.1 Scope.

This part establishes standards and procedures for the preparation and submission of State programs.

[44 FR 15324, Mar. 13, 1979]

§ 731.12 Submission of State programs.

Each State that wishes to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within its boundaries shall submit three copies of a proposed program to the Director. A State may submit a proposed program at any time. The State shall retain suf-

ficient copies of the program for public inspection under § 732.11(a).

[47 FR 26364, June 17, 1982]

§ 731.14 Content requirements for program submissions.

The program shall demonstrate that the State has the capability of carrying out the provisions of the Act and this chapter and achieving their purposes by providing a complete description of the system for implementing, administering and enforcing a State program including, at a minimum—

(a) A copy of the State laws in effect at the time of submission of the program which regulate coal exploration and surface coal mining and reclamation operations, a copy of any State regulations promulgated to implement and enforce those State laws and any amendments to State laws and regulations which are in the process of enactment and have been determined by the State to be essential to allow for program approval;

(b) Copies of other State laws and regulations directly affecting the regulation of coal exploration and surface coal mining and reclamation operations, and amendments to such other laws or regulations which affect the regulation of coal exploration and surface coal mining and reclamation operations which are being considered or are pending;

(c)(1) A legal opinion from the Attorney General of the State or chief legal officer of the State regulatory authority stating that the State has the legal authority under existing laws and regulations, or will have authority under amendments to laws and regulations which are in the process of enactment, to implement, administer and enforce the program and to regulate coal exploration and surface coal mining and reclamation operations in accordance with the Act and consistent with this chapter.

(2) A section-by-section comparison of the State's law and regulations and amendments which are in the process of enactment with the Act and this chapter, explaining any differences and their legal effect;

(d) A copy of the legal document which designates one State agency as

the regulatory authority and authorizes that agency to implement, administer and enforce a State program and to submit grant applications and receive and administer grants under this subchapter;

(e)(1) A description, including appropriate charts, of the existing and proposed structural organization of the agency designated as the regulatory authority and of other agencies or applicable divisions or departments of those agencies which will have duties in the State program. The description must indicate the coordination system between these agencies and lines of authority and the staffing functions within each agency and between agencies.

(2) A summary table of the existing and proposed State program staff, showing job functions, title and required job experience and training, and a description of how the staffing proposed for the State program will be adequate to carry out the functions, including permitting, inspection and legal actions for the projected workload to ensure that coal exploration and surface coal mining and reclamation operations will be regulated in accordance with the requirements of the Act and this chapter;

(f) A copy of supporting agreements between agencies which will have duties in the State program;

(g) Narrative descriptions, flow charts or other appropriate documents of the proposed systems for—

(1) Receiving notices of intention to explore and applications for new, revised or renewed approvals for coal exploration and permits for surface coal mining and reclamation operations, reviewing those applications, approving or disapproving requests for exploration approvals, permits, permit revisions and renewals;

(2) Assessing fees for permit applications;

(3) Implementing, administering and enforcing a system of performance bonds and liability insurance or other equivalent guarantees;

(4) Inspecting and monitoring coal exploration and surface coal mining and reclamation operations including provisions for public participation in the process;

(5) Enforcing the administrative, civil and criminal sanctions of State laws and regulations for violation of any requirement of those laws relating to the regulation of coal exploration and surface coal mining and reclamation operations;

(6) Administering and enforcing the permanent program performance standards;

(7) Assessing and collecting civil penalties;

(8) Issuing public notices and holding public hearings;

(9) Coordinating issuance of permits required under the Act and this chapter with other State, Federal and local agencies;

(10) Consulting with State and Federal agencies having responsibility for the protection or management of fish and wildlife and related environmental values.

(11) Designating lands unsuitable for surface coal mining operations, including provisions for terminating those designations and for public participation in the designation process;

(12) Monitoring, reviewing and enforcing restrictions against direct and indirect financial interests of State employees in surface coal mining and reclamation operations;

(13) Training, examining and certifying blasters, except that no State program is required to implement this provision until six months after the Federal regulations for the provision have been promulgated;

(14) Providing for public participation in the development, revision and enforcement of State regulations, the State program, and permits under the State program;

(15) Providing administrative and judicial review of actions provided for in the State program including inspection and enforcement actions; and

(16) Providing the determination of probable hydrologic consequences and the statement of the results of test borings or core samples required by section 507(c) of the Act.

(17) Consulting with State, Federal, and local agencies having responsibility for historic, cultural, and archeological resources, and for making decisions regarding such resources.

Surface Mining Reclamation and Enforcement, Interior

§ 732.11

(h) Statistical information describing coal exploration and surface coal mining and reclamation operations in the State, adequate to demonstrate that the provisions of the State program and the resources available to it are sufficient when compared to the current and projected coal mining activities in the State;

(i) A description of the actual capital and operating budget, including source of funds, used or proposed to be used to administer the State program for the prior and current fiscal years, and the projected annual budget for each of the next two fiscal years, assuming supplemental funding pursuant to an approved State program and grants under 30 CFR part 735; and a description of the existing and proposed physical resources for use in the program.

[44 FR 15324, Mar. 13, 1979, as amended at 47 FR 26364, June 17, 1982; 48 FR 2272, Jan. 18, 1983; 52 FR 4261, Feb. 10, 1987]

PART 732—PROCEDURES AND CRITERIA FOR APPROVAL OR DISAPPROVAL OF STATE PROGRAM SUBMISSIONS

Sec.

732.1 Scope.

732.10 Information collection.

732.11 Review by the Director.

732.13 Decision by the Secretary.

732.14 Resubmission of State programs.

732.15 Criteria for approval or disapproval of State programs.

732.16 Terms and conditions for State programs.

732.17 State program amendments.

AUTHORITY: 30 U.S.C. 1201 *et seq.* and 16 U.S.C. 470 *et seq.*

§ 732.1 Scope.

This part sets forth criteria and procedures for decisions to approve or disapprove submissions of State programs and program amendments, including requirements for public participation in the process of approval or disapproval.

[44 FR 15326, Mar. 13, 1979]

§ 732.10 Information collection.

The information collection requirements contained in 30 CFR 732.16(a) and 732.17(b) have been approved by the Office of Management and Budget under

44 U.S.C. 3507 and assigned clearance number 1029-0024. The information is needed to afford a State the opportunity to modify or amend its State program and will be used by OSM to determine whether the amendment meets the provisions of the Act.

[47 FR 26365, June 17, 1982]

§ 732.11 Review by the Director.

(a) Immediately upon receipt of a proposed State program, the Director shall publish in the FEDERAL REGISTER and in a newspaper of general circulation in the State a notice meeting the following requirements:

(1) The notice shall include the date of the submission of the program and a summary of the program's contents. It shall also indicate that the full text of the program submission is available for review during regular business hours at the OSM State Office and at the central office and each field office of the State agency responsible for the submission.

(2) The notice shall afford interested persons an opportunity to submit written comments. The comment period shall end on a date following the public hearing scheduled to be held under paragraph (b) of this section and that date shall be specified in the notice.

(3) The notice shall identify the time and location within the State at which the Office will hold the public hearing under paragraph (b) of this section.

(b) A public hearing shall be held by the Director no sooner than 40 days following the publication of the notice required by paragraph (a) of this section. The hearing shall be informal and follow legislative procedures.

(1) The format and the rules of procedure for each hearing shall be determined by the Director and published in the FEDERAL REGISTER notice required by paragraph (a).

(2) When the program is submitted, State laws and regulations must be submitted in their final form or in the form in which they are expected to become final. Should revisions to any of the laws or regulations be necessary during the public comment period or before the Secretary's decision, OSM will give notice and provide an opportunity for review and comment. State

laws and regulations must be enacted by the date of program approval.

(c) Copies of written comments shall be available for public inspection and copying at the OSM State Office and the offices of the State agency responsible for submitting the program.

(d) The Director shall consider all relevant information, including information obtained from public hearings and comments, and shall recommend to the Secretary that the program be approved or disapproved, in whole or in part. The recommended decision shall specify the reasons for the recommendation.

[47 FR 26365, June 17, 1982]

§ 732.13 Decision by the Secretary.

(a) After consideration of the information accompanying the Director's recommendation and the Director's recommendation and findings, the Secretary shall issue to the State in writing, either a decision approving or an initial decision disapproving the State program, in whole or in part.

(b) A program shall not be approved until the Secretary has—

(1) Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the program as proposed; and

(2) Obtained written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of a State program which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*), or the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

(c) The Secretary's decision shall include the findings upon which it is based and shall be mailed to the State.

(d) The Secretary shall issue his decision within 6 months of the Director's receipt of a program submission.

(e) All decisions approving or disapproving a program, in whole or in part, shall be published in the FEDERAL REGISTER, indicating, in the event of disapproval, that the State has 60 days to submit a revised program for consideration.

(f) If the Secretary disapproves a program, in whole or in part, the State shall have 60 days from the date of publication of the FEDERAL REGISTER notice to submit a revised program to the Director for reconsideration. The procedures of § 732.11 will then apply to the revised State program, except that the time allowed between publication of notice and the public hearing for public review and comment may be shortened to not less than 15 days.

(g) The Secretary shall either approve or disapprove the revised program within 60 days from the date of submission of the revised program and publish that decision and reasons for the decision in the FEDERAL REGISTER. A decision disapproving the revised program constitutes the final decision by the Department disapproving that program in its entirety.

(h) If a revised State program is not submitted by a State within 60 days of an initial disapproval under paragraph (a) of this section, the Secretary shall disapprove the initial program submission in its entirety. This decision shall constitute the final decision by the Secretary. This decision and the basis for it shall be published in the FEDERAL REGISTER.

(i) A decision by the Secretary approving a program submission establishes a State program for the State which submitted it and constitutes the final decision by the Department. The State program becomes effective on the date of publication of the decision in the FEDERAL REGISTER unless otherwise specified by the Secretary. The Secretary shall not give his approval unless the program submission can be approved in whole, except as provided in paragraph (j) of this section.

(j) The Secretary may conditionally approve a State program where the program is found to have minor deficiencies, provided:

(1) The deficiencies are of such a size and nature so as to render no part of a proposed State program incomplete;

(2) The State has initiated and is actively proceeding with steps to correct the deficiencies;

(3) The State agrees in writing to correct such deficiencies within a time established by the Secretary and stated in the conditional approval; and

(4) If the deficiencies have not been corrected by the date set forth in the Secretary's decision under paragraph (j)(3) of this section, the Director shall notify the Secretary that the deficiencies have not been corrected and shall within 30 days—

(i) Withdraw approval of the State program in whole or in part, and specify the extent to which approval of the State program is being withdrawn;

(ii) Substitute direct Federal enforcement of those portions of the permanent regulatory program that the State has failed to implement;

(iii) Initiate procedures in accordance with parts 733 and 736 of this chapter to withdraw State program approval and implement a Federal program for the State, including specifying necessary remedial actions to correct continued deficiencies; or

(iv) Take any combination of actions under paragraphs (j)(4) and (i) through (iii) of this section.

[44 FR 15326, Mar. 13, 1979, as amended at 47 FR 26365, 26367, June 17, 1982]

§ 732.14 Resubmission of State programs.

If, by a final decision, the program is disapproved, the State may submit another proposed State program to the Director at any time. Resubmitted State programs must meet the requirements of § 731.14 and will be acted upon pursuant to §§ 732.11–732.16.

[47 FR 26366, June 17, 1982]

§ 732.15 Criteria for approval or disapproval of State programs.

The Secretary shall not approve a State program unless, on the basis of information contained in the program submission, comments, testimony and written presentations at the public hearings, and other relevant information, the Secretary finds that—

(a) The program provides for the State to carry out the provisions and meet the purposes of the Act and this Chapter within the State and that the State's laws and regulations are in accordance with the provisions of the Act and consistent with the requirements of the Chapter.

(b) The State regulatory authority has the authority under State laws and

regulations pertaining to coal exploration and surface coal mining and reclamation operations and the State program includes provisions to—

(1) Implement, administer and enforce all applicable requirements consistent with subchapter K of this chapter;

(2) Implement, administer and enforce a permit system consistent with the regulations of subchapter G of this chapter and prohibit surface coal mining and reclamation operations without a permit issued by the regulatory authority;

(3) Regulate coal exploration consistent with 30 CFR parts 772 and 815 and prohibit coal exploration that does not comply with 30 CFR parts 772 and 815;

(4) Require that persons extracting coal incidental to government financed construction maintain information on site consistent with 30 CFR 707;

(5) Enter, inspect and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal land within the State consistent with the requirements of section 517 of the Act and subchapter L of this chapter;

(6) Implement, administer and enforce a system of performance bonds and liability insurance, or other equivalent guarantees, consistent with the requirements of subchapter J of this chapter;

(7) Provide for civil and criminal sanctions for violations of the State law, regulations and conditions of permits and exploration approvals including civil and criminal penalties in accordance with section 518 of the Act and consistent with 30 CFR 845, including the same or similar procedural requirements;

(8) Issue, modify, terminate and enforce notices of violation, cessation orders and show cause orders in accordance with section 521 of the Act and consistent with the requirements of subchapter L of this chapter including the same or similar procedural requirements;

(9) Designate areas as unsuitable for surface coal mining consistent with subchapter F of this chapter;

§ 732.16

(10) Provide for public participation in the development, revision and enforcement of State regulations and the State program, consistent with public participation requirements of the Act and this chapter;

(11) Monitor, review and enforce the prohibition against indirect or direct financial interests in coal mining operations, by employees of the State regulatory authority, consistent with 30 CFR 705;

(12) Require the training, examination and certification of persons engaged in or responsible for blasting and the use of explosives consistent with regulations issued by the Secretary, except that no State program is required to implement this provision until six months after Federal regulations for this provision have been promulgated;

(13) Provide for small operator assistance.

(14) Provide for administrative review of State program actions, in accordance with section 525 of the Act and subchapter L of this chapter;

(15) Provide for judicial review of State program actions in accordance with State law, as provided in section 526(e) of the Act, except that judicial review of State enforcement actions shall be in accordance with section 526 of the Act. Judicial review in accordance with State law shall not be construed to limit the operation of the rights established in section 520 of the Act, except as provided in that section.

(16) Cooperate and coordinate with and provide documents and other information to the Office under the provisions of this chapter.

(c) The State laws and regulations and the State program do not contain provisions which would interfere with or preclude implementation of those in the Act and this chapter.

(d) The State regulatory authority and other agencies having a role in the State program have sufficient legal, technical and administrative personnel and sufficient funding to implement, administer and enforce the provisions of the program, the requirements of

30 CFR Ch. VII (7-1-17 Edition)

paragraph (b) of this section, and other applicable State and Federal laws.

[44 FR 15326, Mar. 13, 1979, as amended at 46 FR 53384, Oct. 28, 1981; 47 FR 26366, June 17, 1982; 48 FR 2272, Jan. 18, 1983; 48 FR 44779, Sept. 30, 1983]

EDITORIAL NOTE: For a document suspending § 732.15(b)(7) in part, see 45 FR 51548, Aug. 4, 1980.

§ 732.16 Terms and conditions for State programs.

Terms and conditions for the implementation, administration and operation of a State program may be established by the Director as necessary, including, but not limited to—

(a) Establishing a system for regularly reporting to the Office information collected by the State regulatory authority in the conduct of the State program; and

(b) Providing the Office with access to books and records of the regulatory authority upon request.

[44 FR 15326, Mar. 13, 1979]

§ 732.17 State program amendments.

(a) This section applies to any alteration of an approved State program whether accomplished on the initiative of the State regulatory authority or the Director. Such alterations are referred to in this section as “amendments”.

(b) The State regulatory authority shall promptly notify the Director, in writing, of any significant events or proposed changes which affect the implementation, administration or enforcement of the approved State program. At a minimum, notification shall be required for—

(1) Changes in the provisions, scope or objectives of the State program;

(2) Changes in the authority of the regulatory authority to implement, administer or enforce the approved program;

(3) Changes in the State law and regulations from those contained in the approved State program;

(4) Significant changes in staffing and resources of the regulatory authority and divisions or departments of other agencies with duties in the approved program;

(5) Changes in agreements between the regulatory authority and other

agencies which have duties in the approved program;

(6) Significant changes in funding or budgeting relative to the approved program; and

(7) Significant changes in the number or size of coal exploration or surface coal mining and reclamation operations in the State.

(c) Within 30 days of receipt of notification, in writing, of events or proposed changes that may require a State program amendment, or whenever the Director becomes aware of conditions described in paragraph (e) of this section, the Director shall determine whether a State program amendment is required and notify the State regulatory authority of the decision.

(d) The Director shall promptly notify the State regulatory authority of all changes in the Act and the Secretary's regulations which will require an amendment to the State program.

(e) State program amendments may be required when—

(1) As a result of changes in the Act or regulations of this chapter, the approved State program no longer meets the requirements of the Act or this chapter; or

(2) Conditions or events change the implementation, administration or enforcement of the State program; or

(3) Conditions or events indicate that the approved State program no longer meets the requirements of the Act or this chapter.

(f)(1) If the Director determines that a State program amendment is required, the State regulatory authority shall, within 60 days after notification of that decision, submit to the Director either a proposed written amendment or a description of an amendment to be proposed that meets the requirements of the Act and this chapter, and a timetable for enactment which is consistent with established administrative or legislative procedures in the State.

(2) If the State regulatory authority does not submit the information required by paragraph (f)(1), or does not subsequently comply with the submitted timetable, or if the resulting proposed amendment is not approved under this section, then the Director must begin proceedings under 30 CFR part 733 if the Director has reason to

believe that such action is warranted because the State is not effectively implementing, administering, maintaining or enforcing all or part of its approved State program.

(g) Whenever changes to laws or regulations that make up the approved State program are proposed by the State, the State shall immediately submit the proposed changes to the Director as an amendment. No such change to laws or regulations shall take effect for purposes of a State program until approved as an amendment.

(h) The following procedures, time schedules and criteria for approval and disapproval shall apply to State program amendments.

(1) Within 30 days after receipt of a State program amendment from a State regulatory authority, the Director will publish a notice of receipt of the amendment in the FEDERAL REGISTER.

(2) The FEDERAL REGISTER notice announcing the receipt of the amendment will indicate that the amendment(s) is being reviewed by the Director and will include the following:

(i) The text or a summary of the amendment(s) proposed by the regulatory authority;

(ii) Addresses where copies of the proposed amendment(s) may be obtained if the text is not included in the FEDERAL REGISTER notice and that each requestor may receive, free of charge, one single copy of proposed amendment(s) from the Director.

(iii) Date(s) of public comment period(s) and addresses where public comments should be directed;

(iv) Dates and locations of public hearing(s) and/or meeting(s) if public hearing(s) and/or meeting(s) are to be held.

(3) A minimum public comment period of 30 days will be provided for each proposed State program amendment, except a 15 day public comment period may be provided where an amendment concerns changes in State law, regulations or the procedures contained in the approved program that are analogous to changes in SMCRA and/or implementing regulations: *Provided*, That the notice of receipt published in the FEDERAL REGISTER includes the full text of the proposed amendment: *And*

provided, That all applicable provisions of 43 CFR part 14 are complied with.

(4) All State program amendments which may have an effect on historic properties shall be provided to the State Historic Preservation Officer and to the Advisory Council on Historic Preservation for comment.

(5) Public hearings may be provided at the discretion of the Director and shall be held no sooner than five days before the close of the public comment period. The comment period shall end on a date following any public hearing scheduled to be held.

Public hearing plans will be announced in the notice of receipt of the amendment published in the FEDERAL REGISTER. In determining whether to hold a public hearing, the Director will consider the subject of the amendment, its complexity and public hearing and meetings conducted by the State regulatory authority prior to submission of the amendment for OSM approval. When State regulatory authority public hearings or meetings are accepted in lieu of an OSM hearing, the State regulatory authority shall provide to the Director a complete record of any hearings or meetings including transcripts, written presentations, exhibits and copies of all comments. Hearings shall be informal and follow legislative procedures. The format and the rules of procedure for each hearing shall be determined by the Director and published in the notice required by paragraph (h)(1) of this section.

(6) Upon the close of the public comment period, the transcript, written presentations, exhibits and copies of all comments shall be transmitted to the Director.

(7) The Director shall consider all relevant information, including any information obtained from public hearings and comments, and shall approve or disapprove the amendment request within 30 days after the close of the public comment period established in accordance with § 732.17(h)(3).

(8) If the Director does not approve the amendment request, the State regulatory authority will have 60 days after publication of the Director's decision to submit a revised amendment for consideration by the Director. If more time may be needed by the State

to submit a revised amendment, the Director may grant more time by specifying in the decision, a date by which the State regulatory authority must submit a revised amendment. The date specified in the Director's decision should be based on the circumstances of the situation and the established administrative or legislative procedures of the State in question.

(9) The Director will approve or not approve revised amendment submissions in accordance with the provisions under paragraph (h) of this section.

(10) The applicable criteria for approval or disapproval of State programs set forth in § 732.15 shall be utilized by the Director in approving or disapproving State program amendments.

(11) State program amendments shall not be approved until the Director has—

(i) Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the program amendment(s) as proposed; and

(ii) Obtained written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of a State program amendment(s) which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*), and the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

(12) All decisions approving or not approving program amendments must be published in the FEDERAL REGISTER and will be effective upon publication unless the notice specifies a different effective date. The decision approving or not approving program amendments will be published in the FEDERAL REGISTER within 30 days after the date of the Director's decision.

(13) Final action on all amendment requests must be completed within seven months after receipt of the proposed amendments from the State.

[44 FR 15326, Mar. 13, 1979, as amended at 46 FR 7909, Jan. 23, 1981; 47 FR 26366, 26367, June 17, 1982; 52 FR 4261, Feb. 10, 1987; 70 FR 61206, Oct. 20, 2005]

PART 733—MAINTENANCE OF STATE PROGRAMS AND PROCEDURES FOR SUBSTITUTING FEDERAL ENFORCEMENT OF STATE PROGRAMS AND WITHDRAWING APPROVAL OF STATE PROGRAMS

Sec.

733.1 Scope.

733.10 Information collection.

733.11 General requirements for maintaining State programs.

733.12 Procedures for substituting Federal enforcement of State programs or withdrawing approval of State programs.

733.13 Factors to be considered in deciding whether to substitute Federal enforcement for State programs or to withdraw approval of State programs.

AUTHORITY: Secs. 501(b), 503, 504, 517 and 521, Pub. L. 95-87 (30 U.S.C. 1251(b), 1253, 1254, 1267 and 1271).

SOURCE: 44 FR 15328, Mar. 13, 1979, unless otherwise noted.

§ 733.1 Scope.

This part establishes requirements for the maintenance of State programs and procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs.

§ 733.10 Information collection.

The information collection requirement contained in 30 CFR 733.12(a)(2) has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0025. The information required is needed by OSM to verify the allegations in a citizen request to evaluate a State program and to determine whether an evaluation should be undertaken.

[47 FR 26366, June 17, 1982]

§ 733.11 General requirements for maintaining State programs.

States with an approved State program shall implement, administer, enforce and maintain it in accordance with the Act, this chapter and the provisions of the approved State program.

§ 733.12 Procedures for substituting Federal enforcement of State programs or withdrawing approval of State programs.

(a) *Evaluation.* (1) The Director shall evaluate the administration of each state program at least annually.

(2) Any interested person may request the Director to evaluate a State program. The request shall set forth a concise statement of the facts which the person believes establishes the need for evaluation. The Director shall verify the allegations and determine within 60 days whether or not the evaluation shall be made and mail a written decision to the requestor.

(b) If the Director has reason to believe that a State is not effectively implementing, administering, maintaining or enforcing any part of its approved State program, the Director shall promptly notify the State regulatory authority in writing. The Director's notice shall—

(1) Provide sufficient information to allow the State regulatory authority to determine what portions of the program the Director believes are not being effectively implemented, administered, maintained, or enforced;

(2) State the reasons for such belief; and

(3) Specify the time period for the State regulatory authority to accomplish any necessary remedial actions.

(c) The Director shall provide the State regulatory authority an opportunity for an informal conference if the State requests an informal conference within 15 days after the expiration of the time period specified in paragraph (b)(3) of this section. The informal conference may pertain to the facts or the time period for accomplishing remedial actions as specified by the Director's notification.

(d) If an informal conference is not held under paragraph (c) of this section, or if, following such a conference, the Director still has reason to believe that the State is failing to adequately implement, administer, maintain or enforce a part or all of a State program, the Director shall give notice to the State and to the public, specifying the basis for that belief and shall hold a public hearing in the State within 30

days of the expiration of the time period specified in paragraph (b)(3) of this section or as modified at the informal conference held under paragraph (c) of this section.

(e) The State will continue to enforce its approved program unless upon completion of the hearing under paragraph (d) of this section and based upon the review of all available information, including the hearing transcript, written presentations and written comments, the Director finds that the State has failed to implement, administer, maintain or enforce effectively all or part of its approved State program. If the Director finds further that the State has not demonstrated its capability and intent to administer the State program, the Director shall either—

(1) Substitute for the State regulatory authority direct Federal enforcement of all or part of the State program in accordance with paragraph (f) of this section; or

(2) Recommend to the Secretary that he or she withdraw approval of the State program, in whole or in part, in accordance with paragraph (g) of this section. The recommendation shall be accompanied by all relevant information and shall include the reasons for the recommendation.

(f) *Substituted Federal enforcement.* (1) The Director shall give public notice of a finding under paragraph (e) of this section and specify the extent to which the Director is instituting direct Federal enforcement of a State program.

(2) During the period beginning with the public notice and ending when the State satisfies the Director that it will enforce the State program effectively, the Director shall enforce those portions of the State program and any additional regulations that the Office has adopted as necessary to enable the Director to perform his or her duties. To the extent the Director has assumed direct Federal enforcement of the State program, the Director shall—

(i) Enforce any permit condition required under the Act;

(ii) Issue any new or revised permit pursuant to any additional regulation that the Director may promulgate at the time of assumed enforcement; and

(iii) Conduct inspections and issue notices, orders and assessments of pen-

alties as may be necessary for compliance with those permit conditions, the Act and the State program in accordance with subchapter L.

(3) In the case of a State permittee who has met his or her obligations under an existing State permit and who did not willfully secure the issuance of that permit through fraud or collusion, the Director shall give the permittee a reasonable time to conform ongoing surface mining and reclamation operations to the requirements of the Act, before suspending or revoking the State permit.

(g) *Withdrawing approval of State program.* (1) Upon recommending withdrawal of approval of a State program to the Secretary, the Director shall institute direct Federal enforcement in accordance with the requirements of paragraph (f) of this section.

(2) Upon receipt of the Director's recommendation and accompanying information under paragraph (e)(2) of this section the Secretary shall either—

(i) Withdraw approval of the State program in whole or in part if the Secretary finds that failure by the State to administer or enforce part or all of its State program cannot effectively be remedied by substitution of direct Federal enforcement for all or part of the State program, or

(ii) Instruct the Director to continue direct Federal enforcement in accordance with paragraph (f) of this section.

(3) The Secretary shall give public notice of a finding under paragraph (g)(2)(i) of this section, and specify the extent to which approval of a State program is being withdrawn. Not later than the issuance of the notice, the Director shall propose promulgation of, and thereafter promulgate and implement a Federal program for the affected State, in accordance with 30 CFR part 736.

[44 FR 15328, Mar. 13, 1979, as amended at 47 FR 26366, June 17, 1982]

§ 733.13 Factors to be considered in deciding whether to substitute Federal enforcement for State programs or to withdraw approval of State programs.

The record of the State in fulfilling the conditions of the original approval or adjusting to new circumstances, in

Surface Mining Reclamation and Enforcement, Interior

§ 735.5

accordance with requirements of the Act and this chapter, the hearings transcripts, written presentations and comments shall be considered in evaluating the maintenance, administration, or enforcement of a State program for purposes of determining whether to substitute direct Federal enforcement of the State program or to withdraw approval of part or all of the program.

[44 FR 15328, Mar. 13, 1979, as amended at 47 FR 26366, June 17, 1982]

PART 735—GRANTS FOR PROGRAM DEVELOPMENT AND ADMINISTRATION AND ENFORCEMENT

Sec.

735.1 Scope.

735.2 Objectives.

735.3 Authority.

735.4 Responsibility.

735.5 Definitions.

735.10 Information collection.

735.11 Eligibility for program development grants.

735.12 Eligibility for administration and enforcement grants.

735.13 Submission of estimated annual budgets and allocation of funds.

735.14 Coverage of grants.

735.15 Amount of grants.

735.16 Special provisions for States with cooperative agreements.

735.17 Grant periods.

735.18 Grant application procedures.

735.19 Grant agreement.

735.20 Grant amendments.

735.21 Grant reduction and termination.

735.22 Audit.

735.23 Administrative procedures.

735.24 Allowable costs.

735.25 Financial management.

735.26 Reports.

735.27 Records.

735.28 Disclosure of information.

AUTHORITY: Secs. 201, 501, and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62706, Dec. 13, 1977, unless otherwise noted. Redesignated at 44 FR 15312, Mar. 13, 1979.

§ 735.1 Scope.

This part sets forth policies and procedures for grants to States to—

(a) Develop State programs for the regulation and control of surface coal mining and reclamation operations;

(b) Administer and enforce State programs for the regulation and control of

surface coal mining and reclamation operations; and

(c) Administer cooperative agreements for State regulation of surface coal mining and reclamation operations on Federal lands.

(d) Fund the Small Operator Assistance Program established under section 507(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201) and described in part 795 of this chapter.

[42 FR 62706, Dec. 13, 1977. Redesignated at 44 FR 15312, Mar. 13, 1979 and amended at 47 FR 38491, Aug. 31, 1982]

§ 735.2 Objectives.

The objectives of assistance under this part are—

(a) To assist the States in meeting the costs of administering reclamation and enforcement programs consistent with the Act;

(b) To encourage the States to build strong reclamation and enforcement programs; and

(c) To encourage the States to assume jurisdiction over the regulation of surface coal mining and reclamation operations.

§ 735.3 Authority.

Section 705 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201) authorizes the Secretary to make grants to States for developing, administering, and enforcing State regulatory programs.

§ 735.4 Responsibility.

(a) The Director shall administer the State grant program for the development, administration, and enforcement of State programs under this part.

(b) The Director or his authorized designee shall receive, review and approve grant applications under this part.

[42 FR 62706, Dec. 13, 1977. Redesignated at 44 FR 15312, Mar. 13, 1979, and amended at 47 FR 38491, Aug. 31, 1982]

§ 735.5 Definitions.

As used in this part, agency means the State agency designated by the Governor to receive and administer grants under this part.

§ 735.10

30 CFR Ch. VII (7-1-17 Edition)

§ 735.10 Information collection.

(a) The information collection and retention requirements in 30 CFR 735.13 (a) and (b), 735.16(e), 735.18, 735.26 and 735.27 were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned clearance numbers for §§ 735.13 (a) and (b); SF 424, 1029-0016; OSM 50-A, 1029-0079; OSM 50-B, 1029-0078; OSM-47, 1029-0064; OSM-48, 1029-0070; OSM-51, 1029-0072; OSM-51A, 1029-0074; OSM-51B, 1029-0075; OSM-51C, 1029-0069; for Sections 735.16(e) and 735.18; SF 269, 1029-0017; OSM-51, 1029-0072; SF 271, 1029-0073; OSM-51A, 1029-0074; OSM-51B, 1029-0075; OSM-51C, 1029-0069; OSM-60, 1029-0076; OSM-62, 1029-0077; and OSM-63, 1029-0068; for section 735.26; and section 735.27 which was included in the above clearance numbers.

(b) The information required by 30 CFR part 735 will be used by OSM's Headquarters and State offices in administering, evaluating and auditing its State reimbursement grants for program development and administration and enforcement to insure that the requirements of OMB Circular A-102 and the Surface Mining Control and Reclamation Act are met. The information required by 30 CFR part 735 is mandatory.

[47 FR 38491, Aug. 31, 1982]

§ 735.11 Eligibility for program development grants.

(a) *Designation of State agency.* In order to receive a program development grant the Governor of a State shall designate in writing to the Director one agency to submit the grant applications, and to receive and administer the grants.

(b) *Periods covered by program development grants.* (1) An agency may apply for a program development grant for any period for which it does not have an approved State program. This is limited to periods during—

(i) The initial development of a State program;

(ii) The revision of a State program which has been disapproved by the Secretary; and

(iii) The revision of a State program from which the Secretary has withdrawn his approval.

(2) The Director shall limit grants for (b)(1) (ii) and (iii) of this paragraph to the costs of making revisions necessary to secure approval of the State programs.

(3) The Director shall not approve grants for costs incurred prior to August 3, 1977.

(Secs. 201, 501, 503, 705, Pub. L. 95-87, 91 Stat. 450, 467, 470, 520, (30 U.S.C. 1211, 1251, 1253, 1295))

[42 FR 62706, Dec. 13, 1977; 43 FR 2722, Jan. 19, 1977. Redesignated at 44 FR 15312, Mar. 13, 1979, and amended at 45 FR 2804, Jan. 14, 1980]

§ 735.12 Eligibility for administration and enforcement grants.

(a) *Approved program required.* In order to receive a grant to administer and enforce a State program, the State must have an approved State regulatory program.

(b) *Designation of a State agency.* In order to receive a grant to administer and enforce a State program, the Governor must designate a single agency to receive and administer administration and enforcement grants, including cooperative agreement grants described in § 735.16 of this part.

(c) *Nondiscrimination.* The agency shall monitor the compliance activity of its subrecipients with respect to the nondiscrimination provisions in § 735.21(a)(4) of this part.

§ 735.13 Submission of estimated annual budgets and allocation of funds.

(a) Budget summaries for Federal budget. For each fiscal year, the agency shall submit to the Director or his authorized designee 18 months prior to the Federal fiscal year for which the grant will be requested, a projection of its program budget (personnel and fringe benefits, travel, equipment and supplies, contractual, indirect charges, and other), including the costs of administering State-Federal cooperative agreements pursuant to § 211.75 of this title, and any aircraft which the agency proposes to acquire. The Director will use these budget summaries in preparing the Federal budget estimates which he is required to submit.

(b) Updated budget summary. For each fiscal year, the agency shall submit to the Director or his authorized

Surface Mining Reclamation and Enforcement, Interior

§ 735.15

designee a current program budget (personnel and fringe benefits, travel, equipment and supplies, contractual, indirect charges, and other) three months prior to the beginning of the Federal fiscal year for which a grant will be requested.

(c) *Allocation of funds.* (1) The Director shall allocate to the agencies the full amount requested and approved in the States' revised or actual budgets provided that the amount available in the Federal budget is sufficient.

(2) If the funds available for grants are insufficient to cover the total grant needs, including cooperative agreement grants, the Director shall allocate the funds available according to the proportion of each requested and approved agency's budget to the total of all agencies' requested and approved budgets.

(3) Allocation of a specific amount of funds to an agency does not assure that grants for that amount will be approved. Each agency must apply for and secure approval of grants in accordance with the requirements of this part.

(4) The Director shall reallocate any funds which are not requested by agencies as of June 1 of that year. Such funds shall be allocated primarily to those agencies which have received less than the allowable percentage of their eligible costs.

(5) Agencies which are allocated such additional funds may submit new or revised grant applications for the additional amounts on or before August 15, of that year.

[42 FR 62706, Dec. 13, 1977. Redesignated at 44 FR 15312, Mar. 13, 1979, and amended at 47 FR 38491, Aug. 31, 1982]

§ 735.14 Coverage of grants.

(a) *Program development grants.* An agency may use grant money under this part to cover the costs of developing—

(1) New or revised State laws, regulations, and procedures;

(2) Revised or expanded inspection systems;

(3) Training programs for inspectors and other personnel;

(4) New or revised organizational structures;

(5) Information and communications systems, including data processing systems;

(6) A planning process including a data base and information system to receive and act upon petitions to designate lands unsuitable for mining;

(7) An application for the initial administration and enforcement grant to the extent not covered by indirect costs or other cost items;

(8) Other components necessary to obtain an approved State program, as mutually agreed upon by the Director or his authorized designee and the agency receiving a grant.

(b) *Administration and enforcement grants.* An agency may use grant money under this part to cover the costs of—

(1) Administering an approved State regulatory program;

(2) Providing supporting and administrative services required by the State regulatory program;

(3) Providing equipment required for the regulatory program and its support, either through use charges or direct purchase. Equipment charges and purchases will be allowed in accordance with Federal Management Circular 74-4, "Cost principles applicable to grants and contracts with State and local governments," (34 CFR part 255) and Office of Management and Budget Circular No. A-102, "Uniform administrative requirements for grants-in-aid to State and local governments" (42 FR 45828).

§ 735.15 Amount of grants.

(a) *Amount of program development grants.* (1) For the first year of a program development grant the Director or his authorized designee shall approve grants for not more than 80 percent of the total of agreed upon costs pursuant to § 735.14(a).

(2) For the second year of a program development grant the Director or his authorized designee shall approve grants for not more than 60 percent of the total agreed upon costs pursuant to § 735.14(a).

(3) For the third year and each following year of a program development grant the Director or his authorized designee shall approve grants for not more than 50 percent of the total

§ 735.16

30 CFR Ch. VII (7-1-17 Edition)

agreed upon costs pursuant to § 735.14(a).

(b) *Amount of administration and enforcement grants.* (1) If no program development grant has been awarded, the Director or his authorized designee may approve the first administration and enforcement grant for not more than 80 percent of the agreed upon costs for administration and enforcement of the program.

(2) If a program development grant has been awarded for only 1 year, the Director or his authorized designee may approve an administration and enforcement grant for 60 percent of the agreed upon costs for administration and enforcement of the program.

(3) If a program development grant has been awarded for more than 1 year but less than 2 years, the Director or his authorized designee may approve the first administration and enforcement grant for 60 percent for that proportion remaining in the second year and for 50 percent for the proportion allocated to the third year.

(4) For the third and following years, the Director or his authorized designee may approve administration and enforcement grants for 50 percent of the agreed upon costs for administration and enforcement of the program.

(Secs. 201, 501, 503, 705, Pub. L. 95-87, 91 Stat. 450, 467, 470, 520 (30 U.S.C. 1211, 1251, 1253, 1295))

[42 FR 62706, Dec. 13, 1977. Redesignated at 44 FR 15312, Mar. 13, 1979, and amended at 45 FR 2804, Jan. 14, 1980]

§ 735.16 Special provisions for States with cooperative agreements.

(a) *Eligibility.* The Director may approve additional grants to States which have cooperative agreements pursuant to § 211.75 of this title for State regulation of surface coal mining and reclamation operations on Federal lands. This includes—

(1) States which had cooperative agreements on August 3, 1977, which have been modified to comply with the initial regulatory program; and

(2) States which enter into cooperative agreements following approval of the State's regulatory program.

(b) *Coverage of grants.* An agency may use cooperative agreement grants to

carry out the functions assigned to the State under the agreement.

(c) *Amounts of grants.* The Director or his authorized designee may approve grants for the approximate amount which he determines the Federal Government would have expended for regulation of coal mining on the Federal lands being regulated by the State, except that no grant may exceed the actual costs to the State.

(d) *Grant periods.* The Director or his authorized designee shall normally approve a grant for a period of one year or less. Consecutive grants shall be awarded to fund approved programs.

(e) *Application procedures.* (1) States with cooperative agreements in effect on August 3, 1977, may apply for cooperative agreement grants using the procedures set forth in § 735.18 (a), (b) and (d).

(2) States with cooperative agreements established in conjunction with approved State regulatory programs may apply for cooperative agreement grants by including a supplement to an annual administration and enforcement grant application submitted according to § 735.18. The State shall include in the supplemental section:

(i) A separate budget summary for the costs of the cooperative agreement in the format specified by OSM; and

(ii) A separate narrative, in the format specified by OSM, describing the specific activities required by the cooperative agreement for the period for which the grant is requested.

(f) *Other requirements.* The procedures and requirements set forth in §§ 735.17 through 735.26 are applicable to cooperative agreement grants.

[42 FR 62706, Dec. 13, 1977; 43 FR 2722, Jan. 19, 1977. Redesignated at 44 FR 15312, Mar. 13, 1979, and amended at 47 FR 38491, Aug. 31, 1982]

§ 735.17 Grant periods.

The Director or his authorized designee shall normally approve a grant for a period of one year or less. Consecutive grants shall be awarded to fund approved programs.

[47 FR 38491, Aug. 31, 1982]

§ 735.18 Grant application procedures.

(a) The agency shall submit its application (three copies) to the Director or his authorized designee at least sixty days prior to the beginning of the intended grant period, or as soon thereafter as possible.

(b) The agency shall use the application forms and procedures specified by OSM in accordance with Office of Management and Budget Circular No. A-102. No pre-application is required. Each application must include the following:

(1) Part I, Application Form Coversheet, SF 424.

(2) Part II, Project Approval Information.

(i) For non-construction grants use Form OSM-50A, Project Approval Information—Section A.

(ii) For construction grants use Form OSM-50A, Project Approval Information—Section A, and Form OSM-50B, Project Approval Information—Section B.

(3) Part III, Budget Information.

(i) For non-construction grants use Form OSM-47, Budget Information Report, with a narrative explanation of computations.

(ii) For construction grants use Form OSM-48, Budget Information—Construction, with a narrative explanation of computations.

(4) Part IV, Program Narrative Statement, Form OSM-51, providing the narrative for the goals to be achieved for both construction and non-construction grants.

(i) Form OSM-51 is supplemented by completion of Column 5A of Forms OSM-51A and OSM-51B which reports the quantitative Program Management information of the Administration and Enforcement grants.

(ii) Form OSM-51 is supplemented by completion of Column 5A of Form OSM-51C which reports the quantitative Program Management information of the Small Operator Assistance Program Administration and Operational grant.

(5) Part V, The standard assurances for non-construction activities or construction activities as specified in Office of Management and Budget Circular No. A-102, Attachment M.

(c) For program development grant applications, agencies shall include:

(1) An analysis and evaluation of the current State laws and changes required therein to conform to the requirements of the Surface Mining Control and Reclamation Act of 1977, unless previously submitted under part 725;

(2) A description of the changes expected to be required in State regulations, organization, staffing, training and other policies and operations in order to develop a State program which can be approved; and

(3) A program to develop the legislation, regulations, procedures, organization, staffing, training materials, and other program elements necessary to obtain program approval.

(d) For administration and enforcement grants and cooperative agreement grants, agencies shall include:

(1) A description of the specific operations in the approved program which will be implemented during the period for which the grant is requested.

(2) A description and justification of any major equipment (equipment with a unit acquisition cost of \$500 or more and having a life of more than two years) which the agency proposes to acquire with the grant.

(e) The Director or his authorized designee shall notify the agency within thirty days after the receipt of a complete application, or as soon thereafter as possible, whether it is or is not approved. If the application is not approved, the Director or his authorized designee shall set forth in writing the reasons for disapproval and may propose modifications if appropriate. The agency may resubmit the application. The Director or his authorized designee shall process the revised application as an original application.

[47 FR 62706, Dec. 13, 1977. Redesignated at 44 FR 15312, Mar. 13, 1979, and amended at 47 FR 38492, Aug. 31, 1982]

§ 735.19 Grant agreement.

(a) If the Director or his authorized designee approves an agency's grant application, the Director or his authorized designee shall prepare a grant agreement which includes—

(1) The approved scope of the program to be covered by the grant;

§ 735.20

(2) The approved budget, including the Federal share;

(3) Commencement and completion dates for the segment of the program covered by the grant and for major phases of the program to be completed during the grant period; and

(4) Permissible transfers of funds to other State agencies.

(b) The Director or his authorized designee may permit an agency to assign functions and funds to other State agencies. The Director or his authorized designee shall require the grantee agency to retain responsibility for overall administration of the grant, including use of funds, accomplishment of functions and reporting.

(c) Pre-agreement costs for program development grants shall be allowed only as specified in the grant agreement.

(d) The Director or his authorized designee shall transmit four copies of the grant agreement by certified mail, return receipt requested, to the agency for signature. The agency shall execute the grant agreement and return all copies of it within 3 calendar weeks after receipt, or within an extension of such time that may be granted by the Director or his authorized designee.

(e) The Director or his authorized designee shall sign the grant agreement upon its return from the agency and return one copy to the agency. The grant is effective and constitutes an obligation of Federal funds in the amount and for the purposes stated in the grant agreement at the time the Director or his authorized designee signs the agreement.

(f) Neither the approval of a program nor the award of any grant will commit or obligate the United States to award any continuation grant or enter into any grant amendment, including grant increases to cover cost overruns.

§ 735.20 Grant amendments.

(a) A grant amendment is a written alteration in the grant amount, grant terms or conditions, budget or period, or other administrative, technical, or financial agreement whether accomplished on the initiative of the agency or the Director or his authorized designee, or by mutual action of the agen-

30 CFR Ch. VII (7-1-17 Edition)

cy and the Director or his authorized designee.

(b) The agency shall promptly notify the Director or his authorized designee in writing of events or proposed changes which may require a grant amendment, such as—

(1) Rebudgeting;

(2) Changes which may affect the approved scope or objective of a program; or

(3) Changes which may increase or substantially decrease the total cost of a program.

(c) The Director or his authorized designee shall approve or disapprove each proposed amendment within thirty days of receipt, or as soon thereafter as possible, and shall notify the agency in writing of the approval or disapproval of the amendment.

(d) The date the Director or his authorized designee signs the grant amendment establishes the effective date of the action. If no time period is specified in the grant amendment, then the amendment applies to the entire grant period.

[42 FR 62706, Dec. 13, 1977. Redesignated at 44 FR 15312, Mar. 13, 1979, and amended at 47 FR 38492, Aug. 31, 1982]

§ 735.21 Grant reduction and termination.

(a) *Conditions for reduction or termination.* (1) If an agency violates the terms of a grant agreement, the Director or his authorized designee may reduce or terminate the grant.

(2) If an agency fails to implement, enforce or maintain an approved program, or cooperative agreement, the Director or his authorized designee shall terminate the administration and enforcement grant or cooperative agreement grant.

(3) If an agency fails to implement, enforce or maintain only a part of the program, the Director or his authorized designee shall reduce the grant to the amount of the program being operated by the agency.

(4) If an agency is not in compliance with the following nondiscrimination provisions, the Director or his authorized designee shall terminate the grant—

(i) Title VI of the Civil Rights Act of 1964 (78 Stat. 252). Nondiscrimination in

Surface Mining Reclamation and Enforcement, Interior

§ 735.23

Federally Assisted Programs, which provides that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations at 43 CFR part 17.

(ii) Executive Order 11246, as amended by Executive Order 11375, Equal Employment Opportunity, requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex, or national origin, and the implementing regulations at 41 CFR part 60.

(iii) Section 504 of the Rehabilitation Act of 1973, as amended by Executive Order 11914, Nondiscrimination With Respect to the Handicapped in Federally Assisted Programs.

(5) If an agency fails to enforce the financial interest provisions of part 706 of this chapter the Director shall terminate the grant.

(6) If an agency fails to submit reports required by this part or part 705 of this chapter the Director shall reduce or terminate the grant.

(b) *Grant reduction and termination procedures.* (1) The Director or his authorized designee shall give at least 10 days written notice to the agency by certified mail, return receipt requested, of intent to reduce or terminate a grant. The Director or his authorized designee shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) The Director or his authorized designee shall afford the agency opportunity for consultation and remedial action prior to reducing or terminating a grant.

(3) The Director or his authorized designee shall notify the agency of the termination or reduction of the grant in writing by certified mail, return receipt requested.

(4) Upon termination the agency shall refund or credit to the United States that portion of the grant money paid or owed to the agency and allocated to the terminated portion of the grant. However any portion of the grant that is required to meet commit-

ments made prior to the effective date of termination shall be retained by the agency.

(5) The agency shall reduce the amount of outstanding commitments insofar as possible and report to the Director or his authorized designee the uncommitted balance of funds awarded under the grant.

(6) Upon notification of intent to terminate the agency shall not make any new commitments without the approval of the Director or his authorized designee.

(7) The Director or his authorized designee may allow termination costs as determined by applicable Federal cost principles listed in Federal Management Circular 74-4.

(c) *Appeals.* (1) An agency may appeal the Director or his authorized designee's decision to reduce or terminate a grant to the Director within 30 days of the Director or his authorized designee's decision.

(2) An agency shall include in an appeal—

(i) The decision being appealed, and

(ii) The facts which the agency believes justify a reversal or modification of the decision.

(3) The Director shall act upon appeals within 30 days of their receipt, or as soon thereafter as possible.

[58 FR 41938, Aug. 5, 1993]

§ 735.22 Audit.

The agency shall arrange for an independent audit no less frequently than once every two years, pursuant to the requirements of Office of Management and Budget Circular No. A-102, Attachment P. The audits will be performed in accordance with the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" and the "Guidelines for Financial and Compliance Audits of Federally Assisted Programs" published by the Comptroller General of the United States and guidance provided by the cognizant Federal audit agency.

[47 FR 38492, Aug. 31, 1982]

§ 735.23 Administrative procedures.

The agency shall follow administrative procedures governing accounting,

§ 735.24

payment, property and related requirements contained in Office of Management and Budget Circular No. A-102.

§ 735.24 Allowable costs.

The Director or his authorized designee shall determine costs which may be reimbursed according to Office of Management and Budget Circular No. A-87.

[47 FR 38492, Aug. 31, 1982]

§ 735.25 Financial management.

(a) The agency shall account for grant funds in accordance with the requirements of Office of Management and Budget Circular No. A-102. Agencies shall use generally accepted accounting principles and practices, consistently applied. Accounting for grant funds must be accurate and current.

(b) The agency shall adequately safeguard all funds, property, and other assets and shall assure that they are used solely for authorized purposes.

(c) The agency shall provide a comparison of actual amounts spent with budgeted amounts for each grant.

(d) When advances are made by a letter-of-credit method, the agency shall make drawdowns from the U.S. Treasury through its commercial bank as closely as possible to the time of making the disbursements.

(e) The agency shall support accounting records by source documentation.

(f) The agency shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 735.26 Reports.

(a) The agency shall, for each grant made under this part, submit semi-annually to the Director or his authorized designee a Financial Status Report, Form 269 for non-construction grant activities in accordance with Office of Management and Budget Circular No. A-102, Attachment H and OSM requirements. This report shall be accompanied by a Performance Report, Form OSM-51 comparing actual accomplishments to the goals established for the period, prepared according to Attachment I of OMB Circular No. A-102 and OSM requirements. The agency shall also submit semiannually a sepa-

30 CFR Ch. VII (7-1-17 Edition)

rate Outlay Report and Request for Reimbursement for Construction Programs, Form 271, and accompanying narrative performance report comparing actual accomplishments with planned goals on grant funded construction activities.

(b) The Director or his authorized designee shall require through the grant agreement that semiannual reports describe the relationship of financial information to performance and productivity data, including unit cost information. This quantitative information will be reported on Forms OSM-51A and OSM-51B or OSM-51C, Quantitative Program Management Information, as applicable.

(c) The Director or his authorized designee shall require that when a grant is closed out in accordance with Attachment L to Office of Management and Budget Circular No. A-102, the following actions are taken:

(1) The grantee shall account for any property acquired with grant funds or received from the Government in accordance with the provisions of Attachment N to Office of Management and Budget Circular No. A-102. This may be accomplished by the submission of the Report of Government Property, Form OSM-60.

(2) The grantee shall submit a final financial report and thus release OSM from obligations under each grant or cooperative agreement that is being closed out.

[47 FR 38492, Aug. 31, 1982]

§ 735.27 Records.

(a) The agency shall maintain complete records in accordance with Office of Management and Budget Circular No. A-102. This includes books, documents, maps, and other evidence and accounting procedures and practices, sufficient to reflect properly—

(1) The amount, receipt, and disposition by the agency of all assistance received for the program.

(2) The total costs of the program, including all direct and indirect costs of whatever nature incurred for the performance of the program for which the grant has been awarded.

(b) Subgrantees and contractors, including contractors for professional

Surface Mining Reclamation and Enforcement, Interior

§ 736.11

services, shall maintain books, documents, papers, maps, and records which are pertinent to specific grant award.

(c) The agency's records and the records of its subgrantees and contractors, including professional services contracts, shall be subject at all reasonable times to inspection, reproduction, copying, and audit by the Office, the Department of the Interior, the Comptroller General of the United States, the Department of Labor or any authorized representative.

(d) For completed or terminated grants the agency, subgrantees, and contractors shall preserve and make their records available to the Office, the Department of the Interior, the Comptroller General of the United States, Department of Labor, or any authorized representative pursuant to OMB Circular No. A-102.

§ 735.28 Disclosure of information.

All grant applications received by the Director or his authorized designee constitute agency records. As such, their release may be requested by any member of the public under the Freedom of Information Act, 5 U.S.C. 552, and shall be disclosed unless exempt from disclosure under 5 U.S.C. 552(b).

PART 736—FEDERAL PROGRAM FOR A STATE

Sec.

736.1 Scope.

736.11 General procedural requirements.

736.12 Notice, comment and hearing procedures.

736.13 [Reserved]

736.14 Director's decision.

736.15 Implementation, enforcement, and maintenance of a Federal program.

736.16 Federal program termination procedures.

736.17 Consolidation of procedures.

736.21 General requirements of a Federal program.

736.22 Contents of a Federal program.

736.23 Federal program effect on State law or regulations.

736.24 Federal program effect on State funding.

736.25 Permit fees.

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

SOURCE: 44 FR 15329, Mar. 13, 1979, unless otherwise noted.

§ 736.1 Scope.

This part establishes standards and procedures for the promulgation, implementation, maintenance, administration, revision and termination of a Federal program for a State for coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within that State.

§ 736.11 General procedural requirements.

(a) *Promulgation.* (1) The Director shall promulgate and, subject to the provisions of this part, implement a Federal program for a State if the Director reasonably expects coal exploration or surface coal mining and reclamation operations to exist on non-Federal and non-Indian lands within the State at any time before June 1985, and the State fails to—

(i) Submit a State program for regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within that State to the Director as provided in 30 CFR 731.12; or

(ii) Resubmit an acceptable State program within 60 days of a notice of disapproval of a State program pursuant to § 732.13(f). The Director shall not promulgate a Federal program before the expiration of the initial period allowed for submission of a State program, as provided in § 731.12.

(2) The Director shall promulgate a complete Federal program for a State upon the withdrawal of approval of an entire State program under § 733.12.

(3) The Director shall promulgate a partial Federal program for a State upon the withdrawal of approval of part of a State program under 30 CFR part 733.

(b) *Revision.* The Director may revise a Federal program for a State, if necessary to further the purposes of the Act and the regulations adopted under the Act.

(c) *Termination.* The Director shall terminate appropriate portions of a Federal program for a State, upon approval of a State program under 30 CFR parts 731 and 732 that replaces a

§ 736.12

complete or partial Federal program for that State.

[44 FR 15329, Mar. 13, 1979, as amended at 47 FR 26367, June 17, 1982]

§ 736.12 Notice, comment and hearing procedures.

Prior to the promulgation or revision of a Federal program for a State, OSMRE shall:

(a) *Federal Register notice.* Publish in the FEDERAL REGISTER a notice which:

(1) Includes the basis, purpose and substance of the proposed Federal program or revision;

(2) Offers any person an opportunity to submit written comments on the proposed Federal program or revision for a period to end no less than 30 days after the date of the notice;

(3) Offers to hold a public hearing on the proposed Federal program or revision in the affected State during the comment period if requested by any person;

(4) Gives the address of an appropriate place where any person, during normal business hours, may inspect and copy a copy of the administrative record for the proposed Federal program or revision;

(5) For an indirect revision of a Federal program, states that the affected provision of the permanent program is cross-referenced by the Federal program, and thus that the proposed permanent program revision also would revise the Federal program;

(b) *Newspaper notice.* For the initial promulgation of a Federal program for a State, publish in a newspaper of general circulation in the coal mining area of the affected State a notice concerning the proposed rulemaking which includes the information required by paragraph (a) of this section, except that for the substance of the proposed Federal program or revision OSMRE may substitute a brief description; and

(c) *Federal agency comment.* As appropriate, solicit comments from the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the proposed Federal program or revision.

[52 FR 39407, Oct. 21, 1987]

30 CFR Ch. VII (7-1-17 Edition)

§ 736.13 [Reserved]

§ 736.14 Director's decision.

(a) After considering all relevant information received under § 736.12 of this part, the Director shall decide whether to promulgate or revise a Federal program for the State.

(b) The Director shall publish the decision in the FEDERAL REGISTER, including a statement of the basis and purpose for the decision, the regulations of the Federal program for the State or revision thereof, and the effective date of the program or revision.

[44 FR 15329, Mar. 13, 1979, as amended at 52 FR 39408, Oct. 21, 1987]

§ 736.15 Implementation, enforcement, and maintenance of a Federal program.

(a) The Director shall implement, administer, enforce, and maintain a Federal program or any revision thereto not later than 30 days after a Federal program is promulgated or revised.

(b)(1) Except as provided in paragraph (b)(2) of this section, the Director shall implement the procedures and criteria of a Federal program for a State for designating lands unsuitable for all or certain types of surface coal mining one year after a Federal program is made effective for a State.

(2) When a complete or partial Federal program is promulgated because of a State's failure to implement, maintain, or enforce adequately all or a part of its State program, all applicable portions of the Federal program for the State under this part shall be effective immediately upon implementation of the Federal program.

[48 FR 41348, Sept. 14, 1983]

§ 736.16 Federal program termination procedures.

Termination of a Federal program shall be accomplished at the same time and through the procedures for approval of a State program under 30 CFR part 732. No Federal program shall be considered terminated until a State program has been approved by the Secretary in accordance with 30 CFR part 732.

§ 736.17 Consolidation of procedures.

The Director may consolidate public notices, hearings, opportunity for public comment and decisions on the promulgation, revision or termination of a Federal program for a State under this part, with public notices, opportunity for public comment and hearings on the approval, disapproval or withdrawal of a State program under 30 CFR parts 732 through 733.

§ 736.21 General requirements of a Federal program.

(a) Any complete Federal program promulgated or revised by the Director shall include the contents identified in 30 CFR 736.22.

(b) Any partial Federal program shall include all of the contents identified in 30 CFR 736.22 to the extent that those aspects of coal exploration and surface coal mining and reclamation operations within the State are to be regulated by the Director under the partial program and are not to be regulated under the remainder of the State program that continues in effect.

§ 736.22 Contents of a Federal program.

(a) In promulgating or revising any Federal program for a State, the Director shall—

(1) Consider the nature of that State's soils, topography, climate, and biological, chemical, geological, hydrological, agronomic, and other relevant physical conditions;

(2) Include any provisions that are necessary to implement the requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 531 *et seq.*), the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661-666c), the National Historic and Preservation Act of 1966 (16 U.S.C. 470), the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a), and other relevant Federal laws imposing duties upon the Secretary; and

(3) Include, if required pursuant to 30 CFR 736.23, any performance standards for the regulation of coal exploration and surface coal mining and reclamation operations more stringent than those otherwise provided for by this chapter and the Act.

(b)(1) Any Federal program for a State, including appropriate portions of a partial Federal program which is promulgated or revised by the Director, shall provide for Federal regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within the State in accordance with the requirements of the Act and this Chapter, including, at a minimum, the following provisions: Parts 700, 701, 707, 761, 762, 764, 842, 843, 845, subchapters G, J, K, and M.

(2) An exception to these requirements may be made where there is exploration but no mining in the State. In such a case, the Federal program which is promulgated must regulate coal exploration, but not mining, and shall include, at a minimum, the applicable sections of the following provisions: Parts 700, 701, 761, 762, 764, 772, 773, 775, 815, 842, 843 and 845.

(c) For the purpose of avoiding duplication, the Federal program shall include a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations under the Federal program with any other Federal, State, or local planning or permit process applicable to the operations in the jurisdiction involved, including, but not limited to—

(1) The Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*); Clean Water Act, as amended (30 U.S.C. 1251 *et seq.*); Resource Conservation and Recovery Act (42 U.S.C. 3251 *et seq.*); and

(2) Plans approved by the Administrator of the U.S. Environmental Protection Agency under sections 208 or 303(c) of the Clean Water Act, as amended (33 U.S.C. 1288, 1313(c)).

[44 FR 15329, Mar. 13, 1979, as amended at 47 FR 26367, June 17, 1982; 48 FR 44779, Sept. 30, 1983]

§ 736.23 Federal program effect on State law or regulations.

(a) Whenever a Federal program is promulgated or revised for a State, any statutes or regulations of the State regulating coal exploration or surface coal mining and reclamation operations subject to the Act shall be preempted and superseded by the Federal program insofar as they are inconsistent with the requirements of the

§ 736.24

30 CFR Ch. VII (7-1-17 Edition)

Act and the Federal program. In promulgating or revising a Federal program for a State, the Director shall set forth in the FEDERAL REGISTER any State statute or regulation which is preempted and superseded by the Federal program.

(b) The provision of any State statute or regulation which provides for more stringent land use and environmental control and regulation of coal exploration or surface coal mining and reclamation operations than do the provisions of the Act or any regulation issued under the Act shall not be preempted and superseded by the Director and shall be incorporated into the Federal program for the State.

[44 FR 15329, Mar. 13, 1979, as amended at 47 FR 26367, June 17, 1982]

§ 736.24 Federal program effect on State funding.

(a) After the withdrawal of a State program and the promulgation and implementation of a complete Federal program for a State and extending until approval of a new State program, the Director shall not—

(1) Approve, fund or continue to fund a State abandoned mine reclamation program, under section 405(c) of the Act and 30 CFR 884.14, 884.15, 884.16 and 886.18; or,

(2) Make any grants to assist the State in administering and enforcing State programs under the Act and 30 CFR 735.11 and 735.12.

(b) After the withdrawal of a State program in part and the promulgation and implementation of a partial Federal program for a State and extending until the approval of a complete State program the Director shall not—

(1) Approve, fund or continue to fund a State abandoned mine reclamation program, under section 405(c) of the Act and 30 CFR 884.14, 884.15, 884.16 and 886.18, unless the Director finds, in writing, that discontinuation of funding would not be consistent with achieving the purposes of the Act, and

(2) Make any grants to assist the State in administering and enforcing State programs under the Act and 30 CFR 735.12, unless the Director finds in writing that discontinuation of funding would not be consistent with achieving the purposes of the Act.

§ 736.25 Permit fees.

(a) *Applicability.* An applicant for a new permit to conduct surface coal mining operations under a Federal program shall submit to OSM fees in the amounts set out in paragraph (d) of this section. For applications submitted prior to the effective date of this rule, fees shall apply only for stages of OSM review begun on or after the effective date. The applicant shall either submit all applicable fees with the permit application, or by stage of review as follows:

(1) *Administrative completeness review.* An applicant who pays by stage of review shall submit the administrative completeness review fee with the permit application.

(2) *Technical review.* Following receipt from OSM of a notice of administrative completeness, an applicant who pays by stage of review shall submit the technical review basic fee, plus the per-acre fee for each acre of disturbed area or fraction thereof to be included in the permit area.

(3) *Permit issuance.* Following receipt from OSM of a notice of technical adequacy, an applicant who pays by stage of review shall submit the decision document fee.

(b) *Refund of fees.* (1) Upon receipt of a written request from an applicant, OSM will refund any permit fees paid under this section for a permit application when OSM denies the permit:

(i) On the basis of information concerning endangered or threatened species or their critical habitats or information concerning cultural or historical resources, where such information was not available prior to submission of the permit application;

(ii) Because subsequent to submittal of a permit application, the lands contained in the permit application are declared unsuitable for mining under subchapter F of this chapter; or

(iii) Because subsequent to submittal of a permit application, the applicant is denied valid existing rights to mine under part 761 of this chapter where such rights are required for surface coal mining operations on the lands contained in the permit application.

Surface Mining Reclamation and Enforcement, Interior

§ 736.25

(2) An applicant may file a written request for withdrawal of a permit application and a refund of fees in accordance with paragraph (b)(3) of this section.

(3) OSM will, upon receipt of written request for withdrawal of a permit application, cease processing of that application. If requested, OSM will refund fees paid by the applicant for the withdrawn application as follows:

(i) Any fees for a stage of OSM review not yet begun will be refunded;

(ii) Where technical review has begun, partial refund will be made of any technical review fee amounts remaining after deduction of actual OSM costs incurred for that technical review. Costs to process the withdrawal may also be deducted.

(4) No interest will be paid on refunded fees.

(c) *Form of payment.* All fees due under this section shall be submitted to OSM by the applicant in the form of a certified check, bank draft or money order, payable to Office of Surface Mining.

(d) *Fee schedule for a new permit.*

Administrative completeness review. \$250.00

Technical review:

Basic fee 1350.00

Fee per acre of disturbed area in permit area:

First 1,000 acres 13.50/acre

Second 1,000 acres 6.00/acre

Third 1,000 acres 4.00/acre

Additional acres 3.00/acre

Decision Document 2000.00

[55 FR 29548, July 19, 1990]

SUBCHAPTER D—FEDERAL LANDS PROGRAM

PART 740—GENERAL REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON FEDERAL LANDS

Sec.

740.1 Scope and purpose.

740.4 Responsibilities.

740.5 Definitions.

740.10 Information collection.

740.11 Applicability.

740.13 Permits.

740.15 Bonds on Federal lands.

740.17 Inspection, enforcement and civil penalties.

740.19 Performance standards.

AUTHORITY: 30 U.S.C. 1201 *et seq.* and 30 U.S.C. 181 *et seq.*

SOURCE: 48 FR 6935, Feb. 16, 1983, unless otherwise noted.

§ 740.1 Scope and purpose.

This part provides for the regulation of surface coal mining and reclamation operations on Federal lands.

§ 740.4 Responsibilities.

(a) The Secretary is responsible for:

(1) Approval, disapproval or conditional approval of mining plans with respect to lands containing leased Federal coal and of modifications thereto, in accordance with the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 181 *et seq.*;

(2) Execution, modification or termination of State-Federal cooperative agreements in accordance with part 745 of this chapter;

(3) Designation of areas of Federal lands as unsuitable for all or certain types of surface coal mining and reclamation operations, or termination of such designations, in accordance with part 769 of this chapter;

(4) Decisions on requests to determine whether a person possesses valid existing rights to conduct surface coal mining operations on Federal lands within the areas specified in § 761.11(a) and (b) of this chapter; and

(5) Issuance of findings concerning whether there are significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations on Fed-

eral lands within a national forest, as specified in § 761.11(b) of this chapter.

(b) OSM is responsible for:

(1) Providing a decision document recommending to the Secretary approval, disapproval or conditional approval of mining plans and of modifications thereto;

(2) Approval of experimental practices on Federal lands;

(3) Inspection, enforcement and civil penalties with respect to surface coal mining and reclamation operations on Federal lands except as provided in paragraph (c)(5) of this section;

(4) Processing citizen requests for Federal inspections on Federal lands in accordance with parts 842, 843 and 845 of this chapter; and

(5) Overseeing the State regulatory authority's administration and enforcement of the State program on Federal lands pursuant to the terms of any cooperative agreement.

(c) The following responsibilities of OSM may be delegated to a State regulatory authority under a cooperative agreement:

(1) Review and approval, conditional approval or disapproval or permit applications for surface coal mining and reclamation operations on Federal lands, revisions or renewals thereof, and applications for the transfer, sale or assignment of such permits;

(2) Consultation with and obtaining the consent, as necessary, of the Federal land management agency with respect to post-mining land use and to any special requirements necessary to protect non-coal resources of the areas affected by surface coal mining and reclamation operations;

(3) Consultation with and obtaining the consent, as necessary, of the Bureau of Land Management with respect to requirements relating to the development, production and recovery of mineral resources on lands affected by surface coal mining and reclamation operations involving leased Federal coal pursuant to 43 CFR Group 3400;

(4) Approval and release of performance bonds, liability insurance and, as applicable, Federal lessee protection bonds required for surface coal mining

Surface Mining Reclamation and Enforcement, Interior

§ 740.5

and reclamation operations on Federal lands. Approval and release of Federal lessee protection bonds requires the concurrence of the Federal land management agency;

(5) Responsibilities of the regulatory authority with respect to inspection, enforcement and civil penalty activities for (i) exploration operations not subject to 43 CFR Group 3400, and (ii) surface coal mining and reclamation operations on Federal lands;

(6) Review and approval of exploration operations not subject to the requirements of 43 CFR Group 3400; and

(7) Preparation of documentation to comply with the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), except, OSM continues to be responsible for:

(i) Determining the scope, content and format and ensuring the objectivity of NEPA compliance documents;

(ii) Making the determination of whether or not the preparation of an environmental impact statement is required.

(iii) Notifying and soliciting views of other State and Federal agencies, as appropriate, on the environmental effects of the proposed action;

(iv) Publishing and distributing draft and final NEPA compliance documents;

(v) Making policy responses to comments on draft NEPA compliance documents;

(vi) Independently evaluating NEPA compliance documents; and

(vii) Adopting NEPA compliance documents and determining Federal actions to be taken on alternatives presented in such documents.

(d) The Bureau of Land Management is responsible for:

(1) Receiving and approving exploration plans pursuant to 43 CFR Group 3400;

(2) Inspection, enforcement and civil penalties with respect to the terms and conditions of coal exploration licenses issued pursuant to 43 CFR Group 3400;

(3) Inspection, enforcement and civil penalties with respect to the terms and conditions of exploration operations subject to 43 CFR Group 3400;

(4) Reviewing the resource recovery and protection plan and modifications thereto, as required by 43 CFR Group 3400 and recommending to the Sec-

retary approval, disapproval or conditional approval of the resource recovery and protection plan;

(5) Inspection, enforcement and civil penalties with respect to the recovery and protection of the coal resource as required by 43 CFR Group 3400;

(6) Protecting mineral resources not included in the coal lease;

(7) Issuance of exploration licenses for Federal coal subject to the requirements of 43 CFR Group 3400;

(8) Issuance of leases and licenses to mine Federal coal subject to the requirements of 43 CFR Group 3400; and

(9) Issuance, readjustment, modification, termination, cancellation, and approval of transfers of Federal coal leases pursuant to the Mineral Leasing Act and the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. 351 *et seq.*

(e) The Federal land management agency is responsible for:

(1) Determining post-mining land uses;

(2) Protection of non-mineral resources;

(3) Requiring such conditions as may be appropriate to regulate surface coal mining and reclamation operations under other provisions of law applicable to such lands under its jurisdiction; and

(4) Where land containing leased Federal coal is under the surface jurisdiction of a Federal agency other than the Department, concur in the terms of the mining plan approval.

[48 FR 6935, Feb. 16, 1983, as amended at 48 FR 44779, Sept. 30, 1983; 55 FR 9401, Mar. 13, 1990; 64 FR 70830, Dec. 17, 1999]

§ 740.5 Definitions.

(a) As used in this subchapter, the term:

Authorized officer means any person authorized to take official action on behalf of a Federal agency that has administrative jurisdiction over Federal lands.

Coal lease means a Federal coal lease or license issued by the Bureau of Land Management pursuant to the Mineral Leasing Act and the Federal Acquired Lands Leasing Act of 1947 (30 U.S.C. 351 *et seq.*).

§ 740.10

Cooperative agreement means a cooperative agreement entered into in accordance with section 523(c) of the Act and part 745 of this chapter.

Federal land management agency means a Federal agency having administrative jurisdiction over the surface of Federal lands that are subject to these regulations.

Federal lease bond means the bond or equivalent security required by 43 CFR part 3400 to assure compliance with the terms and conditions of a Federal coal lease.

Federal lessee protection bond means a bond payable to the United States or the State, whichever is applicable, for use and benefit of a permittee or lessee of the surface lands to secure payment of any damages to crops or tangible improvements on Federal lands, pursuant to section 715 of the Act.

Lease terms, conditions and stipulations means all of the standard provisions of a Federal coal lease, including provisions relating to lease duration, fees, rentals, royalties, lease bond, production and recordkeeping requirements, and lessee rights of assignment, extension, renewal, termination and expiration, and site-specific requirements included in Federal coal leases in addition to other terms and conditions which relate to protection of the environment and of human, natural and mineral resources.

Leased Federal coal means coal leased by the United States pursuant to 43 CFR part 3400, except mineral interests in coal on Indian lands.

Mineral Leasing Act or *MLA* means the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 181, *et seq.*

Mining plan means the plan for mining leased Federal coal required by the Mineral Leasing Act.

Permit application package means a proposal to conduct surface coal mining and reclamation operations on Federal lands, including an application for a permit, permit revision or permit renewal, all the information required by the Act, this subchapter, the applicable State program, any applicable cooperative agreement and all other applicable laws and regulations including, with respect to leased Federal coal, the Mineral Leasing Act and its implementing regulations.

30 CFR Ch. VII (7–1–17 Edition)

Regulatory authority means the State regulatory authority pursuant to a cooperative agreement approved under part 745 of this chapter or, in the absence of a cooperative agreement, OSM.

TVA-owned lands means land owned by the United States and entrusted to or managed by the Tennessee Valley Authority.

(b) The following terms shall have meanings as set forth in 43 CFR parts 3400: Exploration; exploration plan; maximum economic recovery; method of operation; mine; and resource recovery and protection plan.

[48 FR 6935, Feb. 16, 1983, as amended at 48 FR 44779, Sept. 30, 1983]

§ 740.10 Information collection.

(a) In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of this part. The OMB clearance number is 1029-0027. This information is needed to implement section 523 of the Act, which governs surface coal mining operations on Federal lands. Persons intending to conduct such operations must respond to obtain a benefit.

(b) OSM estimates that the public reporting burden for this part will average 26 hours per respondent, including time spent 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 these information collection requirements, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue, NW, Washington, DC 20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, 725 17th Street, N.W., Washington, DC 20503. Please refer to OMB Control Number 1029-0027 in any correspondence.

[64 FR 70831, Dec. 17, 1999]

Surface Mining Reclamation and Enforcement, Interior

§ 740.13

§ 740.11 Applicability.

(a) Except as provided in paragraph (g) of this section, both this subchapter and the pertinent State or Federal regulatory program in subchapter T of this chapter apply to:

(1) Coal exploration operations on Federal lands not subject to 43 CFR part 3400, and

(2) Surface coal mining and reclamation operations taking place on any Federal lands as defined in §700.5 of this chapter, and lands (except Indian lands) over leased or unleased Federal minerals.

(b) Where OSM is the regulatory authority, references in the State program to the State or an agency or official of the State (with respect to functions of the State acting as regulatory authority) shall be construed as referring to OSM.

(c) Where the Secretary and a State have entered into a cooperative agreement, the cooperative agreement shall delineate the responsibilities of the Secretary and the State with respect to the administration of the regulatory program and this subchapter.

(d) Nothing in this subchapter shall affect in any way the authority of the Secretary or any Federal land management agency to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate surface coal mining and reclamation operations under provisions of law other than the Act on land under their jurisdiction.

(e) This subchapter shall not apply to surface coal mining and reclamation operations within a State prior to approval or promulgation of a regulatory program for the State.

(f) Where coal exploration or surface coal mining and reclamation operations within a State are on Federal lands and where no State or Federal program has been approved for the State, this subchapter shall apply in that State upon the effective date of these regulations.

(g) The definition of valid existing rights in §761.5 of this chapter applies to any decision on a request for a determination of valid existing rights to conduct surface coal mining operations

on the lands specified in §761.11(a) and (b) of this chapter.

[48 FR 6935, Feb. 16, 1983; 48 FR 13985, Apr. 1, 1983, as amended at 48 FR 44779, Sept. 30, 1983; 55 FR 9402, Mar. 13, 1990; 64 FR 70831, Dec. 17, 1999; 75 FR 60275, Sept. 29, 2010]

§ 740.13 Permits.

(a) *General requirements.* (1) No person shall conduct surface coal mining operations on lands subject to this part unless that person has first obtained a permit issued pursuant to the regulatory program and this part.

(2) Every person conducting surface coal mining and reclamation operations on lands subject to this part shall comply with the terms and conditions of the permit and the lease or license, the Act, this subchapter, the regulatory program and all other applicable State and Federal laws and regulations.

(3) Surface coal mining operations authorized under the initial regulatory program or 43 CFR parts 3400, as applicable, may be conducted beyond the eight-month period prescribed in the applicable regulatory program if all of the following conditions are present:

(i) A timely and administratively complete application for a permit to conduct those operations under this part has been made to the regulatory authority in accordance with the provisions of this part and the applicable regulatory program;

(ii) The regulatory authority has not yet rendered a final decision with respect to the permit application; and

(iii) Those operations are conducted in compliance with all terms and conditions of the initial regulatory program approval or permit, the requirements of the Act, 30 CFR chapter VII, subchapter B or 43 CFR parts 3400, as applicable, applicable State laws and regulations, and the requirements of the applicable lease or license.

(b) *Permit application package.* (1) Each application for a permit, or permit revision or renewal thereof to conduct surface coal mining and reclamation operations on lands subject to this part shall be accompanied by a fee

made payable to the regulatory authority. The amount of the fee shall be determined in accordance with the permit fee criteria of the applicable regulatory program.

(2) Unless specified otherwise by the regulatory authority, seven copies of the complete permit application package shall be filed with the regulatory authority.

(3) Each permit application package shall include:

(i) The information required for a permit application or for an application for revision or renewal of a permit under the applicable regulatory program;

(ii) The resource recovery and protection plan required by 43 CFR parts 3400 for operations on lands containing leased Federal coal; and

(iii) Where OSM is the regulatory authority or where the proposed operations are on lands containing leased Federal coal, the following supplemental information to ensure compliance with Federal laws and regulations other than the Act:

(A) A description of the affected area of the proposed surface coal mining and reclamation operation with respect to: (1) Increases in employment, population and revenues to public and private entities, and (2) the ability of public and private entities to provide goods and services necessary to support surface coal mining and reclamation operations.

(B) An evaluation of impacts to the scenic and aesthetic resources, including noise on the surrounding area, due to the proposed surface coal mining and reclamation operation.

(C) A statement, including maps and ownership data as appropriate, of any cultural or historical sites listed on the National Register of Historic Places within the affected area of the proposed surface coal mining and reclamation operation.

(D) A statement of the classes of properties of potential significance within the disturbed area, and a plan for the identification and treatment, in accordance with 36 CFR part 800, of properties significant and listed or eligible for listing on the National Register of Historic Places within the disturbed area of the proposed surface

coal mining and reclamation operation.

(E) A description of the probable changes in air quality resulting from the mining operation and any necessary measures to comply with prevention of significant deterioration limitations, State Implementation Plans, or other Federal or State laws for air quality protection.

(F) A description of the location, acreage and condition of important habitats of selected indicator species located within the affected area of the proposed surface coal mining and reclamation operation.

(G) A description of active and inactive nests and prey areas of any Bald or Golden eagles located within the affected area of the proposed surface coal mining and reclamation operations.

(H) A description of all threatened and endangered species and their critical habitats located within the affected area of the proposed surface coal mining and reclamation operations.

(4) Where the surface of the Federal lands is subject to a lease or permit issued by the Federal government to a person other than the applicant, the permit application package shall contain information sufficient to demonstrate compliance with the requirements of § 740.15(c)(1). This requirement shall not apply to TVA-owned lands.

(c) *Permit review and processing.* Applications for permits, permit revisions or renewals thereof to conduct surface coal mining and reclamation operations on lands subject to this part shall be reviewed and processed in accordance with the requirements of the applicable regulatory program, subject to the following additional requirements:

(1) *Permit terms and conditions.* Permits shall include, as applicable, terms and conditions required by the lease issued pursuant to the Mineral Leasing Act and by other applicable Federal laws and regulations.

(2) *Criteria for permit approval or denial.* The regulatory authority shall not approve an application for a permit, or permit revision or renewal thereof for surface coal mining and reclamation operations on lands subject to this part unless the application is in accordance with the requirements of

the applicable regulatory program and this part or a cooperative agreement, as applicable.

(3) *Public participation in permit review process.* Where public hearings were held and determinations made under section 2(a)(3) (A), (B) and (C) of the Mineral Leasing Act (30 U.S.C. 201(a)(3) (A), (B) and (C)), such hearings may be made a part of the record of each public hearing on a permit application held pursuant to the requirements of the applicable regulatory program and this part. Matters covered at such hearings and determinations made at such hearings need not be readdressed.

(4) *Permit review processing for operations on lands administered by a Federal land management agency.* Upon receipt of a permit application package or a proposed revision or renewal of an approved permit that involves surface coal mining and reclamation operations on lands administered by an agency of the Federal Government, the regulatory authority shall transmit a copy of the complete permit application package, or proposed revision or renewal thereof, to the Federal land management agency, with a request for review and comment.

(5) *Consultation with other Federal agencies.* Prior to approving or disapproving a permit, permit revision or renewal thereof, the regulatory authority shall consider the comments of the Federal land management agency and include these comments in the record of permit decisions.

(6) *Permit processing schedule.* The regulatory authority shall process the permit application package within the time schedule established by the applicable regulatory program, except that the schedule may be extended if necessary to ensure compliance with Federal laws and regulations other than the Act.

(7) *Determination of operator compliance with the Act.* Where OSM is the regulatory authority, it shall afford the applicant or operator an opportunity for an adjudicatory hearing as provided in 43 CFR part 4 prior to a final determination on whether the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of the Act

of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the Act.

(8) *Administrative review of decisions on permit applications.* Where OSM is the regulatory authority, the final decision on a permit application is subject to an appeal to the Department's Office of Hearings and Appeals as provided in part 775 of this chapter. Where the State is the regulatory authority under a cooperative agreement, the final decision on a permit application is subject to administrative review as provided under the approved State program.

(9) *Bonds and insurance required for issuance of permits.* After the approval of an application for a new or revised permit or for renewal of an existing permit, but prior to issuance of such permit, the applicant/permittee shall file with the regulatory authority: (i) A performance bond which meets the requirements of the applicable regulatory program; (ii) proof of liability insurance in accordance with the applicable regulatory program; and (iii) where required, evidence of the execution of a Federal lessee protection bond. Bonds required to be filed with OSM shall be in a form required by OSM and made payable to the United States.

(d) *Review of permit revisions.* (1) Where the State is the regulatory authority for surface coal mining and reclamation operations on lands subject to this subchapter, it shall inform OSM of each request for a permit revision with respect to operations on lands containing leased Federal coal.

(2) OSM shall review each permit revision in consultation with the Bureau of Land Management and the appropriate Federal land management agency to determine whether the permit revision constitutes a mining plan modification requiring the Secretary's approval under § 746.18 of this chapter.

(3) The regulatory authority shall consult with the Federal land management agency to determine whether any permit revision will adversely affect Federal resources other than coal and whether the revision is consistent with that agency's land use plans for other

Federal laws, regulations and executive orders for which it is responsible.

(e) *Transfer, assignment or sale of rights.* (1) The regulatory authority, before approving or disapproving an application for transfer, assignment or sale of rights granted under a permit issued pursuant to this subchapter, shall consult with the appropriate Federal land management agency and the Bureau of Land Management, as applicable.

(2) Approval of a transfer, assignment or sale of rights granted under a permit issued pursuant to this subchapter shall not be construed to constitute a transfer or assignment of leasehold interests. Leasehold interests may be transferred or assigned only in accordance with 43 CFR part 3453.

(f) *Suspension or revocation of permits.* (1) A permit to conduct surface coal mining and reclamation operations on Federal lands may be suspended or revoked by the regulatory authority in accordance with part 843 of this chapter and the applicable regulatory program.

(2) If a permit to conduct surface coal mining and reclamation operations on lands containing leased Federal coal is suspended or revoked, the regulatory authority shall notify the Bureau of Land Management so that the Bureau of Land Management can determine whether action should be taken to cancel the Federal lease. This section does not release the Federal lessee from the diligent development or continued operation requirements of 43 CFR parts 3400.

[48 FR 6935, Feb. 16, 1983, as amended at 48 FR 44779, Sept. 30, 1983; 54 FR 13822, Apr. 5, 1989]

§ 740.15 Bonds on Federal lands.

(a) *Federal lease bonds.* (1) Each holder of a Federal coal lease that is covered by a Federal lease bond required under 43 CFR part 3474 may apply to the authorized officer for release of liability for that portion of the Federal lease bond that covers reclamation requirements.

(2) The authorized officer may release the liability for that portion of the Federal lease bond that covers reclamation requirements if:

(i) The lessee has secured a suitable performance bond covering the permit area under this part;

(ii) There are no pending actions or unresolved claims against existing bonds; and

(iii) The authorized officer has received concurrence from OSM and the Bureau of Land Management.

(b) *Performance bonds.* Where the State is the regulatory authority under a cooperative agreement, the performance bonds required for operations on Federal lands shall be made payable to the United States and the State. Where OSM is the regulatory authority, such bonds shall be payable only to the United States.

(c) *Federal lessee protection bonds.* (1) Where leased Federal coal is to be mined and the surface of the land is subject to a lease or permit issued by the United States for purposes other than surface coal mining, the applicant for a mining permit, if unable to obtain the written consent of the permittee or lessee of the surface to enter and commence surface coal mining operations, shall submit to the regulatory authority with his application evidence of execution of a bond or undertaking which meets the requirements of this section. The Federal lessee protection bond is in addition to the performance bond required by a regulatory program. This section does not apply to permits or licenses for the use of the surface that do not convey to the permittee or licensee the right of transfer, sale or consent to other uses.

(2) The bond shall be payable to the United States and, as applicable, the State for the use and benefit of the permittee or lessee of the surface lands involved.

(3) The bond shall secure payment to the surface estate for any damage which the surface coal mining and reclamation operation causes to the crops or tangible improvements of the permittee or lessee of the surface lands.

(4) The amount of the bond shall be determined either by the applicant and the Federal lessee or permittee or as determined in an action brought against the person conducting surface coal mining and reclamation operations or upon the bond in a court of competent jurisdiction.

Surface Mining Reclamation and Enforcement, Interior

§ 740.19

(d) *Release of bonds.* (1) A Federal lease bond may be released upon satisfactory compliance with all applicable requirements of 43 CFR Group 3400 and after the release is concurred in by the Bureau of Land Management.

(2) A Federal lessee protection bond shall be released upon the written consent of the permittee or lessee.

(3) Where surface coal mining and reclamation operations are subject to an approved mining plan, a performance bond shall be released by the State after the release is concurred in by OSM.

[48 FR 6935, Feb. 16, 1983; 48 FR 13985, Apr. 1, 1983, as amended at 48 FR 44779, Sept. 30, 1983; 55 FR 9402, Mar. 13, 1990]

§ 740.17 Inspection, enforcement and civil penalties.

(a) *General requirements.* (1) Where OSM is the regulatory authority, parts 840, 842, 843 and 845 of this chapter shall govern its inspection, enforcement and civil penalty activities with respect to surface coal mining and reclamation operations on Federal lands.

(2) Where the State is the regulatory authority under a cooperative agreement, the State program shall govern inspection, enforcement and civil penalty activities by the regulatory authority with respect to surface coal mining and reclamation operations on Federal lands, while the requirements of part 842, 843 and 845 of this chapter shall govern OSM inspection, enforcement and civil penalty activities conducted in oversight of the State program.

(3) The requirements of this section shall not apply to coal exploration on Federal lands subject to the requirements of 43 CFR parts 3400.

(b) *Right of entry.* (1) Persons engaging in coal exploration or surface coal mining and reclamation operations on Federal lands shall provide access for any authorized officer of OSM, the regulatory authority, and, as applicable, the Bureau of Land Management or the appropriate Federal land management agency to inspect the operations, without advance notice or a search warrant and upon presentation of appropriate credentials, to determine whether the operations are in compliance with all applicable laws, regulations, notices

and orders, and terms and conditions of the permit.

(2) Any authorized representative of the regulatory authority and, as applicable, the Bureau of Land Management may, at reasonable times and without delay, have access to and copy any records and inspect any monitoring equipment or method of operation required under the Act, this subchapter and the permit, lease, license or mining plan in accordance with paragraph (a) of this section.

(3) No search warrant shall be required with respect to any activity under paragraph (a) or (b) of this section, except entry into a building without consent of the person in control of the building.

(c) *Inspections.* Inspections shall, to the extent practical, be conducted jointly if more than one government agency is involved. The regulatory authority shall coordinate inspections by Federal agencies and may request the participation of representatives from other Federal agencies when necessary to ensure compliance with this subchapter and other applicable Federal laws, regulations and orders.

[48 FR 6935, Feb. 16, 1983, as amended at 48 FR 44779, Sept. 30, 1983]

§ 740.19 Performance standards.

(a) *Operations and reclamation.* (1) Surface coal mining and reclamation operations on lands subject to this part shall be conducted in accordance with the performance standards of the applicable regulatory program.

(2) Surface coal mining and reclamation operations on lands containing leased Federal coal shall be conducted in accordance with the requirements of the terms, conditions and stipulations of the lease issued under the Mineral Leasing Act and its implementing regulations in 43 CFR parts 3400, as applicable, and the mining plan.

(b) *Completion of operations and abandonment.* (1) Upon completion of operations, bonds shall be released in accordance with § 740.15(d) of this chapter.

(2) Where there is a Federal lease bond:

(i) Not less than 30 days prior to permanent cessation or abandonment of surface coal mining and reclamation

operations, the person conducting those operations shall submit to OSM, in duplicate, a notice of intention to cease or abandon those operations, with a statement of the number of acres affected by the operations, the extent and kind of reclamation accomplished and the structures and other facilities that are to be removed from or remain on the permit area.

(ii) Upon receipt of this notice, the Bureau of Land Management and the appropriate Federal land management agency shall promptly make joint inspections to determine whether all operations have been completed in accordance with the requirements of 43 CFR parts 3400, the lease or licenses and the mining plan. Where all of these requirements have been complied with, the liability under the lease bond of the person conducting surface coal mining and reclamation operations shall be terminated.

(3) Where OSM is the regulatory authority, public hearings held with respect to final abandonment and releases of the performance bonds shall be in accordance with 5 U.S.C. 554 and 43 CFR part 4.

[48 FR 6935, Feb. 16, 1983, as amended at 48 FR 44779, Sept. 30, 1983]

PART 745—STATE-FEDERAL COOPERATIVE AGREEMENTS

Sec.

745.1 Scope.

745.10 Information collection.

745.11 Application and agreement.

745.12 Terms.

745.13 Authority reserved by the Secretary.

745.14 Amendments.

745.15 Termination.

745.16 Reinstatement.

AUTHORITY: 30 U.S.C. 1201 *et seq.* and 30 U.S.C. 181 *et seq.*

SOURCE: 48 FR 6939, Feb. 16, 1983, unless otherwise noted.

§ 745.1 Scope.

This part sets forth requirements for the development, approval and administration of cooperative agreements under section 523(c) of the Act.

§ 745.10 Information collection.

(a) In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and

Budget (OMB) has approved the information collection requirements of this part. The OMB clearance number is 1029-0092. This information is needed to implement section 523(c) of the Act, which allows States to regulate surface coal mining operations on Federal lands under certain conditions. States that desire to enter into cooperative agreements to do so must respond to obtain a benefit.

(b) OSM estimates that the public reporting burden for this part will average 1,364 hours per respondent, including time spent 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 these information collection requirements, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue, N.W., Washington, DC 20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, 725 17th Street, N.W., Washington, DC 20503. Please refer to OMB Control Number 1029-0092 in any correspondence.

[64 FR 70831, Dec. 17, 1999]

§ 745.11 Application and agreement.

(a) The Governor of any State may request that the Secretary enter into a cooperative agreement with the State, provided the State has an approved State regulatory program or has submitted a regulatory program for approval under part 731 of this chapter, and has or may have within the State surface coal mining and reclamation operations on Federal lands.

(b) A request for a cooperative agreement shall be submitted in writing and, except to the extent previously submitted in the State program, shall include the following information:

(1) Information sufficient for OSM to make findings in accordance with paragraph (f) of this section;

(2) A proposed agreement consistent with the requirements of this part; and

(3) A certification by the Attorney General or the chief legal officer of the

Surface Mining Reclamation and Enforcement, Interior

§ 745.12

State regulatory authority that no State statutory, regulatory or legal constraint exists which would preclude the State regulatory authority from fully carrying out the proposed cooperative agreement.

(c) OSM shall publish a notice of the request and the full text of the terms of the proposed cooperative agreement as submitted or as subsequently modified by OSM and the State in the FEDERAL REGISTER as a proposed rule. A notice of the request and a summary of the terms of the proposed agreement shall also be published in a newspaper(s) of general circulation throughout the State. Both notices shall include:

(1) The location at which a copy of the request submitted by the State may be obtained; and

(2) A date, not less than 30 days after publication of the notices, before which members of the public may submit written comments on the request and the person to whom comments should be addressed.

(d) A public hearing shall be held within the comment period in a suitable location in the State requesting the cooperative agreement. This hearing may be combined with public hearings required under part 732 of this chapter for the Secretary's consideration of approval of a State program submission, if appropriate. The date, time and place of the public hearing(s) on the request will be published in the FEDERAL REGISTER not less than 15 days prior to the date of the hearing.

(e) Before the expiration of the comment period, OSM shall consult with the Bureau of Land Management, Fish and Wildlife Service, and Federal land management agencies, as appropriate, with respect to the proposed cooperative agreement.

(f) OSM shall recommend to the Secretary that a cooperative agreement be entered into with a State, if OSM finds that:

(1) The State has an approved State regulatory program;

(2) The State regulatory authority has sufficient budget, equipment and personnel to enforce fully its regulatory program on lands subject to this part in the State; and

(3) The State has the legal authority to enter into the cooperative agreement.

(g) The Secretary shall publish in the FEDERAL REGISTER his or her decision with respect to a request by a State to enter into a cooperative agreement and the reasons therefor and the full text of the cooperative agreement.

§ 745.12 Terms.

Each cooperative agreement shall include:

(a) Terms obligating the State regulatory authority to inspect all surface coal mining and reclamation operations on Federal lands in accordance with the State regulatory program and to enforce the State program on Federal lands;

(b) A description of the powers and authority reserved by the Secretary, including, but not limited to, those specified under § 745.13;

(c) Provisions for the administration and enforcement by OSM and the State of this subchapter so as to minimize overlap and duplication;

(d) Provisions for regular reports by the State regulatory authority to OSM on the results of the State's implementation and administration of the cooperative agreement.

(e) Terms requiring the State regulatory authority to maintain sufficient personnel and facilities to comply with the terms of the cooperative agreement, and to notify OSM of any substantial change in State statutes, regulations, funding, staff, or other changes which would affect the State's ability to carry out the terms of the cooperative agreement;

(f) Terms for coordination among the State regulatory authority, the Federal land management agency, the Bureau of Land Management and OSM;

(g) Terms obligating the State regulatory authority to—

(1) Make available to OSM information on any action taken regarding any permit application for surface coal mining and reclamation operations on Federal lands; and

(2) Where lands containing leased Federal coal are involved, provide OSM, in the form specified by OSM in

§ 745.13

consultation with the State, with written findings indicating that each permit application is in compliance with the terms of the regulatory program and a technical analysis of each permit application to assist OSM in meeting its responsibilities under other applicable Federal laws and regulations.

§ 745.13 Authority reserved by the Secretary.

The Secretary shall not delegate to any State, nor shall any cooperative agreement under this part be construed to delegate to any State, authority to—

(a) Designate Federal lands as unsuitable for surface coal mining under subchapter F of this chapter or terminate such designations;

(b) Comply with the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*, and Federal laws and regulations other than SMCRA;

(c) Develop land use management plans for Federal lands where the surface estate is federally-owned;

(d) Regulate non-coal mining activities on Federal lands;

(e) Determine when, where, and how to lease Federal coal and how much to lease;

(f) Develop terms for Federal coal leases, including any special terms relating to mining and reclamation procedures;

(g) Evaluate Federal coal resources;

(h) Establish royalties, rents, and bonuses charged in connection with Federal coal leases;

(i) Approve mining plans or modifications thereto;

(j) Enforce Federal lease terms, including diligent development and maximum economic recovery requirements;

(k) Approve or determine post-mining land uses for Federal lands where the surface estate is federally-owned;

(l) Release Federal lease bonds;

(m) Evaluate the State's administration and enforcement of the approved State program and implementation of the cooperative agreement on Federal lands;

(n) Comply with the inspection, enforcement and civil penalties requirements of parts 842 and 843 of this chap-

30 CFR Ch. VII (7–1–17 Edition)

ter except as provided under § 740.4(c)(5) of this chapter;

(o) Determine whether a person has valid existing rights to conduct surface coal mining operations on Federal lands within the areas specified in § 761.11(a) and (b) of this chapter; or

(p) Issue findings on whether there are significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations on Federal lands within a national forest, as specified in § 761.11(b) of this chapter.

[48 FR 6939, Feb. 16, 1983, as amended at 64 FR 70831, Dec. 17, 1999]

§ 745.14 Amendments.

A cooperative agreement which has been approved pursuant to § 745.11 may be amended by mutual agreement of the Secretary and the Governor of a State. Amendments shall be adopted by Federal rulemaking, in accordance with § 745.11.

§ 745.15 Termination.

(a) A cooperative agreement may be terminated by the State upon written notice to the Secretary, specifying the date upon which the cooperative agreement shall be terminated. The date of termination shall not be less than 90 days from the date of the notice.

(b) A cooperative agreement may be terminated by the Secretary after giving notice to the State regulatory authority and affording the State regulatory authority and the public an opportunity for a public hearing and comment period, in accordance with the cooperative agreement, if the Secretary finds that:

(1) The State regulatory authority has substantially failed to comply with the requirements of this subchapter, the State program, or the cooperative agreement, or

(2) The State regulatory authority has failed to comply with any undertaking by the State in the cooperative agreement upon which approval of the State program, cooperative agreement, or grant by OSM for administration or enforcement of the State program or cooperative agreement was based.

(c) A cooperative agreement shall terminate—

Surface Mining Reclamation and Enforcement, Interior

§ 746.13

(1) When no longer authorized by Federal law or the applicable State laws and regulations; or

(2) Upon termination or withdrawal of the Secretary's approval of the applicable State program.

§ 745.16 Reinstatement.

(a) A State may apply for reinstatement of the cooperative agreement by providing written evidence to OSM that the State has remedied all defects for which the agreement was terminated and is fully capable of carrying out the cooperative agreement. Any reinstatement shall be by Federal rule-making in accordance with § 745.11.

(b) OSM may recommend approval of the reinstatement to the Secretary if it finds that the State meets all the requirements for the initial approval of a cooperative agreement under this subchapter.

(c) The Secretary may approve reinstatement of a cooperative agreement if the Secretary concurs in findings of OSM which recommended that approval.

PART 746—REVIEW AND APPROVAL OF MINING PLANS

Sec.

746.1 Scope.

746.10 Information collection.

746.11 General requirements.

746.13 Decision document and recommendation on mining plan.

746.14 Approval, disapproval or conditional approval, of mining plan.

746.17 Term of approval.

746.18 Mining plan modification.

AUTHORITY: 30 U.S.C. 1201 *et seq.* and 30 U.S.C. 181 *et seq.*

SOURCE: 48 FR 6941, Feb. 16, 1983, unless otherwise noted.

§ 746.1 Scope.

This part provides the process and requirements for the review and approval, disapproval or conditional approval of mining plans on lands containing leased Federal coal.

§ 746.10 Information collection.

The information collection requirements contained in this section have been approved by OSM of Management and Budget under 44 U.S.C. 3507 and as-

signed clearance number 1029-0026. The information is being collected to determine compliance with section 523 of the Act (30 U.S.C. 1273) and this part. The obligation to respond to the information collection requirements of this part is mandatory.

§ 746.11 General requirements.

(a) No person shall conduct surface coal mining and reclamation operations on lands containing leased Federal coal until the Secretary has approved the mining plan.

(b) Surface coal mining and reclamation operations on lands containing leased Federal coal shall be conducted in accordance with a permit issued in accordance with this subchapter, any lease terms and conditions, and the approved mining plan.

§ 746.13 Decision document and recommendation on mining plan.

OSM shall prepare and submit to the Secretary a decision document recommending approval, disapproval or conditional approval of the mining plan to the Secretary. The recommendation shall be based, at a minimum, upon:

(a) The permit application package, including the resource recovery and protection plan;

(b) Information prepared in compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*;

(c) Documentation assuring compliance with the applicable requirements of other Federal laws, regulations and executive orders other than the Act;

(d) Comments and recommendations or concurrence of other Federal agencies, as applicable, and the public;

(e) The findings and recommendations of the Bureau of Land Management with respect to the resource recovery and protection plan and other requirements of the lease and the Mineral Leasing Act;

(f) The findings and recommendations of the regulatory authority with respect to the permit application and the State program; and

(g) The findings and recommendations of OSM with respect to the additional requirements of this subchapter.

§ 746.14

§ 746.14 Approval, disapproval or conditional approval, of mining plan.

The Secretary shall approve, disapprove or conditionally approve the mining plan in accordance with this part.

§ 746.17 Term of approval.

(a) Each mining plan approval shall cover the operations for which a complete permit application package was submitted, unless otherwise indicated in the approval.

(b) An approved mining plan shall remain in effect until modified, cancelled or withdrawn and shall be binding on any person conducting mining under the approved mining plan.

§ 746.18 Mining plan modification.

(a) Mining plan modifications shall be approved by the Secretary.

(b) The approval of mining plan modifications shall be in accordance with the procedures of this part for mining plan approval.

(c) Surface coal mining and reclamation operations on lands containing leased Federal coal pursuant to a permit revision issued by the regulatory authority shall not commence until—

(1) OSM determines that the permit revision does not constitute a mining plan modification under this section, or

30 CFR Ch. VII (7–1–17 Edition)

(2) If the permit revision constitutes a mining plan modification under this section, such modification has been approved by the Secretary.

(d) Permit revisions constitute mining plan modifications if they meet any of the following criteria:

(1) Any change in the mining plan which would affect the conditions of its approval pursuant to Federal law or regulation other than the Act;

(2) Any change which would adversely affect the level of protection afforded any land, facility or place designated unsuitable for mining;

(3) Any change in the location or amount of coal to be mined, except where such change is the result of:

(i) A minor change in the amount of coal actually available for mining from the amount estimated; or

(ii) An incidental boundary change;

(4) Any change which would extend coal mining and reclamation operations onto leased Federal coal lands for the first time;

(5) Any change which requires the preparation of an environmental impact statement under the National Environmental Policy Act or 1969, 42 U.S.C. 4321 *et seq.*;

(6) Any change in the mining operations and reclamation plan that would result in a change in the postmining land use where the surface is federally-owned.

SUBCHAPTER E—INDIAN LANDS PROGRAM

PART 750—REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON INDIAN LANDS

- Sec.
750.1 Scope.
750.5 Definitions.
750.6 Responsibilities.
750.10 Information collection.
750.11 Permits.
750.12 Permit applications.
750.13 Small operator assistance.
750.14 Lands designated unsuitable for mining by Act of Congress.
750.15 Coal exploration.
750.16 Performance standards.
750.17 Bonding.
750.18 Inspection and enforcement.
750.19 Certification of blasters.
750.20 [Reserved]
750.21 Coal extraction incidental to the extraction of other minerals.
750.25 Permit fees.

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

SOURCE: 49 FR 38477, Sept. 28, 1984, unless otherwise noted.

§ 750.1 Scope.

This subchapter provides for the regulation of surface coal mining and reclamation operations on Indian lands and constitutes the Federal program for Indian lands.

§ 750.5 Definitions.

For purposes of regulating surface coal mining operations on Indian lands, the following terms, when used in this subchapter or in parts referenced by this subchapter, have the following meanings:

BIA means the Bureau of Indian Affairs of the U.S. Department of the Interior.

BLM means the Bureau of Land Management of the U.S. Department of the Interior.

Federal program means the Federal program for Indian lands.

Indian mineral owner means (1) any individual Indian or Alaska native who owns land or mineral interests in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or (2) any Indian

tribe, band, native, pueblo, community, rancheria, colony, or other group which owns land or mineral interest in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. This definition does not include owners of lands patented to a village or regional corporation pursuant to the Alaska Native Claims Settlement Act, Pub. L. 92-203.

Local government agencies means, in addition to county, city or township governments, Indian tribal governments.

Minerals agreement means any joint venture, operating, production sharing, service, managerial, lease or other agreements, or any amendment, supplement to or modification of such agreement, providing for the exploration for, or extraction, processing, or the development of coal, or providing for the sale or other disposition of the production or products of such coal resources.

MMS means the Minerals Management Service of the U.S. Department of the Interior.

Regulatory authority means the Office of Surface Mining.

§ 750.6 Responsibilities.

(a) OSM shall: (1) Be the regulatory authority on Indian lands;

(2) After consultation with the Bureau of Indian Affairs and, as applicable, with the Bureau of Land Management, conditionally approve, approve, or disapprove applications for permits, permit renewals, or permit revisions for surface coal mining operations on Indian lands, and applications for the transfer, sale or assignment of such permit rights on Indian lands;

(3) Conduct inspection and enforcement activities with respect to surface coal mining and reclamation operations on Indian lands;

(4) Consult with the BIA and the affected tribe with respect to special requirements relating to the protection

§ 750.10

of non-coal resources of the area affected by surface coal mining and reclamation operations, and assure operator compliance with such special requirements;

(5) Consult with the Bureau of Land Management concerning requirements relating to the development, production and recovery of mineral resources on Indian lands;

(6) Approve environmental protection performance bonds and liability insurance required for surface coal mining and reclamation operations on Indian lands but not the production royalty bond; and

(7) Ensure compliance with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, with respect to permitting actions for surface coal mining and reclamation operations on Indian lands.

(b) The Bureau of Land Management is responsible for: (1) Receiving, reviewing, and conditionally approving, approving or disapproving coal exploration plans and mining plans, as provided in 25 CFR Chapter I or in specific Indian mineral agreements;

(2) Administering, and conducting inspection and enforcement for, coal exploration operations on Indian lands;

(3) Administering mining contract, lease or mineral agreement terms and conditions, as provided for in 25 CFR Chapter I or in specific Indian mineral agreements; and

(4) Administering and conducting inspections and enforcement of terms and conditions of contracts, leases or mineral agreements for coal mining operations, including production verification and inspection of operations for that purpose.

(c) The Minerals Management Service is responsible for collecting and accounting for royalties and other income from Indian mineral agreements except for annual rentals.

(d) The Bureau of Indian Affairs is responsible for: (1) Consulting directly with and providing representation for Indian mineral owners and other Indian land owners in matters relating to surface coal mining and reclamation operations on Indian lands;

(2) After consultation with the affected tribe, reviewing and making rec-

30 CFR Ch. VII (7-1-17 Edition)

ommendations to OSM concerning permit applications, renewals, revisions or transfers of permits, permit rights or performance bonds; and

(3) After consultation with the affected tribe, reviewing mining plans and making recommendations to the Bureau of Land Management pursuant to 25 CFR 216.7.

§ 750.10 Information collection.

The Office of Management and Budget has determined that the information collection requirements contained in 30 CFR part 750 do not require approval under the Paperwork Reduction Act.

[59 FR 43420, Aug. 23, 1994]

§ 750.11 Permits.

(a) No person shall conduct surface coal mining operations on Indian lands after eight months following the effective date of this subchapter unless that person has first obtained a permit pursuant to this part.

(b) Any person conducting surface coal mining and reclamation operations on lands subject to this part shall comply with the terms and conditions of the permit, the requirements of this subchapter, and the Act.

(c) Surface coal mining operations authorized prior to the effective date of this subchapter may be conducted beyond the eight-month period specified in paragraph (a) of this section if the following conditions are present:

(1) An application for a permit to conduct those operations under this part has been made within two months of the implementation of the Federal program for Indian lands;

(2) OSM has not yet rendered an initial administrative decision approving or disapproving the permit application; and

(3) Those operations are conducted in compliance with all terms and conditions of the lease or minerals agreement, the existing authorization to mine, the requirements of the Act, and the requirements of 25 CFR Chapter I.

(d) Whenever surface coal mining and reclamation operations are proposed to include both Indian lands and non-Indian lands, OSM will use reasonable efforts to ensure that reviews of the permit applications will be conducted cooperatively and concurrently by OSM

and the regulatory authority responsible for the non-Indian lands.

[49 FR 38477, Sept. 28, 1984, as amended at 54 FR 13822, Apr. 5, 1989]

§ 750.12 Permit applications.

(a) Each application for a permit to conduct surface coal mining operations on lands subject to this part shall be accompanied by fees in accordance with § 750.25 of this part.

(b) Unless specified otherwise by the regulatory authority, each person submitting a permit application shall file no less than seven copies of the complete permit application package with OSM. OSM will ensure that the affected tribes, the Bureau of Indian Affairs, and when applicable, the Bureau of Land Management receive copies of the application.

(c)(1) The following requirements of subchapter G of this chapter shall govern the processing of permit applications on Indian lands except as specified in paragraph (c)(2) or (c)(3) of this section.

- (i) Part 773;
- (ii) Part 774;
- (iii) Part 775;
- (iv) Part 777;
- (v) Part 778;
- (vi) Part 779;
- (vii) Part 780;
- (viii) Part 783;
- (ix) Part 784; and
- (x) Part 785;

(2) The following provisions of subchapter G are not applicable to permitting on Indian lands:

- (i) Part 772;
- (ii) Sections 773.4, 773.15(c), 777.17;
- (iii) Section 778.16 (a) and (b); and
- (iv) Sections 785.11, 785.12;

(3) *Special requirements.* (i) Approval of a transfer, assignment, or sale of rights granted under a permit shall not be construed as approval of a transfer or assignment of a leasehold interest. Leasehold interests may be transferred or assigned only in accordance with 25 CFR parts 211 and 212.

(ii) The following additional requirements are applicable to permit revisions:

(A) Applications for revisions pursuant to § 774.13(b) of this chapter shall contain the same information on the proposed revised operation as if the re-

vised operation had been proposed as part of the initial operation permitted under this part.

(B) OSM shall determine if the application for revision is complete and if the proposed revision is significant. OSM shall consider the following factors as well as other relevant factors in determining the significance of a proposed revision: (1) Changes in production or recoverability of the coal resource; (2) the environmental effects; (3) the public interest in the operation, or likely interest in the proposed revision; and (4) possible adverse impacts from the proposed revision on fish or wildlife, endangered species, bald or golden eagles or cultural resources.

(C) Significant revisions shall be processed as if they are new applications in accordance with parts 773 and 775 of this chapter. Other revisions shall be reviewed to determine if the findings which were made in issuing the original permit are still valid.

(iii) Any section in this chapter which provides for consultation with, or notification to, State and local governments shall be interpreted as requiring in like manner consultation with, or notification to, tribal governments.

(d) The permit application package shall also contain:

(1) The mining plan required to be submitted by 25 CFR 216.7 or 43 CFR part 3480, as applicable.

(2) The following information to assure compliance with Federal laws other than the Act:

(i) The description of the proposed surface coal mining and reclamation operation with respect to: (A) Increases in employment, population, and revenues to public and private entities; and (B) the ability of public and private entities to provide goods and services necessary to support surface coal mining and reclamation operations.

(ii) An evaluation of impacts to the scenic and aesthetic resources, including noise on the surrounding area, due to the proposed surface coal mining and reclamation operation.

(iii) A statement, including maps and ownership data as appropriate, of any cultural or historical site listed on the National Register of Historic Places within the permit and adjacent areas of

§ 750.13

the proposed surface coal mining and reclamation operation.

(iv) A statement of the classes of properties of potential significance within the disturbed area, and a plan for the identification and treatment, in accordance with 36 CFR part 800, of properties significant and listed, or eligible for listing, on the National Register of Historic Places within the permit area of the proposed surface coal mining and reclamation operation.

(v) A description of compliance with Federal laws aimed at protecting cultural resources on Indian lands.

(vi) A description of the probable changes in air quality resulting from the surface coal mining operation and any necessary measures to comply with prevention of significant deterioration limitations, or other Federal laws for air quality protection.

(vii) A description of the location, acreage and condition of important habitats of selected indicator species located within the permit and adjacent areas of the proposed surface coal mining and reclamation operation.

(viii) A description of active and inactive nests and prey areas of any bald or golden eagles located within the permit and adjacent areas of the proposed surface coal mining and reclamation operations.

(ix) A description and special studies, if required, of all threatened and endangered species and their critical habitats located within the permit and adjacent areas of the proposed surface coal mining and reclamation operations.

[49 FR 38477, Sept. 28, 1984, as amended at 54 FR 22188, May 22, 1989; 55 FR 29548, July 19, 1990; 65 FR 79663, Dec. 19, 2000]

§ 750.13 Small operator assistance.

Part 795 of this chapter is applicable on Indian lands.

§ 750.14 Lands designated unsuitable for mining by Act of Congress.

Part 761 of this chapter is applicable on Indian lands.

§ 750.15 Coal exploration.

Coal exploration operations on Indian lands shall be conducted in accordance with 25 CFR part 216 and 43 CFR part 3480, whichever is applicable.

30 CFR Ch. VII (7–1–17 Edition)

§ 750.16 Performance standards.

After OSM issues a permit under this part, a person conducting surface coal mining operations on Indian lands shall do so in accordance with parts 816, 817, 819, 822, 823, 824, 827, and 828 of this chapter. Prior to that time, the person conducting surface coal mining and reclamation operations shall adhere to the performance standards of 30 CFR chapter VII, subchapter B.

[49 FR 38477, Sept. 28, 1984, as amended at 59 FR 43420, Aug. 23, 1994]

§ 750.17 Bonding.

Subchapter J of this title is applicable on Indian lands.

§ 750.18 Inspection and enforcement.

(a) Parts 842, 843, 845 and 846 of this chapter and the hearings and appeals procedures of 43 CFR part 4 are applicable on Indian lands.

(b) OSM shall furnish copies of notices and orders to mineral owners or surface owners on whose land the surface coal mining operation takes place. OSM may furnish copies of notices and orders to any other person having an interest in the surface coal mining and reclamation operation or the permit area.

(c) BLM shall furnish copies of notices and orders to mineral owners or surface owners on whose land coal exploration operations take place and pursuant to 25 CFR 216.7 and 43 CFR part 3480, where applicable, to any mineral owner or surface owner, or to any person having an interest in the coal mining operation.

(d) Whenever an authorized representative of the Secretary decides to conduct an inspection of any coal mining operations or any premises in which any records to be maintained are located, the appropriate representative of the local governing Indian tribe shall be notified and be invited to accompany the Secretary's representative on such an inspection.

(e) No provision in this chapter shall be interpreted as replacing or superseding any other remedies of the Indian mineral owners, as set forth in a contract or otherwise available at law.

(f) Appropriate officials of the local governing Indian tribe shall be notified

Surface Mining Reclamation and Enforcement, Interior

§ 750.25

of any hearings or conferences conducted regarding civil penalties and shall be invited to attend.

[49 FR 38477, Sept. 28, 1984, as amended at 53 FR 3675, Feb. 8, 1988]

§ 750.19 Certification of blasters.

A person seeking to conduct blasting operations on Indian lands shall comply with the requirements of §§ 816.61(c) and 817.61(c) and part 955 of this chapter.

[51 FR 19461, May 29, 1986]

§ 750.20 [Reserved]

§ 750.21 Coal extraction incidental to the extraction of other minerals.

Part 702 of this chapter is applicable on Indian lands.

[54 FR 52123, Dec. 20, 1989]

§ 750.25 Permit fees.

(a) *Applicability.* An applicant for a new permit to conduct surface coal mining operations on lands subject to this part shall submit to OSM fees in the amounts set out in paragraph (d) of this section. For applications submitted prior to the effective date of this rule, fees shall apply only for stages of OSM review begun on or after the effective date. The applicant shall either submit all applicable fees with the permit application, or by stage of review as follows:

(1) *Administrative completeness review.* An applicant who pays by stage of review shall submit the administrative completeness review fee with the permit application.

(2) *Technical review.* Following receipt from OSM of a notice of administrative completeness, an applicant who pays by stage of review shall submit the technical review basic fee, plus the per-acre fee for each acre of disturbed area or fraction thereof to be included in the permit area.

(3) *Permit issuance.* Following receipt from OSM of a notice of technical adequacy, an applicant who pays by stage of review shall submit the decision document fee.

(b) *Refund of fees.* (1) Upon receipt of a written request from an applicant, OSM will refund any permit fees paid

under this section for a permit application when OSM denies the permit:

(i) On the basis of information concerning endangered or threatened species or their critical habitats or information concerning cultural or historical resources, where such information was not available prior to submission of the permit application;

(ii) Because subsequent to submittal of a permit application, the lands contained in the permit application are declared unsuitable for mining under subchapter F of this chapter; or

(iii) Because subsequent to submittal of a permit application, the applicant is denied valid existing rights to mine under part 761 of this chapter where such rights are required for surface coal mining operations on the lands contained in the permit application.

(2) An applicant may file a written request for withdrawal of a permit application and a refund of fees in accordance with paragraph (b)(3) of this section.

(3) OSM will, upon receipt of written request for withdrawal of a permit application, cease processing of that application. If requested, OSM will refund fees paid by the applicant for the withdrawn application as follows:

(i) Any fees for a stage of OSM review not yet begun will be refunded;

(ii) Where technical review has begun, partial refund will be made of any technical review fee amounts remaining after deduction of actual costs incurred for that technical review. Costs to process the withdrawal may also be deducted.

(4) No interest will be paid on refunded fees.

(c) *Form of payment.* All fees due under this section shall be submitted to OSM by the applicant in the form of a certified check, bank draft or money order, payable to Office of Surface Mining.

(d) *Fee schedule for a new permit.*

Administrative completeness review. \$250.00

Technical review:

Basic fee 1350.00

Fee per acre of disturbed area in permit area:

First 1,000 acres 13.50/acre

Second 1,000 acres 6.00/acre

Third 1,000 acres 4.00/acre

Additional acres 3.00/acre

Pt. 755

Decision document 2000.00

[55 FR 29548, July 19, 1990]

**PART 755—TRIBAL-FEDERAL INTER-
GOVERNMENTAL AGREEMENTS**

Sec.

755.1 Scope.

755.10 Information collection.

755.11 Application and agreement.

755.12 Terms.

755.13 Authority reserved by the Secretary.

755.14 Amendments.

755.15 Termination.

AUTHORITY: Pub. L. 95-87 30 U.S.C. 1201-1328.

SOURCE: 49 FR 38480, Sept. 28, 1984, unless otherwise noted.

§ 755.1 Scope.

This part sets forth requirements for the development, approval and administration of Tribal-Federal Intergovernmental Agreements.

§ 755.10 Information collection.

The information collection requirements contained in this part do not require approval from the Office of Management and Budget under 44 U.S.C. 3507 because there are expected to be less than 10 respondents annually.

§ 755.11 Application and agreement.

(a) An Indian tribe may request that the Secretary enter into a Tribal-Federal intergovernmental agreement with the tribe.

(b) A request for a Tribal-Federal intergovernmental agreement shall be submitted in writing and shall include proposed terms of the agreement consistent with the requirements of this part.

§ 755.12 Terms.

The terms in each Tribal-Federal intergovernmental agreement may include:

(a) Provisions to allow the tribe to work with and assist OSM in the review of permit applications, and to recommend appropriate action on permits, permit applications, inspection and enforcement, and bond release or forfeiture; and

(b) Provisions to provide funding for tribal employees to attend and testify

30 CFR Ch. VII (7-1-17 Edition)

at hearings and to perform other functions under the agreement.

§ 755.13 Authority reserved by the Secretary.

The Secretary shall not delegate to any Indian tribe, nor shall any Tribal-Federal Intergovernmental Agreement be construed to delegate to any tribe, the nondelegable authority exercised by or reserved to the Secretary on Indian lands.

§ 755.14 Amendments.

An agreement that has been approved pursuant to this part may be amended by mutual agreement of the Secretary and the officers of the tribe.

§ 755.15 Termination.

An agreement may be terminated by either party upon written notice to the other specifying the date upon which the agreement will be terminated. The date of termination shall be no less than 30 days from the date of the notice.

PART 756—INDIAN TRIBE ABANDONED MINE LAND RECLAMATION PROGRAMS

Sec.

756.1 Scope.

756.13 Approval of the Navajo Nation's abandoned mine land plan.

756.14 Approval of amendments to the Navajo Nation's abandoned mine land plan.

756.15 Required amendments to the Navajo Nation's abandoned mine land plan.

756.16 Approval of the Hopi Tribe's abandoned mine land reclamation plan.

756.17 Approval of the Hopi Tribe's abandoned mine land reclamation plan amendments.

756.18 Required amendments to the Hopi Tribe's abandoned mine land reclamation plan.

756.19 Approval of the Crow Tribe's abandoned mine land reclamation plan.

756.20 Approval of amendments to the Crow Tribe's abandoned mine land reclamation plan.

756.21 Required amendments to the Crow Tribe's abandoned mine land reclamation plan.

AUTHORITY: 30 U.S.C. 1201 *et seq.* and Pub. L. 100-71.

Surface Mining Reclamation and Enforcement, Interior

§ 756.14

§ 756.1 Scope.

This part implements the provisions in Pub. L. 100-71 which authorize the Crow, Hopi, and Navajo Tribes to obtain the Secretary's approval of Abandoned Mine Land Reclamation programs without prior approval of surface mining regulatory programs as ordinarily required by section 405 of SMCRA.

[53 FR 17190, May 16, 1988]

§ 756.13 Approval of the Navajo Nation's abandoned mine land plan.

The Navajo Nation's Abandoned Mine Land Plan as submitted in June 1982, resubmitted in September 1983, and amended in February 1988, is approved effective May 16, 1988. Copies of the approved program are available at:

(a) The Navajo Nation, Navajo Abandoned Mine Land Reclamation Department, Division of Natural Resources, Navajo Nation Inn—Office Complex, P.O. Box 1875, Window Rock, AZ 86515, Telephone: (520) 871-7593.

(b) Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 505 Marquette Ave., NW., Suite 1200, Albuquerque, NM 87102, Telephone: (505) 248-5070.

[60 FR 33724, June 29, 1995, as amended at 61 FR 6508, Feb. 21, 1996]

§ 756.14 Approval of amendments to the Navajo Nation's abandoned mine land plan.

(a) Revisions to the following provisions of the Navajo Nation AMLR plan, as submitted to OSM on April 7 and 22, 1994, are approved effective September 27, 1994:

NAVAJO NATION ABANDONED MINE LAND RECLAMATION CODE OF 1987: INTRODUCTION

Section 101—Findings

Section 102—Purposes

Section 201—Duties of Navajo Abandoned Mine Lands Reclamation Department

Section 401—Navajo Abandoned Mine Reclamation Fund and Purposes

Section 402—Reclamation Fees

Section 403—Objectives of Fund

Section 404—Eligible Lands and Water

Section 405—Reclamation Program

Section 407—Acquisition and Reclamation of Lands Within the Navajo Nation Adversely Affected by Past Mining Practices

Section 408—Liens

Section 409—Filling Voids and Sealing Tunnels

Section 410—Deletion of Emergency Powers

Section 411—Certification of Completion of Coal Reclamation

Section 412—Navajo Abandoned Mine Reclamation Fund Report

Section 413—Miscellaneous Powers, and

Section 414—Interagency Cooperation

NAVAJO NATION RULES

II(D) (1) and (2)—Reclamation Priorities

II(L) (1) and (2)—General Reclamation Requirements

II(M) (1) and (2)—Certification of Completion of Coal Reclamation

II(N) (1)—Eligible Lands and Water Subsequent to Certification

II(O) (1)—Exclusion of Noncoal Reclamation Sites

II(P) (1), (2), and (3)—Utilities and Other Facilities, and

III(E) (1)—Future Reclamation Set-Aside Program

(b) The Director concurs with the Navajo Nation's May 4, 1994, certification of completion of coal reclamation effective September 27, 1994.

(c) Revisions to sections 404 (a), (b), and (c) of the Navajo Nation Abandoned Mine Land Reclamation (AMLR) Code of 1987, pertaining to eligible lands and water, as submitted to OSM on January 12, 1995, and as subsequently revised on February 23 1995, are approved effective April 25, 1995.

(d) Revisions to, additions of, or deletions of the following rules, as submitted to OSM on September 3, 1996, are approved effective April 15, 1997.

Section II, E, 1, Project selection,

Sections II, L, 1(e) and (g), Eligible coal lands and water,

Section II, L, 1(h), Limited liability,

Section II, L, 1(i), Contractor responsibility,

Section II, L, 1(j), Reports,

Sections II, L, 2(b)(3) and (4), Eligible noncoal lands and water prior to certification,

Section II, L, 2(c), Limited liability,

Section II, L, 2(d), Contractor responsibility,

Section II, L, 2(e), Reports,

Sections II, M, 1(b) and (d), 2, and 2(a) and (b), Certification of completion of coal sites,

Sections II, N, 1 and 1(c), Eligible lands and water subsequent to certification,

Sections II, P, 1(a) through (c), 2(a) through (f), and (3), Utilities and other facilities, and

Section III, E, 1 and 1(a), Future reclamation set-aside program.

§ 756.15

(e) Addition or removal of the following rules, as submitted to OSM on March 2 and 8, 2001, is approved effective July 31, 2001:

Section II, subsections M, 2, 2(a), 2(a)(1), 2(a)(2), and 2(a)(3), noncoal reclamation after certification (removed);

Section II, subsection O, 1, Exclusion of Noncoal Reclamation Sites (removed);

Section II, subsection O, subsection heading "NONCOAL RECLAMATION AFTER CERTIFICATION;"

Section II, subsection O, 1, applicability of subsection O;

Section II, subsections O, 2, 2(a) through 2(c), objectives and priorities;

Section II, subsection O, 3, enhancement of facilities and utilities;

Section II, subsection O, 4, determination of need for activities and construction of specific public facilities and submittal of grant applications;

Section II, subsection O, 5 through 5(h), requirements for grant applications submitted under subsection O.4 to meet;

Section II, subsection O, 6, exclusion of certain noncoal reclamation sites;

Section II, subsection O, 7, land acquisition authority for the noncoal program;

Section II, subsection O, 8, lien requirements;

Section II, subsection O, 9, limited liability;

Section II, subsection O, 10, contractor responsibility; and

Section II, subsection P, subsection heading, "RESERVED" (removed).

[59 FR 49185, Sept. 27, 1994, as amended at 60 FR 20195, Apr. 25, 1995; 62 FR 18272, Apr. 15, 1997; 66 FR 39443, July 31, 2001]

§ 756.15 Required amendments to the Navajo Nation's abandoned mine land plan.

Pursuant to 30 CFR 884.15, the Navajo Nation is required to submit to OSM by the date specified either a proposed amendment or a reasonable timetable, which is consistent with the Navajo Nation's established administrative and legislative procedures, for submitting an amendment to the Navajo Nation plan.

[61 FR 6508, Feb. 21, 1996]

§ 756.16 Approval of the Hopi Tribe's abandoned mine land reclamation plan.

The Hopi Tribe's Abandoned Mine Land Reclamation Plan as submitted in July 1983, and amended in March and May 1988, is approved. Copies of the ap-

30 CFR Ch. VII (7-1-17 Edition)

proved Plan are available at the following locations:

(a) The Hopi Tribe, Hopi Abandoned Mine Land Program, Department of Natural Resources, Honahni Building, P.O. Box 123, Kykotsmovi, AZ 86039, Telephone: (520) 734-2441.

(b) Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 505 Marquette Ave., NW., Suite 1200, Albuquerque, NM 87102, Telephone: (505) 248-5070.

[61 FR 6508, Feb. 21, 1996]

§ 756.17 Approval of the Hopi Tribe's abandoned mine land reclamation plan amendments.

The following amendments to the Hopi Tribe's abandoned mine land reclamation plan are approved.

(a) The Hopi Tribe certification of completion of coal reclamation, as submitted on February 2, 1994, is approved effective June 9, 1994.

(b) With the exceptions of part I, concerning the purpose of the Hopi tribe plan; section I, A(3) concerning facilities related to water supplies; section I, A(4), concerning public facilities projects; section II, B(1)(d)(ii), concerning the protection of property; and section 884.13(f)(2), concerning a description of aesthetic, cultural and recreational conditions of the Hopi Reservation, revisions to and additions of the following plan provisions, as submitted to OSM on November 2, 1995, are approved effective April 23, 1996.

Table of Contents—Title of Part II and List of Appendices;

List of Addenda and Errata—Title for this part;

List of Figures—Title of Figure 4 and deletion of Figure 5;

Preface to Amended Reclamation Plan—Introductory paragraph, program goals and objectives, and eligible projects;

Chairman's Letter of Designation and Hopi Tribe Resolution—Designation of Tribal agency authorized to administer approved plan;

Opinion of Legal Counsel—Authority of designated agency to conduct the AMLR program in accordance with the requirements of Title IV of SMCRA;

Section I, A(1)—Protection of the health, safety, and general welfare of members of the Hopi Tribe;

Section I, A(2)—Restoration of land and water resources;

Surface Mining Reclamation and Enforcement, Interior

§ 756.18

Section I, B—Designation of administrative authority;
Section I, C—Reclamation priorities;
Sections I, C (4) and (5)—Deletion of existing C(4) and recodification of C(5) and (6) as C(4) and (5);
Section I, C—Deletion of allocation of funds provisions;
Section II, A—[Lack of] Limited liability provision for coal;
Section II, A(1)—Abatement of any new coal problems that arise after the effective date of the certification of completion of coal reclamation;
Sections II, A(1) (a) through (f)—Eligible coal lands and water;
Section II, (A)(1)(g)—Contractor responsibility;
Section II, A(1)(h)—Reports;
Sections II, B(1) (a) and (b)—Eligible lands and water subsequent to certification;
Sections II, B(1)(c), (d) (i) and (iii), (e), and (g)—Reclamation priorities for noncoal program;
Section II, B(1)(f)—Need for activities or construction of specific public facilities related to the coal or mineral industry on Tribal lands impacted by coal or mineral development;
Section II, G—Reports;
Sections II, C through F—Exclusion of certain noncoal reclamation sites, noncoal land acquisition authority, limited liability, and contractor responsibility;
Section II, H and [deletion of] ranking and selection of noncoal reclamation projects and Table I, Comprehensive/Problem Evaluation Matrix—Description of needs, proposed construction and activities;
Part III—Coordination of Tribal AML programs with other programs;
Section IV, A(1)—Acquisition of lands by the Hopi Tribe;
Section IV, A(2)(a)(i)—Appraisals;
Section IV, A(2)(b)—Lands eligible for acquisition;
Sections IV, A(2) (c), (d), (e), B(2), and C—Land acquisition, management, and disposal;
Section IV, B(1)—Management of acquired lands;
Part V and Figures 1 and 2—Reclamation on private land;
Section VI, A, B, and C—Rights of entry;
Deletion of section VI, C—Entry for emergency reclamation;
Part VII—Hopi Department of Natural Resources (DNR) policy on public participation;
Part VIII and Figure 4—Organization of the Hopi Tribe;
Part IX—Personnel staffing policies;
Part X—Purchasing and procurement;
Part XI—Management accounting;
[Deletion of] sections 884.13(e) (1), (2), and (3)—Purpose of Hopi Tribe plan and criteria for ranking and identifying projects;

Part XII—Economic conditions of the Hopi Reservation;
Part XIII—Flora and fauna;
Appendices 1 through 12—Addition of cover pages;
Appendix 1—Constitution and By-Laws of the Hopi Tribe, as amended;
Appendix 7—Title of the appendix;
Memorandum from the Assistant General Counsel/Legislation Counsel to DNR dated May 18, 1995—Elimination of Title IV from the draft Hopi Code Mining Ordinance;
Hopi Tribal Council Resolution H-134-89, adopted August 29, 1989; and
Memorandum from the Hopi Tribe Office of Financial Management to DNR dated September 7, 1995—Purchasing procedures.

(c) Revisions to, additions of, or deletions of the following plan provisions, as submitted to OSM on September 23, 1996, are approved effective March 31, 1997:

Preface to Amended Reclamation Plan—Introductory paragraph and Eligible Projects;
Section I, A—Purpose of Hopi plan;
Section II, A(1)—Certification of Completion of Coal Sites;
Section II, A(1)(a)—Eligible Coal Lands and Water;
Section II, A, (1)(g)—Contractor Responsibility (for coal reclamation);
Section II, (A)(1)(i)—Limited Liability (for coal reclamation);
Sections II, (B)(1)(d) and (d)(ii)—Noncoal Reclamation After Certification;
Sections II, (B)(1)(h), (i), and (j)—Limited Liability, Contractor Responsibility, and Reports (for noncoal reclamation);
Deletion of sections II, E, F, and G—Limited Liability, Contractor Responsibility, and Reports (for noncoal reclamation);
Section II, E—Description of Needs, Proposed Construction and Activities;
Sections IV, (A)(1) and (B)(1)—Acquisition and Management of Acquired Lands;
Sections VI, A(1) (a) through (c) and B(1)—Consent to Entry and Public Notice;
Section VII, B(8)—Public Participation;
Section VIII—Organization of the Hopi Tribe;
Section XII—Description of Aesthetic, Cultural and Recreational Conditions of the Hopi Reservation; and
Section XIV—Flora and Fauna.

[61 FR 17839, Apr. 23, 1996, as amended at 62 FR 15115, Mar. 31, 1997]

§ 756.18 Required amendments to the Hopi Tribe's abandoned mine land reclamation plan.

Pursuant to 30 CFR 884.15, the Hopi Tribe is required to submit to OSM by the date specified either a proposed

§ 756.19

amendment or a reasonable timetable, which is consistent with the Hopi Tribe's established administrative and legislative procedures, for submitting an amendment to the Hopi Tribe plan.

(a)–(b) [Reserved]

[61 FR 6508, Feb. 21, 1996, as amended at 61 FR 17840, Apr. 23, 1996; 62 FR 15115, Mar. 31, 1997]

§ 756.19 Approval of the Crow Tribe's abandoned mine land reclamation plan.

The Crow Tribe's Abandoned Mine Land Reclamation Plan as submitted in 1982, and resubmitted in September, 1988 is approved. Copies of the approved Plan are available at the following locations:

(a) Crow Tribal Council, Crow Office of Reclamation, P.O. Box 159, Crow Agency, MT 59022.

Original amendment submission date	Date of final publication	Citation/description
May 29, 2007	April 1, 2008	756.20 Certification of Completion.

(b) [Reserved]

[61 FR 6509, Feb. 21, 1996, as amended at 73 FR 17249, Apr. 1, 2008]

§ 756.21 Required amendments to the Crow Tribe's abandoned mine land reclamation plan.

Pursuant to 30 CFR 884.15, the Crow Tribe is required to submit to OSM by

30 CFR Ch. VII (7–1–17 Edition)

(b) Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Room 2128, 100 East B Street, Casper, WY 82601–1918, Telephone: (307) 261–6555.

[61 FR 6508, Feb. 21, 1996]

§ 756.20 Approval of amendments to the Crow Tribe's abandoned mine land reclamation plan.

Revisions to the following provisions of the Crow Tribe's Abandoned Mine Land Reclamation Plan, as submitted to OSM on the date specified, are approved.

(a) The Director concurs with the Crow Tribe's May 29, 2007, certification of completion of coal reclamation effective April 1, 2008:

the date specified either a proposed amendment or a reasonable timetable, which is consistent with the Crow Tribe's established administrative and legislative procedures, for submitting an amendment to the Crow Tribe plan.

[61 FR 6509, Feb. 21, 1996]

SUBCHAPTER F—AREAS UNSUITABLE FOR MINING

PART 761—AREAS DESIGNATED BY ACT OF CONGRESS

Sec.

761.1 Scope.

761.3 Authority.

761.5 Definitions.

761.10 Information collection.

761.11 Areas where surface coal mining operations are prohibited or limited.

761.12 Exception for existing operations.

761.13 Procedures for compatibility findings for surface coal mining operations on Federal lands in national forests.

761.14 Procedures for relocating or closing a public road or waiving the prohibition on surface coal mining operations within the buffer zone of a public road.

761.15 Procedures for waiving the prohibition on surface coal mining operations within the buffer zone of an occupied dwelling.

761.16 Submission and processing of requests for valid existing rights determinations.

761.17 Regulatory authority obligations at time of permit application review.

761.200 Interpretative rule related to subsidence due to underground coal mining in areas designated by Act of Congress.

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

SOURCE: 48 FR 41348, Sept. 14, 1983, unless otherwise noted.

§ 761.1 Scope.

This part establishes the procedures and standards to be followed in determining whether a proposed surface coal mining and reclamation operation can be authorized in light of the prohibitions and limitations in section 522(e) of the Act for those types of operations on certain Federal, public and private lands.

§ 761.3 Authority.

The State regulatory authority or the Secretary is authorized by section 522(e) of the Act (30 U.S.C. 1272(e)) to prohibit or limit surface coal mining operations on or near certain private, Federal, and other public lands, subject to valid existing rights and except for those operations which existed on August 3, 1977.

§ 761.5 Definitions.

For the purposes of this part—

Cemetery means any area of land where human bodies are interred.

Community or institutional building means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

Occupied dwelling means any building that is currently being used on a regular or temporary basis for human habitation.

Public building means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

Public park means an area or portion of an area dedicated or designated by any Federal, State, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

Public road means a road (a) which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction; (c) for which there is substantial (more than incidental) public use; and (d) which meets road construction standards for other public roads of the same classification in the local jurisdiction.

Publicly-owned park means a public park that is owned by a Federal, State or local governmental entity.

Significant forest cover means an existing plant community consisting predominantly of trees and other woody vegetation. The Secretary of Agriculture shall decide on a case-by-case basis whether the forest cover is significant within those national forests west of the 100th meridian.

Significant recreational, timber, economic, or other values incompatible with surface coal mining operations means those values to be evaluated for their significance which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas. Those values to be evaluated for their importance include:

- (a) Recreation, including hiking, boating, camping, skiing or other related outdoor activities;
- (b) Timber manager and silviculture;
- (c) Agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce;
- (d) Scenic, historic, archeologic, esthetic, fish, wildlife, plants or cultural interests.

Surface operations and impacts incident to an underground coal mine means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in section 701(28) of the Act and the definition of surface coal mining operations appearing in §700.5 of this chapter.

Valid existing rights means a set of circumstances under which a person may, subject to regulatory authority approval, conduct surface coal mining operations on lands where 30 U.S.C. 1272(e) and §761.11 would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of §761.11 and 30 U.S.C. 1272(e). A person seeking to exercise valid existing rights must comply with all other pertinent requirements of the Act and the applicable regulatory program.

(a) *Property rights demonstration.* Except as provided in paragraph (c) of this definition, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations

intended. This right must exist at the time that the land came under the protection of §761.11 or 30 U.S.C. 1272(e). Applicable State statutory or case law will govern interpretation of documents relied upon to establish property rights, unless Federal law provides otherwise. If no applicable State law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

(b) Except as provided in paragraph (c) of this definition, a person claiming valid existing rights also must demonstrate compliance with one of the following standards:

(1) *Good faith/all permits standard.* All permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of §761.11 or 30 U.S.C. 1272(e). At a minimum, an application must have been submitted for any permit required under subchapter G of this chapter or its State program counterpart.

(2) *Needed for and adjacent standard.* The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of §761.11 or 30 U.S.C. 1272(e). To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of §761.11 or 30 U.S.C. 1272(e). Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of §761.11 or 30 U.S.C. 1272(e) when the regulatory authority approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the

original operation was made. In evaluating whether a person meets this standard, the agency making the determination may consider factors such as:

(i) The extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of § 761.11 or 30 U.S.C. 1272(e) depend upon use of that land for surface coal mining operations.

(ii) The extent to which plans used to obtain financing for the operation before the land came under the protection of § 761.11 or 30 U.S.C. 1272(e) rely upon use of that land for surface coal mining operations.

(iii) The extent to which investments in the operation before the land came under the protection of § 761.11 or 30 U.S.C. 1272(e) rely upon use of that land for surface coal mining operations.

(iv) Whether the land lies within the area identified on the life-of-mine map submitted under § 779.24(c) or § 783.24(c) of this chapter before the land came under the protection of § 761.11.

(c) *Roads.* A person who claims valid existing rights to use or construct a road across the surface of lands protected by § 761.11 or 30 U.S.C. 1272(e) must demonstrate that one or more of the following circumstances exist if the road is included within the definition of "surface coal mining operations" in § 700.5 of this chapter:

(1) The road existed when the land upon which it is located came under the protection of § 761.11 or 30 U.S.C. 1272(e), and the person has a legal right to use the road for surface coal mining operations.

(2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of § 761.11 or 30 U.S.C. 1272(e), and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations.

(3) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of § 761.11 or 30 U.S.C. 1272(e).

(4) Valid existing rights exist under paragraphs (a) and (b) of this definition.

We, us, and our refer to the Office of Surface Mining Reclamation and Enforcement.

You and your refer to a person who claims or seeks to obtain an exception or waiver authorized by § 761.11 or 30 U.S.C. 1272(e).

[48 FR 41348, Sept. 14, 1983, as amended at 52 FR 4261, Feb. 10, 1987; 56 FR 65634, Dec. 17, 1991; 64 FR 70831, Dec. 17, 1999]

§ 761.10 Information collection.

(a) In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of this part. The OMB clearance number is 1029-0111. The regulatory authority or other responsible agency will use this information to determine whether a person has valid existing rights or qualifies for one of the other waivers or exemptions from the general prohibition on conducting surface coal mining operations in the areas listed in 30 U.S.C. 1272(e). Persons seeking to conduct surface coal mining operations on these lands must respond to obtain a benefit in accordance with 30 U.S.C. 1272(e).

(b) We estimate that the public reporting and recordkeeping burden for this part will average 15 hours per response under § 761.13, 0.5 hour per response under § 761.14, 2 hours per response under § 761.15, 14 hours per response under § 761.16, 2 hours per response under § 761.17(c), and 2 hours per response under § 761.17(d), including time spent reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The burden for § 761.16 includes 6 hours for the person seeking the determination and 8 hours for the agency processing the request. Send comments regarding this burden estimate or any other aspect of these information collection and recordkeeping requirements, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue, N.W., Washington, DC

§ 761.11

30 CFR Ch. VII (7–1–17 Edition)

20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, 725 17th Street, N.W., Washington, DC 20503. Please refer to OMB Control Number 1029–0111 in any correspondence.

[64 FR 70832, Dec. 17, 1999]

§ 761.11 Areas where surface coal mining operations are prohibited or limited.

You may not conduct surface coal mining operations on the following lands unless you either have valid existing rights, as determined under § 761.16, or qualify for the exception for existing operations under § 761.12:

(a) Any lands within the boundaries of:

- (1) The National Park System;
- (2) The National Wildlife Refuge System;
- (3) The National System of Trails;
- (4) The National Wilderness Preservation System;
- (5) The Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, 16 U.S.C. 1276(a), or study rivers or study river corridors established in any guidelines issued under that Act; or
- (6) National Recreation Areas designated by Act of Congress.

(b) Any Federal lands within a national forest. This prohibition does not apply if the Secretary finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations, and:

(1) Any surface operations and impacts will be incident to an underground coal mine; or

(2) With respect to lands that do not have significant forest cover within national forests west of the 100th meridian, the Secretary of Agriculture has determined that surface mining is in compliance with the Act, the Multiple-Use Sustained Yield Act of 1960, 16 U.S.C. 528–531; the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C. 181 *et seq.*; and the National Forest Management Act of 1976, 16 U.S.C. 1600 *et seq.* This provision does not apply to the Custer National Forest.

(c) Any lands where the operation would adversely affect any publicly owned park or any place in the National Register of Historic Places. This prohibition does not apply if, as provided in § 761.17(d), the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or place jointly approve the operation.

(d) Within 100 feet, measured horizontally, of the outside right-of-way line of any public road. This prohibition does not apply:

(1) Where a mine access or haul road joins a public road, or

(2) When, as provided in § 761.14, the regulatory authority (or the appropriate public road authority designated by the regulatory authority) allows the public road to be relocated or closed, or the area within the protected zone to be affected by the surface coal mining operation, after:

(i) Providing public notice and opportunity for a public hearing; and

(ii) Finding in writing that the interests of the affected public and landowners will be protected.

(e) Within 300 feet, measured horizontally, of any occupied dwelling. This prohibition does not apply when:

(1) The owner of the dwelling has provided a written waiver consenting to surface coal mining operations within the protected zone, as provided in § 761.15; or

(2) The part of the operation to be located closer than 300 feet to the dwelling is an access or haul road that connects with an existing public road on the side of the public road opposite the dwelling.

(f) Within 300 feet, measured horizontally, of any public building, school, church, community or institutional building, or public park.

(g) Within 100 feet, measured horizontally, of a cemetery. This prohibition does not apply if the cemetery is relocated in accordance with all applicable laws and regulations.

[64 FR 70832, Dec. 17, 1999]

§ 761.12 Exception for existing operations.

The prohibitions and limitations of § 761.11 do not apply to:

(a) Surface coal mining operations for which a valid permit, issued under

Subchapter G of this chapter or an approved State regulatory program, exists when the land comes under the protection of § 761.11. This exception applies only to lands within the permit area as it exists when the land comes under the protection of § 761.11.

(b) With respect to operations subject to Subchapter B of this chapter, lands upon which validly authorized surface coal mining operations exist when the land comes under the protection of 30 U.S.C. 1272(e) or § 761.11.

[64 FR 70833, Dec. 17, 1999]

§ 761.13 Procedures for compatibility findings for surface coal mining operations on Federal lands in national forests.

(a) If you intend to rely upon the exception provided in § 761.11(b) to conduct surface coal mining operations on Federal lands within a national forest, you must request that we obtain the Secretarial findings required by § 761.11(b).

(b) You may submit a request to us before preparing and submitting an application for a permit or boundary revision. If you do, you must explain how the proposed operation would not damage the values listed in the definition of "significant recreational, timber, economic, or other values incompatible with surface coal mining operations" in § 761.5. You must include a map and sufficient information about the nature of the proposed operation for the Secretary to make adequately documented findings. We may request that you provide any additional information that we determine is needed to make the required findings.

(c) When a proposed surface coal mining operation or proposed boundary revision for an existing surface coal mining operation includes Federal lands within a national forest, the regulatory authority may not issue the permit or approve the boundary revision before the Secretary makes the findings required by § 761.11(b).

[64 FR 70833, Dec. 17, 1999]

§ 761.14 Procedures for relocating or closing a public road or waiving the prohibition on surface coal mining operations within the buffer zone of a public road.

(a) This section does not apply to:

(1) Lands for which a person has valid existing rights, as determined under § 761.16.

(2) Lands within the scope of the exception for existing operations in § 761.12.

(3) Access or haul roads that join a public road, as described in § 761.11(d)(1).

(b) You must obtain any necessary approvals from the authority with jurisdiction over the road if you propose to:

(1) Relocate a public road;

(2) Close a public road; or

(3) Conduct surface coal mining operations within 100 feet, measured horizontally, of the outside right-of-way line of a public road.

(c) Before approving an action proposed under paragraph (b) of this section, the regulatory authority, or a public road authority that it designates, must determine that the interests of the public and affected landowners will be protected. Before making this determination, the authority must:

(1) Provide a public comment period and opportunity to request a public hearing in the locality of the proposed operation;

(2) If a public hearing is requested, publish appropriate advance notice at least two weeks before the hearing in a newspaper of general circulation in the affected locality; and

(3) Based upon information received from the public, make a written finding as to whether the interests of the public and affected landowners will be protected. If a hearing was held, the authority must make this finding within 30 days after the hearing. If no hearing was held, the authority must make this finding within 30 days after the end of the public comment period.

[64 FR 70833, Dec. 17, 1999]

§ 761.15 Procedures for waiving the prohibition on surface coal mining operations within the buffer zone of an occupied dwelling.

(a) This section does not apply to:

(1) Lands for which a person has valid existing rights, as determined under § 761.16.

(2) Lands within the scope of the exception for existing operations in § 761.12.

(3) Access or haul roads that connect with an existing public road on the side of the public road opposite the dwelling, as provided in § 761.11(e)(2).

(b) If you propose to conduct surface coal mining operations within 300 feet, measured horizontally, of any occupied dwelling, the permit application must include a written waiver by lease, deed, or other conveyance from the owner of the dwelling. The waiver must clarify that the owner and signator had the legal right to deny mining and knowingly waived that right. The waiver will act as consent to surface coal mining operations within a closer distance of the dwelling as specified.

(c) If you obtained a valid waiver before August 3, 1977, from the owner of

an occupied dwelling to conduct operations within 300 feet of the dwelling, you need not submit a new waiver.

(d) If you obtain a valid waiver from the owner of an occupied dwelling, that waiver will remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent purchaser will be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to State laws or if surface coal mining operations have entered the 300-foot zone before the date of purchase.

[64 FR 70833, Dec. 17, 1999]

§ 761.16 Submission and processing of requests for valid existing rights determinations.

(a) *Basic framework for valid existing rights determinations.* The following table identifies the agency responsible for making a valid existing rights determination and the definition that it must use, based upon which paragraph of § 761.11 applies and whether the request includes Federal lands.

Paragraph of § 761.11 that provides protection	Protected feature	Type of land to which request pertains	Agency responsible for determination	Applicable definition of valid existing rights
(a)	National parks, wildlife refuges, etc..	Federal	OSM	Federal ¹
(a)	National parks, wildlife refuges, etc..	Non-Federal	Regulatory authority	Federal ¹
(b)	Federal lands in national forests ³ .	Federal	OSM	Federal ¹
(c)	Public parks and historic places.	Does not matter	Regulatory authority	Regulatory program ²
(d)	Public roads	Does not matter	Regulatory authority	Regulatory program ²
(e)	Occupied dwellings	Does not matter	Regulatory authority	Regulatory program ²
(f)	Schools, churches, parks, etc..	Does not matter	Regulatory authority	Regulatory program ²
(g)	Cemeteries	Does not matter	Regulatory authority	Regulatory program ²

¹ Definition in 30 CFR 761.5.

² Definition in applicable State or Federal regulatory program under 30 CFR Chapter VII, Subchapter T.

³ Neither 30 U.S.C. 1272(e) nor 30 CFR 761.11 provides special protection for non-Federal lands within national forests. Therefore, this table does not include a category for those lands.

(b) *What you must submit as part of a request for a valid existing rights determination.* You must submit a request for a valid existing rights determination to the appropriate agency under paragraph (a) of this section if you intend to conduct surface coal mining operations on the basis of valid existing rights under § 761.11 or wish to confirm the right to do so. You may submit this request before preparing and submit-

ting an application for a permit or boundary revision for the land, unless the applicable regulatory program provides otherwise.

(1) *Requirements for property rights demonstration.* You must provide a property rights demonstration under paragraph (a) of the definition of valid existing rights in § 761.5 if your request relies upon the good faith/all permits standard or the needed for and adjacent

standard in paragraph (b) of the definition of valid existing rights in §761.5. This demonstration must include the following items:

- (i) A legal description of the land to which your request pertains.
 - (ii) Complete documentation of the character and extent of your current interests in the surface and mineral estates of the land to which your request pertains.
 - (iii) A complete chain of title for the surface and mineral estates of the land to which your request pertains.
 - (iv) A description of the nature and effect of each title instrument that forms the basis for your request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities.
 - (v) A description of the type and extent of surface coal mining operations that you claim the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with State property law.
 - (vi) Complete documentation of the nature and ownership, as of the date that the land came under the protection of §761.11 or 30 U.S.C. 1272(e), of all property rights for the surface and mineral estates of the land to which your request pertains.
 - (vii) Names and addresses of the current owners of the surface and mineral estates of the land to which your request pertains.
 - (viii) If the coal interests have been severed from other property interests, documentation that you have notified and provided reasonable opportunity for the owners of other property interests in the land to which your request pertains to comment on the validity of your property rights claims.
 - (ix) Any comments that you receive in response to the notification provided under paragraph (b)(1)(viii) of this section.
- (2) *Requirements for good faith/all permits standard.* If your request relies upon the good faith/all permits standard in paragraph (b)(1) of the definition of valid existing rights in §761.5, you must submit the information required under paragraph (b)(1) of this section.

You also must submit the following information about permits, licenses, and authorizations for surface coal mining operations on the land to which your request pertains:

- (i) Approval and issuance dates and identification numbers for any permits, licenses, and authorizations that you or a predecessor in interest obtained before the land came under the protection of §761.11 or 30 U.S.C. 1272(e).
 - (ii) Application dates and identification numbers for any permits, licenses, and authorizations for which you or a predecessor in interest submitted an application before the land came under the protection of §761.11 or 30 U.S.C. 1272(e).
 - (iii) An explanation of any other good faith effort that you or a predecessor in interest made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of §761.11 or 30 U.S.C. 1272(e).
- (3) *Requirements for needed for and adjacent standard.* If your request relies upon the needed for and adjacent standard in paragraph (b)(2) of the definition of valid existing rights in §761.5, you must submit the information required under paragraph (b)(1) of this section. In addition, you must explain how and why the land is needed for and immediately adjacent to the operation upon which your request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of §761.11 or 30 U.S.C. 1272(e).
- (4) *Requirements for standards for mine roads.* If your request relies upon one of the standards for roads in paragraphs (c)(1) through (c)(3) of the definition of valid existing rights in §761.5, you must submit satisfactory documentation that:
- (i) The road existed when the land upon which it is located came under the protection of §761.11 or 30 U.S.C. 1272(e), and you have a legal right to use the road for surface coal mining operations;
 - (ii) A properly recorded right of way or easement for a road in that location existed when the land came under the

protection of §761.11 or 30 U.S.C. 1272(e), and, under the document creating the right of way or easement, and under any subsequent conveyances, you have a legal right to use or construct a road across that right of way or easement to conduct surface coal mining operations; or

(iii) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of §761.11 or 30 U.S.C. 1272(e).

(c) *Initial review of request.* (1) The agency must conduct an initial review to determine whether your request includes all applicable components of the submission requirements of paragraph (b) of this section. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

(2) If your request does not include all applicable components of the submission requirements of paragraph (b) of this section, the agency must notify you and establish a reasonable time for submission of the missing information.

(3) When your request includes all applicable components of the submission requirements of paragraph (b) of this section, the agency must implement the notice and comment requirements of paragraph (d) of this section.

(4) If you do not provide information that the agency requests under paragraph (c)(2) of this section within the time specified or as subsequently extended, the agency must issue a determination that you have not demonstrated valid existing rights, as provided in paragraph (e)(4) of this section.

(d) *Notice and comment requirements and procedures.* (1) When your request satisfies the completeness requirements of paragraph (c) of this section, the agency must publish a notice in a newspaper of general circulation in the county in which the land is located. This notice must invite comment on the merits of the request. Alternatively, the agency may require that you publish this notice and provide the agency with a copy of the published notice. We will publish a similar notice in the FEDERAL REGISTER if your request involves Federal lands within an area

listed in §761.11(a) or (b). Each notice must include:

(i) The location of the land to which the request pertains.

(ii) A description of the type of surface coal mining operations planned.

(iii) A reference to and brief description of the applicable standard(s) under the definition of valid existing rights in §761.5.

(A) If your request relies upon the good faith/all permits standard or the needed for and adjacent standard in paragraph (b) of the definition of valid existing rights in §761.5, the notice also must include a description of the property rights that you claim and the basis for your claim.

(B) If your request relies upon the standard in paragraph (c)(1) of the definition of valid existing rights in §761.5, the notice also must include a description of the basis for your claim that the road existed when the land came under the protection of §761.11 or 30 U.S.C. 1272(e). In addition, the notice must include a description of the basis for your claim that you have a legal right to use that road for surface coal mining operations.

(C) If your request relies upon the standard in paragraph (c)(2) of the definition of valid existing rights in §761.5, the notice also must include a description of the basis for your claim that a properly recorded right of way or easement for a road in that location existed when the land came under the protection of §761.11 or 30 U.S.C. 1272(e). In addition, the notice must include a description of the basis for your claim that, under the document creating the right of way or easement, and under any subsequent conveyances, you have a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations.

(iv) If your request relies upon one or more of the standards in paragraphs (b), (c)(1), and (c)(2) of the definition of valid existing rights in §761.5, a statement that the agency will not make a decision on the merits of your request if, by the close of the comment period under this notice or the notice required by paragraph (d)(3) of this section, a person with a legal interest in the land initiates appropriate legal action in

the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of your claim.

(v) A description of the procedures that the agency will follow in processing your request.

(vi) The closing date of the comment period, which must be a minimum of 30 days after the publication date of the notice.

(vii) A statement that interested persons may obtain a 30-day extension of the comment period upon request.

(viii) The name and address of the agency office where a copy of the request is available for public inspection and to which comments and requests for extension of the comment period should be sent.

(2) The agency must promptly provide a copy of the notice required under paragraph (d)(1) of this section to:

(i) All reasonably locatable owners of surface and mineral estates in the land included in your request.

(ii) The owner of the feature causing the land to come under the protection of § 761.11, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of § 761.11. For example, both the landowner and the State Historic Preservation Officer must be notified if surface coal mining operations would adversely impact any site listed on the National Register of Historic Places. As another example, both the surface owner and the National Park Service must be notified if the request includes non-Federal lands within the authorized boundaries of a unit of the National Park System.

(3) The letter transmitting the notice required under paragraph (d)(2) of this section must provide a 30-day comment period, starting from the date of service of the letter, and specify that another 30 days is available upon request. At its discretion, the agency responsible for the determination of valid existing rights may grant additional time for good cause upon request. The agency need not necessarily consider comments received after the closing date of the comment period.

(e) *How a decision will be made.* (1) The agency responsible for making the determination of valid existing rights must review the materials submitted under paragraph (b) of this section, comments received under paragraph (d) of this section, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the agency must notify you in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the agency deems necessary to remedy the inadequacy.

(2) Once the record is complete and adequate, the responsible agency must determine whether you have demonstrated valid existing rights. The decision document must explain how you have or have not satisfied all applicable elements of the definition of valid existing rights in § 761.5. It must contain findings of fact and conclusions, and it must specify the reasons for the conclusions.

(3) *Impact of property rights disagreements.* This paragraph applies only when your request relies upon one or more of the standards in paragraphs (b), (c)(1), and (c)(2) of the definition of valid existing rights in § 761.5.

(i) The agency must issue a determination that you have not demonstrated valid existing rights if your property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The agency will make this determination without prejudice, meaning that you may refile the request once the property rights dispute is finally adjudicated. This paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under paragraph (d)(1) or (d)(3) of this section.

(ii) If the record indicates disagreement as to the accuracy of your property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the agency must evaluate the merits of the

§ 761.17

30 CFR Ch. VII (7–1–17 Edition)

information in the record and determine whether you have demonstrated that the requisite property rights exist under paragraph (a), (c)(1), or (c)(2) of the definition of valid existing rights in § 761.5, as appropriate. The agency must then proceed with the decision process under paragraph (e)(2) of this section.

(4) The agency must issue a determination that you have not demonstrated valid existing rights if you do not submit information that the agency requests under paragraph (c)(2) or (e)(1) of this section within the time specified or as subsequently extended. The agency will make this determination without prejudice, meaning that you may refile a revised request at any time.

(5) After making a determination, the agency must:

(i) Provide a copy of the determination, together with an explanation of appeal rights and procedures, to you, to the owner or owners of the land to which the determination applies, to the owner of the feature causing the land to come under the protection of § 761.11, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of § 761.11.

(ii) Publish notice of the determination in a newspaper of general circulation in the county in which the land is located. Alternatively, the agency may require that you publish this notice and provide a copy of the published notice to the agency. We will publish the determination, together with an explanation of appeal rights and procedures, in the FEDERAL REGISTER if your request includes Federal lands within an area listed in § 761.11(a) or (b).

(f) *Administrative and judicial review.* A determination that you have or do not have valid existing rights is subject to administrative and judicial review under §§ 775.11 and 775.13 of this chapter.

(g) *Availability of records.* The agency responsible for processing a request subject to notice and comment under paragraph (d) of this section must make a copy of that request available to the public in the same manner as the agency, when acting as the regu-

latory authority, must make permit applications available to the public under § 773.6(d) of this chapter. In addition, the agency must make records associated with that request, and any subsequent determination under paragraph (e) of this section, available to the public in accordance with the requirements and procedures of § 840.14 or § 842.16 of this chapter.

[64 FR 70833, Dec. 17, 1999, as amended at 75 FR 60275, Sept. 29, 2010]

§ 761.17 Regulatory authority obligations at time of permit application review.

(a) Upon receipt of an administratively complete application for a permit for a surface coal mining operation, or an administratively complete application for revision of the boundaries of a surface coal mining operation permit, the regulatory authority must review the application to determine whether the proposed surface coal mining operation would be located on any lands protected under § 761.11.

(b) The regulatory authority must reject any portion of the application that would locate surface coal mining operations on land protected under § 761.11 unless:

(1) The site qualifies for the exception for existing operations under § 761.12;

(2) A person has valid existing rights for the land, as determined under § 761.16;

(3) The applicant obtains a waiver or exception from the prohibitions of § 761.11 in accordance with §§ 761.13 through 761.15; or

(4) For lands protected by § 761.11(c), both the regulatory authority and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with paragraph (d) of this section.

(c) *Location verification.* If the regulatory authority has difficulty determining whether an application includes land within an area specified in § 761.11(a) or within the specified distance from a structure or feature listed in § 761.11(f) or (g), the regulatory authority must request that the Federal, State, or local governmental agency with jurisdiction over the protected

Surface Mining Reclamation and Enforcement, Interior

§ 762.5

land, structure, or feature verify the location.

(1) The request for location verification must:

(i) Include relevant portions of the permit application.

(ii) Provide the agency with 30 days after receipt to respond, with a notice that another 30 days is available upon request.

(iii) Specify that the regulatory authority will not necessarily consider a response received after the comment period provided under paragraph (c)(1)(ii) of this section.

(2) If the agency does not respond in a timely manner, the regulatory authority may make the necessary determination based on available information.

(d) *Procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks or historic places.* (1) If the regulatory authority determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the regulatory authority must request that the Federal, State, or local agency with jurisdiction over the park or place either approve or object to the proposed operation. The request must:

(i) Include a copy of applicable parts of the permit application.

(ii) Provide the agency with 30 days after receipt to respond, with a notice that another 30 days is available upon request.

(iii) State that failure to interpose an objection within the time specified under paragraph (d)(1)(ii) of this section will constitute approval of the proposed operation.

(2) The regulatory authority may not issue a permit for a proposed operation subject to paragraph (d)(1) of this section unless all affected agencies jointly approve.

(3) Paragraphs (d)(1) and (d)(2) of this section do not apply to:

(i) Lands for which a person has valid existing rights, as determined under § 761.16.

(ii) Lands within the scope of the exception for existing operations in § 761.12.

[64 FR 70836, Dec. 17, 1999]

§ 761.200 Interpretative rule related to subsidence due to underground coal mining in areas designated by Act of Congress.

OSM has adopted the following interpretation of rules promulgated in part 761.

(a) *Interpretation of § 761.11—Areas where mining is prohibited or limited.* Subsidence due to underground coal mining is not included in the definition of surface coal mining operations under section 701(28) of the Act and § 700.5 of this chapter and therefore is not prohibited in areas protected under section 522(e) of the Act.

(b) [Reserved]

[64 FR 70866, Dec. 17, 1999]

PART 762—CRITERIA FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

Sec.

762.1 Scope.

762.4 Responsibility.

762.5 Definitions.

762.11 Criteria for designating lands as unsuitable.

762.12 Additional criteria.

762.13 Land exempt from designation as unsuitable for surface coal mining operations.

762.14 Applicability to lands designated as unsuitable by Congress.

762.15 Exploration on land designated as unsuitable for surface coal mining operations.

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

SOURCE: 48 FR 41350, Sept. 14, 1983, unless otherwise noted.

§ 762.1 Scope.

This part establishes the minimum criteria to be used in determining whether lands should be designated as unsuitable for all or certain types of surface coal mining operations.

§ 762.4 Responsibility.

The regulatory authority or OSM shall use the criteria in this part for the evaluation of each petition for the designation of areas as unsuitable for surface coal mining operations.

§ 762.5 Definitions.

For purposes of this part:

§ 762.11

Fragile lands means areas containing natural, ecologic, scientific, or esthetic resources that could be significantly damaged by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmarks, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and esthetic features, and areas of recreational value due to high environmental quality.

Historic lands means areas containing historic, cultural, or scientific resources. Examples of historic lands include archeological sites, properties listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to Native Americans or religious groups, and properties for which historic designation is pending.

Natural hazard lands means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches and areas of unstable geology.

Renewable resource lands means geographic areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

Substantial legal and financial commitments in a surface coal mining operation means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. Costs of acquiring the coal in place, or the right to mine it alone without other significant investments, as described above, are not sufficient to con-

30 CFR Ch. VII (7-1-17 Edition)

stitute substantial legal and financial commitments.

[48 FR 41350, Sept. 14, 1983, as amended at 52 FR 18795, May 19, 1987; 53 FR 26584, July 13, 1988]

§ 762.11 Criteria for designating lands as unsuitable.

(a) Upon petition an area shall be designated as unsuitable for all or certain types of surface coal mining operations, if the regulatory authority determines that reclamation is not technologically and economically feasible under the Act, this chapter or an approved State program.

(b) Upon petition an area may be (but is not required to be) designated as unsuitable for certain types of surface coal mining operations, if the operations will—

(1) Be incompatible with existing State or local land use plans or programs;

(2) Affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems;

(3) Affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or

(4) Affect natural hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

§ 762.12 Additional criteria.

(a) A State regulatory authority may establish additional or more stringent criteria for determining whether lands within the State should be designated as unsuitable for coal mining operations. Such criteria shall be approved pursuant to subchapter C of this chapter.

(b) The Secretary may establish additional criteria for determining whether Federal lands should be designated as unsuitable for surface mining operations.

(c) Additional criteria will be determined to be more stringent on the

basis of whether they provide for greater protection of the public health, safety and welfare or the environment, such that areas beyond those specified in the criteria of this part would be designated as unsuitable for surface coal mining operations.

§ 762.13 Land exempt from designation as unsuitable for surface coal mining operations.

The requirements of this part do not apply to—

(a) Lands on which surface coal mining operations were being conducted on the date of enactment of the Act;

(b) Lands covered by a permit issued under the Act; or

(c) Lands where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977.

§ 762.14 Applicability to lands designated as unsuitable by Congress.

Pursuant to appropriate petitions, lands listed in § 761.11 of this chapter are subject to designation as unsuitable for all or certain types of surface coal mining operations under this part and parts 764 and 769 of this chapter.

[64 FR 70837, Dec. 17, 1999]

§ 762.15 Exploration on land designated as unsuitable for surface coal mining operations.

Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to section 522 of the Act and regulations of this subchapter does not prohibit coal exploration operations in the area, if conducted in accordance with the Act, this chapter, any approved State or Federal program, and other applicable requirements. Exploration operations on any lands designated unsuitable for surface coal mining operations must be approved by the regulatory authority under part 772 of this chapter, to ensure that exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining.

[48 FR 41350, Sept. 14, 1983. Redesignated at 64 FR 70837, Dec. 17, 1999]

PART 764—STATE PROCESSES FOR DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

Sec.

764.1 Scope.

764.10 Information collection.

764.11 General process requirements.

764.13 Petitions.

764.15 Initial processing, recordkeeping, and notification requirements.

764.17 Hearing requirements.

764.19 Decision.

764.21 Data base and inventory system requirements.

764.23 Public information.

764.25 Regulatory authority responsibility for implementation.

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

SOURCE: 48 FR 41351, Sept. 14, 1983, unless otherwise noted.

§ 764.1 Scope.

This part establishes minimum procedures and standards to be included in each approved State program for designating non-Federal and non-Indian lands in a State as unsuitable for all or certain types of surface coal mining operations and for terminating designations.

§ 764.10 Information collection.

The information collection requirements contained in §§ 764.21 and 764.25(b) have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0030. The information required in § 764.21 is necessary to allow the regulatory authority to develop a data base and inventory system to evaluate whether reclamation is feasible in areas covered by petitions. The information required in § 764.25(b) is necessary to allow the regulatory authority to determine, when a permit application is filed, whether it includes any areas designated as unsuitable for surface coal mining.

§ 764.11 General process requirements.

Each State shall establish a process enabling objective decisions to be made on which, if any, land areas of the State are unsuitable for all or certain

types of surface coal mining operations. These decisions shall be based on competent, scientifically sound data and other relevant information. This process shall include the requirements listed in this part.

§ 764.13 Petitions.

(a) *Right to petition.* Any person having an interest which is or may be adversely affected has the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated. For the purpose of this Action, a person having an interest which is or may be adversely affected must demonstrate how he or she meets an "injury in fact" test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

(b) *Designation.* The regulatory authority shall determine what information must be provided by the petitioner to have an area designated as unsuitable for surface coal mining operations.

(1) At a minimum, a complete petition for designation shall include—

(i) The petitioner's name, address, telephone number, and notarized signature;

(ii) Identification of the petitioned areas, including its location and size, and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area;

(iii) An identification of the petitioner's interest which is or may be adversely affected by surface coal mining operations, including a statement demonstrating how the petitioner satisfies the requirements of paragraph (a) of this section;

(iv) A description of how mining of the area has affected or may adversely affect people, land, air, water, or other resources, including the petitioner's interests; and

(v) Allegations of fact and supporting evidence, covering all lands in the petition area, which tend to establish that the area is unsuitable for all or certain types of surface coal mining operations, pursuant to specific criteria of sections 522(a) (2) and (3) of the Act, assuming that contemporary mining

practices required under applicable regulatory programs would be followed if the area were to be mined. Each of the allegations of fact should be specific as to the mining operation, if known, and the portion(s) of the petitioned area and petitioner's interests to which the allegation applies and be supported by evidence that tends to establish the validity of the allegations for the mining operation or portion of the petitioned areas.

(2) The regulatory authority may request that the petitioner provide other supplementary information which is readily available.

(c) *Termination.* The regulatory authority shall determine what information must be provided by the petitioner to terminate designations of lands as unsuitable for surface coal mining operations.

(1) At a minimum, a complete petition for termination shall include—

(i) The petitioner's name, address, telephone number, and notarized signature;

(ii) Identification of the petitioned area, including its location and size and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area to which the termination petition applies;

(iii) An identification of the petitioner's interest which is or may be adversely affected by the designation that the area is unsuitable for surface coal mining operations including a statement demonstrating how the petitioner satisfies the requirements of paragraph (a) of this section;

(iv) Allegations of facts covering all lands for which the termination is proposed. Each of the allegations of fact shall be specific as to the mining operation, if any, and to portions of the petitioned area and petitioner's interests to which the allegation applies. The allegations shall be supported by evidence, not contained in the record of the designation proceeding, that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area, assuming that contemporary mining practices required under applicable regulatory programs would be followed were the area to be mined. For areas previously

and unsuccessfully proposed for termination, significant new allegations of facts and supporting evidence must be presented in the petition. Allegations and supporting evidence should also be specific to the basis for which the designation was made and tend to establish that the designation should be terminated on the following bases:

(A) Nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in § 762.11(b) of this chapter;

(B) Reclamation now being technologically and economically feasible if the designation was based on the criteria found in § 762.11(a) of this chapter; or

(C) Resources or conditions not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on the criteria found in § 762.11(b) of this chapter;

(2) The State regulatory authority may request that the petitioner provide other supplementary information which is readily available.

§ 764.15 Initial processing, record-keeping, and notification requirements.

(a)(1) Within 30 days of receipt of a petition, the regulatory authority shall notify the petitioner by certified mail whether the petition is complete under § 764.13 (b) or (c). Complete, for a designation or termination petition, means that the information required under § 764.13 (b) or (c) has been provided.

(2) The regulatory authority shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the regulatory authority finds there are not any identified coal resources in that area, it shall return the petition to the petitioner with a statement of the findings.

(3) If the regulatory authority determines that the petition is incomplete, frivolous, or that the petitioner does not meet the requirements of § 764.13(a), it shall return the petition

to the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete. A frivolous petition is one in which the allegations of harm lack serious merit.

(4) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the regulatory authority shall determine if the new petition presents significant new allegations of facts with evidence which tends to establish the allegations. If the petition does not contain such material, the regulatory authority may choose not to consider the petition and may return the petition to the petitioner, with a statement of its findings and a reference to the record of the previous designation proceedings where the facts were considered.

(5) The regulatory authority shall notify the person who submits a petition of any application for a permit received which includes any area covered by the petition.

(6) The regulatory authority may determine not to process any petition received insofar as it pertains to lands for which an administratively complete permit application has been filed and the first newspaper notice has been published. Based on such a determination, the regulatory authority may issue a decision on a complete and accurate permit application and shall inform the petitioner why the regulatory authority cannot consider the part of the petition pertaining to the proposed permit area.

(b)(1) Promptly after a petition is received, the regulatory authority shall notify the general public of the receipt of the petition by a newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area and in any official State register of public notices. The regulatory authority shall make copies of the petition available to the public and shall provide copies of the petition to other interested governmental agencies, intervenors, persons with an ownership interest of record in the property, and other persons known to the regulatory authority to have an interest in the property. Proper notice to persons with

§ 764.17

30 CFR Ch. VII (7-1-17 Edition)

an ownership interest of record in the property shall comply with the requirements of applicable State law.

(2) Promptly after the determination that a petition is complete, the regulatory authority shall request submissions from the general public of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area, and in any official State register of public notices.

(c) Until three days before the regulatory authority holds a hearing under § 764.17, any person may intervene in the proceeding by filing allegations of facts describing how the designation determination directly affects the intervenor, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address and telephone number.

(d) Beginning from the date a petition is filed, the regulatory authority shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the regulatory authority. The regulatory authority shall make the record available to the public for inspection free of charge and for copying at reasonable cost during all normal hours at the main office of the regulatory authority. The regulatory authority shall also maintain information at or near the area in which the petitioned land is located and make this information available to the public for inspection free of charge and for copying at reasonable cost during all normal business hours. At a minimum, this information shall include a copy of the petition.

[48 FR 41351, Sept. 14, 1983, as amended at 52 FR 49323, 49324, Dec. 30, 1987]

§ 764.17 Hearing requirements.

(a) Within 10 months after receipt of a complete petition, the regulatory authority shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The regulatory authority may subpoena witnesses as necessary. The hearing may be conducted with cross-

examination of expert witnesses only. A record of the hearing shall be made and preserved according to State law. No person shall bear the burden of proof or persuasion. All relevant parts of the data base and inventory system and all public comments received during the public comment period shall be included in the record and considered by the regulatory authority in its decision on the petition.

(b)(1) The regulatory authority shall give notice of the date, time, and location of the hearing to:

(i) Local, State, and Federal agencies which may have an interest in the decision on the petition;

(ii) The petitioner and the intervenors; and

(iii) Any person known by the regulatory authority to have a property interest in the petitioned area. Proper notice to persons with an ownership interest of record shall comply with the requirements of applicable State law.

(2) Notice of the hearing shall be sent by certified mail to petitioners and intervenors, and by regular mail to government agencies and property owners involved in the proceeding, and postmarked not less than 30 days before the scheduled date of the hearing.

(c) The regulatory authority shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for 2 consecutive weeks in the locale of the area covered by the petition and once during the week prior to the public hearing. The consecutive weekly advertisement must begin between 4 and 5 weeks before the scheduled date of the public hearing.

(d) The regulatory authority may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(e) Prior to designating any land areas as unsuitable for surface coal mining operations, the regulatory authority shall prepare a detailed statement, using existing and available information on the potential coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

Surface Mining Reclamation and Enforcement, Interior

§ 764.25

(f) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

§ 764.19 Decision.

(a) In reaching its decision, the regulatory authority shall use—

(1) The information contained in the data base and inventory system;

(2) Information provided by other governmental agencies;

(3) The detailed statement when it is prepared under § 764.17(e); and

(4) Any other relevant information submitted during the comment period.

(b) A final written decision shall be issued by the regulatory authority, including a statement of reasons, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete petition. The regulatory authority shall simultaneously send the decision by certified mail to the petitioner and intervenors and by regular mail to all other persons involved in the proceeding.

(c) The decision of the State regulatory authority with respect to a petition, or the failure of the regulatory authority to act within the time limits set forth in this section, shall be subject to judicial review by a court of competent jurisdiction in accordance with State law under section 526(e) of the Act and § 775.13 of this chapter. All relevant portions of the data base, inventory system, and public comments received during the public comment period set by the regulatory authority shall be considered and included in the record of the administrative proceeding.

§ 764.21 Data base and inventory system requirements.

(a) The regulatory authority shall develop a data base and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

(b) The regulatory authority shall include in the system information relevant to the criteria in § 762.11 of this chapter, including, but not limited to, information received from the United States Fish and Wildlife Service, the State Historic Preservation Officer,

and the agency administering section 127 of the Clean Air Act, as amended (42 U.S.C. 7470 *et seq.*).

(c) The regulatory authority shall add to the data base and inventory system information—

(1) On potential coal resources of the State, demand for those resources, the environment, the economy and the supply of coal, sufficient to enable the regulatory authority to prepare the statements required by § 764.17(e); and

(2) That becomes available from petitions, publications, experiments, permit application, mining and reclamation operations, and other sources.

§ 764.23 Public information.

The regulatory authority shall:

(a) Make the information in the data base and inventory system developed under § 764.21 available to the public for inspection free of charge and for copying at reasonable cost, except that specific information relating to location of properties proposed to be nominated to, or listed in, the National Register of Historic Places need not be disclosed if the regulatory authority determines that the disclosure of such information would create a risk of destruction or harm to such properties;

(b) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

§ 764.25 Regulatory authority responsibility for implementation.

(a) The regulatory authority shall not issue permits which are inconsistent with designations made pursuant to part 761, 762, or 764 of this chapter.

(b) The regulatory authority shall maintain a map or other unified and cumulative record of areas designated unsuitable for all or certain types of surface coal mining operations.

(c) The regulatory authority shall make available to any person any information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment but excepting

proprietary information on the chemical and physical properties of the coal.

PART 769—PETITION PROCESS FOR DESIGNATION OF FEDERAL LANDS AS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING OPERATIONS AND FOR TERMINATION OF PREVIOUS DESIGNATIONS

Sec.

- 769.1 Scope.
- 769.10 Information collection.
- 769.11 Who may submit a petition.
- 769.12 Where to submit petitions.
- 769.13 Contents of petitions.
- 769.14 Initial processing, recordkeeping, and notification requirements.
- 769.15 Intervention.
- 769.16 Public information.
- 769.17 Hearing requirements.
- 769.18 Decisions on petitions.
- 769.19 Regulatory policy.

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

SOURCE: 48 FR 41354, Sept. 14, 1983, unless otherwise noted.

§ 769.1 Scope.

This part establishes minimum procedures and standards for designating Federal lands as unsuitable for all or certain types of surface coal mining operations and for terminating designations pursuant to petition.

§ 769.10 Information collection.

The information collection requirements in this part do not require approval of the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than 10 respondents annually.

§ 769.11 Who may submit a petition.

Any person having an interest which is or may be adversely affected by surface coal mining operations to be conducted on Federal lands may petition the Secretary to have an area designated as unsuitable for all or certain types of surface coal mining operations, or to have an existing designation terminated. This right does not apply to areas set aside from surface coal mining operations under laws other than the Act. For the purpose of this section, a person having an inter-

est which is or may be adversely affected must demonstrate how he or she meets an “injury in fact” test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

§ 769.12 Where to submit petitions.

Each petition to have an area of Federal lands designated as unsuitable or to terminate an existing designation shall be submitted to the Director of the OSM Field Office responsible for that area where the Federal lands are located.

§ 769.13 Contents of petitions.

(a) *Designation.* The only information that a petitioner need provide to designate lands is that required under § 764.13(b) of this chapter.

(b) *Termination.* The only information that a petitioner need provide to terminate a designation is that required by § 764.13(c) of this chapter.

§ 769.14 Initial processing, recordkeeping, and notification requirements.

(a)(1) Within 30 days of receipt of a petition, OSMRE shall determine whether the petition is complete and not frivolous. OSMRE may request other supplementary information that is readily available to be provided by the petitioner. Any request for such supplementary information from the petitioner shall not affect OSMRE's determination that the petition is complete for further processing.

(2) *Complete*, (i) for a designation petition, means that (A) all information required under § 764.13(b) of this chapter has been provided and (B) the information submitted by the petitioner contains significant new allegations of fact and supporting evidence not considered in any previous unsuccessful petition of Federal lands review conducted under Section 522(b) of the Act, that tends to establish that the lands are unsuitable for surface coal mining operations; and (ii) for a termination petition, means that all information required under § 764.13(c) has been provided.

(3) *Frivolous*, for a designation or termination petition, means that:

Surface Mining Reclamation and Enforcement, Interior

§ 769.16

(i) The allegations of harm lack serious merit; or

(ii) Available information shows that no “mineable” coals resources exist in the petitioned area or that the petitioned area is not or could not be subject to related surface coal mining operations and surface impacts incident to an underground coal mine or an adjoining surface mine (mineable coal is coal with development potential as mapped or reported by the Bureau of Land Management under 43 CFR 3420.1-4(e)(1); and privately owned coal under land owned by the United States).

(b) When the Director finds that the petition is incomplete or frivolous, he or she shall reject the petition with a written statement of reasons and advise the petitioner, via certified mail, that the petition may be reconsidered upon resubmittal with deficiencies cured.

(c) When the Director finds that the petition is complete and not frivolous, he or she shall initiate the petition review and so advise the petitioner via certified mail.

(d)(1) Within 2 weeks after accepting the petition for further processing, OSM shall send a copy of the petition to the authorized officer of the land management agency for the officer's recommendation on the petition.

(2) The authorized officer of the appropriate Federal land management agency shall furnish a recommendation on the petition to OSM within 30 days of its receipt, if the area covered by the petition has been included in a completed Federal lands review or within 9 months, if the area has not been included in a Federal lands review.

(e) Promptly after accepting a petition for further processing, OSM shall circulate copies of the petition to, and request submissions of relevant information from, other interested governmental agencies, the petitioner, intervenors, and any person, known to OSM to have an ownership interest in the property.

(f) Where lands administered by the Department of the Interior and other Federal land management agencies are contiguous or intermingled or where the Department's resource management could affect resources on the other's land, the Director of OSM shall

refer a copy of the petition to the other Federal land management agency and shall consider the agency's recommendations about designating those lands unsuitable for all or certain types of surface coal mining or terminating such designations.

(g) OSM may determine not to process any petition received insofar as it pertains to lands for which an administratively complete permit application has been filed and the first newspaper notice has been published. Based on such a determination, OSM may issue a decision on a complete and accurate permit application and shall inform the petitioner why OSM cannot consider the part of the petition pertaining to the proposed permit area.

[48 FR 41354, Sept. 14, 1983, as amended at 52 FR 49324, Dec. 30, 1987]

§ 769.15 Intervention.

Up to 3 days before the OSM holds a hearing on a petition under § 769.17, any person may intervene in the proceeding by filing a statement describing how the designation directly affects the intervenor, allegations of facts and supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address and telephone number.

§ 769.16 Public information.

(a) Promptly after determining that a petition is complete, the Director shall notify the general public of the receipt of the petition and request submissions of the relevant information by a newspaper advertisement placed once a week for two consecutive weeks in the newspaper providing broadest circulation in the region of the petitioned area, and in the FEDERAL REGISTER. The advertisement and FEDERAL REGISTER notice shall include a description of the boundaries of the petitioned area, the allegations of fact, and information regarding where the petition is available for public review.

(b)(1) Beginning immediately after a petition is filed, OSM shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by OSM with the exception of that information excluded under § 769.16(b)(2). OSM shall make the

record available to the public for inspection free of charge and for copying at a reasonable cost during all normal business hours at its Washington, D.C. office. OSM shall also maintain information in or near the area in which the petitioned land is located; this information shall be available for public inspection, free of charge, and for copying at reasonable cost during all normal business hours. At a minimum, this information shall include a copy of the petition.

(2) OSM need not make available to any person or entity the specific location of property proposed to be nominated to be listed or listed in the National Register of Historic Places if it is determined that disclosure of that information would create a risk of destruction or harm to such properties. Withheld information must be disclosed when a designation of unsuitability would rest primarily on an allegation based on that information.

§ 769.17 Hearing requirements.

(a) Within 10 months after receipt of a complete petition, OSM shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. OSM may subpoena witnesses as necessary. The hearing may be conducted with cross-examination of expert witnesses only. A record of the hearing shall be made and preserved. No person shall bear the burden of proof or persuasion. All relevant parts of the data base and inventory system and all public comments received during the public comment period shall be included in the record and considered by OSM in deciding the petition.

(b)(1) OSM shall give notice of the date, time, and location of the hearing to:

(i) Local, State, and Federal agencies which may have an interest in the decision on the petition;

(ii) The petitioner and the intervenors; and

(iii) Any person known by OSM to have a property interest in the petitioned area.

(2) Notice of the hearing shall be sent by certified mail to the petitioner and

intervenors, and by regular mail to other persons involved in the proceeding, and postmarked not less than 30 days before the scheduled date of the hearing.

(3) OSM shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for 2 consecutive weeks prior to the scheduled date of the public hearing in the locale of the area covered by the petition and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisements must begin between 4 and 5 weeks prior to the scheduled date of the public hearing.

(c) OSM may consolidate into a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(d) If any petitions relates to an area of Federal lands which is the subject of a pending surface coal mining and reclamation operations permit application, OSM may, with consent of all petitioners and intervenors, coordinate the hearing on the petition required under paragraph (a) of this section with any hearing on the permit application or informal conference held in accordance with section 513(b) of the Act and § 740.13 of this chapter on the permit application. Nothing in this paragraph shall relieve an applicant for a permit from the burden of establishing that his or her application is in compliance with the requirements of the Federal lands program.

(e) Prior to designating any lands as unsuitable for surface coal mining operations, OSM shall issue a detailed statement on the abundance of coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

§ 769.18 Decisions on petitions.

(a) In reaching his or her decision, the Director shall use the information and consider the recommendation provided by the Federal land management agency, information provided by other governmental agencies, the detailed statement, when it is prepared under

Surface Mining Reclamation and Enforcement, Interior

§ 769.19

§ 769.17(e), and any other relevant information submitted during the comment period.

(b) A final written decision shall be issued by the Director, including a statement of reasons, within 60 days of completion of the public hearing, or if no public hearing is held, within 12 months after receipt of the complete petition. The Director shall simultaneously send the decision by certified mail to the petitioner and the intervenors and by regular mail to all other persons involved in the proceeding.

(c) If the Director concurs with the recommendation of the surface managing agency, the Director's decision becomes final. If the Director does not concur with the recommendation, he or she shall notify the Director of the surface managing agency within 30 days

after the public hearing, if any. The decision at the same time will be referred to the Secretary through respective agency heads for resolution and issuance of a final decision within 60 days after the hearing, if any.

(d) A final decision of the Director or the Secretary is subject to judicial review in accordance with § 775.13 of this chapter and section 526 (a)(2) and (b) of the Act.

§ 769.19 Regulatory policy.

Once an area of Federal lands is designated as unsuitable for all or certain types of surface coal mining operations, any permit or lease shall be conditioned in a manner so as to limit or prohibit surface coal mining operations on the designated areas in accordance with the designation.

SUBCHAPTER G—SURFACE COAL MINING AND RECLAMATION OPERATIONS PERMITS AND COAL EXPLORATION SYSTEMS UNDER REGULATORY PROGRAMS

PART 772—REQUIREMENTS FOR COAL EXPLORATION

Sec.

772.1 Scope and purpose.

772.10 Information collection.

772.11 Notice requirements for exploration removing 250 tons of coal or less.

772.12 Permit requirements for exploration that will remove more than 250 tons of coal or that will occur on lands designated as unsuitable for surface coal mining operations.

772.13 Coal exploration compliance duties.

772.14 Commercial use or sale.

772.15 Public availability of information.

AUTHORITY: 30 U.S.C. 1201 *et seq.* and 16 U.S.C. 470 *et seq.*

SOURCE: 48 FR 40634, Sept. 8, 1983, unless otherwise noted.

§ 772.1 Scope and purpose.

This part establishes the requirements and procedures applicable to coal exploration operations on all lands except for Federal lands subject to the requirements of 43 CFR parts 3480–3487.

[48 FR 40634, Sept. 8, 1983, as amended at 48 FR 44779, Sept. 30, 1983]

§ 772.10 Information collection.

(a) In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection and recordkeeping requirements of this part. The OMB clearance number is 1029–0112. OSM and State regulatory authorities use the information collected under this part to maintain knowledge of coal exploration activities, evaluate the need for an exploration permit, and ensure that exploration activities comply with the environmental protection, public participation, and reclamation requirements of parts 772 and 815 of this chapter and 30 U.S.C. 1262. Persons seeking to conduct coal exploration must respond to obtain a benefit.

(b) OSM estimates that the combined public reporting and recordkeeping burden for all respondents under this part will average 11 hours per notice or

application submitted, including time spent reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Specifically, OSM estimates that preparation of a notice of intent to explore under § 772.11 will require an average of 10 hours per notice, preparation and processing of an application for coal exploration under § 772.12 will require an average of 103 hours per application, compliance with § 772.14 will require an average of 18 hours per application, and record-keeping and information collection under § 772.15 will require an average of approximately 1 hour per response. Send comments regarding this burden estimate or any other aspect of these information collection requirements, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue, N.W., Washington, DC 20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, 725 17th Street, N.W., Washington, DC 20503. Please refer to OMB Control Number 1029–0112 in any correspondence.

[64 FR 70837, Dec. 17, 1999]

§ 772.11 Notice requirements for exploration removing 250 tons of coal or less.

(a) Any person who intends to conduct coal exploration operations outside a permit area during which 250 tons or less of coal will be removed, shall, before conducting the exploration, file with the regulatory authority a written notice of intention to explore. Exploration which will take place on lands designated as unsuitable for surface coal mining operations under subchapter F of this chapter, shall be subject to the permitting requirements under § 772.12. Exploration conducted under a notice of intent

shall be subject to the requirements prescribed under § 772.13.

(b) The notice shall include—

(1) The name, address, and telephone number of the person seeking to explore;

(2) The name, address, and telephone number of the person's representative who will be present at, and responsible for, conducting the exploration activities;

(3) A narrative describing the proposed exploration area or a map at a scale of 1:24,000, or greater, showing the proposed area of exploration and the general location of drill holes and trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of surface water, and pipelines;

(4) A statement of the period of intended exploration; and

(5) A description of the method of exploration to be used and the practices that will be followed to protect the environment and to reclaim the area from adverse impacts of the exploration activities in accordance with the applicable requirements of part 815 of this chapter.

[48 FR 40634, Sept. 8, 1983, as amended at 53 FR 52949, Dec. 29, 1988]

§ 772.12 Permit requirements for exploration that will remove more than 250 tons of coal or that will occur on lands designated as unsuitable for surface coal mining operations.

(a) *Exploration permit.* Any person who intends to conduct coal exploration outside a permit area during which more than 250 tons of coal will be removed or which will take place on lands designated as unsuitable for surface mining under subchapter F of this chapter, shall, before conducting the exploration, submit an application and obtain written approval from the regulatory authority in an exploration permit. Such exploration shall be subject to the requirements prescribed under §§ 772.13 and 772.14.

(b) *Application information.* Each application for an exploration permit shall contain, at a minimum, the following information:

(1) The name, address, and telephone number of the applicant.

(2) The name, address and telephone number of the applicant's representative who will be present at, and responsible for, conducting the exploration activities.

(3) A narrative describing the proposed exploration area.

(4) A narrative description of the methods and equipment to be used to conduct the exploration and reclamation.

(5) An estimated timetable for conducting and completing each phase of the exploration and reclamation.

(6) The estimated amount of coal to be removed and a description of the methods to be used to determine the amount.

(7) A statement of why extraction of more than 250 tons of coal is necessary for exploration.

(8) A description of—

(i) Cultural or historical resources listed on the National Register of Historic Places;

(ii) Cultural or historical resources known to be eligible for listing on the National Register of Historic Places; and

(iii) Known archeological resources located within the proposed exploration area.

(iv) Any other information which the regulatory authority may require regarding known or unknown historic or archeological resources.

(9) A description of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) identified within the proposed exploration area.

(10) A description of the measures to be used to comply with the applicable requirements of part 815 of this chapter.

(11) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored.

(12) A map or maps at a scale of 1:24,000, or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, topographic and drainage features, bodies of surface

water, and pipelines; proposed locations of trenches, roads, and other access routes and structures to be constructed; the location of proposed land excavations; the location of exploration holes or other drill holes or underground openings; the location of excavated earth or waste-material disposal areas; and the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(13) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

(14) For any lands listed in § 761.11 of this chapter, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of § 761.11 of this chapter, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of § 761.11 of this chapter.

(c) *Public notice and opportunity to comment.* Public notice of the application and opportunity to comment shall be provided as follows:

(1) Within such time as the regulatory authority may designate, the applicant shall provide public notice of the filing of an administratively complete application with the regulatory authority in a newspaper of general circulation in the county of the proposed exploration area.

(2) The public notice shall state the name and address of the person seeking approval, the filing date of the application, the address of the regulatory authority where written comments on the application may be submitted, the closing date of the comment period, and a description of the area of exploration.

(3) Any person having an interest which is or may be adversely affected shall have the right to file written comments on the application within reasonable time limits.

(d) *Decisions on applications for exploration.* (1) The regulatory authority shall act upon an administratively complete application for a coal exploration permit and any written comments within a reasonable period of time. The approval of a coal exploration permit may be based only on a complete and accurate application.

(2) The regulatory authority shall approve a complete and accurate application for a coal exploration permit filed in accordance with this part if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application will—

(i) Be conducted in accordance with this part, part 815 of this chapter, and the applicable provisions of the regulatory program;

(ii) Not jeopardize the continued existence of an endangered or threatened species listed pursuant to section 4 of the Endangered Species Act of 1973, 16 U.S.C. 1533, or result in the destruction or adverse modification of critical habitat of those species;

(iii) Not adversely affect any cultural or historical resources listed on the National Register of Historic Places pursuant to the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, unless the proposed exploration has been approved by both the regulatory authority and the agency with jurisdiction over the resources to be affected; and

(iv) With respect to exploration activities on any lands protected under § 761.11 of this chapter, minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the regulatory authority must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of § 761.11 of this chapter, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to

come under the protection of § 761.11 of this chapter, to comment on whether the finding is appropriate.

(3) Terms of approval issued by the regulatory authority shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with this part, part 815 of this chapter, and the regulatory program.

(e) *Notice and hearing.* (1) The regulatory authority shall notify the applicant, the appropriate local government officials, and other commenters on the application, in writing, of its decision on the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. Public notice of the decision on each application shall be posted by the regulatory authority at a public office in the vicinity of the proposed exploration operations.

(2) Any person having an interest which is or may be adversely affected by a decision of the regulatory authority pursuant to paragraph (e)(1) of this section shall have the opportunity for administrative and judicial review as set forth in part 775 of this chapter.

[48 FR 40634, Sept. 8, 1983, as amended at 52 FR 4262, Feb. 10, 1987; 53 FR 52949, Dec. 29, 1988; 64 FR 70837, Dec. 17, 1999]

§ 772.13 Coal exploration compliance duties.

(a) All coal exploration and reclamation activities that substantially disturb the natural land surface shall be conducted in accordance with the coal exploration requirements of this part, part 815 of this chapter, the regulatory program, and any exploration permit term or condition imposed by the regulatory authority.

(b) Any person who conducts any coal exploration in violation of the provisions of this part, part 815 of this chapter, the regulatory program, or any exploration permit term or condition imposed by the regulatory authority shall be subject to the provisions of section 518 of the Act, subchapter L of this chapter, and the applicable inspection and enforcement provisions of the regulatory program.

§ 772.14 Commercial use or sale.

(a) Except as provided under §§ 772.14(b) and 700.11(a)(5), any person who intends to commercially use or sell coal extracted during coal exploration operations under an exploration permit, shall first obtain a permit to conduct surface coal mining operations for those operations from the regulatory authority under parts 773 through 785 of this chapter.

(b) With the prior written approval of the regulatory authority, no permit to conduct surface coal mining operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the regulatory authority. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:

(1) The name of the testing firm and the locations at which the coal will be tested.

(2) If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:

(i) The specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;

(ii) The amount of coal necessary for the test and why a lesser amount is not sufficient; and

(iii) A description of the specific tests that will be conducted.

(3) Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to

§ 772.15

demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve.

(4) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation.

[53 FR 52949, Dec. 29, 1988]

§ 772.15 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 available for public inspection and copying at the local offices of the regulatory authority closest to the exploration area.

(b) The regulatory authority shall keep information 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 relating to the competitive rights of the persons intending to conduct coal exploration.

(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 both seeking and opposing disclosure of the information.

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

Sec.

773.1 Scope and purpose.

773.3 Information collection.

773.4 Requirements to obtain permits.

773.5 How must the regulatory authority coordinate the permitting process with requirements under other laws?

773.6 Public participation in permit processing.

773.7 How and when will the regulatory authority review and make a decision on an application for a permit, permit revision, or permit renewal?

773.8 General provisions for review of permit application information and entry of information into AVS.

773.9 Review of applicant and operator information.

773.10 Review of permit history.

773.11 Review of compliance history.

30 CFR Ch. VII (7–1–17 Edition)

773.12 Permit eligibility determination.

773.13 Unanticipated events or conditions at remaining sites.

773.14 Eligibility for provisionally issued permits.

773.15 What findings must the regulatory authority make before approving a permit application?

773.16 Performance bond submittal.

773.17 What conditions must the regulatory authority place on each permit issued?

773.19 Permit issuance and right of renewal.

773.20 What actions must the regulatory authority take when a permit is issued on the basis of inaccurate information?

773.21 Initial review and finding requirements for improvidently issued permits.

773.22 Notice requirements for improvidently issued permits.

773.23 Suspension or rescission requirements for improvidently issued permits.

773.25 Who may challenge ownership or control listings and findings.

773.26 How to challenge an ownership or control listing or finding.

773.27 Burden of proof for ownership or control challenges.

773.28 Written agency decision on challenges to ownership or control listings or findings.

AUTHORITY: 30 U.S.C. 1201 *et seq.*, 54 U.S.C. 300101 *et seq.*, 16 U.S.C. 661 *et seq.*, 16 U.S.C. 703 *et seq.*, 16 U.S.C. 668a *et seq.*, 16 U.S.C. 469 *et seq.*, and 16 U.S.C. 1531 *et seq.*

SOURCE: 48 FR 44391, Sept. 28, 1983, unless otherwise noted.

§ 773.1 Scope and purpose.

This part provides minimum requirements for permits and permit processing and covers obtaining and reviewing permits; coordinating with other laws; public participation; permit decision and notification; permit conditions; and permit term and right of renewal.

§ 773.3 Information collection.

The collections of information contained in part 773 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0115. The information collected will be used by the regulatory authority in processing surface coal mining permit applications. Persons intending to conduct surface coal mining operations must respond to obtain a benefit. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it

displays a currently valid OMB control number. Response is required to obtain a benefit in accordance with SMCRA. Send comments regarding burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Room 202—SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.

[72 FR 68029, Dec. 3, 2007]

§ 773.4 Requirements to obtain permits.

(a) *All operations.* On and after 8 months from the effective date of a permanent regulatory program within a State, no person shall engage in or carry out any surface coal mining operations, unless such person has first obtained a permit issued by the regulatory authority except as provided for in paragraph (b) of this section. A permittee need not renew the permit if no surface coal mining operations will be conducted under the permit and solely reclamation activities remain to be done. Obligations established under a permit continue until completion of surface coal mining and reclamation operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.

(b) *Continuation of initial program operations.* (1) If a State program receives final disapproval under part 732 of this chapter, including judicial review of the disapproval, existing surface coal mining and reclamation operations may continue pursuant to the provisions of subchapter B of this chapter and section 502 of the Act until promulgation of a complete Federal program for the State. During this period, no new permits for surface coal mining and reclamation operations shall be issued by the State. Permits that lapse during this period may continue in full force and effect within the specified permit area until promulgation of a Federal program for the State.

(2) Except for coal preparation plants separately authorized to operate under 30 CFR 785.21(e), a person conducting surface coal mining operations, under a

permit issued or amended by the regulatory authority in accordance with the requirements of section 502 of the Act, may conduct such operations beyond the period prescribed in paragraph (a) of this section if—

(i) Not later than 2 months following the effective date of a permanent regulatory program, regardless of litigation contesting that program, an application for a permanent regulatory program permit is filed for any operation to be conducted after the expiration of 8 months from such effective date in accordance with the provisions of the regulatory program;

(ii) The regulatory authority has not yet rendered an initial administrative decision approving or disapproving the permit; and

(iii) The surface coal mining and reclamation operation is conducted in compliance with the requirements of the Act, subchapter B of this chapter, applicable State statutes and regulations, and all terms and conditions of the initial program authorization or permit.

(3) No new initial program permits may be issued after the effective date of a State program unless the application was received prior to such date.

(c) *Continued operations under Federal program permits.* (1) A permit issued by the Director pursuant to a Federal program for a State shall be valid under any superseding State program approved by the Secretary.

(2) The Federal permittee shall have the right to apply to the State regulatory authority for a State permit to supersede the Federal permit.

(3) The State regulatory authority may review a permit issued pursuant to the superseded Federal program to determine that the requirements of the Act and the approved State program are not violated by the Federal permit, and to the extent that the approved State program contains additional requirements not contained in the Federal program for the State, the State regulatory authority shall—

(i) Inform the permittee in writing;

(ii) Provide the permittee an opportunity for a hearing;

§ 773.5

(iii) Provide the permittee a reasonable opportunity to resubmit the permit application in whole or in part, as appropriate; and

(iv) Provide the permittee a reasonable time to conform ongoing surface coal mining and reclamation operations to the requirements of the State program.

(d) *Continued operations under State program permits.* (1) A permit issued pursuant to a previously approved or conditionally approved State program shall be valid under a superseding Federal program.

(2) Immediately following promulgation of a Federal program, the Director shall review the permits issued under the previously approved State program to determine that the requirements of the Act, this chapter, and the Federal program are not violated. If the Director determines that a permit was granted contrary to the requirements of this Act, the Director shall—

(i) Inform the permittee in writing;

(ii) Provide the permittee an opportunity for a hearing;

(iii) Provide the permittee a reasonable opportunity to resubmit the permit application in whole or in part, as appropriate; and

(iv) Provide the permittee a reasonable time to conform ongoing surface coal mining and reclamation operations to the requirements of the Federal program, as prescribed in the Federal program for the State.

[48 FR 44391, Sept. 28, 1983, as amended at 53 FR 11607, Apr. 7, 1988; 54 FR 13823, Apr. 5, 1989. Redesignated at 65 FR 79663, Dec. 19, 2000.]

§ 773.5 How must the regulatory authority coordinate the permitting process with requirements under other laws?

(a) To avoid duplication, each regulatory program must provide for the coordination of review of permit applications and issuance of permits for surface coal mining operations with the federal and state agencies responsible for permitting and related actions under the following laws and their implementing regulations:

(1) The Clean Water Act (33 U.S.C. 1251 *et seq.*).

(2) The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(3) The Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*).

(4) The Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 *et seq.*).

(5) The Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d).

(b) In addition to the requirements of paragraph (a) of this section, each federal regulatory program must provide for coordination of the review of permit applications and issuance of permits for surface coal mining operations with applicable requirements of the following laws and their implementing regulations:

(1) The National Historic Preservation Act of 1966 (54 U.S.C. 300101 *et seq.*).

(2) The Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*).

(3) The Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa *et seq.*), where federal or Indian lands covered by that Act are involved.

(4) The National Environmental Policy Act of 1969 (42 U.S.C. 4371 *et seq.*).

[81 FR 93323, Dec. 20, 2016]

§ 773.6 Public participation in permit processing.

(a) *Filing and public notice.* (1) Upon submission of an administratively complete application, an applicant for a permit, significant revision of a permit under § 774.13, or renewal of a permit under § 774.15, shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least once a week for four consecutive weeks. A copy of the advertisement as it will appear in the newspaper shall be submitted to the regulatory authority. The advertisement shall contain, at a minimum, the following:

(i) The name and business address of the applicant.

(ii) A map or description which clearly shows or describes the precise location and boundaries of the proposed permit area and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location. If a

30 CFR Ch. VII (7–1–17 Edition)

map is used, it shall indicate the north direction.

(iii) The location where a copy of the application is available for public inspection.

(iv) The name and address of the regulatory authority where written comments, objections, or requests for informal conferences on the application may be submitted under paragraphs (b) and (c) of this section.

(v) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with § 761.14 of this chapter; a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing.

(vi) If the application includes a request for an experimental practice under § 785.13, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

(2) The applicant shall make an application for a permit, significant revision under § 774.13, or renewal of a permit under § 774.15 available for the public to inspect and copy by filing a full copy of the application with the recorder at the courthouse of the county where the mining is proposed to occur, or an accessible public office approved by the regulatory authority. This copy of the application need not include confidential information exempt from disclosure under paragraph (d) of this section. The application required by this paragraph shall be filed by the first date of newspaper advertisement of the application. The applicant shall file any changes to the application with the public office at the same time the change is submitted to the regulatory authority.

(3) Upon receipt of an administratively complete application for a permit, a significant revision to a permit under § 774.13, or a renewal of a permit under § 774.15, the regulatory authority shall issue written notification indicating the applicant's intention to mine the described tract of land, the

application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted. The notification shall be sent to—

(i) Local governmental agencies with jurisdiction over or an interest in the area of the proposed surface coal mining and reclamation operation, including but not limited to planning agencies, sewage and water treatment authorities, water companies; and

(ii) All Federal or State governmental agencies with authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and which are part of the permit coordinating process developed in accordance with section 503(a)(6) or section 504(h) of the Act, or § 773.5; or those agencies with an interest in the proposed operation, including the U.S. Department of Agriculture Soil Conservation Service district office, the local U.S. Army Corps of Engineers district engineer, the National Park Service, State and Federal fish and wildlife agencies, and the historic preservation officer.

(b) *Comments and objections on permit applications.* (1) Within a reasonable time established by the regulatory authority, written comments or objections on an application for a permit, significant revision to a permit under § 774.13, or renewal of a permit under § 774.15 may be submitted to the regulatory authority by public entities notified under paragraph (a)(3) of this section with respect to the effects of the proposed mining operations on the environment within their areas of responsibility.

(2) Written objections to an application for a permit, significant revision to a permit under § 774.13, or renewal of a permit under § 774.15 may be submitted to the regulatory authority by any person having an interest which is or may be adversely affected by the decision on the application, or by an officer or head of any Federal, State, or local government agency or authority, within 30 days after the last publication of the newspaper notice required by paragraph (a) of this section.

(3) The regulatory authority shall upon receipt of such written comments or objections—

(i) Transmit a copy of the comments or objections to the applicants; and

(ii) File a copy for public inspection at the same public office where the application is filed.

(c) *Informal conferences.* (1) Any person having an interest which is or may be adversely affected by the decision on the application, or an officer or a head of a Federal, State, or local government agency, may request in writing that the regulatory authority hold an informal conference on the application for a permit, significant revision to a permit under § 774.13, or renewal of a permit under § 774.15. The request shall—

(i) Briefly summarize the issues to be raised by the requestor at the conference;

(ii) State whether the requestor desires to have the conference conducted in the locality of the proposed operation; and

(iii) Be filed with the regulatory authority no later than 30 days after the last publication of the newspaper advertisement required under paragraph (a) of this section.

(2) Except as provided in paragraph (c)(3) of this section, if an informal conference is requested in accordance with paragraph (c)(1) of this section, the regulatory authority shall hold an informal conference within a reasonable time following the receipt of the request. The informal conference shall be conducted as follows:

(i) If requested under paragraph (c)(1)(ii) of this section, it shall be held in the locality of the proposed surface coal mining and reclamation operation.

(ii) The date, time, and location of the informal conference shall be sent to the applicant and other parties to the conference and advertised by the regulatory authority in a newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least 2 weeks before the scheduled conference.

(iii) If requested in writing by a conference requestor at a reasonable time before the conference, the regulatory authority may arrange with the appli-

cant to grant parties to the conference access to the proposed permit area and, to the extent that the applicant has the right to grant access to it, to the adjacent area prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(iv) The requirements of section 5 of the Administrative Procedure Act, as amended (5 U.S.C. 554), shall not apply to the conduct of the informal conference. The conference shall be conducted by a representative of the regulatory authority, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to subchapter J of this chapter.

(3) If all parties requesting the informal conference withdraw their request before the conference is held, the informal conference may be canceled.

(4) Informal conferences held in accordance with this section may be used by the regulatory authority as the public hearing required under § 761.14(c) of this chapter on proposed relocation or closing of public roads.

(d) *Public availability of permit applications*—(1) *General availability.* Except as provided in paragraph (d)(2) or (d)(3) of this section, all applications for permits; revisions; renewals; and transfers, assignments or sales of permit rights on file with the regulatory authority shall be available, at reasonable times, for public inspection and copying.

(2) *Limited availability.* Except as provided in paragraph (d)(3)(i) of this section, information pertaining to coal seams, test borings, core samplings, or soil samples in an application shall be made available to any person with an interest which is or may be adversely affected. Information subject to this paragraph shall be made available to the public when such information is required to be on public file pursuant to State law.

(3) *Confidentiality.* The regulatory authority shall provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confidentiality of qualified confidential information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application. Confidential information is limited to—

(i) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment;

(ii) Information required under section 508 of the Act that is not on public file pursuant to State law and that the applicant has requested in writing to be held confidential;

(iii) Information on the nature and location of archeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979 (Pub. L. 96–95, 93 Stat. 721, 16 U.S.C. 470).

[48 FR 44391, Sept. 28, 1983, as amended at 64 FR 70837, Dec. 17, 1999. Redesignated and amended at 65 FR 79663, Dec. 19, 2000; 66 FR 16127, Mar. 23, 2001; 75 FR 60275, Sept. 29, 2010]

§ 773.7 How and when will the regulatory authority review and make a decision on an application for a permit, permit revision, or permit renewal?

(a) *General.* The regulatory authority will review an application for a permit, permit revision, or permit renewal; and issue a written decision granting, requiring modification of, or denying the application. Before making this decision, the regulatory authority must consider any written comments and objections submitted, as well as the records of any informal conference or hearing held on the application.

(b) *When will the regulatory authority make a decision on a permit application?*

(1) If an informal conference is held under § 773.6(c) of this part, the regulatory authority will issue a decision on the application within 60 days of the close of the conference.

(2) If no informal conference is held under § 773.6(c) of this part, the regulatory authority must issue a decision

on the application within a reasonable time established in the regulatory program. In determining what constitutes a reasonable time, the regulatory authority must consider the following five factors:

(i) The time needed for proper site investigations.

(ii) The complexity of the permit application.

(iii) Whether there are any written objections on file.

(iv) Whether the application previously has been approved or disapproved, in whole or in part.

(v) The time required for coordination of permitting activities with other agencies under § 773.5 of this part.

(c) *Who has the burden of proof?* You, the applicant for a permit, revision of a permit, or the transfer, assignment, or sale of permit rights, have the burden of establishing that your application is in compliance with all requirements of the regulatory program.

[81 FR 93323, Dec. 20, 2016]

§ 773.8 General provisions for review of permit application information and entry of information into AVS.

(a) Based on an administratively complete application, we, the regulatory authority, must undertake the reviews required under §§ 773.9 through 773.11 of this part.

(b) We will enter into AVS—

(1) The information you are required to submit under §§ 778.11 and 778.12(c) of this subchapter.

(2) The information you submit under § 778.14 of this subchapter pertaining to violations which are unabated or uncorrected after the abatement or correction period has expired.

(c) We must update the information referred to in paragraph (b) of this section in AVS upon our verification of any additional information submitted or discovered during our permit application review.

[65 FR 79663, Dec. 19, 2000, as amended at 72 FR 68029, Dec. 3, 2007]

§ 773.9 Review of applicant and operator information.

(a) We, the regulatory authority, will rely upon the information that you, the applicant, are required to submit

§ 773.10

under § 778.11 of this subchapter, information from AVS, and any other available information, to review your and your operator's organizational structure and ownership or control relationships.

(b) We must conduct the review required under paragraph (a) of this section before making a permit eligibility determination under § 773.12 of this part.

[65 FR 79663, Dec. 19, 2000, as amended at 72 FR 68029, Dec. 3, 2007; 75 FR 60275, Sept. 29, 2010]

§ 773.10 Review of permit history.

(a) We, the regulatory authority, will rely upon the permit history information you, the applicant, submit under § 778.12 of this subchapter, information from AVS, and any other available information to review your and your operator's permit histories. We must conduct this review before making a permit eligibility determination under § 773.12 of this part.

(b) We will also determine if you or your operator have previous mining experience.

(c) If you or your operator do not have any previous mining experience, we may conduct an additional review under § 774.11(f) of this subchapter. The purpose of this review will be to determine if someone else with mining experience controls the mining operation.

[65 FR 79663, Dec. 19, 2000, as amended at 72 FR 68029, Dec. 3, 2007]

§ 773.11 Review of compliance history.

(a) We, the regulatory authority, will rely upon the violation information supplied by you, the applicant, under § 778.14 of this subchapter, a report from AVS, and any other available information to review histories of compliance with the Act or the applicable State regulatory program, and any other applicable air or water quality laws, for—

- (1) You;
- (2) Your operator;
- (3) Operations you own or control; and
- (4) Operations your operator owns or controls.

(b) We must conduct the review required under paragraph (a) of this section before making a permit eligibility

30 CFR Ch. VII (7–1–17 Edition)

determination under § 773.12 of this part.

[65 FR 79663, Dec. 19, 2000]

§ 773.12 Permit eligibility determination.

Based on the reviews required under §§ 773.9 through 773.11 of this part, we, the regulatory authority, will determine whether you, the applicant, are eligible for a permit under section 510(c) of the Act.

(a) Except as provided in §§ 773.13 and 773.14 of this part, you are not eligible for a permit if we find that any surface coal mining operation that—

(1) You directly own or control has an unabated or uncorrected violation; or

(2) You or your operator indirectly control has an unabated or uncorrected violation and your control was established or the violation was cited after November 2, 1988.

(b) We will not issue you a permit if you or your operator are permanently ineligible to receive a permit under § 774.11(c) of this subchapter.

(c) After we approve your permit under § 773.15 of this part, we will not issue the permit until you comply with the information update and certification requirement of § 778.9(d) of this subchapter. After you complete that requirement, we will again request a compliance history report from AVS to determine if there are any unabated or uncorrected violations which affect your permit eligibility under paragraphs (a) and (b) of this section. We will request this report no more than five business days before permit issuance under § 773.19 of this part.

(d) If you are ineligible for a permit under this section, we will send you written notification of our decision. The notice will tell you why you are ineligible and include notice of your appeal rights under part 775 of this subchapter and 43 CFR 4.1360 through 4.1369.

[65 FR 79663, Dec. 19, 2000, as amended at 72 FR 68029, Dec. 3, 2007]

Surface Mining Reclamation and Enforcement, Interior

§ 773.15

§ 773.13 Unanticipated events or conditions at remining sites.

(a) You, the applicant, are eligible for a permit under § 773.12 if an unabated violation—

(1) Occurred after October 24, 1992; and

(2) Resulted from an unanticipated event or condition at a surface coal mining and reclamation operation on lands that are eligible for remining under a permit that was held by the person applying for the new permit.

(b) For permits issued under § 785.25 of this subchapter, an event or condition is presumed to be unanticipated for the purpose of this section if it—

(1) Arose after permit issuance;

(2) Was related to prior mining; and

(3) Was not identified in the permit application.

[65 FR 79663, Dec. 19, 2000, as amended at 73 FR 67630, Nov. 14, 2008]

§ 773.14 Eligibility for provisionally issued permits.

(a) This section applies to you if you are an applicant who owns or controls a surface coal mining and reclamation operation with—

(1) A notice of violation issued under § 843.12 of this chapter or the State regulatory program equivalent for which the abatement period has not yet expired; or

(2) A violation that is unabated or uncorrected beyond the abatement or correction period.

(b) We, the regulatory authority, will find you eligible for a provisionally issued permit under this section if you demonstrate that one or more of the following circumstances exists with respect to all violations listed in paragraph (a) of this section—

(1) For violations meeting the criteria of paragraph (a)(1) of this section, you certify that the violation is being abated to the satisfaction of the regulatory authority with jurisdiction over the violation, and we have no evidence to the contrary.

(2) As applicable, you, your operator, and operations that you or your operator own or control are in compliance with the terms of any abatement plan (or, for delinquent fees or penalties, a payment schedule) approved by the

agency with jurisdiction over the violation.

(3) You are pursuing a good faith—

(i) Challenge to all pertinent ownership or control listings or findings under §§ 773.25 through 773.27 of this part; or

(ii) Administrative or judicial appeal of all pertinent ownership or control listings or findings, unless there is an initial judicial decision affirming the listing or finding and that decision remains in force.

(4) The violation is the subject of a good faith administrative or judicial appeal contesting the validity of the violation, unless there is an initial judicial decision affirming the violation and that decision remains in force.

(c) We will consider a provisionally issued permit to be improvidently issued, and we must immediately initiate procedures under §§ 773.22 and 773.23 of this part to suspend or rescind that permit, if—

(1) Violations included in paragraph (b)(1) of this section are not abated within the specified abatement period;

(2) You, your operator, or operations that you or your operator own or control do not comply with the terms of an abatement plan or payment schedule mentioned in paragraph (b)(2) of this section;

(3) In the absence of a request for judicial review, the disposition of a challenge and any subsequent administrative review referenced in paragraph (b)(3) or (4) of this section affirms the validity of the violation or the ownership or control listing or finding; or

(4) The initial judicial review decision referenced in paragraph (b)(3)(ii) or (4) of this section affirms the validity of the violation or the ownership or control listing or finding.

[65 FR 79663, Dec. 19, 2000, as amended at 72 FR 68029, Dec. 3, 2007]

§ 773.15 What findings must the regulatory authority make before approving a permit application?

The regulatory authority may not approve any application for a permit or a significant revision of a permit that you, the applicant, submit unless the application affirmatively demonstrates and the regulatory authority finds, in writing, on the basis of information set

forth in the application or from information otherwise available that is documented in the approval, that—

(a) The application is accurate and complete and you have complied with all applicable requirements of the Act and the regulatory program.

(b) You have demonstrated that reclamation as required by the Act and the regulatory program can be accomplished under the reclamation plan contained in the permit application.

(c) The proposed permit area is not within an area—

(1) Under study or administrative proceedings under a petition filed pursuant to part 764 or part 769 of this chapter to have an area designated as unsuitable for surface coal mining operations, unless you demonstrate that you made substantial legal and financial commitments before January 4, 1977, in relation to the operation covered by the permit application;

(2) Designated under parts 762 and 764 or 769 of this chapter as unsuitable for the type of surface coal mining operations that you propose to conduct; or

(3) Subject to the prohibitions of § 761.11 of this chapter, unless one or more of the exceptions provided under that section apply.

(d) For mining operations where the private mineral estate to be mined has been severed from the private surface estate, you have submitted to the regulatory authority the documentation required under § 778.15(b) of this chapter.

(e) The regulatory authority has—

(1) Made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area; and

(2) Determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(f) You have demonstrated that any existing structure will comply with § 701.11(d) of this chapter and the applicable performance standards of subchapter B or K of this chapter.

(g) You have paid all reclamation fees from previous and existing operations as required by subchapter R of this chapter.

(h) You have satisfied the applicable requirements of part 785 of this chapter.

(i) If applicable, you have satisfied the requirements for approval of a long-term, intensive agricultural postmining land use.

(j)(1) You have provided documentation that the proposed surface coal mining and reclamation operations would have no effect on species listed or proposed for listing as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, or on designated or proposed critical habitat under that law; or

(2) You and the regulatory authority have documented compliance with a valid biological opinion that covers issuance of permits for surface coal mining operations and the conduct of those operations under the applicable regulatory program; or

(3) You have provided documentation that interagency consultation under section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1536, has been completed for the proposed operation; or

(4) You have provided documentation that the proposed operation is covered under a permit issued pursuant to section 10 of the Endangered Species Act of 1973, 16 U.S.C. 1539.

(k) The regulatory authority has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources or a documented decision that the regulatory authority has determined that no additional protection measures are necessary.

(l) For a proposed remining operation where you intend to reclaim in accordance with the requirements of § 816.106 or § 817.106 of this chapter, the site of the operation is a previously mined area, as that term is defined in § 701.5 of this chapter.

(m) You are eligible to receive a permit, based on the reviews under §§ 773.7 through 773.14 of this part.

(n) You have demonstrated, and the regulatory authority concurs, that—

(1) The operation has been designed to prevent the formation of toxic mine drainage that would require long-term treatment after mining has been completed.

(2) A thorough analysis of all available evidence supports a conclusion that the design of the proposed operation will work as intended to prevent the formation of discharges that would require long-term treatment after mining has been completed. If a study or other evidence supports a contrary conclusion, you must explain why that study or other evidence is not credible or applicable to the proposed operation.

(o) To the extent possible using the best technology currently available, the proposed operation has been designed to minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and to achieve enhancement of those resources where practicable, as required under § 780.16 or § 784.16 of this chapter.

[81 FR 93324, Dec. 20, 2016]

§ 773.16 Performance bond submittal.

If the regulatory authority decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of subchapter J of this chapter.

[48 FR 44391, Sept. 28, 1983, as amended at 52 FR 4262, Feb. 10, 1987; 52 FR 17529, May 8, 1987; 53 FR 38890, Oct. 3, 1988; 54 FR 8991, Mar. 2, 1989; 59 FR 54353, Oct. 28, 1994; 60 FR 58491, Nov. 27, 1995; 62 FR 19458, Apr. 21, 1997; 64 FR 70837, Dec. 17, 1999; 65 FR 79663, Dec. 19, 2000. Redesignated at 65 FR 79663, Dec. 19, 2000; 66 FR 16127, Mar. 23, 2001]

§ 773.17 What conditions must the regulatory authority place on each permit issued?

The regulatory authority must include the following conditions in each permit issued:

(a) You, the permittee, may conduct surface coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent

guarantee in effect pursuant to part 800 of this chapter.

(b) You must conduct all surface coal mining and reclamation operations only as described in the approved application, except to the extent that the regulatory authority otherwise directs in the permit.

(c) You must comply with the terms and conditions of the permit, all applicable requirements of the Act, and the requirements of the regulatory program.

(d) Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, you must allow authorized representatives of the Secretary and the regulatory authority to—

(1) Have the right of entry provided for in §§ 842.13 and 840.12 of this chapter; and

(2) Be accompanied by private persons for the purpose of conducting an inspection in accordance with parts 840 and 842 of this chapter, when the inspection is in response to an alleged violation reported to the regulatory authority by the private person.

(e) You must take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to—

(1) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance.

(2) Immediate implementation of measures necessary to comply.

(3) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

(4) Notifying the regulatory authority and other appropriate state and federal regulatory agencies whenever conditions within the permit area result in an imminent danger to the health or safety of the public or cause or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, regardless of whether a noncompliance exists.

(f) As applicable, you must comply with § 701.11(d) and subchapter B or K of

this chapter for compliance, modification, or abandonment of existing structures.

(g) You or the operator must pay all reclamation fees required by subchapter R of this chapter for coal produced under the permit for sale, transfer, or use, in the manner required by that subchapter.

(h) You must obtain all necessary authorizations, certifications, and permits in accordance with other applicable federal, state, and tribal laws before conducting any activities that require authorization, certification, or a permit under those laws.

(i) You must comply with all effluent limitations and conditions in any National Pollutant Discharge Elimination System permit issued for your operation by the appropriate authority under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

[81 FR 93324, Dec. 20, 2016]

§ 773.19 Permit issuance and right of renewal.

(a) *Decision.* If the application is approved, the permit shall be issued upon submittal of a performance bond in accordance with subchapter J. If the application is disapproved, specific reasons therefore shall be set forth in the notification required by paragraph (b) of this section.

(b) *Notification.* The regulatory authority shall issue written notification of the decision to the following persons and entities:

(1) The applicant, each person who files comments or objections to the permit application, and each party to an informal conference.

(2) The local governmental officials in the local political subdivision in which the land to be affected is located within 10 days after the issuance of a permit, including a description of the location of the land.

(3) If the regulatory authority is a State agency, the local OSM office.

(c) *Permit term.* Each permit shall be issued for a fixed term of 5 years or less, unless the requirements of § 773.17 of this chapter are met.

(d) *Right of renewal.* Permit application approval shall apply to those lands that are specifically designated as the permit area on the maps submitted

with the application and for which the application is complete and accurate. Any valid permit issued in accordance with paragraph (a) of this section shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit, in accordance with § 774.15.

(e) *Initiation of operations.* (1) A permit shall terminate if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within 3 years of the issuance of the permit.

(2) The regulatory authority may grant a reasonable extension of time for commencement of these operations, upon receipt of a written statement showing that such an extension of time is necessary, if—

(i) Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

(ii) There are conditions beyond the control and without the fault or negligence of the permittee.

(3) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.

(4) Extensions of time granted by the regulatory authority under this paragraph shall be specifically set forth in the permit, and notice of the extension shall be made public by the regulatory authority.

§ 773.20 What actions must the regulatory authority take when a permit is issued on the basis of inaccurate information?

(a) We, the regulatory authority, will take the actions set forth in paragraphs (b) through (f) of this section if we issue a permit on the basis of what we later determine to be inaccurate baseline information, provided that the information is inaccurate to the extent that it would invalidate one or more of the findings required for permit application approval under § 773.15 or other provisions of this chapter.

(b) We will provide you, the permittee, with written notice that we

have made a preliminary finding that your permit was issued on the basis of inaccurate information of the nature described in paragraph (a) of this section. The notice will set forth the reasons for that finding.

(c) Within 30 days of receiving a notice under paragraph (b) of this section, you may—

(1) Challenge the preliminary finding by providing us with an explanation of why the information either is not inaccurate or does not meet the standard established in paragraph (a) of this section; or

(2) Supply, or agree to supply, updated information and submit an application to revise the permit as needed to correct the deficiency in an expeditious manner.

(d)(1) We will evaluate any explanation that you submit under paragraph (c)(1) of this part.

(2)(i) If you do not take either of the actions identified under paragraph (c) of this section, or if the evaluation under paragraph (d)(1) of this section determines that the deficiency identified in our preliminary finding still exists, we will serve you with a written notice of proposed suspension or rescission of the permit, together with a statement of the reasons for the proposed suspension or rescission,

(ii) Any proposed suspension or rescission will take effect 60 days from the date that we provide notice under paragraph (d)(2)(i) of this section, unless you obtain temporary relief under § 775.11(b)(2) of this chapter.

(3) The proposed suspension or rescission under paragraph (d)(2) of this section is subject to administrative review under part 775 of this chapter.

(4) Section 843.14 of this chapter will govern service under paragraph (d)(2) of this section.

(e)(1) If we suspend your permit under paragraph (d)(2) of this section, you must cease all surface coal mining operations under the permit and complete all affirmative obligations specified in the suspension order within the time established in that order. We will rescind your permit in accordance with paragraph (d)(2) of this section if you do not complete those obligations within the time specified.

(2) If we rescind your permit under paragraph (d)(2) of this section, you must cease all surface coal mining operations under the permit and complete reclamation within the time specified in the order.

(f)(1) If we suspend or rescind your permit under paragraph (d)(2) of this section, the bond posted for the permit will remain in effect until you complete all reclamation obligations under the reclamation plan approved in the permit and obtain bond release under §§ 800.40 through 800.44 of this chapter.

(2) We will initiate bond forfeiture proceedings under § 800.50 of this chapter if you do not complete all reclamation obligations within the time specified in the order issued under paragraph (d)(2) of this section.

[81 FR 93325, Dec. 20, 2016]

§ 773.21 Initial review and finding requirements for improvidently issued permits.

(a) If we, the regulatory authority, have reason to believe that we improvidently issued a permit to you, the permittee, we must review the circumstances under which the permit was issued. We will make a preliminary finding that your permit was improvidently issued if, under the permit eligibility criteria of the applicable regulations implementing section 510(c) of the Act in effect at the time of permit issuance, your permit should not have been issued because you or your operator owned or controlled a surface coal mining and reclamation operation with an unabated or uncorrected violation.

(b) We will make a finding under paragraph (a) of this section only if you or your operator—

(1) Continue to own or control the operation with the unabated or uncorrected violation;

(2) The violation remains unabated or uncorrected; and

(3) The violation would cause you to be ineligible under the permit eligibility criteria in our current regulations.

(c) When we make a preliminary finding under paragraph (a) of this section, we must serve you with a written notice of the preliminary finding, which must be based on evidence sufficient to

§ 773.22

establish a *prima facie* case that your permit was improvidently issued.

(d) Within 30 days of receiving a notice under paragraph (c) of this section, you may challenge the preliminary finding by providing us with evidence as to why the permit was not improvidently issued under the criteria in paragraphs (a) and (b) of this section.

(e) The provisions of §§ 773.25 through 773.27 of this part apply when a challenge under paragraph (d) of this section concerns a preliminary finding under paragraphs (a) and (b)(1) of this section that you or your operator currently own or control, or owned or controlled, a surface coal mining operation.

[65 FR 79665, Dec. 19, 2000, as amended at 72 FR 68029, Dec. 3, 2007]

§ 773.22 Notice requirements for improvidently issued permits.

(a) We, the regulatory authority, must serve you, the permittee, with a written notice of proposed suspension or rescission, together with a statement of the reasons for the proposed suspension or rescission, if—

(1) After considering any evidence submitted under § 773.21(d) of this part, we find that a permit was improvidently issued under the criteria in paragraphs (a) and (b) of § 773.21 of this part; or

(2) Your permit was provisionally issued under § 773.14(b) of this part and one or more of the conditions in §§ 773.14(c)(1) through (4) exists.

(b) If we propose to suspend your permit, we will provide 60 days notice.

(c) If we propose to rescind your permit, we will provide 120 days notice.

(d) If you wish to appeal the notice, you must exhaust administrative remedies under the procedures at 43 CFR 4.1370 through 4.1377 (when OSM is the regulatory authority) or under the State regulatory program equivalent (when a State is the regulatory authority).

(e) After we serve you with a notice of proposed suspension or rescission under this section, we will take action under § 773.23 of this part.

(f) The regulations for service at § 843.14 of this chapter, or the State regulatory program equivalent, will govern service under this section.

30 CFR Ch. VII (7–1–17 Edition)

(g) The times specified in paragraphs (b) and (c) of this section will apply unless you obtain temporary relief under the procedures at 43 CFR 4.1376 or the State regulatory program equivalent.

[65 FR 79665, Dec. 19, 2000, as amended at 72 FR 68029, Dec. 3, 2007; 75 FR 60275, Sept. 29, 2010]

§ 773.23 Suspension or rescission requirements for improvidently issued permits.

(a) Except as provided in paragraph (b) of this section, we, the regulatory authority, must suspend or rescind your permit upon expiration of the time specified in § 773.22(b) or (c) of this part unless you submit evidence and we find that—

(1) The violation has been abated or corrected to the satisfaction of the agency with jurisdiction over the violation;

(2) You or your operator no longer own or control the relevant operation;

(3) Our finding for suspension or rescission was in error;

(4) The violation is the subject of a good faith administrative or judicial appeal (unless there is an initial judicial decision affirming the violation, and that decision remains in force);

(5) The violation is the subject of an abatement plan or payment schedule that is being met to the satisfaction of the agency with jurisdiction over the violation; or

(6) You are pursuing a good faith challenge or administrative or judicial appeal of the relevant ownership or control listing or finding (unless there is an initial judicial decision affirming the listing or finding, and that decision remains in force).

(b) If you have requested administrative review of a notice of proposed suspension or rescission under § 773.22(e) of this part, we will not suspend or rescind your permit unless and until the Office of Hearings and Appeals or its State counterpart affirms our finding that your permit was improvidently issued.

(c) When we suspend or rescind your permit under this section, we must—

(1) Issue you a written notice requiring you to cease all surface coal mining operations under the permit; and

Surface Mining Reclamation and Enforcement, Interior

§ 773.27

(2) Post the notice at our office closest to the permit area.

(d) If we suspend or rescind your permit under this section, you may request administrative review of the notice under the procedures at 43 CFR 4.1370 through 4.1377 (when OSM is the regulatory authority) or under the State regulatory program equivalent (when a State is the regulatory authority). Alternatively, you may seek judicial review of the notice.

[65 FR 79665, Dec. 19, 2000, as amended at 72 FR 68029, Dec. 3, 2007]

§ 773.25 Who may challenge ownership or control listings and findings.

You may challenge a listing or finding of ownership or control using the provisions under §§ 773.26 and 773.27 of this part if you are—

(a) Listed in a permit application or AVS as an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof;

(b) Found to be an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof, under §§ 773.21 or 774.11(g) of this subchapter; or

(c) An applicant or permittee affected by an ownership or control listing or finding.

[65 FR 79666, Dec. 19, 2000, as amended at 72 FR 68029, Dec. 3, 2007]

§ 773.26 How to challenge an ownership or control listing or finding.

This section applies to you if you challenge an ownership or control listing or finding.

(a) To challenge an ownership or control listing or finding, you must submit a written explanation of the basis for the challenge, along with any evidence or explanatory materials you wish to provide under § 773.27(b) of this part, to the regulatory authority, as identified in the following table.

If the challenge concerns . . .	Then you must submit a written explanation to . . .
(1) a pending State or Federal permit application	the regulatory authority with jurisdiction over the application.
(2) your ownership or control of a surface coal mining operation, and you are not currently seeking a permit.	the regulatory authority with jurisdiction over the surface coal mining operation.

(b) The provisions of this section and of §§ 773.27 and 773.28 of this part apply only to challenges to ownership or control listings or findings. You may not use these provisions to challenge your liability or responsibility under any other provision of the Act or its implementing regulations.

(c) When the challenge concerns a violation under the jurisdiction of a different regulatory authority, the regulatory authority with jurisdiction over the permit application or permit must consult the regulatory authority with jurisdiction over the violation and the AVS Office to obtain additional information.

(d) A regulatory authority responsible for deciding a challenge under paragraph (a) of this section may request an investigation by the AVS Office.

(e) At any time, you, a person listed in AVS as an owner or controller of a surface coal mining operation, may request an informal explanation from the AVS Office as to the reason you are

shown in AVS in an ownership or control capacity. Within 14 days of your request, the AVS Office will provide a response describing why you are listed in AVS.

[65 FR 79667, Dec. 19, 2000, as amended at 72 FR 68029, Dec. 3, 2007]

§ 773.27 Burden of proof for ownership or control challenges.

This section applies to you if you challenge an ownership or control listing or finding.

(a) When you challenge a listing of ownership or control, or a finding of ownership or control made under § 774.11(g) of this subchapter, you must prove by a preponderance of the evidence that you either—

(1) Do not own or control the entire surface coal mining operation or relevant portion or aspect thereof; or

(2) Did not own or control the entire surface coal mining operation or relevant portion or aspect thereof during the relevant time period.

(b) In meeting your burden of proof, you must present reliable, credible, and substantial evidence and any explanatory materials to the regulatory authority. The materials presented in connection with your challenge will become part of the permit file, an investigation file, or another public file. If you request, we will hold as confidential any information you submit under this paragraph which is not required to be made available to the public under § 842.16 of this chapter (when OSM is the regulatory authority) or under § 840.14 of this chapter (when a State is the regulatory authority).

(c) Materials you may submit in response to the requirements of paragraph (b) of this section include, but are not limited to—

(1) Notarized affidavits containing specific facts concerning the duties that you performed for the relevant operation, the beginning and ending dates of your ownership or control of the operation, and the nature and details of any transaction creating or severing your ownership or control of the operation.

(2) Certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records.

(3) Certified copies of documents filed with or issued by any State, municipal, or Federal governmental agency.

(4) An opinion of counsel, when supported by—

- (i) Evidentiary materials;
- (ii) A statement by counsel that he or she is qualified to render the opinion; and
- (iii) A statement that counsel has personally and diligently investigated the facts of the matter.

[65 FR 79666, Dec. 19, 2000, as amended at 72 FR 68030, Dec. 3, 2007]

§ 773.28 Written agency decision on challenges to ownership or control listings or findings.

(a) Within 60 days of receipt of your challenge under § 773.26(a) of this part, we, the regulatory authority identified under § 773.26(a) of this part, will review and investigate the evidence and explanatory materials you submit and any other reasonably available infor-

mation bearing on your challenge and issue a written decision. Our decision must state whether you own or control the relevant surface coal mining operation, or owned or controlled the operation, during the relevant time period.

(b) We will promptly provide you with a copy of our decision by either—

(1) Certified mail, return receipt requested; or

(2) Any means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure, or its State regulatory program counterparts.

(c) Service of the decision on you is complete upon delivery and is not incomplete if you refuse to accept delivery.

(d) We will post all decisions made under this section on AVS.

(e) Any person who receives a written decision under this section, and who wishes to appeal that decision, must exhaust administrative remedies under the procedures at 43 CFR 4.1380 through 4.1387 or, when a State is the regulatory authority, the State regulatory program counterparts, before seeking judicial review.

(f) Following our written decision or any decision by a reviewing administrative or judicial tribunal, we must review the information in AVS to determine if it is consistent with the decision. If it is not, we must promptly revise the information in AVS to reflect the decision.

[65 FR 79666, Dec. 19, 2000, as amended at 72 FR 68030, Dec. 3, 2007]

PART 774—REVISION; RENEWAL; TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS; POST-PERMIT ISSUANCE REQUIREMENTS

Sec.

774.1 Scope and purpose.

774.9 Information collection.

774.10 When must the regulatory authority review a permit after issuance?

774.11 Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information.

774.12 Post-permit issuance information requirements for permittees.

774.13 Permit revisions.

Surface Mining Reclamation and Enforcement, Interior

§ 774.10

774.15 How may I renew a permit?

774.17 Transfer, assignment, or sale of permit rights.

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

SOURCE: 48 FR 44395, Sept. 28, 1983, unless otherwise noted.

§ 774.1 Scope and purpose.

This part provides requirements for revision; renewal; transfer, assignment, or sale of permit rights; entering and updating information in AVS following the issuance of a permit; post-permit issuance requirements for regulatory authorities and permittees; and other actions based on ownership, control, and violation information.

[65 FR 79667, Dec. 19, 2000]

§ 774.9 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of this part and assigned it control number 1029-0116. The regulatory authority uses this information to determine if you, the applicant, meet the requirements for permit revision; permit renewal; or the transfer, assignment, or sale of permit rights. The regulatory authority also uses this information to update the Applicant/Violator System. You must respond to obtain a benefit. A federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Room 203-SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

[81 FR 93325, Dec. 20, 2016]

§ 774.10 When must the regulatory authority review a permit after issuance?

(a)(1) The regulatory authority must review each permit issued and outstanding under an approved regulatory program during the term of the permit.

(2) The review required by paragraph (a)(1) of this section must include, but is not limited to, an evaluation of the impacts of the operation on fish, wildlife, and related environmental values in the permit and adjacent areas. The regulatory authority must use that evaluation to determine whether it is necessary to order the permittee to modify the fish and wildlife enhancement plan approved in the permit to ensure that the operation minimizes disturbances and adverse impacts on fish, wildlife, and related environmental values within the permit and adjacent areas to the extent possible using the best technology currently available.

(3) The review required by paragraph (a)(1) of this section must occur not later than the middle of each permit term except that permits with a term longer than 5 years must be reviewed no less frequently than the permit mid-term or every 5 years, whichever is more frequent.

(4) Permits granted in accordance with § 785.14 of this chapter (mountaintop removal mining) and permits containing a variance from approximate original contour restoration requirements in accordance with § 785.16 of this chapter must be reviewed no later than 3 years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the permit. This review may be combined with the first review conducted under paragraph (a)(3) of this section if the permit term does not exceed 5 years.

(5) Permits containing an experimental practice approved in accordance with § 785.13 of this chapter must be reviewed as set forth in the permit or at least every 2½ years from the date of issuance as required by the regulatory authority, in accordance with § 785.13(g) of this chapter.

(6) Permits granted in accordance with § 785.18 of this chapter (variance for delay in contemporaneous reclamation requirement in combined surface and underground mining operations) must be reviewed no later than 3 years from the date of issuance of the permit. This review may be combined with the first review conducted under paragraph

§ 774.11

30 CFR Ch. VII (7–1–17 Edition)

(a)(3) of this section if the permit term does not exceed 5 years.

(b) After a review required by paragraph (a) of this section, or at any time, the regulatory authority may, by order, require reasonable revision of a permit in accordance with § 774.13 to ensure compliance with the Act and the regulatory program.

(c) Any order of the regulatory authority requiring revision of a permit must be based upon written findings and is subject to the provisions for administrative and judicial review in part 775 of this chapter. Copies of the order must be sent to the permittee.

(d) Permits may be suspended or revoked in accordance with subchapter L of this chapter.

[81 FR 93325, Dec. 20, 2016]

§ 774.11 Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information.

(a) For the purposes of future permit eligibility determinations and enforcement actions, we, the regulatory authority, must enter into AVS the data shown in the following table—

We must enter into AVS all . . .	Within 30 days after . . .
(1) permit records	the permit is issued or subsequent changes made.
(2) unabated or uncorrected violations	the abatement or correction period for a violation expires.
(3) changes to information initially required to be provided by an applicant under 30 CFR 778.11.	receiving notice of a change.
(4) changes in violation status	abatement, correction, or termination of a violation, or a decision from an administrative or judicial tribunal.

(b) If, at any time, we discover that any person owns or controls an operation with an unabated or uncorrected violation, we will determine whether enforcement action is appropriate under part 843, 846 or 847 of this chapter. We must enter the results of each enforcement action, including administrative and judicial decisions, into AVS.

(c) We must serve a preliminary finding of permanent permit ineligibility under section 510(c) of the Act on you, an applicant or operator, if the criteria in paragraphs (c)(1) and (c)(2) are met. In making a finding under this paragraph, we will only consider control relationships and violations which would make, or would have made, you ineligible for a permit under §§ 773.12(a) and (b) of this subchapter. We must make a preliminary finding of permanent permit ineligibility if we find that—

(1) You control or have controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations under section 510(c) of the Act; and

(2) The violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate your intent not to comply with the Act, its implementing regula-

tions, the regulatory program, or your permit.

(d) You may request a hearing on a preliminary finding of permanent permit ineligibility under 43 CFR 4.1350 through 4.1356.

(e) Entry into AVS.

(1) If you do not request a hearing, and the time for seeking a hearing has expired, we will enter our finding into AVS.

(2) If you request a hearing, we will enter our finding into AVS only if that finding is upheld on administrative appeal.

(f) At any time, we may identify any person who owns or controls an entire surface coal mining operation or any relevant portion or aspect thereof. If we identify such a person, we must issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. Our written preliminary finding must be based on evidence sufficient to establish a prima facie case of ownership or control.

(g) After we issue a written preliminary finding under paragraph (f) of this section, we will allow you, the person subject to the preliminary finding, 30 days in which to submit any information tending to demonstrate your lack

of ownership or control. If, after reviewing any information you submit, we are persuaded that you are not an owner or controller, we will serve you a written notice to that effect. If, after reviewing any information you submit, we still find that you are an owner or controller, or if you do not submit any information within the 30-day period, we will issue a written finding and enter our finding into AVS.

(h) If we identify you as an owner or controller under paragraph (g) of this section, you may challenge the finding using the provisions of §§ 773.25, 773.26, and 773.27 of this subchapter.

[65 FR 79667, Dec. 19, 2000, as amended at 72 FR 68030, Dec. 3, 2007]

§ 774.12 Post-permit issuance information requirements for permittees.

(a) Within 30 days after the issuance of a cessation order under § 843.11 of this chapter, or its State regulatory program equivalent, you, the permittee, must provide or update all the information required under § 778.11 of this subchapter.

(b) You do not have to submit information under paragraph (a) of this section if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect.

(c) Within 60 days of any addition, departure, or change in position of any person identified in § 778.11(c) of this subchapter, you must provide—

(1) The information required under § 778.11(d) of this subchapter; and

(2) The date of any departure.

[65 FR 79667, Dec. 19, 2000, as amended at 72 FR 68030, Dec. 3, 2007]

§ 774.13 Permit revisions.

(a) *General.* During the term of a permit, the permittee may submit an application to the regulatory authority for a revision of the permit.

(b) *Application requirements and procedures.* the regulatory authority shall establish—

(1) A time period within which the regulatory authority will approve or disapprove an application for a permit revision; and

(2) Guidelines establishing the scale or extent of revisions for which all the permit application information requirements and procedures of this sub-

chapter, including notice, public participation, and notice of decision requirements of §§ 773.6, 773.19(b) (1) and (3), and 778.21, shall apply. Such requirements and procedures shall apply at a minimum to all significant permit revisions.

(c) *Criteria for approval.* No application for a permit revision shall be approved unless the application demonstrates and the regulatory authority finds that reclamation as required by the Act and the regulatory program can be accomplished, applicable requirements under § 773.15 which are pertinent to the revision are met, and the application for a revision complies with all requirements of the Act and the regulatory program.

(d) *Request to change permit boundary.* Any extensions to the area covered by the permit, except incidental boundary revisions, shall be made by application for a new permit.

[48 FR 44395, Sept. 28, 1983, as amended at 65 FR 79668, Dec. 19, 2000]

§ 774.15 How may I renew a permit?

(a) *Right of renewal.* A valid permit, issued pursuant to an approved regulatory program, carries with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(b) *Application requirements and procedures.* (1) You, the permittee, must file an application for renewal of a permit with the regulatory authority at least 120 days before expiration of the existing permit term.

(2) You must file the application for renewal in the form required by the regulatory authority. At a minimum, your application must include the following information—

(i) Your name and address.

(ii) The term of the renewal requested.

(iii) The permit number or other identifier.

(iv) Evidence that a liability insurance policy for the operation will continue in full force and effect during the proposed renewal term or that you will have adequate self-insurance under § 800.60 of this chapter for the proposed term of renewal.

(v) Evidence that the performance bond for the permit will continue in full force and effect for the proposed term of renewal.

(vi) A copy of the newspaper notice and proof of publication, as required by § 778.21 of this chapter.

(vii) Additional revised or updated information required by the regulatory authority.

(3) Applications for renewal are subject to the public notification and public participation requirements in §§ 773.6 and 773.19(b) of this chapter.

(4) If an application for renewal includes any proposed revisions to the permit, those revisions must be identified and processed in accordance with § 774.13 of this part.

(c) *Approval process*—(1) *Criteria for approval*. The regulatory authority must approve a complete and accurate application for permit renewal, unless it finds, in writing that—

(i) The terms and conditions of the existing permit are not being satisfactorily met.

(ii) The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards of the Act and the regulatory program. The permit eligibility standards in §§ 773.12 through 773.14 of this chapter apply to this determination.

(iii) The requested renewal substantially jeopardizes your continuing ability to comply with the Act and the regulatory program on existing permit areas.

(iv) You have not provided evidence of having continuing liability insurance or self-insurance coverage as required under § 800.60 of this chapter.

(v) You have not provided evidence that any performance bond required to be in effect for the operation will continue in full force and effect for the proposed term of renewal.

(vi) You have not posted any additional bond required by the regulatory authority under part 800 of this chapter.

(vii) You have not provided any additional revised or updated information required by the regulatory authority.

(2) *Burden of proof*. In the determination of whether to approve or deny an application for renewal of a permit, the

burden of proof is on the opponents of renewal.

(3) *Alluvial valley floor variance*. Areas previously identified in the reclamation plan for the original permit as exempt from the standards in paragraphs (A) and (B) of section 510(b)(5) of the Act and the requirements of paragraphs (c) through (e) of § 785.19 of this chapter will retain their exempt status for the term of the renewal.

(d) *Renewal term*. The term for any permit renewal must not exceed the original permit term under § 773.19(c) of this chapter.

(e) *Notice of decision*. The regulatory authority must send copies of its decision to the applicant, to each person who filed comments or objections on the renewal, to each party to any informal conference held on the permit renewal, and to OSMRE if OSMRE is not the regulatory authority.

(f) *Administrative and judicial review*. Any person having an interest which is or may be adversely affected by the decision of the regulatory authority has the right to administrative and judicial review under part 775 of this chapter.

[81 FR 93326, Dec. 20, 2016]

§ 774.17 Transfer, assignment, or sale of permit rights.

(a) *General*. No transfer, assignment, or sale of rights granted by a permit shall be made without the prior written approval of the regulatory authority. At its discretion, the regulatory authority may allow a prospective successor in interest to engage in surface coal mining and reclamation operations under the permit during the pendency of an application for approval of a transfer, assignment, or sale of permit rights submitted under paragraph (b) of this section, provided that the prospective successor in interest can demonstrate to the satisfaction of the regulatory authority that sufficient bond coverage will remain in place.

(b) *Application requirements*. An applicant for approval of the transfer, assignment, or sale of permit rights shall—

(1) Provide the regulatory authority with an application for approval of the proposed transfer, assignment, or sale including—

(i) The name and address of the existing permittee and permit number or other identifier;

(ii) A brief description of the proposed action requiring approval; and

(iii) The legal, financial, compliance, and related information required by part 778 of this chapter for the applicant for approval of the transfer, assignment, or sale of permit rights.

(2) Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit, and the address to which written comments may be sent;

(3) Obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations, as required under subchapter J of this chapter.

(c) *Public participation.* Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the regulatory authority within a time specified by the regulatory authority.

(d) *Criteria for approval.* The regulatory authority may allow a permittee to transfer, assign, or sell permit rights to a successor, if it finds in writing that the successor—

(1) Is eligible to receive a permit in accordance with §§ 773.12 and 773.14 of this chapter;

(2) Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee, as required by subchapter J of this chapter; and

(3) Meets any other requirements specified by the regulatory authority.

(e) *Notification.* (1) The regulatory authority shall notify the permittee, the successor, commenters, and OSM, if OSM is not the regulatory authority, of its findings.

(2) The successor shall immediately provide notice to the regulatory authority of the consummation of the transfer, assignment, or sale of permit rights.

(f) *Continued operation under existing permit.* The successor in interest shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with the Act, the regulatory program, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit as provided in this subchapter.

[48 FR 44395, Sept. 28, 1983, as amended at 65 FR 79668, Dec. 19, 2000; 72 FR 68030, Dec. 3, 2007]

PART 775—ADMINISTRATIVE AND JUDICIAL REVIEW OF DECISIONS

Sec.

775.1 Scope and purpose.

775.11 Administrative review.

775.13 Judicial review.

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

SOURCE: 48 FR 44397, Sept. 28, 1983, unless otherwise noted.

§ 775.1 Scope and purpose.

This part provides requirements for administrative and judicial review of decisions on permits.

§ 775.11 Administrative review.

(a) *General.* Within 30 days after an applicant or permittee is notified of the decision of the regulatory authority concerning an application for approval of exploration required under part 772 of this chapter, a permit for surface coal mining and reclamation operations, a permit revision, a permit renewal, or a transfer, assignment, or sale of permit rights, the applicant, permittee, or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the decision, in accordance with this section.

(b) *Administrative hearings under State programs.* (1) The regulatory authority shall start the administrative hearing within 30 days of such request. The hearing shall be on the record and adjudicatory in nature. No person who presided at an informal conference under § 773.6(c) shall either preside at

§ 775.13

30 CFR Ch. VII (7–1–17 Edition)

the hearing or participate in the decision following the hearing or administrative appeal.

(2) The regulatory authority may, under such conditions as it prescribes, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if—

(i) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(ii) The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding;

(iii) The relief sought will not adversely affect the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(iv) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the regulatory authority except that continuation under an existing permit may be allowed where the operation has a valid permit issued under section 510 of the Act.

(3) The hearing shall be conducted under the following conditions:

(i) The hearing authority may administer oaths and affirmations, subpoena witnesses and written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence, including, but not limited to, site inspections of the land to be affected and other surface coal mining and reclamation operations carried on by the applicant in the general vicinity of the proposed operations.

(ii) A verbatim record of each public hearing required by this section shall be made, and a transcript made available on the motion of any party or by order of the hearing authority.

(iii) Ex parte contacts between representatives of the parties appearing before the hearing authority and the hearing authority shall be prohibited.

(4) Within 30 days after the close of the record, the hearing authority shall issue and furnish the applicant and each person who participated in the hearing with the written findings of fact, conclusions of law, and order of

the hearing authority with respect to the appeal of the decision.

(5) The burden of proof at such hearings shall be on the party seeking to reverse the decision of the regulatory authority.

(c) *Administrative hearings under Federal programs and Federal lands programs.* All hearings, under a Federal program for a State or a Federal lands program except as may be modified by a cooperative agreement pursuant to part 745 of this chapter, on an application for approval of exploration, a permit for surface coal mining and reclamation operations, permit revision, a permit renewal, or a transfer, assignment, or sale of permit rights shall be of record and governed by 5 U.S.C. 554 and 43 CFR part 4.

[48 FR 44397, Sept. 28, 1983, as amended at 65 FR 79668, Dec. 19, 2000]

§ 775.13 Judicial review.

(a) *General.* Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative hearings as an objector may appeal as provided in paragraph (b) or (c) of this section if—

(1) The applicant or person is aggrieved by the decision of the hearing authority in the administrative hearing conducted pursuant to § 775.11 of this chapter; or

(2) Either the regulatory authority or the hearing authority for administrative review under § 775.11 of this chapter fails to act within applicable time limits specified in the Act, this chapter, or the regulatory program.

(b) *Judicial review under State programs.* The action of the hearing authority identified in paragraph (a) of this section shall be subject to judicial review by a court of competent jurisdiction, as provided for in the State program, but the availability of such review shall not be construed to limit the operation of the rights established in section 520 of the Act.

(c) *Judicial review under Federal programs and Federal lands programs.* The action of the hearing authority identified in paragraph (a) of this section is subject to judicial review by the U.S. District Court for the district where the coal exploration or surface coal mining and reclamation operation is or

would be located, except for judicial review of State regulatory authority actions in a State court of competent jurisdiction as may be provided for in a cooperative agreement, in the time and manner provided for in section 526 (a)(2), (b) and (e) of the Act. The availability of such review shall not be construed to limit the operation of the rights established in section 520 of the Act.

PART 777—GENERAL CONTENT REQUIREMENTS FOR PERMIT APPLICATIONS

Sec.

777.1 What does this part cover?

777.10 Information collection.

777.11 What are the format and content requirements for permit applications?

777.13 What requirements apply to the collection, analysis, and reporting of technical data and to the use of models?

777.14 What general requirements apply to maps and plans?

777.15 What information must my application include to be administratively complete?

777.17 Permit fees.

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

SOURCE: 48 FR 44398, Sept. 28, 1983, unless otherwise noted.

§ 777.1 What does this part cover?

This part provides minimum requirements concerning data collection and analysis and the format and general content of permit applications under a regulatory program.

[81 FR 93326, Dec. 20, 2016]

§ 777.10 Information collection.

The information collection requirements contained in part 777 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0032. The information is being collected to meet the requirements of sections 507, 508, and 510(b) of the Act. It provides general requirements for permit application format and contents. The obligation to respond is mandatory.

§ 777.11 What are the format and content requirements for permit applications?

(a) An application must—

(1) Contain current information, as required by this subchapter.

(2) Be clear and concise.

(3) Be filed in the format prescribed by the regulatory authority.

(b) If used in the application, referenced materials must either be provided to the regulatory authority by the applicant or be readily available to the regulatory authority. If provided, relevant portions of referenced published materials must be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

(c) Applications for permits; revisions; renewals; or transfers, sales or assignments of permit rights must be verified under oath, by a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief.

[81 FR 93327, Dec. 20, 2016]

§ 777.13 What requirements apply to the collection, analysis, and reporting of technical data and to the use of models?

(a) *Technical data and analyses.* (1) All technical data submitted in the application must be accompanied by metadata, including, but not limited to, the names of persons or organizations that collected and analyzed the data, the dates that the data were collected and analyzed, descriptions of the methodology used to collect and analyze the data, the quality assurance and quality control procedures used by the laboratory and the results of those procedures, and the field sampling sheets for each surface-water sample collected and for each groundwater sample collected from wells, seeps, and springs. For electronic data, metadata must include identification of any data transformations.

(2) Technical analyses must be planned by or under the direction of a professional qualified in the subject to be analyzed.

(b) *Sampling and analyses of groundwater and surface water.* All sampling and analyses of groundwater and surface water performed to meet the requirements of this subchapter must be conducted according to—

§ 777.14

(1) The methodology in 40 CFR parts 136 and 434, to the extent applicable; or

(2) A scientifically defensible methodology acceptable to the regulatory authority, in coordination with any agency responsible for administering or implementing a program under the Clean Water Act, 33 U.S.C. 1251 *et seq.*, that requires water sampling and analysis.

(c) *Geological sampling and analysis.* All geological sampling and analyses performed to meet the requirements of this subchapter must be conducted using a scientifically defensible methodology.

(d) *Use of models.* (1) Unless the regulatory authority specifies otherwise, you may use modeling techniques, interpolation, or statistical techniques to prepare the permit application.

(2) You must use actual site-specific data to calibrate each model. All models must be validated for the region and ecosystem in which they will be used.

(3) The regulatory authority may either disallow the use of models or require that you submit additional actual, site-specific data.

[81 FR 93327, Dec. 20, 2016]

§ 777.14 What general requirements apply to maps and plans?

(a)(1) Maps submitted with applications must be presented in a consolidated format, to the extent possible, and must include all the types of information that are set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series.

(2) Maps of the proposed permit area must be at a scale of 1:6,000 or larger.

(3) Maps of the adjacent area must clearly show the lands and waters within that area and must be at a scale determined by the regulatory authority, but in no event smaller than 1:24,000.

(b) When applicable, maps must clearly show those portions of the operation where surface coal mining operations occurred—

(1) Prior to August 3, 1977.

(2) After August 3, 1977, but prior to either—

(i) May 3, 1978; or

(ii) January 1, 1979, if an applicant or operator obtained a small operator's

30 CFR Ch. VII (7–1–17 Edition)

exemption in accordance with § 710.12 of this chapter.

(3) After May 3, 1978 (or January 1, 1979, for persons who received a small operator's exemption in accordance with § 710.12 of this chapter) and prior to the approval of the applicable regulatory program.

[81 FR 93327, Dec. 20, 2016]

§ 777.15 What information must my application include to be administratively complete?

An administratively complete application for a permit to conduct surface coal mining operations and must include at a minimum—

(a) For surface mining activities, the information required under parts 778, 779, and 780 of this chapter, and, as applicable to the operation, part 785 of this chapter.

(b) For underground mining activities, the information required under parts 778, 783, and 784 of this chapter, and, as applicable to the operation, part 785 of this chapter.

[81 FR 93327, Dec. 20, 2016]

§ 777.17 Permit fees.

An application for a surface coal mining and reclamation permit shall be accompanied by a fee determined by the regulatory authority. The fee may be less than, but shall not exceed, the actual or anticipated cost of reviewing, administering, and enforcing the permit. The regulatory authority may develop procedures to allow the fee to be paid over the term of the permit.

PART 778—PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION

Sec.

778.1 Scope and purpose.

778.8 Information collection.

778.9 Certifying and updating existing permit application information.

778.11 Providing applicant and operator information.

778.12 Providing permit history information.

778.13 Providing property interest information.

778.14 Providing violation information.

Surface Mining Reclamation and Enforcement, Interior

§ 778.11

- 778.15 Right-of-entry information.
- 778.16 Status of unsuitability claims.
- 778.17 Permit term.
- 778.18 Insurance.
- 778.21 Proof of publication
- 778.22 Facilities or structures used in common.

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

SOURCE: 48 FR 44399, Sept. 28, 1983, unless otherwise noted.

§ 778.1 Scope and purpose.

This part establishes the minimum requirements for the permit applications for surface coal mining and reclamation operations under a State or Federal program. This part covers minimum legal, financial, and compliance requirements and general information that must be contained in permit applications. This part applies to any person who submits an application to a regulatory authority for a permit to conduct surface coal mining and reclamation operations.

§ 778.8 Information collection.

The collections of information contained in part 778 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0117. The information collected will be used by the regulatory authority to ensure that

all legal, financial, and compliance information requirements are satisfied before issuance of a permit. Persons intending to conduct surface coal mining operations must respond to obtain a benefit. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Response is required to obtain a benefit in accordance with SMCRA. Send comments regarding burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Room 202-SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.

[72 FR 68031, Dec. 3, 2007]

§ 778.9 Certifying and updating existing permit application information.

In this section, “you” means the applicant and “we” or “us” means the regulatory authority.

(a) If you have previously applied for a permit and the required information is already in AVS, then you may update the information as shown in the following table.

If . . .	then you . . .
(1) All or part of the information already in AVS is accurate and complete.	may certify to us by swearing or affirming, under oath and in writing, that the relevant information in AVS is accurate, complete, and up to date.
(2) Part of the information in AVS is missing or incorrect	must submit to us the necessary information or corrections and swear or affirm, under oath and in writing, that the information you submit is accurate and complete.
(3) You can neither certify that the data in AVS is accurate and complete nor make needed corrections.	must include in your permit application the information required under this part.

(b) You must swear or affirm, under oath and in writing, that all information you provide in an application is accurate and complete.

(c) We may establish a central file to house your identity information, rather than place duplicate information in each of your permit application files. We will make the information available to the public upon request.

(d) After we approve an application, but before we issue a permit, you must update, correct, or indicate that no change has occurred in the information

previously submitted under this section and §§ 778.11 through 778.14 of this part.

[65 FR 79668, Dec. 19, 2000]

§ 778.11 Providing applicant and operator information.

(a) You, the applicant, must provide in the permit application—

(1) A statement indicating whether you and your operator are corporations, partnerships, associations, sole proprietorships, or other business entities;

§ 778.12

(2) Taxpayer identification numbers for you and your operator.

(b) You must provide the name, address, and telephone number for—

(1) The applicant.

(2) Your resident agent who will accept service of process.

(3) Any operator, if different from the applicant.

(4) Each business entity in the applicant's and operator's organizational structure, up to and including the ultimate parent entity of the applicant and operator; for every such business entity, you must also provide the required information for every president, chief executive officer, and director (or persons in similar positions), and every person who owns, of record, 10 percent or more of the entity.

(c) For you and your operator, you must provide the information required by paragraph (d) of this section for every—

(1) Officer.

(2) Partner.

(3) Member.

(4) Director.

(5) Person performing a function similar to a director.

(6) Person who owns, of record, 10 percent or more of the applicant or operator.

(d) You must provide the following information for each person listed in paragraph (c) of this section—

(1) The person's name, address, and telephone number.

(2) The person's position title and relationship to you, including percentage of ownership and location in the organizational structure.

(3) The date the person began functioning in that position.

(e) We need not make a finding as provided for under § 774.11(g) of this subchapter before entering into AVS the information required to be disclosed under this section; however, the mere listing in AVS of a person identified in paragraph (b) or (c) of this section does not create a presumption or constitute a determination that such person owns or controls a surface coal mining operation.

[65 FR 79668, Dec. 19, 2000, as amended at 72 FR 68031, Dec. 3, 2007]

30 CFR Ch. VII (7–1–17 Edition)

§ 778.12 Providing permit history information.

(a) You, the applicant, must provide a list of all names under which you, your operator, your partners or principal shareholders, and your operator's partners or principal shareholders operate or previously operated a surface coal mining operation in the United States within the five-year period preceding the date of submission of the application.

(b) For you and your operator, you must provide a list of any pending permit applications for surface coal mining operations filed in the United States. The list must identify each application by its application number and jurisdiction, or by other identifying information when necessary.

(c) For any surface coal mining operations that you or your operator owned or controlled within the five-year period preceding the date of submission of the application, and for any surface coal mining operation you or your operator own or control on that date, you must provide the—

(1) Permittee's and operator's name and address;

(2) Permittee's and operator's taxpayer identification numbers;

(3) Federal or State permit number and corresponding MSHA number;

(4) Regulatory authority with jurisdiction over the permit; and

(5) Permittee's and operator's relationship to the operation, including percentage of ownership and location in the organizational structure.

[65 FR 79669, Dec. 19, 2000]

§ 778.13 Providing property interest information.

You, the applicant, must provide in the permit application all of the following information for the property to be mined—

(a) The name and address of—

(1) Each legal or equitable owner(s) of record of the surface and mineral.

(2) The holder(s) of record of any leasehold interest.

(3) Any purchaser(s) of record under a real estate contract.

(b) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.

Surface Mining Reclamation and Enforcement, Interior

§ 778.15

(c) A statement of all interests, options, or pending bids you hold or have made for lands contiguous to the proposed permit area. If you request in writing, we will hold as confidential, under § 773.6(d)(3)(ii) of this chapter, any information you are required to submit under this paragraph which is not on public file under State law.

(d) The Mine Safety and Health Administration (MSHA) numbers for all structures that require MSHA approval.

[65 FR 79669, Dec. 19, 2000]

§ 778.14 Providing violation information.

(a) You, the applicant, must state, in your permit application, whether you, your operator, or any subsidiary, affiliate, or entity which you or your operator own or control or which is under common control with you or your operator, has—

(1) Had a Federal or State permit for surface coal mining operations suspended or revoked during the five-year period preceding the date of submission of the application; or

(2) Forfeited a performance bond or similar security deposited in lieu of bond in connection with surface coal mining and reclamation operations during the five-year period preceding the date of submission of the application.

(b) For each suspension, revocation, or forfeiture identified under paragraph (a), you must provide a brief explanation of the facts involved, including the—

(1) Permit number.

(2) Date of suspension, revocation, or forfeiture, and, when applicable, the amount of bond or similar security forfeited.

(3) Regulatory authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action.

(4) Current status of the permit, bond, or similar security involved.

(5) Date, location, type, and current status of any administrative or judicial proceedings concerning the suspension, revocation, or forfeiture.

(c) A list of all violation notices you or your operator received for any surface coal mining and reclamation oper-

ation during the three-year period preceding the date of submission of the application. In addition you must submit a list of all unabated or uncorrected violation notices incurred in connection with any surface coal mining and reclamation operation that you or your operator own or control on that date. For each violation notice reported, you must include the following information, when applicable—

(1) The permit number and associated MSHA number.

(2) The issue date, identification number, and current status of the violation notice.

(3) The name of the person to whom the violation notice was issued.

(4) The name of the regulatory authority or agency that issued the violation notice.

(5) A brief description of the violation alleged in the notice.

(6) The date, location, type, and current status of any administrative or judicial proceedings concerning the violation notice.

(7) If the abatement period for a violation in a notice of violation issued under § 843.12 of this chapter, or its State regulatory program equivalent, has not expired, certification that the violation is being abated or corrected to the satisfaction of the agency with jurisdiction over the violation.

(8) For all violations not covered by paragraph (c)(7) of this section, the actions taken to abate or correct the violation.

[65 FR 79669, Dec. 19, 2000]

§ 778.15 Right-of-entry information.

(a) An application shall contain a description of the documents upon which the applicant bases his legal right to enter and begin surface coal mining and reclamation operations in the permit area and shall state whether that right is the subject of pending litigation. The description shall identify the documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(b) Where the private mineral estate to be mined has been severed from the private surface estate, an applicant shall also submit—

§ 778.16

(1) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods;

(2) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(3) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under applicable State law, the applicant has the legal authority to extract the coal by those methods.

(c) Nothing in this section shall be construed to provide the regulatory authority with the authority to adjudicate property rights disputes.

§ 778.16 Status of unsuitability claims.

(a) An application shall contain available information as to whether the proposed permit area is within an area designated as unsuitable for surface coal mining and reclamation operations or is within an area under study for designation in an administrative proceeding under parts 762, 764, and 769 of this chapter.

(b) An application in which the applicant claims the exemption described in § 762.13(c) of this chapter shall contain information supporting the assertion that the applicant made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface coal mining and reclamation operations.

(c) An application that proposes to conduct surface coal mining operations within 100 feet of a public road or within 300 feet of an occupied dwelling must meet the requirements of § 761.14 or § 761.15 of this chapter, respectively.

[48 FR 44399, Sept. 28, 1983, as amended at 64 FR 70837, Dec. 17, 1999]

§ 778.17 Permit term.

(a) Each application shall state the anticipated or actual starting and termination date of each phase of the surface coal mining and reclamation operation and the anticipated number of acres of land to be affected during each phase of mining over the life of the mine.

(b) If the applicant requires an initial permit term in excess of 5 years in order to obtain necessary financing for

30 CFR Ch. VII (7–1–17 Edition)

equipment and the opening of the operation, the application shall—

(1) Be complete and accurate covering the specified longer term; and

(2) Show that the proposed longer term is reasonably needed to allow the applicant to obtain financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source of financing.

§ 778.18 Insurance.

An application shall contain either a certificate of liability insurance or evidence of self-insurance in compliance with § 800.60 of this chapter.

§ 778.21 Proof of publication.

A copy of the newspaper advertisements of the application for a permit, significant revision of a permit, or renewal of a permit, or proof of publication of the advertisements which is acceptable to the regulatory authority shall be filed with the regulatory authority and shall be made a part of the application not later than 4 weeks after the last date of publication as required by § 773.6(a)(1) of this chapter.

[48 FR 44399, Sept. 28, 1983, as amended at 65 FR 79669, Dec. 19, 2000]

§ 778.22 Facilities or structures used in common.

The plans of a facility or structure that is to be shared by two or more separately permitted mining operations may be included in one permit application and referenced in the other applications. In accordance with part 800 of this chapter, each permittee shall bond the facility or structure unless the permittees sharing it agree to another arrangement for assuming their respective responsibilities. If such agreement is reached, then the application shall include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the facility or structure. The agreement shall demonstrate to the satisfaction of the regulatory authority that all responsibilities under this chapter for the facility or structure will be met.

PART 779—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES AND CONDITIONS

Sec.

- 779.1 What does this part do?
- 779.2 What is the objective of this part?
- 779.4 What responsibilities do I and government agencies have under this part?
- 779.10 Information collection.
- 779.11–779.12 [Reserved]
- 779.17 What information on cultural, historic, and archeological resources must I include in my permit application?
- 779.18 What information on climate must I include in my permit application?
- 779.19 What information on vegetation must I include in my permit application?
- 779.20 What information on fish and wildlife resources must I include in my permit application?
- 779.21 What information on soils must I include in my permit application?
- 779.22 What information on land use and productivity must I include in my permit application?
- 779.24 What maps, plans, and cross-sections must I submit with my permit application?
- 779.25 [Reserved]

AUTHORITY: 30 U.S.C. 1201 *et seq.* and 54 U.S.C. 300101 *et seq.*

SOURCE: 81 FR 93327, Dec. 20, 2016, unless otherwise noted.

§ 779.1 What does this part do?

This part establishes the minimum requirements for the descriptions of environmental resources and conditions that you must include in an application for a permit to conduct surface mining activities.

§ 779.2 What is the objective of this part?

The objective of this part is to ensure that you, the permit applicant, provide the regulatory authority with a complete and accurate description of the environmental resources that may be impacted or affected by proposed surface mining activities and the environmental conditions that exist within the proposed permit and adjacent areas.

§ 779.4 What responsibilities do I and government agencies have under this part?

(a) You, the permit applicant, must provide all information required by this part in your application, except when this part specifically exempts you from doing so.

(b) State and federal government agencies are responsible for providing information for permit applications to the extent that this part specifically requires that they do so.

§ 779.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of this part and assigned it control number 1029-0035. The information is being collected to meet the requirements of sections 507 and 508 of SMCRA, which require that each permit application include a description of the premining environmental resources within and around the proposed permit area. The regulatory authority uses this information as a baseline for evaluating the impacts of mining. You, the permit applicant, must respond to obtain a benefit. A federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Room 203-SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

§§ 779.11–779.12 [Reserved]

§ 779.17 What information on cultural, historic, and archeological resources must I include in my permit application?

(a) Your permit application must describe the nature of cultural, historic, and archeological resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed

permit and adjacent areas. The description must be based on all available information, including, but not limited to, information from the State Historic Preservation Officer and from local archeological, historical, and cultural preservation agencies.

(b) The regulatory authority may require you, the applicant, to identify and evaluate important historic and archeological resources that may be eligible for listing on the National Register of Historic Places by—

- (1) Collecting additional information;
- (2) Conducting field investigations, or
- (3) Completing other appropriate analyses.

§ 779.18 What information on climate must I include in my permit application?

The regulatory authority may require that your permit application contain a statement of the climatic factors that are representative of the proposed permit area, including:

- (a) The average seasonal precipitation.
- (b) The average direction and velocity of prevailing winds.
- (c) Seasonal temperature ranges.
- (d) Additional data that the regulatory authority deems necessary to ensure compliance with the requirements of this subchapter.

§ 779.19 What information on vegetation must I include in my permit application?

(a) You must identify, describe, and map existing vegetation types and plant communities within the proposed permit area. If you propose to use reference areas for purposes of determining revegetation success under § 816.116 of this chapter, you also must identify, describe, and map existing vegetation types and plant communities within any proposed reference areas.

(b) The description and map required under paragraph (a) of this section must—

- (1) Be in sufficient detail to assist in preparation of the revegetation plan under § 780.12(g) of this chapter and provide a baseline for comparison with postmining vegetation;
- (2) Be adequate to evaluate whether the vegetation provides important

habitat for fish and wildlife and whether the proposed permit area contains native plant communities of local or regional significance;

(3) Identify areas with significant populations of non-native invasive or noxious species; and

(4) Delineate all wetlands and all areas bordering streams that either support or are capable of supporting hydrophytic or hydrophilic vegetation or vegetation typical of floodplains.

(c) If the vegetation on the proposed permit area has been altered by human activity, you must describe the native vegetation and plant communities typical of that area in the absence of human alterations.

§ 779.20 What information on fish and wildlife resources must I include in my permit application?

(a) *General requirements.* Your permit application must include information on fish and wildlife resources for the proposed permit and adjacent areas, including all species of fish, wildlife, plants, and other life forms listed or proposed for listing under the Endangered Species Act of 1973, 30 U.S.C. 1531 *et seq.* The adjacent area must include all lands and waters likely to be affected by the proposed operation.

(b) *Scope and level of detail.* The regulatory authority will determine the scope and level of detail for this information in coordination with state and federal agencies with responsibilities for fish and wildlife. The scope and level of detail must be sufficient to design the protection and enhancement plan required under § 780.16 of this chapter.

(c) *Site-specific resource information requirements.* Your application must include site-specific resource information if the proposed permit area or the adjacent area contains or is likely to contain one or more of the following—

- (1) Species listed or proposed for listing as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, or designated or proposed critical habitat under that law. When these circumstances exist, the site-specific resource information must include a description of the effects of future non-federal activities that are

reasonably certain to occur within the proposed permit and adjacent areas.

(2) Species or habitat protected by state or tribal endangered species statutes and regulations.

(3) Habitat of unusually high value for fish and wildlife, which may include wetlands, riparian areas, cliffs that provide nesting sites for raptors, significant migration corridors, specialized reproduction or wintering areas, areas offering special shelter or protection, and areas that support populations of endemic species that are vulnerable because of restricted ranges, limited mobility, limited reproductive capacity, or specialized habitat requirements.

(4) Other species or habitat identified through interagency coordination as requiring special protection under state, tribal, or federal law, including species identified as sensitive by a state, tribal, or federal agency.

(5) Perennial or intermittent streams.

(6) Native plant communities of local or regional ecological significance.

§ 779.21 What information on soils must I include in my permit application?

Your permit application must include—

(a) The results of a reconnaissance inspection to determine whether the proposed permit area may contain prime farmland historically used for cropland, as required by § 785.17(b)(1) of this chapter.

(b)(1) A map showing the soil mapping units located within the proposed permit area, if the National Cooperative Soil Survey has completed and published a soil survey of the area.

(2) The applicable soil survey information that the Natural Resources Conservation Service maintains for the soil mapping units identified in paragraph (b)(1) of this section. You may provide this information either in paper form or via a link to the appropriate element of the Natural Resources Conservation Service's soil survey Web site.

(c) A description of soil depths within the proposed permit area.

(d) Detailed information on soil quality, if you seek approval for the use of

soil substitutes or supplements under § 780.12(e) of this chapter.

(e) The soil survey information required by § 785.17(b)(3) of this chapter if the reconnaissance inspection conducted under paragraph (a) of this section indicates that prime farmland historically used for cropland may be present.

(f) Any other information on soils that the regulatory authority finds necessary to determine land use capability.

§ 779.22 What information on land use and productivity must I include in my permit application?

Your permit application must contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including—

(a)(1) A map and narrative identifying and describing the land use or uses in existence at the time of the filing of the application.

(2) A description of the historical uses of the land to the extent that this information is readily available or can be inferred from the uses of other lands in the vicinity.

(3) For any previously mined area within the proposed permit area, a description of the land uses in existence before any mining, to the extent that such information is available.

(b) A narrative analysis of—

(1) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the proposed permit area; and

(2) The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products obtained under high levels of management, as determined by—

(i) Actual yield data; or

(ii) Yield estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities, or appropriate state natural resources or agricultural agencies.

(c) Any additional information that the regulatory authority deems necessary to determine the condition, capability, and productivity of the land within the proposed permit area.

§ 779.24 What maps, plans, and cross-sections must I submit with my permit application?

(a) In addition to the maps, plans, and information required by other sections of this part, your permit application must include maps and, when appropriate, plans and cross-sections showing—

(1) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the proposed permit area.

(2) The boundaries of land within the proposed permit area upon which you have the legal right to enter and begin surface mining activities.

(3) The boundaries of all areas that you anticipate affecting over the estimated total life of the surface mining activities, with a description of the size, sequence, and timing of the mining of subareas for which you anticipate seeking additional permits or expansion of an existing permit in the future.

(4) The location and current use of all buildings on the proposed permit area or within 1,000 feet of the proposed permit area.

(5) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, highways, electric transmission lines, pipelines, constructed drainageways, irrigation ditches, and agricultural drainage tile fields.

(6) The location and boundaries of any proposed reference areas for determining the success of revegetation.

(7) The location and ownership of existing wells, springs, and other groundwater resources within the proposed permit and adjacent areas. You may provide ownership information in a table cross-referenced to a map if approved by the regulatory authority.

(8) The location and depth (if available) of each water well within the proposed permit and adjacent areas. You may provide information concerning

depth in a table cross-referenced to a map if approved by the regulatory authority.

(9) The name, location, ownership, and description of all surface-water bodies and features, such as perennial, intermittent, and ephemeral streams; ponds, lakes, and other impoundments; wetlands; and natural drainageways, within the proposed permit and adjacent areas. To the extent appropriate, you may provide this information in a table cross-referenced to a map if approved by the regulatory authority.

(10) The locations of water supply intakes for current users of surface water flowing into, from, and within a hydrologic area defined by the regulatory authority.

(11) The location of any public water supplies and the extent of any associated wellhead protection zones located within one-half mile, measured horizontally, of the proposed permit area. Both you and the regulatory authority must keep this information confidential when required by state law or when otherwise necessary for safety and security purposes and protection of the integrity of public water supplies.

(12) The location of all existing and proposed discharges to any surface-water body within the proposed permit and adjacent areas.

(13) The location of any discharge into or from an active, inactive, or abandoned surface or underground mine, including, but not limited to, a mine-water treatment or pumping facility, that is hydrologically connected to the site of the proposed operation or that is located within one-half mile, measured horizontally, of the proposed permit area.

(14) Each public road located in or within 100 feet of the proposed permit area.

(15) The boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archaeological sites within the permit and adjacent areas.

(16) Each cemetery that is located in or within 100 feet of the proposed permit area.

(17) Any land within the proposed permit area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act.

(18) The elevations, locations, and geographic coordinates of test borings and core samplings. You may provide this information in a table cross-referenced to a map if approved by the regulatory authority.

(19) The location and extent of any subsurface water encountered within the proposed permit and adjacent areas. This information must include, but is not limited to, the elevation of the water table, the areal and vertical distribution of aquifers, and maximum and minimum variations in hydraulic head in different aquifers. You must provide this information on appropriately-scaled cross-sections or maps, in a narrative, or a combination of these methods, whichever format best displays this information to the satisfaction of the regulatory authority.

(20) The elevations, locations, and geographic coordinates of monitoring stations used to gather data on water quality and quantity and on fish and wildlife in preparation of the application. You may provide this information in a table cross-referenced to a map if approved by the regulatory authority.

(21) The nature, depth, thickness, and commonly used names of the coal seams to be mined.

(22) Any coal crop lines within the permit and adjacent areas and the strike and dip of the coal to be mined.

(23) The location and extent of known workings of active, inactive, or abandoned underground mines within or underlying the proposed permit and adjacent areas.

(24) Any underground mine openings to the surface within the proposed permit and adjacent areas.

(25) The location and extent of existing or previously surface-mined areas within the proposed permit area.

(26) The location and dimensions of existing areas of spoil, coal mine waste, noncoal mine waste disposal sites, dams, embankments, other impoundments, and water treatment fa-

cilities within the proposed permit area.

(27) The location and, if available, the depth of all gas and oil wells within the proposed permit and adjacent areas. You must identify the lateral extent of the well bores unless that information is confidential under state law. You may provide information concerning well depth in a table cross-referenced to a map if approved by the regulatory authority.

(28) Other relevant information required by the regulatory authority.

(b) Maps, plans, and cross-sections required by paragraph (a) of this section must be—

(1) Prepared by, or under the direction of, and certified by a qualified registered professional engineer, a professional geologist, or in any state that authorizes land surveyors to prepare and certify such maps, plans, and cross-sections, a qualified registered professional land surveyor, with assistance from experts in related fields such as landscape architecture.

(2) Updated when required by the regulatory authority.

(c) The regulatory authority may require that you submit the materials required by this section in a digital format that includes all necessary metadata.

§ 779.25 [Reserved]

PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR OPERATION AND RECLAMATION PLANS

Sec.

780.1 What does this part do?

780.2 What is the objective of this part?

780.4 What responsibilities do I and government agencies have under this part?

780.10 Information collection.

780.11 What must I include in the description of my proposed operations?

780.12 What must the reclamation plan include?

780.13 What additional maps and plans must I include in the reclamation plan?

780.14 What requirements apply to the use of existing structures?

780.15 What plans for the use of explosives must I include in my application?

780.16 What must I include in the fish and wildlife protection and enhancement plan?

§ 780.1

780.17–780.18 [Reserved]

780.19 What baseline information on hydrology, geology, and aquatic biology must I provide?

780.20 How must I prepare the determination of the probable hydrologic consequences of my proposed operation (PHC determination)?

780.21 What requirements apply to preparation, use, and review of the cumulative hydrologic impact assessment (CHIA)?

780.22 What information must I include in the hydrologic reclamation plan and what information must I provide on alternative water sources?

780.23 What information must I include in plans for the monitoring of groundwater, surface water, and the biological condition of streams during and after mining?

780.24 What requirements apply to the postmining land use?

780.25 What information must I provide for siltation structures, impoundments, and refuse piles?

780.26 What special requirements apply to surface mining near underground mining?

780.27 What additional permitting requirements apply to activities in or through ephemeral streams?

780.28 What additional permitting requirements apply to proposed activities in, through, or adjacent to a perennial or intermittent stream?

780.29 What information must I include in the surface-water runoff control plan?

780.31 What information must I provide concerning the protection of publicly owned parks and historic places?

780.33 What information must I provide concerning the relocation or use of public roads?

780.35 What information must I provide concerning the minimization and disposal of excess spoil?

780.37 What information must I provide concerning access and haul roads?

780.38 What information must I provide concerning support facilities?

AUTHORITY: 30 U.S.C. 1201 *et seq.* and 54 U.S.C. 300101 *et seq.*

SOURCE: 81 FR 93330, Dec. 20, 2016, unless otherwise noted.

§ 780.1 What does this part do?

This part establishes the minimum requirements for the operation and reclamation plan portions of applications for a permit to conduct surface mining activities, except to the extent that part 785 of this subchapter establishes different requirements.

30 CFR Ch. VII (7–1–17 Edition)

§ 780.2 What is the objective of this part?

The objective of this part is to ensure that you, the permit applicant, provide the regulatory authority with comprehensive and reliable information on how you propose to conduct surface mining activities and reclaim the disturbed area in compliance with the Act, this chapter, and the regulatory program.

§ 780.4 What responsibilities do I and government agencies have under this part?

(a) You, the permit applicant, must provide to the regulatory authority all information required by this part, except where specifically exempted in this part.

(b) State and federal governmental agencies must provide information needed for permit applications to the extent that this part specifically requires that they do so.

§ 780.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of this part and assigned it control number 1029–0036. Sections 507 and 508 of SMCRA contain permit application requirements for surface coal mining activities, including a requirement that the application include an operation and reclamation plan. The regulatory authority uses this information to determine whether the proposed surface coal mining operation will achieve the environmental protection requirements of the Act and regulatory program. You, the permit applicant, must respond to obtain a benefit. A federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Room 203–SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

§ 780.11 What must I include in the description of my proposed operations?

Your application must contain a description of the mining operations that you propose to conduct during the life of the mine within the proposed permit area, including, at a minimum, the following:

- (a) A narrative description of the—
 - (1) Type and method of coal mining procedures and proposed engineering techniques.
 - (2) Anticipated annual and total number of tons of coal to be produced.
 - (3) Major equipment to be used for all aspects of the proposed operations.
- (b) A narrative explaining the construction, modification, use, maintenance, and removal (unless you can satisfactorily explain why retention is necessary or appropriate for the postmining land use specified in the application under § 780.24 of this part) of the following facilities:
 - (1) Dams, embankments, and other impoundments.
 - (2) Overburden and soil handling and storage areas and structures.
 - (3) Coal removal, handling, storage, cleaning, and transportation areas and structures.
 - (4) Spoil, coal processing waste, and noncoal mine waste removal, handling, storage, transportation, and disposal areas and structures.
 - (5) Mine facilities.
 - (6) Water pollution control facilities.

§ 780.12 What must the reclamation plan include?

(a) *General requirements.* Your application must contain a plan for the reclamation of the lands to be disturbed within the proposed permit area. The plan must show how you will comply with the operation and reclamation requirements of the applicable regulatory program. At a minimum, the plan must include all information required under this part and part 785 of this chapter.

(b) *Reclamation timetable.* The reclamation plan must contain a detailed timetable for the completion of each major step in the reclamation process including, but not limited to—

- (1) Backfilling.
- (2) Grading.

(3) Establishment of the surface drainage pattern and stream-channel configuration approved in the permit, including construction of appropriately-designed perennial, intermittent, and ephemeral stream channels to replace those removed by mining, to the extent and in the form required by §§ 780.27, 780.28, 816.56, and 816.57 of this chapter.

(4) Soil redistribution.

(5) Planting of all vegetation in accordance with the revegetation plan approved in the permit, including establishment of streamside vegetative corridors along the banks of perennial, intermittent, and ephemeral streams when required by §§ 816.56(c) and 816.57(d) of this chapter.

(6) Demonstration of revegetation success.

(7) Demonstration of restoration of the ecological function of all reconstructed perennial and intermittent stream segments.

(8) Application for each phase of bond release under § 800.42 of this chapter.

(c) *Reclamation cost estimate.* The reclamation plan must contain a detailed estimate of the cost of reclamation, including both direct and indirect costs, of those elements of the proposed operations that are required to be covered by a performance bond under part 800 of this chapter, with supporting calculations for the estimates. You must use current standardized construction cost estimation methods and equipment cost guides or up-to-date actual contracting costs incurred by the regulatory authority for similar activities to prepare this estimate.

(d) *Backfilling and grading plan.* (1) The reclamation plan must contain a plan for backfilling the mined area, compacting the backfill, and grading the disturbed area, with contour maps, models, or cross-sections that show in detail the anticipated final surface configuration of the proposed permit area, including drainage patterns, in accordance with §§ 816.102 through 816.107 of this chapter, using the best technology currently available.

(2) The backfilling and grading plan must describe in detail how you will conduct backfilling and related reclamation activities, including how you will—

(i) Compact spoil to reduce infiltration to minimize leaching and discharges of parameters of concern.

(ii) Limit compaction of topsoil and soil materials in the root zone to the minimum necessary to achieve stability. The plan also must identify measures that will be used to alleviate soil compaction if necessary.

(iii) Handle acid-forming and toxic-forming materials, if present, to prevent the formation of acid or toxic drainage from acid-forming and toxic-forming materials within the overburden. The plan must be consistent with paragraph (n) of this section and § 816.38 of this chapter.

(e) *Soil handling plan*—(1) *General requirements.* (i) The reclamation plan must include a plan and schedule for removal, storage, and redistribution of topsoil, subsoil, and other material to be used as a final growing medium in accordance with § 816.22 of this chapter. It also must include a plan and schedule for removal, storage, and redistribution or other use of organic matter in accordance with § 816.22(f) of this chapter.

(ii) Except as provided in paragraphs (e)(1)(iii) and (iv) of this section, the plan submitted under paragraph (e)(1)(i) of this section must require that the B soil horizon, the C soil horizon, and other underlying strata, or portions of those soil horizons and strata, be removed separately, stockpiled if necessary, and redistributed to the extent and in the manner needed to achieve the optimal rooting depths required to restore premining land use capability and to comply with the revegetation requirements of §§ 816.111 and 816.116 of this chapter.

(iii) The plan submitted under paragraph (e)(1)(i) of this section need not require salvage of those soil horizons which you demonstrate, to the satisfaction of the regulatory authority, are inferior to other overburden materials as a plant growth medium, provided you comply with the soil substitute requirements of paragraph (e)(2) of this section.

(iv) The plan submitted under paragraph (e)(1)(i) of this section may allow blending of the B soil horizon, the C soil horizon, and underlying strata, or portions thereof, to the extent that re-

search or prior experience under similar conditions has demonstrated that blending will not adversely affect soil productivity.

(v) The plan submitted under paragraph (e)(1)(i) of this section must explain how you will handle and, if necessary, store soil materials to avoid contamination by acid-forming or toxic-forming materials and to minimize deterioration of desirable soil characteristics.

(2) *Substitutes and supplements.* (i) You must identify each soil horizon for which you propose to use appropriate overburden materials as either a supplement to or a substitute for the existing topsoil or subsoil on the proposed permit area. For each of those horizons, you must demonstrate, and the regulatory authority must find in writing, that—

(A)(I) The quality of the existing topsoil and subsoil is inferior to that of the best overburden materials available; or

(2) The quantity of the existing topsoil and subsoil is insufficient to provide an optimal rooting depth. In this case, the plan must require that all available existing topsoil and favorable subsoil, regardless of the amount, be removed, stored, and redistributed as part of the final growing medium unless the conditions described in paragraph (e)(2)(i)(A)(I) of this section also apply.

(B) The use of the overburden materials that you have selected, in combination with or in place of the existing topsoil or subsoil, will result in a soil medium that is more suitable than the existing topsoil and subsoil to support and sustain vegetation consistent with the postmining land use and the revegetation plan under paragraph (g) of this section and that will provide a rooting depth that is superior to the existing topsoil and subsoil.

(C) The overburden materials that you select for use as a soil substitute or supplement are the best materials available to support and sustain vegetation consistent with the postmining land use and the revegetation plan under paragraph (g) of this section.

(ii) For purposes of paragraph (e)(2)(i) of this section, the regulatory authority will specify the—

(A) Suitability criteria for substitutes and supplements.

(B) Chemical and physical analyses, field trials, or greenhouse tests that you must conduct to make the demonstration required by paragraph (e)(2)(i) of this section.

(C) Sampling objectives and techniques and the analytical techniques that you must use for purposes of paragraph (e)(2)(ii)(B) of this section.

(iii) At a minimum, the demonstrations required by paragraph (e)(2)(i) of this section must include—

(A) The physical and chemical soil characteristics and root zones needed to support and sustain the type of vegetation to be established on the reclaimed area.

(B) A comparison and analysis of the thickness, total depth, texture, percent coarse fragments, pH, and areal extent of the different kinds of soil horizons and overburden materials available within the proposed permit area, based upon a statistically-valid sampling procedure.

(iv) You must include a plan for testing and evaluating overburden materials during both removal and redistribution to ensure that only materials approved for use as soil substitutes or supplements are removed and redistributed.

(f) *Surface stabilization plan.* The reclamation plan must contain a plan for stabilizing road surfaces, redistributed soil materials, and other exposed surface areas to effectively control erosion and air pollution attendant to erosion in accordance with §§ 816.95, 816.150, and 816.151 of this chapter.

(g) *Revegetation plan.* (1) The reclamation plan must contain a plan for revegetation consistent with §§ 816.111 through 816.116 of this chapter, including, but not limited to, descriptions of—

(i) The schedule for revegetation of the area to be disturbed.

(ii) The site preparation techniques that you plan to use, including the measures that you will take to avoid or, when avoidance is not possible, to minimize and alleviate compaction of the root zone during backfilling, grading, soil redistribution, and planting.

(iii) What soil tests you will perform, together with a statement as to whether

you will apply lime, fertilizer, or other amendments in response to those tests before planting or seeding.

(iv) The species that you will plant to achieve temporary erosion control or, if you do not intend to establish a temporary vegetative cover, a description of other soil stabilization measures that you will implement in lieu of planting a temporary cover.

(v) The species that you will plant and the seeding and stocking rates and planting arrangements that you will use to achieve or complement the postmining land use, enhance fish and wildlife habitat, and achieve the streamside vegetative corridor requirements of §§ 816.56(c) and 816.57(d) of this chapter, when applicable.

(A) Revegetation plans that involve the establishment of trees and shrubs must include site-specific planting prescriptions for canopy trees, understory trees and shrubs, and herbaceous ground cover compatible with establishment of trees and shrubs.

(B) To the extent practicable and consistent with other revegetation and regulatory program requirements, the species mix must include native pollinator-friendly plants and the planting arrangements must promote the establishment of pollinator-friendly habitat.

(vi) The planting and seeding techniques that you will use.

(vii) Whether you will apply mulch and, if so, the type of mulch and the method of application.

(viii) Whether you plan to conduct irrigation or apply fertilizer after the first growing season and, if so, to what extent and for what length of time.

(ix) Any normal husbandry practices that you plan to use in accordance with § 816.115(d) of this chapter.

(x) The standards and evaluation techniques that you propose to use to determine the success of revegetation in accordance with § 816.116 of this chapter.

(xi) The measures that you will take to avoid the establishment of invasive species on reclaimed areas or to control those species if they do become established.

(2) Except as provided in paragraphs (g)(4) and (5) of this section, the species and planting rates and arrangements selected as part of the revegetation

plan must be designed to create a diverse, effective, permanent vegetative cover that is consistent with the native plant communities and natural succession process described in the permit application in accordance with § 779.19 of this chapter.

(3) The species selected as part of the revegetation plan must—

(i) Be native to the area. The regulatory authority may approve the use of introduced species as part of the permanent vegetative cover for the site only if—

(A) The introduced species are both non-invasive and necessary to achieve the postmining land use;

(B) Planting of native species would be inconsistent with the approved postmining land use; and

(C) The approved postmining land use is implemented before the entire bond amount for the area has been fully released under §§ 800.40 through 800.43 of this chapter.

(ii) Be capable of stabilizing the soil surface from erosion to the extent that control of erosion with herbaceous ground cover is consistent with establishment of a permanent vegetative cover that resembles native plant communities in the area.

(iii) Be compatible with the approved postmining land use.

(iv) Have the same seasonal characteristics of growth, consistent with the appropriate stage of natural succession, as the native plant communities described in the permit application in accordance with § 779.19 of this chapter.

(v) Be capable of self-regeneration and natural succession.

(vi) Be compatible with the plant and animal species of the area.

(vii) Meet the requirements of applicable state and federal seed, noxious plant, and introduced species laws and regulations.

(4) The regulatory authority may grant an exception to the requirements of paragraphs (g)(3)(i), (iv), and (v) of this section when necessary to achieve a quick-growing, temporary, stabilizing cover on disturbed and regraded areas, and the species selected to achieve this purpose will not impede the establishment of permanent vegetation.

(5) The regulatory authority may grant an exception to the requirements of paragraphs (g)(2), (g)(3)(iv), and (g)(3)(v) of this section for those areas with a long-term, intensive, agricultural postmining land use.

(6) A qualified, experienced biologist, soil scientist, forester, or agronomist must prepare or approve all revegetation plans.

(h) *Stream protection and reconstruction plan.* The reclamation plan must describe how you will comply with the stream reconstruction requirements of §§ 780.27 and 816.56 of this chapter for ephemeral streams and the stream protection, stream reconstruction, and functional restoration requirements of §§ 780.28 and 816.57 of this chapter for perennial and intermittent streams.

(i) *Coal resource conservation plan.* The reclamation plan must describe the measures that you will employ to maximize the use and conservation of the coal resource while using the best technology currently available to maintain environmental integrity, as required by § 816.59 of this chapter.

(j) *Plan for disposal of noncoal waste materials.* The reclamation plan must describe—

(1) The type and quantity of noncoal waste materials that you anticipate disposing of within the proposed permit area.

(2) How you intend to dispose of noncoal waste materials in accordance with § 816.89 of this chapter.

(3) The locations of any proposed noncoal waste material disposal sites within the proposed permit area.

(4) The contingency plans that you have developed to preclude sustained combustion of combustible noncoal materials.

(k) *Management of mine openings, boreholes, and wells.* The reclamation plan must contain a description, including appropriate cross-sections and maps, of the measures that you will use to seal or manage mine openings, and to plug, case or manage exploration holes, boreholes, wells and other openings within the proposed permit area, in accordance with § 816.13 of this chapter.

(l) *Compliance with Clean Air Act and Clean Water Act.* The reclamation plan must describe the steps that you have

taken or will take to comply with the requirements of the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Clean Water Act (33 U.S.C. 1251 *et seq.*), and other applicable air and water quality laws and regulations and health and safety standards.

(m) *Consistency with land use plans and surface owner plans.* The reclamation plan must describe how the proposed operation is consistent with—

(1) All applicable state and local land use plans and programs.

(2) The plans of the surface landowner, to the extent that those plans are practicable and consistent with this chapter and with other applicable laws and regulations.

(n) *Handling of acid-forming and toxic-forming materials.* (1) If the baseline geologic information collected under § 780.19(e)(3) of this part indicates the presence of acid-forming or toxic-forming materials in any stratum above the lowest coal seam to be mined, you must develop a plan to prevent any adverse hydrologic impacts that may result from exposure and fracturing of that stratum during the mining process and demonstrate how you will handle the materials to protect groundwater and surface water. At a minimum the plan must—

(i) Identify the anticipated postmining groundwater level for all locations within the mined-out area at which you propose to place acid-forming or toxic-forming materials within the backfill.

(ii) Explain how you will use one of the techniques in paragraphs (n)(1)(ii)(A) through (C) of this section when placing those materials in the backfill, as appropriate and as approved by the regulatory authority, to prevent the formation of acid or toxic mine drainage or other discharges that would require long-term treatment after mining has been completed:

(A) Treat or otherwise neutralize acid-forming and toxic-forming materials to prevent the formation of acid or toxic mine drainage. This technique may include the blending of acid-forming materials with spoil of sufficient alkalinity to prevent the development of acid drainage.

(B) Place acid-forming and toxic-forming materials in a location below

the water table where they will remain fully saturated at all times, provided that you demonstrate, and the regulatory authority finds in writing in the permit, that complete saturation will prevent the formation of acid or toxic mine drainage.

(C) Isolate acid-forming and toxic-forming materials by completely surrounding them with compacted material with a hydraulic conductivity at least two orders of magnitude lower than the hydraulic conductivity of the adjacent spoil.

(2) The plan developed under paragraph (n)(1) of this section may allow the placement of acid-forming and toxic-forming materials in an excess spoil fill or a coal mine waste refuse pile, using one or more of the techniques identified in paragraphs (n)(1)(ii)(A) through (C) of this section.

(3) If the baseline geologic information collected under § 780.19(e)(3) of this chapter indicates the presence of acid-forming or toxic-forming material in the stratum immediately below the lowest coal seam to be mined, you must identify the measures that you will take to prevent any adverse hydrologic impacts that might develop as a result of exposure of that stratum during the mining process.

§ 780.13 What additional maps and plans must I include in the reclamation plan?

(a) In addition to the maps and plans required under § 779.24 and other provisions of this subchapter, your application must include maps, plans, and cross-sections of the proposed permit area showing—

(1) The lands that you propose to affect throughout the life of the operation, including the sequence and timing of surface mining activities and the sequence and timing of backfilling, grading, and other reclamation activities on areas where the operation will disturb the land surface.

(2) Each area of land for which a performance bond or equivalent guarantee will be posted under part 800 of this chapter.

(3) Any change that the proposed operations will cause in a facility or feature identified under § 779.24 of this chapter.

§ 780.14

30 CFR Ch. VII (7–1–17 Edition)

(4) All buildings, utility corridors, and facilities to be used or constructed within the proposed permit area, with identification of those facilities that you propose to retain as part of the postmining land use.

(5) Each coal storage, cleaning, processing, and loading area and facility.

(6) Each temporary storage area for soil, spoil, coal mine waste, and noncoal mine waste.

(7) Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used, including the location of each point at which water will be discharged from the proposed permit area to a surface-water body and the name of that water body.

(8) Each disposal facility for coal mine waste and noncoal mine waste materials.

(9) Each feature and facility to be constructed to protect or enhance fish, wildlife, and related environmental values.

(10) Each explosive storage and handling facility.

(11) The location of each siltation structure, sedimentation pond, permanent water impoundment, refuse pile, and coal mine waste impoundment for which plans are required by § 780.25 of this part, and the location of each excess spoil fill for which plans are required under § 780.35 of this part.

(12) Each segment of a perennial or intermittent stream that you propose to mine through, bury, or divert.

(13) Each location in which you propose to restore a perennial or intermittent stream or construct a temporary or permanent diversion of a perennial or intermittent stream.

(14) Each streamside vegetative corridor that you propose to establish.

(15) Each segment of a perennial or intermittent stream that you propose to enhance under the plan submitted in accordance with § 780.16 of this part.

(16) The location and geographic coordinates of each monitoring point for groundwater and surface water.

(17) The location and geographic coordinates of each point at which you propose to monitor the biological condition of perennial and intermittent streams.

(b) Except as provided in §§ 780.25(a)(2), 780.25(a)(3), 780.35,

816.74(c), and 816.81(c) of this chapter, maps, plans, and cross-sections required under paragraphs (a)(5), (6), (7), (10), and (11) of this section must be prepared by, or under the direction of, and certified by a qualified registered professional engineer, a professional geologist, or, in any state that authorizes land surveyors to prepare and certify maps, plans, and cross-sections, a qualified registered professional land surveyor, with assistance from experts in related fields such as landscape architecture.

(c) The regulatory authority may require that you submit the materials required by paragraph (a) of this section in a digital format.

§ 780.14 What requirements apply to the use of existing structures?

(a) Each application must contain a description of every existing structure that you propose to use in connection with or to facilitate surface coal mining and reclamation operations. The description must include—

(1) The location of the structure.

(2) Plans of the structure.

(3) A description of the current condition of the structure.

(4) The approximate dates when the structure was originally built.

(5) A showing, including relevant monitoring data or other evidence, of whether the structure meets the permanent program performance standards of subchapter K of this chapter or, if the structure does not meet the performance standards of subchapter K of this chapter, a showing of whether the structure meets the initial program performance standards of subchapter B of this chapter.

(b) Each application must contain a compliance plan for every existing structure that you propose to modify or reconstruct for use in connection with or to facilitate surface coal mining and reclamation operations. The compliance plan must include—

(1) Design specifications for the modification or reconstruction of the structure to meet the design and performance standards of subchapter K of this chapter.

(2) A schedule for the initiation and completion of any modification or reconstruction under paragraph (b)(1) of this section.

(3) Provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards of subchapter K of this chapter are met.

(4) A demonstration that there is no significant risk of harm to the environment or to public health or safety during modification or reconstruction of the structure.

§ 780.15 What plans for the use of explosives must I include in my application?

(a) *Blasting plan.* Each application must contain a blasting plan for the proposed permit area, explaining how you will comply with the requirements of §§ 816.61 through 816.68 of this chapter. This plan must include, at a minimum, information setting forth the limitations on ground vibration and airblast, the bases for those limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(b) *Monitoring system.* Each application must contain a description of any system to be used to monitor compliance with the standards of § 816.67 including the type, capability, and sensitivity of any blast-monitoring equipment and proposed procedures and locations of monitoring.

(c) *Blasting near underground mines.* Blasting operations within 500 feet of active underground mines require approval of the state and federal regulatory authorities concerned with the health and safety of underground miners.

§ 780.16 What must I include in the fish and wildlife protection and enhancement plan?

(a) *General requirements.* Your application must include a fish and wildlife protection and enhancement plan that—

(1) Is consistent with the requirements of § 816.97 of this chapter.

(2) Is specific to the resources identified under § 779.20 of this chapter.

(3) Complies with the requirements of paragraphs (b) through (f) of this section.

(b) *Requirements related to the Endangered Species Act of 1973.* (1) Paragraphs (b)(2) and (3) of this section apply when the proposed operation may affect species listed or proposed for listing as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, or designated or proposed critical habitat under that law.

(2) You must describe the steps that you have taken or will take to comply with the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, including any biological opinions developed under section 7 of that law and any species-specific habitat conservation plans developed in accordance with section 10 of that law.

(3) The regulatory authority may not approve the permit application before there is a demonstration of compliance with the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, through one of the mechanisms listed in § 773.15(j) of this chapter.

(c) *Protection of fish, wildlife, and related environmental values in general.* You must describe how, to the extent possible using the best technology currently available, you will minimize disturbances and adverse impacts on fish, wildlife, and related environmental values. At a minimum, you must explain how you will—

(1) Retain forest cover and other native vegetation as long as possible and time the removal of that vegetation to minimize adverse impacts on aquatic and terrestrial species.

(2) Locate and design sedimentation ponds, utilities, support facilities, roads, rail spurs, and other transportation facilities to avoid or minimize adverse impacts on fish, wildlife, and related environmental values.

(3) Except as provided under § 780.12(g)(4) of this part, select non-invasive native species for revegetation that either promote or do not inhibit the long-term development of wildlife habitat.

(4)(i) Avoid mining through wetlands or perennial or intermittent streams or disturbing riparian habitat adjacent to those streams. When avoidance is not possible, minimize—

(A) The time during which mining and reclamation operations disrupt wetlands or streams or riparian habitat associated with streams;

(B) The length of stream mined through; and

(C) The amount of wetlands or riparian habitat disturbed by the operation.

(ii) If you propose to mine through or discharge dredged or fill material into wetlands or streams that are subject to the jurisdiction of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, your application must identify the authorizations, certifications, and permits that you anticipate will be needed under the Clean Water Act and describe the steps that you have taken or will take to procure those authorizations, certifications, and permits. The regulatory authority will process your application and may issue the permit before you obtain all necessary authorizations, certifications, and permits under the Clean Water Act, 33 U.S.C. 1251 *et seq.*, provided your application meets all applicable requirements of subchapter G of this chapter. Issuance of a permit under subchapter G of this chapter does not authorize you to conduct any surface mining activity in or affecting waters subject to the jurisdiction of the Clean Water Act before you obtain any required Clean Water Act authorization, certification, or permit. Information submitted and analyses conducted under subchapter G of this chapter may inform the agency responsible for authorizations, certifications, and permits under the Clean Water Act, but they are not a substitute for the reviews, authorizations, certifications, and permits required under the Clean Water Act.

(5) Implement other appropriate conservation practices such as, but not limited to, those identified in the technical guides published by the Natural Resources Conservation Service.

(d) *Enhancement measures*—(1) *General requirements.* (i) You must describe how, to the extent possible, you will use the best technology currently available to enhance fish, wildlife, and related environmental values both within and outside the area to be disturbed by mining activities, where practicable. Your application must identify the enhancement measures

that you propose to implement and the lands upon which you propose to implement those measures. Those measures may include some or all the potential enhancement measures listed in paragraph (d)(2) of this section, but they are not limited to the measures listed in paragraph (d)(2) of this section.

(ii) If your application includes no proposed enhancement measures under paragraph (d)(1)(i) of this section, you must explain, to the satisfaction of the regulatory authority, why implementation of enhancement measures is not practicable.

(2) *Potential enhancement measures.* Potential enhancement measures include, but are not limited to—

(i) Using the backfilling and grading process to create postmining surface features and configurations, such as functional wetlands, of high value to fish and wildlife.

(ii) Designing and constructing permanent impoundments in a manner that will maximize their value to fish and wildlife.

(iii) Creating rock piles and other permanent landscape features of value to raptors and other wildlife for nesting and shelter, to the extent that those features are consistent with features that existed on the site before any mining, the surrounding topography, and the approved postmining land use.

(iv) Reestablishing native forests or other native plant communities, both within and outside the permit area. This may include restoring the native plant communities that existed before any mining, establishing native plant communities consistent with the native plant communities that are a part of the natural succession process, establishing native plant communities designed to restore or expand native pollinator populations and habitats, or establishing native plant communities that will support wildlife species of local, state, tribal, or national concern, including, but not limited to, species listed or proposed for listing as threatened or endangered on a state, tribal, or national level.

(v) Establishing a vegetative corridor along the banks of streams where there is no such corridor before mining but where a vegetative corridor typically

would exist under natural conditions. Species selected for planting within the corridor must be comprised of species native to the area, including native plants adapted to and suitable for planting in any floodplains or other riparian zones located within the corridor. Whenever possible, you should establish this corridor along both banks of the stream, preferably with a minimum corridor width of 100 feet along each bank.

(vi) Implementing conservation practices identified in publications, such as the technical guides published by the Natural Resources Conservation Service.

(vii) Permanently fencing livestock away from perennial and intermittent streams and wetlands.

(viii) Installing perches and nest boxes.

(ix) Establishing conservation easements or deed restrictions, with an emphasis on preserving riparian vegetation and forested corridors along perennial and intermittent streams.

(x) Providing funding to cover long-term operation and maintenance costs that watershed organizations incur in treating long-term postmining discharges from previous mining operations.

(xi) Reclaiming previously mined areas located outside the area that you propose to disturb for coal extraction.

(xii) Implementing measures to reduce or eliminate existing sources of surface-water or groundwater pollution.

(3) *Additional enhancement requirements for operations with anticipated long-term adverse impacts.* (i) The exception in paragraph (d)(1)(ii) of this section does not apply if your proposed surface mining activities would result in the—

(A) Temporary or permanent loss of mature native forest or other native plant communities that cannot be restored fully before final bond release under §§ 800.40 through 800.43 of this chapter or

(B) Permanent loss of wetlands or a segment of a perennial or intermittent stream.

(ii) Whenever the conditions described in paragraph (d)(3)(i) of this section apply, the scope of the en-

hancement measures that you propose under paragraph (d)(1)(i) of this section must be commensurate with the magnitude of the long-term adverse impacts of the proposed operation. Whenever possible, the measures must be permanent.

(iii)(A) Enhancement measures proposed under paragraph (d)(3)(ii) of this section must be implemented within the watershed in which the proposed operation is located, unless opportunities for enhancement are not available within that watershed. In that case, you must propose to implement enhancement measures in the closest adjacent watershed in which enhancement opportunities exist, as approved by the regulatory authority.

(B) Each regulatory program must prescribe the size of the watershed for purposes of paragraph (d)(3)(iii)(A) of this section, using a generally-accepted watershed classification system.

(4) *Inclusion within permit area.* If the enhancement measures to be implemented under paragraphs (d)(1) through (d)(3) of this section would involve more than a de minimis disturbance of the surface of land outside the area to be mined, you must include the land to be disturbed by those measures within the proposed permit area.

(e) *Fish and Wildlife Service or National Marine Fisheries Service review.*

(1)(i) The regulatory authority must provide the protection and enhancement plan developed under this section and the resource information submitted under § 779.20 of this chapter to the appropriate regional or field office of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as applicable, whenever the resource information submitted under § 779.20 of this chapter includes species listed as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, designated or proposed critical habitat under that law, or species proposed for listing as threatened or endangered under that law. The regulatory authority must provide the resource information and the protection and enhancement plan to the appropriate Service(s) no later than the time that it provides written

§§ 780.17–780.18

30 CFR Ch. VII (7–1–17 Edition)

notice of the permit application to governmental agencies under § 773.6(a)(3)(ii) of this chapter.

(ii)(A) When the resource information obtained under § 779.20 of this chapter does not include species listed as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, designated or proposed critical habitat under that law, or species proposed for listing as threatened or endangered under that law, the regulatory authority must provide the resource information and the protection and enhancement plan to the appropriate regional or field office of the U.S. Fish and Wildlife Service only if the Service requests an opportunity to review and comment on the resource information and the protection and enhancement plan.

(B) The regulatory authority must provide the resource information and the protection and enhancement plan to the Service under paragraph (e)(1)(ii)(A) of this section within 10 days of receipt of a request from the Service to review the resource information and the protection and enhancement plan.

(2) The regulatory authority must document the disposition of comments that it receives from the applicable Service(s) in response to the distribution made under paragraph (e)(1)(i) of this section to the extent that those comments pertain to species listed as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, to designated or proposed critical habitat under that law, or to species proposed for listing as

threatened or endangered under that law.

§§ 780.17–780.18 [Reserved]

§ 780.19 What baseline information on hydrology, geology, and aquatic biology must I provide?

(a)(1) *General requirements.* Your permit application must include information on the hydrology, geology, and aquatic biology of the proposed permit area and the adjacent area in sufficient detail to assist in—

(i) Determining the probable hydrologic consequences of the operation upon the quality and quantity of surface water and groundwater in the proposed permit and adjacent areas, as required under § 780.20 of this part.

(ii) Determining the nature and extent of both the hydrologic reclamation plan required under § 780.22 of this part and the monitoring plans required under § 780.23 of this part.

(iii) Determining whether reclamation as required by this chapter can be accomplished.

(iv) Preparing the cumulative hydrologic impact assessment under § 780.21 of this part, including an evaluation of whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(2) *Core baseline water-quality data requirements for surface water and groundwater.* You must provide the following water-quality information for each groundwater and surface-water sample collected for baseline data purposes.

Parameter	Surface water	Groundwater
pH	Yes	Yes.
Specific conductance corrected to 25 °C (conductivity)	Yes	Yes.
Total dissolved solids	Yes	Yes.
Total suspended solids	Yes	No.
Hot acidity	Yes	Yes.
Total alkalinity	Yes	Yes.
Major anions (dissolved), including, at a minimum, bicarbonate, sulfate, and chloride.	Yes	Yes.
Major anions (total), including, at a minimum, bicarbonate, sulfate, and chloride.	Yes	No.
Major cations (dissolved), including, at a minimum, calcium, magnesium, sodium, and potassium.	Yes	Yes.
Major cations (total), including, at a minimum, calcium, magnesium, sodium, and potassium.	Yes	No.
Cation-anion balance of dissolved major cations and dissolved major anions.	Yes	Yes.

Surface Mining Reclamation and Enforcement, Interior

§ 780.19

Parameter	Surface water	Groundwater
Any cation or anion that constitutes a significant percentage of the total ionic charge balance, but that was not included in the analyses of major anions and major cations.	Yes	Yes.
Iron (dissolved)	Yes	Yes.
Iron (total)	Yes	No.
Manganese (dissolved)	Yes	Yes.
Manganese (total)	Yes	No.
Selenium (dissolved)	Yes	Yes.
Selenium (total)	Yes	No.
Any other parameter identified in any applicable National Pollutant Discharge Elimination System permit, if known at the time of application for the SMCRA permit.	Yes	No.
Temperature	Yes	Yes.

(b) *Groundwater information*—(1) *General requirements.* Your permit application must include information sufficient to document seasonal variations in the quality, quantity, and usage of groundwater, including all surface discharges, within the proposed permit and adjacent areas.

(2) *Underground mine pools.* If an underground mine pool is present within the proposed permit or adjacent areas, you must prepare an assessment of the characteristics of the mine pool, including seasonal changes in quality, quantity, and flow patterns, unless you demonstrate, and the regulatory authority finds, that the mine pool is not hydrologically connected to the proposed permit area. The determination of the probable hydrologic consequences of mining required under § 780.20 of this part also must include a discussion of the effect of the proposed mining operation on any underground mine pools within the proposed permit and adjacent areas.

(3) *Monitoring wells.* The regulatory authority must require the installation of properly-screened monitoring wells to document seasonal variations in the quality, quantity, and usage of groundwater.

(4) *Groundwater quality descriptions.* Groundwater quality descriptions must include baseline information on the parameters identified in paragraph (a)(2) of this section and any additional parameters that the regulatory authority determines to be of local importance.

(5) *Groundwater quantity descriptions.* At a minimum, groundwater quantity descriptions must include baseline data documenting seasonal variations in—

(i) The areal extent and saturated thickness of all potentially-impacted aquifers; and

(ii) Approximate rates of groundwater discharge or usage and the elevation of the water table or potentiometric head in—

(A) Each water-bearing coal seam to be mined.

(B) Each aquifer above each coal seam to be mined.

(C) Each potentially-impacted aquifer below the lowest coal seam to be mined.

(6) *Groundwater sampling requirements.*

(i) You must establish monitoring wells or equivalent monitoring points at a sufficient number of locations within the proposed permit and adjacent areas to determine groundwater quality, quantity, and movement in each aquifer above or immediately below the lowest coal seam to be mined. At a minimum, for each aquifer, you must locate monitoring points—

(A) Upgradient and downgradient of the proposed permit area; and

(B) Within the proposed permit area.

(ii)(A) To document seasonal variations in groundwater quality and quantity, you must collect samples and take the measurements identified in paragraph (b)(5) of this section from each location identified in paragraph (b)(6)(i) of this section at approximately equally-spaced monthly intervals for a minimum of 12 consecutive months.

(B) If approved by the regulatory authority, you may modify the interval or the 12-consecutive-month requirement specified in paragraph (b)(6)(ii)(A)

of this section if adverse weather conditions make travel to a location specified in paragraph (b)(6)(i) of this section hazardous or if the water at that location is completely frozen.

(C) In lieu of the frequency specified in paragraph (b)(6)(ii)(A) of this section, the regulatory authority may allow you to collect data quarterly for 2 years. The regulatory authority may initiate review of the permit application after collection and analysis of the first four quarterly groundwater samples, but it may not approve the application until after receipt and analysis of the final four quarterly groundwater samples.

(D) You must analyze the samples collected in paragraph (b)(6)(ii)(A) of this section for the applicable water quality parameters identified in paragraph (a)(2) of this section and any other parameters specified by the regulatory authority.

(iii) You must provide the Palmer Drought Severity Index for the proposed permit and adjacent areas for the initial baseline data collection period under paragraph (b)(6)(ii) of this section. The regulatory authority may extend the minimum data collection period specified in paragraph (b)(6)(ii) of this section whenever data available from the National Oceanic and Atmospheric Administration or similar databases indicate that the region in which the proposed operation is located experienced severe drought or abnormally high precipitation during the initial baseline data collection period.

(c) *Surface-water information*—(1) *General requirements*. Your permit application must include information sufficient to document seasonal variation in surface-water quality, quantity, and usage within the proposed permit and adjacent areas.

(2) *Surface-water quality descriptions*. Surface-water quality descriptions must include baseline information on the parameters identified in paragraph (a)(2) of this section and any additional parameters that the regulatory authority determines to be of local importance.

(3) *Surface-water quantity descriptions*. (i) At a minimum, surface-water quantity descriptions for perennial and intermittent streams within the pro-

posed permit and adjacent areas must include baseline data documenting—

(A) Peak-flow magnitude and frequency.

(B) Actual and anticipated usage.

(C) Seasonal flow variations.

(ii) All flow measurements under paragraph (c)(3)(i) of this section must be made using generally-accepted professional techniques approved by the regulatory authority. All techniques must be repeatable and must produce consistent results on successive measurements. Visual observations are not acceptable.

(4) *Surface-water sampling requirements*. (i) You must establish monitoring points at a sufficient number of locations within the proposed permit and adjacent areas to determine the quality and quantity of water in perennial and intermittent streams within those areas. At a minimum, you must locate monitoring points upgradient and downgradient of the proposed permit area in each perennial and intermittent stream within the proposed permit and adjacent areas.

(ii)(A) To document seasonal variations in surface-water quality and quantity, you must collect samples and take the measurements identified in paragraph (c)(3) of this section from each location identified in paragraph (c)(4)(i) of this section at approximately equally-spaced monthly intervals for a minimum of 12 consecutive months.

(B) If approved by the regulatory authority, you may modify the interval or the 12-consecutive-month sampling requirement specified in paragraph (c)(4)(ii)(A) of this section if adverse weather conditions make travel to a location specified in paragraph (c)(4)(i) of this section hazardous or if the water at that location is completely frozen.

(C) You must analyze the samples collected under paragraph (c)(4)(ii)(A) of this section for the applicable parameters identified in paragraph (a)(2) of this section and any other parameters specified by the regulatory authority. (iii) You must provide the Palmer Drought Severity Index for the proposed permit and adjacent areas for the initial baseline data collection period under paragraph (c)(4)(ii) of this section. The regulatory authority may

extend the minimum data collection period specified in paragraphs (c)(4)(ii) and (iii) of this section whenever data available from the National Oceanic and Atmospheric Administration or similar databases indicate that the region in which the proposed operation is located experienced severe drought or abnormally high precipitation during the initial baseline data collection period.

(5) *Precipitation measurements.* (i) You must provide records of precipitation amounts for the proposed permit area, using on-site, self-recording devices.

(ii) Precipitation records must be adequate to generate and calibrate a hydrologic model of the site. The regulatory authority will determine whether you must create such a model.

(iii) At the discretion of the regulatory authority, you may use precipitation data from a single self-recording device to provide baseline data for multiple permits located close to each other.

(6) *Stream assessments.* (i)(A) You must map and separately identify all perennial, intermittent, and ephemeral streams within the proposed permit area and all perennial and intermittent streams within the adjacent area.

(B) The map must show the location of the channel head of each stream identified in paragraph (c)(6)(i)(A) of this section whenever the applicable area includes a terminal reach of the stream.

(C) The map must show the location of transition points from ephemeral to intermittent and from intermittent to perennial (and vice versa, when applicable) for each stream identified in paragraph (c)(6)(i)(A) of this section whenever the applicable area includes such a transition point. If the U.S. Army Corps of Engineers has determined the location of a transition point, your application must be consistent with that determination.

(ii)(A) For all perennial and intermittent streams within the proposed permit area, you must describe the baseline stream pattern, profile, and dimensions, with measurements of channel slope, sinuosity, water depth, alluvial groundwater depth, depth to bedrock, bankfull depth, bankfull width, width of the flood-prone area, and dom-

inant in-stream substrate at a scale and frequency adequate to characterize the entire length of the stream within the proposed permit area.

(B) You must describe the general stream-channel configuration of ephemeral streams within the proposed permit area.

(iii) For all perennial, intermittent, and ephemeral streams within the proposed permit area, you must describe the vegetation growing along the banks of each stream, including—

(A) Identification of any hydrophytic vegetation located within or adjacent to the stream channel.

(B) The extent to which streamside vegetation consists of trees and shrubs.

(C) The percentage of channel canopy coverage.

(D) A scientific calculation of the species diversity of the vegetation.

(iv) You must identify all stream segments within the proposed permit and adjacent areas that appear on the list of impaired surface waters prepared under section 303(d) of the Clean Water Act, 33 U.S.C. 1313(d). You must identify the parameters responsible for the impaired condition and the total maximum daily loads associated with those parameters, when applicable.

(v) For all perennial, intermittent, and ephemeral streams within the proposed permit area and for all perennial and intermittent streams within the adjacent area, you must identify the extent of wetlands adjoining the stream and describe the quality of those wetlands.

(vi) Except as provided in paragraph (g) of this section, you must provide an assessment of the biological condition of—

(A) Each perennial stream within the proposed permit area.

(B) Each perennial stream within the adjacent area that could be affected by the proposed operation.

(C) Each intermittent stream within the proposed permit area, if a scientifically defensible protocol has been established for assessment of intermittent streams in the state or region in which the stream is located.

(D) Each intermittent stream within the adjacent area that could be affected by the proposed operation, if a scientifically defensible protocol has

been established for assessment of intermittent streams in the state or region in which the stream is located.

(vii) When determining the biological condition of a stream under paragraph (c)(6)(vi) of this section, you must adhere to a bioassessment protocol approved by the state or tribal agency responsible for preparing the water quality inventory required under section 305(b) of the Clean Water Act, 33 U.S.C. 1315(b), or to other scientifically defensible bioassessment protocols accepted by agencies responsible for implementing the Clean Water Act, 33 U.S.C. 1251 *et seq.*, modified as necessary to meet the following requirements. The protocol must—

(A) Be based upon the measurement of an appropriate array of aquatic organisms, including, at a minimum, benthic macroinvertebrates, identified to the genus level where possible, otherwise to the lowest practical taxonomic level.

(B) Result in the calculation of index values for both stream habitat and aquatic biota based on the reference condition.

(C) Provide index values that correspond to the capability of the stream to support its designated aquatic life uses under section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c).

(D) Include a quantitative assessment of in-stream and riparian habitat condition.

(E) Describe the technical elements of the bioassessment protocol, including but not limited to sampling methods, sampling gear, index period, sample processing and analysis, and quality assessment/quality control procedures.

(viii) Except as provided in paragraph (g) of this section, you must describe the biology of each intermittent stream within the proposed permit area, and each intermittent stream within the adjacent area that could be affected by the proposed operation, whenever an assessment of the biological condition of those streams is not required under paragraph (c)(6)(vi) of this section. When obtaining the data needed to prepare this description, you must—

(A) Sample each stream using a scientifically defensible sampling method

or protocol established or endorsed by an agency responsible for implementing the Clean Water Act, 33 U.S.C. 1251 *et seq.*;

(B) Identify benthic macroinvertebrates to the genus level where possible, otherwise to the lowest practical taxonomic level; and

(C) Describe the technical elements of the sampling protocol, including but not limited to sampling methods, sampling gear, index period, sample processing and analysis, and quality assessment/quality control procedures.

(d) *Additional information for discharges from previous coal mining operations.* If the proposed permit and adjacent areas contain any point-source discharges from previous surface or underground coal mining operations, you must sample those discharges during low-flow conditions of the receiving stream on a one-time basis. You must analyze the samples for the surface-water parameters identified in paragraph (a)(2) of this section and for both total and dissolved fractions of the following parameters—

- (1) Aluminum.
- (2) Arsenic.
- (3) Barium.
- (4) Beryllium.
- (5) Cadmium.
- (6) Copper.
- (7) Lead.
- (8) Mercury.
- (9) Nickel.
- (10) Silver.
- (11) Thallium.
- (12) Zinc.

(e) *Geologic information.* (1) Your application must include a description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined that may be adversely impacted by mining. The description must include—

(i) The areal and structural geology of the proposed permit and adjacent areas.

(ii) Other parameters that may influence the required reclamation.

(iii) An explanation of how the areal and structural geology and other parameters affect the occurrence, availability, movement, quantity, and quality of potentially impacted surface water and groundwater.

(2) The description required by paragraph (e)(1) of this section must be based on all of the following—

(i) The cross-sections, maps, and plans required by § 779.24 of this chapter.

(ii) The information obtained under paragraphs (e)(3) and (4) of this section.

(iii) Geologic literature and practices.

(3) For any portion of the proposed permit area in which the strata down to the coal seam or seams to be mined will be removed or are already exposed, you must collect and analyze samples collected from test borings; drill cores; or fresh, unweathered, uncontaminated samples from rock outcrops, down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest seam to be mined that may be adversely impacted by mining. Your application must include the following data and analyses:

(i) Logs showing the lithologic characteristics, including physical properties and thickness of each stratum, and the location of any groundwater encountered.

(ii) Chemical analyses identifying those strata that may contain acid-forming materials, toxic-forming materials, or alkalinity-producing materials and the extent to which each stratum contains those materials.

(iii) Chemical analyses of all coal seams for acid-forming or toxic-forming materials, including, but not limited to, total sulfur and pyritic sulfur.

(4) You must provide any additional geologic information and analyses that the regulatory authority determines to be necessary to protect the hydrologic balance or to meet the performance standards of this chapter.

(5) You may request the regulatory authority to waive the requirements of paragraph (e)(3) of this section, in whole or in part. The regulatory authority may grant the waiver request only after finding in writing that the collection and analysis of such data is

unnecessary because other representative information is available to the regulatory authority in a satisfactory form.

(f) *Cumulative impact area information.*

(1) You must obtain the hydrologic, geologic, and biological information necessary to assess the impacts of both the proposed operation and all anticipated mining on surface-water and groundwater systems in the cumulative impact area, as required by § 780.21 of this part, from the appropriate federal or state agencies, to the extent that the information is available from those agencies.

(2) If the information identified as necessary in paragraph (f)(1) of this section is not available from other federal or state agencies, you may gather and submit this information to the regulatory authority as part of the permit application. As an alternative to collecting new information, you may submit data and analyses from nearby mining operations if the site of those operations is representative of the proposed operations in terms of topography, hydrology, geology, geochemistry, and method of mining.

(3) The regulatory authority may not approve the permit application until the information identified as necessary in paragraph (f)(1) of this section has been made available to the regulatory authority and the regulatory authority has used that information to prepare the cumulative hydrologic impact assessment required by § 780.21 of this part.

(g) *Exception for operations that avoid streams.* Upon your request, the regulatory authority may waive the biological information requirements of paragraphs (c)(6)(vi) through (viii) of this section if you demonstrate, and if the regulatory authority finds in writing, that your operation will not—

(1) Mine through or bury a perennial or intermittent stream;

(2) Create a point-source discharge to any perennial, intermittent, or ephemeral stream; or

(3) Modify the base flow of any perennial or intermittent stream.

(h) *Coordination with Clean Water Act agencies.* The regulatory authority will make best efforts to—

(1) Consult in a timely manner with the agencies responsible for issuing permits, authorizations, and certifications under the Clean Water Act;

(2) Minimize differences in baseline data collection points and parameters; and

(3) Share data to the extent practicable and consistent with each agency's mission, statutory requirements, and implementing regulations.

(i) *Corroboration of baseline data.* The regulatory authority must either corroborate a sample of the baseline information in your application or arrange for a third party to conduct the corroboration at your expense. Corroboration may include, but is not limited to, simultaneous sample collection and analysis, visual observation of sample collection, use of field measurements, or comparison of application data with application or monitoring data from adjacent operations.

§ 780.20 How must I prepare the determination of the probable hydrologic consequences of my proposed operation (PHC determination)?

(a) *Content of PHC determination.* Your permit application must contain a determination of the probable hydrologic consequences of the proposed operation upon the quality and quantity of surface water and groundwater and, except as provided in § 780.19(g) of this part, upon the biology of perennial and intermittent streams under seasonal flow conditions for the proposed permit and adjacent areas. You must base the PHC determination on an analysis of the baseline hydrologic, geologic, biological, and other information required under § 780.19 of this part. It must include findings on:

(1) Whether the operation may cause material damage to the hydrologic balance outside the permit area.

(2) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface water or groundwater, including, but not limited to, a discharge of toxic mine drainage after the completion of land reclamation.

(3) Whether the proposed operation may result in contamination, diminution, or interruption of an underground or surface source of water within the

proposed permit or adjacent areas that is used for a domestic, agricultural, industrial, or other legitimate purpose.

(4) Whether the proposed operation will intercept aquifers in overburden strata or aquifers in underground mine voids (mine pools) or create aquifers in spoil placed in the backfilled area and, if so, what impacts the operation would have on those aquifers, both during mining and after reclamation, and the effect of those impacts on the hydrologic balance.

(5) What impact the proposed operation will have on:

(i) Sediment yield and transport from the area to be disturbed.

(ii) The quality of groundwater and surface water within the proposed permit and adjacent areas. At a minimum, unless otherwise specified, the finding must address the impacts of the operation on both groundwater and surface water in terms of the parameters listed in § 780.19(a)(2) of this part and any additional water quality parameters that the regulatory authority determines to be of local importance.

(iii) Flooding and precipitation runoff patterns and characteristics.

(iv) Peak-flow magnitude and frequency for perennial and intermittent streams within the proposed permit and adjacent areas.

(v) Seasonal variations in streamflow.

(vi) The availability of groundwater and surface water, including the impact of any diversion of surface or subsurface flows to underground mine workings or any changes in watershed size as a result of the postmining surface configuration.

(vii) The biology of perennial and intermittent streams within the proposed permit and adjacent areas, except as provided in § 780.19(g) of this part.

(viii) Other characteristics as required by the regulatory authority.

(b) *Supplemental information.* You must provide any supplemental information that the regulatory authority determines is needed to fully evaluate the probable hydrologic consequences of the proposed operation and to plan remedial and reclamation activities. This information may include, but is

not limited to, additional drilling, geochemical analyses of overburden materials, aquifer tests, hydrogeologic analyses of the water-bearing strata, analyses of flood flows, or analyses of other characteristics of water quality or quantity, including the stability of underground mine pools that might be affected by the proposed operation.

(c) *Subsequent reviews of PHC determinations.* (1) The regulatory authority must review each application for a permit revision to determine whether a new or updated PHC determination is needed.

(2) The regulatory authority must require that you prepare a new or updated PHC determination if the review under paragraph (c)(1) of this section finds that one is needed.

§ 780.21 What requirements apply to preparation, use, and review of the cumulative hydrologic impact assessment (CHIA)?

(a) *General requirements.* (1) The regulatory authority must prepare a written assessment of the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining upon surface-water and groundwater systems in the cumulative impact area. This assessment, which is known as the CHIA, must be sufficient to determine, for purposes of permit application approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(2) In preparing the CHIA, the regulatory authority must consider relevant information on file for other mining operations located within the cumulative impact area or in similar watersheds.

(3) As provided in § 780.19(f) of this part, the regulatory authority may not approve a permit application until the hydrologic, geologic, and biological information needed to prepare the CHIA has been made available to the regulatory authority and the regulatory authority has used that information to prepare the CHIA.

(b) *Contents.* The CHIA must include—

(1) A map of the cumulative impact area. At a minimum, the map must identify and display—

(i) Any difference in the boundaries of the cumulative impact area for groundwater and surface water.

(ii) The locations of all previous, current, and anticipated surface and underground mining.

(iii) The locations of all baseline data collection sites within the proposed permit and adjacent areas under § 780.19 of this part.

(iv) Designated uses of surface water under section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c).

(2) A description of all previous, existing, and anticipated surface and underground coal mining within the cumulative impact area, including, at a minimum, the coal seam or seams mined or to be mined, the extent of mining, and the reclamation status of each operation.

(3) A quantitative and qualitative description of baseline hydrologic information for the proposed permit and adjacent areas under § 780.19 of this part, including—

(i) The quality and quantity of surface water and groundwater and seasonal variations therein.

(ii) The quality and quantity of water needed to support, maintain, or attain each—

(A) Designated use of surface water under section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), or, if there are no designated uses, each premining use of surface water.

(B) Premining use of groundwater.

(iii) A description and/or maps of the local and regional groundwater systems.

(iv) To the extent required by § 780.19(c)(6)(vi) of this part, the biological condition of perennial and intermittent streams and, to the extent required by § 780.19(c)(6)(viii) of this part, the biology of intermittent streams not included within § 780.19(c)(6)(vi) of this part.

(4) A discussion of any potential concerns identified in the PHC determination required under § 780.20 of this part and how those concerns have been or will be resolved.

(5) A qualitative and quantitative assessment of how all anticipated surface and underground mining may impact the quality of surface water and groundwater in the cumulative impact

§ 780.21

area, expressed in terms of each baseline parameter identified under § 780.19 of this part.

(6) Site-specific numeric or narrative thresholds for material damage to the hydrologic balance outside the permit area. These thresholds must also be included as a condition of the permit. When identifying thresholds to define when material damage to the hydrologic balance outside the permit area would occur in connection with a particular permit, the regulatory authority will—

(i) In consultation with the Clean Water Act authority, as appropriate, undertake a comprehensive evaluation that considers the following factors—

(A) The baseline data collected under § 780.19 of this part;

(B) The PHC determination prepared under § 780.20 of this part;

(C) Applicable water quality standards adopted under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c);

(D) Applicable state or tribal standards for surface water or groundwater;

(E) Ambient water quality criteria developed under section 304(a) of the Clean Water Act, 33 U.S.C. 1314(a);

(F) The biological requirements of any species listed as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, when those species; designated critical habitat for those species; habitat occupied by those species, such as nesting, resting, feeding, and breeding areas; and any areas in which those species are present only for a short time, but that are important to their persistence, such as migration and dispersal corridors, are present within the cumulative impact area; and

(G) Other pertinent information and considerations to identify the parameters for which thresholds are necessary.

(ii) In consultation with the Clean Water Act authority, adopt numeric thresholds as appropriate, taking into consideration relevant contaminants for which there are water quality criteria under the Clean Water Act, 33 U.S.C. 1251 *et seq.* The regulatory authority may not adopt a narrative threshold for parameters for which numeric water quality criteria exist

30 CFR Ch. VII (7–1–17 Edition)

under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

(iii) Identify the portion of the cumulative impact area to which each threshold applies. Parameters and thresholds may vary from subarea to subarea within the cumulative impact area when appropriate, based upon differences in watershed characteristics and variations in the geology, hydrology, and biology of the cumulative impact area.

(iv) Identify the points within the cumulative impact area at which the permittee will monitor the impacts of the operation on surface water and groundwater outside the permit area and explain how those locations will facilitate timely detection of the impacts of the operation on surface water and groundwater outside the permit area in a scientifically defensible manner. The permit applicant must incorporate those monitoring locations into the surface water and groundwater monitoring plans submitted under § 780.23 of this part.

(7) Evaluation thresholds for critical water quality and quantity parameters, as determined by the regulatory authority. After permit issuance, if monitoring results at the locations designated under paragraph (b)(6)(iv) of this section document exceedance of an evaluation threshold, the regulatory authority, in consultation with the Clean Water Act authority, as appropriate, must determine the cause of the exceedance. If the mining operation is responsible for the exceedance and if the adverse trend is likely to continue in the absence of corrective action, the regulatory authority must issue a permit revision order under § 774.10 of this chapter. The order must require that the permittee reassess the adequacy of the PHC determination prepared under § 780.20 of this part and the hydrologic reclamation plan approved under § 780.20 of this part and develop measures to prevent material damage to the hydrologic balance outside the permit area.

(8) An assessment of how all anticipated surface and underground mining may affect groundwater movement and availability within the cumulative impact area.

(9) After consultation with the Clean Water Act authority, as appropriate, an evaluation, with references to supporting data and analyses, of whether the CHIA will support a finding that the operation has been designed to prevent material damage to the hydrologic balance outside the permit area. To support this finding, the CHIA must include the following determinations, with appropriate documentation, or an explanation of why the determination is not necessary or appropriate:

(i) Except as provided in §§ 780.22(b) and 816.40 of this chapter, the proposed operation will not—

(A) Cause or contribute to a violation of applicable water quality standards adopted under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), or other applicable state or tribal water quality standards;

(B) Cause or contribute to a violation of applicable state or tribal groundwater quality standards;

(C) Preclude attainment of a premining use of a surface water located outside the permit area when no water quality standards have been established for that surface water; or

(D) Preclude attainment of any premining use of groundwater located outside the permit area.

(ii) The proposed operation has been designed to ensure that neither the mining operation nor the final configuration of the reclaimed area will result in changes in the size or frequency of peak flows from precipitation events or thaws that would cause an increase in flooding outside the permit area, when compared with premining conditions.

(iii) Perennial and intermittent streams located outside the permit area will continue to have sufficient base flow at all times during and after mining and reclamation to maintain their premining flow regime; *i.e.*, perennial streams located outside the permit area will retain perennial flows and intermittent streams located outside the permit area will retain intermittent flows both during and after mining and reclamation. Conversion of an intermittent stream to a perennial stream or conversion of an ephemeral stream to an intermittent or perennial stream outside the permit area may be acceptable, provided the conversion

would be consistent with paragraph (b)(9)(i) of this section and would not result in a violation of the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*

(iv) The proposed operation has been designed to protect the quantity and quality of water in any aquifer that significantly ensures the prevailing hydrologic balance.

(c) *Subsequent reviews.* (1) The regulatory authority must review each application for a significant permit revision to determine whether a new or updated CHIA is needed. The regulatory authority must document the review, including the analysis and conclusions, together with the rationale for the conclusions, in writing.

(2) The regulatory authority must re-evaluate the CHIA at intervals not to exceed 3 years to determine whether the CHIA remains accurate and whether the material damage and evaluation thresholds in the CHIA and the permit are adequate to ensure that material damage to the hydrologic balance outside the permit area will not occur. This evaluation must include a review of all biological and water monitoring data from both this operation and all other coal mining operations within the cumulative impact area.

(3) The regulatory authority must prepare a new or updated CHIA if the review conducted under paragraph (c)(1) or (2) of this section finds that one is needed.

§ 780.22 What information must I include in the hydrologic reclamation plan and what information must I provide on alternative water sources?

(a) *Hydrologic reclamation plan.* Your permit application must include a plan, with maps and descriptions, that demonstrates how the proposed operation will comply with the applicable provisions of subchapter K of this chapter that relate to protection of the hydrologic balance. The plan must—

(1) Be specific to local hydrologic conditions.

(2) Include preventive or remedial measures for any potential adverse hydrologic consequences identified in the PHC determination prepared under § 780.20 of this part. These measures must describe the steps that you will take during mining and reclamation

§ 780.23

30 CFR Ch. VII (7–1–17 Edition)

through final bond release under §§ 800.40 through 800.43 of this chapter to—

(i) Minimize disturbances to the hydrologic balance within the proposed permit and adjacent areas.

(ii) Prevent material damage to the hydrologic balance outside the proposed permit area.

(iii) Meet applicable water quality laws and regulations.

(iv) Protect the rights of existing water users in accordance with paragraph (b) of this section and § 816.40 of this chapter.

(v) Avoid acid or toxic discharges to surface water and avoid or, if avoidance is not possible, minimize degradation of groundwater.

(vi) Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or to runoff outside the proposed permit area.

(vii) Provide water-treatment facilities when needed.

(viii) Control surface-water runoff in accordance with § 780.29 of this part.

(ix) Restore the approximate premining recharge capacity.

(3) Address the impacts of any transfers of water among active and abandoned mines within the proposed permit and adjacent areas.

(4) Describe the steps that you will take during mining and reclamation through final bond release under §§ 800.40 through 800.43 of this chapter to protect and enhance aquatic life and related environmental values to the extent possible using the best technology currently available.

(b) *Alternative water source information.* (1) If the PHC determination prepared under § 780.20 of this part indicates that the proposed mining operation may result in contamination, diminution, or interruption of an underground or surface source of water that is used for a domestic, agricultural, industrial, or other legitimate purpose, you must—

(i) Identify alternative water sources that are available, feasible to develop, and of suitable quality and sufficient in quantity to support the uses existing before mining and, when applicable, the approved postmining land uses.

(ii) Develop a water supply replacement plan that includes construction details, costs, and an implementation schedule.

(2) If you cannot identify an alternative water source that is both suitable and available, you must modify your application to prevent the proposed operation from contaminating, interrupting, or diminishing any water supply protected under § 816.40 of this chapter.

(3)(i) When a suitable alternative water source is available, your operation plan must require that the alternative water supply be developed and installed on a permanent basis before your operation advances to the point at which it could adversely affect an existing water supply protected under § 816.40 of this chapter.

(ii) Paragraph (b)(3)(i) of this section will not apply immediately if you demonstrate, and the regulatory authority finds, that the proposed operation also would adversely affect the replacement supply. In that case, your plan must require provision of a temporary replacement water supply until it is safe to install the permanent replacement water supply required under paragraph (b)(3)(i) of this section.

(4) Your application must describe how you will provide both temporary and permanent replacements for any unexpected losses of water supplies protected under § 816.40 of this chapter.

§ 780.23 What information must I include in plans for the monitoring of groundwater, surface water, and the biological condition of streams during and after mining?

(a) *Groundwater monitoring plan*—(1) *General requirements.* Your permit application must include a groundwater monitoring plan adequate to evaluate the impacts of the mining operation on groundwater in the proposed permit and adjacent areas and to determine in a timely manner whether corrective action is needed to prevent the operation from causing material damage to the hydrologic balance outside the permit area. The plan must—

(i) Identify the locations to be monitored, the measurements to be taken at each location, and the parameters to be analyzed in samples collected at each location.

- (ii) Specify the sampling frequency.
- (iii) Establish a sufficient number of appropriate monitoring locations to evaluate the accuracy of the findings in the PHC determination, to identify adverse trends, and to determine, in a timely fashion, whether corrective action is needed to prevent material damage to the hydrologic balance outside the permit area. At a minimum, the plan must include—
 - (A) For each aquifer above or immediately below the lowest coal seam to be mined, monitoring wells or equivalent monitoring points located upgradient and downgradient of the proposed operation.
 - (B) Monitoring wells placed in backfilled portions of the permit area after backfilling and grading of all or a portion of the permit area is completed, unless you demonstrate, and the regulatory authority finds in writing, that wells in the backfilled area are not necessary to determine or predict the future impact of the mining operation on groundwater quality.
 - (C) Monitoring wells in any existing underground mine workings that would have a direct hydrologic connection to the proposed operation.—
 - (D) Monitoring wells or equivalent monitoring points at the locations specified in the CHIA under § 780.21(b)(6)(iv) of this part.
- (iv) Describe how the monitoring data will be used to—
 - (A) Determine the impacts of the operation upon the hydrologic balance.
 - (B) Determine the impacts of the operation upon the biology of surface waters within the permit and adjacent areas.
 - (C) Prevent material damage to the hydrologic balance outside the permit area.
 - (v) Describe how the water samples will be collected, preserved, stored, transmitted for analysis, and analyzed in accordance with the sampling, analysis, and reporting requirements of paragraphs (a) and (b) of § 777.13 of this chapter.
- (2) *Parameters*—(i) *General criteria for selection of parameters.* The plan must provide for the monitoring of parameters for which an evaluation threshold under § 780.21(b)(7) of this part exists. It also must provide for the monitoring of

other parameters that could be affected by the proposed operation to the extent needed to assess the—

(A) Accuracy of the findings and predictions in the PHC determination prepared under § 780.20 of this part.

(B) Suitability of the quality and quantity of groundwater for premining uses of the groundwater within the permit and adjacent areas, subject to § 816.40 of this chapter.

(C) Suitability of the quality and quantity of groundwater to support the premining land uses within the permit and adjacent areas.

(ii) *Minimum sampling and analysis requirements.* At a minimum, the plan must require collection and analysis of a sample from each monitoring point every 3 months, with data submitted to the regulatory authority at the same frequency. The data must include—

(A) Analysis of each sample for the groundwater parameters listed in § 780.19(a)(2) of this part.

(B) Water levels in each well used for monitoring purposes and discharge rates from each spring or underground opening used for monitoring purposes.

(C) Analysis of each sample for parameters detected by the baseline sampling and analysis conducted under § 780.19(d) of this part.

(D) Analysis of each sample for all parameters for which there is an evaluation threshold under § 780.21(b)(7) of this part.

(E) Analysis of each sample for other parameters of concern, as determined by the regulatory authority, based upon the information and analyses required under §§ 780.19 through 780.21 of this part.

(3) *Regulatory authority review and action.* (i) Upon completing the technical review of the application, the regulatory authority may require that you revise the plan to increase the frequency of monitoring, to require monitoring of additional parameters, or to require monitoring at additional locations, if the additional requirements would contribute to protection of the hydrologic balance.

(ii) After completing preparation of the cumulative hydrologic impact assessment required under § 780.21 of this

part, the regulatory authority must reconsider the adequacy of the monitoring plan and require that you make any necessary changes.

(4) *Exception.* If you can demonstrate, on the basis of the PHC determination prepared under § 780.20 of this part or other available information that a particular aquifer in the proposed permit and adjacent areas has no existing or foreseeable use for agricultural or other human purposes or for fish and wildlife purposes and does not serve as an aquifer that significantly ensures the hydrologic balance within the cumulative impact area, the regulatory authority may waive monitoring of that aquifer.

(b) *Surface-water monitoring plan*—(1) *General requirements.* Your permit application must include a surface-water monitoring plan adequate to evaluate the impacts of the mining operation on surface water in the proposed permit and adjacent areas and to determine in a timely manner whether corrective action is needed to prevent the operation from causing material damage to the hydrologic balance outside the permit area. The plan must—

(i) Identify the locations to be monitored, the measurements to be taken at each location, and the parameters to be analyzed in samples collected at each location.

(ii)(A) Require on-site measurement of precipitation amounts at specified locations within the permit area, using self-recording devices.

(B) Measurement of precipitation amounts must continue through Phase II bond release under § 800.42(c) of this chapter or for any longer period specified by the regulatory authority.

(C) At the discretion of the regulatory authority, you may use precipitation data from a single self-recording device to provide monitoring data for multiple permits that are contiguous or nearly contiguous if a single station would provide adequate and accurate coverage of precipitation events occurring in that area.

(iii) Specify the sampling frequency.

(iv) Establish a sufficient number of appropriate monitoring locations to evaluate the accuracy of the findings in the PHC determination, to identify adverse trends, and to determine, in a

timely fashion, whether corrective action is needed to prevent material damage to the hydrologic balance outside the permit area. At a minimum, the plan must include—

(A) Monitoring of point-source discharges from the proposed operation.

(B) Monitoring locations upgradient and downgradient of the proposed permit area in each perennial and intermittent stream within the proposed permit and adjacent areas, with the exception that no upgradient monitoring location is needed for a stream when the operation will mine through the headwaters of that stream.

(C) Monitoring locations specified in the CHIA under § 780.21(b)(6)(vi) of this part.

(v) Describe how the monitoring data will be used to—

(A) Determine the impacts of the operation upon the hydrologic balance.

(B) Determine the impacts of the operation upon the biology of surface waters within the permit and adjacent areas.

(C) Prevent material damage to the hydrologic balance outside the permit area.

(vi) Describe how the water samples will be collected, preserved, stored, transmitted for analysis, and analyzed in accordance with the sampling, analysis, and reporting requirements of paragraphs (a) and (b) of § 777.13 of this chapter.

(2) *Parameters*—(i) *General criteria for selection of parameters.* The plan must provide for the monitoring of parameters—

(A) For which there are applicable effluent limitation guidelines under 40 CFR part 434.

(B) Needed to assess the accuracy of the findings and predictions in the PHC determination prepared under § 780.20 of this part.

(C) Needed to assess the adequacy of the surface-water runoff control plan prepared under § 780.29 of this part.

(D) Needed to assess the suitability of the quality and quantity of surface water in the permit and adjacent areas for all designated uses under section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), or, if there are no designated uses, all premining uses of surface

water in the permit and adjacent areas, subject to §816.40 of this chapter; and—

(E) Needed to assess the suitability of the quality and quantity of surface water in the permit and adjacent areas to support the premining land uses.

(F) For which there is an evaluation threshold under §780.21(b)(7) of this part.

(ii) *Minimum sampling and analysis requirements for monitoring locations other than point-source discharges.* For all monitoring locations other than point-source discharges, the plan must require collection and analysis of a sample from each monitoring point at least every 3 months, with data submitted to the regulatory authority at the same frequency. The data must include—

(A) Analysis of each sample for the surface-water parameters listed in §780.19(a)(2) of this part.

(B) Flow rates at each sampling location. The plan must require use of generally-accepted professional flow measurement techniques. Visual observations are not acceptable.

(C) Analysis of each sample for parameters detected by the baseline sampling and analysis conducted under §780.19(d) of this part.

(D) Analysis of each sample for all parameters for which there is an evaluation threshold under §780.21(b)(7) of this part.

(E) Analysis of each sample for other parameters of concern, as determined by the regulatory authority, based upon the information and analyses required under §§780.19 through 780.21 of this part.

(iii) *Minimum requirements for point-source discharges.* For point-source discharges, the plan must—

(A) Provide for monitoring in accordance with 40 CFR parts 122, 123, and 434 and as required by the National Pollutant Discharge Elimination System permitting authority.

(B) Require measurement of flow rates, using generally-accepted professional flow measurement techniques. Visual observations are not acceptable.

(iv) *Requirements related to the Clean Water Act.* You must revise the plan to incorporate any site-specific monitoring requirements imposed by the National Pollutant Discharge Elimination System permitting authority or

the agency responsible for administration of section 404 of the Clean Water Act, 33 U.S.C. 1344, subsequent to submission of the SMCRA permit application.

(3) *Regulatory authority review and action.* (i) Upon completing the technical review of your application, the regulatory authority may require that you revise the plan to increase the frequency of monitoring, to require monitoring of additional parameters, or to require monitoring at additional locations, if the additional requirements would contribute to protection of the hydrologic balance.

(ii) After completing preparation of the cumulative hydrologic impact assessment required under §780.21 of this part, the regulatory authority must reconsider the adequacy of the monitoring plan and require that you make any necessary changes.

(c) *Biological condition monitoring plan—*(1) *General requirements.* Except as provided in paragraph (d) of this section, your permit application must include a plan for monitoring the biological condition of each perennial and intermittent stream within the proposed permit and adjacent areas for which baseline biological condition data was collected under §780.19(c)(6)(vi) of this part. The plan must be adequate to evaluate the impacts of the mining operation on the biological condition of those streams and to determine in a timely manner whether corrective action is needed to prevent the operation from causing material damage to the hydrologic balance outside the permit area.

(2) *Monitoring techniques.* The plan must—

(i) Require use of a bioassessment protocol that meets the requirements of §780.19(c)(6)(vii) of this part.

(ii) Identify monitoring locations in each perennial and intermittent stream within the proposed permit and adjacent areas for which baseline biological condition data was collected under §780.19(c)(6)(vi) of this part.

(iii) Establish a sampling frequency that must be no less than annual, but not so frequent as to unnecessarily deplete the populations of the species being monitored.

§ 780.24

30 CFR Ch. VII (7–1–17 Edition)

(iv) Require submission of monitoring data to the regulatory authority on an annual basis.

(3) *Regulatory authority review and action.* (i) Upon completing review of your application, the regulatory authority may require that you revise the plan to adjust monitoring locations, the frequency of monitoring, and the species to be monitored.

(ii) After completing preparation of the cumulative hydrologic impact assessment required under § 780.21 of this part, the regulatory authority must reconsider the adequacy of the monitoring plan and require that you make any necessary changes.

(d) *Exceptions*—(1) *Lands eligible for re-mining.* (i) If the proposed permit area includes only lands eligible for re-mining, you may request that the regulatory authority modify the groundwater and surface water monitoring plan requirements of paragraphs (a) and (b) of this section and modify or waive the biological condition monitoring plan requirements of paragraph (c) of this section.

(ii) The regulatory authority may approve your request if it determines that a less extensive monitoring plan will be adequate to monitor the impacts of the proposed operation on groundwater and surface water, based upon an evaluation of the quality of groundwater and surface water and the biological condition of the receiving stream at the time of application.

(2) *Operations that avoid streams.* (i) Upon your request, the regulatory authority may waive the biological condition monitoring plan requirements of paragraph (c) of this section if you demonstrate, and if the regulatory authority finds in writing, that your operation will not—

(A) Mine through or bury any perennial or intermittent stream;

(B) Create a point-source discharge to any perennial, intermittent, or ephemeral stream; or

(C) Modify the base flow of any perennial or intermittent stream.

(ii) If you meet all the criteria of paragraph (d)(2)(i) of this section with the exception of paragraph (d)(2)(i)(B) of this section, you may request, and the regulatory authority may approve, limiting the biological condition moni-

toring plan requirements of paragraph (c) of this section to only the stream that will receive the point-source discharge.

(e) *Coordination with Clean Water Act agencies.* The regulatory authority will make best efforts to—

(1) Consult in a timely manner with the agencies responsible for issuing permits, authorizations, and certifications under the Clean Water Act;

(2) Minimize differences in monitoring locations and reporting requirements; and

(3) Share data to the extent practicable and consistent with each agency's mission, statutory requirements, and implementing regulations.

§ 780.24 What requirements apply to the postmining land use?

(a) *What postmining land use information must my application contain?* (1) You must describe and map the proposed use or uses of the land within the proposed permit area following reclamation, based on the categories of land uses listed in the definition of land use in § 701.5 of this chapter.

(2) Except for prime farmland historically used for cropland, you must discuss the utility and capability of the reclaimed land to support the proposed postmining land use and the variety of uses that the land was capable of supporting before any mining, as identified under § 779.22 of this chapter, regardless of the proposed postmining land use.

(3) You must explain how the proposed postmining land use is consistent with existing state and local land use policies and plans.

(4) You must include a copy of the comments concerning the proposed postmining use that you receive from the—

(i) Legal or equitable owner of record of the surface of the proposed permit area; and

(ii) State and local government agencies that would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(5) You must explain how the proposed postmining land use will be

achieved and identify any support activities or facilities needed to achieve that use.

(6) If you propose to restore the proposed permit area or a portion thereof to a condition capable of supporting a higher or better use or uses rather than to a condition capable of supporting the uses that the land could support before any mining, you must provide the demonstration required under paragraph (b)(1) of this section.

(b) *What requirements apply to the approval of alternative postmining land uses?*—(1) *Application requirements.* If you propose to restore the proposed permit area or a portion thereof to a condition capable of supporting a higher or better use or uses, rather than to a condition capable of supporting the uses that the land could support before any mining, you must demonstrate that the proposed higher or better use or uses meet the following criteria:

(i) There is a reasonable likelihood that the proposed use or uses will be achieved after mining and reclamation, as documented by, for example, real estate and construction contracts, plans for installation of any necessary infrastructure, procurement of any necessary zoning approvals, landowner commitments, economic forecasts, and studies by land use planning agencies.

(ii) The proposed use or uses do not present any actual or probable hazard to public health or safety or any threat of water diminution or pollution.

(iii) The proposed use or uses will not—

(A) Be impractical or unreasonable.

(B) Be inconsistent with applicable land use policies or plans.

(C) Involve unreasonable delay in implementation.

(D) Cause or contribute to a violation of federal, state, tribal or local law.

(E) Result in changes in the size or frequency of peak flows from the reclaimed area that would cause an increase in flooding when compared with the conditions that would exist if the land were restored to a condition capable of supporting the uses that it was capable of supporting before any mining.

(F) Cause the total volume of flow from the reclaimed area, during every season of the year, to vary in a way

that would preclude attainment of any designated use of a surface water located outside the permit area under section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), or, if there are no designated uses, any premining use of a surface water located outside the permit area.

(G) Cause a change in the temperature or chemical composition of the water that would preclude attainment of any designated use of a surface water under section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), or, if there are no designated uses, any premining use of a surface water located outside the permit area.

(2) *Regulatory authority decision requirements.* The regulatory authority may approve your request if it—

(i) Consults with the landowner or the land management agency having jurisdiction over the lands to which the use would apply; and

(ii) Finds in writing that you have made the demonstration required under paragraph (b)(1) of this section. Landowner consent alone is an insufficient basis for this finding.

(c) *What requirements apply to permit revision applications that propose to change the postmining land use?* (1) You may propose to change the postmining land use for all or a portion of the permit area at any time through the permit revision process under § 774.13 of this chapter.

(2) If you propose a higher or better postmining land use, the requirements of paragraphs (b)(1) and (2) of this section will apply and the application must be considered a significant permit revision for purposes of § 774.13(b)(2) of this chapter.

(d) *What restrictions apply to the retention of mining-related structures?* (1) If you propose to retain mining-related structures other than roads and impoundments for potential future use as part of the postmining land use, you must demonstrate, and the regulatory authority must find in writing, that the size and characteristics of the structures are consistent with and proportional to the needs of the postmining land use.

(2) The amount of bond required for the permit under part 800 of this chapter must include the cost of removing

§ 780.25

30 CFR Ch. VII (7–1–17 Edition)

the structure and reclaiming the land upon which it was located to a condition capable of supporting the premining uses. The bond must include the cost of restoring the site to its approximate original contour in accordance with § 816.102 of this chapter and revegetating the site in accordance with the revegetation plan approved under § 780.12(g) of this part for the permit area surrounding the site upon which the structure was previously located.

(3) The reclamation plan submitted under § 780.12 of this part must specify that if a structure is not in use as part of the approved postmining land use by the end of the revegetation responsibility period specified in § 816.115 of this chapter, you must remove the structure and reclaim the land upon which it was located by restoring the approximate original contour in accordance with § 816.102 of this chapter and revegetating the site in accordance with the revegetation plan approved under § 780.12(g) of this part for the permit

area surrounding the site upon which the structure was previously located.

(e) *What special provisions apply to previously mined areas?* If land that was previously mined cannot be reclaimed to the land use that existed before any mining because of the previously mined condition, you may propose, and the regulatory authority may approve, any appropriate postmining land use for that land that is both achievable and compatible with land uses in the surrounding area, provided that restoration of the land to that capability does not require disturbance of land previously unaffected by mining.

§ 780.25 What information must I provide for siltation structures, impoundments, and refuse piles?

(a) *How do I determine the hazard potential of a proposed impoundment?* You must use the following table to identify the hazard potential classification of each proposed impoundment that includes a dam:

Hazard potential classification	Loss of human life in event of failure	Economic, environmental, or lifeline losses ¹ in event of failure
Low	None expected	Low potential; generally limited to property owned by the permittee.
Significant	None expected	Yes.
High	Loss of one or more lives probable ...	Yes, but not necessary for this classification.

¹ Lifeline losses refer to disruption of lifeline facilities, which include, but are not limited to, important public utilities, highways, and railroads.

(b) *How must I prepare the general plan for proposed siltation structures, impoundments, and refuse piles?* If you propose to construct a siltation structure, impoundment, or refuse pile, your application must include a general plan that meets the following requirements:

(1) The plan must be prepared by, or under the direction of, and certified by a qualified registered professional engineer, a professional geologist, or, in any state that authorizes land surveyors to prepare and certify such plans, a qualified registered professional land surveyor, with assistance from experts in related fields such as landscape architecture.

(2) The plan must contain a description, map, and cross-sections of the structure and its location.

(3) The plan must contain the hydrologic and geologic information required

to assess the hydrologic impact of the structure.

(4)(i) The plan must contain a report describing the results of a geotechnical investigation of the potential effect on the structure if subsurface strata subside as a result of past, current, or future underground mining operations beneath or within the proposed permit and adjacent areas. When necessary, the investigation report also must identify design and construction measures that would prevent adverse subsidence-related impacts on the structure.

(ii) Except for structures that would meet the criteria in § 77.216(a) of this title or that would have a significant or high hazard potential under paragraph (a) of this section, the requirements of paragraph (b)(4)(i) of this section do not apply—

(A) In areas with 26.0 inches or less of average annual precipitation; or

(B) To siltation structures.

(5)(i) The plan must contain an analysis of the potential for each impoundment to drain into subjacent underground mine workings, together with an analysis of the impacts of such drainage.

(ii) Except for structures that would meet the criteria in §77.216(a) of this title or that would have a significant or high hazard potential under paragraph (a) of this section, the requirements of paragraph (b)(5)(i) of this section do not apply—

(A) In areas with 26.0 inches or less of average annual precipitation; or

(B) To siltation structures.

(6) The plan must include a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the regulatory authority.

(c) *How must I prepare the detailed design plan for proposed siltation structures, impoundments, and refuse piles?*—(1) *Detailed design plan requirements for high hazard dams, significant hazard dams, and impounding structures that meet MSHA criteria.* If you propose to construct an impounding structure that would meet the criteria in §77.216(a) of this title or that would have a significant or high hazard potential under paragraph (a) of this section, you must prepare and submit a detailed design plan that meets the following requirements:

(i) The plan must be prepared by, or under the direction of, a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture. The engineer must certify that the impoundment design meets the requirements of this part, current prudent engineering practices, and any design criteria established by the regulatory authority. The qualified registered professional engineer must be experienced in the design and construction of impoundments.

(ii) The plan must incorporate any design and construction measures identified in the geotechnical investigation report prepared under paragraph (b)(4) of this section as necessary to protect

against potential adverse impacts from subsidence resulting from underground mine workings underlying or adjacent to the structure.

(iii) The plan must describe the operation and maintenance requirements for each structure.

(iv) The plan must describe the timetable and plans to remove each structure, if appropriate.

(2) *Detailed design plan requirements for other structures.* If you propose to construct an impounding structure that would not meet the criteria in §77.216(a) of this title and that would not have a significant or high hazard potential under paragraph (a) of this section, you must prepare and submit a detailed design plan that meets the following requirements:

(i)(A) Except as provided in paragraph (c)(2)(i)(B) of this section, the plan must be prepared by, or under the direction of, a qualified, registered, professional engineer, or, in any state that authorizes land surveyors to prepare and certify such plans, a qualified, registered, professional, land surveyor. The engineer or land surveyor must certify that the impoundment design meets the requirements of this part, current prudent engineering practices, and any design criteria established by the regulatory authority. The qualified registered professional engineer or qualified registered professional land surveyor must be experienced in the design and construction of impoundments.

(B) All coal mine waste structures to which §§816.81 through 816.84 of this chapter apply must be certified by a qualified, registered, professional engineer.

(ii) The plan must reflect any design and construction requirements for the structure, including any measures identified as necessary in the geotechnical investigation report prepared under paragraph (b)(4) of this section.

(iii) The plan must describe the operation and maintenance requirements for each structure.

(iv) The plan must describe the timetable and plans to remove each structure, if appropriate.

(3) *Timing of submittal of detailed design plans.* You must submit the detailed design plans to the regulatory authority either as part of the permit application or in accordance with the schedule submitted under paragraph (b)(6) of this section. The regulatory authority must approve, in writing, the detailed design plan for a structure before you may begin construction of the structure.

(d) *What additional design requirements apply to siltation structures?* You must design siltation structures in compliance with the requirements of § 816.46 of this chapter.

(e) *What additional design requirements apply to permanent and temporary impoundments?* (1) You must design permanent and temporary impoundments to comply with the requirements of § 816.49 of this chapter.

(2) The regulatory authority may establish, through the regulatory program approval process, engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of conducting engineering tests to establish compliance with the minimum static safety factor of 1.3 required in § 816.49(a)(2)(ii) of this chapter.

(3) Each plan must include stability analyses of the proposed impoundment if the structure would meet the criteria in § 77.216(a) of this title or would have a significant or high hazard potential under paragraph (a) of this section. The stability analyses must address static, seismic, and post-earthquake (liquefaction) conditions. They must include, but are not limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan also must contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific analysis and design parameters and construction methods.

(f) *What additional design requirements apply to coal mine waste impoundments, refuse piles, and impounding structures constructed of coal mine waste?* If you propose to place coal mine waste in a refuse pile or impoundment, or if you plan to use coal mine waste to construct an impounding structure, you must comply with the applicable de-

sign requirements in paragraphs (f)(1) and (2) of this section.

(1) *Design requirements for refuse piles.* You must design refuse piles to comply with the requirements of §§ 780.28, 816.81, and 816.83 of this chapter.

(2) *Design requirements for impounding structures that will impound coal mine waste or that will be constructed of coal mine waste.* (i) You must design impounding structures constructed of or intended to impound coal mine waste to comply with the coal mine waste disposal requirements of §§ 780.28, 816.81, and 816.84 of this chapter and with the impoundment requirements of paragraphs (a) and (c) of § 816.49 of this chapter.

(ii) The plan for each impounding structure that meets the criteria of § 77.216(a) of this title must comply with the requirements of § 77.216-2 of this title.

(iii) Each plan for an impounding structure that will impound coal mine waste or that will be constructed of coal mine waste must contain the results of a geotechnical investigation to determine the structural competence of the foundation that will support the proposed impounding structure and the impounded material. An engineer or engineering geologist must plan and supervise the geotechnical investigation. In planning the investigation, the engineer or geologist must—

(A) Determine the number, location, and depth of borings and test pits using current prudent engineering practice for the size of the impoundment and the impounding structure, the quantity of material to be impounded, and subsurface conditions.

(B) Consider the character of the overburden and bedrock, the proposed abutment sites for the impounding structure, and any adverse geotechnical conditions that may affect the impounding structure.

(C) Identify all springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed impounding structure on each plan.

(D) Consider the possibility of mudflows, rock-debris falls, or other landslides into the impounding structure, impoundment, or impounded material.

(iv) The design must ensure that at least 90 percent of the water stored in the impoundment during the design precipitation event will be removed within a 10-day period.

§ 780.26 What special requirements apply to surface mining near underground mining?

Your application must describe the measures that you will use to comply with §816.79 of this chapter if you intend to conduct surface mining activities within 500 feet of an underground mine.

§ 780.27 What additional permitting requirements apply to proposed activities in or through ephemeral streams?

(a) *Clean Water Act requirements.* If the proposed permit area includes waters subject to the jurisdiction of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the regulatory authority must condition the permit to prohibit initiation of surface mining activities in or affecting those waters before you obtain all necessary authorizations, certifications, and permits under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

(b) *Postmining surface drainage pattern and stream-channel configuration.* (1) If you propose to mine through an ephemeral stream, your application must include a plan to construct—

(i) A postmining surface drainage pattern that is similar to the premining surface drainage pattern, relatively stable, and in dynamic near-equilibrium; and

(ii) Postmining stream-channel configurations that are relatively stable and similar to the premining configuration of ephemeral stream channels.

(2) The regulatory authority may approve or require a postmining surface drainage pattern or stream-channel configuration that differs from the pattern or configuration otherwise required under paragraph (b)(1) of this section when the regulatory authority finds that a different pattern or configuration is necessary or appropriate to—

(i) Ensure stability;

(ii) Prevent or minimize downcutting or widening of reconstructed stream channels and control meander migration;

(iii) Promote enhancement of fish and wildlife habitat;

(iv) Accommodate any anticipated temporary or permanent increase in surface runoff as a result of mining and reclamation;

(v) Accommodate the construction of excess spoil fills, coal mine waste refuse piles, or coal mine waste impounding structures;

(vi) Replace a stream that was channelized or otherwise severely altered prior to submittal of the permit application with a more natural, relatively stable, and ecologically sound drainage pattern or stream-channel configuration; or

(vii) Reclaim a previously mined area.

(c) *Streamside vegetative corridors.* (1) If you propose to mine through an ephemeral stream, your application must include a plan to establish a vegetative corridor at least 100 feet wide along each bank of the reconstructed stream channel, consistent with natural vegetation patterns.

(2) The plan submitted under paragraph (c)(1) of this section must be consistent with the requirements of §816.56(c) of this chapter for vegetative corridors along ephemeral streams.

(3) Paragraphs (c)(1) and (2) of this section do not apply to prime farmland historically used for cropland.

§ 780.28 What additional permitting requirements apply to proposed activities in, through, or adjacent to a perennial or intermittent stream?

(a) *Clean Water Act requirements.* If the proposed permit area includes waters subject to the jurisdiction of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the regulatory authority must condition the permit to prohibit initiation of surface mining activities in or affecting those waters before you obtain all necessary authorizations, certifications, and permits under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

(b) *To what activities does this section apply?* You, the permit applicant, must provide the information and demonstrations required by paragraphs (c) through (g) of this section, as applicable, whenever you propose to conduct surface mining activities—

(1) In or through a perennial or intermittent stream; or

(2) On the surface of lands within 100 feet of a perennial or intermittent stream. You must measure this distance horizontally on a line perpendicular to the stream, beginning at the ordinary high water mark.

(c) *Postmining surface drainage pattern and stream-channel configuration.* (1) If you propose to mine through a perennial or intermittent stream, your application must include a plan to construct—

(i) A postmining surface drainage pattern that is similar to the premining surface drainage pattern, relatively stable, and in dynamic near-equilibrium; and

(ii) Postmining stream-channel configurations that are relatively stable and similar to the premining configuration of perennial and intermittent stream channels.

(2) The regulatory authority may approve or require a postmining surface drainage pattern or stream-channel configuration that differs from the pattern or configuration otherwise required under paragraph (c)(1) of this section when the regulatory authority finds that a different pattern or configuration is necessary or appropriate to—

(i) Ensure stability;

(ii) Prevent or minimize downcutting or widening of reconstructed stream channels and control meander migration;

(iii) Promote enhancement of fish and wildlife habitat;

(iv) Accommodate any anticipated temporary or permanent increase in surface runoff as a result of mining and reclamation;

(v) Accommodate the construction of excess spoil fills, coal mine waste refuse piles, or coal mine waste impounding structures;

(vi) Replace a stream that was channelized or otherwise severely altered

prior to submittal of the permit application with a more natural, relatively stable, and ecologically sound drainage pattern or stream-channel configuration; or

(vii) Reclaim a previously mined area.

(d) *Streamside vegetative corridors.* (1) If you propose to conduct any surface mining activities identified in paragraph (b) of this section, your application must include a plan to establish a vegetated streamside corridor at least 100 feet wide along each bank of the stream as part of the reclamation process following the completion of surface mining activities within that area.

(2) The plan submitted under paragraph (d)(1) of this section must be consistent with natural vegetation patterns.

(3) The plan submitted under paragraph (d)(1) of this section must be consistent with the streamside vegetative corridor requirements of § 816.57(d) of this chapter.

(4) The corridor width must be measured horizontally on a line perpendicular to the stream, beginning at the ordinary high water mark.

(5) Paragraphs (d)(1) through (2) of this section do not apply to prime farmland historically used for cropland.

(e) *What demonstrations must I include in my application if I propose to conduct activities in or within 100 feet of a perennial or intermittent stream?* (1) Except as provided in paragraphs (e)(4), (e)(5), and (i) of this section and § 816.57(i) of this chapter, your application must contain the applicable demonstrations set forth in the table if you propose to conduct surface mining activities in or through a perennial or intermittent stream or on the surface of land within 100 feet of a perennial or intermittent stream, as specified in paragraph (b) of this section.

Surface Mining Reclamation and Enforcement, Interior

§ 780.28

Demonstration	Activity		
	Any activity other than mining through or permanently diverting a stream or construction of an excess spoil fill, coal mine waste refuse pile, or impounding structure that encroaches upon any part of a stream	Mining through or permanently diverting a stream	Construction of an excess spoil fill, coal mine waste refuse pile, or impounding structure that encroaches upon any part of a stream
(i) The proposed activity would not cause or contribute to a violation of applicable state or tribal water quality standards, including, but not limited to, standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c).	Yes	Yes	Yes.
(ii) The proposed activity would not cause material damage to the hydrologic balance outside the permit area or upset the dynamic near-equilibrium of streams outside the permit area.	Yes	Yes	Yes.
(iii) The proposed activity would not result in conversion of the affected stream segment from perennial to ephemeral.	Yes	Yes	Not applicable.
(iv) The proposed activity would not result in conversion of the affected stream segment from intermittent to ephemeral or from perennial to intermittent.	Yes	Yes, except as provided in paragraphs (e)(2) and (5) of this section.	Not applicable.
(v) There is no practicable alternative that would avoid mining through or diverting a perennial or intermittent stream.	Not applicable	Yes, except as provided in paragraph (e)(3) of this section.	Yes.
(vi) After evaluating all potential upland locations in the vicinity of the proposed operation, including abandoned mine lands and unclaimed bond forfeiture sites, there is no practicable alternative that would avoid placement of excess spoil or coal mine waste in a perennial or intermittent stream.	Not applicable	Not applicable	Yes.
(vii) The proposed operation has been designed to minimize the extent to which perennial or intermittent streams will be mined through, diverted, or covered by an excess spoil fill, a coal mine waste refuse pile, or a coal mine waste impounding structure.	Not applicable	Yes, except as provided in paragraphs (e)(3) and (5) of this section.	Yes.
(viii) The stream restoration techniques in the proposed reclamation plan are adequate to ensure restoration or improvement of the form, hydrologic function (including flow regime), dynamic near-equilibrium, streamside vegetation, and ecological function of the stream after you have mined through it, as required by §816.57 of this chapter.	Not applicable	Yes, except as provided in paragraph (e)(5) of this section.	Not applicable.
(ix) The proposed operation has been designed to minimize the amount of excess spoil or coal mine waste that the proposed operation will generate.	§ 780.35(b) of this part requires minimization of excess spoil.	§ 780.35(b) of this part requires minimization of excess spoil.	Yes.
(x) To the extent possible using the best technology currently available, the proposed operation has been designed to minimize adverse impacts on fish, wildlife, and related environmental values.	Yes	Yes	Yes.
(xi) The fish and wildlife enhancement plan prepared under § 780.16 of this part includes measures that would fully and permanently offset any long-term adverse impacts on fish, wildlife, and related environmental values within the footprint of each excess spoil fill, coal mine waste refuse pile, and coal mine waste impounding structure.	Not applicable	Not applicable	Yes.

Demonstration	Activity		
	Any activity other than mining through or permanently diverting a stream or construction of an excess spoil fill, coal mine waste refuse pile, or impounding structure that encroaches upon any part of a stream	Mining through or permanently diverting a stream	Construction of an excess spoil fill, coal mine waste refuse pile, or impounding structure that encroaches upon any part of a stream
(xii) Each excess spoil fill, coal mine waste refuse pile, and coal mine waste impounding structure has been designed in a manner that will not result in the formation of toxic mine drainage.	Not applicable	Not applicable	Yes.
(xiii) The revegetation plan prepared under § 780.12(g) of this part requires reforestation of each completed excess spoil fill if the land is forested at the time of application or if the land would revert to forest under conditions of natural succession.	Not applicable	Not applicable	Yes.

(2)(i) As part of a proposal to mine through an intermittent stream, you may propose to convert a minimal portion of the mined-through segment of an intermittent stream to an ephemeral stream. The regulatory authority may approve the proposed conversion only if you demonstrate, and the regulatory authority finds, that the conversion would not degrade the hydrologic function, dynamic near-equilibrium, or the ecological function of the stream as a whole within the mined area, as determined by comparison with the stream assessment conducted under § 780.19(c)(6) of this part.

(ii) Paragraph (e)(2)(i) of this section does not apply to the circumstances described in paragraph (e)(5) of this section.

(3)(i) Paragraphs (e)(1)(v) and (vii) of this section do not apply to a proposal to mine through a segment of an intermittent stream when that segment meets the criteria of paragraph (e)(3)(ii) of this section, provided you demonstrate, and the regulatory authority finds, that implementation of the proposed mining and reclamation plan—

(A) Will improve the form of the stream segment;

(B) Will improve the hydrologic function of the stream;

(C) Is likely to result in improvement of the biological condition or ecological function of the stream;

(D) Will not further degrade the hydrologic function, dynamic near-equilibrium, biological condition, or ecological function of the stream; and

(E) Will result in establishment of a streamside vegetative corridor for the stream segment in accordance with § 816.57(d) of this chapter.

(ii) To qualify for purposes of paragraph (e)(3)(i) of this section, a stream segment must display both of the following characteristics:

(A) Prior anthropogenic activity has resulted in substantial degradation of the profile or dimensions of the stream channel; and

(B) Degradation of the stream channel has resulted in a substantial adverse impact on the ecological function of the stream.

(4) Paragraph (e)(1) of this section does not apply to a stream segment that will be part of a permanent impoundment approved and constructed under § 816.49(b) of this chapter.

(5) Paragraphs (e)(1)(iv) and (vii) of this section and the requirement for restoration of the hydrologic and ecological functions and the dynamic near-equilibrium of a stream in paragraph (e)(1)(viii) of this section do not apply to an intermittent stream segment if—

(i) The intermittent segment is a minor interval in what is otherwise a predominantly ephemeral stream;

(ii) You demonstrate, and the regulatory authority finds, that the intermittent segment has no significant fish, wildlife, or related environmental values, as documented by the baseline data collected under § 780.19(c)(6) of this part; and

(iii) You demonstrate, and the regulatory authority finds, that conversion of the intermittent stream segment will not adversely affect water uses.

(f) *What design requirements apply to the diversion, restoration, and reconstruction of perennial and intermittent stream channels?* (1)(i) You must design permanent stream-channel diversions, temporary stream-channel diversions that will remain in use for 3 or more years, and stream channels to be reconstructed after the completion of mining to restore, approximate, or improve the premining characteristics of the original stream channel, to promote the recovery and enhancement of aquatic habitat and the ecological and hydrologic functions of the stream, and to minimize adverse alteration of stream channels on and off the site, including channel deepening or enlargement.

(ii) Pertinent stream-channel characteristics include, but are not limited to, the baseline stream pattern, profile, dimensions, substrate, habitat, and natural vegetation growing in the riparian zone and along the banks of the stream.

(iii) For temporary stream-channel diversions that will remain in use for 3 or more years, the vegetation proposed for planting along the banks of the diversion need not include species that would not reach maturity until after the diversion is removed.

(2) You must design the hydraulic capacity of all temporary and permanent stream-channel diversions to be at least equal to the hydraulic capacity of the unmodified stream channel immediately upstream of the diversion, but no greater than the hydraulic capacity of the unmodified stream channel immediately downstream from the diversion.

(3) You must design all temporary and permanent stream-channel diversions in a manner that ensures that the combination of channel, bank, and flood-plain configuration is adequate

to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

(4) You must submit a certification from a qualified registered professional engineer that the designs for all stream-channel diversions and all stream channels to be reconstructed after the completion of mining meet the design requirements of this section and any additional design criteria established by the regulatory authority. This certification may be limited to the location, dimensions, and physical characteristics of the stream channel.

(g) *What requirements apply to establishment of standards for restoration of the ecological function of a stream?* (1) If you propose to mine through a perennial or intermittent stream, the regulatory authority must establish standards for determining when the ecological function of the reconstructed stream has been restored. Your application must incorporate those standards and explain how you will meet them.

(2) In establishing standards under paragraph (g)(1) of this section, the regulatory authority must coordinate with the appropriate agencies responsible for administering the Clean Water Act, 33 U.S.C. 1251 *et seq.*, to ensure compliance with all Clean Water Act requirements.

(3)(i) The biological component of the standards established under paragraph (g)(1) of this section must employ the best technology currently available, as specified in paragraphs (g)(3)(ii) through (iv) of this section.

(ii) For perennial streams, the best technology currently available includes an assessment of the biological condition of the stream, as determined by an index of biological condition or other scientifically-defensible bio-assessment protocols consistent with § 780.19(c)(6)(vii) of this part. Standards established under paragraph (g)(1) of this section for perennial streams—

(A) Need not require that a reconstructed stream or stream-channel diversion have precisely the same biological condition or biota as the stream segment did before mining.

(B) Must prohibit substantial replacement of pollution-sensitive species with pollution-tolerant species.

(C) Must require that populations of organisms used to determine the biological condition of the reconstructed stream or stream-channel diversion be self-sustaining within that stream segment.

(iii) Paragraph (g)(3)(ii) of this section also applies to intermittent streams whenever a scientifically defensible biological index and bioassessment protocol have been established for assessment of intermittent streams in the state or region in which the stream is located.

(iv)(A) Except as provided in paragraph (g)(3)(iii) of this section, the best technology currently available for intermittent streams consists of the establishment of standards that rely upon restoration of the form, hydrologic function, and water quality of the stream and reestablishment of streamside vegetation as a surrogate for the biological condition of the stream.

(B) The regulatory authority must reevaluate the best technology currently available for intermittent streams under paragraph (g)(3)(iv)(A) of this section at 5-year intervals. Upon conclusion of that evaluation, the regulatory authority must make any appropriate adjustments before processing permit applications submitted after the conclusion of that evaluation.

(4) Standards established under paragraph (g)(1) of this section must ensure that the reconstructed stream or stream-channel diversion will not—

(i) Preclude attainment of the designated uses of that stream segment under section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), before mining, or, if there are no designated uses, the premining uses of that stream segment; or

(ii) Result in that stream segment not meeting the applicable anti-degradation requirements under section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), as adopted by a state or authorized tribe or as promulgated in a federal rulemaking under the Clean Water Act.

(h) *What finding must the regulatory authority make before approving a permit application under this section?* The regulatory authority may not approve an application that includes a proposal to conduct surface mining activities in or within 100 feet of a perennial or intermittent stream unless it first makes a specific written finding that you have fully satisfied all applicable requirements of paragraphs (c) through (f) of this section. The finding must be accompanied by a detailed explanation of the rationale for the finding.

(i) *Programmatic alternative.* Paragraphs (c) through (h) of this section will not apply to a state program approved under subchapter T of this chapter if that program is amended to expressly prohibit all surface mining activities, including the construction of stream-channel diversions, that would result in more than a de minimis disturbance of perennial or intermittent streams or the surface of land within 100 feet of a perennial or intermittent stream.

§ 780.29 What information must I include in the surface-water runoff control plan?

Your application must contain a surface-water runoff control plan that includes the following—

(a)(1) An explanation of how you will handle surface-water runoff in a manner that will prevent peak flows from the proposed permit area, both during and after mining and reclamation, from exceeding the premining peak flow from the same area for the same-size precipitation event. You must use the appropriate regional Natural Resources Conservation Service synthetic storm distribution or another scientifically defensible method approved by the regulatory authority that takes into account the time of concentration to estimate peak flows.

(2) The explanation in paragraph (a)(1) of this section must consider the findings in the determination of the probable hydrologic consequences of mining prepared under § 780.20 of this part.

(b) A surface-water runoff monitoring and inspection program that will provide sufficient precipitation and

stormwater discharge data for the proposed permit area to evaluate the effectiveness of the surface-water runoff control practices under paragraph (a) of this section. The surface-water runoff monitoring and inspection program must specify criteria for monitoring, inspection, and reporting consistent with §816.34(d) of this chapter. The program must contain a monitoring-point density that adequately represents the drainage pattern across the entire proposed permit area, with a minimum of one monitoring point per watershed discharge point.

(c) Descriptions maps, and cross-sections of runoff-control structures. A runoff-control structure is any man-made structure designed to control or convey storm water runoff on or across a minesite. This term encompasses the entire surface water control system and includes diversion ditches, drainage benches or terraces, drop structures or check dams, all types of conveyance channels, downdrains, and sedimentation and detention ponds and associated outlets. It does not include swales or reconstructed perennial, intermittent, or ephemeral stream channels.

(d) An explanation of how diversions will be constructed in compliance with §816.43 of this chapter.

§780.31 What information must I provide concerning the protection of publicly owned parks and historic places?

(a) For any publicly owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, you must describe the measures to be used—

(1) To prevent adverse impacts, or

(2) If a person has valid existing rights, as determined under §761.16 of this chapter, or if joint agency approval is to be obtained under §761.17(d) of this chapter, to minimize adverse impacts.

(b) The regulatory authority may require the applicant to protect historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treat-

ment measures may be required to be taken after permit issuance, provided that the required measures are completed before the properties are affected by any mining operation.

§780.33 What information must I provide concerning the relocation or use of public roads?

Your application must describe, with appropriate maps and cross-sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under §761.14 of this chapter, you seek to have the regulatory authority approve—

(a) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(b) Relocating a public road.

§780.35 What information must I provide concerning the minimization and disposal of excess spoil?

(a) *Applicability.* This section applies to you, the permit applicant, if you propose to generate excess spoil as part of your operation.

(b) *Demonstration of minimization of excess spoil.* (1) You must submit a demonstration, with supporting calculations and other documentation, that the operation has been designed to minimize, to the extent possible, the volume of excess spoil that the operation will generate.

(2) The demonstration under paragraph (b)(1) of this section must explain, in quantitative terms, how the maximum amount of overburden will be returned to the mined-out area after considering—

(i) Applicable regulations concerning backfilling, compaction, grading, and restoration of the approximate original contour.

(ii) Safety and stability needs and requirements.

(iii) The need for access and haul roads with their attendant drainage structures and safety berms during mining and reclamation. You may construct roads and their attendant drainage structures and safety berms on the perimeter of the backfilled area as necessary to conduct surface coal mining

and reclamation operations, but, when the roads are no longer needed to support heavy equipment traffic, you must reduce the total width of roads and their attendant drainage structures and berms to be retained as part of the postmining land use to no more than 20 feet unless you demonstrate an essential need for a greater width for the postmining land use.

(iv) Needs and requirements associated with revegetation and the proposed postmining land use.

(v) Any other relevant regulatory requirements, including those pertaining to protection of water quality and fish, wildlife, and related environmental values.

(3) When necessary to avoid or minimize construction of excess spoil fills on undisturbed land, paragraph (b)(2)(i) of this section does not prohibit the placement of what would otherwise be excess spoil on the mined-out area to heights in excess of the premining elevation, provided that the final surface configuration is compatible with the surrounding terrain and generally resembles landforms found in the surrounding area.

(4) You may not create a permanent impoundment under § 816.49(b) of this chapter or place coal combustion residues or noncoal materials in the mine excavation if doing so would result in the creation of excess spoil.

(c) *Preferential use of preexisting benches for excess spoil disposal.* To the extent that your proposed operation will generate excess spoil, you must maximize the placement of excess spoil on preexisting benches in the vicinity of the proposed permit area in accordance with § 816.74 of this chapter rather than constructing excess spoil fills on previously undisturbed land.

(d) *Fill capacity demonstration.* You must submit a demonstration, with supporting calculations and other documentation, that the designed maximum cumulative volume of all proposed excess spoil fills within the permit area is no larger than the capacity needed to accommodate the anticipated cumulative volume of excess spoil that the operation will generate, as calculated under paragraph (b) of this section.

(e) *Requirements related to perennial and intermittent streams.* You must comply with the requirements of § 780.28 of this part concerning activities in or near perennial or intermittent streams if you propose to construct an excess spoil fill in or within 100 feet of a perennial or intermittent stream. The 100-foot distance must be measured horizontally on a line perpendicular to the stream, beginning at the ordinary high water mark.

(f) *Location and profile.* (1) You must submit maps and cross-section drawings or models showing the location and profile of all proposed excess spoil fills.

(2) You must locate fills on the most moderately sloping and naturally stable areas available. The regulatory authority will determine which areas are available, based upon the requirements of the Act and this chapter.

(3) Whenever possible, you must place fills on or above a natural terrace, bench, or berm if that location would provide additional stability and prevent mass movement.

(g) *Design plans.* You must submit detailed design plans, including appropriate maps and cross-section drawings, for each proposed fill, prepared in accordance with the requirements of this section and §§ 816.71 through 816.74 of this chapter. You must design the fill and appurtenant structures using current prudent engineering practices and any additional design criteria established by the regulatory authority.

(h) *Geotechnical investigation.* You must submit the results of a geotechnical investigation, with supporting calculations and analyses, of the site of each proposed fill, with the exception of those sites at which excess spoil will be placed only on a preexisting bench under § 816.74 of this chapter. The information submitted must include—

(1) Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, to determine the design requirements for foundation stability for each site.

(2) A description of the character of the bedrock and any adverse geologic conditions in the area of the proposed fill.

(3) The geographic coordinates and a narrative description of all springs, seepage, mine discharges, and ground-water flow observed or anticipated during wet periods in the area of the proposed fill.

(4) An analysis of the potential effects of any underground mine workings within the proposed permit and adjacent areas, including the effects of any subsidence that may occur as a result of previous, existing, and future underground mining operations.

(5) A technical description of the rock materials to be used in the construction of fills underlain by a rock drainage blanket.

(6) Stability analyses that address static and seismic conditions. The analyses must include, but are not limited to, strength parameters, pore pressures and long-term seepage conditions. The analyses must be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(i) *Operation and reclamation plans.* You must submit plans for the construction, operation, maintenance, and reclamation of all excess spoil fills in accordance with the requirements of §§ 816.71 through 816.74 of this chapter.

(j) *Additional requirements for bench cuts or rock-toe buttresses.* If bench cuts or rock-toe buttresses are required under § 816.71(b)(2) of this chapter, you must provide the—

(1) Number, location, and depth of borings or test pits, which must be determined according to the size of the fill and subsurface conditions.

(2) Engineering specifications used to design the bench cuts or rock-toe buttresses. Those specifications must be based upon the stability analyses required under paragraph (h)(6) of this section.

(k) *Design certification.* A qualified registered professional engineer experienced in the design of earth and rock fills must certify that the design of each proposed fill and appurtenant structures meets the requirements of this section.

§ 780.37 What information must I provide concerning access and haul roads?

(a) *Design and other application requirements.* (1) You, the applicant, must submit a map showing the location of all roads that you intend to construct or use within the proposed permit area, together with plans and drawings for each road to be constructed, used, or maintained within the proposed permit area.

(2) You must include appropriate cross-sections, design drawings, and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, drainage structures, and fords and low-water crossings of perennial and intermittent streams.

(3) You must demonstrate how all proposed roads will comply with the applicable requirements of §§ 780.28, 816.150, and 816.151 of this chapter.

(4) You must identify—

(i) Each road that you propose to locate in or within 100 feet, measured horizontally on a line perpendicular to the stream, beginning at the ordinary high water mark, of a perennial or intermittent stream.

(ii) Each proposed ford of a perennial or intermittent stream that you plan to use as a temporary route during road construction.

(iii) Any plans to alter or relocate a natural stream channel.

(iv) Each proposed low-water crossing of a perennial or intermittent stream channel.

(5) You must explain why the roads, fords, and stream crossings identified in paragraph (a)(4) of this section are necessary and how they comply with the applicable requirements of § 780.28 of this part and §§ 816.150 and 816.151 of this chapter.

(6) You must describe the plans to remove and reclaim each road that would not be retained as part of the postmining land use, and provide a schedule for removal and reclamation.

(b) *Primary road certification.* The plans and drawings for each primary road must be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or in any state that authorizes land surveyors to certify the design of primary

§ 780.38

roads, a qualified registered professional land surveyor, with experience in the design and construction of roads, as meeting the requirements of this chapter; current, prudent engineering practices; and any design criteria established by the regulatory authority.

(c) *Standard design plans.* The regulatory authority may establish engineering design standards for primary roads through the regulatory program approval process, in lieu of engineering tests, to establish compliance with the minimum static safety factor of 1.3 for all embankments specified in §816.151(c) of this chapter.

§ 780.38 What information must I provide concerning support facilities?

You must submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings must include a map, appropriate cross-sections, design drawings, and specifications sufficient to demonstrate compliance with §816.181 of this chapter for each facility.

PART 783—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES AND CONDITIONS

Sec.

783.1 What does this part do?

783.2 What is the objective of this part?

783.4 What responsibilities do I and government agencies have under this part?

783.10 Information collection.

783.11–783.12 [Reserved]

783.17 What information on cultural, historic, and archeological resources must I include in my permit application?

783.18 What information on climate must I include in my permit application?

783.19 What information on vegetation must I include in my permit application?

783.20 What information on fish and wildlife resources must I include in my permit application?

783.21 What information on soils must I include in my permit application?

783.22 What information on land use and productivity must I include in my permit application?

30 CFR Ch. VII (7–1–17 Edition)

783.24 What maps, plans, and cross-sections must I submit with my permit application?

783.25 [Reserved]

783.26 May I submit permit application information in increments as mining progresses?

AUTHORITY: 30 U.S.C. 1201 *et seq.* and 54 U.S.C. 300101 *et seq.*

SOURCE: 81 FR 93352, Dec. 20, 2016, unless otherwise noted.

§ 783.1 What does this part do?

This part establishes the minimum requirements for the descriptions of environmental resources and conditions that you must include in an application for a permit to conduct underground mining activities.

§ 783.2 What is the objective of this part?

The objective of this part is to ensure that you, the permit applicant, provide the regulatory authority with a complete and accurate description of the environmental resources that may be impacted or affected by proposed underground mining activities and the environmental conditions that exist within the proposed permit and adjacent areas.

§ 783.4 What responsibilities do I and government agencies have under this part?

(a) You, the permit applicant, must provide all information required by this part in your application, except when this part specifically exempts you from doing so.

(b) State and federal government agencies are responsible for providing information for permit applications to the extent that this part specifically requires that they do so.

§ 783.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of this part and assigned it control number 1029-0035. The information is being collected to meet the requirements of sections 507 and 508 of SMCRA, which require that each permit application include a description of the premining environmental resources within and

around the proposed permit area. The regulatory authority uses this information as a baseline for evaluating the impacts of mining. You, the permit applicant, must respond to obtain a benefit. A federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Room 203-SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

§§ 783.11–783.12 [Reserved]

§ 783.17 What information on cultural, historic, and archeological resources must I include in my permit application?

(a) Your permit application must describe the nature of cultural, historic, and archeological resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed permit and adjacent areas. The description must be based on all available information, including, but not limited to, information from the State Historic Preservation Officer and from local archeological, historical, and cultural preservation agencies.

(b) The regulatory authority may require you, the applicant, to identify and evaluate important historic and archeological resources that may be eligible for listing on the National Register of Historic Places by—

- (1) Collecting additional information,
- (2) Conducting field investigations, or
- (3) Completing other appropriate analyses.

§ 783.18 What information on climate must I include in my permit application?

The regulatory authority may require that your permit application contain a statement of the climatic factors that are representative of the proposed permit area, including—

- (a) The average seasonal precipitation.

(b) The average direction and velocity of prevailing winds.

(c) Seasonal temperature ranges.

(d) Additional data that the regulatory authority deems necessary to ensure compliance with the requirements of this subchapter.

§ 783.19 What information on vegetation must I include in my permit application?

(a) You must identify, describe, and map existing vegetation types and plant communities within the proposed permit area. If you propose to use reference areas for purposes of determining revegetation success under § 817.116 of this chapter, you also must identify, describe, and map existing vegetation types and plant communities within any proposed reference areas.

(b) The description and map required under paragraph (a) of this section must—

(1) Be in sufficient detail to assist in preparation of the revegetation plan under § 784.12(g) of this chapter and provide a baseline for comparison with postmining vegetation;

(2) Be adequate to evaluate whether the vegetation provides important habitat for fish and wildlife and whether the proposed permit area contains native plant communities of local or regional significance;

(3) Identify areas with significant populations of non-native invasive or noxious species; and

(4) Delineate all wetlands and all areas bordering streams that either support or are capable of supporting hydrophytic or hydrophilic vegetation or vegetation typical of floodplains.

(c) If the vegetation on the proposed permit area has been altered by human activity, you must describe the native vegetation and plant communities typical of that area in the absence of human alterations.

§ 783.20 What information on fish and wildlife resources must I include in my permit application?

(a) *General requirements.* Your permit application must include information on fish and wildlife resources for the proposed permit and adjacent areas, including all species of fish, wildlife,

§ 783.21

30 CFR Ch. VII (7–1–17 Edition)

plants, and other life forms listed or proposed for listing under the Endangered Species Act of 1973, 30 U.S.C. 1531 *et seq.* The adjacent area must include all lands and waters likely to be affected by the proposed operation.

(b) *Scope and level of detail.* The regulatory authority will determine the scope and level of detail for this information in coordination with state and federal agencies with responsibilities for fish and wildlife. The scope and level of detail must be sufficient to design the protection and enhancement plan required under § 784.16 of this chapter.

(c) *Site-specific resource information requirements.* Your application must include site-specific resource information if the proposed permit area or the adjacent area contains or is likely to contain one or more of the following—

(1) Species listed or proposed for listing as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, or designated or proposed critical habitat under that law. When these circumstances exist, the site-specific resource information must include a description of the effects of future non-federal activities that are reasonably certain to occur within the proposed permit and adjacent areas.

(2) Species or habitat protected by state or tribal endangered species statutes and regulations.

(3) Habitat of unusually high value for fish and wildlife, which may include wetlands, riparian areas, cliffs that provide nesting sites for raptors, significant migration corridors, specialized reproduction or wintering areas, areas offering special shelter or protection, and areas that support populations of endemic species that are vulnerable because of restricted ranges, limited mobility, limited reproductive capacity, or specialized habitat requirements.

(4) Other species or habitat identified through interagency coordination as requiring special protection under state, tribal, or federal law, including species identified as sensitive by a state, tribal, or federal agency.

(5) Perennial or intermittent streams.

(6) Native plant communities of local or regional ecological significance.

§ 783.21 What information on soils must I include in my permit application?

Your permit application must include—

(a) The results of a reconnaissance inspection to determine whether the proposed permit area may contain prime farmland historically used for cropland, as required by § 785.17(b)(1) of this chapter.

(b)(1) A map showing the soil mapping units located within the proposed permit area, if the National Cooperative Soil Survey has completed and published a soil survey of the area.

(2) The applicable soil survey information that the Natural Resources Conservation Service maintains for the soil mapping units identified in paragraph (b)(1) of this section. You may provide this information either in paper form or via a link to the appropriate element of the Natural Resources Conservation Service's soil survey Web site.

(c) A description of soil depths within the proposed permit area.

(d) Detailed information on soil quality, if you seek approval for the use of soil substitutes or supplements under § 784.12(e) of this chapter.

(e) The soil survey information required by § 785.17(b)(3) of this chapter if the reconnaissance inspection conducted under paragraph (a) of this section indicates that prime farmland historically used for cropland may be present.

(f) Any other information on soils that the regulatory authority finds necessary to determine land capability.

§ 783.22 What information on land use and productivity must I include in my permit application?

Your permit application must contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including—

(a)(1) A map and narrative identifying and describing the land use or uses in existence at the time of the filing of the application.

(2) A description of the historical uses of the land to the extent that this information is readily available or can

be inferred from the uses of other lands in the vicinity.

(3) For any previously mined area within the proposed permit area, a description of the land uses in existence before any mining, to the extent that such information is available.

(b) A narrative analysis of—

(1) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the proposed permit area; and

(2) The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products obtained under high levels of management, as determined by—

(i) Actual yield data; or

(ii) Yield estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities, or appropriate state natural resources or agricultural agencies.

(c) Any additional information that the regulatory authority deems necessary to determine the condition, capability, and productivity of the land within the proposed permit area.

§ 783.24 What maps, plans, and cross-sections must I submit with my permit application?

(a) In addition to the maps, plans, and information required by other sections of this part, your permit application must include maps and, when appropriate, plans and cross-sections showing—

(1) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the proposed permit area.

(2) The boundaries of land within the proposed permit area upon which you have the legal right to enter and begin underground mining activities.

(3) The boundaries of all areas that you anticipate affecting over the estimated total life of the underground mining activities, with a description of the size, sequence, and timing of the mining of subareas for which you anticipate seeking additional permits or

expansion of an existing permit in the future.

(4) The location and current use of all buildings within the proposed permit area or within 1,000 feet of the proposed permit area.

(5) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit and adjacent areas, including, but not limited to, highways, electric transmission lines, pipelines, constructed drainageways, irrigation ditches, and agricultural drainage tile fields.

(6) The location and boundaries of any proposed reference areas for determining the success of revegetation.

(7) The location and ownership of existing wells, springs, and other groundwater resources within the proposed permit and adjacent areas. You may provide ownership information in a table cross-referenced to a map if approved by the regulatory authority.

(8) The location and depth (if available) of each water well within the proposed permit and adjacent areas. You may provide information concerning depth in a table cross-referenced to a map if approved by the regulatory authority.

(9) The name, location, ownership, and description of all surface-water bodies and features, such as perennial, intermittent, and ephemeral streams; ponds, lakes, and other impoundments; wetlands; and natural drainageways, within the proposed permit and adjacent areas. To the extent appropriate, you may provide this information in a table cross-referenced to a map if approved by the regulatory authority.

(10) The locations of water supply intakes for current users of surface water flowing into, from, and within a hydrologic area defined by the regulatory authority.

(11) The location of any public water supplies and the extent of any associated wellhead protection zones located within one-half mile, measured horizontally, of the proposed permit area or the area overlying the proposed underground workings. Both you and the regulatory authority must keep this information confidential when required by state law or when otherwise necessary for safety and security purposes

and protection of the integrity of public water supplies.

(12) The location of all existing and proposed discharges to any surface-water body within the proposed permit and adjacent areas.

(13) The location of any discharge into or from an active, inactive, or abandoned surface or underground mine, including, but not limited to, a mine-water treatment or pumping facility, that is hydrologically connected to the site of the proposed operation or that is located within one-half mile, measured horizontally, of either the proposed permit area or the area overlying the proposed underground workings.

(14) Each public road located in or within 100 feet of the proposed permit area.

(15) The boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit and adjacent areas.

(16) Each cemetery that is located in or within 100 feet of the proposed permit area.

(17) Any land within the proposed permit area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act.

(18) The elevations, locations, and geographic coordinates of test borings and core samplings. You may provide this information in a table cross-referenced to a map if approved by the regulatory authority.

(19) The location and extent of subsurface water, if encountered, within the proposed permit and adjacent areas. This information must include, but is not limited to, the elevation of the water table, the areal and vertical distribution of aquifers, and maximum and minimum variations in hydraulic head in different aquifers. You must provide this information on appropriately-scaled cross-sections or maps, in a narrative, or a combination of these methods, whichever format best displays this information to the satisfaction of the regulatory authority.

(20) The elevations, locations, and geographic coordinates of monitoring stations used to gather data on water quality and quantity and on fish and wildlife in preparation of the application. You may provide this information in a table cross-referenced to a map if approved by the regulatory authority.

(21) The nature, depth, thickness, and commonly used names of the coal seams to be mined.

(22) Any coal crop lines within the permit and adjacent areas and the strike and dip of the coal to be mined.

(23) The location and extent of known workings of active, inactive, or abandoned underground mines within or underlying the proposed permit and adjacent areas.

(24) Any underground mine openings to the surface within the proposed permit and adjacent areas.

(25) The location and extent of existing or previously surface-mined areas within the proposed permit area.

(26) The location and dimensions of existing areas of spoil, coal mine waste, noncoal mine waste disposal sites, dams, embankments, other impoundments, and water treatment facilities within the proposed permit area.

(27) The location and, if available, the depth of all gas and oil wells within the proposed permit and adjacent areas. You must identify the lateral extent of the well bores unless that information is confidential under state law. You may provide information concerning well depth in a table cross-referenced to a map if approved by the regulatory authority.

(28) Other relevant information required by the regulatory authority.

(b) Maps, plans, and cross-sections required by paragraph (a) of this section must be—

(1) Prepared by, or under the direction of, and certified by a qualified registered professional engineer, a professional geologist, or in any state that authorizes land surveyors to prepare and certify such maps, plans, and cross-sections, a qualified registered professional land surveyor, with assistance from experts in related fields such as landscape architecture.

(2) Updated when required by the regulatory authority.

(c) The regulatory authority may require that you submit the materials required by this section in a digital format that includes all necessary metadata.

§ 783.25 [Reserved]

§ 783.26 May I submit permit application information in increments as mining progresses?

(a) You may request that the regulatory authority approve a schedule for incremental submission of the information required by this part, based on the anticipated progress and impact of underground mining activities.

(b) At its discretion, the regulatory authority may approve the proposed schedule, provided that—

(1) Each increment is clearly defined and includes at least 5 years of anticipated mining.

(2) The schedule includes a map showing the limits of underground mining activity under each increment. You must establish those limits in a manner that will prevent any impact on the succeeding increment before the regulatory authority approves mining within that increment.

(3) The schedule requires that you submit all required data under this part for each successive increment at least one year in advance of any anticipated impact of underground mining upon that increment.

(4) The regulatory authority conditions the permit to—

(i) Require that you reevaluate the adequacy of the PHC determination under § 784.20 of this chapter and the hydrologic reclamation plan under § 784.22 of this chapter as part of each submission under paragraph (b)(3) of this section.

(ii) Prohibit the conduct of any underground mining activity that might impact an increment before the regulatory authority reviews the information submitted for that increment, updates the CHIA prepared under § 784.21 of this chapter to incorporate that information, and determines that the findings made under § 773.15 of this chapter remain accurate.

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR OPERATION AND RECLAMATION PLANS

Sec.

784.1 What does this part do?

784.2 What is the objective of this part?

784.4 What responsibilities do I and government agencies have under this part?

784.10 Information collection.

784.11 What must I include in the general description of my proposed operations?

784.12 What must the reclamation plan include?

784.13 What additional maps and plans must I include in the reclamation plan?

784.14 What requirements apply to the use of existing structures?

784.15 [Reserved]

784.16 What must I include in the fish and wildlife protection and enhancement plan?

784.17–784.18 [Reserved]

784.19 What baseline information on hydrology, geology, and aquatic biology must I provide?

784.20 How must I prepare the determination of the probable hydrologic consequences of my proposed operation (PHC determination)?

784.21 What requirements apply to preparation, use, and review of the cumulative hydrologic impact assessment (CHIA)?

784.22 What information must I include in the hydrologic reclamation plan and what information must I provide on alternative water sources?

784.23 What information must I include in plans for the monitoring of groundwater, surface water, and the biological condition of streams during and after mining?

784.24 What requirements apply to the postmining land use?

784.25 What information must I provide for siltation structures, impoundments, and refuse piles?

784.26 What information must I provide if I plan to return coal processing waste to abandoned underground mine workings?

784.27 What additional permitting requirements apply to proposed activities in or through ephemeral streams?

784.28 What additional permitting requirements apply to proposed surface activities in, through, or adjacent to perennial or intermittent streams?

784.29 What information must I include in the surface-water runoff control plan?

784.30 When must I prepare a subsidence control plan and what information must that plan include?

§ 784.1

30 CFR Ch. VII (7–1–17 Edition)

784.31 What information must I provide concerning the protection of publicly owned parks and historic places?

784.33 What information must I provide concerning the relocation or use of public roads?

784.35 What information must I provide concerning the minimization and disposal of excess spoil?

784.37 What information must I provide concerning access and haul roads?

784.38 What information must I provide concerning support facilities?

784.40 May I submit permit application information in increments as mining progresses?

784.200 [Reserved]

AUTHORITY: 30 U.S.C. 1201 *et seq.* and 54 U.S.C. 300101 *et seq.*

SOURCE: 81 FR 93355, Dec. 20, 2016, unless otherwise noted.

§ 784.1 What does this part do?

This part establishes the minimum requirements for the operation and reclamation plan portions of applications for a permit to conduct underground mining activities, except to the extent that part 785 of this subchapter establishes different requirements.

§ 784.2 What is the objective of this part?

The objective of this part is to ensure that you, the permit applicant, provide the regulatory authority with comprehensive and reliable information on how you propose to conduct underground mining activities and reclaim the disturbed area in compliance with the Act, this chapter, and the regulatory program.

§ 784.4 What responsibilities do I and government agencies have under this part?

(a) You, the permit applicant, must provide to the regulatory authority all information required by this part, except where specifically exempted in this part.

(b) State and federal governmental agencies must provide information needed for permit applications to the extent that this part specifically requires that they do so.

§ 784.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the infor-

mation collection requirements of this part and assigned it control number 1029–0039. Collection of this information is required under section 516(d) of SMCRA, which in effect requires applicants for permits for underground coal mines to prepare and submit an operation and reclamation plan for coal mining activities as part of the application. The regulatory authority uses this information to determine whether the plan will achieve the reclamation and environmental protection requirements of the Act and regulatory program. You, the permit applicant, must respond to obtain a benefit. A federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Room 203–SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

§ 784.11 What must I include in the general description of my proposed operations?

Your application must contain a description of the mining operations that you propose to conduct during the life of the mine, including, at a minimum, the following—

(a) A narrative description of the—

(1) Type and method of coal mining procedures and proposed engineering techniques.

(2) Anticipated annual and total number of tons of coal to be produced.

(3) Major equipment to be used for all aspects of the proposed operations.

(b) A narrative explaining the construction, modification, use, maintenance, and removal (unless you can satisfactorily explain why retention is necessary or appropriate for the postmining land use specified in the application under § 784.24 of this part) of the following facilities:

(1) Dams, embankments, and other impoundments.

(2) Overburden and soil handling and storage areas and structures.

(3) Coal removal, handling, storage, cleaning, and transportation areas and structures.

(4) Spoil, coal processing waste, underground development waste, and noncoal mine waste removal, handling, storage, transportation, and disposal areas and structures.

(5) Mine facilities, including ventilation boreholes, fans, and access roads.

(6) Water pollution control facilities.

§ 784.12 What must the reclamation plan include?

(a) *General requirements.* Your application must contain a plan for the reclamation of the lands to be disturbed within the proposed permit area. The plan must show how you will comply with the reclamation requirements of the applicable regulatory program. At a minimum, the plan must include all information required under this part and part 785 of this chapter.

(b) *Reclamation timetable.* The reclamation plan must contain a detailed timetable for the completion of each major step in the reclamation process including, but not limited to—

(1) Backfilling.

(2) Grading.

(3) Establishment of the surface drainage pattern and stream-channel configuration approved in the permit, including construction of appropriately-designed perennial, intermittent, and ephemeral stream channels to replace those removed by mining, to the extent and in the form required by §§ 784.27, 784.28, 817.56, and 817.57 of this chapter.

(4) Soil redistribution.

(5) Planting of all vegetation in accordance with the revegetation plan approved in the permit, including establishment of streamside vegetative corridors along the banks of perennial, intermittent, and ephemeral streams when required by §§ 817.56(c) and 817.57(d) of this chapter.

(6) Demonstration of revegetation success.

(7) Demonstration of restoration of the ecological function of all reconstructed perennial and intermittent stream segments.

(8) Application for each phase of bond release under § 800.42 of this chapter.

(c) *Reclamation cost estimate.* The reclamation plan must contain a detailed estimate of the cost of reclamation, including both direct and indirect costs, of those elements of the proposed operations that are required to be covered by a performance bond under part 800 of this chapter, with supporting calculations for the estimates. You must use current standardized construction cost estimation methods and equipment cost guides or up-to-date actual contracting costs incurred by the regulatory authority for similar activities to prepare this estimate.

(d) *Backfilling and grading plan.* (1) The reclamation plan must contain a plan for backfilling surface excavations, compacting the backfill, and grading the disturbed area, with contour maps, models, or cross-sections that show the anticipated final surface configuration of the proposed permit area, including drainage patterns, in accordance with §§ 817.102 through 817.107 of this chapter, using the best technology currently available.

(2) The backfilling and grading plan must describe in detail how you will conduct backfilling and related reclamation activities, including how you will—

(i) Compact spoil to reduce infiltration to minimize leaching and discharges of parameters of concern.

(ii) Limit compaction of topsoil and soil materials in the root zone to the minimum necessary to achieve stability. The plan also must identify measures that will be used to alleviate soil compaction if necessary.

(iii) Handle acid-forming and toxic-forming materials, if present, to prevent the formation of acid or toxic drainage from acid-forming and toxic-forming materials within the overburden. The plan must be consistent with paragraph (n) of this section and § 817.38 of this chapter.

(e) *Soil handling plan*—(1) *General requirements.* (i) The reclamation plan must include a plan and schedule for removal, storage, and redistribution of topsoil, subsoil, and other material to be used as a final growing medium in accordance with § 817.22 of this chapter.

It also must include a plan and schedule for removal, storage, and redistribution or other use of organic matter in accordance with § 817.22(f) of this chapter.

(ii) Except as provided in paragraphs (e)(1)(iii) and (iv) of this section, the plan submitted under paragraph (e)(1)(i) of this section must require that the B soil horizon, the C soil horizon, and other underlying strata, or portions of those soil horizons and strata, be removed separately, stockpiled if necessary, and redistributed to the extent and in the manner needed to achieve the optimal rooting depths required to restore premining land use capability and to comply with the revegetation requirements of §§ 817.111 and 817.116 of this chapter.

(iii) The plan submitted under paragraph (e)(1)(i) of this section need not require salvage of those soil horizons which you demonstrate, to the satisfaction of the regulatory authority, are inferior to other overburden materials as a plant growth medium, provided you comply with the soil substitute requirements of paragraph (e)(2) of this section.

(iv) The plan submitted under paragraph (e)(1)(i) of this section may allow blending of the B soil horizon, the C soil horizon, and underlying strata, or portions thereof, to the extent that research or prior experience under similar conditions has demonstrated that blending will not adversely affect soil productivity.

(v) The plan submitted under paragraph (e)(1)(i) of this section must explain how you will handle and, if necessary, store soil materials to avoid contamination by acid-forming or toxic-forming materials and to minimize deterioration of desirable soil characteristics.

(2) *Substitutes and supplements.* (i) You must identify each soil horizon for which you propose to use appropriate overburden materials as either a supplement to or a substitute for the existing topsoil or subsoil on the proposed permit area. For each of those horizons, you must demonstrate, and the regulatory authority must find in writing, that—

(A)(1) The quality of the existing topsoil and subsoil is inferior to that of

the best overburden materials available; or

(2) The quantity of the existing topsoil and subsoil on the proposed permit area is insufficient to provide an optimal rooting depth. In this case, the plan must require that all available existing topsoil and favorable subsoil, regardless of the amount, be removed, stored, and redistributed as part of the final growing medium unless the conditions described in paragraph (e)(2)(i)(A)(1) of this section also apply.

(B) The use of the overburden materials that you have selected, in combination with or in place of the topsoil or subsoil, will result in a soil medium that is more suitable than the existing topsoil and subsoil to support and sustain vegetation consistent with the postmining land use and the revegetation plan under paragraph (g) of this section and that will provide a rooting depth that is superior to the existing topsoil and subsoil.

(C) The overburden materials that you select for use as a soil substitute or supplement are the best materials available to support and sustain vegetation consistent with the postmining land use and the revegetation plan under paragraph (g) of this section.

(ii) For purposes of paragraph (e)(2)(i) of this section, the regulatory authority will specify the—

(A) Suitability criteria for substitutes and supplements.

(B) Chemical and physical analyses, field trials, or greenhouse tests that you must conduct to make the demonstration required by paragraph (e)(2)(ii) of this section.

(C) Sampling objectives and techniques and the analytical techniques that you must use for purposes of paragraph (e)(2)(iii)(B) of this section.

(iii) At a minimum, the demonstrations required by paragraph (e)(2)(ii) of this section must include—

(A) The physical and chemical soil characteristics and root zones needed to support and sustain the type of vegetation to be established on the reclaimed area.

(B) A comparison and analysis of the thickness, total depth, texture, percent coarse fragments, pH, and areal extent of the different kinds of soil horizons and overburden materials available

within the proposed permit area, based upon a statistically valid sampling procedure.

(iv) [Reserved]

(v) You must include a plan for testing and evaluating overburden materials during both removal and redistribution to ensure that only materials approved for use as soil substitutes or supplements are removed and redistributed.

(f) *Surface stabilization plan.* The reclamation plan must contain a plan for stabilizing road surfaces, redistributed soil materials, and other exposed surface areas to effectively control erosion and air pollution attendant to erosion in accordance with §§ 817.95, 817.150, and 817.151 of this chapter.

(g) *Revegetation plan.* (1) The reclamation plan must contain a plan for revegetation consistent with §§ 817.111 through 817.116 of this chapter, including, but not limited to, descriptions of—

(i) The schedule for revegetation of the area to be disturbed.

(ii) The site preparation techniques that you plan to use, including the measures that you will take to avoid or, when avoidance is not possible, to minimize and alleviate compaction of the root zone during backfilling, grading, soil redistribution, and planting.

(iii) What soil tests you will perform, together with a statement as to whether you will apply lime, fertilizer, or other amendments in response to those tests before planting or seeding.

(iv) The species that you will plant to achieve temporary erosion control or, if you do not intend to establish a temporary vegetative cover, a description of other soil stabilization measures that you will implement in lieu of planting a temporary cover.

(v) The species that you will plant and the seeding and stocking rates and planting arrangements that you will use to achieve or complement the postmining land use, enhance fish and wildlife habitat, and achieve the streamside vegetative corridor requirements of §§ 817.56(c) and 817.57(d) of this chapter, when applicable.

(A) Revegetation plans that involve the establishment of trees and shrubs must include site-specific planting prescriptions for canopy trees, understory

trees and shrubs, and herbaceous ground cover compatible with establishment of trees and shrubs.

(B) To the extent practicable and consistent with other revegetation and regulatory program requirements, the species mix must include native pollinator-friendly plants and the planting arrangements must promote the establishment of pollinator-friendly habitat.

(vi) The planting and seeding techniques that you will use.

(vii) Whether you will apply mulch and, if so, the type of mulch and the method of application.

(viii) Whether you plan to conduct irrigation or apply fertilizer after the first growing season and, if so, to what extent and for what length of time.

(ix) Any normal husbandry practices that you plan to use in accordance with § 817.115(d) of this chapter.

(x) The standards and evaluation techniques that you propose to use to determine the success of revegetation in accordance with § 817.116 of this chapter.

(xi) The measures that you will take to avoid the establishment of invasive species on reclaimed areas or to control those species if they do become established.

(2) Except as provided in paragraphs (g)(4) and (5) of this section, the species and planting rates and arrangements selected as part of the revegetation plan must be designed to create a diverse, effective, permanent vegetative cover that is consistent with the native plant communities and natural succession process described in the permit application in accordance with § 783.19 of this chapter.

(3) The species selected as part of the revegetation plan must—

(i) Be native to the area. The regulatory authority may approve the use of introduced species as part of the permanent vegetative cover for the site only if—

(A) The introduced species are both non-invasive and necessary to achieve the postmining land use;

(B) Planting of native species would be inconsistent with the approved postmining land use; and

(C) The approved postmining land use is implemented before the entire bond

amount for the area has been fully released under §§ 800.40 through 800.43 of this chapter.

(ii) Be capable of stabilizing the soil surface from erosion to the extent that control of erosion with herbaceous ground cover is consistent with establishment of a permanent vegetative cover that resembles native plant communities in the area.

(iii) Be compatible with the approved postmining land use.

(iv) Have the same seasonal characteristics of growth, consistent with the appropriate stage of natural succession, as the native plant communities described in the permit application in accordance with § 783.19 of this chapter.

(v) Be capable of self-regeneration and natural succession.

(vi) Be compatible with the plant and animal species of the area.

(vii) Meet the requirements of applicable state and federal seed, noxious plant, and introduced species laws and regulations.

(4) The regulatory authority may grant an exception to the requirements of paragraphs (g)(3)(i), (iv), and (v) of this section when necessary to achieve a quick-growing, temporary, stabilizing cover on disturbed and regraded areas, and the species selected to achieve this purpose will not impede the establishment of permanent vegetation.

(5) The regulatory authority may grant an exception to the requirements of paragraphs (g)(2), (g)(3)(iv), and (g)(3)(v) of this section for those areas with a long-term, intensive, agricultural postmining land use.

(6) A qualified, experienced biologist, soil scientist, forester, or agronomist must prepare or approve all revegetation plans.

(h) *Stream protection and reconstruction plan.* The reclamation plan must describe how you will comply with the stream reconstruction requirements of §§ 784.27 and 817.56 of this chapter for ephemeral streams and the stream protection, stream reconstruction, and functional restoration requirements of §§ 784.28 and 817.57 of this chapter for perennial and intermittent streams.

(i) *Coal resource conservation plan.* The reclamation plan must describe the measures that you will employ to

maximize the use and conservation of the coal resource while using the best technology currently available to maintain environmental integrity, as required by § 817.59 of this chapter.

(j) *Plan for disposal of noncoal waste materials.* The reclamation plan must describe—

(1) The type and quantity of noncoal waste materials that you anticipate disposing of within the proposed permit area.

(2) How you intend to dispose of noncoal waste materials in accordance with § 817.89 of this chapter.

(3) The locations of any proposed noncoal waste material disposal sites within the proposed permit area.

(4) The contingency plans that you have developed to preclude sustained combustion of combustible noncoal materials.

(k) *Management of mine openings, boreholes, and wells.* The reclamation plan must contain a description, including appropriate cross-sections and maps, of the measures that you will use to seal or manage mine openings, and to plug, case or manage exploration holes, boreholes, wells and other openings within the proposed permit area, in accordance with § 817.13 of this chapter.

(l) *Compliance with Clean Air Act and Clean Water Act.* The reclamation plan must describe the steps that you have taken or will take to comply with the requirements of the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Clean Water Act (33 U.S.C. 1251 *et seq.*), and other applicable air and water quality laws and regulations and health and safety standards.

(m) *Consistency with land use plans and surface owner plans.* The reclamation plan must describe how the proposed operation is consistent with—

(1) All applicable state and local land use plans and programs.

(2) The plans of the surface landowner, to the extent that those plans are practicable and consistent with this chapter and with other applicable laws and regulations.

(n) *Handling of acid-forming and toxic-forming materials.* (1) If the baseline geologic information collected under § 784.19(e)(3) and (4) of this part indicates the presence of acid-forming or

toxic-forming materials, you must develop a plan to prevent any adverse hydrologic impacts that may result from exposure of those materials during either the face-up process or disposal of underground development waste. At a minimum the plan must—

(i) Identify the anticipated postmining groundwater level for all locations at which you propose to place acid-forming or toxic-forming materials.

(ii) When approved in the permit, place acid-forming and toxic-forming materials in an excess spoil fill or a coal mine waste refuse pile, using one or both of the following techniques, as appropriate:

(A) Completely surround acid-forming and toxic-forming materials with compacted material with a hydraulic conductivity at least two orders of magnitude lower than the hydraulic conductivity of the adjacent spoil or coal mine waste.

(B) Treat or otherwise neutralize acid-forming and toxic-forming materials to prevent the formation of acid or toxic mine drainage. This technique may include the blending of acid-forming materials with spoil of sufficient alkalinity to prevent the development of acid drainage.

§ 784.13 What additional maps and plans must I include in the reclamation plan?

(a) In addition to the maps and plans required under § 783.24 and other provisions of this subchapter, your application must include maps, plans, and cross-sections of the proposed permit area showing—

(1) The lands that you propose to affect throughout the life of the operation, including the sequence and timing of underground mining activities and the sequence and timing of backfilling, grading, and other reclamation activities to be conducted on areas where the operation will disturb the land surface.

(2) Each area of land for which a performance bond or other equivalent guarantee will be posted under part 800 of this chapter.

(3) Any change that the proposed operations will cause in a facility or fea-

ture identified under § 783.24 of this chapter.

(4) All buildings, utility corridors, and facilities to be used or constructed within the proposed permit area, with identification of those facilities that you propose to retain as part of the postmining land use.

(5) Each coal storage, cleaning, processing, and loading area and facility.

(6) Each temporary storage area for soil, spoil, coal mine waste, and noncoal mine waste.

(7) Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used, including the location of each point at which water will be discharged from the proposed permit area to a surface-water body and the name of that water body.

(8) Each disposal facility for coal mine waste and noncoal mine waste materials.

(9) Each feature and facility to be constructed to protect or enhance fish, wildlife, and related environmental values.

(10) Each explosive storage and handling facility.

(11) The location of each siltation structure, sedimentation pond, permanent water impoundment, refuse pile, and coal mine waste impoundment for which plans are required by § 784.25 of this part, and the location of each excess spoil fill for which plans are required under § 784.35 of this part.

(12) Each segment of a perennial or intermittent stream that you propose to mine through, bury, or divert.

(13) Each location in which you propose to restore a perennial or intermittent stream or construct a temporary or permanent diversion of a perennial or intermittent stream.

(14) Each streamside vegetative corridor that you propose to establish.

(15) Each segment of a perennial or intermittent stream that you propose to enhance under the plan submitted in accordance with § 784.16 of this part.

(16) The location and geographic coordinates of each monitoring point for groundwater, surface water, and subsidence.

(17) The location and geographic coordinates of each point at which you

§ 784.14

propose to monitor the biological condition of perennial and intermittent streams.

(b) Except as provided in §§ 784.25(a)(2), 784.25(a)(3), 784.35, 817.74(c), and 817.81(c) of this chapter, maps, plans, and cross-sections required under paragraphs (a)(5), (6), (7), (10), and (11) of this section must be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, a professional geologist, or, in any state that authorizes land surveyors to prepare and certify such maps, plans, and cross-sections, a qualified, registered, professional, land surveyor, with assistance from experts in related fields such as landscape architecture.

(c) The regulatory authority may require that you submit the materials required by paragraph (a) of this section in a digital format.

§ 784.14 What requirements apply to the use of existing structures?

(a) Each application must contain a description of every existing structure that you propose to use in connection with or to facilitate surface coal mining and reclamation operations. The description must include—

- (1) The location of the structure.
- (2) Plans of the structure.
- (3) A description of the current condition of the structure.
- (4) The approximate dates when the structure was originally built.
- (5) A showing, including relevant monitoring data or other evidence, of whether the structure meets the permanent program performance standards of subchapter K of this chapter or, if the structure does not meet the performance standards of subchapter K of this chapter, a showing of whether the structure meets the initial program performance standards of subchapter B of this chapter.

(b) Each application must contain a compliance plan for every existing structure that you propose to modify or reconstruct for use in connection with or to facilitate surface coal mining and reclamation operations. The compliance plan must include—

- (1) Design specifications for the modification or reconstruction of the structure to meet the design and per-

30 CFR Ch. VII (7–1–17 Edition)

formance standards of subchapter K of this chapter.

(2) A schedule for the initiation and completion of any modification or reconstruction under paragraph (b)(1) of this section.

(3) Provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards of subchapter K of this chapter are met.

(4) A demonstration that there is no significant risk of harm to the environment or to public health or safety during modification or reconstruction of the structure.

§ 784.15 [Reserved]

§ 784.16 What must I include in the fish and wildlife protection and enhancement plan?

(a) *General requirements.* Your application must include a fish and wildlife protection and enhancement plan that—

(1) Is consistent with the requirements of § 817.97 of this chapter.

(2) Is specific to the resources identified under § 783.20 of this chapter.

(3) Complies with the requirements of paragraphs (b) through (e) of this section.

(b) *Requirements related to the Endangered Species Act of 1973.* (1) Paragraphs (b)(2) and (3) of this section apply when the proposed operation may affect species listed or proposed for listing as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, or designated or proposed critical habitat under that law.

(2) You must describe the steps that you have taken or will take to comply with the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, including any biological opinions developed under section 7 of that law and any species-specific habitat conservation plans developed in accordance with section 10 of that law.

(3) The regulatory authority may not approve the permit application before there is a demonstration of compliance with the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, through one of the mechanisms listed in § 773.15(j) of this chapter.

(c) *Protection of fish, wildlife, and related environmental values in general.*

You must describe how, to the extent possible using the best technology currently available, you will minimize disturbances and adverse impacts on fish, wildlife, and related environmental values. At a minimum, you must explain how you will—

(1) Retain forest cover and other native vegetation as long as possible and time the removal of that vegetation to minimize adverse impacts on aquatic and terrestrial species.

(2) Locate and design sedimentation ponds, utilities, support facilities, roads, rail spurs, and other transportation facilities to avoid or minimize adverse impacts on fish, wildlife, and related environmental values.

(3) Except as provided under § 784.12(g)(4) of this part, select non-invasive native species for revegetation that either promote or do not inhibit the long-term development of wildlife habitat.

(4)(i) Avoid mining through wetlands or perennial or intermittent streams or disturbing riparian habitat adjacent to those streams. When avoidance is not possible, minimize—

(A) The time during which mining and reclamation operations disrupt wetlands or streams or riparian habitat associated with streams;

(B) The length of stream mined through; and

(C) The amount of wetlands or riparian habitat disturbed by the operation.

(ii) If you propose to mine through or discharge dredged or fill material into wetlands or streams that are subject to the jurisdiction of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, your application must identify the authorizations, certifications, and permits that you anticipate will be needed under the Clean Water Act and describe the steps that you have taken or will take to procure those authorizations, certifications, and permits. The regulatory authority will process your application and may issue the permit before you obtain all necessary authorizations, certifications, and permits under the Clean Water Act, 33 U.S.C. 1251 *et seq.*, provided your application meets all applicable requirements of subchapter G of this chapter. Issuance of a permit under subchapter G of this chapter does not authorize you to conduct any

mining-related activity in or affecting waters subject to the jurisdiction of the Clean Water Act before you obtain any required Clean Water Act authorization, certification, or permit. Information submitted and analyses conducted under subchapter G of this chapter may inform the agency responsible for authorizations, certifications, and permits under the Clean Water Act, but they are not a substitute for the reviews, authorizations, certifications, and permits required under the Clean Water Act.

(5) Implement other appropriate conservation practices such as, but not limited to, those identified in the technical guides published by the Natural Resources Conservation Service.

(d) *Enhancement measures*—(1) *General requirements.* (i) You must describe how, to the extent possible, you will use the best technology currently available to enhance fish, wildlife, and related environmental values both within and outside the area to be disturbed by mining activities, where practicable. Your application must identify the enhancement measures that you propose to implement and the lands upon which you propose to implement those measures. Those measures may include some or all the potential enhancement measures listed in paragraph (d)(2) of this section, but they are not limited to the measures listed in paragraph (d)(2) of this section.

(ii) If your application includes no proposed enhancement measures under paragraph (d)(1)(i) of this section, you must explain, to the satisfaction of the regulatory authority, why implementation of enhancement measures is not practicable.

(2) *Potential enhancement measures.* Potential enhancement measures include, but are not limited to—

(i) Using the backfilling and grading process to create postmining surface features and configurations, such as functional wetlands, of high value to fish and wildlife.

(ii) Designing and constructing permanent impoundments in a manner that will maximize their value to fish and wildlife.

(iii) Creating rock piles and other permanent landscape features of value

to raptors and other wildlife for nesting and shelter, to the extent that those features are consistent with features that existed on the site before any mining, the surrounding topography, and the approved postmining land use.

(iv) Reestablishing native forests or other native plant communities, both within and outside the permit area. This may include restoring the native plant communities that existed before any mining, establishing native plant communities consistent with the native plant communities that are a part of the natural succession process, establishing native plant communities designed to restore or expand native pollinator populations and habitats, or establishing native plant communities that will support wildlife species of local, state, tribal, or national concern, including, but not limited to, species listed or proposed for listing as threatened or endangered on a state, tribal, or national level.

(v) Establishing a vegetative corridor along the banks of streams where there is no such corridor before mining but where a vegetative corridor typically would exist under natural conditions. Species selected for planting within the corridor must be comprised of species native to the area, including native plants adapted to and suitable for planting in any floodplains or other riparian zones located within the corridor. Whenever possible, you should establish this corridor along both banks of the stream, preferably with a minimum corridor width of 100 feet along each bank.

(vi) Implementing conservation practices identified in publications, such as the technical guides published by the Natural Resources Conservation Service.

(vii) Permanently fencing livestock away from perennial and intermittent streams and wetlands.

(viii) Installing perches and nest boxes.

(ix) Establishing conservation easements or deed restrictions, with an emphasis on preserving riparian vegetation and forested corridors along perennial and intermittent streams.

(x) Providing funding to cover long-term operation and maintenance costs

that watershed organizations incur in treating long-term postmining discharges from previous mining operations.

(xi) Reclaiming previously mined areas located outside the area that you propose to disturb for coal extraction.

(xii) Implementing measures to reduce or eliminate existing sources of surface-water or groundwater pollution.

(3) *Additional enhancement requirements for operations with anticipated long-term adverse impacts.* (i) The exception in paragraph (d)(1)(ii) of this section does not apply if you propose to conduct activities on the land surface that would result in the—

(A) Temporary or permanent loss of mature native forest or other native plant communities that cannot be restored fully before final bond release under §§ 800.40 through 800.43 of this chapter or

(B) Permanent loss of wetlands or a segment of a perennial or intermittent stream.

(ii) Whenever the conditions described in paragraph (d)(3)(i) of this section apply, the scope of the enhancement measures that you propose under paragraph (d)(1)(i) of this section must be commensurate with the magnitude of the long-term adverse impacts of the proposed operation. Whenever possible, the measures must be permanent.

(iii)(A) Enhancement measures proposed under paragraph (d)(3)(ii) of this section must be implemented within the watershed in which the proposed operation is located, unless opportunities for enhancement are not available within that watershed. In that case, you must propose to implement enhancement measures in the closest adjacent watershed in which enhancement opportunities exist, as approved by the regulatory authority.

(B) Each regulatory program must prescribe the size of the watershed for purposes of paragraph (d)(3)(iii)(A) of this section, using a generally-accepted watershed classification system.

(4) *Inclusion within permit area.* If the enhancement measures to be implemented under paragraphs (d)(1)

through (d)(3) of this section would involve more than a de minimis disturbance of the surface of land outside the area to be mined, you must include the land to be disturbed by those measures within the proposed permit area.

(e) *Fish and Wildlife Service or National Marine Fisheries Service review.* (1)(i) The regulatory authority must provide the protection and enhancement plan developed under this section and the resource information submitted under § 779.20 of this chapter to the appropriate regional or field office of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as applicable, whenever the resource information submitted under § 783.20 of this chapter includes species listed as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, designated or proposed critical habitat under that law, or species proposed for listing as threatened or endangered under that law. The regulatory authority must provide the resource information and the protection and enhancement plan to the appropriate Service(s) no later than the time that it provides written notice of the permit application to governmental agencies under § 773.6(a)(3)(ii) of this chapter.

(ii)(A) When the resource information obtained under § 783.20 of this chapter does not include species listed as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, designated or proposed critical habitat under that law, or species proposed for listing as threatened or endangered under that law, the regulatory authority must provide the resource information and the protection and enhancement plan to the appropriate regional or field office of the U.S. Fish and Wildlife Service only if the Service requests an opportunity to review and comment on the resource information or the protection and enhancement plan.

(B) The regulatory authority must provide the resource information and the protection and enhancement plan to the Service under paragraph (e)(1)(ii)(A) of this section within 10 days of receipt of a request from the Service to review the resource informa-

tion and the protection and enhancement plan.

(2) The regulatory authority must document the disposition of comments that it receives from the applicable Service(s) in response to the distribution made under paragraph (e)(1)(i) of this section to the extent that those comments pertain to species listed as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, to designated or proposed critical habitat under that law, or to species proposed for listing as threatened or endangered under that law.

§§ 784.17–784.18 [Reserved]

§ 784.19 What baseline information on hydrology, geology, and aquatic biology must I provide?

(a)(1) *General requirements.* Your permit application must include information on the hydrology, geology, and aquatic biology of the proposed permit area and the adjacent area in sufficient detail to assist in—

(i) Determining the probable hydrologic consequences of the proposed operation upon the quality and quantity of surface water and groundwater in the proposed permit and adjacent areas, as required under § 784.20 of this part.

(ii) Determining the nature and extent of both the hydrologic reclamation plan required under § 784.22 of this part and the monitoring plans required under § 784.23 of this part.

(iii) Determining whether reclamation as required by this chapter can be accomplished.

(iv) Preparing the cumulative hydrologic impact assessment under § 784.21 of this part, including an evaluation of whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(v) Preparing the subsidence control plan under § 784.30 of this part.

(2) *Core baseline water-quality data requirements for surface water and groundwater.* You must provide the following water-quality information for each groundwater and surface-water sample collected for baseline data purposes.

Parameter	Surface water	Groundwater
pH	Yes	Yes.
Specific conductance corrected to 25 °C (conductivity)	Yes	Yes.
Total dissolved solids	Yes	Yes.
Total suspended solids	Yes	No.
Hot acidity	Yes	Yes.
Total alkalinity	Yes	Yes.
Major anions (dissolved), including, at a minimum, bicarbonate, sulfate, and chloride	Yes	Yes.
Major anions (total), including, at a minimum, bicarbonate, sulfate, and chloride	Yes	No.
Major cations (dissolved), including, at a minimum, calcium, magnesium, sodium, and potassium	Yes	Yes.
Major cations (total), including, at a minimum, calcium, magnesium, sodium, and potassium	Yes	No.
Cation-anion balance of dissolved major cations and dissolved major anions	Yes	Yes.
Any cation or anion that constitutes a significant percentage of the total ionic charge balance, but that was not included in the analyses of major anions and major cations.	Yes	Yes.
Iron (dissolved)	Yes	Yes.
Iron (total)	Yes	No.
Manganese (dissolved)	Yes	Yes.
Manganese (total)	Yes	No.
Selenium (dissolved)	Yes	Yes.
Selenium (total)	Yes	No.
Any other parameter identified in any applicable National Pollutant Discharge Elimination System permit, if known at the time of application for the SMCRA permit.	Yes	No.
Temperature	Yes	Yes.

(b) *Groundwater information*—(1) *General requirements.* Your permit application must include information sufficient to document seasonal variations in the quality, quantity, and usage of groundwater, including all surface discharges, within the proposed permit and adjacent areas.

(2) *Underground mine pools.* If an underground mine pool is present within the proposed permit or adjacent areas, you must prepare an assessment of the characteristics of the mine pool, including seasonal changes in quality, quantity, and flow patterns, unless you demonstrate, and the regulatory authority finds, that the mine pool would not be hydrologically connected to the proposed operation. The determination of the probable hydrologic consequences of mining required under § 784.20 of this part also must include a discussion of the effect of the proposed mining operation on any underground mine pools within the proposed permit and adjacent areas.

(3) *Monitoring wells.* The regulatory authority must require the installation of properly-screened monitoring wells to document seasonal variations in the quality, quantity, and usage of groundwater.

(4) *Groundwater quality descriptions.* Groundwater quality descriptions must include baseline information on the parameters identified in paragraph (a)(2) of this section and any additional pa-

rameters that the regulatory authority determines to be of local importance.

(5) *Groundwater quantity descriptions.* At a minimum, groundwater quantity descriptions must include baseline data documenting seasonal variations in—

(i) The areal extent and saturated thickness of all potentially-impacted aquifers; and

(ii) Approximate rates of groundwater discharge or usage and the elevation of the water table or potentiometric head in—

(A) Each water-bearing coal seam to be mined.

(B) Each aquifer above each coal seam to be mined.

(C) Each potentially-impacted aquifer below the lowest coal seam to be mined.

(6) *Groundwater sampling requirements.*

(i) You must establish monitoring wells or equivalent monitoring points at a sufficient number of locations within the proposed permit and adjacent areas to determine groundwater quality, quantity, and movement in each aquifer above or immediately below the lowest coal seam to be mined. At a minimum, for each aquifer, you must locate monitoring points—

(A) Upgradient and downgradient of the proposed permit area;

(B) Upgradient and downgradient of the area encompassed by the angle of dewatering; and

(C) Within the proposed permit area and the area overlying the proposed underground workings.

(ii)(A) To document seasonal variations in groundwater quality and quantity, you must collect samples and take the measurements identified in paragraph (b)(5) of this section from each location identified in paragraph (b)(6)(i) of this section at approximately equally-spaced monthly intervals for a minimum of 12 consecutive months.

(B) If approved by the regulatory authority, you may modify the interval or the 12-consecutive-month requirement specified in paragraph (b)(6)(ii)(A) of this section if adverse weather conditions make travel to a location specified in paragraph (b)(6)(i) of this section hazardous or if the water at that location is completely frozen.

(C) In lieu of the frequency specified in paragraph (b)(6)(ii)(A) of this section, the regulatory authority may allow you to collect data quarterly for 2 years. The regulatory authority may initiate review of the permit application after collection and analysis of the first four quarterly groundwater samples, but it may not approve the application until after receipt and analysis of the final four quarterly groundwater samples.

(D) You must analyze the samples collected in paragraph (b)(6)(ii)(A) of this section for the applicable water quality parameters identified in paragraph (a)(2) of this section and any other parameters specified by the regulatory authority.

(iii) You must provide the Palmer Drought Severity Index for the proposed permit and adjacent areas for the initial baseline data collection period under paragraph (b)(6)(ii) of this section. The regulatory authority may extend the minimum data collection period specified in paragraph (b)(6)(ii) of this section whenever data available from the National Oceanic and Atmospheric Administration or similar databases indicate that the region in which the proposed operation is located experienced severe drought or abnormally high precipitation during the initial baseline data collection period.

(c) *Surface-water information*—(1) *General requirements*. Your permit applica-

tion must include information sufficient to document seasonal variation in surface-water quality, quantity, and usage within the proposed permit and adjacent areas.

(2) *Surface-water quality descriptions*. Surface-water quality descriptions must include baseline information on the parameters identified in paragraph (a)(2) of this section and any additional parameters that the regulatory authority determines to be of local importance.

(3) *Surface-water quantity descriptions*.

(i) At a minimum, surface-water quantity descriptions for perennial and intermittent streams within the proposed permit and adjacent areas must include baseline data documenting—

(A) Peak-flow magnitude and frequency.

(B) Actual and anticipated usage.

(C) Seasonal flow variations.

(D) Seepage-run sampling determinations, if you propose to deploy a longwall panel beneath a perennial or intermittent stream or employ other types of full-extraction mining methods beneath a perennial or intermittent stream. You must take the seepage-run measurement during both low-flow and high-flow conditions. The seepage-run measurement must extend to the full length of the stream that would be affected by the mining operation.

(ii) All flow measurements under paragraph (c)(3)(i) of this section must be made using generally-accepted professional techniques approved by the regulatory authority. All techniques must be repeatable and must produce consistent results on successive measurements. Visual observations are not acceptable.

(4) *Surface-water sampling requirements*. (i) You must establish monitoring points at a sufficient number of locations within the proposed permit and adjacent areas to determine the quality and quantity of water in perennial and intermittent streams within those areas. At a minimum, you must locate monitoring points—

(A) Upgradient and downgradient of the proposed permit area in each perennial and intermittent stream within the proposed permit and adjacent areas; and

(B) Upgradient and downgradient of the area encompassed by the angle of dewatering in all potentially affected perennial and intermittent streams.

(ii)(A) To document seasonal variations in surface-water quality and quantity, you must collect samples and take the measurements identified in paragraph (c)(3) of this section from each location identified in paragraph (c)(4)(i) of this section at approximately equally-spaced monthly intervals for a minimum of 12 consecutive months.

(B) If approved by the regulatory authority, you may modify the interval or the 12-consecutive-month sampling requirement specified in paragraph (c)(4)(ii)(A) of this section if adverse weather conditions make travel to a location specified in paragraph (c)(4)(i) of this section hazardous or if the water at that location is completely frozen.

(C) You must analyze the samples collected under paragraph (c)(4)(ii)(A) of this section for the applicable parameters identified in paragraph (a)(2) of this section and any other parameters specified by the regulatory authority. (iii) You must provide the Palmer Drought Severity Index for the proposed permit and adjacent areas for the initial baseline data collection period under paragraph (c)(4)(ii) of this section. The regulatory authority may extend the minimum data collection period specified in paragraphs (c)(4)(ii) and (iii) of this section whenever data available from the National Oceanic and Atmospheric Administration or similar databases indicate that the region in which the proposed operation is located experienced severe drought or abnormally high precipitation during the initial baseline data collection period.

(5) *Precipitation measurements.* (i) You must provide records of precipitation amounts for the proposed permit area, using on-site, self-recording devices.

(ii) Precipitation records must be adequate to generate and calibrate a hydrologic model of the site. The regulatory authority will determine whether you must create such a model.

(iii) At the discretion of the regulatory authority, you may use precipitation data from a single self-recording device to provide baseline data for mul-

tiple permits located close to each other.

(6) *Stream assessments.* (i)(A) You must map and separately identify all perennial, intermittent, and ephemeral streams within the proposed permit area and all perennial and intermittent streams within the adjacent area.

(B) The map must show the location of the channel head of each stream identified in paragraph (c)(6)(i)(A) of this section whenever the applicable area includes a terminal reach of the stream.

(C) The map must show the location of transition points from ephemeral to intermittent and from intermittent to perennial (and vice versa, when applicable) for each stream identified in paragraph (c)(6)(i)(A) of this section whenever the applicable area includes such a transition point. If the U.S. Army Corps of Engineers has determined the location of a transition point, your application must be consistent with that determination.

(ii)(A) For all perennial and intermittent streams within the proposed permit area, you must describe the baseline stream pattern, profile, and dimensions, with measurements of channel slope, sinuosity, water depth, alluvial groundwater depth, depth to bedrock, bankfull depth, bankfull width, width of the flood-prone area, and dominant in-stream substrate at a scale and frequency adequate to characterize the entire length of the stream within the proposed permit area.

(B) You must describe the general stream-channel configuration of ephemeral streams within the proposed permit area.

(iii) For all perennial, intermittent, and ephemeral streams within the proposed permit area, you must describe the vegetation growing along the banks of each stream, including—

(A) Identification of any hydrophytic vegetation located within or adjacent to the stream channel.

(B) The extent to which streamside vegetation consists of trees and shrubs.

(C) The percentage of channel canopy coverage.

(D) A scientific calculation of the species diversity of the vegetation.

(iv) You must identify all stream segments within the proposed permit and

adjacent areas that appear on the list of impaired surface waters prepared under section 303(d) of the Clean Water Act, 33 U.S.C. 1313(d). You must identify the parameters responsible for the impaired condition and the total maximum daily loads associated with those parameters, when applicable.

(v) For all perennial, intermittent, and ephemeral streams within the proposed permit area and for all perennial and intermittent streams within the adjacent area, you must identify the extent of wetlands adjoining the stream and describe the quality of those wetlands.

(vi) Except as provided in paragraph (g) of this section, you must provide an assessment of the biological condition of—

(A) Each perennial stream within the proposed permit area.

(B) Each perennial stream within the adjacent area that could be affected by the proposed operation.

(C) Each intermittent stream within the proposed permit area, if a scientifically defensible protocol has been established for assessment of intermittent streams in the state or region in which the stream is located.

(D) Each intermittent stream within the adjacent area that could be affected by the proposed operation, if a scientifically defensible protocol has been established for assessment of intermittent streams in the state or region in which the stream is located.

(vii) When determining the biological condition of a stream under paragraph (c)(6)(vi) of this section, you must adhere to a bioassessment protocol approved by the state or tribal agency responsible for preparing the water quality inventory required under section 305(b) of the Clean Water Act, 33 U.S.C. 1315(b), or to other scientifically defensible bioassessment protocols accepted by agencies responsible for implementing the Clean Water Act, 33 U.S.C. 1251 *et seq.*, modified as necessary to meet the following requirements. The protocol must—

(A) Be based upon the measurement of an appropriate array of aquatic organisms, including, at a minimum, benthic macroinvertebrates, identified to the genus level where possible, oth-

erwise to the lowest practical taxonomic level.

(B) Result in the calculation of index values for both stream habitat and aquatic biota based on the reference condition.

(C) Provide index values that correspond to the capability of the stream to support its designated aquatic life uses under section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c).

(D) Include a quantitative assessment of in-stream and riparian habitat condition.

(E) Describe the technical elements of the bioassessment protocol, including but not limited to sampling methods, sampling gear, index period, sample processing and analysis, and quality assessment/quality control procedures.

(viii) Except as provided in paragraph (g) of this section, you must describe the biology of each intermittent stream within the proposed permit area, and each intermittent stream within the adjacent area that could be affected by the proposed operation, whenever an assessment of the biological condition of those streams is not required under paragraph (c)(6)(vi) of this section. When obtaining the data needed to prepare this description, you must—

(A) Sample each stream using a scientifically defensible sampling method or protocol established or endorsed by an agency responsible for implementing the Clean Water Act, 33 U.S.C. 1251 *et seq.*;

(B) Identify benthic macroinvertebrates to the genus level where possible, otherwise to the lowest practical taxonomic level; and

(C) Describe the technical elements of the sampling protocol, including but not limited to sampling methods, sampling gear, index period, sample processing and analysis, and quality assessment/quality control procedures.

(d) *Additional information for discharges from previous coal mining operations.* If the proposed permit and adjacent areas contain any point-source discharges from previous surface or underground coal mining operations, you must sample those discharges during low-flow conditions of the receiving stream on a one-time basis. You must

analyze the samples for the surface-water parameters identified in paragraph (a)(2) of this section and for both total and dissolved fractions of the following parameters—

- (1) Aluminum.
- (2) Arsenic.
- (3) Barium.
- (4) Beryllium.
- (5) Cadmium.
- (6) Copper.
- (7) Lead.
- (8) Mercury.
- (9) Nickel.
- (10) Silver.
- (11) Thallium.
- (12) Zinc.

(e) *Geologic information.* (1) Your application must include a description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined that may be adversely impacted by mining. The description must include—

- (i) The areal and structural geology of the proposed permit and adjacent areas.
- (ii) Other parameters that influence the required reclamation.
- (iii) An explanation of how the areal and structural geology may affect the occurrence, availability, movement, quantity, and quality of potentially impacted surface water and groundwater.
- (iv) The composition of the bed of each perennial and intermittent stream within the proposed permit and adjacent areas, together with a prediction of how that bed would respond to subsidence of strata overlying the proposed underground mine workings and how subsidence would impact streamflow.

(2) The description required by paragraph (f)(1) of this section must be based on all of the following—

- (i) The cross-sections, maps, and plans required by § 783.24 of this chapter.
- (ii) The information obtained under paragraphs (e)(3) through (5) of this section.
- (iii) Geologic literature and practices.

(3) For any portion of the proposed permit area in which the strata down to the coal seam to be mined will be removed or are already exposed, you must collect and analyze samples from test borings; drill cores; or fresh, unweathered, uncontaminated samples from rock outcrops, down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest seam to be mined that may be adversely impacted by mining. Your application must include the following data and analyses:

(i) Logs showing the lithologic characteristics, including physical properties and thickness, of each stratum, and the location of any groundwater encountered.

(ii) Chemical analyses identifying those strata that may contain acid-forming materials, toxic-forming materials, or alkalinity-producing materials and the extent to which each stratum contains those materials.

(iii) Chemical analyses of all coal seams for acid-forming or toxic-forming materials, including, but not limited to, total sulfur and pyritic sulfur.

(4) For lands within the permit and adjacent areas where the strata above the coal seam to be mined will not be removed, you must collect and analyze samples from test borings or drill cores. Your application must include the following data and analyses:

(i) Logs showing the lithologic characteristics, including physical properties and thickness, of each stratum that may be impacted, and the location of any groundwater encountered.

(ii) Chemical analyses of those strata immediately above and below the coal seam to be mined to identify whether and to what extent each stratum contains acid-forming materials, toxic-forming materials, or alkalinity-producing materials.

(iii) Chemical analyses of the coal seam for acid-forming or toxic-forming materials, including, but not limited to, total sulfur and pyritic sulfur.

(iv) For standard room-and-pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, in the strata immediately above and below each coal seam to be mined.

(5) You must provide any additional geologic information and analyses that the regulatory authority determines to be necessary to protect the hydrologic balance, to minimize or prevent subsidence, or to meet the performance standards of this chapter.

(6) You may request the regulatory authority to waive the requirements of paragraphs (e)(3) and (4) of this section, in whole or in part. The regulatory authority may grant the waiver request only after finding in writing that the collection and analysis of that data is unnecessary because other representative information is available to the regulatory authority in a satisfactory form.

(f) *Cumulative impact area information.*

(1) You must obtain the hydrologic, geologic, and biological information necessary to assess the impacts of both the proposed operation and all anticipated mining on surface-water and groundwater systems in the cumulative impact area, as required by § 784.21 of this part, from the appropriate federal or state agencies, to the extent that the information is available from those agencies.

(2) If the information identified as necessary in paragraph (f)(1) of this section is not available from other federal or state agencies, you may gather and submit this information to the regulatory authority as part of the permit application. As an alternative to collecting new information, you may submit data and analyses from nearby mining operations if the site of those operations is representative of the proposed operations in terms of topography, hydrology, geology, geochemistry, and method of mining.

(3) The regulatory authority may not approve the permit application until the information identified as necessary in paragraph (f)(1) of this section has been made available to the regulatory authority and the regulatory authority has used that information to prepare the cumulative hydrologic impact assessment required by § 784.21 of this part.

(g) *Exception for operations that avoid streams.* Upon your request, the regulatory authority may waive the biological information requirements of paragraphs (c)(6)(vi) through (viii) of

this section if you demonstrate, and if the regulatory authority finds in writing, that your operation will not—

(1) Mine through or bury a perennial or intermittent stream;

(2) Create a point-source discharge to any perennial, intermittent, or ephemeral stream; or

(3) Modify the base flow of any perennial or intermittent stream.

(h) *Coordination with Clean Water Act agencies.* The regulatory authority will make best efforts to—

(1) Consult in a timely manner with the agencies responsible for issuing permits, authorizations, and certifications under the Clean Water Act;

(2) Minimize differences in baseline data collection points and parameters; and

(3) Share data to the extent practicable and consistent with each agency's mission, statutory requirements, and implementing regulations.

(i) *Corroboration of baseline data.* The regulatory authority must either corroborate a sample of the baseline information in your application or arrange for a third party to conduct the corroboration at your expense. Corroboration may include, but is not limited to, simultaneous sample collection and analysis, visual observation of sample collection, use of field measurements, or comparison of application data with application or monitoring data from adjacent operations.

§ 784.20 How must I prepare the determination of the probable hydrologic consequences of my proposed operation (PHC determination)?

(a) *Content of PHC determination.* Your permit application must contain a determination of the probable hydrologic consequences of the proposed operation upon the quality and quantity of surface water and groundwater and, except as provided in § 784.19(g) of this part, upon the biology of perennial and intermittent streams under seasonal flow conditions for the proposed permit and adjacent areas. You must base the PHC determination on an analysis of the baseline hydrologic, geologic, biological, and other information required under § 784.19 of this part. It must include findings on:

(1) Whether the operation may cause material damage to the hydrologic balance outside the permit area.

(2) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface water or groundwater, including, but not limited to, a discharge of toxic mine drainage after the completion of land reclamation.

(3) Whether underground mining activities conducted after October 24, 1992, may result in contamination, diminution or interruption of a well or spring within the permit or adjacent areas that was in existence when the permit application was submitted and that is used for domestic, drinking, or residential purposes.

(4) Whether the proposed operation will intercept aquifers in overburden strata or aquifers in underground mine voids (mine pools) or create aquifers in spoil placed in the backfilled area and, if so, what impacts the operation would have on those aquifers, both during mining and after reclamation, and the effect of those impacts on the hydrologic balance.

(5) What impact the proposed operation will have on:

(i) Sediment yield and transport from the area to be disturbed.

(ii) The quality of groundwater and surface water within the proposed permit and adjacent areas. At a minimum, unless otherwise specified, the finding must address the impacts of the operation on both groundwater and surface water in terms of the parameters listed in § 784.19(a)(2) of this part and any additional water quality parameters that the regulatory authority determines to be of local importance.

(iii) Flooding and precipitation runoff patterns and characteristics.

(iv) Peak-flow magnitude and frequency for perennial and intermittent streams within the proposed permit and adjacent areas.

(v) Seasonal variations in streamflow.

(vi) The availability of groundwater and surface water, including the impact of any diversion of surface or subsurface flows to underground mine workings or any changes in watershed size as a result of the postmining surface configuration.

(vii) The biology of perennial and intermittent streams within the proposed permit and adjacent areas, except as provided in § 784.19(g) of this part.

(viii) Other characteristics as required by the regulatory authority.

(6) What impact subsidence resulting from the proposed underground mining activities may have on perennial and intermittent streams.

(7) Whether the underground mine workings will flood after mine closure and, if so, a statement and explanation of—

(i) The highest potentiometric surface of the mine pool after closure.

(ii) Whether, where, and when the mine pool is likely to result in a surface discharge, either via gravity or as a result of hydrostatic pressure.

(iii) The predicted quality of any discharge from the mine pool.

(iv) The predicted impact of the mine pool on the hydrologic balance of the proposed permit and adjacent areas after the mine pool reaches equilibrium.

(v) The potential for a mine pool blowout or other hydrologic disturbances.

(vi) The potential for the mine pool to destabilize surface features.

(vii) The potential impact of roof collapses on mine pool behavior and equilibrium.

(b) *Supplemental information.* You must provide any supplemental information that the regulatory authority determines is needed to fully evaluate the probable hydrologic consequences of the proposed operation and to plan remedial and reclamation activities. This information may include, but is not limited to, additional drilling, geochemical analyses of overburden materials, aquifer tests, hydrogeologic analyses of the water-bearing strata, analyses of flood flows, or analyses of other characteristics of water quality or quantity, including the stability of underground mine pools that might be affected by the proposed operation.

(c) *Subsequent reviews of PHC determinations.* (1) The regulatory authority must review each application for a permit revision to determine whether a new or updated PHC determination is needed.

(2) The regulatory authority must require that you prepare a new or updated PHC determination if the review under paragraph (c)(1) of this section finds that one is needed.

§ 784.21 What requirements apply to preparation, use, and review of the cumulative hydrologic impact assessment (CHIA)?

(a) *General requirements.* (1) The regulatory authority must prepare a written assessment of the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining upon surface-water and groundwater systems in the cumulative impact area. This assessment, which is known as the CHIA, must be sufficient to determine, for purposes of permit application approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(2) In preparing the CHIA, the regulatory authority must consider relevant information on file for other mining operations located within the cumulative impact area or in similar watersheds.

(3) As provided in § 784.19(f) of this part, the regulatory authority may not approve a permit application until the hydrologic, geologic, and biological information needed to prepare the CHIA has been made available to the regulatory authority and the regulatory authority has used that information to prepare the CHIA.

(b) *Contents.* The CHIA must include—

(1) A map of the cumulative impact area. At a minimum, the map must identify and display—

(i) Any difference in the boundaries of the cumulative impact area for groundwater and surface water.

(ii) The locations of all previous, current, and anticipated surface and underground mining.

(iii) The locations of all baseline data collection sites within the proposed permit and adjacent areas under § 784.19 of this part.

(iv) Designated uses of surface water under section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c).

(2) A description of all previous, existing, and anticipated surface and un-

derground coal mining within the cumulative impact area, including, at a minimum, the coal seam or seams mined or to be mined, the extent of mining, and the reclamation status of each operation.

(3) A quantitative and qualitative description of baseline hydrologic information for the proposed permit and adjacent areas under § 784.19 of this part, including—

(i) The quality and quantity of surface water and groundwater and seasonal variations therein.

(ii) The quality and quantity of water needed to support, maintain, or attain each—

(A) Designated use of surface water under section 303(c) of the Clean Water Act, 33 U.S.C. or 1313(c), or, if there are no designated uses, each premining use of surface water.

(B) Premining use of groundwater.

(iii) A description and/or maps of the local and regional groundwater systems.

(iv) To the extent required by § 784.19(c)(6)(vi) of this part, the biological condition of perennial and intermittent streams and, to the extent required by § 784.19(c)(6)(viii) of this part, the biology of intermittent streams not included within § 784.19(c)(6)(vi) of this part.

(4) A discussion of any potential concerns identified in the PHC determination required under § 784.20 of this part and how those concerns have been or will be resolved.

(5) A qualitative and quantitative assessment of how all anticipated surface and underground mining may impact the quality of surface water and groundwater in the cumulative impact area, expressed in terms of each baseline parameter identified under § 784.19 of this part.

(6) Site-specific numeric or narrative thresholds for material damage to the hydrologic balance outside the permit area. These thresholds must also be included as a condition of the permit. When identifying thresholds to define when material damage to the hydrologic balance outside the permit area would occur in connection with a particular permit, the regulatory authority will—

§ 784.21

(i) In consultation with the Clean Water Act authority, as appropriate, undertake a comprehensive evaluation that considers the following factors—

(A) The baseline data collected under § 784.19 of this part;

(B) The PHC determination prepared under § 784.20 of this part;

(C) Applicable water quality standards adopted under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c);

(D) Applicable state or tribal standards for surface water or groundwater;

(E) Ambient water quality criteria developed under section 304(a) of the Clean Water Act, 33 U.S.C. 1314(a);

(F) The biological requirements of any species listed as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, when those species; designated critical habitat for those species; habitat occupied by those species, such as nesting, resting, feeding, and breeding areas; and any areas in which those species are present only for a short time, but that are important to their persistence, such as migration and dispersal corridors, are present within the cumulative impact area; and

(G) Other pertinent information and considerations to identify the parameters for which thresholds are necessary.

(ii) In consultation with the Clean Water Act authority, adopt numeric thresholds as appropriate, taking into consideration relevant contaminants for which there are water quality criteria under the Clean Water Act, 33 U.S.C. 1251 *et seq.* The regulatory authority may not adopt a narrative threshold for parameters for which numeric water quality criteria exist under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

(iii) Identify the portion of the cumulative impact area to which each threshold applies. Parameters and thresholds may vary from subarea to subarea within the cumulative impact area when appropriate, based upon differences in watershed characteristics and variations in the geology, hydrology, and biology of the cumulative impact area.

(iv) Identify the points within the cumulative impact area at which the per-

30 CFR Ch. VII (7–1–17 Edition)

mittee will monitor the impacts of the operation on surface water and groundwater outside the permit area and explain how those locations will facilitate timely detection of the impacts of the operation on surface water and groundwater outside the permit area in a scientifically defensible manner. The permit applicant must incorporate those monitoring locations into the surface water and groundwater monitoring plans submitted under § 784.23 of this part.

(7) Evaluation thresholds for critical water quality and quantity parameters, as determined by the regulatory authority. After permit issuance, if monitoring results at the locations designated under paragraph (b)(6)(iv) of this section document exceedance of an evaluation threshold, the regulatory authority, in consultation with the Clean Water Act authority, as appropriate, must determine the cause of the exceedance. If the mining operation is responsible for the exceedance and if the adverse trend is likely to continue in the absence of corrective action, the regulatory authority must issue a permit revision order under § 774.10 of this chapter. The order must require that the permittee reassess the adequacy of the PHC determination prepared under § 784.20 of this part and the hydrologic reclamation plan approved under § 784.20 of this part and develop measures to prevent material damage to the hydrologic balance outside the permit area.

(8) An assessment of how all anticipated surface and underground mining may affect groundwater movement and availability within the cumulative impact area.

(9) After consultation with the Clean Water Act authority, as appropriate, an evaluation, with references to supporting data and analyses, of whether the CHIA will support a finding that the operation has been designed to prevent material damage to the hydrologic balance outside the permit area. To support this finding, the CHIA must include the following determinations, with appropriate documentation, or an explanation of why the determination is not necessary or appropriate:

(i) Except as provided in §§ 784.22(b) and 817.40 of this chapter, the proposed operation will not—

(A) Cause or contribute to a violation of applicable water quality standards adopted under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), or other applicable state or tribal water quality standards;

(B) Cause or contribute to a violation of applicable state or tribal groundwater quality standards;

(C) Preclude attainment of a premining use of a surface water located outside the permit area when no water quality standards have been established for that surface water; or

(D) Preclude attainment of any premining use of groundwater located outside the permit area.

(ii) The proposed operation has been designed to ensure that neither the mining operation nor the final configuration of the reclaimed area will result in changes in the size or frequency of peak flows from precipitation events or thaws that would cause an increase in flooding outside the permit area, when compared with premining conditions.

(iii) Perennial and intermittent streams located outside the permit area will continue to have sufficient base flow at all times during and after mining and reclamation to maintain their premining flow regime; *i.e.*, perennial streams located outside the permit area will retain perennial flows and intermittent streams located outside the permit area will retain intermittent flows both during and after mining and reclamation. Conversion of an intermittent stream to a perennial stream or conversion of an ephemeral stream to an intermittent or perennial stream outside the permit area may be acceptable, provided the conversion would be consistent with paragraph (b)(9)(i) of this section and would not result in a violation of the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*

(iv) The proposed operation has been designed to protect the quantity and quality of water in any aquifer that significantly ensures the prevailing hydrologic balance.

(c) *Subsequent reviews.* (1) The regulatory authority must review each application for a significant permit revision to determine whether a new or up-

dated CHIA is needed. The regulatory authority must document the review, including the analysis and conclusions, together with the rationale for the conclusions, in writing.

(2) The regulatory authority must re-evaluate the CHIA at intervals not to exceed 3 years to determine whether the CHIA remains accurate and whether the material damage and evaluation thresholds in the CHIA and the permit are adequate to ensure that material damage to the hydrologic balance outside the permit area will not occur. This evaluation must include a review of all biological and water monitoring data from both this operation and all other coal mining operations within the cumulative impact area.

(3) The regulatory authority must prepare a new or updated CHIA if the review conducted under paragraph (c)(1) or (2) of this section finds that one is needed.

§ 784.22 What information must I include in the hydrologic reclamation plan and what information must I provide on alternative water sources?

(a) *Hydrologic reclamation plan.* Your permit application must include a plan, with maps and descriptions, that demonstrates how the proposed operation will comply with the applicable provisions of this subchapter and subchapter K of this chapter that relate to protection of the hydrologic balance. The plan must—

(1) Be specific to local hydrologic conditions.

(2) Include preventive or remedial measures for any potential adverse hydrologic consequences identified in the PHC determination prepared under § 784.20 of this part. These measures must describe the steps that you will take during mining and reclamation through final bond release under §§ 800.40 through 800.43 of this chapter to—

(i) Minimize disturbances to the hydrologic balance within the proposed permit and adjacent areas. .

(ii) Prevent material damage to the hydrologic balance outside the proposed permit area. The plan must include remedial measures for any predicted diminution of streamflow or loss of wetlands as a result of subsidence.

The application must discuss the results of past use of the proposed remedial measures in the vicinity of the proposed mining operation and under similar conditions elsewhere.

(iii) Meet applicable water quality laws and regulations.

(iv) Protect existing water users in accordance with paragraph (b) of this section and § 817.40 of this chapter.

(v) Avoid acid or toxic discharges to surface water and avoid or, if avoidance is not possible, minimize degradation of groundwater.

(vi) Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or to runoff outside the proposed permit area.

(vii) Provide water-treatment facilities when needed.

(viii) Control surface-water runoff in accordance with § 784.29 of this part.

(3) Address the impacts of any transfers of water among active and abandoned mines within the proposed permit and adjacent areas.

(4) Describe the steps that you will take during mining and reclamation through final bond release under §§ 800.40 through 800.43 of this chapter to protect and enhance aquatic life and related environmental values to the extent possible using the best technology currently available.

(b) *Alternative water source information.* (1)(i) If the PHC determination prepared under § 784.20 of this part indicates that underground mining activities conducted after October 24, 1992, may result in contamination, diminution, or interruption of a well or spring that is in existence at the time the permit application is submitted and that is used for domestic, drinking, or residential purposes, you must demonstrate that alternative water sources are both available and feasible to develop. The alternative water sources must be of suitable quality and sufficient in quantity to support all uses protected under § 817.40 of this chapter.

(ii) You must develop a water supply replacement plan for all uses protected under § 817.40 of this chapter that includes construction details, costs, and an implementation schedule.

(2) If you cannot identify an alternative water source that is both suitable and available, you must modify your application to prevent the proposed operation from contaminating, interrupting, or diminishing any water supply protected under § 817.40 of this chapter.

(3)(i) When a suitable alternative water source is available, your operation plan must require that the alternative water supply be developed and installed on a permanent basis before your operation advances to the point at which it could adversely affect an existing water supply protected under § 817.40 of this chapter. This requirement applies only to those water supplies for which adverse impacts are probable.

(ii) Paragraph (b)(3)(i) of this section will not apply immediately if you demonstrate, and the regulatory authority finds, that the proposed operation also would adversely affect the replacement supply. In that case, your plan must require provision of a temporary replacement water supply until it is safe to install the permanent replacement water supply required under paragraph (b)(3)(i) of this section.

(4) Your application must describe how you will provide both temporary and permanent replacements for any unexpected losses of water supplies protected under § 817.40 of this chapter.

§ 784.23 What information must I include in plans for the monitoring of groundwater, surface water, and the biological condition of streams during and after mining?

(a) *Groundwater monitoring plan*—(1) *General requirements.* Your permit application must include a groundwater monitoring plan adequate to evaluate the impacts of the mining operation on groundwater in the proposed permit and adjacent areas and to determine in a timely manner whether corrective action is needed to prevent the operation from causing material damage to the hydrologic balance outside the permit area. The plan must—

(i) Identify the locations to be monitored, the measurements to be taken at each location, and the parameters to be analyzed in samples collected at each location.

(ii) Specify the sampling frequency.

(iii) Establish a sufficient number of appropriate monitoring locations to evaluate the accuracy of the findings in the PHC determination, to identify adverse trends, and to determine, in a timely fashion, whether corrective action is needed to prevent material damage to the hydrologic balance outside the permit area. At a minimum, the plan must include—

(A) For each aquifer above or immediately below the coal seam to be mined, monitoring sites located upgradient and downgradient of the proposed operation at a distance sufficiently close to the underground mine workings to detect changes as the mining operation progresses. The plan must include a schedule and map for moving these sites as the underground workings advance.

(B) Monitoring wells in any existing underground mine workings that would have a direct hydrological connection to the proposed operation.

(C) At least one monitoring well to be located in the mine pool after mine closure.

(D) Monitoring wells or equivalent monitoring points at the locations specified in the CHIA under § 784.21(b)(6)(vi) of this part.

(iv) Describe how the monitoring data will be used to—

(A) Determine the impacts of the operation upon the hydrologic balance.

(B) Determine the impacts of the operation upon the biology of surface waters within the permit and adjacent areas.

(C) Prevent material damage to the hydrologic balance outside the permit area.

(v) Describe how the water samples will be collected, preserved, stored, transmitted for analysis, and analyzed in accordance with the sampling, analysis, and reporting requirements of paragraphs (a) and (b) of § 777.13 of this chapter.

(2) *Parameters*—(i) *General criteria for selection of parameters*. The plan must provide for the monitoring of parameters for which an evaluation threshold under § 784.21(b)(7) of this part exists. It also must provide for the monitoring of other parameters that could be affected by the proposed operation to the extent needed to assess the—

(A) Accuracy of the findings and predictions in the PHC determination prepared under § 784.20 of this part.

(B) Suitability of the quality and quantity of groundwater for protected premining uses of groundwater within the permit and adjacent areas, subject to § 817.40 of this chapter.

(C) Suitability of the quality and quantity of groundwater to support the premining land uses within the permit and adjacent areas.

(ii) *Minimum sampling and analysis requirements*. At a minimum, the plan must require collection and analysis of a sample from each monitoring point every 3 months, with data submitted to the regulatory authority at the same frequency. The data must include—

(A) Analysis of each sample for the groundwater parameters listed in § 784.19(a)(2) of this part.

(B) Water levels in each well used for monitoring purposes and discharge rates from each spring or underground opening used for monitoring purposes.

(C) Analysis of each sample for parameters detected by the baseline sampling and analysis conducted under § 784.19(d) of this part.

(D) Analysis of each sample for all parameters for which there is an evaluation threshold under § 784.21(b)(7) of this part.

(E) Analysis of each sample for other parameters of concern, as determined by the regulatory authority, based upon the information and analyses required under §§ 784.19 through 784.21 of this part.

(3) *Regulatory authority review and action*. (i) Upon completing the technical review of the application, the regulatory authority may require that you revise the plan to increase the frequency of monitoring, to require monitoring of additional parameters, or to require monitoring at additional locations, if the additional requirements would contribute to protection of the hydrologic balance.

(ii) After completing preparation of the cumulative hydrologic impact assessment required under § 784.21 of this part, the regulatory authority must reconsider the adequacy of the monitoring plan and require that you make any necessary changes.

(4) *Exception.* If you can demonstrate, on the basis of the PHC determination prepared under § 784.20 of this part or other available information that a particular aquifer in the proposed permit and adjacent areas has no existing or foreseeable use for agricultural or other human purposes or for fish and wildlife purposes and does not serve as an aquifer that significantly ensures the hydrologic balance within the cumulative impact area, the regulatory authority may waive monitoring of that aquifer.

(b) *Surface-water monitoring plan*—(1) *General requirements.* Your permit application must include a surface-water monitoring plan adequate to evaluate the impacts of the mining operation on surface water in the proposed permit and adjacent areas and to determine in a timely manner whether corrective action is needed to prevent the operation from causing material damage to the hydrologic balance outside the permit area. The plan must—

(i) Identify the locations to be monitored, the measurements to be taken at each location, and the parameters to be analyzed in samples collected at each location.

(ii)(A) Require on-site measurement of precipitation amounts at specified locations within the permit area, using self-recording devices.

(B) Measurement of precipitation amounts must continue through Phase II bond release under § 800.42(c) of this chapter or for any longer period specified by the regulatory authority.

(C) At the discretion of the regulatory authority, you may use precipitation data from a single self-recording device to provide monitoring data for multiple permits that are contiguous or nearly contiguous if a single station would provide adequate and accurate coverage of precipitation events occurring in that area.

(iii) Specify the sampling frequency.

(iv) Establish a sufficient number of appropriate monitoring locations to evaluate the accuracy of the findings in the PHC determination, to identify adverse trends, and to determine, in a timely fashion, whether corrective action is needed to prevent material damage to the hydrologic balance out-

side the permit area. At a minimum, the plan must include—

(A) Monitoring of point-source discharges from the proposed operation.

(B) Monitoring locations upgradient and downgradient of the proposed permit area in each perennial and intermittent stream within the proposed permit and adjacent areas, with the exception that no upgradient monitoring location is needed for a stream when the operation will mine through the headwaters of that stream.

(C) Monitoring locations upgradient and downgradient of the proposed operation at a distance sufficiently close to the underground mine workings to detect changes as the mining operation progresses. The plan must include a schedule and map for moving these sites as the underground workings advance.

(D) Monitoring locations specified in the CHIA under § 784.21(b)(6)(vi) of this part.

(v) Describe how the monitoring data will be used to—

(A) Determine the impacts of the operation upon the hydrologic balance.

(B) Determine the impacts of the operation upon the biology of surface waters within the permit and adjacent areas.

(C) Prevent material damage to the hydrologic balance outside the permit area.

(vi) Describe how the water samples will be collected, preserved, stored, transmitted for analysis, and analyzed in accordance with the sampling, analysis, and reporting requirements of paragraphs (a) and (b) of § 777.13 of this chapter.

(2) *Parameters*—(i) *General criteria for selection of parameters.* The plan must provide for the monitoring of parameters—

(A) For which there are applicable effluent limitation guidelines under 40 CFR part 434.

(B) Needed to assess the accuracy of the findings and predictions in the PHC determination prepared under § 784.20 of this part.

(C) Needed to assess the adequacy of the surface-water runoff control plan prepared under § 784.29 of this part.

(D) Needed to assess the suitability of the quality and quantity of surface

water in the permit and adjacent areas for all designated uses under section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), or, if there are no designated uses, all premining uses of surface water in the permit and adjacent areas, subject to § 817.40 of this chapter; and

(E) Needed to assess the suitability of the quality and quantity of surface water in the permit and adjacent areas to support the premining land uses.

(F) For which there is an evaluation threshold under § 784.21(b)(7) of this part.

(ii) *Minimum sampling and analysis requirements for monitoring locations other than point-source discharges.* For all monitoring locations other than point-source discharges, the plan must require collection and analysis of a sample from each monitoring point at least every 3 months, with data submitted to the regulatory authority at the same frequency. The data must include—

(A) Analysis of each sample for the surface-water parameters listed in § 784.19(a)(2) of this part.

(B) Flow rates at each sampling location. The plan must require use of generally-accepted professional flow measurement techniques. Visual observations are not acceptable.

(C) Analysis of each sample for parameters detected by the baseline sampling and analysis conducted under § 784.19(d) of this part.

(D) Analysis of each sample for all parameters for which there is an evaluation threshold under § 784.21(b)(7) of this part.

(E) Analysis of each sample for other parameters of concern, as determined by the regulatory authority, based upon the information and analyses required under §§ 784.19 through 784.21 of this part.

(iii) *Minimum requirements for point-source discharges.* For point-source discharges, the plan must—

(A) Provide for monitoring in accordance with 40 CFR parts 122, 123, and 434 and as required by the National Pollutant Discharge Elimination System permitting authority.

(B) Require measurement of flow rates, using generally-accepted professional flow measurement techniques. Visual observations are not acceptable.

(iv) *Requirements related to the Clean Water Act.* You must revise the plan to incorporate any site-specific monitoring requirements imposed by the National Pollutant Discharge Elimination System permitting authority or the agency responsible for administration of section 404 of the Clean Water Act, 33 U.S.C. 1344, subsequent to submission of the SMCRA permit application.

(3) *Regulatory authority review and action.* (i) Upon completing the technical review of your application, the regulatory authority may require that you revise the plan to increase the frequency of monitoring, to require monitoring of additional parameters, or to require monitoring at additional locations, if the additional requirements would contribute to protection of the hydrologic balance.

(ii) After completing preparation of the cumulative hydrologic impact assessment required under § 784.21 of this part, the regulatory authority must reconsider the adequacy of the monitoring plan and require that you make any necessary changes.

(c) *Biological condition monitoring plan*—(1) *General requirements.* Except as provided in paragraph (d) of this section, your permit application must include a plan for monitoring the biological condition of each perennial and intermittent stream within the proposed permit and adjacent areas for which baseline biological condition data was collected under § 784.19(c)(6)(vi) of this part. The plan must be adequate to evaluate the impacts of the mining operation on the biological condition of those streams and to determine in a timely manner whether corrective action is needed to prevent the operation from causing material damage to the hydrologic balance outside the permit area.

(2) *Monitoring techniques.* The plan must—

(i) Require use of a bioassessment protocol that meets the requirements of § 784.19(c)(6)(vii) of this part.

(ii) Identify monitoring locations in each perennial and intermittent stream within the proposed permit and adjacent areas for which baseline biological condition data was collected under § 784.19(c)(6)(vi) of this part.

(iii) Establish a sampling frequency that must be no less than annual, but not so frequent as to unnecessarily deplete the populations of the species being monitored.

(iv) Require submission of monitoring data to the regulatory authority on an annual basis.

(3) *Regulatory authority review and action.* (i) Upon completing review of your application, the regulatory authority may require that you revise the plan to adjust monitoring locations, the frequency of monitoring, and the species to be monitored.

(ii) After completing preparation of the cumulative hydrologic impact assessment required under § 784.21 of this part, the regulatory authority must reconsider the adequacy of the monitoring plan and require that you make any necessary changes.

(d) *Exception for operations that avoid streams.* (1) Upon your request, the regulatory authority may waive the biological condition monitoring plan requirements of paragraph (c) of this section if you demonstrate, and if the regulatory authority finds in writing, that your operation will not—

(i) Mine through or bury any perennial or intermittent stream;

(ii) Create a point-source discharge to any perennial, intermittent, or ephemeral stream; or

(iii) Modify the base flow of any perennial or intermittent stream or cause the stream to pool, either as a result of subsidence or as a result of any other mining-related activity.

(2) If you meet all the criteria of paragraph (d)(1) of this section with the exception of paragraph (d)(1)(ii) of this section, you may request, and the regulatory authority may approve, limiting the biological condition monitoring requirements of paragraph (c) of this section to only the stream that will receive the point-source discharge.

(e) *Coordination with Clean Water Act agencies.* The regulatory authority will make best efforts to—

(1) Consult in a timely manner with the agencies responsible for issuing permits, authorizations, and certifications under the Clean Water Act;

(2) Minimize differences in monitoring locations and reporting requirements; and

(3) Share data to the extent practicable and consistent with each agency's mission, statutory requirements, and implementing regulations.

§ 784.24 What requirements apply to the postmining land use?

(a) *What postmining land use information must my application contain?* (1) You must describe and map the proposed use or uses of the land within the proposed permit area following reclamation, based on the categories of land uses listed in the definition of land use in § 701.5 of this chapter.

(2) Except for prime farmland historically used as cropland, you must discuss the utility and capability of the reclaimed land to support the proposed postmining land use and the variety of uses that the land was capable of supporting before any mining, as identified under § 783.22 of this chapter, regardless of the proposed postmining land use.

(3) You must explain how the proposed postmining land use is consistent with existing state and local land use policies and plans.

(4) You must include a copy of the comments concerning the proposed postmining use that you receive from the—

(i) Legal or equitable owner of record of the surface of the proposed permit area; and

(ii) State and local government agencies that would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(5) You must explain how the proposed postmining land use will be achieved and identify any support activities or facilities needed to achieve that use.

(6) If you propose to restore the proposed permit area or a portion thereof to a condition capable of supporting a higher or better use or uses rather than to a condition capable of supporting the uses that the land could support before any mining, you must provide the demonstration required under paragraph (b)(1) of this section.

(b) *What requirements apply to the approval of alternative postmining land uses?*—(1) *Application requirements.* If you propose to restore the proposed

permit area or a portion thereof to a condition capable of supporting a higher or better use or uses, rather than to a condition capable of supporting the uses that the land could support before any mining, you must demonstrate that the proposed higher or better use or uses meet the following criteria:

(i) There is a reasonable likelihood that the proposed use or uses will be achieved after mining and reclamation, as documented by, for example, real estate and construction contracts, plans for installation of any necessary infrastructure, procurement of any necessary zoning approvals, landowner commitments, economic forecasts, and studies by land use planning agencies.

(ii) The proposed use or uses do not present any actual or probable hazard to public health or safety or any threat of water diminution or pollution.

(iii) The proposed use or uses will not—

(A) Be impractical or unreasonable.

(B) Be inconsistent with applicable land use policies or plans.

(C) Involve unreasonable delay in implementation.

(D) Cause or contribute to a violation of federal, state, tribal or local law.

(E) Result in changes in the size or frequency of peak flows from the reclaimed area that would cause an increase in flooding when compared with the conditions that would exist if the land were restored to a condition capable of supporting the uses that it was capable of supporting before any mining.

(F) Cause the total volume of flow from the reclaimed area, during every season of the year, to vary in a way that would preclude attainment of any designated use of a surface water located outside the permit area under section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), or, if there are no designated uses, any premining use of a surface water located outside the permit area.

(G) Cause a change in the temperature or chemical composition of the water that would preclude attainment of any designated use of a surface water under section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), or, if there are no designated uses, any premining

use of a surface water located outside the permit area.

(2) *Regulatory authority decision requirements.* The regulatory authority may approve your request if it—

(i) Consults with the landowner or the land management agency having jurisdiction over the lands to which the use would apply; and

(ii) Finds in writing that you have made the demonstration required under paragraph (b)(1) of this section. Landowner consent alone is an insufficient basis for this finding.

(c) *What requirements apply to permit revision applications that propose to change the postmining land use?* (1) You may propose to change the postmining land use for all or a portion of the permit area at any time through the permit revision process under §774.13 of this chapter.

(2) If you propose a higher or better postmining land use, the requirements of paragraphs (b)(1) and (2) of this section will apply and the application must be considered a significant permit revision for purposes of §774.13(b)(2) of this chapter.

(d) *What restrictions apply to the retention of mining-related structures?* (1) If you propose to retain mining-related structures other than roads and impoundments for potential future use as part of the postmining land use, you must demonstrate, and the regulatory authority must find in writing, that the size and characteristics of the structures are consistent with and proportional to the needs of the postmining land use.

(2) The amount of bond required for the permit under part 800 of this chapter must include the cost of removing the structure and reclaiming the land upon which it was located to a condition capable of supporting the premining uses. The bond must include the cost of restoring the site to its approximate original contour in accordance with §817.102 of this chapter and revegetating the site in accordance with the revegetation plan approved under §784.12(g) of this part for the permit area surrounding the site upon which the structure was previously located.

(3) The reclamation plan submitted under §784.12 of this part must specify

that if a structure is not in use as part of the approved postmining land use by the end of the revegetation responsibility period specified in § 817.115 of this chapter, you must remove the structure and reclaim the land upon which it was located by restoring the approximate original contour in accordance with § 817.102 of this chapter and revegetating the site in accordance with the revegetation plan approved under § 784.12(g) of this part for the permit area surrounding the site upon which the structure was previously located.

(e) *What special provisions apply to previously mined areas?* If land that was previously mined cannot be reclaimed to the land use that existed before any mining because of the previously mined condition, you may propose, and the regulatory authority may approve, any appropriate postmining land use for that land that is both achievable and compatible with land uses in the surrounding area, provided that restoration of the land to that capability does not require disturbance of land previously unaffected by mining.

§ 784.25 What information must I provide for siltation structures, impoundments, and refuse piles?

(a) *How do I determine the hazard potential of a proposed impoundment?* You must use the following table to identify the hazard potential classification of each proposed impoundment that includes a dam:

Hazard potential classification	Loss of human life in event of failure	Economic, environmental, or lifeline losses ¹ in event of failure
Low	None expected	Low potential; generally limited to property owned by the permittee.
Significant.	None expected	Yes.
High	Loss of one or more lives probable.	Yes, but not necessary for this classification.

¹ Lifeline losses refer to disruption of lifeline facilities, which include, but are not limited to, important public utilities, highways, and railroads.

(b) *How must I prepare the general plan for proposed siltation structures, impoundments, and refuse piles?* If you propose to construct a siltation structure, impoundment, or refuse pile, your application must include a general plan that meets the following requirements:

(1) The plan must be prepared by, or under the direction of, and certified by a qualified registered professional engineer, a professional geologist, or, in any state that authorizes land surveyors to prepare and certify such plans, a qualified registered professional land surveyor, with assistance from experts in related fields such as landscape architecture.

(2) The plan must contain a description, map, and cross-sections of the structure and its location.

(3) The plan must contain the hydrologic and geologic information required to assess the hydrologic impact of the structure.

(4)(i) The plan must contain a report describing the results of a geotechnical investigation of the potential effect on the structure if subsurface strata subside as a result of past, current, or future underground mining operations beneath or within the proposed permit and adjacent areas. When necessary, the investigation report also must identify design and construction measures that would prevent adverse subsidence-related impacts on the structure.

(ii) Except for structures that would meet the criteria in § 77.216(a) of this title or that would have a significant or high hazard potential under paragraph (a) of this section, the requirements of paragraph (b)(4)(i) of this section do not apply—

(A) In areas with 26.0 inches or less of average annual precipitation; or

(B) To siltation structures.

(5)(i) The plan must contain an analysis of the potential for each impoundment to drain into subjacent underground mine workings, together with an analysis of the impacts of such drainage.

(ii) Except for structures that would meet the criteria in § 77.216(a) of this title or that would have a significant or high hazard potential under paragraph (a) of this section, the requirements of paragraph (b)(5)(i) of this section do not apply—

(A) In areas with 26.0 inches or less of average annual precipitation; or

(B) To siltation structures.

(6) The plan must include a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general

plan will be submitted to the regulatory authority.

(c) *How must I prepare the detailed design plan for proposed siltation structures, impoundments, and refuse piles?*—(1) *Detailed design plan requirements for high hazard dams, significant hazard dams, and impounding structures that meet MSHA criteria.* If you propose to construct an impounding structure that would meet the criteria in §77.216(a) of this title or that would have a significant or high hazard potential under paragraph (a) of this section, you must prepare and submit a detailed design plan that meets the following requirements:

(i) The plan must be prepared by, or under the direction of, a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture. The engineer must certify that the impoundment design meets the requirements of this part, current prudent engineering practices, and any design criteria established by the regulatory authority. The qualified registered professional engineer must be experienced in the design and construction of impoundments.

(ii) The plan must incorporate any design and construction measures identified in the geotechnical investigation report prepared under paragraph (b)(4) of this section as necessary to protect against potential adverse impacts from subsidence resulting from underground mine workings underlying or adjacent to the structure.

(iii) The plan must describe the operation and maintenance requirements for each structure.

(iv) The plan must describe the timetable and plans to remove each structure, if appropriate.

(2) *Detailed design plan requirements for other structures.* If you propose to construct an impounding structure that would not meet the criteria in §77.216(a) of this title and that would not have a significant or high hazard potential under paragraph (a) of this section, you must prepare and submit a detailed design plan that meets the following requirements:

(i)(A) Except as provided in paragraph (c)(2)(i)(B) of this section, the plan must be prepared by, or under the

direction of, a qualified, registered, professional engineer, or, in any state that authorizes land surveyors to prepare and certify such plans, a qualified, registered, professional, land surveyor. The engineer or land surveyor must certify that the impoundment design meets the requirements of this part, current prudent engineering practices, and any design criteria established by the regulatory authority. The qualified registered professional engineer or qualified registered professional land surveyor must be experienced in the design and construction of impoundments.

(B) All coal mine waste structures to which §§817.81 through 817.84 of this chapter apply must be certified by a qualified, registered, professional engineer.

(ii) The plan must reflect any design and construction requirements for the structure, including any measures identified as necessary in the geotechnical investigation report prepared under paragraph (b)(4) of this section.

(iii) The plan must describe the operation and maintenance requirements for each structure.

(iv) The plan must describe the timetable and plans to remove each structure, if appropriate.

(3) *Timing of submittal of detailed design plans.* You must submit the detailed design plans to the regulatory authority either as part of the permit application or in accordance with the schedule submitted under paragraph (b)(6) of this section. The regulatory authority must approve, in writing, the detailed design plan for a structure before you may begin construction of the structure.

(d) *What additional design requirements apply to siltation structures?* You must design siltation structures in compliance with the requirements of §817.46 of this chapter.

(e) *What additional design requirements apply to permanent and temporary impoundments?* (1) You must design permanent and temporary impoundments to comply with the requirements of §817.49 of this chapter.

(2) The regulatory authority may establish, through the regulatory program approval process, engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of conducting engineering tests to establish compliance with the minimum static safety factor of 1.3 required in § 816.49(a)(2)(ii) of this chapter.

(3) Each plan must include stability analyses of the proposed impoundment if the structure would meet the criteria in § 77.216(a) of this title or would have a significant or high hazard potential under paragraph (a) of this section. The stability analyses must address static, seismic, and post-earthquake (liquefaction) conditions. They must include, but are not limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan also must contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific analysis and design parameters and construction methods.

(f) *What additional design requirements apply to coal mine waste impoundments, refuse piles, and impounding structures constructed of coal mine waste?* If you propose to place coal mine waste in a refuse pile or impoundment, or if you plan to use coal mine waste to construct an impounding structure, you must comply with the applicable design requirements in paragraphs (f)(1) and (2) of this section.

(1) *Design requirements for refuse piles.* You must design refuse piles to comply with the requirements of §§ 784.28, 817.81, and 817.83 of this chapter.

(2) *Design requirements for impounding structures that will impound coal mine waste or that will be constructed of coal mine waste.* (i) You must design impounding structures constructed of or intended to impound coal mine waste to comply with the coal mine waste disposal requirements of §§ 784.28, 817.81, and 817.84 of this chapter and with the impoundment requirements of paragraphs (a) and (c) of § 817.49 of this chapter.

(ii) The plan for each impounding structure that meets the criteria of § 77.216(a) of this title must comply

with the requirements of § 77.216–2 of this title.

(iii) Each plan for an impounding structure that will impound coal mine waste or that will be constructed of coal mine waste must contain the results of a geotechnical investigation to determine the structural competence of the foundation that will support the proposed impounding structure and the impounded material. An engineer or engineering geologist must plan and supervise the geotechnical investigation. In planning the investigation, the engineer or geologist must—

(A) Determine the number, location, and depth of borings and test pits using current prudent engineering practice for the size of the impoundment and the impounding structure, the quantity of material to be impounded, and subsurface conditions.

(B) Consider the character of the overburden and bedrock, the proposed abutment sites for the impounding structure, and any adverse geotechnical conditions that may affect the impounding structure.

(C) Identify all springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed impounding structure on each plan.

(D) Consider the possibility of mudflows, rock-debris falls, or other landslides into the impounding structure, impoundment, or impounded material.

(iv) The design must ensure that at least 90 percent of the water stored in the impoundment during the design precipitation event will be removed within a 10-day period.

§ 784.26 What information must I provide if I plan to return coal processing waste to abandoned underground mine workings?

(a) As provided in §§ 816.81(h) and 817.81(h) of this chapter, you may return coal processing waste from either surface-mined coal or underground-mined coal to abandoned underground mine workings for disposal only if the regulatory authority and the Mine Safety and Health Administration first approve the disposal plan.

(b) Each plan for the return of coal processing waste to abandoned underground mine workings must describe the—

(1) Source and quality of coal processing waste to be stowed in the abandoned underground workings.

(2) All chemicals used to process the coal, the quantity of those chemicals remaining in the coal processing waste, and the likely impact of those chemicals on groundwater and any persons, aquatic life, or wildlife using that groundwater.

(3) Area of the abandoned underground workings in which the waste is to be placed.

(4) Percent of the abandoned underground mine void to be filled.

(5) Method of constructing underground retaining walls.

(6) Influence of the backstowing operation on active underground mine operations.

(7) Surface area to be supported by the backstowed waste.

(8) Anticipated occurrence of surface effects following backstowing.

(9) Source and operation of the hydraulic transport mediums.

(10) Method of dewatering the coal processing waste after placement.

(11) Extent to which water will be retained underground.

(12) Method of treatment of water if released to surface streams.

(13) Plans for monitoring for chemicals contained in the coal processing waste.

(14) Effect on the hydrologic regime and biological communities.

(15) Measures to be taken to comply with the requirements of §816.41 or §817.41 of this chapter for discharges to underground mines.

(c) The plan submitted under paragraph (b) of this section must include a monitoring plan that complies with §784.23 of this part, as applicable. It must describe the objective of each permanent monitoring well to be located in the area in which coal processing waste is placed, the stratum underlying the mined coal, and the gradient from the area in which the waste is placed.

(d) Paragraphs (a) through (c) of this section also apply to pneumatic backstowing operations, except that

the regulatory authority may exempt a proposed pneumatic backstowing operation from compliance with the monitoring requirements of paragraph (c) of this section after finding in writing that you have demonstrated that the proposed operation will not adversely impact surface water, groundwater, or water supplies.

§ 784.27 What additional permitting requirements apply to proposed activities in or through ephemeral streams?

(a) *Clean Water Act requirements.* If the proposed permit area includes waters subject to the jurisdiction of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the regulatory authority must condition the permit to prohibit initiation of mining-related activities in or affecting those waters before you obtain all necessary authorizations, certifications, and permits under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

(b) *Postmining surface drainage pattern and stream-channel configuration.* (1) If you propose to mine through an ephemeral stream, your application must include a plan to construct—

(i) A postmining surface drainage pattern that is similar to the premining surface drainage pattern, relatively stable, and in dynamic near-equilibrium; and

(ii) Postmining stream-channel configurations that are relatively stable and similar to the premining configuration of ephemeral stream channels.

(2) The regulatory authority may approve or require a postmining surface drainage pattern or stream-channel configuration that differs from the pattern or configuration otherwise required under paragraph (b)(1) of this section when the regulatory authority finds that a different pattern or configuration is necessary or appropriate to—

(i) Ensure stability;

(ii) Prevent or minimize downcutting or widening of reconstructed stream channels and control meander migration;

(iii) Promote enhancement of fish and wildlife habitat;

(iv) Accommodate any anticipated temporary or permanent increase in

surface runoff as a result of mining and reclamation; or

(v) Accommodate the construction of excess spoil fills, coal mine waste refuse piles, or coal mine waste impounding structures;

(vi) Replace a stream that was channelized or otherwise severely altered prior to submittal of the permit application with a more natural, relatively stable, and ecologically sound drainage pattern or stream-channel configuration; or

(vii) Reclaim a previously mined area.

(c) *Streamside vegetative corridors.* (1) If you propose to mine through an ephemeral stream, your application must include a plan to establish a vegetative corridor at least 100 feet wide along each bank of the reconstructed stream channel, consistent with natural vegetation patterns.

(2) The plan submitted under paragraph (c)(1) of this section must be consistent with the requirements of § 817.56(c) of this chapter for vegetative corridors along ephemeral streams.

(3) Paragraphs (c)(1) and (2) of this section do not apply to prime farmland historically used for cropland.

§ 784.28 What additional permitting requirements apply to proposed surface activities in, through, or adjacent to perennial or intermittent streams?

(a) *Clean Water Act requirements.* If the proposed permit area includes waters subject to the jurisdiction of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the regulatory authority must condition the permit to prohibit initiation of mining-related activities in or affecting those waters before you obtain all necessary authorizations, certifications, and permits under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

(b) *To what activities does this section apply?* You, the permit applicant, must provide the information and demonstrations required by paragraphs (c) through (g) of this section, as applicable, whenever you propose to conduct mining activities—

(1) In or through a perennial or intermittent stream; or

(2) On the surface of lands within 100 feet of a perennial or intermittent stream. You must measure this dis-

tance horizontally on a line perpendicular to the stream, beginning at the ordinary high water mark.

(c) *Postmining surface drainage pattern and stream-channel configuration.* (1) If you propose to mine through a perennial or intermittent stream, your application must include a plan to construct—

(i) A postmining surface drainage pattern that is similar to the premining surface drainage pattern, relatively stable, and in dynamic near-equilibrium; and

(ii) Postmining stream-channel configurations that are relatively stable and similar to the premining configuration of perennial and intermittent stream channels.

(2) The regulatory authority may approve or require a postmining surface drainage pattern or stream-channel configuration that differs from the pattern or configuration otherwise required under paragraph (c)(1) of this section when the regulatory authority finds that a different pattern or configuration is necessary or appropriate to—

(i) Ensure stability;

(ii) Prevent or minimize downcutting or widening of reconstructed stream channels and control meander migration;

(iii) Promote enhancement of fish and wildlife habitat;

(iv) Accommodate any anticipated temporary or permanent increase in surface runoff as a result of mining and reclamation;

(v) Accommodate the construction of excess spoil fills, coal mine waste refuse piles, or coal mine waste impounding structures;

(vi) Replace a stream that was channelized or otherwise severely altered prior to submittal of the permit application with a more natural, relatively stable, and ecologically sound drainage pattern or stream-channel configuration; or

(vii) Reclaim a previously mined area.

(d) *Streamside vegetative corridors.* (1) If you propose to conduct any mining activities identified in paragraph (b) of this section, your application must include a plan to establish a vegetated streamside corridor at least 100 feet

Surface Mining Reclamation and Enforcement, Interior

§ 784.28

wide on each side of the stream as part of the reclamation process following the completion of mining activities on the surface of land within that area.

(2) The plan submitted under paragraph (d)(1) of this section must be consistent with natural vegetation patterns.

(3) The plan submitted under paragraph (d)(1) of this section must be consistent with the streamside vegetative corridor requirements of §817.57(d) of this chapter.

(4) The corridor width must be measured horizontally on a line perpendicular to the stream, beginning at the ordinary high water mark.

(5) Paragraphs (d)(1) through (2) of this section do not apply to prime

farmland historically used for cropland.

(e) *What demonstrations must I include in my application if I propose to conduct activities in or within 100 feet of a perennial or intermittent stream?* (1) Except as provided in paragraphs (e)(5), (e)(6), and (i) of this section and §817.57(i) of this chapter, your application must contain the applicable demonstrations set forth in the table if you propose to conduct mining activities in or through a perennial or intermittent stream or on the surface of land within 100 feet of a perennial or intermittent stream, as specified in paragraph (b) of this section.

Demonstration	Activity		
	Any activity other than mining through or permanently diverting a stream or construction of an excess spoil fill, coal mine waste refuse pile, or impounding structure that encroaches upon any part of a stream	Mining through or permanently diverting a stream	Construction of an excess spoil fill, coal mine waste refuse pile, or impounding structure that encroaches upon any part of a stream
(i) The proposed activity would not cause or contribute to a violation of applicable state or tribal water quality standards, including, but not limited to, standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c).	Yes	Yes	Yes.
(ii) The proposed activity would not cause material damage to the hydrologic balance outside the permit area or upset the dynamic near-equilibrium of streams outside the permit area.	Yes	Yes	Yes.
(iii) The proposed activity would not result in conversion of the affected stream segment from perennial to ephemeral.	Yes	Yes	Not applicable.
(iv) The proposed activity would not result in conversion of the affected stream segment from intermittent to ephemeral or from perennial to intermittent.	Yes	Yes, except as provided in paragraphs (e)(2) and (5) of this section.	Not applicable.
(v) There is no practicable alternative that would avoid mining through or diverting a perennial or intermittent stream.	Not applicable ...	Yes, except as provided in paragraph (e)(3) of this section.	Yes.
(vi) After evaluating all potential upland locations in the vicinity of the proposed operation, including abandoned mine lands and unreclaimed bond forfeiture sites, there is no practicable alternative that would avoid placement of excess spoil or coal mine waste in a perennial or intermittent stream.	Not applicable ...	Not applicable ...	Yes.
(vii) The proposed operation has been designed to minimize the extent to which perennial or intermittent streams will be mined through, diverted, or covered by an excess spoil fill, a coal mine waste refuse pile, or a coal mine waste impounding structure.	Not applicable ...	Yes, except as provided in paragraphs (e)(3) and (5) of this section.	Yes.

Demonstration	Activity		
	Any activity other than mining through or permanently diverting a stream or construction of an excess spoil fill, coal mine waste refuse pile, or impounding structure that encroaches upon any part of a stream	Mining through or permanently diverting a stream	Construction of an excess spoil fill, coal mine waste refuse pile, or impounding structure that encroaches upon any part of a stream
(viii) The stream restoration techniques in the proposed reclamation plan are adequate to ensure restoration or improvement of the form, hydrologic function (including flow regime), dynamic near-equilibrium, streamside vegetation, and ecological function of the stream after you have mined through it, as required by § 817.57 of this chapter.	Not applicable ...	Yes, except as provided in paragraph (e)(5) of this section.	Not applicable.
(ix) The proposed operation has been designed to minimize the amount of excess spoil or coal mine waste that the proposed operation will generate.	§ 784.35(b) of this part requires minimization of excess spoil.	§ 784.35(b) of this part requires minimization of excess spoil.	Yes.
(x) To the extent possible using the best technology currently available, the proposed operation has been designed to minimize adverse impacts on fish, wildlife, and related environmental values.	Yes	Yes	Yes.
(xi) The fish and wildlife enhancement plan prepared under § 784.16 of this part includes measures that would fully and permanently offset any long-term adverse impacts on fish, wildlife, and related environmental values within the footprint of each excess spoil fill, coal mine waste refuse pile, and coal mine waste impounding structure.	Not applicable ...	Not applicable ...	Yes.
(xii) Each excess spoil fill, coal mine waste refuse pile, and coal mine waste impounding structure has been designed in a manner that will not result in the formation of toxic mine drainage.	Not applicable ...	Not applicable ...	Yes.
(xiii) The revegetation plan prepared under § 784.12(g) of this part requires reforestation of each completed excess spoil fill if the land is forested at the time of application or if the land would revert to forest under conditions of natural succession.	Not applicable ...	Not applicable ...	Yes.

(2)(i) As part of a proposal to mine through an intermittent stream, you may propose to convert a minimal portion of the mined-through segment of an intermittent stream to an ephemeral stream. The regulatory authority may approve the proposed conversion only if you demonstrate, and the regulatory authority finds, that the conversion would not degrade the hydrologic function, dynamic near-equilibrium, or the ecological function of the stream as a whole within the mined area, as determined by comparison with the stream assessment conducted under § 784.19(c)(6) of this part.

(ii) Paragraph (e)(2)(i) of this section does not apply to the circumstances described in paragraph (e)(5) of this section.

(3)(i) Paragraphs (e)(1)(v) and (vii) of this section do not apply to a proposal to mine through a segment of an inter-

mittent stream when that segment meets the criteria of paragraph (e)(3)(ii) of this section, provided you demonstrate, and the regulatory authority finds, that implementation of the proposed mining and reclamation plan—

(A) Will improve the form of the stream segment;

(B) Will improve the hydrologic function of the stream;

(C) Is likely to result in improvement of the biological condition or ecological function of the stream;

(D) Will not further degrade the hydrologic function, dynamic near-equilibrium, biological condition, or ecological function of the stream; and

(E) Will result in establishment of a streamside vegetative corridor for the stream segment in accordance with § 817.57(d) of this chapter.

(ii) To qualify for purposes of paragraph (e)(3)(i) of this section, a stream segment must display both of the following characteristics:

(A) Prior anthropogenic activity has resulted in substantial degradation of the profile or dimensions of the stream channel; and

(B) Degradation of the stream channel has resulted in a substantial adverse impact on the ecological function of the stream.

(4) Paragraph (e)(1) of this section does not apply to a stream segment that will be part of a permanent impoundment approved and constructed under § 817.49(b) of this chapter.

(5) Paragraphs (e)(1)(iv) and (vii) of this section and the requirement for restoration of the hydrologic and ecological functions and the dynamic near-equilibrium of a stream in paragraph (e)(1)(viii) of this section do not apply to an intermittent stream segment if—

(i) The intermittent segment is a minor interval in what is otherwise a predominantly ephemeral stream;

(ii) You demonstrate, and the regulatory authority finds, that the intermittent segment has no significant fish, wildlife, or related environmental values, as documented by the baseline data collected under § 784.19(c)(6) of this part; and

(iii) You demonstrate, and the regulatory authority finds, that conversion of the intermittent stream segment will not adversely affect water uses.

(f) *What design requirements apply to the diversion, restoration, and reconstruction of perennial and intermittent stream channels?* (1)(i) You must design permanent stream-channel diversions, temporary stream-channel diversions that will remain in use for 3 or more years, and stream channels to be reconstructed after the completion of mining to restore, approximate, or improve the premining characteristics of the original stream channel, to promote the recovery and enhancement of aquatic habitat and the ecological and hydrologic functions of the stream, and to minimize adverse alteration of stream channels on and off the site, including channel deepening or enlargement.

(ii) Pertinent stream-channel characteristics include, but are not limited to, the baseline stream pattern, profile, dimensions, substrate, habitat, and natural vegetation growing in the riparian zone and along the banks of the stream.

(iii) For temporary stream-channel diversions that will remain in use for 3 or more years, the vegetation proposed for planting along the banks of the diversion need not include species that would not reach maturity until after the diversion is removed.

(2) You must design the hydraulic capacity of all temporary and permanent stream-channel diversions to be at least equal to the hydraulic capacity of the unmodified stream channel immediately upstream of the diversion, but no greater than the hydraulic capacity of the unmodified stream channel immediately downstream from the diversion.

(3) You must design all temporary and permanent stream-channel diversions in a manner that ensures that the combination of channel, bank, and flood-plain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

(4) You must submit a certification from a qualified registered professional engineer that the designs for all stream-channel diversions and all stream channels to be reconstructed after the completion of mining meet the design requirements of this section and any additional design criteria established by the regulatory authority. This certification may be limited to the location, dimensions, and physical characteristics of the stream channel.

(g) *What requirements apply to establishment of standards for restoration of the ecological function of a stream?* (1) If you propose to mine through a perennial or intermittent stream, the regulatory authority must establish standards for determining when the ecological function of the reconstructed stream has been restored. Your application must incorporate those standards and explain how you will meet them.

(2) In establishing standards under paragraph (g)(1) of this section, the regulatory authority must coordinate with the appropriate agencies responsible for administering the Clean Water Act, 33 U.S.C. 1251 *et seq.*, to ensure compliance with all Clean Water Act requirements.

(3)(i) The biological component of the standards established under paragraph (g)(1) of this section must employ the best technology currently available, as specified in paragraphs (g)(3)(ii) through (iv) of this section.

(ii) For perennial streams, the best technology currently available includes an assessment of the biological condition of the stream, as determined by an index of biological condition or other scientifically-defensible bio-assessment protocols consistent with § 784.19(c)(6)(vii) of this part. Standards established under paragraph (g)(1) of this section for perennial streams—

(A) Need not require that a reconstructed stream or stream-channel diversion have precisely the same biological condition or biota as the stream segment did before mining.

(B) Must prohibit substantial replacement of pollution-sensitive species with pollution-tolerant species.

(C) Must require that populations of organisms used to determine the biological condition of the reconstructed stream or stream-channel diversion be self-sustaining within that stream segment.

(iii) Paragraph (g)(3)(ii) of this section also applies to intermittent streams whenever a scientifically defensible biological index and bioassessment protocol have been established for assessment of intermittent streams in the state or region in which the stream is located.

(iv)(A) Except as provided in paragraph (g)(3)(iii) of this section, the best technology currently available for intermittent streams consists of the establishment of standards that rely upon restoration of the form, hydrologic function, and water quality of the stream and reestablishment of streamside vegetation as a surrogate for the biological condition of the stream.

(B) The regulatory authority must reevaluate the best technology cur-

rently available for intermittent streams under paragraph (g)(3)(iv)(A) of this section at 5-year intervals. Upon conclusion of that evaluation, the regulatory authority must make any appropriate adjustments before processing permit applications submitted after the conclusion of that evaluation.

(4) Standards established under paragraph (g)(1) of this section must ensure that the reconstructed stream or stream-channel diversion will not—

(i) Preclude attainment of the designated uses of that stream segment under section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), before mining, or, if there are no designated uses, the premining uses of that stream segment; or

(ii) Result in that stream segment not meeting the applicable anti-degradation requirements under section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), as adopted by a state or authorized tribe or as promulgated in a federal rulemaking under the Clean Water Act.

(h) *What finding must the regulatory authority make before approving a permit application under this section?* The regulatory authority may not approve an application that includes a proposal to conduct mining activities in a perennial or intermittent stream or on the surface of land within 100 feet of a perennial or intermittent stream unless it first makes a specific written finding that you have fully satisfied all applicable requirements of paragraphs (c) through (f) of this section. The finding must be accompanied by a detailed explanation of the rationale for the finding.

(i) *Programmatic alternative.* Paragraphs (c) through (h) of this section will not apply to a state program approved under subchapter T of this chapter if that program is amended to expressly prohibit all mining activities, including the construction of stream-channel diversions, that would result in more than a de minimis disturbance of perennial or intermittent streams or the surface of land within 100 feet of a perennial or intermittent stream.

§ 784.29 What information must I include in the surface-water runoff control plan?

Your application must contain a surface-water runoff control plan that includes the following—

(a)(1) An explanation of how you will handle surface-water runoff in a manner that will prevent peak discharges from the proposed permit area, both during and after mining and reclamation, from exceeding the premining peak discharge from the same area for the same-size precipitation event. You must use the appropriate regional Natural Resources Conservation Service synthetic storm distribution or another scientifically defensible method approved by the regulatory authority that takes into account the time of concentration to estimate peak discharges.

(2) The explanation in paragraph (a)(1) of this section must consider the findings in the determination of the probable hydrologic consequences of mining prepared under § 784.20 of this part.

(b) A surface-water runoff monitoring and inspection program that will provide sufficient precipitation and stormwater discharge data for the proposed permit area to evaluate the effectiveness of the surface-water runoff control practices under paragraph (a) of this section. The surface-water runoff monitoring and inspection program must specify criteria for monitoring, inspection, and reporting consistent with § 817.34(d) of this chapter. The program must contain a monitoring-point density that adequately represents the drainage pattern across the entire proposed permit area, with a minimum of one monitoring point per watershed discharge point.

(c) Descriptions maps, and cross-sections of runoff-control structures. A runoff-control structure is any man-made structure designed to control or convey storm water runoff on or across a minesite. This term encompasses the entire surface water control system and includes diversion ditches, drainage benches or terraces, drop structures or check dams, all types of conveyance channels, downdrains, and sedimentation and detention ponds and associated outlets. It does not include

swales or reconstructed perennial, intermittent, or ephemeral stream channels.

(d) An explanation of how diversions will be constructed in compliance with § 817.43 of this chapter.

§ 784.30 When must I prepare a subsidence control plan and what information must that plan include?

(a) *Pre-subsidence survey.* Each application must include—

(1) A map of the proposed permit and adjacent areas at a scale no smaller than 1:12,000. The regulatory authority may require a larger-scale or more detailed map. The map must show the location and type of—

(i) Structures, renewable resource lands, wetlands, streams, and water bodies that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence; and

(ii) Drinking, domestic, and residential water supplies that could be contaminated, diminished, or interrupted by subsidence.

(2) A narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures, renewable resource lands, wetlands, streams, or water bodies or could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies.

(3)(i) A survey of the quantity and quality of all drinking, domestic, and residential water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence.

(ii) You, the applicant, must pay for any technical assessment or engineering evaluation used to determine the premining quantity and quality of drinking, domestic, or residential water supplies. You may use publicly available assessments conducted for research purposes by a university or government agency, provided those assessments are updated to reflect any changes that have occurred since completion of the study.

(iii) You must provide copies of the survey and any technical assessment or engineering evaluation to the property owner and to the regulatory authority.

(b) *Conditions under which no subsidence control plan is needed.* You do not need to submit a subsidence control plan if the survey conducted and information provided under paragraph (a) of this section show that—

(1) No structures, drinking, domestic, or residential water supplies, renewable resource lands, wetlands, streams, or water bodies exist within the proposed permit and adjacent areas; or

(2) There would be no material damage or diminution in value or reasonably foreseeable use of structures, lands, or features protected under §817.121(c) through (e) of this chapter, and no contamination, diminution, or interruption of water supplies protected under §817.40 of this chapter would occur as a result of mine subsidence, provided that the regulatory authority agrees with this conclusion.

(c) *Subsidence control plan.* (1) Your application must include a subsidence control plan unless the conditions specified in paragraph (b) of this section exist.

(2) The subsidence control plan must contain the following information:

(i) A description of the method of coal removal, such as longwall mining, room-and-pillar removal or hydraulic mining, including the size, sequence and timing of the development of underground workings.

(ii) A map of the underground workings that describes the location and extent of the areas in which planned-subsidence mining methods will be used and that identifies all areas where the measures described in paragraphs (c)(2)(iv), (v), and (vii) of this section will be taken to prevent or minimize subsidence and subsidence-related damage; and, when applicable, to correct subsidence-related material damage.

(iii) A description of the physical conditions, such as depth of cover, seam thickness and lithology of overlying strata, that affect the likelihood or extent of subsidence and subsidence-related damage.

(iv) A description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce or correct material damage in accordance with §817.121(c) of this chapter.

(v) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage to the extent technologically and economically feasible. Those measures may include, but are not limited to:

(A) Backstowing of voids;

(B) Leaving support pillars of coal;

(C) Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving coal in place; and

(D) Taking measures on the surface to prevent or minimize material damage or diminution in value of the surface.

(vi) A description of the anticipated effects of planned subsidence, if any, including impacts to wetlands, streams, and water bodies that support the value and reasonably foreseeable uses of surface lands.

(vii) For those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to non-commercial buildings and occupied residential dwellings and structures related thereto; or the written consent of the owner of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs of repair.

(viii) A description of the measures to be taken in accordance with §§817.40 and 817.121(c) of this chapter to replace adversely affected protected water supplies or to mitigate or remedy any subsidence-related material damage to land, wetlands, streams, water bodies, and protected structures.

(ix) Other information specified by the regulatory authority as necessary to demonstrate that the operation will be conducted in accordance with §817.121 of this chapter.

§ 784.31 What information must I provide concerning the protection of publicly owned parks and historic places?

(a) For any publicly owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, you must describe the measures to be used—

(1) To prevent adverse impacts, or

(2) If a person has valid existing rights, as determined under § 761.16 of this chapter, or if joint agency approval is to be obtained under § 761.17(d) of this chapter, to minimize adverse impacts.

(b) The regulatory authority may require the applicant to protect historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance, provided that the required measures are completed before the properties are affected by any mining operation.

§ 784.33 What information must I provide concerning the relocation or use of public roads?

Your application must describe, with appropriate maps and cross-sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under § 761.14 of this chapter, you seek to have the regulatory authority approve—

(a) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(b) Relocating a public road.

§ 784.35 What information must I provide concerning the minimization and disposal of excess spoil?

(a) *Applicability.* This section applies to you, the permit applicant, if you propose to generate excess spoil as part of your operation.

(b) *Demonstration of minimization of excess spoil.* (1) You must submit a demonstration, with supporting calculations and other documentation, that

the operation has been designed to minimize, to the extent possible, the volume of excess spoil that the operation will generate.

(2) The demonstration under paragraph (b)(1) of this section must explain, in quantitative terms, how the maximum amount of overburden will be returned to the mined-out area after considering—

(i) Applicable regulations concerning backfilling, compaction, grading, and restoration of the approximate original contour.

(ii) Safety and stability needs and requirements.

(iii) The need for access and haul roads with their attendant drainage structures and safety berms during mining and reclamation. You may construct roads and their attendant drainage structures and safety berms on the perimeter of the backfilled area as necessary to conduct surface coal mining and reclamation operations, but, when the roads are no longer needed to support heavy equipment traffic, you must reduce the total width of roads and their attendant drainage structures and berms to be retained as part of the postmining land use to no more than 20 feet unless you demonstrate an essential need for a greater width for the postmining land use.

(iv) Needs and requirements associated with revegetation and the proposed postmining land use.

(v) Any other relevant regulatory requirements, including those pertaining to water quality and protection of fish, wildlife, and related environmental values.

(3) When necessary to avoid or minimize construction of excess spoil fills on undisturbed land, paragraph (b)(2)(i) of this section does not prohibit the placement of what would otherwise be excess spoil on the mined-out area to heights in excess of the premining elevation, provided that the final surface configuration is compatible with the surrounding terrain and generally resembles landforms found in the surrounding area.

(4) You may not create a permanent impoundment under § 817.49(b) of this

chapter or place coal combustion residues or noncoal materials in the surface excavation if doing so would result in the creation of excess spoil.

(c) *Preferential use of preexisting benches for excess spoil disposal.* To the extent that your proposed operation will generate excess spoil, you must maximize the placement of excess spoil on preexisting benches in the vicinity of the proposed permit area in accordance with § 817.74 of this chapter rather than constructing excess spoil fills on previously undisturbed land.

(d) *Fill capacity demonstration.* You must submit a demonstration, with supporting calculations and other documentation, that the designed maximum cumulative volume of all proposed excess spoil fills within the permit area is no larger than the capacity needed to accommodate the anticipated cumulative volume of excess spoil that the operation will generate, as calculated under paragraph (b) of this section.

(e) *Requirements related to perennial and intermittent streams.* You must comply with the requirements of § 784.28 of this part concerning activities in or near perennial or intermittent streams if you propose to construct an excess spoil fill in or within 100 feet of a perennial or intermittent stream. The 100-foot distance must be measured horizontally on a line perpendicular to the stream, beginning at the ordinary high water mark.

(f) *Location and profile.* (1) You must submit maps and cross-section drawings or models showing the location and profile of all proposed excess spoil fills.

(2) You must locate fills on the most moderately sloping and naturally stable areas available. The regulatory authority will determine which areas are available, based upon the alternatives analysis under § 784.28 of this part and other requirements of the Act and this chapter.

(3) Whenever possible and consistent with the alternatives analysis and alternative selection requirements of § 784.28 of this part, you must place fills on or above a natural terrace, bench, or berm if that location would provide additional stability and prevent mass movement.

(g) *Design plans.* You must submit detailed design plans, including appropriate maps and cross-section drawings, for each proposed fill, prepared in accordance with the requirements of this section and §§ 817.71 through 817.74 of this chapter. You must design the fill and appurtenant structures using current prudent engineering practices and any additional design criteria established by the regulatory authority.

(h) *Geotechnical investigation.* You must submit the results of a geotechnical investigation, with supporting calculations and analyses, of the site of each proposed fill, with the exception of those sites at which excess spoil will be placed only on a preexisting bench under § 817.74 of this chapter. The information submitted must include—

(1) Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, to determine the design requirements for foundation stability for each site.

(2) A description of the character of the bedrock and any adverse geologic conditions in the area of the proposed fill.

(3) The geographic coordinates and a narrative description of all springs, seepage, mine discharges, and groundwater flow observed or anticipated during wet periods in the area of the proposed fill.

(4) An analysis of the potential effects of any underground mine workings within the proposed permit and adjacent areas, including the effects of any subsidence that may occur as a result of previous, existing, and future underground mining operations.

(5) A technical description of the rock materials to be used in the construction of fills underlain by a rock drainage blanket.

(6) Stability analyses that address static and seismic conditions. The analyses must include, but are not limited to, strength parameters, pore pressures, and long-term seepage conditions. The analyses must be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the design specifications and methods.

(i) *Operation and reclamation plans.* You must submit plans for the construction, operation, maintenance, and reclamation of all excess spoil fills in accordance with the requirements of §§ 817.71 through 817.74 of this chapter.

(j) *Additional requirements for bench cuts or rock-toe buttresses.* If bench cuts or rock-toe buttresses are required under § 817.71(b)(2) of this chapter, you must provide the—

(1) Number, location, and depth of borings or test pits, which must be determined according to the size of the fill and subsurface conditions.

(2) Engineering specifications used to design the bench cuts or rock-toe buttresses. Those specifications must be based upon the stability analyses required under paragraph (h)(6) of this section.

(k) *Design certification.* A qualified registered professional engineer experienced in the design of earth and rock fills must certify that the design of each proposed fill and appurtenant structures meets the requirements of this section.

§ 784.37 What information must I provide concerning access and haul roads?

(a) *Design and other application requirements.* (1) You, the applicant, must submit a map showing the location of all roads that you intend to construct or use within the proposed permit area, together with plans and drawings for each road to be constructed, used, or maintained within the proposed permit area.

(2) You must include appropriate cross-sections, design drawings, and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, drainage structures, and fords and low-water crossings of perennial and intermittent streams.

(3) You must demonstrate how all proposed roads will comply with the applicable requirements of §§ 784.28, 817.150, and 817.151 of this chapter.

(4) You must identify—

(i) Each road that you propose to locate in or within 100 feet, measured horizontally on a line perpendicular to the stream, beginning at the ordinary

high water mark of a perennial or intermittent stream.

(ii) Each proposed ford of a perennial or intermittent stream that you plan to use as a temporary route during road construction.

(iii) Any plans to alter or relocate a natural stream channel.

(iv) Each proposed low-water crossing of a perennial or intermittent stream channel.

(5) You must explain why the roads, fords, and stream crossings identified in paragraph (a)(4) of this section are necessary and how they comply with the applicable requirements of § 784.28 of this part and §§ 817.150 and 817.151 of this chapter.

(6) You must describe the plans to remove and reclaim each road that would not be retained as part of the postmining land use, and provide a schedule for removal and reclamation.

(b) *Primary road certification.* The plans and drawings for each primary road must be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or in any state that authorizes land surveyors to certify the design of primary roads, a qualified registered professional land surveyor, with experience in the design and construction of roads, as meeting the requirements of this chapter; current, prudent engineering practices; and any design criteria established by the regulatory authority.

(c) *Standard design plans.* The regulatory authority may establish engineering design standards for primary roads through the regulatory program approval process, in lieu of engineering tests, to establish compliance with the minimum static safety factor of 1.3 for all embankments specified in § 817.151(c) of this chapter.

§ 784.38 What information must I provide concerning support facilities?

You must submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings must include a map, appropriate cross-sections, design drawings, and specifications sufficient to demonstrate compliance with § 817.181 of this chapter for each facility.

§ 784.40

§ 784.40 May I submit permit application information in increments as mining progresses?

(a) You may request that the regulatory authority approve a schedule for incremental submission of the information required by this part, based on the anticipated progress and impact of underground mining activities.

(b) Section 783.26(b) of this chapter applies to a request submitted under paragraph (a) of this section.

(c) The monitoring plans submitted under § 784.23 of this part may be structured and implemented in a manner consistent with the schedule approved under paragraph (b) of this section.

§ 784.200 [Reserved]

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

Sec.

785.1 Scope.

785.2 Objective.

785.10 Information collection.

785.11 Anthracite surface coal mining and reclamation operations.

785.12 Special bituminous surface coal mining and reclamation operations.

785.13 Experimental practices mining.

785.14 What special provisions apply to mountaintop removal mining operations?

785.15 Steep slope mining.

785.16 What special provisions apply to proposed variances from approximate original contour restoration requirements for steep-slope mining?

785.17 Prime farmlands.

785.18 Variances for delay in contemporaneous reclamation requirement in combined surface and underground mining activities.

785.19 Surface coal mining and reclamation operations on areas or adjacent to areas including alluvial valley floors in the arid and semi-arid areas west of the 100th meridian.

785.20 Augering.

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

785.22 In situ processing activities.

785.25 What special provisions apply to proposed operations on lands eligible for re-mining?

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

SOURCE: 44 FR 15370, Mar. 13, 1979, unless otherwise noted.

30 CFR Ch. VII (7–1–17 Edition)

§ 785.1 Scope.

This part establishes the minimum requirements for regulatory program provisions for permits for certain categories of surface coal mining and reclamation operations. These requirements are in addition to the general permit requirements contained in this subchapter G. All of the provisions of subchapter G apply to these operations, unless otherwise specifically provided in this part.

§ 785.2 Objective.

The objective of this part is to ensure that permits are issued for certain categories of surface coal mining and reclamation operations only after the regulatory authority receives information that shows that these operations will be conducted according to the applicable requirements of the Act, subchapter K, and applicable regulatory programs.

§ 785.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of part 785 and assigned it control number 1029-0040. Collection of this information is required by sections 510, 515, 701 and 711 of SMCRA, which requires applicants for special types of mining activities to provide pertinent descriptions, maps, plans, and data. The regulatory authority will use this information to determine whether you, the applicant, can meet the applicable performance standards for the special type of mining activity. You must respond to obtain a benefit. A federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Room 203-SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

[81 FR 93379, Dec. 20, 2016]

Surface Mining Reclamation and Enforcement, Interior

§ 785.13

§ 785.11 Anthracite surface coal mining and reclamation operations.

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

(b) Each person who intends to conduct anthracite surface coal mining and reclamation operations in Pennsylvania shall apply for and obtain a permit in accordance with the requirements of this subchapter. The following standards apply to applications for and issuance of permits:

(1) In lieu of the requirements of 30 CFR parts 816–817, the requirements of 30 CFR part 820 shall apply.

(2) All other requirements of this chapter including the bonding and insurance requirements of 30 CFR 800.70, except the bond limits and the period of revegetation responsibility, to the extent they are required under sections 509 or 510 of the Act, shall apply.

(c) If the Pennsylvania anthracite permanent regulatory program in effect on August 3, 1977, is amended with respect to environmental protection performance standards, the Secretary shall issue additional regulations necessary to meet the purposes of the Act.

[44 FR 15370, Mar. 13, 1979, as amended at 48 FR 44780, Sept. 30, 1983]

§ 785.12 Special bituminous surface coal mining and reclamation operations.

(a) This section applies to any person who conducts or intends to conduct certain special bituminous coal surface mine operations in Wyoming.

(b) Each application for a permit for a special bituminous coal mine operation shall include, as part of the mining operations and reclamation plan, the detailed descriptions, maps and plans needed to demonstrate that the operations will comply with the requirements of the Act and 30 CFR part 825.

(c) The regulatory authority may issue a permit for a special bituminous coal mine operation for which a complete application has been filed in accordance with this section, if it finds, in writing, that the operation will be conducted in compliance with the Act and 30 CFR part 825.

(d) Upon amendment or revision to the Wyoming regulatory program, regulations, or decisions made thereunder, governing special bituminous coal mines, the Secretary shall issue additional regulations necessary to meet the purposes of the Act.

§ 785.13 Experimental practices mining.

(a) Experimental practices provide a variance from environmental protection performance standards of the Act, of subchapter K of this chapter, and the regulatory program for experimental or research purposes, or to allow an alternative postmining land use, and may be undertaken if they are approved by the regulatory authority and the Director and if they are incorporated in a permit or permit revision issued in accordance with the requirements of subchapter G of this chapter.

(b) An application for an experimental practice shall contain descriptions, maps, plans, and data which show—

(1) The nature of the experimental practice, including a description of the performance standards for which variances are requested, the duration of the experimental practice, and any special monitoring which will be conducted;

(2) How use of the experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreation facilities) on an experimental basis;

(3) That the experimental practice—

(i) Is potentially more, or at least as, environmentally protective, during and after mining operations, as would otherwise be required by standards promulgated under subchapter K of this chapter; and

(ii) Will not reduce the protection afforded public health and safety below that provided by the requirements of subchapter K of this chapter; and

(4) That the applicant will conduct monitoring of the effects of the experimental practice. The monitoring program shall ensure the collection, analysis, and reporting of reliable data that are sufficient to enable the regulatory authority and the Director to—

(i) Evaluate the effectiveness of the experimental practice; and

(ii) Identify, at the earliest possible time, potential risk to the environment and public health and safety which may be caused by the experimental practice during and after mining.

(c) Applications for experimental practices shall comply with the public notice requirements of § 773.6 of this chapter.

(d) No application for an experimental practice under this section shall be approved until the regulatory authority first finds in writing and the Director then concurs that—

(1) The experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities) on an experimental basis;

(2) The experimental practice is potentially more, or at least as, environmentally protective, during and after mining operations, as would otherwise be required by standards promulgated under subchapter K of this chapter;

(3) The mining operations approved for a particular land-use or other purpose are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice; and

(4) The experimental practice does not reduce the protection afforded public health and safety below that provided by standards promulgated under subchapter K of this chapter.

(e) Experimental practices granting variances from the special environmental protection performance standards of sections 515 and 516 of the Act applicable to prime farmlands shall be approved only after consultation with the U.S. Department of Agriculture, Soil Conservation Service.

(f) Each person undertaking an experimental practice shall conduct the periodic monitoring, recording and reporting program set forth in the application, and shall satisfy such additional requirements as the regulatory authority or the Director may impose to ensure protection of the public health and safety and the environment.

(g) Each experimental practice shall be reviewed by the regulatory authority at a frequency set forth in the approved permit, but no less frequently than every 2½ years. After review, the regulatory authority may require such reasonable modifications of the experimental practice as are necessary to ensure that the activities fully protect the environment and the public health and safety. Copies of the decision of the regulatory authority shall be sent to the permittee and shall be subject to the provisions for administrative and judicial review of part 775 of this chapter.

(h) Revisions or modifications to an experimental practice shall be processed in accordance with the requirements of § 774.13 of this chapter and approved by the regulatory authority. Any revisions which propose significant alterations in the experimental practice shall, at a minimum, be subject to notice, hearing, and public participation requirements of § 773.6 of this chapter and concurrence by the Director. Revisions that do not propose significant alterations in the experimental practice shall not require concurrence by the Director.

[48 FR 9484, Mar. 4, 1983, as amended at 65 FR 79669, Dec. 19, 2000]

§ 785.14 What special provisions apply to mountaintop removal mining operations?

(a) *Applicability.* This section applies to you if you conduct or intend to conduct mountaintop removal mining, as that term is defined in § 701.5 of this chapter.

(b) *Application and approval requirements.* The regulatory authority may approve an application for a permit to conduct mountaintop removal mining operations, without regard to the approximate original contour restoration requirements of §§ 816.102 and 816.105 of this chapter, if it first finds, in writing, on the basis of a complete application, that you have met the following requirements:

(1) The proposed postmining land use of the lands to be disturbed is an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use.

(2) After consultation with the appropriate land-use planning agencies, if any, the regulatory authority deems that the proposed postmining land use constitutes an equal or better economic or public use of the land compared with the premining use.

(3) You have demonstrated compliance with the requirements for alternative postmining land uses in § 780.24(b) of this chapter.

(4) You have presented specific plans for the proposed postmining land use and appropriate assurances that the use will be—

(i) Compatible with adjacent land uses.

(ii) Obtainable according to data regarding expected need and market.

(iii) Assured of investment in necessary public facilities.

(iv) Supported by commitments from public agencies where appropriate.

(v) Practicable with respect to private financial capability for completion of the proposed use.

(vi) Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use.

(5) The proposed operation has been designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

(6) The proposed use is consistent with adjacent land uses and with existing state and local land use plans and programs.

(7) The regulatory authority has provided, in writing, an opportunity of not more than 60 days to review and comment on the proposed use to—

(i) The governing body of the unit of general-purpose government in whose jurisdiction the land is located; and

(ii) Any state or federal agency that the regulatory authority, in its discretion, determines to have an interest in the proposed use.

(8) You have demonstrated that the proposed operation has been designed to comply with the requirements of part 824 of this chapter.

(9) You have demonstrated that the operation will not damage natural watercourses within the proposed permit

and adjacent areas. You may meet this requirement by demonstrating that the proposed operation will comply with all of the following requirements:

(i) The proposed operation will not increase the amount or concentration of parameters of concern in discharges to groundwater and surface water from the proposed permit area, when compared to the discharges that would occur if the operation were designed to adhere to approximate original contour restoration requirements.

(ii) The proposed operation will not result in any greater adverse impact to the aquatic and terrestrial ecology of the proposed permit and adjacent area than would occur if the area to be mined was restored to its approximate original contour.

(iii) The proposed operation will not result in changes in the size or frequency of peak flows from the proposed permit area that would cause an increase in flooding, when compared to the impacts that would occur if the operation were designed to adhere to approximate original contour restoration requirements.

(iv) The total volume of flow from the proposed permit area, during every season of the year, will not vary in a way that would adversely affect any—

(A) Designated use of a surface water located outside the proposed permit area under section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), or, if there are no designated uses, any premining use of a surface water located outside the proposed permit area.

(B) Premining use of groundwater located outside the proposed permit area.

(v) Any other demonstrations that the regulatory authority finds necessary to determine that no damage will occur to natural watercourses within the proposed permit and adjacent areas.

(10) The revegetation plan proposed under § 780.12(g) of this chapter requires that those portions of the proposed permit area that are forested at the time of application or that would revert to forest under conditions of natural succession be revegetated using native tree and understory species to the extent that this requirement is not inconsistent with attainment of the proposed postmining land use.

§ 785.15

30 CFR Ch. VII (7–1–17 Edition)

(11) The proposed operation complies with all other requirements of the regulatory program.

(c) *Additional requirements for permit issuance.* (1) The permit must specifically identify the acreage and location of the lands on which mountaintop removal mining operations will occur within the permit area.

(2) The permit must include a condition prohibiting the release of any part of the bond posted for the permit under part 800 of this chapter until substantial implementation of the approved postmining land use is underway. The condition must provide that the prohibition does not apply to any portion of the bond that is in excess of an amount equal to the cost of regrading the site to its approximate original contour and revegetating the regraded land in the event that the approved postmining land use is not implemented.

(3) The regulatory authority must clearly mark the permit issued under this part as including mountaintop removal mining operations.

(d) *Subsequent permit reviews.* (1) The regulatory authority must review each permit issued under this section in accordance with § 774.10(a)(2) of this chapter.

(2) The regulatory authority may modify the terms and conditions of a permit for mountaintop removal mining at any time if it determines that more stringent measures are necessary to insure that the operation is conducted in compliance with the requirements of the regulatory program.

[81 FR 93379, Dec. 20, 2016]

§ 785.15 Steep slope mining.

(a) This section applies to any persons who conducts or intends to conduct steep slope surface coal mining and reclamation operations, except—

(1) Where an operator proposes to conduct surface coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the mining operation proceeds;

(2) Where a person obtains a permit under the provisions of § 785.14; or

(3) To the extent that a person obtains a permit incorporating a variance under § 785.16.

(b) Any application for a permit for surface coal mining and reclamation operations covered by this section shall contain sufficient information to establish that the operations will be conducted in accordance with the requirements of § 816.107 or § 817.107 of this chapter.

(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 requirements of this subchapter, the operation will be conducted in accordance with the requirements of § 816.107 or § 817.107 of this chapter.

[44 FR 15370, Mar. 13, 1979, as amended at 51 FR 9006, Mar. 17, 1986]

§ 785.16 What special provisions apply to proposed variances from approximate original contour restoration requirements for steep-slope mining?

(a) *Application and approval requirements.* The regulatory authority may issue a permit for non-mountaintop removal steep-slope surface coal mining operations that includes a variance from the approximate original contour restoration requirements in §§ 816.102 and 816.105 of this chapter, as referenced in § 816.107 of this chapter, or § 817.102 of this chapter, as referenced in § 817.107 of this chapter, for all or a portion of the permit area. The permit may contain this variance only if the regulatory authority finds, in writing, that you, the applicant, have demonstrated compliance with the following requirements on the basis of a complete application:

(1) After reclamation, the lands within the proposed permit area to which the variance would apply will be suitable for an industrial, commercial, residential, or public (including recreational facilities) postmining land use.

(2) The alternative postmining land use requirements of § 780.24(b) or § 784.24(b) of this chapter have been met.

(3) After consultation with the appropriate land use planning agencies, if

any, the proposed use is shown to constitute an equal or better economic or public use.

(4) Federal, state, and local government agencies with an interest in the proposed land use have an adequate period in which to review and comment on the proposed use.

(5) A qualified registered professional engineer has certified that the operation has been designed in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

(6) The highwall will be completely backfilled with spoil material in a manner that results in a static factor of safety of at least 1.3, using standard geotechnical analysis methods.

(7) Only the amount of spoil that is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of this chapter will be placed off the mine bench. All spoil not retained on the bench will be placed in accordance with §§816.71 and 816.74 or §§817.71 and 817.74 of this chapter.

(8) The variance will not result in the construction of a fill in a perennial or intermittent stream.

(9) The proposed operation will improve the condition of the watershed of lands within the proposed permit and adjacent areas when compared either with the condition of the watershed before the proposed operation or with the condition that would exist if the site were mined and restored to the approximate original contour. The condition of the watershed will be deemed improved only if you demonstrate that the following criteria will be met, relative to one of the situations described in the preceding sentence:

(i) The amount or concentration of total suspended solids or other parameters of concern in discharges to groundwater or surface water from the proposed permit area will be reduced.

(ii) Flood hazards within the watershed containing the proposed permit area will be diminished by reduction of the size or frequency of peak-flow discharges from precipitation events or thaws.

(iii) The total volume of flow from the proposed permit area, during every season of the year, will not vary in a way that would adversely affect any—

(A) Designated use of a surface water located outside the proposed permit area under section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), or, if there are no designated uses, any premining use of a surface water located outside the proposed permit area;

(B) Premining use of groundwater located outside the proposed permit area.

(iv) The proposed operation will result in a lesser adverse impact on the aquatic ecology of the cumulative impact area than would occur if the area to be mined was restored to its approximate original contour.

(v) The impact on perennial and intermittent streams within the proposed permit and adjacent areas will be less than the impact that would occur if the area to be mined was restored to its approximate original contour. The fish and wildlife enhancement measures proposed and approved under §780.16 or §784.16 of this chapter may be considered in making this determination.

(vi) The appropriate state environmental agency has approved the plan.

(10)(i) The owner of the surface of the lands within the proposed permit area has knowingly requested, in writing, as part of the application, that a variance be granted.

(ii) The request to which paragraph (a)(10)(i) of this section refers must be made separately from any surface owner consent given for the operations under §778.15 of this chapter and it must show an understanding that the variance could not be granted without the surface owner's request.

(iii) The permit application must include a copy of the request to which paragraph (a)(10)(i) of this section refers.

(11) The proposed deviations from the premining surface configuration are necessary and appropriate to achieve the approved postmining land use.

(12) The revegetation plan proposed under §780.12(g) or §784.12(g) of this chapter requires the use of native tree and understory species to revegetate all portions of the permit area that are forested at the time of application or

that would revert to forest under conditions of natural succession. This requirement does not apply to—

(i) Permanent impoundments, roads, and other impervious surfaces to be retained following the completion of mining and reclamation.

(ii) Those portions of the permit area covered by the variance, but only to the extent that compliance with this requirement would be inconsistent with attainment of the postmining land use.

(b) *Additional requirements for permit issuance.* (1) The regulatory authority must specifically mark any permit issued under this section as containing an approved variance from approximate original contour restoration requirements.

(2) The permit must include a condition prohibiting the release of any part of the bond posted for the permit under part 800 of this chapter until substantial implementation of the approved postmining land use is underway. The condition must provide that the prohibition does not apply to any portion of the bond that is in excess of an amount equal to the cost of regrading the site to its approximate original contour and revegetating the regraded land in the event that the approved postmining land use is not implemented.

(c) *Subsequent permit reviews.* (1) The regulatory authority must review each permit incorporating a variance under this section in accordance with § 774.10(a)(2) of this chapter.

(2) The regulatory authority may modify the terms and conditions of a permit incorporating a variance under this section at any time if it determines that more stringent measures are necessary to ensure that the operations are conducted in compliance with the requirements of the regulatory program.

(d) *Miscellaneous provision.* The regulatory authority may grant variances in accordance with this section only if it has promulgated specific rules to govern the granting of variances in accordance with the provisions of this section and any necessary more stringent requirements.

[81 FR 93380, Dec. 20, 2016]

§ 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 historically used for cropland. This section does not apply to:

(1) Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977; or

(2) Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 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 surface coal mining operation begun under a permit issued before August 3, 1977; and

(ii) The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract, or lease but not including an option to buy, lease, or contract; and

(iii) The lands contain part of a 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 continuous surface coal mining operation) begun 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. For the purposes of this paragraph, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one surface coal mining 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.

(3) If the reconnaissance inspection indicates that land within the proposed permit area may be prime farmland historically used for cropland, the applicant shall determine if a soil survey exists for those lands and whether soil mapping units in the permit area have been designated as prime farmland. If no soil survey exists, the applicant shall have a soil survey made of the lands within the permit area which the reconnaissance inspection indicates could be prime farmland. Soil surveys of the detail used by the U.S. Soil Conservation Service for operational conservation planning shall be used to identify and locate prime farmland soils.

(i) If the soil survey indicates that no prime farmland soils are present within the proposed permit area, paragraph (b)(2) of this section shall apply.

(ii) If the soil survey indicates that prime farmland soils are present within the proposed permit area, paragraph (c) of this section shall apply.

(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:

(1) A soil survey of the permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in U.S. Department of Agriculture Handbooks 436 "Soil Taxonomy" (U.S. Soil Conservation Service, 1975) as amended on March 22, 1982 and October 5, 1982, and 18, "Soil Survey Manual" (U.S. Soil Conservation Service, 1951), as amended on December 18, 1979, May 7, 1980, May 9, 1980, September 11, 1980, June 9, 1981, June 29, 1981, November 16, 1982. The U.S. Soil Conservation Service establishes the standards of the National Cooperative Soil Survey and maintains a National Soils Handbook which gives current acceptable procedures for conducting soil surveys. This National Soils Handbook is available for review at area and State SCS offices.

(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.

[44 FR 15370, Mar. 13, 1979, as amended at 46 FR 47722, Sept. 29, 1981; 48 FR 21462, May 12, 1983; 53 FR 40839, Oct. 18, 1988]

§ 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 offsite 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;

(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 Surface coal mining and reclamation operations on areas or adjacent to areas including alluvial valley floors in the arid and semiarid areas west of the 100th meridian.

(a) *Alluvial valley floor determination.*

(1) Permit applicants who propose to conduct surface coal mining and reclamation operations within a valley holding a stream or in a location where the permit area or adjacent area includes any stream, in the arid and semiarid regions of the United States, as an initial step in the permit process, may request the regulatory authority to make an alluvial valley floor determination with respect to that valley floor. The applicant shall demonstrate and the regulatory authority shall determine, based on either available data or field studies submitted by the applicant, or a combination of available data and field studies, the presence or absence of an alluvial valley floor.

Studies shall include sufficiently detailed geologic, hydrologic, land use, soils, and vegetation data and analysis to demonstrate the probable existence of an alluvial valley floor in the area. The regulatory authority may require additional data collection and analysis or other supporting documents, maps, and illustrations in order to make the determination.

(2) The regulatory authority shall make a written determination as to the extent of any alluvial valley floors within the area. The regulatory authority shall determine that an alluvial valley floor exists if it finds that—

(i) Unconsolidated streambed deposits holding streams are present; and

(ii) There is sufficient water available to support agricultural activities as evidenced by—

(A) The existence of current flood irrigation in the area in question;

(B) The capability of an area to be flood irrigated, based on evaluations of typical regional agricultural practices, historical flood irrigation, streamflow, water quality, soils, and topography; or

(C) Subirrigation of the lands in question derived from the groundwater system of the valley floor.

(3) If the regulatory authority determines in writing that an alluvial valley does not exist pursuant to paragraph (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) (i) 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, heretofore 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;

(B) Factors contributing to the function of storing water, such as permeability, infiltration, porosity, depth and direction of ground water flow, and water holding capacity;

(C) Factors contributing to the function of regulating the flow of surface and ground water, such as the longitudinal profile and slope of the valley and channels, the sinuosity and cross-sections of the channels, interchange of water between streams and associated alluvial and bedrock aquifers, and rates and amount of water supplied by these aquifers; and

(D) Factors contributing to water availability, such as the presence of flood plains and terraces suitable for agricultural activities.

(ii) Whether the operation will avoid during mining and reclamation the interruption, discontinuance, or preclusion of farming on the alluvial valley floor;

§ 785.20

(iii) Whether the operation will cause material damage to the quantity or quality of surface or ground waters supplied to the alluvial valley floor;

(iv) Whether the reclamation plan is in compliance with requirements of the Act, this chapter, and regulatory program; and

(v) Whether the proposed monitoring system will provide sufficient information to measure compliance with part 822 of this chapter during and after mining and reclamation operations.

(e) *Findings.* (1) The findings of paragraphs (e)(2) (i) and (ii) of this section are not required with regard to alluvial valley floors to which are applicable any of the exclusions of paragraph (b)(2) of this section.

(2) No permit or permit revision application for surface coal mining and reclamation operations on lands located west of the 100th meridian west longitude shall be approved by the regulatory authority unless the application demonstrates and the regulatory authority finds in writing, on the basis of information set forth in the application, that—

(i) The proposed operations will not interrupt, discontinue, or preclude farming on an alluvial valley floor;

(ii) The proposed operations will not materially damage the quantity or quality of water in surface and underground water systems that supply alluvial valley floors; and

(iii) The proposed operations will comply with part 822 of this chapter and the other applicable requirements of the Act and the regulatory program.

[48 FR 29820, June 28, 1983, as amended at 54 FR 9735, Mar. 7, 1989]

§ 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 un-

30 CFR Ch. VII (7–1–17 Edition)

less 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 writing that, in addition to meeting all other applicable requirements of this subchapter, the operations will be conducted in compliance with the requirements of part 827 of this chapter.

(d)(1) Except as provided in paragraph (d)(2) of this section, any person who operates a coal preparation plant beyond May 10, 1986, that was not subject to this chapter before July 6, 1984, shall have applied for a permit no later than November 11, 1985.

(2)(i) State programs that have a statutory or regulatory bar precluding issuance of permits to facilities covered by paragraph (d)(1) of this section shall notify OSMRE not later than November 7, 1985, and shall establish a schedule for actions necessary to allow the permitting of such facilities as soon as practicable. Not later than December 9, 1985, this schedule shall be submitted to OSMRE for approval.

(ii) Any person who operates a coal preparation plant that was not subject to this chapter before July 6, 1984, in a state which submits a schedule in accordance with paragraph (d)(2)(i) of this section shall apply for a permit in accordance with the schedule approved by OSMRE.

(e) Notwithstanding § 773.4 of this chapter and except as prohibited by § 761.11 of this chapter, any person operating a coal preparation plant that was not subject to this chapter before July 6, 1984, may continue to operate without a permit until May 10, 1986, and may continue to operate beyond that date if:

(1) A permit application has been timely filed under paragraph (d)(1) of this section or under a State imposed schedule specified in paragraph (d)(2) of this section,

(2) The regulatory authority has yet to either issue or deny the permit, and

(3) The person complies with the applicable performance standards of § 827.13 of this chapter.

[48 FR 20401, May 5, 1983, as amended at 52 FR 17730, May 11, 1987; 53 FR 47391, Nov. 22, 1988, as amended at 65 FR 79669, Dec. 19, 2000]

§ 785.22 In situ processing activities.

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

(b) Any application for a permit for operations covered by this section shall be made according to all requirements of this subchapter applicable to underground mining activities. In addition, the mining and reclamation operations plan for operations involving in situ processing activities shall contain information establishing how those operations will be conducted in compliance with the requirements of 30 CFR part 828, including—

(1) Delineation of proposed holes and wells and production zone for approval of the regulatory authority;

(2) Specifications of drill holes and casings proposed to be used;

(3) A plan for treatment, confinement or disposal of all acid-forming, toxic-forming or radioactive gases, solids, or liquids constituting a fire, health, safe-

ty or environmental hazard caused by the mining and recovery process; and

(4) Plans for monitoring surface and ground water and air quality, as required by the regulatory authority.

(c) No permit shall be issued for operations covered by this section, unless the regulatory authority first finds, in writing, upon the basis of a complete application made in accordance with paragraph (b) of this section, that the operation will be conducted in compliance with all requirements of this subchapter relating to underground mining activities, and 30 CFR parts 817 and 828.

§ 785.25 What special provisions apply to proposed operations on lands eligible for remining?

(a) This section applies to you if you intend to apply for a permit to conduct surface coal mining operations on lands eligible for remining, as that term is defined in § 701.5 of this chapter.

(b)(1) Your application must comply with all applicable requirements of this subchapter.

(2) In addition, to be eligible under the provisions of § 773.13 of this chapter concerning unanticipated events or conditions at remining sites, the application must—

(i) To the extent possible, if not otherwise addressed in the permit application, identify potential environmental and safety problems that could reasonably be anticipated to occur as a result of prior mining activities within the proposed permit area. This identification must be based on a due diligence investigation that includes visual observations, a record review of past mining operations at or near the site, environmental sampling, and any other relevant available information, including data from prior mining activities and remining operations on similar sites.

(ii) With regard to potential environmental and safety problems referred to in paragraph (b)(1)(i) of this section, describe the measures that will be taken to ensure that the applicable reclamation requirements of the regulatory program can and will be met.

[81 FR 93381, Dec. 20, 2016]

SUBCHAPTER H—SMALL OPERATOR ASSISTANCE

PART 795—PERMANENT REGULATORY PROGRAM—SMALL OPERATOR ASSISTANCE PROGRAM

Sec.

- 795.1 Scope and purpose.
- 795.3 Definitions.
- 795.4 Information collection.
- 795.5 Grant application procedures.
- 795.6 Eligibility for assistance.
- 795.7 Filing for assistance.
- 795.8 Application approval and notice.
- 795.9 Program services and data requirements.
- 795.10 Qualified laboratories.
- 795.11 Assistance funding.
- 795.12 Applicant liability.

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

SOURCE: 48 FR 2272, Jan. 18, 1983, unless otherwise noted.

§ 795.1 Scope and purpose.

This part comprises the Small Operator Assistance Program (SOAP) and establishes the procedures for providing assistance to eligible operators by the program administrator. It is an elective means for a regulatory authority to satisfy the requirements of section 507(c) of the Act. The purpose of the program is to provide for eligible operators a determination of probable hydrologic consequences and a statement of results of test borings or core samplings which are required components of the permit application under subchapter G of this chapter.

§ 795.3 Definitions.

As used in this part—

Program administrator means the State or Federal official within the regulatory authority who has the authority and responsibility for overall management of the Small Operator Assistance Program; and

Qualified laboratory means a designated public agency, private firm, institution, or analytical laboratory that can provide the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified at § 795.9 under the Small Op-

erator Assistance Program and that meets the standards of § 795.10.

[48 FR 2272, Jan. 18, 1983, as amended at 59 FR 28167, May 31, 1994]

§ 795.4 Information collection.

The collections of information contained in part 795 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0061. The information will be used to determine if the applicants meet the requirements of the Small Operator Assistance Program. Response is required to obtain a benefit in accordance with Public Law 95-87. Public reporting burden for this information is estimated to average 24.2 hours 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 the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer (MS-202), 1951 Constitution Avenue, NW., Washington, DC 20240.

[59 FR 28167, May 31, 1994, as amended at 75 FR 60275, Sept. 29, 2010]

§ 795.5 Grant application procedures.

A State intending to administer a Small Operator Assistance Program under a grant from the Office of Surface Mining may submit a grant application to OSM for funding of the program under the procedures of part 735 of this chapter.

§ 795.6 Eligibility for assistance.

(a) An applicant is eligible for assistance if he or she—

(1) Intends to apply for a permit pursuant to the Act;

(2) Establishes that his or her probable total attributed annual production from all locations on which the operator is issued the surface coal mining and reclamation permit will not exceed

Surface Mining Reclamation and Enforcement, Interior

§ 795.8

300,000 tons. Production from the following operations shall be attributed to the applicant:

(i) The pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a 10 percent interest;

(ii) The pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than 10 percent of the applicant's operation;

(iii) All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management;

(iv) All coal produced by operations owned by members of the applicant's family and the applicants' relatives, unless it is established that there is no direct or indirect business relationship between or among them.

(3) Is not restricted in any manner from receiving a permit under the permanent regulatory program; and

(4) Does not organize or reorganize his or her company solely for the purpose of obtaining assistance under the SOAP.

(b) A State may provide alternate criteria or procedures for determining the eligibility of an operator for assistance under the program, provided that such criteria may not be used as a basis for grant requests in excess of that which would be authorized under the criteria of paragraph (a) of this section.

[48 FR 2272, Jan. 18, 1983, as amended at 59 FR 28168, May 31, 1994]

§ 795.7 Filing for assistance.

Each application for assistance shall include the following information:

(a) A statement of the operator's intent to file a permit application.

(b) The names and addresses of—

(1) The permit applicant; and

(2) The operator if different from the applicant.

(c) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under § 795.6 The schedule shall include for each location—

(1) The operator or company name under which coal is or will be mined;

(2) The permit number and Mine Safety and Health Administration (MSHA) number;

(3) The actual coal production during the year preceding the year for which the applicant applies for assistance and production that may be attributed to the applicant under § 795.6; and

(4) The estimated coal production and any production which may be attributed to the applicant for each year of the proposed permit.

(d) A description of—

(1) The proposed method of coal mining;

(2) The anticipated starting and termination dates of mining operations;

(3) The number of acres of land to be affected by the proposed mining operation; and

(4) A general statement on the probable depth and thickness of the coal resource including a statement of reserves in the permit area and the method by which they were calculated.

(e) A U.S. Geological Survey topographic map at a scale of 1:24,000 or larger or other topographic map of equivalent detail which clearly shows—

(1) The area of land to be affected;

(2) The location of any existing or proposed test borings; and

(3) The location and extent of known workings of any underground mines.

(f) Copies of documents which show that—

(1) The applicant has a legal right to enter and commence mining within the permit area; and

(2) A legal right of entry has been obtained for the program administrator and laboratory personnel to inspect the lands to be mined and adjacent areas to collect environmental data or to install necessary instruments.

§ 795.8 Application approval and notice.

(a) If the program administrator finds the applicant eligible, he or she shall inform the applicant in writing that the application is approved.

(b) If the program administrator finds the applicant ineligible, he or she shall inform the applicant in writing that the application is denied and shall state the reasons for denial.

§ 795.9

§ 795.9 Program services and data requirements.

(a) To the extent possible with available funds, the program administrator shall select and pay a qualified laboratory to make the determination and statement and provide other services referenced in paragraph (b) of this section for eligible operators who request assistance.

(b) The program administrator shall determine the data needed for each applicant or group of applicants. Data collected and the results provided to the program administrator shall be sufficient to satisfy the requirements for:

(1) The determination of the probable hydrologic consequences of the surface mining and reclamation operation in the proposed permit area and adjacent areas, including the engineering analyses and designs necessary for the determination in accordance with §§ 780.21(f), 784.14(e), and any other applicable provisions of this chapter;

(2) The drilling and statement of the results of test borings or core samplings for the proposed permit area in accordance with §§ 780.22(b) and 784.22(b) and any other applicable provisions of this chapter;

(3) The development of cross-section maps and plans required by §§ 779.25 and 783.25;

(4) The collection of archaeological and historic information and related plans required by §§ 779.12(b) and 783.12(b) and §§ 780.31 and 784.17 and any other archaeological and historic information required by the regulatory authority;

(5) Pre-blast surveys required by § 780.13; and

(6) The collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by §§ 780.16 and 784.21, and information and plans for any other environmental values required by the regulatory authority under the act.

(c) Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.

(d) Data collected under this program shall be made publicly available in accordance with § 773.6(d) of this chapter. The program administrator shall de-

30 CFR Ch. VII (7-1-17 Edition)

velop procedures for interstate coordination and exchange of data.

[48 FR 2272, Jan. 18, 1983, as amended at 48 FR 44780, Sept. 30, 1983; 59 FR 28168, May 31, 1994, as amended at 65 FR 79670, Dec. 19, 2000]

§ 795.10 Qualified laboratories.

(a) *Basic qualifications.* To be designated a qualified laboratory, a firm shall demonstrate that it—

(1) Is staffed with experienced, professional or technical personnel in the fields applicable to the work to be performed;

(2) Has adequate space for material preparation and cleaning and sterilizing equipment and has stationary equipment, storage, and space to accommodate workloads during peak periods;

(3) Meets applicable Federal or State safety and health requirements;

(4) Has analytical, monitoring and measuring equipment capable of meeting applicable standards; and

(5) Has the capability of collecting necessary field samples and making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic, geologic, or analytical methods in accordance with the requirements of §§ 780.21, 780.22, 784.14 and 784.22 and any other applicable provisions of this chapter. Other appropriate methods or guidelines for data acquisition may be approved by the program administrator.

(6) Has the capability of performing services for either the determination or statement referenced in § 795.9(b).

(b) *Subcontractors.* Subcontractors, may be used to provide some of the required services provided their use is identified at the time a determination is made that a firm is qualified and they meet requirements specified by the program administrator.

§ 795.11 Assistance funding.

(a) *Use of funds.* Funds specifically authorized for this program shall be used to provide the services specified in § 795.9 and shall not be used to cover administrative expenses.

(b) *Allocation of funds.* The program administrator shall establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to

Surface Mining Reclamation and Enforcement, Interior

§ 795.12

provide the services pursuant to this part.

§ 795.12 Applicant liability.

(a) A coal operator who has received assistance pursuant to § 795.9 shall reimburse the regulatory authority for the cost of the services rendered if:

(1) The applicant submits false information, fails to submit a permit application within 1 year from the date of receipt of the approved laboratory report, or fails to mine after obtaining a permit;

(2) The program administrator finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is

issued the surface coal mining and reclamation permit; or

(3) The permit is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the 300,000 ton production limit during the 12 months immediately following the date on which the permit was originally issued. Under this paragraph the applicant and its successor are jointly and severally obligated to reimburse the regulatory authority.

(b) The program administrator may waive the reimbursement obligation if he or she finds that the applicant at all times acted in good faith.

[48 FR 2272, Jan. 18, 1983, as amended at 59 FR 28168, May 31, 1994]

SUBCHAPTER I [RESERVED]

SUBCHAPTER J—PERFORMANCE BOND, FINANCIAL ASSURANCE, AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS

PART 800—PERFORMANCE BOND, FINANCIAL ASSURANCE, AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS

Sec.

- 800.1 Scope and purpose.
- 800.4 Regulatory authority responsibilities.
- 800.5 Definitions.
- 800.9 What requirements apply to alternative bonding systems?
- 800.10 Information collection.
- 800.11 When and how must I file a performance bond?
- 800.12 What types of performance bond are acceptable?
- 800.13 What is the liability period for a performance bond?
- 800.14 How will the regulatory authority determine the amount of performance bond required?
- 800.15 When must the regulatory authority adjust the performance bond amount and when may I request adjustment of the bond amount?
- 800.16 What are the general terms and conditions of a performance bond?
- 800.17 [Reserved]
- 800.18 What special provisions apply to financial guarantees for long-term treatment of discharges?
- 800.20 What additional requirements apply to surety bonds?
- 800.21 What additional requirements apply to collateral bonds?
- 800.23 What additional requirements apply to self-bonds?
- 800.30 When may I replace a performance bond or financial assurance and when must I do so?
- 800.40 How do I apply for release of all or part of a performance bond?
- 800.41 How will the regulatory authority process my application for bond release?
- 800.42 What are the criteria for bond release?
- 800.43 When and how must the regulatory authority provide notification of its decision on a bond release application?
- 800.44 Who may file an objection to a bond release application and how must the regulatory authority respond to an objection?
- 800.50 When and how will a bond be forfeited?
- 800.60 What liability insurance must I carry?

800.70 What special bonding provisions apply to anthracite operations in Pennsylvania?

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

SOURCE: 81 FR 93381, Dec. 20, 2016, unless otherwise noted.

§ 800.1 Scope and purpose.

This part sets forth the minimum requirements for filing and maintaining bonds, financial assurances, and liability insurance policies for surface coal mining and reclamation operations under regulatory programs in accordance with the Act.

§ 800.4 Regulatory authority responsibilities.

(a) The regulatory authority must prescribe and furnish forms for filing performance bonds and financial assurances.

(b) The regulatory authority must prescribe by regulation terms and conditions for performance bonds, financial assurances, and liability insurance policies.

(c) The regulatory authority must determine the amount of the bond for each area to be bonded, in accordance with § 800.14 of this part. The regulatory authority also must adjust the bond amount as acreage in the permit area is revised or when other relevant conditions change, in accordance with § 800.15 of this part. In addition, the regulatory authority must determine the amount of financial assurance required to ensure long-term treatment of discharges under § 800.18 of this part, monitor trust performance, and require adjustments of the financial assurance as necessary.

(d) The regulatory authority may accept a self-bond if the requirements of § 800.23 of this part and any additional requirements in the regulatory program are met. However, a state or tribal regulatory program need not authorize the use of self-bonds.

(e) The regulatory authority must release liability under a bond or financial

assurance instrument in accordance with §§ 800.40 through 800.44 of this part.

(f) If the conditions specified in § 800.50 of this part occur, the regulatory authority must take appropriate action to cause all or part of a bond or financial assurance to be forfeited in accordance with procedures of that section.

(g) The regulatory authority must require in the permit that adequate bond and financial assurance coverage be in effect at all times. Except as provided in § 800.30(b) of this part, operating without adequate bond or financial assurance is a violation of these rules and the terms and conditions of the permit.

§ 800.5 Definitions.

Collateral bond means an indemnity agreement in a sum certain, executed by the permittee as principal, which is supported by the deposit with the regulatory authority of one or more of the following:

(1) A cash account, which must be the deposit of cash—

(i) In one or more federally-insured or equivalently protected accounts, payable only to the regulatory authority upon demand; or

(ii) Directly with the regulatory authority.

(2) Negotiable bonds of the United States, a state, or a municipality, endorsed to the order of, and placed in the possession of, the regulatory authority.

(3) Negotiable certificates of deposit, made payable or assigned to the regulatory authority and placed in its possession or held by a federally-insured bank.

(4) An irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to the regulatory authority upon presentation.

(5) A perfected, first-lien security interest in real property in favor of the regulatory authority.

(6) Other securities with a rating of “A” or higher from either Moody’s Investors Service or Standard and Poor’s or an equivalent rating issued by any other nationally recognized statistical rating organization registered with the Securities and Exchange Commission,

endorsed to the order of, and placed in the possession of, the regulatory authority.

Financial assurance is a type of alternative bonding system that consists of a trust, an annuity, or a combination thereof.

Self-bond means an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor and made payable to the regulatory authority, with or without separate surety.

Surety bond means an indemnity agreement in a sum certain payable to the regulatory authority, executed by the permittee as principal, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the state where the operation is located.

§ 800.9 What requirements apply to alternative bonding systems?

(a) *Criteria for approval.* OSMRE may approve an alternative bonding system as part of a state or federal regulatory program if the system will achieve the following objectives and purposes of the bonding program:

(1) The alternative must assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time, except as provided in paragraphs (c) and (d) of this section.

(2) The alternative must provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

(b) *Relationship to other bonding regulations.* (1) The alternative bonding system will apply in lieu of the requirements of §§ 800.12 through 800.23 of this part, with the exception of those provisions of § 800.18 of this part that apply to financial assurances established to guarantee long-term treatment of discharges, to the extent specified in the regulatory program provisions establishing the alternative bonding system and the terms of approval under part 732 of this chapter.

(2) The alternative bonding system must include appropriate conforming modifications to the bond release provisions of §§ 800.40 through 800.44 of this

part and the bond forfeiture provisions of § 800.50 of this part.

(c) *Partial alternative bonding systems.* An alternative bonding system may be structured to include only certain phases of mining and reclamation under § 800.42 of this part, provided that the other phases of mining and reclamation are covered by one of the types of bond listed in § 800.12 of this part.

(d) *Discharges that require long-term treatment.* (1) Except as provided in paragraphs (d)(2) and (3) of this section, a discharge requiring long-term treatment is not eligible for coverage under an alternative bonding system, other than a financial assurance under § 800.18 of this part, unless the permittee contributes cash in an amount equal to the present value of all costs that the regulatory authority estimates that the alternative bonding system will incur to treat the discharge for as long as the discharge requires active or passive treatment, taking into account the expenses listed in § 800.18(c)(2)(i) through (v) of this part. If the alternative bonding system will receive interest or other earnings on the cash contribution, the regulatory authority may deduct the present value of those estimated earnings from the present value of all estimated expenses when calculating the amount of the required cash contribution.

(2)(i) The regulatory authority must amend an alternative bonding system, other than a financial assurance under § 800.18 of this part, that we approved as part of a regulatory program under subchapter T of this chapter before January 19, 2017 to specify that any permittee responsible for a discharge requiring long-term treatment must make the cash contribution required under paragraph (d)(1) of this section if the permittee elects to retain coverage of discharge treatment under the alternative bonding system.

(ii) An alternative bonding system, other than a financial assurance under § 800.18 of this part, that we approved as part of a regulatory program under subchapter T of this chapter before January 19, 2017 must continue to provide coverage for long-term treatment of discharges from operations included

within the system until we approve the program amendment to which paragraph (d)(2)(i) of this section refers and the permittee makes the cash contribution required by the state program counterpart to paragraph (d)(1) of this section, unless the permittee posts a separate financial assurance, collateral bond, or surety bond to cover that liability.

(iii) An alternative bonding system, other than a financial assurance under § 800.18 of this part, that we approved as part of a regulatory program under subchapter T of this chapter before January 19, 2017 must continue to provide coverage for long-term treatment of discharges from operations included within the system if the permittee does not make the cash contribution required by the state program counterpart to paragraph (d)(1) of this section, unless the permittee posts a separate financial assurance, collateral bond, or surety bond to cover that liability.

(iv) Paragraphs (d)(2)(i) through (iii) of this section do not apply to an alternative bonding system that we approved as part of a regulatory program under subchapter T of this chapter if the system that we approved includes an exclusion for coverage of discharges that require long-term treatment.

(3) An alternative bonding system to which paragraphs (d)(1) and (2) of this section apply may elect to provide secondary coverage for long-term treatment of discharges when the permittee posts a financial assurance, collateral bond, or surety bond to cover anticipated treatment costs in lieu of making the cash contribution required by paragraph (d)(1) of this section to retain or obtain primary coverage under the alternative bonding system. The regulatory authority must establish terms and conditions for the secondary coverage.

§ 800.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of this part and assigned it control number 1029-0043. The regulatory authority uses information collected under this part to ensure that bond, insurance, and financial assurance instruments

are valid and meet all requirements of section 509 of SMCRA, which requires that persons planning to conduct surface coal mining operations first post a performance bond to guarantee fulfillment of all reclamation obligations under the approved permit. The regulatory authority also uses information collected under this part to ensure compliance with the bond release requirements and procedures of section 519 of SMCRA, the liability insurance requirements of section 507(f) of SMCRA, and bond forfeiture requirements and procedures. Persons planning to conduct surface coal mining operations must respond to obtain a benefit. A federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Room 203-SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

§ 800.11 When and how must I file a performance bond?

(a) After approving a permit application submitted under subchapter G of this chapter, the regulatory authority may not issue the permit until you, the permit applicant, file one of the following:

- (1) A performance bond or bonds for the entire permit area;
 - (2) A cumulative bond schedule and the performance bond required for full reclamation of the initial area to be disturbed; or
 - (3) An incremental bond schedule and the performance bond required for the first increment in the schedule.
- (b) The bond or bonds that you file under paragraph (a) of this section must be—
- (1) In an amount determined under § 800.14 of this part.
 - (2) On a form prescribed and furnished by the regulatory authority.
 - (3) Made payable to the regulatory authority.

(4) Conditioned upon the faithful performance of all the requirements of the regulatory program and the permit, including the reclamation plan.

(c) If the bond or bonds filed under paragraph (a) of this section cover only an identified increment of land within the permit area upon which you will initiate and conduct surface coal mining operations during the initial term of the permit, you must—

(1) Identify the initial and successive areas or increments for bonding on the permit application map submitted under part 780 or part 784 of this chapter and specify the bond amount to be provided for each area or increment.

(2) Ensure that independent increments are of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the regulatory authority become necessary pursuant to § 800.50 of this part.

(3) File additional bond or bonds with the regulatory authority to cover each succeeding increment before you initiate and conduct surface coal mining operations on that increment. The bond or bonds must comply with paragraph (b) of this section.

(d) You may not disturb any surface area or extend any vertical underground mine shaft or other vertical underground mine opening for which a performance bond is required before the regulatory authority accepts the performance bond required for that area or extension.

§ 800.12 What types of performance bond are acceptable?

(a) Except as provided in paragraphs (b) through (d) of this section, the regulatory authority may allow you to post any of the following types of performance bond:

- (1) A surety bond;
- (2) A collateral bond;
- (3) A self-bond; or
- (4) A combination of any of these types of performance bond.

(b) An alternative bonding system approved under § 800.9 of this part may accept either more or fewer types of performance bond than those listed in paragraph (a) of this section.

(c) To guarantee long-term treatment of a discharge under § 800.18 of

§ 800.13

this part, the regulatory authority may accept a—

- (1) Financial assurance;
- (2) Collateral bond; or
- (3) Surety bond.

(d) The regulatory authority may accept any type of performance bond listed in paragraph (a) of this section, other than a self-bond, to guarantee restoration of the ecological function of a perennial or intermittent stream under §§780.28(e) and (g), 784.28(e) and (g), 816.57(g), and 817.57(g) of this chapter.

§ 800.13 What is the liability period for a performance bond?

(a)(1) Liability under the performance bond will be for the duration of the surface coal mining and reclamation operation and for a period coincident with the period of extended responsibility for successful revegetation under §816.115 or §817.115 of this chapter or until achievement of the reclamation requirements of the regulatory program and the permit, whichever is later.

(2) With the approval of the regulatory authority, you may post a performance bond to guarantee specific phases of reclamation within the permit area, provided that the sum of the phase bonds posted equals or exceeds the total performance bond amount required under §§800.14 and 800.15 of this part. The scope of work to be guaranteed and the liability assumed under each phase bond must be specified in detail.

(b) Isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area and bonded separately with the approval of the regulatory authority, with the following provisos:

(1) These areas must be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern of failure.

(2) The regulatory authority must include any necessary access roads or routes in the area under extended liability.

(c) If the regulatory authority approves a long-term, intensive agricultural postmining land use, the revegetation responsibility period specified under §816.115 or §817.115 of this chap-

30 CFR Ch. VII (7–1–17 Edition)

ter will start on the date of initial planting for the long-term agricultural use.

(d)(1) The bond liability of the permittee includes only those actions that the permittee is required to perform under the permit and regulatory program to complete the reclamation plan for the area covered by the bond.

(2) The performance bond does not cover implementation of the approved postmining land use or uses. The permittee is responsible only for restoring the site to conditions capable of supporting the uses specified in §816.133 or §817.133 of this chapter.

(3) Performance bond liability for prime farmland historically used for cropland includes meeting the productivity requirement specified in §800.42(c) of this part.

(4) Section 800.18 of this part specifies the liability for long-term treatment of discharges.

§ 800.14 How will the regulatory authority determine the amount of performance bond required?

(a) The regulatory authority must determine the amount of the performance bond required for the permit or permit increment based upon, but not limited to—

(1) The requirements of the permit, including the reclamation plan.

(2) The probable difficulty of reclamation, giving consideration to the topography, geology, hydrology, and revegetation potential of the permit area.

(3) The estimated reclamation costs submitted by the permit applicant.

(b) The amount of the performance bond must be sufficient to assure the completion of the reclamation plan if the work has to be performed by a third party under contract with the regulatory authority in the event of forfeiture.

(c) The amount of financial assurance, collateral bond, or surety bond required to guarantee long-term treatment of discharges must be determined in accordance with §800.18 of this part.

(d) The total performance bond initially posted for the entire area under one permit may not be less than \$10,000.

(e) The permittee's financial responsibility under § 817.121(c) of this chapter for repairing or compensating for material damage resulting from subsidence may be satisfied by the liability insurance policy required under § 800.60 of this part.

§ 800.15 When must the regulatory authority adjust the performance bond amount and when may I request adjustment of the bond amount?

(a) The regulatory authority must adjust the amount of performance bond required and, if needed, the terms of the acceptance when—

(1) The area requiring bond coverage increases or decreases.

(2) The unit cost or scope of future reclamation changes as a result of technological advances, revisions to the operation or reclamation plans in the permit, or external factors. The regulatory authority may specify periodic times or set a schedule for re-evaluating and adjusting the bond amount to fulfill this requirement.

(b) The permittee may request at any time that the regulatory authority reduce the amount of the performance bond based upon submission of evidence that the permittee's method of operation or other circumstances will reduce the estimated unit costs for the regulatory authority to reclaim the bonded area.

(c) Bond reductions under paragraphs (a) and (b) of this section are not subject to the bond release requirements and procedures of §§ 800.40 through 800.44 of this part.

(d) The regulatory authority may not use the provisions of this section to reduce the amount of the performance bond to reflect changes in the cost of reclamation resulting from completion of activities required under the reclamation plan. Bond reduction for completed reclamation activities must comply with the bond release requirements and procedures of §§ 800.40 through 800.44 of this part.

(e) Before making a bond adjustment, the regulatory authority must—

(1) Notify the permittee, the surety, and any person with a property interest in collateral who has requested notification under § 800.21(f) of this part of

any proposed adjustment to the bond amount; and

(2) Provide the permittee an opportunity for an informal conference on the adjustment.

(f) In the event that an approved permit is revised in accordance with subchapter G of this chapter, the regulatory authority must review the bond amount for adequacy and, if necessary, require adjustment of the bond amount to conform to the permit as revised. This provision may not be used to reduce bond amounts on the basis of completion of reclamation activities, in whole or in part.

(g) The regulatory authority must require that the permittee post a financial assurance, collateral bond, or surety bond in accordance with § 800.18 of this part whenever it identifies a discharge that will require long-term treatment.

(h) The regulatory authority may not reduce the bond amount when the permittee does not restore the approximate original contour as required or when the reclamation plan does not reflect the level of reclamation required under the regulatory program.

§ 800.16 What are the general terms and conditions of a performance bond?

(a) The performance bond must be in an amount determined by the regulatory authority as provided in § 800.14 of this part.

(b) The performance bond must be payable to the regulatory authority.

(c) The performance bond must be conditioned upon faithful performance of all the requirements of the regulatory program and the approved permit, including completion of the reclamation plan.

(d) The duration of the bond must be for the time provided in § 800.13 of this part.

(e) The bond must provide a mechanism for a bank, surety, or other responsible financial entity to give prompt notice to the regulatory authority and the permittee of any action filed alleging the insolvency or bankruptcy of the surety, the bank, or other responsible financial entity, or alleging

§ 800.17

any violations that would result in suspension or revocation of the firm's charter or license to do business.

§ 800.17 [Reserved]

§ 800.18 What special provisions apply to financial guarantees for long-term treatment of discharges?

(a) *Applicability.* (1) This section applies to any discharge resulting from surface coal mining operations, underground mining activities, or other activities or facilities regulated under this title whenever both the discharge and the need to treat the discharge continue or may reasonably be expected to continue after the completion of mining, backfilling, grading, and the establishment of revegetation. For purposes of this section, the term *discharge* includes both discharges to surface water and discharges to groundwater.

(2) This section also applies whenever information available to the regulatory authority documents that a discharge of the nature described in paragraph (a)(1) of this section will develop in the future, provided that the quantity and quality of the future discharge can be determined with reasonable probability.

(3) Paragraphs (a)(1) and (2) of this section apply only to discharges that are not anticipated at the time of permit application approval. Those paragraphs do not authorize approval of a permit application for a proposed operation that anticipates creating a discharge for which long-term treatment would be required.

(4) As provided in § 800.18(g) of this part, the regulatory authority must require adjustment of the bond amount whenever it becomes aware of a situation described in paragraph (a)(1) or (2) of this section.

(b) *Acceptable bonding mechanisms.* (1) Except as provided in paragraph (b)(2) of this section, you, the permittee, must post a financial assurance, a collateral bond, or a surety bond to guarantee treatment or abatement of discharges requiring long-term treatment.

(2) Operations with discharges in states with an alternative bonding system (other than a financial assurance) approved under subchapter T of this chapter must comply with the require-

30 CFR Ch. VII (7-1-17 Edition)

ments of the applicable alternative bonding system.

(c) *Calculation of amount of financial assurance or performance bond.* (1) If you elect to post a financial assurance under paragraph (b)(1) of this section, the regulatory authority must calculate the amount of financial assurance required in the manner provided in paragraph (d) of this section.

(2) If you elect to post a collateral bond or surety bond under paragraph (b)(1) of this section, the bond amount must be no less than the present value of the funds needed to pay for—

(i) Treatment of the discharge in perpetuity, unless you demonstrate, and the regulatory authority finds, based upon available evidence, that treatment will be needed for a lesser time, either because the discharge will attenuate or because its quality will improve;

(ii) Treatment of the discharge during the time required to forfeit and collect the bond;

(iii) Maintenance, renovation, and replacement of treatment and support facilities as needed;

(iv) Final reclamation of sites upon which treatment facilities are located and areas used in support of those facilities; and

(v) Administrative costs borne by the regulatory authority.

(d) *Requirements for financial assurances.* (1) The trust or annuity must be established in a manner that guarantees that sufficient moneys will be available when needed to pay for—

(i) Treatment of discharges in perpetuity, unless the permittee demonstrates, and the regulatory authority finds, based upon available evidence, that treatment will be needed for a lesser time, either because the discharge will attenuate or because its quality will improve. The regulatory authority may accept arrangements that allow the permittee to build the amount of the trust or annuity over time, provided—

(A) The permittee continues to treat the discharge during that time; and

(B) The regulatory authority retains all performance bonds posted for the permit or permit increment until the

trust or annuity reaches a self-sustaining level as determined by the regulatory authority.

(ii) Maintenance, renovation, and replacement of treatment and support facilities as needed.

(iii) Final reclamation of the sites upon which treatment facilities are located and areas used in support of those facilities.

(iv) Administrative costs borne by the regulatory authority or trustee to implement paragraphs (d)(1)(i) through (iii) of this section.

(2) The regulatory authority must require that the investment portfolio held by the trust or annuity prudently account for:

(i) The expected duration of the treatment obligation;

(ii) The need to provide a guarantee of uninterrupted treatment; and

(iii) Whether any other financial guarantee covers a portion of the treatment obligation. If the financial assurance will provide the only financial guarantee of treatment, the regulatory authority must require that the trust or annuity hold a low-risk investment portfolio.

(3) In determining the required amount of the trust or annuity, the regulatory authority must base present value calculations on a conservative anticipated real rate of return on the proposed investments. The rate of return must be net of management or trustee fees.

(4)(i) The trust or annuity must be in a form approved by the regulatory authority and contain all terms and conditions required by the regulatory authority.

(ii) When appropriate, the terms and conditions must include a mechanism whereby the regulatory authority may require the permittee to grant the trustee the real and personal property rights necessary to continue treatment in the event that the permittee ceases treatment. These rights include, but are not limited to, access to and use of the treatment site and ownership of treatment facilities and equipment.

(5) The trust or annuity must irrevocably establish the regulatory authority as the beneficiary of the trust or of the proceeds from the annuity for the purpose of treating mine drainage or

other mining-related discharges to protect the environment and users of surface water.

(6) The trust or annuity must provide that disbursement of money from the trust or annuity may be made only upon written authorization of the regulatory authority or according to a schedule established in the agreement accompanying the trust or annuity.

(7) A financial institution or company serving as a trustee or issuing an annuity must be one of the following:

(i) A national bank chartered by the Office of the Comptroller of the Currency.

(ii) An operating subsidiary of a national bank chartered by the Office of the Comptroller of the Currency.

(iii) A bank or trust company chartered by the state in which the operation is located.

(iv) An insurance company licensed or authorized to do business in the state in which the operation is located or designated by the pertinent regulatory body of that state as an eligible surplus lines insurer.

(v) Any other financial institution or company authorized to do business in the state in which the operation is located, provided that—

(A) The institution's or company's activities are examined or regulated by a state or federal agency; and

(B) The institution or company has trust powers satisfactory to the regulatory authority.

(8) The regulatory authority may allow a not-for-profit organization under section 501(c)(3) of the Internal Revenue Code to serve as a trustee if—

(i) The organization maintains appropriate professional liability insurance coverage; and

(ii) The regulatory authority determines that the organization has demonstrated the financial and technical capability to manage trusts and assume day-to-day operation of the trust and treatment facility in the event of a default.

(9) The permittee or the regulatory authority must procure a new trustee when the trustee's administration of the trust or annuity is unsatisfactory to the regulatory authority.

(e) *Termination of a financial assurance instrument.* Termination of a trust

§ 800.20

or annuity may occur only as specified by the regulatory authority upon a determination that one of the following situations exists—

(1) No further treatment or other reclamation measures are necessary, in which case paragraph (h) of this section will apply.

(2) A satisfactory replacement financial assurance or bond has been posted in accordance with paragraph (g) of this section.

(3) The terms of the trust or annuity establish conditions for termination and those conditions have been met.

(f) *Regulatory authority review and adjustment of amount of financial assurance.* (1) The regulatory authority must establish a schedule for reviewing the performance of the trustee, the adequacy of the trust or annuity, and the accuracy of the assumptions upon which the trust or annuity is based. This review must occur on at least an annual basis.

(2) The regulatory authority must require that the permittee provide additional resources to the trust or annuity whenever the review conducted under paragraph (f)(1) of this section or any other information available to the regulatory authority at any time demonstrates that the financial assurance is no longer adequate to meet the purpose for which it was established.

(g) *Replacement of financial assurance.* With the approval of the regulatory authority, a financial assurance may be replaced in accordance with the provisions of § 800.30(a) of this part.

(h) *Release of liability.* Release of reclamation liabilities and obligations under a financial assurance is subject to the applicable bond release provisions of §§ 800.40 through 800.44 of this part.

(i) *Effect of financial assurance on release of bond.* The permittee may apply for, and the regulatory authority may approve, release of any bonds posted for the permit or, if the permittee uses incremental bonding, the permit increment for which the regulatory authority has approved a financial assurance under this section, provided that the permittee and the regulatory authority comply with the bond release requirements and procedures in §§ 800.40 through 800.44 of this part. This provi-

30 CFR Ch. VII (7–1–17 Edition)

sion applies only if the following conditions exist—

(1) The financial assurance is both in place and fully funded.

(2) The permit or permit increment fully meets all applicable reclamation requirements, with the exception of the discharge and the presence of associated treatment and support facilities.

(3) The financial assurance will serve as the bond for reclamation of the portion of the permit area required for postmining water treatment facilities and access to those facilities.

§ 800.20 What additional requirements apply to surety bonds?

(a) A surety bond must be executed by the permittee and a corporate surety licensed to do business in the state where the operation is located.

(b) Surety bonds must be noncancellable during their terms, except that surety bond coverage for undisturbed lands may be cancelled with the prior consent of the regulatory authority. Within 30 days after receipt of a notice to cancel bond, the regulatory authority will advise the surety whether the bond may be cancelled on an undisturbed area.

(c) The regulatory authority may decline to accept a surety bond if, in the judgment of the regulatory authority, the surety does not have resources sufficient to cover the default of one or more mining companies for which the surety has provided bond coverage.

§ 800.21 What additional requirements apply to collateral bonds?

(a) Collateral bonds, except for letters of credit, cash accounts, and real property, are subject to the following conditions:

(1) The regulatory authority must keep custody of collateral deposited by the applicant or permittee until authorized for release or replacement as provided in this part.

(2) The regulatory authority must value collateral at its current market value, not at face value.

(3) The regulatory authority must require that certificates of deposit be made payable to or assigned to the regulatory authority, both in writing and upon the records of the bank or other

financial institution issuing the certificates. If assigned, the regulatory authority must require the bank or other financial institution issuing the certificate to waive all rights of setoff or liens against the certificate.

(4) The regulatory authority may not accept an individual certificate of deposit in an amount in excess of the maximum amount insured by the Federal Deposit Insurance Corporation.

(b) Letters of credit are subject to the following conditions:

(1) The letter may be issued only by a bank organized or authorized to do business in the United States;

(2) Letters of credit must be irrevocable during their terms.

(3) The letter of credit must be payable to the regulatory authority upon demand, in part or in full, upon receipt from the regulatory authority of a notice of forfeiture issued in accordance with § 800.50 of this part.

(4) If the permittee has not replaced a letter of credit with another letter of credit or other suitable bond at least 30 days before the letter's expiration date, the regulatory authority must draw upon the letter of credit and use the cash received as a replacement bond.

(c) Real property posted as a collateral bond must meet the following conditions:

(1) The applicant or permittee must grant the regulatory authority a first mortgage, first deed of trust, or perfected first-lien security interest in real property with a right to sell or otherwise dispose of the property in the event of forfeiture under § 800.50 of this part.

(2) In order for the regulatory authority to evaluate the adequacy of the real property offered to satisfy collateral requirements, the applicant or permittee must submit a schedule of the real property to be mortgaged or pledged to secure the obligations under the indemnity agreement. The schedule must include—

(i) A description of the property;

(ii) The fair market value as determined by an independent appraisal conducted by a certified appraiser; and

(iii) Proof of possession and title to the real property.

(3) The property may include land that is part of the permit area. How-

ever, land pledged as collateral for a bond under this section may not be disturbed under any permit while it is serving as security under this section.

(4) The appraised fair market value determined under paragraph (c)(2)(ii) of this section is not the bond value of the real estate. In calculating the bond value of real estate, the regulatory authority must discount the appraised fair market value to account for the administrative costs of liquidating real estate, the probability of a forced sale in the event of forfeiture, and a contingency reserve for unanticipated costs including, but not limited to, unpaid real estate taxes, liens, property maintenance expenses, and insurance premiums.

(d) Cash accounts are subject to the following conditions:

(1) The regulatory authority may authorize the permittee to supplement the bond through the establishment of a cash account in one or more federally insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the regulatory authority. The total bond, including the cash account, may not be less than the amount determined under § 800.14 of this part, as modified by any adjustments under § 800.15 of this part, less any amounts released under §§ 800.40 through 800.44 of this part.

(2) Any interest paid on a cash account will be retained in the account and applied to the bond value of the account unless the regulatory authority has approved the payment of interest to the permittee.

(3) Certificates of deposit may be substituted for a cash account with the approval of the regulatory authority.

(4) The regulatory authority may not accept an individual cash account in an amount in excess of the maximum amount insured by the Federal Deposit Insurance Corporation.

(e)(1) The regulatory authority must determine the bond value of all collateral posted as assurance under this section. The bond value must reflect legal and liquidation fees, as well as value depreciation, marketability, and fluctuations that might affect the net cash available to the regulatory authority to complete reclamation.

§ 800.23

30 CFR Ch. VII (7–1–17 Edition)

(2)(i) The regulatory authority may evaluate the bond value of collateral at any time.

(ii) The regulatory authority must evaluate the bond value of collateral as part of the permit renewal process.

(iii) The regulatory authority must increase or decrease the performance bond amount required if an evaluation conducted under paragraph (e)(2)(i) or (ii) of this section determines that the bond value of collateral has increased or decreased.

(iv) In no case may the bond value of collateral exceed the market value of the collateral.

(f) Persons who have an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, must request such notification in writing to the regulatory authority at the time that the collateral is offered.

§ 800.23 What additional requirements apply to self-bonds?

(a) *Definitions.* For the purposes of this section only:

Current assets means cash or other assets or resources that are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business.

Current liabilities means obligations that are reasonably expected to be paid or liquidated within one year or within the normal operating cycle of the business.

Fixed assets means plants and equipment, but does not include land or coal in place.

Liabilities means obligations to transfer assets or provide services to other entities in the future as a result of past transactions.

Net worth means total assets minus total liabilities and is equivalent to owners' equity.

Parent corporation means a corporation which owns or controls the applicant.

Tangible net worth means net worth minus intangibles such as goodwill and rights to patents or royalties.

(b) The regulatory authority may accept a self-bond from an applicant for a permit if all of the following conditions

are met by the applicant or its parent corporation guarantor:

(1) The applicant designates a suitable agent to receive service of process in the state where the proposed surface coal mining operation is to be conducted.

(2) The applicant has been in continuous operation as a business entity for a period of not less than 5 years. Continuous operation means that business was conducted over the 5 years immediately preceding the date of application.

(i) The regulatory authority may allow a joint venture or syndicate with less than 5 years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operation for at least 5 years immediately preceding the date of application.

(ii) When calculating the period of continuous operation, the regulatory authority may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed surface coal mining and reclamation operations.

(3) The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:

(i) The applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's Investors Service or Standard and Poor's or an equivalent rating from any other nationally recognized statistical rating organization registered with the Securities and Exchange Commission.

(ii) The applicant has a tangible net worth of at least \$10 million, a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater.

(iii) The applicant's fixed assets in the United States total at least \$20 million, and the applicant has a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater.

(4) The applicant submits—

(i) Financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;

(ii) Unaudited financial statements for completed quarters in the current fiscal year; and

(iii) Additional unaudited information as requested by the regulatory authority.

(c)(1) The regulatory authority may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if the guarantor meets the conditions of paragraphs (b)(1) through (4) of this section as if it were the applicant. This written guarantee will be referred to as a "corporate guarantee." The terms of the corporate guarantee must provide for the following:

(i) If the applicant fails to complete the reclamation plan, the guarantor must do so or the guarantor will be liable under the indemnity agreement to provide funds to the regulatory authority sufficient to complete the reclamation plan, but not to exceed the bond amount.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the regulatory authority at least 90 days in advance of the cancellation date, and the regulatory authority accepts the cancellation.

(iii) The cancellation may be accepted by the regulatory authority if the applicant obtains suitable replacement bond before the cancellation date or if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed.

(2) The regulatory authority may accept a written guarantee for an applicant's self-bond from any corporate guarantor, whenever the applicant meets the conditions of paragraphs (b)(1), (2), and (4) of this section, and the guarantor meets the conditions of paragraphs (b)(1) through (4) of this section. This written guarantee will be

referred to as a "non-parent corporate guarantee." The terms of this guarantee must provide for compliance with the conditions of paragraphs (c)(1)(i) through (iii) of this section. The regulatory authority may require the applicant to submit any information specified in paragraph (b)(3) of this section in order to determine the financial capabilities of the applicant.

(d)(1) For the regulatory authority to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations may not exceed 25 percent of the applicant's tangible net worth in the United States.

(2) For the regulatory authority to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations may not exceed 25 percent of the guarantor's tangible net worth in the United States.

(3) For the regulatory authority to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds may not exceed 25 percent of the guarantor's tangible net worth in the United States.

(e) If the regulatory authority accepts an applicant's self-bond, the applicant must submit an indemnity agreement subject to the following requirements:

(1) The indemnity agreement must be executed by all persons and parties who are to be bound by it, including the parent corporation guarantor. It must bind each party jointly and severally.

(2) Corporations applying for a self-bond, and parent and non-parent corporations guaranteeing an applicant's self-bond, must submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of the authorization must be provided to the regulatory authority along with an affidavit certifying that the agreement is valid under all applicable federal and state laws. In addition, the guarantor must provide a copy of the corporate authorization demonstrating that the

§ 800.30

corporation may guarantee the self-bond and execute the indemnity agreement.

(3) If the applicant is a partnership, joint venture or syndicate, the agreement must bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant.

(4) Pursuant to §800.50 of this part, the applicant and the parent or non-parent corporate guarantor will be required to complete the approved reclamation plan for the lands in default or to pay to the regulatory authority an amount necessary to complete the approved reclamation plan, not to exceed the bond amount. If permitted under state law, the indemnity agreement, when under forfeiture, will operate as a judgment against those parties liable under the indemnity agreement.

(f) A regulatory authority may require self-bonded applicants and parent and non-parent corporate guarantors to submit an update of the information required under paragraphs (b)(3) and (4) of this section within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee.

(g) If at any time during the period when a self-bond is posted, the financial conditions of the applicant or the parent or non-parent corporate guarantor change so that the criteria of paragraphs (b)(3) and (d) of this section are not satisfied, the permittee must notify the regulatory authority immediately and post an alternate form of bond in the same amount as the self-bond within 90 days. Should the permittee fail to post an adequate substitute bond, the provisions of §800.30(b) of this part will apply.

§800.30 When may I replace a performance bond or financial assurance and when must I do so?

(a) *Replacement upon request of permittee.* (1) The regulatory authority may allow you, the permittee, to replace existing performance bonds and financial assurances with other performance bonds and financial assurances that provide equivalent coverage.

(2) The regulatory authority may not release any existing performance bond or financial assurance until you have submitted, and the regulatory author-

30 CFR Ch. VII (7-1-17 Edition)

ity has approved, an acceptable replacement.

(b) *Replacement by order of the regulatory authority.* (1) Upon the incapacity of a bank, surety, or other responsible financial entity by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, you will be deemed to be without bond coverage and you must promptly notify the regulatory authority.

(2) Upon receipt of notification from a bank, surety, or other responsible financial entity under §800.16(e) of this part or from you under paragraph (b)(1) of this section, the regulatory authority must issue an order requiring that you submit replacement bond or financial assurance coverage within a reasonable time, not to exceed 90 days.

(3) If you do not post adequate bond or financial assurance by the end of the time allowed under paragraph (b)(2) of this section, the regulatory authority must issue a notice of violation requiring that you cease surface coal mining operations immediately. The notice of violation also must require that you either—

(i) Post adequate bond or financial assurance coverage before you may resume surface coal mining operations; or

(ii) Reclaim the site in accordance with the provisions of §816.132 or §817.132 of this chapter.

§800.40 How do I apply for release of all or part of a performance bond?

(a) *When may I file an application for bond release?* You, the permittee, may file an application with the regulatory authority for the release of all or part of a performance bond only at times or during seasons authorized by the regulatory authority. The times or seasons appropriate for the evaluation of certain types of reclamation will be established in either the regulatory program or your permit.

(b) *What must I include in my application for bond release?* Each application for bond release must include—

(1) An application on a form prescribed by the regulatory authority.

(2) All other information required by the regulatory authority, which must include a detailed description of the results that you have achieved under the

approved reclamation plan and an analysis of the results of the monitoring conducted under §§816.35 through 816.37 or §§817.35 through 817.37 of this chapter.

(3) A certified copy of an advertisement that you have placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining and reclamation operation. You must submit the copy within 30 days after you file the application form under paragraph (b)(1) of this section. The advertisement must contain—

- (i) Your name.
- (ii) The permit number and approval date.
- (iii) The number of acres and the precise location of the land for which you are requesting bond release.
- (iv) The amount of the performance bond filed and the portion for which you seek release.
- (v) The type and dates of reclamation work performed.
- (vi) A brief description of the results that you have achieved under the approved reclamation plan.
- (vii) The name and address of the regulatory authority to which written comments, objections, or requests for public hearings and informal conferences on the bond release application may be submitted pursuant to §800.44 of this section and the location at which the application may be reviewed.

(4) Copies of letters that you have sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality of the surface coal mining and reclamation operation, notifying them of your intention to seek release of the bond.

(5) A notarized statement certifying that all applicable reclamation activities have been accomplished in accordance with the requirements of the regulatory program and the approved reclamation plan. You must submit a separate certification for each application and each phase of bond release.

§ 800.41 How will the regulatory authority process my application for bond release?

(a)(1) Upon receipt of a complete application for bond release, the regulatory authority will, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection of the site and an evaluation of the reclamation work performed and the reclamation work remaining. A complete application for bond release is one that includes all items required under §800.40 of this part.

(2) The evaluation will consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution.

(b)(1) The regulatory authority will notify the surface owner, agent, or lessee before conducting the inspection and will offer that person an opportunity to participate with the regulatory authority in making the inspection.

(2) The regulatory authority may arrange with you to allow access to the permit area, upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

§ 800.42 What are the criteria for bond release?

(a) *General requirements.* (1) Except as provided in paragraphs (a)(2) through (5) of this section, the regulatory authority may release all or part of the performance bond for the permit area or an increment thereof if the regulatory authority is satisfied that you have accomplished the required reclamation for the permit area or increment in accordance with paragraphs (b) through (d) of this section.

(2)(i) The regulatory authority must conduct a scientifically defensible trend analysis of the monitoring data submitted under §§816.35 through 816.37 or §§817.35 through 817.37 of this chapter before releasing any bond amount.

(ii) The regulatory authority may not approve a bond release application if the analysis conducted under paragraph (a)(2)(i) of this section and other

relevant information indicate that the operation is causing material damage to the hydrologic balance outside the permit area or is likely to do so in the future.

(3) If you are responsible for a discharge requiring long-term treatment, regardless of whether the discharge emerges either on the permit area or at a point that is hydrologically connected to the permit area, you must post a separate financial assurance, collateral bond, or surety bond under §800.18 of this part to guarantee treatment of the discharge before any portion of the existing performance bond for the permit area may be released, unless the type and amount of bond remaining after the release would be adequate to meet the requirements of §800.18 of this part as well as any remaining land reclamation obligations.

(4) If the permit area or increment includes mountaintop removal mining operations under §785.14 of this chapter or a variance from restoration of the approximate original contour under §785.16 of this chapter, the amount of bond that may be released is subject to the limitation specified in §785.14(c)(2) of this chapter for mountaintop removal mining operations or the limitation specified in §785.16(b)(2) of this chapter for a variance from restoration of the approximate original contour.

(5) The bond amount described in §780.24(d)(2) or §784.24(d)(2) of this chapter may not be released either until the structure is in use as part of the postmining land use or until the structure is removed and the site upon which it was located is reclaimed in accordance with part 816 or part 817 of this chapter.

(6) The regulatory authority must consider the results of the evaluation conducted under §800.41(a)(2) of this part when determining the amount of performance bond to release.

(b) *Phase I reclamation.* (1) The regulatory authority may release a maximum of 60 percent of the performance bond for a bonded area after you complete Phase I reclamation for that area in accordance with the approved reclamation plan. Phase I reclamation consists of backfilling, grading, and establishment of drainage control. It includes construction of the postmining

drainage pattern and stream-channel configuration required by §§816.56(b), 816.57(c)(1), 817.56(b), and 817.57(c)(1) of this chapter and restoration of the form of perennial and intermittent streams under §§816.57(e) and 817.57(e) of this chapter. Soil replacement is optional for this phase.

(2) The amount of performance bond that the regulatory authority retains after Phase I release must be adequate to ensure that the regulatory authority will have sufficient funds for a third party to complete the remaining portion of the reclamation plan, including restoration of the hydrologic function and ecological function of perennial and intermittent streams under §816.57(f) and (g) or §817.57(f) and (g) of this chapter and completion of any fish and wildlife enhancement measures required in the permit in accordance with §780.16 or §784.16 of this chapter, in the event of forfeiture.

(c) *Phase II reclamation.* (1) The regulatory authority may release an additional amount of performance bond after you complete Phase II reclamation, which consists of—

(i) Soil replacement and redistribution of organic materials (if not accomplished as part of Phase I reclamation);

(ii) Restoration of the hydrologic function of perennial and intermittent streams under §816.57(f) or §817.57(f) of this chapter; and

(iii) Successfully establishing revegetation on the area in accordance with the approved reclamation plan, including any streamside vegetative corridors required by §§816.56(c), 816.57(d), 817.56(c), and 817.57(d) of this chapter. The regulatory authority must establish standards defining successful establishment of vegetation for Phase II reclamation.

(2) The amount of performance bond that the regulatory authority retains after Phase II release must be sufficient to cover the cost of having a third party reestablish revegetation for the revegetation responsibility period under §816.115 or §817.115 of this chapter. In addition, it must be adequate to ensure that the regulatory authority will have sufficient funds for a third party to complete the remaining portion of the reclamation plan, including restoration of the ecological function

of perennial and intermittent streams under §816.57(g) or §817.57(g) of this chapter and completion of any fish and wildlife enhancement measures required in the permit in accordance with §780.16 or §784.16 of this chapter, in the event of forfeiture.

(3) The regulatory authority may not release any part of the performance bond under paragraph (c)(1) of this section if the lands to which the release would apply are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by subchapter K of this chapter.

(4) The regulatory authority may not release any part of the performance bond under paragraph (c)(1) of this section until soil productivity for all prime farmland historically used for cropland on the area to which the release would apply has returned to levels of yield equivalent to yields from nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed under part 823 of this chapter.

(5) When the regulatory authority has approved retention of a silt dam as a permanent impoundment under §816.49(b) or §817.49(b) of this chapter, the regulatory authority may approve Phase II bond release for the area of the impoundment if the requirements of §816.55 or §817.55 of this chapter have been met and provisions for sound future maintenance by the operator or the landowner have been made with the regulatory authority.

(d) *Phase III reclamation.* (1) The regulatory authority must release the remaining portion of the performance bond upon the completion of Phase III reclamation, which consists of successful completion of all surface coal mining and reclamation activities and expiration of the revegetation responsibility period under §816.115 or §817.115 of this chapter.

(2) The regulatory authority may not fully release any performance bond under provisions of this section until all applicable reclamation requirements of the regulatory program and the permit are fully met. Among other things, those requirements include restoration of the ecological function of

perennial and intermittent streams under §816.57(g) or §817.57(g) of this chapter and completion of any fish and wildlife enhancement measures required in the permit in accordance with §780.16 or §784.16 of this chapter.

§ 800.43 When and how must the regulatory authority provide notification of its decision on a bond release application?

(a) The regulatory authority will provide written notification of its decision on your bond release application to—

(1) You;

(2) The surety (if applicable);

(3) All other persons with an interest in bond collateral who have requested notification under §800.21(f) of this part;

(4) Any person who filed objections in writing; and

(5) Objectors who were a party to the hearing proceedings, if any.

(b) The regulatory authority will provide notification under paragraph (a) of this section—

(1) Within 60 days after you file the application, if there is no public hearing under §800.44 of this part, or

(2) Within 30 days after a public hearing has been held under §800.44 of this part.

(c) If the regulatory authority disapproves your application for release of the bond or portion thereof, the regulatory authority must notify you, the surety, and any person with an interest in collateral as provided in §800.21(f) of this part, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

(d) When any application for total or partial bond release is filed with the regulatory authority, the regulatory authority must notify the municipality in which the surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

§ 800.44 Who may file an objection to a bond release application and how must the regulatory authority respond to an objection?

(a)(1) Any person with a valid legal interest that might be adversely affected by release of the bond, or the responsible officer or head of any federal, state, tribal, or local governmental agency with jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to those operations, has the right to file written objections to the proposed bond release with the regulatory authority within 30 days after the last publication of the notice required by § 800.40(b)(2) of this part.

(2) If written objections are filed and a hearing is requested, the regulatory authority must inform all interested parties of the time and place of the hearing, and hold a public hearing within 30 days after receipt of the request for the hearing. The regulatory authority must advertise the date, time, and location of the public hearing in a newspaper of general circulation in the locality for two consecutive weeks.

(3) The public hearing must be held in the locality of the surface coal mining operation for which bond release is sought, at the location of the regulatory authority office, or at the state capital, at the option of the objector.

(b)(1) For the purpose of the hearing under paragraph (a) of this section, the regulatory authority has the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials, and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity.

(2) A verbatim record of each public hearing must be made, and a transcript must be made available on the motion of any party or by order of the regulatory authority.

(c) Without prejudice to the right of an objector or the applicant for bond release, the regulatory authority may

hold an informal conference as provided in section 513(b) of the Act, 30 U.S.C. 1263(b), to resolve written objections. The regulatory authority must make a record of the informal conference unless waived by all parties, which must be accessible to all parties. The regulatory authority also must furnish all parties to the informal conference with a written finding based on the informal conference, and the reasons for the finding.

§ 800.50 When and how will a bond be forfeited?

(a) If a permittee or operator refuses or is unable to conduct reclamation of an unabated violation, if the terms of the permit are not met, or if the permittee or operator defaults on the conditions under which the bond was accepted, the regulatory authority must take the following action to forfeit all or part of a bond or bonds for any permit area or an increment of a permit area:

(1)(i) Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit all or part of the bond, including the reasons for the forfeiture and the amount to be forfeited.

(ii) If the amount to be forfeited under paragraph (a)(1)(i) of this section is less than the total amount of bond posted, the amount forfeited must be no less than the estimated total cost of achieving the reclamation plan requirements. For a discharge that requires long-term treatment, the regulatory authority must calculate the estimated total cost of achieving the reclamation plan requirements for that discharge in a manner consistent with § 800.18(c) of this part.

(2) Advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. Those conditions may include, but are not limited to—

(i) Agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule that meets the conditions of the permit, the reclamation plan, and the regulatory program and a

Surface Mining Reclamation and Enforcement, Interior

§ 800.70

demonstration that the party has the ability to satisfy the conditions; or

(ii) The regulatory authority may allow a surety to complete the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the reclamation work performed meets the criteria for partial bond release under §800.42 of this part, no surety liability may be released until successful completion of all reclamation under the terms of the permit, including applicable liability periods of §800.13 of this part.

(b) In the event forfeiture of the bond is required by this section, the regulatory authority shall—

(1) Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, or if rights of appeal, if any, have not been exercised within a time established by the regulatory authority, or if such appeal, if taken, is unsuccessful.

(2) Use funds collected from bond forfeiture to complete the reclamation plan, or the portion thereof covered by the bond, on the permit area or increment to which the bond applies.

(c) Upon default, the regulatory authority may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Unless specifically limited, as provided in §800.11(c) of this part, bond liability will extend to the entire permit area under conditions of forfeiture.

(d)(1) In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the permittee or operator is liable for remaining costs. The regulatory authority may complete, or authorize completion of, reclamation of the bonded area and may recover from the permittee or operator all costs of reclamation in excess of the amount forfeited.

(2) In the event the amount of performance bond forfeited is more than the amount necessary to complete reclamation, the regulatory authority must return the unused funds to the party from whom they were collected.

§ 800.60 What liability insurance must I carry?

(a) The regulatory authority must require the applicant to submit as part of its permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which the permit is sought. The policy must provide for personal-injury and property-damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the surface coal mining and reclamation operations, including the use of explosives, and who are entitled to compensation under the applicable provisions of state law. Minimum insurance coverage for bodily injury and property damage is \$300,000 for each occurrence and \$500,000 aggregate.

(b) The policy must be maintained in full force during the life of the permit or any renewal thereof and the liability period necessary to complete all reclamation operations under this chapter.

(c) The policy must include a rider requiring that the insurer notify the regulatory authority whenever substantive changes are made in the policy, including any termination or failure to renew.

(d) The regulatory authority may accept from the applicant, in lieu of a certificate for a public liability insurance policy, satisfactory evidence from the applicant that it satisfies applicable state self-insurance requirements approved as part of the regulatory program and the requirements of this section.

§ 800.70 What special bonding provisions apply to anthracite operations in Pennsylvania?

(a) All provisions of this subchapter apply to bonding and insuring anthracite surface coal mining and reclamation operations in Pennsylvania except that—

(1) The regulatory authority must determine specified bond limits in accordance with applicable provisions of

§ 800.70

Pennsylvania statutes, rules and regulations adopted thereunder, and implementing policies of the Pennsylvania regulatory authority.

(2) The period of liability for responsibility under each bond must be established for those operations in accordance with applicable laws of the Commonwealth of Pennsylvania, rules and regulations adopted thereunder, and implementing policies of the Pennsylvania regulatory authority.

30 CFR Ch. VII (7–1–17 Edition)

(b) Upon amendment of the Pennsylvania permanent regulatory program with respect to specified bond limits and the period of revegetation responsibility for anthracite surface coal mining and reclamation operations, any person engaging in or seeking to engage in those operations must comply with additional regulations the Secretary may issue as are necessary to meet the purposes of the Act.

SUBCHAPTER K—PERMANENT PROGRAM PERFORMANCE STANDARDS

PART 810—PERMANENT PROGRAM PERFORMANCE STANDARDS—GENERAL PROVISIONS

Sec.

810.1 Scope.

810.2 Objective.

810.3 Authority.

810.4 Responsibility.

810.11 Applicability.

AUTHORITY: Secs. 102, 201, 501(b), 503, 504, 505, 512, 515, 516 and 517, Pub. L. 95-87, 91 Stat. 448, 449, 468, 470, 471, 473, 483, 486, 495, and 498 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1255, 1262, 1265, 1266, and 1267).

SOURCE: 44 FR 15393, Mar. 13, 1979, unless otherwise noted.

§ 810.1 Scope.

This subchapter sets forth the minimum performance standards and design requirements to be adopted and implemented under a regulatory program for coal exploration and surface coal mining and reclamation operations.

§ 810.2 Objective.

The objective of this subchapter is to ensure that coal exploration and surface coal mining and reclamation operations are conducted in manners which are compatible with the environmental, social, and esthetic needs of the Nation. Accordingly, the performance standards and design requirements in this subchapter will provide for—

(a) Protection of the health, safety, and general welfare of mine workers and the public;

(b) Maximum use and conservation of the solid fuel resource being recovered so that reaffected the land through future surface coal mining operations can be minimized;

(c) Prompt reclamation of all affected areas to conditions that are capable of supporting the premining land uses or higher or better land uses;

(d) Reclamation of land affected by surface coal mining operations as contemporaneously as practicable with mining operations;

(e) Minimizing, to the extent possible using the best technology currently available, disturbances and adverse impacts on fish, wildlife, and other related environmental values, and enhancement of such resources where practicable;

(f) Revegetation which achieves a prompt vegetative cover and recovery of productivity levels compatible with approved land uses;

(g) Minimum disturbance to the prevailing hydrologic balance at the mine-site and in associated off-site areas, and to the quality and quantity of water in surface and ground water systems;

(h) Protection of fragile and historic lands where surface coal mining operations could result in significant damage to important historic, cultural, scientific, or esthetic values and natural systems;

(i) Confinement of surface coal mining and reclamation operations including, but not limited to, the location of spoil disposal areas to lands within the permit area; and

(j) Striking a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy.

(k) Protection of endangered and threatened species and their critical habitats as determined by the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

§ 810.3 Authority.

The Secretary shall approve and promulgate minimum coal exploration and surface mining and reclamation operations performance standards and design requirements applicable under regulatory programs which are at least as stringent as subchapter K in accordance with subchapter C of this chapter.

§ 810.4 Responsibility.

(a) The Director shall ensure that performance standards and design requirements at least as stringent as the

§810.11

standards of this subchapter are implemented and enforced under every regulatory program.

(b) The State regulatory authority shall ensure that performance standards and design requirements at least as stringent as the standards in this subchapter are implemented and enforced under every State program.

(c) Each person conducting coal exploration or surface coal mining and reclamation operations is responsible for complying with performance standards and design requirements which are at least as stringent as the standards in this subchapter and the applicable regulatory program.

§810.11 Applicability.

Part 815 applies to all coal exploration conducted under regulatory programs. Part 816 applies to all surface mining activities conducted under regulatory programs. Part 817 applies to all underground mining activities conducted under regulatory programs. Parts 818 through 828 apply to certain special categories of surface coal mining and reclamation operations. Parts 816 and 817 apply to each of those special categories of operations, except to the extent that a provision of parts 818 through 828 specifically exempts a particular category from a particular requirement of part 816 or part 817.

PART 815—PERMANENT PROGRAM PERFORMANCE STANDARDS— COAL EXPLORATION

Sec.

815.1 Scope and purpose.

815.2 Permitting information.

815.13 Required documents.

815.15 Performance standards for coal exploration.

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

SOURCE: 48 FR 40636, Sept. 8, 1983, unless otherwise noted.

§815.1 Scope and purpose.

This part sets forth performance standards required for coal exploration which substantially disturbs the natural land surface. At the discretion of the regulatory authority, coal exploration operations may be further required to comply with the applicable

30 CFR Ch. VII (7-1-17 Edition)

standards of 30 CFR parts 816 through 828.

§815.2 Permitting information.

Notwithstanding cross-references in other parts which may be otherwise construed, part 772 establishes the notice and permit information requirements for coal exploration.

[53 FR 52950, Dec. 29, 1988]

§815.13 Required documents.

Each person who conducts coal exploration which substantially disturbs the natural land surface shall, while in the exploration area, have available a copy of the filed notice of intention to explore or a copy of the exploration permit for review by the authorized representative of the regulatory authority upon request.

§815.15 Performance standards for coal exploration.

(a) Habitats of unique or unusually high value for fish, wildlife, and other related environmental values and critical habitats of threatened or endangered species identified pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) shall not be disturbed during coal exploration.

(b) All roads or other transportation facilities used for coal exploration shall comply with the applicable provisions of §§816.150 (b) through (f), 816.180, and 816.181 of this chapter.

(c) If excavations, artificially flat areas, or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

(d) Topsoil shall be separately removed, stored, and redistributed on areas disturbed by coal exploration activities as necessary to assure successful revegetation or as required by the regulatory authority.

(e) All areas disturbed by coal exploration activities shall be revegetated in a manner that encourages prompt revegetation and recovery of a diverse, effective, and permanent vegetative cover. Revegetation shall be accomplished in accordance with the following:

(1) All areas disturbed by coal exploration activities shall be seeded or planted to the same seasonal variety native to the areas disturbed. If the land use of the exploration area is intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph.

(2) The vegetative cover shall be capable of stabilizing the soil surface from erosion.

(f) Diversions of overland flows and ephemeral, perennial, or intermittent streams shall be made in accordance with §816.43 of this chapter.

(g) Each exploration hole, borehole, well, or other exposed underground opening created during exploration shall be reclaimed in accordance with §§816.13 through 816.15 of this chapter.

(h) All facilities and equipment shall be promptly removed from the exploration area when they are no longer needed for exploration, except for those facilities and equipment that the regulatory authority determines may remain to—

(1) Provide additional environmental data,

(2) Reduce or control the onsite and offsite effects of the exploration activities, or

(3) Facilitate future surface mining and reclamation operations by the person conducting the exploration.

(i) Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance in accordance with §§816.41 through 816.49 of this chapter. The regulatory authority may specify additional measures which shall be adopted by the person engaged in coal exploration.

(j) Acid- or toxic-forming materials shall be handled and disposed of in accordance with §§816.41(b), 816.41(f), and 816.102(e) of this chapter. The regulatory authority may specify additional measures which shall be adopted by the person engaged in coal exploration.

[48 FR 40636, Sept. 8, 1983, as amended at 53 FR 45211, Nov. 8, 1988]

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS— SURFACE MINING ACTIVITIES

Sec.

816.1 What does this part do?

816.2 What is the objective of this part?

816.10 Information collection.

816.11 What signs and markers must I post?

816.13 What special requirements apply to drilled holes, wells, and exposed underground openings?

816.14–816.15 [Reserved]

816.22 How must I handle topsoil, subsoil, and other plant growth media?

816.34 How must I protect the hydrologic balance?

816.35 How must I monitor groundwater?

816.36 How must I monitor surface water?

816.37 How must I monitor the biological condition of streams?

816.38 How must I handle acid-forming and toxic-forming materials?

816.39 What must I do with exploratory or monitoring wells when I no longer need them?

816.40 What responsibility do I have to replace water supplies?

816.41 Under what conditions may I discharge water and other materials into an underground mine?

816.42 What Clean Water Act requirements apply to discharges from my operation?

816.43 How must I construct and maintain diversions?

816.45 What sediment control measures must I implement?

816.46 What requirements apply to siltation structures?

816.47 What requirements apply to discharge structures for impoundments?

816.49 What requirements apply to impoundments?

816.55 What must I do with sedimentation ponds, diversions, impoundments, and treatment facilities after I no longer need them?

816.56 What additional performance standards apply to mining activities conducted in or through an ephemeral stream?

816.57 What additional performance standards apply to mining activities conducted in or through a perennial or intermittent stream or on the surface of land within 100 feet of a perennial or intermittent stream?

816.59 How must I maximize coal recovery?

816.61 Use of explosives: General requirements.

816.62 Use of explosives: Preblasting survey.

816.64 Use of explosives: Blasting schedule.

816.66 Use of explosives: Blasting signs, warnings, and access control.

816.67 Use of explosives: Control of adverse effects.

§816.1

- 816.68 Use of explosives: Records of blasting operations.
- 816.71 How must I dispose of excess spoil?
- 816.72–816.73 [Reserved]
- 816.74 What special requirements apply to the disposal of excess spoil on a pre-existing bench?
- 816.79 What measures must I take to protect underground mines in the vicinity of my surface mine?
- 816.81 How must I dispose of coal mine waste?
- 816.83 What special requirements apply to coal mine waste refuse piles?
- 816.84 What special requirements apply to coal mine waste impounding structures?
- 816.87 What special requirements apply to burning and burned coal mine waste?
- 816.89 How must I dispose of noncoal mine wastes?
- 816.95 How must I protect surface areas from wind and water erosion?
- 816.97 How must I protect and enhance fish, wildlife, and related environmental values?
- 816.99 What measures must I take to prevent and remediate landslides?
- 816.100 What are the standards for conducting reclamation contemporaneously with mining?
- 816.101 [Reserved]
- 816.102 How must I backfill the mined area and grade and configure the land surface?
- 816.104 What special provisions for backfilling, grading, and surface configuration apply to sites with thin overburden?
- 816.105 What special provisions for backfilling, grading, and surface configuration apply to sites with thick overburden?
- 816.106 What special provisions for backfilling, grading, and surface configuration apply to previously mined areas with a preexisting highwall?
- 816.107 What special provisions for backfilling, grading, and surface configuration apply to operations on steep slopes?
- 816.111 How must I revegetate areas disturbed by mining activities?
- 816.113–816.114 [Reserved]
- 816.115 How long am I responsible for revegetation after planting?
- 816.116 What requirements apply to standards for determining revegetation success?
- 816.131 What actions must I take when I temporarily cease mining operations?
- 816.132 What actions must I take when I permanently cease mining operations?
- 816.133 What provisions concerning postmining land use apply to my operation?
- 816.150 What are the general requirements for haul and access roads?
- 816.151 What additional requirements apply to primary roads?

30 CFR Ch. VII (7–1–17 Edition)

- 816.180 To what extent must I protect utility installations?
- 816.181 What requirements apply to support facilities?
- 816.200 [Reserved]

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

SOURCE: 81 FR 93392, Dec. 20, 2016, unless otherwise noted.

§816.1 What does this part do?

This part sets forth the minimum environmental protection performance standards for surface mining activities under the Act.

§816.2 What is the objective of this part?

This part is intended to ensure that all surface mining activities are conducted in an environmentally sound manner in accordance with the Act.

§816.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of this part and assigned it control number 1029–0047. Collection of this information is required under section 515 of SMCRA, which provides that permittees conducting surface coal mining and reclamation operations must meet all applicable performance standards of the regulatory program approved under the Act. The regulatory authority uses the information collected to ensure that surface mining activities are conducted in compliance with the requirements of the applicable regulatory program. Persons intending to conduct such operations must respond to obtain a benefit. A federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Room 203–SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

§ 816.11 What signs and markers must I post?

(a) *General specifications.* Signs and markers required under this part must—

(1) Be posted and maintained by the person who conducts the surface mining activities;

(2) Be of a uniform design throughout the operation;

(3) Be easily seen and read;

(4) Be made of durable material; and

(5) Conform to local ordinances and codes.

(b) *Duration of maintenance.* You must maintain signs and markers during the conduct of all activities to which they pertain.

(c) *Mine and permit identification signs.*

(1) You must display identification signs at each point of access to the permit area from public roads.

(2) The signs must show the name, business address, and telephone number of the person who conducts the surface mining activities and the identification number of the current SMCR permit authorizing surface mining activities.

(3) You must retain and maintain the signs until the release of all bonds for the permit area.

(d) *Perimeter markers.* You must clearly mark the perimeter of the permit area before beginning surface mining activities.

(e) *Stream buffer zone markers.* You must clearly mark the boundaries of any buffer to be maintained between surface mining activities and a perennial or intermittent stream in accordance with §§ 780.28 and 816.57 of this chapter to avoid disturbance by surface mining activities.

(f) *Topsoil markers.* You must clearly mark stockpiles of topsoil, subsoil, or other plant growth media segregated and stored as required in the permit in accordance with § 816.22 of this part.

§ 816.13 What special requirements apply to drilled holes, wells, and exposed underground openings?

(a) Except as provided in paragraph (f) of this section, you must case, line, otherwise manage each exploration hole, drilled hole, borehole, shaft, well, or other exposed underground opening

in a manner approved by the regulatory authority to—

(1) Prevent acid or other toxic drainage from entering groundwater and surface water.

(2) Minimize disturbance to the prevailing hydrologic balance.

(3) Ensure the safety of people, livestock, fish and wildlife, and machinery in the permit area and the adjacent area.

(b) If the approved permit identifies an exploration hole, drilled hole, borehole, well, or other exposed underground opening for use to monitor groundwater or to return coal processing waste or water to underground workings, you must temporarily seal the hole or opening before use and protect it during use by installing barricades, fences, or other protective devices approved by the regulatory authority. You must periodically inspect these devices and maintain them in good operating condition.

(c) You may retain and transfer a drilled hole or groundwater monitoring well for use as a water well under the conditions established in § 816.39 of this part.

(d) Except as provided in paragraph (c) of this section, you must permanently close each exploration hole, drilled hole, borehole, well, or underground opening that mining activities uncover or expose within the permit area, unless the regulatory authority—

(1) Approves use of the hole, well, or opening for water monitoring purposes; or

(2) Authorizes other management of the hole or well.

(e)(1) Except as provided in paragraph (c) of this section, you must cap, seal, backfill, or otherwise properly manage each shaft, drift, adit, tunnel, exploratory hole, entryway or other opening to the surface from underground when no longer needed for monitoring or any other use that the regulatory authority approves after finding that the use will not adversely affect the environment or public health and safety.

(2) Permanent closure measures taken under paragraph (e)(1) of this section must be—

(i) Consistent with § 75.1771 of this title;

(ii) Designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery; and

(iii) Designed to keep acid or toxic mine drainage from entering ground-water or surface water.

(f) The requirements of this section do not apply to holes drilled and used for blasting for surface mining purposes.

§§ 816.14–816.15 [Reserved]

§ 816.22 How must I handle topsoil, subsoil, and other plant growth media?

(a) *Removal and salvage.* (1)(i) You, the permittee, must remove and salvage all topsoil and other soil materials identified for salvage and use as postmining plant growth media in the soil handling plan approved in the permit under § 780.12(e) of this chapter.

(ii) The soil handling plan approved in the permit under § 780.12(e) of this chapter will specify which soil horizons and underlying strata, or portions thereof, you must separately remove and salvage. The plan also will specify whether some or all of those soil horizons and soil substitute materials may or must be blended to achieve an improved plant growth medium.

(iii) Except as provided in the soil handling plan approved in the permit under § 780.12(e) of this chapter, you must complete removal and salvage of topsoil, subsoil, and organic matter in advance of any mining-related surface disturbance other than the minor disturbances identified in paragraph (a)(2) of this section.

(2) Unless otherwise specified by the regulatory authority, you need not remove and salvage topsoil and other soil materials for minor disturbances that—

(i) Occur at the site of small structures, such as power poles, signs, monitoring wells, or fence lines; or

(ii) Will not destroy the existing vegetation and will not cause erosion.

(b) *Handling and storage.* (1) You must segregate and separately handle the materials removed under paragraph (a) of this section to the extent required in the soil handling plan approved in the permit pursuant to § 780.12(e). You must redistribute those materials promptly on regraded areas or stock-

pile them when prompt redistribution is impractical.

(2) Stockpiled materials must—

(i) Be selectively placed on a stable site within the permit area;

(ii) Be protected from contaminants and unnecessary compaction that would interfere with revegetation;

(iii) Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick-growing, non-invasive vegetative cover or through other measures approved by the regulatory authority; and

(iv) Not be moved until required for redistribution unless approved by the regulatory authority.

(3) When stockpiling of organic matter and soil materials removed under paragraphs (a) and (f) of this section would be detrimental to the quality or quantity of those materials, you may temporarily redistribute those soil materials on an approved site within the permit area to enhance the current use of that site until the materials are needed for later reclamation, provided that—

(i) Temporary redistribution will not permanently diminish the capability of the topsoil of the host site; and

(ii) The redistributed material will be preserved in a condition more suitable for redistribution than if it were stockpiled.

(c) *Soil substitutes and supplements.* When the soil handling plan approved in the permit in accordance with § 780.12(e) of this chapter provides for the use of substitutes for or supplements to the existing topsoil or subsoil, you must salvage, store, and redistribute the overburden materials selected and approved for that purpose in a manner consistent with paragraphs (a), (b), and (e) of this section.

(d) *Site preparation.* If necessary to reduce potential slippage of the redistributed material or to promote root penetration, you must rip, chisel-plow, deep-till, or otherwise mechanically treat backfilled and graded areas either before or after redistribution of soil materials, whichever time is agronomically appropriate.

(e) *Redistribution.* (1) You must redistribute the materials removed, salvaged, and, if necessary, stored

under paragraphs (a) through (c) of this section in a manner that—

(i) Complies with the soil handling plan developed under § 780.12(e) of this chapter and approved as part of the permit.

(ii) Is consistent with the approved postmining land use, the final surface configuration, and surface water drainage systems.

(iii) Minimizes compaction of the topsoil and soil materials in the root zone to the extent possible and alleviates any excess compaction that may occur. You must limit your use of measures that result in increased compaction to those situations in which added compaction is necessary to ensure stability.

(iv) Protects the materials from wind and water erosion before and after seeding and planting to the extent necessary to ensure establishment of a successful vegetative cover and to avoid causing or contributing to a violation of applicable state or tribal water quality standards or effluent limitations, including, but not limited to, water quality standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), and effluent limitations established in any National Pollutant Discharge Elimination System permit issued for the operation under section 402 of the Clean Water Act, 33 U.S.C. 1342, or its state or tribal counterpart.

(v) Achieves an approximately uniform, stable thickness across the regraded area. The thickness may vary when consistent with the approved postmining land use, the final surface configuration, surface water drainage systems, and the requirement in § 816.133 of this part for restoration of all disturbed areas to conditions that are capable of supporting the uses they were capable of supporting before any mining or higher or better uses approved under § 780.24(b) of this chapter. The thickness also may vary when variations are necessary or desirable to achieve specific revegetation goals and ecological diversity, as set forth in the revegetation plan developed under § 780.12(g) of this chapter and approved as part of the permit.

(2) You must use a statistically valid sampling technique to document that

soil materials have been redistributed in the locations and depths required by the soil handling plan developed under § 780.12(e) of this chapter and approved as part of the permit.

(3) The regulatory authority may choose not to require the redistribution of topsoil on the embankments of permanent impoundments or on the embankments of roads to be retained as part of the postmining land use if it determines that—

(i) Placement of topsoil on those embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation, and

(ii) The embankments will be otherwise stabilized.

(f) *Organic matter.* (1)(i) You must salvage duff, other organic litter, and vegetative materials such as tree tops and branches, small logs, and root balls. When practicable and consistent with the approved postmining land use, you may salvage organic matter and topsoil in a single operation that blends those materials.

(ii) Paragraph (f)(1)(i) of this section does not apply to organic matter from areas identified under § 779.19(b) of this chapter as containing significant populations of invasive or noxious non-native species. You must bury organic matter from those areas in the backfill at a sufficient depth to prevent regeneration or proliferation of undesirable species.

(2)(i) Except as otherwise provided in paragraphs (f)(2)(ii) and (iii) and (3) of this section, you must redistribute the organic matter salvaged under paragraph (f)(1) of this section across the regraded surface or incorporate it into the soil to control erosion, promote growth of vegetation, serve as a source of native plant seeds and soil inoculants to speed restoration of the soil's ecological community, and increase the moisture retention capability of the soil.

(ii) You may use vegetative debris to construct stream improvement or fish and wildlife habitat enhancement features consistent with the approved postmining land use.

(iii) You may adjust the timing and pattern of redistribution of large woody debris to accommodate the use

§ 816.34

30 CFR Ch. VII (7–1–17 Edition)

of mechanized tree-planting equipment on sites with a forestry postmining land use.

(3)(i) The redistribution requirements of paragraph (f)(2)(i) of this section do not apply to those portions of the permit area—

(A) Upon which row crops will be planted as part of the postmining land use before final bond release under §§ 800.40 through 800.43 of this chapter;

(B) That will be intensively managed for hay production as part of the postmining land use before final bond release under §§ 800.40 through 800.43 of this chapter; or

(C) Upon which structures, roads, other impervious surfaces, or water impoundments have been or will be constructed as part of the postmining land use before final bond release under §§ 800.40 through 800.43 of this chapter.

(ii) When the circumstances described in paragraph (f)(3)(i) of this section apply, you must make reasonable efforts to redistribute the salvaged organic matter on other portions of the permit area or use woody debris to construct stream improvement or fish and wildlife habitat enhancement features consistent with the approved postmining land use. If you demonstrate, and the regulatory authority finds, that it is not reasonably possible to use all available organic matter for these purposes, you may bury it in the backfill.

(4)(i) You may not burn organic matter.

(ii) You may bury organic matter in the backfill only as provided in paragraphs (f)(1)(ii) and (3)(ii) of this section.

§ 816.34 How must I protect the hydrologic balance?

(a) You, the permittee, must conduct all surface mining and reclamation activities in a manner that will—

(1) Minimize disturbance of the hydrologic balance within the permit and adjacent areas.

(2) Prevent material damage to the hydrologic balance outside the permit area.

(3) Protect streams in accordance with §§ 780.28 and 816.57 of this chapter.

(4) Assure the protection or replacement of water supplies to the extent required by § 816.40 of this part.

(5) Protect existing water rights under state law.

(6) Support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this part.

(7) Comply with the hydrologic reclamation plan as submitted under § 780.22 of this chapter and approved in the permit.

(8) Protect groundwater quality by using best management practices to handle earth materials and runoff in a manner that avoids the formation of acid or toxic mine drainage and by managing excavations and other disturbances to prevent or control groundwater degradation. The regulatory authority will determine the meaning of the term “best management practices” on a site-specific basis. At a minimum, the term includes equipment, devices, systems, methods, and techniques that the Director determines to be best management practices.

(9) Protect groundwater quantity by handling earth materials and runoff in a manner that will restore the approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and excess spoil fills, so as to allow the movement of water into the groundwater system.

(10) Protect surface-water quality by using best management practices, as described in paragraph (a)(8) of this section, to handle earth materials, groundwater discharges, and runoff in a manner that—

(i) Prevents postmining discharges of acid or toxic mine drainage.

(ii) Prevents additional contribution of suspended solids to streamflow or runoff outside the permit area to the extent possible, using the best technology currently available.

(iii) Otherwise prevents water pollution.

(11) Protect surface-water quality and flow rates by handling earth materials and runoff in accordance with the steps outlined in the hydrologic reclamation plan and the surface-water

runoff control plan approved in the permit in accordance with §§ 780.22 and 780.29 of this chapter, respectively.

(b)(1) To the maximum extent practicable, you must use mining and reclamation practices that minimize water pollution, changes in flow, and adverse impacts on stream biota rather than relying upon water treatment to minimize those impacts.

(2) You must install, use, and maintain any necessary water-treatment facilities or water-quality controls if drainage control, materials handling, stabilization and revegetation of disturbed areas, diversion of runoff, mulching, and other reclamation and remedial practices are not adequate to meet the requirements of this section and § 816.42 of this part.

(c) The regulatory authority may require that you take preventive, remedial, or monitoring measures in addition to those set forth in this part to prevent material damage to the hydrologic balance outside the permit area.

(d)(1) You must examine the runoff-control structures identified under § 780.29 of this chapter within 72 hours of cessation of each occurrence of the following precipitation events:

(i) In areas with an average annual precipitation of more than 26.0 inches, an event of a size equal to or greater than that of a storm with a 2-year recurrence interval. You must use the appropriate regional Natural Resources Conservation Service synthetic storm distribution to determine peak flow for a storm with that recurrence interval.

(ii) In areas with an average annual precipitation of 26.0 inches or less, a significant event of a size specified by the regulatory authority.

(2)(i) You must prepare a report, which must be certified by a registered professional engineer, and submit the report to the regulatory authority within 30 days of cessation of the applicable precipitation event under paragraph (d)(1) of this section. The report must address the performance of the runoff-control structures, identify and describe any material damage to the hydrologic balance outside the permit area that occurred, and identify and describe the remedial measures taken in response to that damage.

(ii) The report prepared under paragraph (d)(2)(i) of this section may include all precipitation events that occur within 30 days of cessation of the applicable precipitation event under paragraph (d)(1) of this section.

§ 816.35 How must I monitor groundwater?

(a)(1)(i) You, the permittee, must monitor groundwater in the manner specified in the groundwater monitoring plan approved in the permit in accordance with § 780.23(a) of this chapter.

(ii) You must adhere to the data collection, analysis, and reporting requirements of paragraphs (a) and (b) of § 777.13 of this chapter when conducting monitoring under this section.

(2) At a minimum, you must conduct monitoring through mining, reclamation, and the revegetation responsibility period under § 816.115 of this part for the monitored area. Monitoring must continue beyond that minimum for any additional time needed for monitoring results to demonstrate that the criteria of § 816.35(d)(1) and (2) of this section have been met, as determined by the regulatory authority.

(b)(1) You must submit groundwater monitoring data to the regulatory authority every 3 months, or more frequently if prescribed by the regulatory authority.

(2) Monitoring reports must include analytical results from each sample taken during the reporting period.

(c) When the analysis of any sample indicates noncompliance with the terms and conditions of the permit, you must promptly notify the regulatory authority, take any applicable actions required under § 773.17(e) of this chapter, and implement any applicable remedial measures required by the hydrologic reclamation plan approved in the permit in accordance with § 780.22 of this chapter.

(d) You may use the permit revision procedures of § 774.13 of this chapter to request that the regulatory authority modify the groundwater monitoring requirements, including the parameters covered and the sampling frequency. The regulatory authority may approve your request if you demonstrate, using

the monitoring data obtained under this section, that—

(1) Future adverse changes in groundwater quantity or quality are unlikely to occur.

(2) The operation has—

(i) Minimized disturbance to the hydrologic balance in the permit and adjacent areas.

(ii) Prevented material damage to the hydrologic balance outside the permit area.

(iii) Preserved or restored the biological condition of perennial and intermittent streams within the permit and adjacent areas for which baseline biological condition data was collected under § 780.19(c)(6)(vi) of this chapter when groundwater from the permit area provides all or part of the base flow of those streams.

(iv) Maintained or restored the availability and quality of groundwater to the extent necessary to support the approved postmining land uses within the permit area.

(v) Protected or replaced the water rights of other users.

(e) Whenever information available to the regulatory authority indicates that additional monitoring is necessary to protect the hydrologic balance, to detect hydrologic changes, or to meet other requirements of the regulatory program, the regulatory authority must issue an order under § 774.10(b) of this chapter requiring that you revise your permit to include the necessary additional monitoring.

(f) You must install, maintain, operate, and, when no longer needed, remove all equipment, structures, and other devices used in conjunction with monitoring groundwater, consistent with §§ 816.13 and 816.39 of this part.

§ 816.36 How must I monitor surface water?

(a)(1)(i) You, the permittee, must monitor surface water in the manner specified in the surface-water monitoring plan approved in the permit in accordance with § 780.23(b) of this chapter.

(ii) You must adhere to the data collection, analysis, and reporting requirements of paragraphs (a) and (b) of § 777.13 of this chapter when conducting monitoring under this section.

(2) Monitoring must continue through mining and during reclamation until the regulatory authority releases the entire bond amount for the monitored area under §§ 800.40 through 800.43 of this chapter.

(b)(1) You must submit surface-water monitoring data to the regulatory authority every 3 months, or more frequently when prescribed by the regulatory authority.

(2) Monitoring reports must include analytical results from each sample taken during the reporting period.

(3) The reporting requirements of paragraph (b) of this section do not exempt you from meeting any National Pollutant Discharge Elimination System (NPDES) reporting requirements.

(c) When the analysis of any sample indicates noncompliance with the terms and conditions of the permit, you must promptly notify the regulatory authority, take any applicable actions required under § 773.17(e) of this chapter, and implement any applicable remedial measures required by the hydrologic reclamation plan approved in the permit in accordance with § 780.22 of this chapter.

(d) You may use the permit revision procedures of § 774.13 of this chapter to request that the regulatory authority modify the surface-water monitoring requirements (except those required by the NPDES permitting authority), including the parameters covered and the sampling frequency. The regulatory authority may approve your request if you demonstrate, using the monitoring data obtained under this section, that—

(1) Future adverse changes in surface-water quantity or quality are unlikely to occur.

(2) The operation has—

(i) Minimized disturbance to the hydrologic balance in the permit and adjacent areas.

(ii) Prevented material damage to the hydrologic balance outside the permit area.

(iii) Preserved or restored the biological condition of perennial and intermittent streams within the permit and adjacent areas for which baseline biological condition data was collected under § 780.19(c)(6)(vi) of this chapter.

(iv) Maintained or restored the availability and quality of surface water to the extent necessary to support the approved postmining land uses within the permit area.

(v) Not precluded attainment of any designated use of a surface water under section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c).

(vi) Protected or replaced the water rights of other users.

(e) Whenever information available to the regulatory authority indicates that additional monitoring is necessary to protect the hydrologic balance, to detect hydrologic changes, or to meet other requirements of the regulatory program, the regulatory authority must issue an order under § 774.10(b) of this chapter requiring that you revise your permit to include the necessary additional monitoring.

(f) You must install, maintain, operate, and, when no longer needed, remove all equipment, structures, and other devices used in conjunction with monitoring surface water.

§ 816.37 How must I monitor the biological condition of streams?

(a)(1)(i) You must monitor the biological condition of perennial and intermittent streams in the manner specified in the plan approved in the permit in accordance with § 780.23(c) of this chapter.

(ii) You must adhere to the data collection, analysis, and reporting requirements of paragraphs (a) and (b) of § 777.13 of this chapter and use a bio-assessment protocol that complies with § 780.19(c)(6)(vii) of this chapter when conducting monitoring under this section.

(2) Monitoring must continue through mining and during reclamation until the regulatory authority releases the entire bond amount for the monitored area under §§ 800.40 through 800.43 of this chapter.

(b) You must submit biological condition monitoring data to the regulatory authority on an annual basis, or more frequently if prescribed by the regulatory authority.

(c) Whenever information available to the regulatory authority indicates that additional monitoring is necessary to meet the requirements of the

regulatory program, the regulatory authority must issue an order under § 774.10(b) of this chapter requiring that you revise your permit to include the necessary additional monitoring.

§ 816.38 How must I handle acid-forming and toxic-forming materials?

(a) You, the permittee, must use the best technology currently available to handle acid-forming and toxic-forming materials in a manner that will avoid the creation of acid or toxic mine drainage into surface water and groundwater. At a minimum, you must comply with the plan approved in the permit in accordance with § 780.12(n) of this chapter and adhere to disposal, treatment, and storage practices that are consistent with other material handling and disposal provisions of this chapter.

(b) You may temporarily store acid-forming and toxic-forming materials only if the regulatory authority specifically approves temporary storage as necessary and finds in writing in the permit that the proposed storage method will protect surface water and groundwater by preventing erosion, the formation of polluted runoff, and the infiltration of polluted water into aquifers. The regulatory authority must specify a maximum time for temporary storage, which may not exceed the period until permanent disposal first becomes feasible. In addition, storage must not result in any risk of water pollution, adverse impacts to the biology of perennial or intermittent streams, or other environmental damage.

§ 816.39 What must I do with exploratory or monitoring wells when I no longer need them?

(a) Except as provided in paragraph (b) of this section, you, the permittee, must permanently seal exploratory or monitoring wells in a safe and environmentally sound manner in accordance with § 816.13 of this part before the regulatory authority may approve full release of the bond posted for the land on which the wells are located under §§ 800.40 through 800.43 of this chapter.

(b) With the prior approval of the regulatory authority, you may transfer wells to another party for further use.

The conditions of the transfer must comply with state and local laws. You will remain responsible for the proper management of the wells until full release of the bond posted for the land on which the wells are located under §§ 800.40 through 800.43 of this chapter.

§ 816.40 What responsibility do I have to replace water supplies?

(a) *Replacement of adversely-impacted water supplies.* (1) You, the permittee, must replace the water supply of an owner of an interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source when the water supply has been adversely impacted by contamination, diminution, or interruption as a result of your surface mining activities.

(2) The replacement supply must be equivalent to the quantity and quality of the premining supply.

(3) Replacement includes provision of an equivalent water supply delivery system and payment of operation and maintenance expenses in excess of customary and reasonable delivery costs for the premining water supply. If you and the water supply owner agree, your obligation to pay operation and maintenance costs may be satisfied by a one-time payment in an amount that covers the present worth of the increased annual operation and maintenance costs for a period upon which you and the water supply owner agree.

(4) 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, you may satisfy the replacement requirements by demonstrating that a suitable alternative water source is available and could feasibly be developed, provided you obtain written concurrence from the owner of the affected water supply.

(b) *Measures to address anticipated adverse impacts to protected water supplies.* For anticipated loss of or damage to a protected water supply, you must adhere to the requirements set forth in the permit in accordance with § 780.22(b) of this chapter.

(c) *Measures to address unanticipated adverse impacts to protected water supplies.* For unanticipated loss of or damage to a protected water supply, you must—

(1) Provide an emergency temporary water supply within 24 hours of notification of the loss. The temporary supply must be adequate in quantity and quality to meet normal household needs.

(2) Develop and submit a plan for a permanent replacement supply to the regulatory authority within 30 days of receiving notice that an unanticipated loss of or damage to a protected water supply has occurred.

(3) Provide a permanent replacement water supply within 2 years of the date of receiving notice of an unanticipated loss of or damage to a protected water supply. The regulatory authority may grant an extension if you have made a good-faith effort to meet this deadline, but have been unable to do so for reasons beyond your control.

(d) *Basis for determination of adverse impact.* The regulatory authority must use the baseline hydrologic and geologic information required under § 780.19 of this chapter and all other available information to determine whether and to what extent the mining operation adversely impacted the damaged water supply.

§ 816.41 Under what conditions may I discharge water and other materials into an underground mine?

(a) You may not discharge any water or other materials from a surface coal mining and reclamation operation into an underground mine unless the regulatory authority specifically approves the discharge in writing, based upon a demonstration that—

(1) The discharge will be made in a manner that—

(i) Minimizes disturbances to the hydrologic balance within the permit area;

(ii) Prevents material damage to the hydrologic balance outside the permit area, including the hydrologic balance of the area in which the underground mine receiving the discharge is located;

(iii) Does not adversely impact the biology of perennial or intermittent streams; and

(iv) Otherwise eliminates public hazards resulting from surface mining activities.

(2) The discharge will not cause or contribute to a violation of applicable state or tribal water quality standards or effluent limitations, including, but not limited to, water quality standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), and effluent limitations established in any National Pollutant Discharge Elimination System permit issued for the operation under section 402 of the Clean Water Act, 33 U.S.C. 1342, or its state or tribal counterpart.

(3)(i) The discharge will be at a known rate and of a quality that will meet the effluent limitations for pH and total suspended solids in 40 CFR part 434.

(ii) The regulatory authority may approve discharges of water that exceed the effluent limitations for pH and total suspended solids in 40 CFR part 434 if the available evidence indicates that there is no direct hydrologic connection between the underground mine and other waters and that those exceedances will not be inconsistent with paragraph (a)(1) of this section.

(4) The discharge will not cause or contribute to a violation of applicable state or tribal water quality standards for groundwater.

(5) The Mine Safety and Health Administration has approved the discharge.

(6) You have obtained written permission from the owner of the mine into which the discharge is to be made and you have provided a copy of that authorization to the regulatory authority.

(b) Discharges are limited to the following materials:

(1) Water.

(2) Coal processing waste.

(3) Fly ash from a coal-fired facility.

(4) Sludge from an acid-mine-drainage treatment facility.

(5) Flue-gas desulfurization sludge.

(6) Inert materials used for stabilizing underground mines.

(7) Underground mine development waste.

§ 816.42 What Clean Water Act requirements apply to discharges from my operation?

(a) Nothing in this section, nor any action taken pursuant to this section, supersedes or modifies—

(1) The authority or jurisdiction of federal, state, or tribal agencies responsible for administration, implementation, and enforcement of the Clean Water Act, 33 U.S.C. 1251 *et seq.*; or

(2) The decisions that those agencies make under the authority of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, including decisions on whether a particular set of facts constitutes a violation of the Clean Water Act.

(b) Discharges of water from surface mining activities and from areas disturbed by surface mining activities must—

(1) Be made in compliance with all applicable water quality laws and regulations, including the effluent limitations established in the National Pollutant Discharge Elimination System permit for the operation under section 402 of the Clean Water Act, 33 U.S.C. 1342, or its state or tribal counterpart. The regulatory authority must notify the appropriate Clean Water Act authority whenever it takes action to enforce a permit condition required by § 773.17(i) of this chapter with respect to an effluent limitation in a National Pollutant Discharge Elimination System permit. The regulatory authority must initiate coordination with the Clean Water Act authority before taking enforcement action if coordination is needed to determine whether a violation of the National Pollutant Discharge Elimination System permit exists.

(2) Not cause or contribute to a violation of applicable water quality standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), or other applicable state or tribal water quality standards.

(c) Discharges of overburden, coal mine waste, and other materials into waters subject to the jurisdiction of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, must be made in compliance with section 404 of the Clean Water Act, 33 U.S.C. 1344, and its implementing regulations.

(d) The regulatory authority will coordinate an investigation with the appropriate Clean Water Act authority whenever information available to the regulatory authority indicates that mining activities may be causing or contributing to a violation of the water quality standards to which paragraph (b)(2) of this section refers, or to a violation of section 404 of the Clean Water Act, 33 U.S.C. 1344, and its implementing regulations. If, after coordination with the appropriate Clean Water Act authority, it is determined that mining activities are causing or contributing to a Clean Water Act violation, the regulatory authority must, in addition to any action taken by the appropriate Clean Water Act authority, independently take enforcement or other appropriate action to correct the cause of the violation.

(e) You must construct water treatment facilities for discharges from the operation as soon as the need for those facilities becomes evident.

(f)(1) You must remove precipitates and otherwise maintain all water treatment facilities requiring the use of settling ponds or lagoons as necessary to maintain the functionality of those facilities.

(2) You must dispose of all precipitates removed from facilities under paragraph (f)(1) of this section either in an approved solid waste landfill or within the permit area in accordance with a plan approved by the regulatory authority.

(g) You must operate and maintain water treatment facilities until the regulatory authority authorizes removal based upon monitoring data demonstrating that influent to the facilities meets all applicable effluent limitations without treatment and that discharges would not cause or contribute to a violation of applicable water quality standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), or other applicable state or tribal water quality standards if left untreated.

§ 816.43 How must I construct and maintain diversions?

(a) *Classification.* The term *diversion* applies to the following categories of

channels that convey surface water flow:

(1) *Diversion Ditches.* Diversion ditches are channels constructed to convey surface water runoff or other flows from areas not disturbed by mining activities away from or around disturbed areas. Diversion ditches may be temporary or permanent.

(i) You must remove a temporary diversion ditch as soon as it is no longer needed. You must restore the land disturbed by the removal process in accordance with the approved permit and § 816.55 of this part. Before removing a temporary diversion ditch, you must modify or remove downstream water treatment facilities previously protected by the ditch to prevent overtopping or failure of the facilities. You must continue to maintain water treatment facilities until they are no longer needed.

(ii) You may retain a *diversion ditch* as a permanent structure if you demonstrate and the regulatory authority finds that retention of that diversion ditch would—

(A) Be environmentally beneficial;

(B) Meet the requirements of the reclamation plan approved under § 780.12 of this chapter; and

(C) Be consistent with the surface drainage pattern restoration requirements of §§ 816.56 and 816.57 of this part.

(iii) When approved in the permit, you may divert the following flows away from the disturbed area by means of temporary or permanent diversion ditches without treatment:

(A) Any surface runoff or other flows from mined areas abandoned before May 3, 1978.

(B) Any surface runoff or other flows from undisturbed areas.

(C) Any surface runoff or other flows from reclaimed areas for which the criteria of § 816.46 of this part for siltation structure removal have been met.

(2) *Stream diversions.* Stream diversions are temporary or permanent relocations of perennial or intermittent streams. Diversions of perennial and intermittent streams must comply with the applicable requirements of this section, § 780.28 of this chapter, and § 816.57 of this part.

(i) You must remove *temporary stream diversions* after the original stream

channel is reconstructed after mining. As set forth in § 780.28(f) of this chapter, different requirements apply to temporary stream diversions depending on whether they will be in existence for less or more than 3 years.

(ii) *Permanent stream diversions* remain in their locations following mining and reclamation.

(3) *Conveyances and channels within the disturbed area.* All other conveyances and channels that are constructed within the disturbed area to transport surface water are also diversions. During mining, these channels or conveyances must deliver all captured surface water flow to siltation structures.

(i) You must remove temporary conveyances or channels when they are no longer needed for their intended purpose.

(ii) When approved in the permit, you may retain conveyances or channels that support or enhance the approved postmining land use.

(b) *Design criteria.* When the permit requires the use of siltation structures for sediment control, you must construct diversions designed to the standards of this section to convey runoff from the disturbed area to the siltation structures unless the topography will naturally direct all surface runoff or other flows to a siltation structure.

(1) You must design all diversions to—

(i) Ensure the safety of the public.

(ii) Minimize adverse impacts to the hydrologic balance, including the biology of perennial and intermittent streams, within the permit and adjacent areas.

(iii) Prevent material damage to the hydrologic balance outside the permit area.

(2) You must design, locate, construct, maintain, and use each diversion and its appurtenant structures to—

(i) Be stable.

(ii) Provide and maintain the capacity to safely pass the peak flow of surface runoff from a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion. Flow capacity for stream diversions includes both the in-channel capacity and the

flood-prone area overbank capacity. Flow capacity for diversion ditches and conveyances or channels includes only in-channel capacity, with adequate freeboard to prevent out-of-channel flow. You must use the appropriate regional Natural Resources Conservation Service synthetic storm distribution to determine peak flows.

(iii) Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area.

(iv) Comply with all applicable federal, state, tribal, and local laws and regulations.

(c) *Application to § 816.41.* You may not divert surface runoff or other flows into underground mines without approval of the regulatory authority under § 816.41 of this part.

(d) *Additional requirements.* The regulatory authority may specify additional design criteria for diversions to meet the requirements of this section.

§ 816.45 What sediment control measures must I implement?

(a) You must design, construct, and maintain appropriate sediment control measures, using the best technology currently available to—

(1) Prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area.

(2) Meet the applicable effluent limitations referenced in § 816.42(a) of this part.

(3) Minimize erosion to the extent possible.

(b) Sediment control measures include practices carried out within the disturbed area. Sediment control measures consist of the use of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to—

(1) Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation.

(2) Shaping and stabilizing the backfilled material to promote a reduction in the rate and volume of runoff.

(3) Retaining sediment within disturbed areas.

(4) Diverting surface runoff from undisturbed areas away from disturbed areas.

(5) Using protected channels or pipes to convey surface runoff from undisturbed areas through disturbed areas so as not to cause additional erosion.

(6) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment.

(7) Treating surface runoff collected in sedimentation ponds with flocculants or other chemicals.

§ 816.46 What requirements apply to siltation structures?

(a) *Scope.* For the purpose of this section only, the phrase “disturb the land surface” does not include those areas—

(1) In which the only surface mining activities consist of diversions, siltation structures, or roads that are designed, constructed, and maintained in accordance with this part; and

(2) For which you do not plan to otherwise disturb the land surface upgradient of the diversion, siltation structure, or road.

(b) *General requirements.* (1) When siltation structures will be used to achieve the requirements of § 816.45 of this part, you must construct those structures before beginning any surface mining activities that will disturb the land surface.

(2) Upon completion of construction of a siltation structure, a qualified registered professional engineer, or, in any state that authorizes land surveyors to prepare and certify plans in accordance with § 780.25(a) of this chapter, a qualified registered professional land surveyor, must certify that the structure has been constructed as designed and as approved in the reclamation plan in the permit.

(3) Any siltation structure that impounds water must be designed, constructed and maintained in accordance with § 816.49 of this chapter.

(4) You must maintain siltation structures until removal is authorized by the regulatory authority and the

disturbed area has been stabilized and revegetated.

(5)(i) When a siltation structure is removed, you must regrade the land upon which the structure was located and revegetate the land in accordance with the reclamation plan and §§ 816.111 and 816.116 of this chapter.

(ii) Paragraph (b)(5)(i) of this section does not apply to sedimentation ponds approved by the regulatory authority for retention as permanent impoundments under § 816.49(b) of this part if the maintenance requirements of § 800.42(c)(5) of this chapter are met.

(c) *Sedimentation ponds.* (1) When used, sedimentation ponds must—

(i) Be located as near as possible to the disturbed area and outside perennial or intermittent stream channels unless approved by the regulatory authority in the permit in accordance with §§ 780.28 and 816.57(c) of this chapter.

(ii) Be designed, constructed, and maintained to—

(A) Provide adequate sediment storage volume.

(B) Provide adequate detention time to allow the effluent from the ponds to meet applicable effluent limitations.

(C) Contain or treat the 10-year, 24-hour precipitation event (“design event”) unless a lesser design event is approved by the regulatory authority based on terrain, climate, other site-specific conditions, and a demonstration that the effluent limitations referenced in § 816.42 of this part will be met.

(D) Provide a nonclogging dewatering device adequate to maintain the detention time required under paragraph (c)(1)(ii)(B) of this section.

(E) Minimize short circuiting to the extent possible.

(F) Provide periodic sediment removal sufficient to maintain adequate volume for the design event.

(G) Ensure against excessive settlement.

(H) Be free of sod, large roots, frozen soil, and acid-forming or toxic-forming materials.

(I) Be compacted properly.

(2) *Spillways.* A sedimentation pond must include either a combination of principal and emergency spillways or a

single spillway configured as specified in § 816.49(a)(9) of this part.

(d) *Other treatment facilities.* (1) You must design other treatment facilities to treat the 10-year, 24-hour precipitation event unless the regulatory authority approves a lesser design event based upon terrain, climate, other site-specific conditions, and a demonstration that the effluent limitations referenced in § 816.42 of this part will be met.

(2) You must design other treatment facilities in accordance with the applicable requirements of paragraph (c) of this section.

(e) *Exemptions.* The regulatory authority may grant an exemption from the requirements of this section if—

(1) The disturbed drainage area within the total disturbed area is small; and

(2) You demonstrate that neither siltation structures nor alternate sediment control measures are necessary for drainage from the disturbed drainage area to comply with § 816.42 of this part.

§ 816.47 What requirements apply to discharge structures for impoundments?

You must control discharges from sedimentation ponds, permanent and temporary impoundments, coal mine waste impounding structures, and diversions by energy dissipators, riprap channels, and other devices when necessary to reduce erosion, to control meander migration, to prevent deepening or enlargement of stream channels, or to minimize disturbance of the hydrologic balance. You must design discharge structures according to standard engineering design procedures.

§ 816.49 What requirements apply to impoundments?

(a) *Requirements that apply to both permanent and temporary impoundments—*

(1) *MSHA requirements.* An impoundment meeting the criteria of § 77.216(a) of this title must comply with the requirements of § 77.216 of this title and this section.

(2) *Stability.* (i) An impoundment that meets the criteria of § 77.216(a) of this title or that includes a dam with a significant or high hazard potential classification under § 780.25(a) of this chapter must have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least 1.2.

(ii) Impoundments not included in paragraph (a)(2)(i) of this section, except for a coal mine waste impounding structure, must have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of § 780.25(e)(2) of this chapter.

(3) *Freeboard.* (i) Impoundments must have adequate freeboard to resist overtopping by waves that occur in conjunction with the typical increase in water elevation at the downwind edge of any body of water, waves resulting from sudden influxes of surface runoff from precipitation events, or waves resulting from any combination of these events or other events.

(ii) An impoundment that includes a dam with a significant or high hazard potential classification under § 780.25(a) of this chapter must comply with the freeboard hydrograph criteria in the following table:

MINIMUM AUXILIARY SPILLWAY HYDROLOGIC CRITERIA

Hazard potential classification of embankment	Design precipitation event for—	
	Auxiliary spillway hydrograph	Freeboard hydrograph
Significant	$P_{100}^1 + 0.12(PMP^2 - P_{100})$	$P_{100} + 0.40(PMP - P_{100})$
High	$P_{100} + 0.26(PMP - P_{100})$	PMP.

¹ P_{100} = Precipitation event for 100-year return interval.

² PMP = Probable Maximum Precipitation event.

(4) *Foundation.* (i) Foundations and abutments for an impounding structure must be stable during all phases of construction and operation and must be

struction and operation and must be

designed based on adequate and accurate information on the foundation and abutment conditions.

(ii) You must conduct foundation and abutment investigations, as well as any necessary laboratory testing of foundation material, to determine the design requirements for foundation stability and control of underseepage for an impoundment that includes a dam with a significant or high hazard potential classification under §780.25(a) of this chapter.

(iii) You must remove all vegetative and organic materials from the foundation area and excavate and prepare the foundation area to resist failure. You must install cutoff trenches if necessary to ensure stability.

(5) *Protection of impoundment slopes.* You must take measures to protect impoundment slopes from surface erosion and the adverse impacts of a sudden drawdown.

(6) *Protection of embankment faces.* Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

(7) *Spillways.* An impoundment must include either a combination of principal and emergency spillways or a single spillway configured as specified in paragraph (a)(7)(i) of this section, designed and constructed to safely pass the applicable design precipitation event specified in paragraph (a)(7)(ii) of this section, except as set forth in paragraph (c)(2) of this section.

(i) The regulatory authority may approve a single open-channel spillway that is:

(A) Of nonerodible construction and designed to carry sustained flows; or

(B) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(ii) Except as specified in paragraph (c)(2) of this section, the required design precipitation event for an impoundment meeting the spillway requirements of paragraph (a)(7) of this section is:

(A) For an impoundment that includes a dam with a significant or high hazard potential classification under

§780.25(a) of this chapter, the design precipitation event specified in the auxiliary spillway hydrograph column in the table in paragraph (a)(3)(ii) of this section, or any greater event specified by the regulatory authority.

(B) For an impoundment meeting the criteria of §77.216(a) of this title, the 100-year, 6-hour event, or any greater event specified by the regulatory authority.

(C) For an impoundment not included in paragraphs (a)(7)(ii)(A) and (B) of this section, the 25-year, 6-hour event, or any greater event specified by the regulatory authority.

(8) *Highwalls.* The vertical portion of any highwall remnant within the impoundment must be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

(9) *Inspections.* Except as provided in paragraph (a)(9)(iv) of this section, a qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer must inspect each impoundment as provided in paragraph (a)(9)(i) of this section. The professional engineer or specialist must be experienced in the construction of impoundments.

(i) Inspections must be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(ii) After each inspection required by paragraph (a)(9)(i) of this section, the qualified registered professional engineer, or qualified registered professional land surveyor as specified in paragraph (a)(9)(iv) of this section, must promptly provide to the regulatory authority a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this chapter. The report must include a discussion of any appearance of instability, any structural weakness or other hazardous condition, the depth and elevation of any impounded waters, the existing storage capacity, any existing or required monitoring procedures and instrumentation, and any

other aspects of the structure affecting stability.

(iii) You must retain a copy of the report at or near the minesite.

(iv) In any state that authorizes land surveyors to prepare and certify plans in accordance with § 780.25(b)(1) of this chapter, a qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the criteria of § 77.216(a) of this title, or that is not classified as having a significant or high hazard potential under § 780.25(a) of this chapter, and certify and submit the report required by paragraph (a)(9)(ii) of this section, except that a qualified registered professional engineer must certify all coal mine waste impounding structures covered by § 816.84 of this chapter. The professional land surveyor must be experienced in the construction of impoundments.

(10) *Examinations.* (i) Impoundments that meet the criteria of § 77.216 of this title, or that are classified as having a significant or high hazard potential under § 780.25(a) of this chapter, must be examined in accordance with § 77.216-3 of this title.

(ii) Impoundments that are not subject to § 77.216 of this title, or that are not classified as having a significant or high hazard potential under § 780.25(a) of this chapter, must be examined at least quarterly. A qualified person designated by the operator must examine impoundments for the appearance of structural weakness and other hazardous conditions.

(11) *Emergency procedures.* If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment must promptly inform the regulatory authority of the finding and of the emergency procedures formulated for public protection and remedial action. The regulatory authority must be notified immediately if adequate procedures cannot be formulated or implemented. The regulatory authority then must notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) *Requirements that apply only to permanent impoundments.* A permanent impoundment of water may be created if authorized by the regulatory authority

in the approved permit based upon the following demonstration:

(1) The size and configuration of the impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, discharges from the impoundment will not cause or contribute to a violation of applicable state or tribal water quality standards or effluent limitations, including, but not limited to, water quality standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), and effluent limitations established in the National Pollutant Discharge Elimination System permit for the operation under section 402 of the Clean Water Act, 33 U.S.C. 1342, or its state or tribal counterpart.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provide for adequate safety and access for proposed water users.

(5) The impoundment will not result in diminution of the quality or quantity of surface water or groundwater used by surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining land use.

(7) Approval of the impoundment will not result in retention of spoil piles or ridges that are inconsistent with the definition of approximate original contour.

(8) Approval of the impoundment will not result in the creation of an excess spoil fill elsewhere within the permit area.

(9) The impoundment has been designed with dimensions, features, and other characteristics that will enhance fish and wildlife habitat to the extent that doing so is not inconsistent with the intended use.

(c) *Requirements that apply only to temporary impoundments that rely primarily upon storage.* (1) In lieu of meeting the requirements in paragraph (a)(7)(i) of this section, the regulatory authority may approve an impoundment that relies primarily on storage to control the runoff from the design

§ 816.55

precipitation event when you demonstrate, and a qualified registered professional engineer or qualified registered professional land surveyor in accordance with § 780.25(b) of this chapter certifies, that the impoundment will safely control the design precipitation event.

(2) You must use current prudent engineering practices to safely remove the water from an impoundment constructed in accordance with paragraph (c)(1) of this section.

(3) An impoundment constructed in accordance with paragraph (c)(1) of this section must be located where failure would not be expected to cause loss of life or serious property damage, unless the impoundment meets one of the following exceptions:

(i) An impoundment that meets the criteria of § 77.216(a) of this title, or that is classified as having a significant or high hazard potential under § 780.25(a) of this chapter, and is designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or any greater event specified by the regulatory authority.

(ii) An impoundment not included in paragraph (c)(3)(i) of this section that is designed to control the precipitation of the 100-year, 6-hour event, or any greater event specified by the regulatory authority.

§ 816.55 What must I do with sedimentation ponds, diversions, impoundments, and treatment facilities after I no longer need them?

(a) Before seeking final bond release under § 800.42(d) of this chapter, you must—

(1) Remove all temporary structures and reclaim the land upon which those structures were located in accordance with the approved permit; and

(2) Ensure that all sedimentation ponds, diversions, and impoundments approved for retention after final bond release have been maintained properly and meet all applicable requirements of the approved permit and this chapter for retention as permanent structures. You must renovate the structures if necessary to meet the requirements for retention.

(b) [Reserved]

30 CFR Ch. VII (7–1–17 Edition)

§ 816.56 What additional performance standards apply to mining activities conducted in or through an ephemeral stream?

(a) *Compliance with federal, state, and tribal water quality laws and regulations.*

(1) You may conduct surface mining activities in or affecting waters subject to the jurisdiction of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, only if you first obtain all necessary authorizations, certifications, and permits under that law.

(2) Surface mining activities must comply with all applicable state and tribal laws and regulations concerning surface water and groundwater.

(b) *Postmining surface drainage pattern and stream-channel configuration.* If you mine through an ephemeral stream, you must construct a postmining surface drainage pattern and stream-channel configurations that are consistent with the surface drainage pattern and stream-channel configurations approved in the permit in accordance with § 780.27 of this chapter.

(c) *Establishment of streamside vegetative corridors.* (1) If you mine through an ephemeral stream, you must establish a vegetative corridor at least 100 feet wide along each bank of the reconstructed stream channel. The 100-foot distance must be measured horizontally on a line perpendicular to the stream, beginning at the ordinary high water mark. The corridor must be consistent with natural vegetation patterns.

(2) When planting the streamside vegetative corridors required by paragraph (c)(1) of this section, you must—

(i) Use appropriate native species adapted to the area, unless an agency responsible for implementing section 404 of the Clean Water Act, 33 U.S.C. 1344, requires the use of non-native species.

(ii) Ensure that the species planted are consistent with the revegetation plan approved in the permit.

(iii) Include appropriate native hydrophytic vegetation, vegetation typical of floodplains, or hydrophilic vegetation characteristic of riparian areas and wetlands to the extent that the corridor contains suitable habitat for those species and the stream and

the geomorphology of the area are capable of supporting vegetation of that nature.

(iv) Use native trees and shrubs when planting areas within the streamside corridor that were forested at the time of application or that would revert to forest under conditions of natural succession.

(3) Paragraphs (c)(1) and (2) of this section do not require planting of hydrophytic or hydrophilic species within those portions of streamside corridors where the stream, soils, or climate are incapable of providing the moisture or other growing conditions needed to support and sustain hydrophytic or hydrophilic species. In those situations, you must plant the corridor with appropriate native species that are consistent with the baseline information concerning natural streamside vegetation included in the permit application under § 779.19 of this chapter, unless otherwise directed by an agency responsible for implementing section 404 of the Clean Water Act, 33 U.S.C. 1344.

(4) Paragraphs (c)(1) through (3) of this section do not apply to—

(i) Prime farmland historically used for cropland; or

(ii) Situations in which establishment of a streamside vegetative corridor comprised of native species would be incompatible with an approved postmining land use that is implemented before final bond release under §§ 800.40 through 800.43 of this chapter.

§ 816.57 What additional performance standards apply to mining activities conducted in or through a perennial or intermittent stream or on the surface of land within 100 feet of a perennial or intermittent stream?

(a) *Compliance with federal, state, and tribal water quality laws and regulations.*

(1) You may conduct surface mining activities in or affecting waters subject to the jurisdiction of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, only if you first obtain all necessary authorizations, certifications, and permits under that law.

(2) Surface mining activities must comply with all applicable state and tribal laws and regulations concerning surface water and groundwater.

(b) *Prohibition on mining in or within 100 feet of a perennial or intermittent stream.* You may not conduct surface mining activities in or through a perennial or intermittent stream, or that would disturb the surface of land within 100 feet of a perennial or intermittent stream, unless the regulatory authority authorizes you to do so in the permit after making the findings required under § 780.28 of this chapter. The 100-foot distance must be measured horizontally on a line perpendicular to the stream, beginning at the ordinary high water mark.

(c) *Postmining surface drainage pattern and stream-channel configuration.* (1) If you mine through or permanently divert a perennial or intermittent stream, you must construct a postmining surface drainage pattern and stream-channel configurations that are consistent with the surface drainage pattern and stream-channel configurations approved in the permit in accordance with § 780.28 of this chapter.

(2) Upon completion of construction of a stream-channel diversion for a perennial or intermittent stream, or reconstruction of a stream channel after mining through a perennial or intermittent stream, you must obtain a certification from a qualified registered professional engineer that the stream-channel diversion or reconstructed stream channel has been constructed in accordance with the design approved in the permit and that it meets all engineering-related requirements of this section. This certification may be limited to the location, dimensions, and physical characteristics of the stream channel.

(d) *Establishment of streamside vegetative corridors.* (1)(i) If you mine through a perennial or intermittent stream, you must establish a vegetative corridor at least 100 feet wide along each bank of the reconstructed stream channel. The corridor must be consistent with natural vegetation patterns.

(ii) You must establish a vegetative corridor on any land that you disturb within 100 feet of a perennial or intermittent stream. The corridor must be consistent with natural vegetation patterns.

(iii) If you divert a perennial or intermittent stream, you must establish a vegetative corridor at least 100 feet wide along each bank of the stream-channel diversion, with the exception of temporary diversions that will be in place less than 3 years. The corridor must be consistent with natural vegetation patterns.

(iv) The 100-foot distance mentioned in paragraphs (d)(1)(i) through (iii) of this section must be measured horizontally on a line perpendicular to the stream, beginning at the ordinary high water mark.

(2) When planting the streamside vegetative corridors required by paragraph (d)(1) of this section, you must—

(i) Use appropriate native species adapted to the area, unless an agency responsible for implementing section 404 of the Clean Water Act, 33 U.S.C. 1344, requires the use of non-native species.

(ii) Ensure that the species planted are consistent with the revegetation plan approved in the permit.

(iii) Include appropriate native hydrophytic vegetation, vegetation typical of floodplains, or hydrophilic vegetation characteristic of riparian areas and wetlands to the extent that the corridor contains suitable habitat for those species and the stream and the geomorphology of the area are capable of supporting vegetation of that nature.

(iv) Use native trees and shrubs when planting areas within the streamside corridor that were forested at the time of application or that would revert to forest under conditions of natural succession.

(3) Paragraphs (d)(1) and (2) of this section do not require planting of hydrophytic or hydrophilic species within those portions of streamside corridors where the stream, soils, or climate are incapable of providing the moisture or other growing conditions needed to support and sustain hydrophytic or hydrophilic species. In those situations, you must plant the corridor with appropriate native species that are consistent with the baseline information concerning natural streamside vegetation included in the permit application under §779.19 of this chapter, unless otherwise directed by

an agency responsible for implementing section 404 of the Clean Water Act, 33 U.S.C. 1344.

(4) Paragraphs (d)(1) through (3) of this section do not apply to—

(i) Prime farmland historically used for cropland; or

(ii) Situations in which establishment of a streamside vegetative corridor comprised of native species would be incompatible with an approved postmining land use that is implemented before final bond release under §§800.40 through 800.43 of this chapter.

(e) *Restoration of form.* If you mine through or permanently divert a perennial or intermittent stream, you must demonstrate successful restoration or reconstruction of the form of the stream channel in accordance with the design approved in the permit before you qualify for Phase I bond release under §800.42(b)(1) of this chapter.

(f) *Restoration of hydrologic function.* If you mine through or permanently divert a perennial or intermittent stream, you must demonstrate restoration of the hydrologic function of the reconstructed stream segment before you qualify for Phase II bond release under §800.42(b)(2) of this chapter. Restoration of the hydrologic function includes, but is not limited to, restoration of the flow regime, except as otherwise approved in the permit under §780.28(e)(2) of this chapter.

(g) *Restoration of ecological function.* If you mine through or permanently divert a perennial or intermittent stream, the reconstructed stream or stream-channel diversion must meet the criteria approved in the permit for determining restoration of ecological function, as established by the regulatory authority under §780.28(g) of this chapter, before you qualify for final bond release under §§800.40 through 800.43 of this chapter.

(h) *Prohibition on placement of siltation structures in perennial or intermittent streams.* (1)(i) Except as provided in paragraph (h)(2) of this section, you may not construct a siltation structure in a perennial or intermittent stream or use perennial or intermittent streams as waste treatment systems to convey surface runoff from the disturbed area to a sedimentation pond.

(ii) Paragraph (h)(1)(i) of this section does not prohibit the construction of a siltation structure in a stream channel immediately downstream of a stream segment that is mined through.

(2) If approved in the permit, the prohibition in paragraph (h)(1) of this section will not apply to excess spoil fills, coal mine waste refuse piles, or coal mine waste impounding structures in steep-slope areas when you demonstrate, and the regulatory authority finds in writing, that use of a perennial or intermittent stream segment as a waste treatment system for sediment control or construction of a sedimentation pond or other siltation structure in a perennial or an intermittent stream would have less overall adverse impact on fish, wildlife, and related environmental values than construction of diversions and sedimentation ponds or other siltation structures on slopes above the stream.

(3) When the circumstances described in paragraph (h)(2) of this section exist, the following requirements apply:

(i) You must minimize the length of stream used as a waste treatment system to the extent possible and, when practicable, maintain an undisturbed buffer along that stream segment in accordance with paragraph (b) of this section.

(ii) You must place the sedimentation pond or other siltation structure as close to the toe of the excess spoil fill, coal mine waste refuse pile, or coal mine waste impounding structure as possible.

(iii) Following the completion of construction and revegetation of the fill or coal mine waste structure, you must—

(A) Remove and properly dispose of accumulated sediment in the siltation structure and any stream segment between the inlet of the siltation structure and the toe of the excess spoil fill or coal mine waste structure;

(B) Remove the sedimentation pond or other siltation structure; and

(C) Restore the stream segment in accordance with paragraphs (e) through (g) of this section.

(i) *Programmatic alternative.* Paragraphs (b) through (h) of this section will not apply to a state program approved under subchapter T of this chapter if that program is amended to

expressly prohibit all surface mining activities, including the construction of stream-channel diversions, that would result in more than a de minimis disturbance of land in or within 100 feet of a perennial or intermittent stream.

§ 816.59 How must I maximize coal recovery?

You must conduct surface mining activities so as to maximize the utilization and conservation of the coal, while using the best appropriate technology currently available to maintain environmental integrity, so that re-affecting the land in the future through surface coal mining operations is minimized.

§ 816.61 Use of explosives: General requirements.

(a) *Compliance with other laws and regulations.* You must comply with all applicable state and federal laws and regulations governing the use of explosives.

(b) *Compliance with blasting schedule.* Blasts that use more than 5 pounds of explosive or blasting agent must be conducted according to the schedule required by § 816.64 of this part.

(c) *Requirements for blasters.* (1) No later than 12 months after the blaster certification program for a state required by part 850 of this chapter has been approved under the procedures of subchapter C of this chapter, all blasting operations in that state must be conducted under the direction of a certified blaster. Before that time, all blasting operations in that state must be conducted by competent, experienced persons who understand the hazards involved.

(2) Certificates of blaster certification must be carried by blasters or be on file at the permit area during blasting operations.

(3) A blaster and at least one other person shall be present at the firing of a blast.

(4) Any blaster who is responsible for conducting blasting operations at a blasting site must:

(i) Be familiar with the blasting plan and site-specific performance standards; and

§816.62

30 CFR Ch. VII (7–1–17 Edition)

(ii) Give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or who assist in the use of explosives.

(d) *Blast design.* (1) You must submit an anticipated blast design if blasting operations will be conducted within—

(i) 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or

(ii) 500 feet of an active or abandoned underground mine.

(2) You must submit the blast design required by paragraph (d)(1) of this section either as part of the permit application or, if approved by the regulatory authority, at a later date before blasting begins. Regulatory authority approval of the blast design is not required, but, as provided in paragraph (d)(5) of this section, the regulatory authority may require changes to the design.

(3) The blast design must contain—

(i) Sketches of the drill patterns, delay periods, and decking.

(ii) The type and amount of explosives to be used.

(iii) Critical dimensions.

(iv) The location and general description of structures to be protected.

(v) A discussion of design factors to be used to protect the public and meet the applicable airblast, flyrock, and ground-vibration standards in §816.67 of this part.

(4) A certified blaster must prepare and sign the blast design.

(5) The regulatory authority may require changes to the design submitted.

§816.62 Use of explosives: Preblasting survey.

(a) At least 30 days before initiation of blasting, you must notify, in writing, all residents or owners of dwellings or other structures located within $\frac{1}{2}$ mile of the permit area how to request a preblasting survey.

(b)(1) A resident or owner of a dwelling or structure within $\frac{1}{2}$ mile of any part of the permit area may request a preblasting survey. This request must be made, in writing, directly to you or to the regulatory authority. If the request is made to the regulatory author-

ity, the regulatory authority will promptly notify you.

(2) You must promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey.

(3) You must conduct an updated survey of any subsequent additions, modifications, or renovations to the dwelling or structure, if requested by the resident or owner.

(c) You must determine the condition of the dwelling or structure and document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention; however, the assessment of these structures may be limited to surface conditions and other readily available data.

(d)(1) The person who conducted the survey must sign the written report of the survey.

(2) You must promptly provide copies of the report to the regulatory authority and to the person requesting the survey.

(3) If the person requesting the survey disagrees with the contents or recommendations of the survey, he or she may submit a detailed description of the specific areas of disagreement to both you and the regulatory authority.

(e) You must complete any surveys requested more than 10 days before the planned initiation of blasting before the initiation of blasting.

§816.64 Use of explosives: Blasting schedule.

(a) *General requirements.* (1) You must conduct blasting operations at times approved by the regulatory authority and announced in the blasting schedule. The regulatory authority may limit the area covered, the timing, and the sequence of blasting if those limitations are necessary and reasonable to protect public health and safety or welfare.

(2) You must conduct all blasting between sunrise and sunset, unless the regulatory authority approves nighttime blasting based upon a showing that the public will be protected from adverse noise and other impacts. The

regulatory authority may specify more restrictive time periods for blasting.

(3)(i) You may conduct unscheduled blasts only where public or operator health and safety so require and for emergency blasting actions.

(ii) When you conduct an unscheduled blast, you must use audible signals to notify residents within ½ mile of the blasting site.

(iii) You must document the reason for the unscheduled blast in accordance with § 816.68(c)(16) of this part.

(b) *Blasting schedule publication and distribution.* (1) You must publish the blasting schedule in a newspaper of general circulation in the locality of the blasting site at least 10 days, but not more than 30 days, before beginning a blasting program.

(2) You must distribute copies of the schedule to local governments and public utilities and to each local residence within ½ mile of the proposed blasting site described in the schedule.

(3) You must republish and redistribute the schedule at least every 12 months and revise and republish the schedule at least 10 days, but not more than 30 days, before blasting whenever the area covered by the schedule changes or actual times for blasting significantly differ from the prior announcement.

(c) *Blasting schedule contents.* The blasting schedule must contain, at a minimum, the—

(1) Name, address, and telephone number of the operator;

(2) Identification of the specific areas in which blasting will take place;

(3) Dates and times when explosives are to be detonated;

(4) Methods to be used to control access to the blasting area; and

(5) Type and patterns of audible blast warning and all-clear signals to be used before and after blasting.

§ 816.66 Use of explosives: Blasting signs, warnings, and access control.

(a) *Blasting signs.* Blasting signs must meet the specifications of § 816.11 of this part.

(1) You must place conspicuous signs reading “Blasting Area” along the edge of any blasting area that comes within

100 feet of any public road right-of-way and at the point where any other road provides access to the blasting area.

(2) You must place conspicuous signs reading “Warning! Explosives in Use” at all entrances to the permit area from public roads or highways. The signs must clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use and explain the marking of blasting areas and charged holes awaiting firing within the permit area.

(b) *Warnings.* You must give blast warning and all-clear signals of different character or pattern that are audible within a range of ½ mile from the point of the blast. You must notify each person within the permit area and each person who resides or regularly works within ½ mile of the permit area of the meaning of the signals in the blasting schedule.

(c) *Access control.* You must control access within the blasting area to prevent presence of livestock or unauthorized persons during blasting and until your authorized representative has reasonably determined that—

(1) No unusual hazards, such as imminent slides or undetonated charges, exist; and

(2) Access to and travel within the blasting area can be safely resumed.

§ 816.67 Use of explosives: Control of adverse effects.

(a) *General requirements.* You must conduct blasting in a manner that prevents—

(1) Injury to persons;

(2) Damage to public or private property outside the permit area;

(3) Adverse impacts on any underground mine; or

(4) Change in the course, channel, or availability of surface water or groundwater outside the permit area.

(b) *Airblast.*—(1) *Limits.* (i) Airblast must not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in paragraph (e) of this section.

Lower frequency limit of measuring system in Hertz (Hz), plus or minus 3 decibels	Maximum level in decibels (dB)
0.1 Hz or lower—flat response ¹	134 peak.
2 Hz or lower—flat response	133 peak.
6 Hz or lower—flat response	129 peak.
C-weighted—slow response ¹	105 peak dBC.

¹ Only when approved by the regulatory authority.

(ii) If necessary to prevent damage, the regulatory authority must specify lower maximum allowable airblast levels than those of paragraph (b)(1)(i) of this section for use in the vicinity of a specific blasting operation.

(2) *Monitoring.* (i) You must conduct periodic monitoring to ensure compliance with the airblast standards. The regulatory authority may require airblast measurement of any or all blasts and may specify the locations at which measurements are taken.

(ii) The measuring systems must have an upper-end flat-frequency response of at least 200 Hz.

(c) *Flyrock.* Flyrock travelling in the air or along the ground must not be cast from the blasting site—

(1) More than one-half the distance to the nearest dwelling or other occupied structure;

(2) Beyond the area of control required under § 816.66(c) of this part; or

(3) Beyond the permit boundary.

(d) *Ground vibration.*—(1) *General requirements.* (i) In all blasting operations, except as otherwise authorized in paragraph (e) of this section, the maximum ground vibration must not exceed the values approved in the

blasting plan required under § 780.15 of this chapter.

(ii) The maximum ground vibration for protected structures listed in paragraph (d)(2)(i) of this section must be established in accordance with either the maximum peak-particle-velocity limits of paragraph (d)(2) of this section, the scaled-distance equation of paragraph (d)(3) of this section, the blasting-level chart of paragraph (d)(4) of this section, or by the regulatory authority under paragraph (d)(5) of this section.

(iii) All structures in the vicinity of the blasting area not listed in paragraph (d)(2)(i) of this section, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines, must be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator in the blasting plan and approved by the regulatory authority.

(2) *Maximum peak particle velocity.* (i) The maximum ground vibration must not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area:

Distance (D), from the blasting site, in feet	Maximum allowable peak particle velocity for ground vibration, in inches/second ¹	Scaled-distance factor to be applied without seismic monitoring (Ds) ²
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

¹ Ground vibration must be measured as the particle velocity. Particle velocity must be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity applies to each of the three measurements.

² Applicable to the scaled-distance equation of paragraph (d)(3)(i) of this section.

(ii) You must provide a seismographic record for each blast.

(3) *Scaled-distance equation.* (i) You may use the scaled-distance equation, $W=(D/D_s)^2$, to determine the allowable charge weight of explosives to be deto-

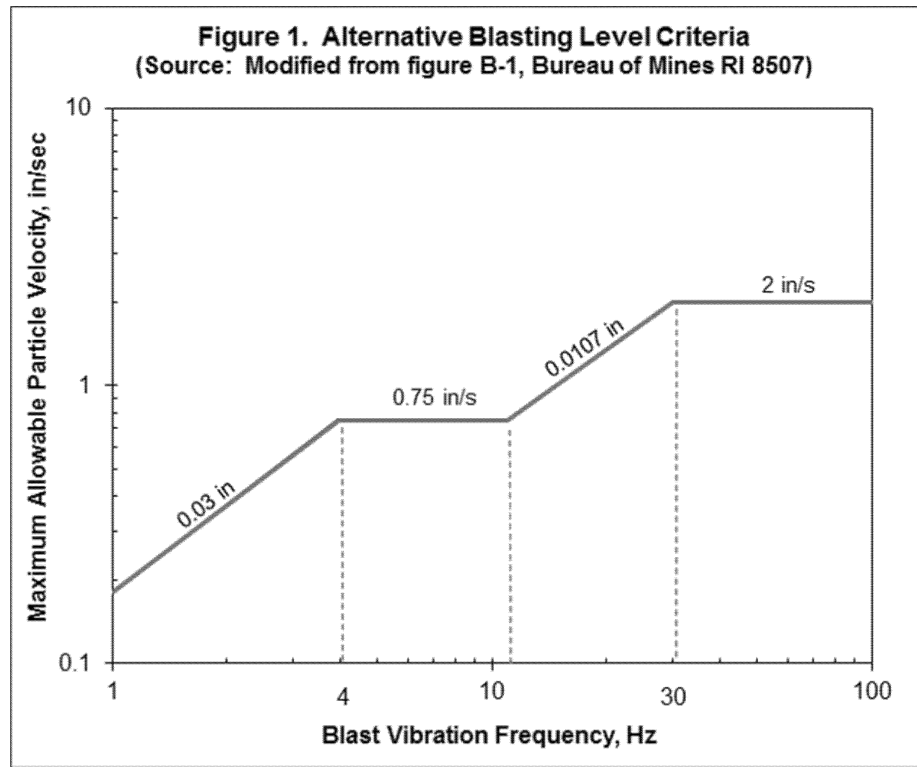
nated in any 8-millisecond period, without seismic monitoring, where W=the maximum weight of explosives, in pounds; D=the distance, in feet, from the blasting site to the nearest protected structure; and Ds=the scaled-

distance factor. The regulatory authority may initially approve the scaled-distance equation using the values for the scaled-distance factor listed in paragraph (d)(2)(i) of this section.

(ii) The regulatory authority may authorize development of a modified scaled-distance factor upon receipt of a written request by the operator, supported by seismographic records of blasting at the minesite. The modified

scale-distance factor must be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of paragraph (d)(2)(i) of this section at a 95-percent confidence level.

(4) *Blasting-level chart.* (i) You may use the ground-vibration limits in Figure 1 to determine the maximum allowable ground vibration.



(ii) If the Figure 1 limits are used, you must provide a seismographic record including both particle velocity and vibration-frequency levels for each blast. The regulatory authority must approve the method for the analysis of the predominant frequency contained in the blasting records before application of this alternative blasting criterion.

(5) The regulatory authority must reduce the maximum allowable ground vibration beyond the limits otherwise provided by this section, if determined necessary to provide damage protection.

§ 816.68

30 CFR Ch. VII (7–1–17 Edition)

(6) The regulatory authority may require that you conduct seismic monitoring of any or all blasts or may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(e) The maximum airblast and ground-vibration standards of paragraphs (b) and (d) of this section do not apply at the following locations:

(1) At structures owned by the permittee and not leased to another person.

(2) At structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the regulatory authority before blasting.

§ 816.68 Use of explosives: Records of blasting operations

(a) You must retain a record of all blasts for at least 3 years.

(b) Upon request, you must make copies of these records available to the regulatory authority and to the public for inspection.

(c) The records must contain the following data:

(1) Name of the operator conducting the blast.

(2) Location, date, and time of the blast.

(3) Name, signature, and certification number of the blaster conducting the blast.

(4) Identification, direction, and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area, except those described in § 816.67(e) of this part.

(5) Weather conditions, including those which may cause possible adverse blasting effects.

(6) Type of material blasted.

(7) Sketches of the blast pattern, including number of holes, burden, spacing, decks, and delay pattern.

(8) Diameter and depth of holes.

(9) Types of explosives used.

(10) Total weight of explosives used per hole.

(11) The maximum weight of explosives detonated in an 8-millisecond period.

(12) Initiation system.

(13) Type and length of stemming.

(14) Mats or other protections used.

(15) Seismographic and airblast records, if required, which must include—

(i) Type of instrument, sensitivity, and calibration signal or certification of annual calibration;

(ii) Exact location of instrument and the date, time, and distance from the blast;

(iii) Name of the person and firm taking the reading;

(iv) Name of the person and firm analyzing the seismographic record; and

(v) The vibration and/or airblast level recorded.

(16) Reasons and conditions for each unscheduled blast.

§ 816.71 How must I dispose of excess spoil?

(a) *General requirements.* You, the permittee or operator, must mechanically transport and place excess spoil in designated disposal areas, including approved valley fills and other types of approved fills, within the permit area in a controlled manner in compliance with the requirements of this section. In general, you must place excess spoil in a manner that will—

(1) Minimize the adverse effects of leachate and surface water runoff from the fill on groundwater and surface water, including aquatic life, within the permit and adjacent areas.

(2) Ensure mass stability and prevent mass movement during and after construction.

(3) Ensure that the final surface configuration of the fill is suitable for revegetation and the approved postmining land use or uses and is compatible with the natural drainage pattern and surroundings.

(4) Minimize disturbances to, and adverse impacts on, fish, wildlife, and related environmental values to the extent possible, using the best technology currently available.

(5) Ensure that the fill will not change the size or frequency of peak flows from precipitation events or thaws in a way that would result in an increase in flooding when compared with the impacts of premining peak flows.

Surface Mining Reclamation and Enforcement, Interior

§816.71

(6) Ensure that the fill will not cause or contribute to a violation of applicable state or tribal groundwater standards or preclude any premining use of groundwater.

(7) Ensure that the fill will not cause or contribute to a violation of applicable state or tribal water quality standards for surface water located downstream of the toe of the fill, including, but not limited to, water quality standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c).

(b) *Stability requirements*—(1) *Static safety factor*. You must design and construct the fill to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill must be stable under all conditions of construction.

(2) *Special requirement for steep-slope conditions*. Where the slope in the disposal area exceeds 2.8h:1v (36 percent), or any lesser slope designated by the regulatory authority based on local conditions, you must construct bench cuts (excavations into stable bedrock) or rock-toe buttresses to ensure fill stability.

(c) *Compliance with permit*. You must construct the fill in accordance with the design and plans approved in the permit in accordance with §780.35 of this chapter.

(d) *Requirements for handling of organic matter and soil materials*. You must remove all vegetation, other organic matter, and soil materials from the disposal area prior to placement of the excess spoil. You must store, redistribute, or otherwise use those materials in accordance with §816.22 of this part. You may use soil substitutes and supplements if approved in the permit in accordance with §780.12(e) of this chapter.

(e) *Surface runoff control requirements*. (1) You must direct surface runoff from areas above the fill and runoff from the

surface of the fill into stabilized channels designed to—

(i) Meet the requirements of §816.43 of this part; and

(ii) Safely pass the runoff from the 100-year, 6-hour precipitation event. You must use the appropriate regional Natural Resources Conservation Service synthetic storm distribution to determine the peak flow from surface runoff from this event.

(2) You must grade the top surface of a completed fill such that the final slope after settlement will be toward properly designed drainage channels. You may not direct uncontrolled surface runoff over the outslope of the fill.

(f) *Control of water within the footprint of the fill*—(1) *General requirements*. If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, you must design and construct underdrains and temporary diversions as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.

(2) *Temporary diversions*. Temporary diversions must comply with the requirements of §816.43 of this part.

(3) *Underdrains*. (i) You must construct underdrains that are comprised of hard rock that is resistant to weathering.

(ii) You must design and construct underdrains using current, prudent engineering practices and any design criteria established by the regulatory authority.

(iii) In constructing rock underdrains, you may use only hard rock that is resistant to weathering, such as well-cemented sandstone and massive limestone, and that is not acid-forming or toxic-forming. The underdrain must be free of soil and fine-grained, clastic rocks such as siltstone, shale, mudstone, and claystone. All rock used to construct underdrains must meet the criteria in the following table:

Test	ASTM standard	AASHTO standard	Acceptable results
Los Angeles Abrasion	C 131 or C 535	T 96	Loss of no more than 50 percent of test sample by weight.
Sulfate Soundness	C 88 or C 5240	T 104	Sodium sulfate test: Loss of no more than 12 percent of test sample by weight. Magnesium sulfate test: Loss of no more than 18 percent of test sample by weight.

(iv) The underdrain system must be designed and constructed to carry the maximum anticipated infiltration of water due to precipitation, snowmelt, and water from seeps and springs in the foundation of the disposal area away from the excess spoil fill.

(v) To provide a safety factor against future changes in local surface-water and groundwater hydrology, perforated pipe may be embedded within the rock underdrain to enhance the underdrain capacity to carry water in excess of the anticipated maximum infiltration away from the excess spoil fill. The pipe must be manufactured of materials that are not susceptible to corrosion and must be demonstrated to be suitable for the deep burial conditions commonly associated with excess spoil fill underdrains.

(vi) The underdrain system must be protected from material piping, clogging, and contamination by an adequate filter system designed and constructed using current, prudent engineering practices to ensure the long-term functioning of the underdrain system.

(g) *Placement of excess spoil.* (1) Using mechanized equipment, you must transport and place excess spoil in a controlled manner in horizontal lifts not exceeding 4 feet in thickness; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; and graded so that surface and subsurface drainage is compatible with the natural surroundings.

(2) You may not use any excess spoil transport and placement technique that involves end-dumping, wing-dumping, cast-blasting, gravity placement, or casting spoil downslope.

(3) *Acid-forming, toxic-forming, and combustible materials.* (i) You must handle acid-forming and toxic-forming materials in accordance with §816.38 of this part and in a manner that will minimize adverse effects on plant growth and the approved postmining land use.

(ii) You must cover combustible materials with noncombustible materials in a manner that will prevent sustained combustion and minimize adverse effects on plant growth and the approved postmining land use.

(h) *Final configuration.* (1) The final configuration of the fill must be suitable for the approved postmining land use, compatible with the natural drainage pattern and the surrounding terrain, and, to the extent practicable, consistent with natural landforms.

(2) You may construct terraces on the outslope of the fill if required for stability, to control erosion, to conserve soil moisture, or to facilitate the approved postmining land use. The grade of the outslope between terrace benches may not be steeper than 2h: 1v (50 percent).

(3)(i) You must configure the top surface of the fill to create a topography that includes ridgelines and valleys with varied hillslope configurations when practicable, compatible with stability and postmining land use considerations, and generally consistent with the topography of the area before any mining.

(ii) The final surface elevation of the fill may exceed the elevation of the surrounding terrain when necessary to minimize placement of excess spoil in perennial and intermittent streams, provided the final configuration complies with the requirements of paragraphs (a)(3) and (h)(1) of this section.

(iii) The geomorphic reclamation requirements of paragraph (h)(3)(i) of this section do not apply in situations in which they would result in burial of a greater length of perennial or intermittent streams than traditional fill design and construction techniques.

(i) *Impoundments and depressions.* No permanent impoundments are allowed on the completed fill. You may construct small depressions if they—

(1) Are needed to retain moisture, minimize erosion, create or enhance wildlife habitat, or assist revegetation;

(2) Are not incompatible with the stability of the fill;

(3) Are consistent with the hydrologic reclamation plan approved in the permit in accordance with §780.22 of this chapter;

(4) Will not result in elevated levels of parameters of concern in discharges from the fill; and

(5) Are approved by the regulatory authority.

(j) *Surface area stabilization.* You must provide slope protection to minimize

surface erosion at the site. You must revegetate all disturbed areas, including diversion channels that are not riprapped or otherwise protected, upon completion of construction.

(k) *Inspections and examinations.* (1) A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, must inspect the fill at least quarterly during construction, with additional complete inspections conducted during critical construction periods. The professional engineer or specialist must be experienced in the construction of earth and rock fills. Critical construction periods include, at a minimum—

(i) Foundation preparation, including the removal of all organic matter and soil materials.

(ii) Placement of underdrains and protective filter systems.

(iii) Installation of final surface drainage systems.

(2) An engineer or specialist meeting the qualifications of paragraph (k)(1) of this section also must—

(i) Conduct daily examinations during placement and compaction of fill materials or, when more than one lift is completed per day, upon completion of each 4-foot lift. As an alternative, the engineer or specialist may conduct examinations on a weekly basis if a mine representative takes photographs on a daily basis to document the lift thickness and elevation with visual reference features. The certified report required by paragraph (k)(3) of this section must include this photographic documentation.

(ii) Maintain a log recording the examinations conducted under paragraph (k)(2)(i) of this section for each 4-foot lift in each fill. The log must include a description of the specific work locations, excess spoil placement methods, compaction adequacy, lift thickness, suitability of fill material, special handling of acid-forming and toxic-forming materials, deviations from the approved permit, and remedial measures taken.

(3)(i) The qualified registered professional engineer to which paragraph (k)(1) of this section refers must provide a certified report to the regulatory authority on a quarterly basis.

(ii) In each report prepared under paragraph (k)(3)(i) of this section, the engineer must certify that the fill has been constructed and maintained as designed and in accordance with the approved plan and this chapter.

(iii) The report prepared under paragraph (k)(3)(i) of this section must identify and discuss any evidence of instability, structural weakness, or other hazardous conditions. If one of more of those conditions exists, you must submit an application for a permit revision that includes appropriate remedial design specifications.

(iv) The report prepared under paragraph (k)(3)(i) of this section must contain—

(A) A review and summary of all complete inspections conducted during the quarter under paragraph (k)(1) of this section.

(B) A review and summary of all examinations conducted during the quarter under paragraph (k)(2) of this section, including the logs maintained under paragraph (k)(2)(ii) of this section.

(C) The photographs taken under paragraph (k)(2)(i) of this section.

(v) Each certified report prepared under paragraph (k)(3) of this section for a quarter in which construction activities include placement of underdrains and protective filter systems must include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase must be certified separately. The photographs must be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(4) You must retain a copy of each certified report prepared under paragraph (k)(3) of this section at or near the mine site.

(l) *Coal mine waste.* You may dispose of coal mine waste in excess spoil fills only if approved by the regulatory authority and only if—

(1) You demonstrate, and the regulatory authority finds in writing, that the disposal of coal mine waste in the excess spoil fill will not—

(i) Cause or contribute to a violation of applicable state or tribal water quality standards or effluent limitations, including, but not limited to, water quality standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), and effluent limitations established in any National Pollutant Discharge Elimination System permit issued for the operation under section 402 of the Clean Water Act, 33 U.S.C. 1342, or its state or tribal counterpart;

(ii) Cause or contribute to a violation of applicable state or tribal water quality standards for groundwater; or

(iii) Result in material damage to the hydrologic balance outside the permit area.

(2) The waste is placed in accordance with §§ 816.81 and 816.83 of this part.

(3) The waste is nontoxic-forming, nonacid-forming, and non-combustible.

(4) The waste is of the proper characteristics to be consistent with the design stability of the fill.

(m) *Underground disposal.* You may dispose of excess spoil in underground mine workings only in accordance with a plan approved by the regulatory authority and the Mine Safety and Health Administration under § 784.26 of this chapter.

§§ 816.72–816.73 [Reserved]

§ 816.74 What special requirements apply to the disposal of excess spoil on a preexisting bench?

(a) *General requirements.* The regulatory authority may approve the disposal of excess spoil through placement on a preexisting bench on a previously mined area or a bond forfeiture site if—

(1) The proposed permit area includes the portion of the preexisting bench on which the spoil will be placed;

(2) The proposed operation will comply with the applicable requirements of § 816.102 of this part; and

(3) The requirements of this section are met.

(b) *Requirements for removal and disposition of vegetation, other organic matter, and soil materials.* You must remove all vegetation, other organic matter, topsoil, and subsoil from the disposal area prior to placement of the excess spoil and store, redistribute, or otherwise use those materials in accordance

with § 816.22 of this part. You may use soil substitutes and supplements if approved in the permit in accordance with § 780.12(e) of this chapter.

(c)(1) The fill must be designed and constructed using current, prudent engineering practices.

(2) The design must be certified by a registered professional engineer.

(3) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design must include underdrains and temporary diversions as necessary to control erosion, prevent water infiltration into the fill, and ensure stability. Underdrains must comply with the requirements of § 816.71(f)(3) of this part.

(d)(1) The spoil must be placed on the solid portion of the bench in a controlled manner and concurrently compacted as necessary to attain a long-term static safety factor of 1.3 for all portions of the fill.

(2) Any spoil deposited on any fill portion of the bench must be treated as an excess spoil fill under § 816.71 of this part.

(e) You must grade the spoil placed on the preexisting bench to—

(1) Achieve a stable slope that does not exceed the angle of repose.

(2) Eliminate the preexisting highwall to the maximum extent technically practical, using all reasonably available spoil, as that term is defined in § 701.5 of this chapter.

(3) Minimize erosion and water pollution both on and off the site.

(f) All disturbed areas, including diversion channels that are not riprapped or otherwise protected, must be revegetated upon completion of construction.

(g) You may not construct permanent impoundments on preexisting benches on which excess spoil is placed under this section.

(h) The final configuration of the fill on the preexisting bench must—

(1) Be compatible with natural drainage patterns and the surrounding area.

(2) Support the approved postmining land use.

§ 816.79 What measures must I take to protect underground mines in the vicinity of my surface mine?

No surface mining activities may be conducted closer than 500 feet to any

point of either an active or abandoned underground mine, except to the extent that—

(a) The activities result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public; and

(b) The nature, timing, and sequence of the activities that propose to mine closer than 500 feet to an active underground mine are jointly approved by the regulatory authority, the Mine Safety and Health Administration, and the state agency, if any, responsible for the safety of underground mine workers.

§ 816.81 How must I dispose of coal mine waste?

(a) *General requirements.* If you, the permittee, intend to dispose of coal mine waste in an area other than the mine workings or excavations, you must place the waste in new or existing disposal areas within a permit area in accordance with this section and, as applicable, §§ 816.83 and 816.84 of this part.

(b) *Basic performance standards.* You must haul or convey and place the coal mine waste in a controlled manner to—

(1) Minimize the adverse effects of leachate and surface-water runoff on groundwater and surface water, including aquatic life, within the permit and adjacent areas to the extent possible, using the best technology currently available.

(2) Ensure mass stability and prevent mass movement during and after construction.

(3) Ensure that the final disposal facility is suitable for revegetation, compatible with the natural surroundings, and consistent with the approved postmining land use.

(4) Not create a public hazard.

(5) Prevent combustion.

(6) Ensure that the disposal facility will not change the size or frequency of peak flows from precipitation events or thaws in a way that would result in an increase in flooding when compared with the impacts of premining peak flows.

(7) Ensure that the disposal facility will not cause or contribute to a violation of applicable state or tribal

groundwater standards or preclude any premining use of groundwater.

(8) Ensure that the disposal facility will not cause or contribute to a violation of applicable state or tribal water quality standards for surface water located downstream of the toe of the fill, including, but not limited to, water quality standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c).

(9) Ensure that the disposal facility will not discharge acid or toxic mine drainage.

(c) *Coal mine waste from outside the permit area.* You may dispose of coal mine waste materials from activities located outside the permit area within the permit area only if approved by the regulatory authority. Approval must be based upon a showing that disposal will be in accordance with the standards of this section.

(d) *Design and construction requirements.* (1)(i) You must design and construct coal mine waste disposal facilities using current, prudent engineering practices and any design or construction criteria established by the regulatory authority.

(ii) A qualified registered professional engineer, experienced in the design and construction of similar earth and waste structures, must certify the design of the disposal facility. The engineer must specifically certify that any existing and planned underground mine workings in the vicinity of the disposal facility will not adversely impact the stability of the structure.

(iii) You must construct the disposal facility in accordance with the design and plans submitted under § 780.25 of this chapter and approved in the permit. A qualified registered professional engineer experienced in the design and construction of similar earth and waste structures must certify that the facility has been constructed in accordance with the requirements of this paragraph.

(2) You must design and construct the disposal facility to attain a minimum long-term static safety factor of 1.5. The foundation and abutments must be stable under all conditions of construction.

(e) *Foundation investigations.* You must perform sufficient foundation and

§ 816.83

30 CFR Ch. VII (7–1–17 Edition)

abutment investigations, as well as any necessary laboratory testing of foundation material, to determine the design requirements for foundation stability and control of underseepage. The analyses of the foundation conditions must take into consideration the effect of any underground mine workings located in the permit and adjacent areas upon the stability of the disposal facility.

(f) *Soil handling requirements.* You must remove all vegetation, other organic matter, and soil materials from the disposal area prior to placement of the coal mine waste. You must store, redistribute, or otherwise use those materials in accordance with § 816.22 of this part. You may use soil substitutes and supplements if approved in the permit in accordance with § 780.12(e) of this chapter.

(g) *Emergency procedures.* (1) If any examination or inspection discloses that a potential hazard exists, you must inform the regulatory authority promptly of the finding and of the emergency procedures formulated for public protection and remedial action.

(2) If adequate procedures cannot be formulated or implemented, you must notify the regulatory authority immediately. The regulatory authority then must notify the appropriate agencies that other emergency procedures are required to protect the public.

(h) *Underground disposal.* You may dispose of coal mine waste in underground mine workings only in accordance with a plan approved by the regulatory authority and the Mine Safety and Health Administration under § 784.26 of this chapter.

§ 816.83 What special requirements apply to coal mine waste refuse piles?

(a) *General requirements.* Refuse piles must meet the applicable requirements of § 816.81 of this part, the additional requirements of this section, and the requirements of §§ 77.214 and 77.215 of this title.

(b) *Surface runoff and drainage control.* (1) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, you must design and construct the refuse pile with diversions and underdrains as

necessary to control erosion, prevent water infiltration into the disposal facility, and ensure stability.

(2) You may not direct or divert uncontrolled surface runoff over the out-slope of the refuse pile.

(3) You must direct runoff from areas above the refuse pile and runoff from the surface of the refuse pile into stabilized channels designed to meet the requirements of § 816.43 of this part and to safely pass the runoff from the 100-year, 6-hour precipitation event. You must use the appropriate regional Natural Resources Conservation Service synthetic storm distribution to determine the peak flow from surface runoff from this event.

(4) Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile.

(5) Underdrains must comply with the requirements of § 816.71(f) of this part.

(c) *Surface area stabilization.* You must provide slope protection to minimize surface erosion at the site. You must revegetate all disturbed areas, including diversion channels that are not ripped or otherwise protected, upon completion of construction.

(d) *Final configuration and cover.* (1) The final configuration of the refuse pile must be suitable for the approved postmining land use. Terraces may be constructed on the out-slope of the refuse pile if required for stability, erosion control, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the out-slope between terrace benches may not be steeper than 2h:1v (50 percent).

(2) No permanent impoundments or depressions are allowed on the completed refuse pile.

(3) Following final grading of the refuse pile, you must cover the coal mine waste with a minimum of 4 feet of the best available, nontoxic, and non-combustible material in a manner that does not impede drainage from the underdrains. The regulatory authority may allow less than 4 feet of cover material based on physical and chemical analyses showing that the revegetation requirements of §§ 816.111 and 816.116 of this part will be met.

(e) *Inspections.* You must comply with the inspection and examination requirements of § 816.71(k) of this part.

§ 816.84 What special requirements apply to coal mine waste impounding structures?

(a) Impounding structures constructed of coal mine waste or intended to impound coal mine waste must meet the requirements of § 816.81 of this part.

(b) You may not use coal mine waste to construct impounding structures unless you demonstrate, and the regulatory authority finds in writing, that the stability of such a structure conforms to the requirements of this part and that the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment as a result of acid drainage or toxic seepage through the impounding structure. You must discuss the stability of the structure and the prevention and potential impact of acid drainage or toxic seepage through the impounding structure in detail in the design plan submitted to the regulatory authority in accordance with § 780.25 of this chapter.

(c)(1) You must design, construct, and maintain each impounding structure constructed of coal mine waste or intended to impound coal mine waste in accordance with paragraphs (a) and (c) of § 816.49 of this part.

(2) You may not retain these structures permanently as part of the approved postmining land use.

(3) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of § 77.216(a) of this title must have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6-hour precipitation event or greater event as specified by the regulatory authority.

(d) You must design spillways and outlet works to provide adequate protection against erosion and corrosion. Inlets must be protected against blockage.

(e) You must direct surface runoff from areas above the disposal facility and runoff from the surface of the facil-

ity that may cause instability or erosion of the impounding structure into stabilized channels designed and constructed to meet the requirements of § 816.43 of this part and to safely pass the runoff from a 100-year, 6-hour precipitation event. You must use the appropriate regional Natural Resources Conservation Service synthetic storm distribution to determine the peak flow from surface runoff from this event.

(f) For an impounding structure constructed of or impounding coal mine waste, you must remove at least 90 percent of the water stored during the design precipitation event within the 10-day period following the design precipitation event.

§ 816.87 What special requirements apply to burning and burned coal mine waste?

(a) You must extinguish coal mine waste fires in accordance with a plan approved by the regulatory authority and the Mine Safety and Health Administration. The plan must contain, at a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedures to be used, are involved in the extinguishing operations.

(b) You may not remove burning or burned coal mine waste from a permitted coal mine waste disposal area without a removal plan approved by the regulatory authority. Consideration must be given to potential hazards to persons working or living in the vicinity of the structure.

§ 816.89 How must I dispose of noncoal mine wastes?

(a)(1) You must place and store noncoal mine wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber, and other combustible materials generated during mining activities, in a controlled manner in a designated portion of the permit area.

(2) Placement and storage of noncoal wastes must ensure that leachate and surface runoff do not degrade surface water or groundwater, that fires are prevented, and that the area remains stable and suitable for reclamation and

§ 816.95

revegetation compatible with the natural surroundings.

(b)(1) Final disposal of noncoal mine wastes must be in a designated disposal site within the permit area or in a state-approved solid waste disposal area.

(2) Disposal sites within the permit area must meet the following requirements:

(i) The site must be designed and constructed to ensure that leachate and drainage from the noncoal mine waste area does not degrade surface water or groundwater.

(ii) Wastes must be routinely compacted and covered to prevent combustion and wind-borne waste.

(iii) When the disposal of noncoal wastes is completed, the site must be covered with a minimum of 2 feet of soil, slopes must be stabilized, and the site must be revegetated in accordance with §§ 816.111 through 816.116 of this part.

(iv) The disposal site must be operated in accordance with all local, state and federal requirements.

(c) At no time may any noncoal mine waste be deposited in a coal mine waste refuse pile or impounding structure, nor may an excavation for a noncoal mine waste disposal site be located within 8 feet of any coal outcrop or coal storage area.

§ 816.95 How must I protect surface areas from wind and water erosion?

(a) You must protect and stabilize all exposed surface areas to effectively control erosion and air pollution attendant to erosion.

(b)(1) You must fill, regrade, or otherwise stabilize rills and gullies that form in areas that have been regraded and upon which soil or soil substitute materials have been redistributed. This requirement applies only to rills and gullies that—

(i) Disrupt the approved postmining land use or reestablishment of the vegetative cover;

(ii) Cause or contribute to a violation of applicable state or tribal water quality standards or effluent limitations, including, but not limited to, water quality standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), and efflu-

30 CFR Ch. VII (7–1–17 Edition)

ent limitations established in any National Pollutant Discharge Elimination System permit issued for the operation under section 402 of the Clean Water Act, 33 U.S.C. 1342, or its state or tribal counterpart;

(iii) Cause or contribute to a violation of applicable state or tribal water quality standards for groundwater; or

(iv) Result in material damage to the hydrologic balance outside the permit area.

(2) You must reapply soil materials to the filled or regraded rills and gullies when necessary to reestablish a vegetative cover. You must then replant those areas.

§ 816.97 How must I protect and enhance fish, wildlife, and related environmental values?

(a) *General requirements.* You, the permittee, must, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and achieve enhancement of those resources where practicable, as described in detail in the fish and wildlife protection and enhancement plan approved in the permit in accordance with § 780.16 of this chapter.

(b) *Requirements related to federal, state, and tribal endangered species laws.*—(1) *Requirements related to the Endangered Species Act of 1973.* (i) You may not conduct any surface mining activity that is in violation of the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* Nothing in this chapter authorizes the taking of a species listed as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, or the destruction or adverse modification of designated critical habitat unless the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as applicable, authorizes the taking of a threatened or endangered species or the destruction or adverse modification of designated critical habitat under 16 U.S.C. 1536(b)(4) or 1539(a)(1)(B).

(ii) You must promptly report to the regulatory authority the presence of any previously unreported species listed as threatened or endangered, or any previously unreported species proposed

for listing as threatened or endangered, under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, within the permit or adjacent areas. This requirement applies regardless of whether the species was listed before or after permit issuance.

(iii)(A) Upon receipt of a notification under paragraph (b)(2)(i) of this section, the regulatory authority will contact and coordinate with the appropriate state, tribal, and federal fish and wildlife agencies.

(B) The regulatory authority, in coordination with the appropriate state, tribal, and federal fish and wildlife agencies, will identify whether, and under what conditions, you may proceed. When necessary to ensure compliance with the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, the regulatory authority will issue an order under § 774.10(b) of this chapter requiring that you revise the permit.

(iv) You must comply with any species-specific protection measures required by the regulatory authority in coordination with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as applicable.

(2) *Requirements related to state and tribal endangered species laws.* (i) You must promptly report to the regulatory authority any previously unreported state-listed or tribally-listed threatened or endangered species within the permit or adjacent areas whenever you become aware of its presence. This requirement applies regardless of whether the species was listed before or after permit issuance.

(ii)(A) Upon receipt of a notification under paragraph (b)(2)(i) of this section, the regulatory authority will contact and coordinate with the appropriate state or tribal fish and wildlife agencies.

(B) The regulatory authority, in coordination with the appropriate state or tribal fish and wildlife agencies, will identify whether, and under what conditions, you may proceed. When necessary, the regulatory authority will issue an order under § 774.10(b) of this chapter requiring that you revise the permit.

(c) *Bald and golden eagles.* (1) You may not conduct any surface mining activity in a manner that would result

in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs.

(2) You must promptly report to the regulatory authority any golden or bald eagle nest within the permit area of which you become aware.

(3) Upon notification, the regulatory authority will contact and coordinate with the U.S. Fish and Wildlife Service and, when appropriate, the state or tribal fish and wildlife agency to identify whether, and under what conditions, you may proceed.

(4) Nothing in this chapter authorizes the taking of a bald or golden eagle, its nest, or any of its eggs in violation of the Bald and Golden Eagle Protection Act, 16 U.S.C. 668–668d.

(d) *Miscellaneous protective measures for other species of fish and wildlife.* To the extent possible, using the best technology currently available, you must—

(1) Ensure that electric power transmission lines and other transmission facilities used for, or incidental to, surface mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors and other avian species with large wingspans.

(2) Locate, construct, operate, and maintain haul and access roads and sedimentation control structures in a manner that avoids or minimizes impacts on important fish and wildlife species or other species protected by state or federal law.

(3) Design fences, overland conveyors, and other potential barriers to permit passage for large mammals, except where the regulatory authority determines that such requirements are unnecessary.

(4) Fence, cover, or use other appropriate methods to exclude wildlife from ponds that contain hazardous concentrations of toxic or toxic-forming materials.

(5) Reclaim and reforest lands that were forested at the time of application and lands that would revert to forest under conditions of natural succession in a manner that enhances recovery of the native forest ecosystem as expeditiously as practicable.

(e) *Wetlands.* (1) To the extent possible, using the best technology currently available, you must avoid disturbances to wetlands and, where practicable, enhance them. If avoidance is not possible, you must restore or replace wetlands that you disturb and, where practicable, enhance them.

(2) Nothing in paragraph (e)(1) of this section authorizes destruction or degradation of wetlands in violation of section 404 of the Clean Water Act, 33 U.S.C. 1344.

(f) *Habitat of unusually high value for fish and wildlife.* To the extent possible, using the best technology currently available, you must avoid disturbances to and, where practicable, enhance riparian and other native vegetation along rivers and streams, lentic vegetation bordering ponds and lakes, and habitat of unusually high value for fish and wildlife, as described in §779.20(c)(3) of this chapter. If avoidance of these features is not possible, you must restore or replace those features and, where practicable, enhance them.

(g) *Vegetation requirements for fish and wildlife habitat postmining land use.* Where fish and wildlife habitat is a postmining land use, you must select and arrange the plant species to be used for revegetation to maximize the benefits to fish and wildlife. Plant species must be native to the area and must be selected on the basis of the following criteria:

(1) Their proven nutritional value for fish or wildlife.

(2) Their value as cover for fish or wildlife.

(3) Their ability to support and enhance fish or wildlife habitat after the release of performance bonds.

(4) Their ability to sustain natural succession by allowing the establishment and spread of plant species across ecological gradients. You may not use invasive plant species that are known to inhibit plant succession.

(h) *Vegetation requirements for cropland postmining land use.* Where cropland is the postmining land use, and where appropriate for wildlife-management and crop-management practices, you must intersperse the crop fields with trees, hedges, or fence rows to break up large blocks of monoculture

and to diversify habitat types for birds and other animals.

(i) *Vegetation requirements for forestry postmining land uses.* Where forestry, whether managed or unmanaged, is the postmining land use, you must plant native tree and understory species to the extent that doing so is not inconsistent with the type of forestry to be practiced as part of the postmining land use. In all cases, regardless of the type of forestry to be practiced as part of the postmining land use, you must intersperse plantings of commercial species with plantings of native trees and shrubs of high value to wildlife.

(j) *Vegetation requirements for other postmining land uses.* Where residential, public service, commercial, industrial, or intensive recreational uses are the postmining land use, you must establish—

(1) Greenbelts comprised of non-invasive native plants that provide food or cover for wildlife, unless greenbelts would be inconsistent with the approved postmining land use plan for that site.

(2)(i) A vegetated buffer at least 100 feet wide along each bank of all perennial and intermittent streams within the permit area. The width of the buffer must be measured horizontally on a line perpendicular to the stream, beginning at the ordinary high water mark. The buffer must be planted with species native to the area, including species adapted to and suitable for planting in any floodplains or other riparian habitat located within the buffer. The species planted must consist of native tree and understory species if the land was forested at the time of application or if it would revert to forest under conditions of natural succession.

(ii) Paragraph (j)(2)(i) of this section does not apply to situations in which a vegetated buffer comprised of native species would be incompatible with an approved postmining land use that is implemented before final bond release under §§800.40 through 800.43 of this chapter.

(k) *Planting arrangement requirements.* You must design and arrange plantings in a manner that optimizes benefits to wildlife to the extent practicable and consistent with the postmining land use.

§ 816.99 What measures must I take to prevent and remediate landslides?

(a) You, the permittee or operator, must provide an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for the distance that the regulatory authority determines is needed to assure stability. The barrier must be retained in place to prevent slides.

(b)(1) You must notify the regulatory authority by the fastest available means whenever a landslide occurs that has the potential to adversely affect public property, health, safety, or the environment.

(2) You must comply with any remedial measures that the regulatory authority requires in response to the notification provided in paragraph (b)(1) of this section.

§ 816.100 What are the standards for conducting reclamation contemporaneously with mining?

You must reclaim all land disturbed by surface mining activities as contemporaneously as practicable with the mining operations, except when the mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities under § 785.18 of this chapter. Reclamation activities include, but are not limited to, backfilling, grading, soil replacement, revegetation, and stream restoration.

§ 816.101 [Reserved]

§ 816.102 How must I backfill the mined area and grade and configure the land surface?

(a) You, the permittee or operator, must backfill all mined areas and grade all disturbed areas in compliance with the plan approved in the permit in accordance with § 780.12(d) of this chapter to—

(1) Restore the approximate original contour as the final surface configuration, except in the following situations:

(i) Mountaintop removal mining operations approved under § 785.14 of this chapter.

(ii) Sites for which the regulatory authority has approved a variance under § 785.16 of this chapter.

(iii) Operations to which the thin overburden standards of § 816.104 of this part apply.

(iv) Operations to which the thick overburden standards of § 816.105 of this part apply.

(v) Remining operations on previously mined areas, but only to the extent specified in § 816.106(b) of this part.

(vi) Excess spoil fills constructed in accordance with § 816.71 or § 816.74 of this part.

(vii) Refuse piles constructed in accordance with § 816.83 of this part.

(viii) Permanent impoundments that meet the requirements of paragraph (a)(3)(ii) of this section and § 780.35(b)(4) of this chapter.

(ix) The placement, in accordance with § 780.35(b)(3) of this chapter, of what would otherwise be excess spoil on the mined-out area to heights in excess of the premining elevation when necessary to avoid or minimize construction of excess spoil fills on undisturbed land.

(2) Minimize the creation of uniform slopes and cut-and-fill terraces. The regulatory authority may approve cut-and-fill terraces only if—

(i) They are compatible with the approved postmining land use and are needed to conserve soil moisture, ensure stability, or control erosion on final-graded slopes; or

(ii) Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land use.

(3) Eliminate all highwalls, spoil piles, impoundments, and depressions, except in the following situations:

(i) You may construct or retain small depressions if—

(A) They are needed to retain moisture, minimize erosion, create or enhance wildlife habitat, or assist revegetation;

(B) They are consistent with the hydrologic reclamation plan approved in the permit in accordance with § 780.22 of this chapter; and

(C) You demonstrate that they will not result in elevated levels of parameters of concern in discharges from the backfilled and graded area.

(ii) The regulatory authority may approve the retention of permanent impoundments if—

(A) They meet the requirements of §§ 816.49 and 816.55 of this part;

(B) They are suitable for the approved postmining land use;

(C) You demonstrate compliance with the future maintenance provisions of § 800.42(c)(5) of this chapter; and

(D) You have obtained all necessary approvals and authorizations under section 404 of the Clean Water Act, 33 U.S.C. 1344, when the impoundment is located in waters subject to the jurisdiction of the Clean Water Act, 33 U.S.C. 1251 *et seq.*

(iii) You may retain highwalls on previously mined areas to the extent provided in § 816.106(b) of this part.

(iv) You may retain modified highwall segments to the extent necessary to replace similar natural landforms removed by the mining operation. The regulatory program must establish the conditions under which these highwall segments may be retained and the modifications that must be made to the highwall to ensure that—

(A) The retained segment resembles similar landforms that existed before any mining and restores the ecological niches that those landforms provided. Nothing in this paragraph authorizes the retention of modified highwall segments in excess of the number, length, and height needed to replace similar landforms that existed before any mining.

(B) The retained segment is stable. Features that result in the creation of talus slopes for wildlife habitat are acceptable if they meet the requirements of paragraph (a)(3)(iv)(A) of this section.

(C) The retained segment does not create an increased safety hazard compared to the features that existed before any mining.

(D) The exposure of water-bearing strata, if any, in the retained segment does not adversely impact the hydrologic balance.

(4) Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides.

(5) Minimize erosion and water pollution, both on and off the site.

(6) Support the approved postmining land use.

(b) You must return all spoil to the mined-out area. This requirement does not apply to—

(1) Excess spoil disposed of in accordance with § 816.71 or § 816.74 of this part.

(2) Mountaintop removal mining operations approved under § 785.14 of this chapter.

(3) Spoil placed outside the mined-out area in non-steep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain, provided that you comply with the following requirements:

(i) You must remove all vegetation and other organic matter from the area outside the mined-out area before spoil placement begins. You may not burn these materials; you must store, redistribute, use, or bury them in the manner specified in § 816.22(f) of this part.

(ii) You must remove, segregate, store, and redistribute topsoil on the area outside the mined-out area in accordance with § 816.22 of this part.

(c) You must compact spoil and waste materials when necessary to ensure stability or to prevent the formation of acid or toxic mine drainage, but, to the extent possible, you must avoid compacting spoil, soil, and other materials placed in what will be the root zone of the species planted under the revegetation plan approved in the permit in accordance with § 780.12(g) of this chapter.

(d)(1) You must cover all exposed coal seams with material that is non-combustible, nonacid-forming, and nontoxic-forming.

(2) You must handle and dispose of all other combustible materials exposed, used, or produced during mining in accordance with § 816.89 of this part in a manner that will prevent sustained combustion, as approved in the permit in accordance with § 780.12(j) of this chapter.

(3) You must handle all other acid-forming and toxic-forming materials—

(i) In compliance with the plan approved in the permit in accordance with § 780.12(n) of this chapter;

(ii) In compliance with § 816.38 of this part;

(iii) In compliance with the hydrologic reclamation plan approved in the permit in accordance with § 780.22(a) of this chapter; and

(iv) In a manner that will minimize adverse effects on plant growth and the approved postmining land use.

(e) You must dispose of any coal mine waste placed in the mined-out area in accordance with §§ 816.81 and 816.83 of this part, except that a long-term static safety factor of 1.3 will apply instead of the 1.5 factor specified in § 816.81(d)(2) of this part.

(f) You must prepare final-graded surfaces in a manner that minimizes erosion and provides a surface for replacement of soil materials that will minimize slippage.

§ 816.104 What special provisions for backfilling, grading, and surface configuration apply to sites with thin overburden?

(a) *Applicability.* This section applies only where the thickness of all overburden strata multiplied by the swell factor for those strata plus the thickness of any waste materials to be returned to the mined-out area is less than the combined thickness of the overburden and coal seam or seams prior to removing the coal to the extent that there is insufficient material to restore the approximate original contour. Specifically, there is insufficient material to achieve a surface configuration that—

(1) Closely resembles the surface configuration of the mined area prior to any mining; and

(2) Blends into and complements the drainage pattern of the surrounding terrain.

(b) *Performance standards.* Where thin overburden as described in paragraph (a) of this section occurs within the permit area, you must backfill all mined areas and grade all disturbed areas in accordance with the plan approved in the permit under § 780.12(d) of

this chapter. At a minimum, you must—

(1) Use all spoil and waste materials available from the entire permit area to attain the lowest practicable grade that does not exceed the angle of repose.

(2) Comply with the requirements of paragraphs (a)(2) through (f) of § 816.102 of this part.

(3) Ensure that the final surface configuration blends into and complements the drainage pattern of the surrounding terrain to the extent possible.

§ 816.105 What special provisions for backfilling, grading, and surface configuration apply to sites with thick overburden?

(a) *Applicability.* This section applies only where the thickness of all overburden strata multiplied by the swell factor for those strata plus the thickness of any waste materials to be returned to the mined-out area exceeds the combined thickness of the overburden strata and the coal seam or seams in place to the extent that there is more material than can be used to restore the approximate original contour. Specifically, the amount of material to be returned to the mined-out area is so large that it is not possible to achieve a surface configuration that closely resembles the surface configuration of the mined land prior to any mining.

(b) *Performance standards.* Where thick overburden as described in paragraph (a) of this section occurs within the permit area, you must backfill all mined areas and grade all disturbed areas in accordance with the plan approved in the permit under § 780.12(d) of this chapter. At a minimum, you must—

(1) Backfill the mined-out area to the approximate original contour and then place the remaining spoil and waste materials on top of the backfilled area to the extent possible, as determined in accordance with the excess spoil minimization requirements of § 780.35(b) of this chapter.

(2) Grade the backfilled area to the lowest practicable grade that is ecologically sound, consistent with the postmining land use, and compatible

§ 816.106

with the surrounding region. No slope may exceed the angle of repose.

(3) Comply with the requirements of paragraphs (a)(2) through (f) of § 816.102 of this part.

(4) Dispose of any excess spoil in accordance with § 816.71 or § 816.74 of this part.

(5) Ensure that the final surface configuration blends into and complements the drainage pattern of the surrounding terrain to the extent possible.

§ 816.106 What special provisions for backfilling, grading, and surface configuration apply to previously mined areas with a preexisting highwall?

(a) Remining operations on previously mined areas that contain a preexisting highwall must comply with the requirements of §§ 816.102 through 816.107 of this part, except as provided in this section.

(b) The highwall elimination requirements of § 816.102(a) of this part do not apply to remining operations for which you demonstrate in writing, to the regulatory authority's satisfaction, that the volume of all reasonably available spoil is insufficient to completely backfill the reaffected or enlarged highwall. Instead, for those operations, you must eliminate the highwall to the maximum extent technically practical in accordance with the following criteria:

(1) You must use all spoil generated by the remining operation and any other reasonably available spoil to backfill the area. You must include reasonably available spoil in the immediate vicinity of the remining operation within the permit area.

(2) You must grade the backfilled area to a slope that is compatible with the approved postmining land use and that provides adequate drainage and long-term stability.

(3) Any highwall remnant must be stable and not pose a hazard to the public health and safety or to the environment. You must demonstrate, to the satisfaction of the regulatory authority, that the highwall remnant is stable.

(4) You must not disturb spoil placed on the outslope during previous mining operations if disturbance would cause

30 CFR Ch. VII (7–1–17 Edition)

instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

§ 816.107 What special provisions for backfilling, grading, and surface configuration apply to operations on steep slopes?

(a) Surface mining activities on steep slopes must comply with this section and the requirements of §§ 816.102 through 816.106 of this part, except where—

(1) Mining is conducted on flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area; or

(2) Operations are conducted in accordance with part 824 of this chapter.

(b) You may not place the following materials on the downslope:

(1) Spoil.

(2) Waste materials of any type.

(3) Debris, including debris from clearing and grubbing, except for woody materials used to enhance fish and wildlife habitat.

(4) Abandoned or disabled equipment.

(c) You may not disturb land above the highwall unless the regulatory authority finds that disturbance will facilitate compliance with the environmental protection standards of this subchapter and the disturbance is limited to that necessary to facilitate compliance.

(d) You must handle woody materials in accordance with § 816.22(f) of this part.

§ 816.111 How must I revegetate areas disturbed by mining activities?

(a) You, the permittee, must establish a diverse, effective, permanent vegetative cover on regraded areas and on all other disturbed areas except—

(1) Water areas approved as a postmining land use or in support of the postmining land use.

(2) The surfaces of roads approved for retention to support the postmining land use.

(3) Rock piles, water areas, and other non-vegetative features created to restore or enhance wildlife habitat under the fish and wildlife protection and enhancement plan approved in the permit

in accordance with §780.16 of this chapter.

(4) Any other impervious surface, such as a building or a parking lot, approved as part of or in support of the postmining land use. This provision applies only to structures and facilities constructed before expiration of the revegetation responsibility period.

(b) The reestablished vegetative cover must—

(1) Comply with the revegetation plan approved in the permit in accordance with §780.12(g) of this chapter.

(2) Be consistent with the approved postmining land use and, except as provided in the revegetation plan approved in the permit in accordance with §780.12(g) of this chapter, the native plant communities described in §779.19 of this chapter.

(3) Be at least equal in extent of cover to the natural vegetation of the area.

(4) Be capable of stabilizing the soil surface and, in the long term, preventing erosion in excess of what would have occurred naturally had the site not been disturbed.

(5) Not inhibit the establishment of trees and shrubs when the revegetation plan approved in the permit requires the use of woody plants.

(c) Volunteer plants of species that are desirable components of the plant communities described in the permit application under §779.19 of this chapter and that are not inconsistent with the postmining land use may be considered in determining whether the requirements of §§816.111 and 816.116 have been met.

(d) You must stabilize all areas upon which you have redistributed soil or soil substitute materials. You must use one or a combination of the following methods, unless the regulatory authority determines that neither method is necessary to stabilize the surface and control erosion—

(1) Establishing a temporary vegetative cover consisting of noncompetitive and non-invasive species, either native or domesticated or a combination thereof.

(2) Applying a suitable mulch free of weed and noxious plant seeds.

(e) You must plant all disturbed areas with the species needed to estab-

lish a permanent vegetative cover during the first normal period for favorable planting conditions after redistribution of the topsoil or other plant-growth medium. The normal period for favorable planting conditions is the generally accepted local planting time for the type of plant materials approved in the permit as part of the revegetation plan under §780.12(g) of this chapter.

§§816.113–816.114 [Reserved]

§816.115 How long am I responsible for revegetation after planting?

(a) *General provisions.* (1) The period of extended responsibility for successful revegetation will begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with paragraph (d) of this section.

(2) The initial planting of small areas that are regraded and planted as a result of the removal of sediment control structures and associated structures and facilities, including ancillary roads used to access those structures, need not be considered an augmented seeding necessitating an extended or separate revegetation responsibility period. This paragraph also applies to areas upon which accumulated sediment and materials resulting from removal of sedimentation pond embankments are spread.

(b) *Areas of more than 26.0 inches of average annual precipitation.* In areas of more than 26.0 inches of annual average precipitation, the period of responsibility will continue for a period of not less than—

(1) Five full years, except as provided in paragraph (b)(2) of this section.

(i) The vegetation parameters for grazing land, pasture land, or cropland must equal or exceed the approved success standard during the growing season of any 2 years of the responsibility period, except the first year.

(ii) On all other areas, the parameters must equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(2) Two full years for lands eligible for reining included in a permit approved under §785.25 of this chapter. The lands must equal or exceed the applicable ground cover standard during the growing season of the last year of the responsibility period.

(c) *Areas of 26.0 inches or less average annual precipitation.* In areas of 26.0 inches or less average annual precipitation, the period of responsibility will continue for a period of not less than:

(1) Ten full years, except as provided in paragraph (c)(2) of this section.

(i) The vegetation parameters for grazing land, pasture land, or cropland must equal or exceed the approved success standard during the growing season of any two years after year six of the responsibility period.

(ii) On all other areas, the parameters must equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(2) Five full years for lands eligible for reining included in a permit approved under §785.25 of this chapter. The lands must equal or exceed the applicable ground cover standard during the growing seasons of the last two consecutive years of the responsibility period.

(d) *Normal husbandry practices.* (1) The regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from OSMRE in accordance with §732.17 of this chapter that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability, if those practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success.

(2) Approved practices must be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting

specifically necessitated by such actions.

§816.116 What requirements apply to standards for determining revegetation success?

(a) The regulatory authority must select standards for revegetation success and statistically valid sampling techniques for measuring revegetation success. The standards and techniques must be made available to the public in written form.

(b) The standards for success applied to a specific permit must reflect the revegetation plan requirements of §780.12(g) of this chapter. They must be based upon the following data—

(1) The plant community and vegetation information required under §779.19 of this chapter.

(2) The soil type and productivity information required under §779.21 of this chapter.

(3) The land use capability and productivity information required under §779.22 of this chapter.

(4) The postmining land use approved under §780.24 of this chapter, but only to the extent that the approved postmining land use will be implemented before final bond release under §§800.40 through 800.43 of this chapter. Otherwise, the site must be revegetated in a manner that will restore native plant communities and the revegetation success standards for the site must reflect that requirement.

(c) Except for the areas identified in §816.111(a) of this part, standards for success must include—

(1) Species diversity.

(2) Areal distribution of species.

(3) Ground cover, except for land actually used for cropland after the completion of regrading and redistribution of soil materials.

(4) Production, for land used for cropland, pasture, or grazing land either before permit issuance or after the completion of regrading and redistribution of soil materials.

(5) Stocking, for areas revegetated with woody plants.

(d) The ground cover, production, or stocking of the revegetated area will be considered equal to the approved success standard for those parameters when the measured values are not less

than 90 percent of the success standard, using a 90-percent statistical confidence interval (*i.e.*, a one-sided test with a 0.10 alpha error).

(e) For all areas revegetated with woody plants, regardless of the postmining land use, the regulatory authority must specify minimum stocking and planting arrangements on the basis of local and regional conditions and after coordination with and approval by the state agencies responsible for the administration of forestry and wildlife programs. Coordination and approval may occur on either a program-wide basis or a permit-specific basis.

(f)(1) Only those species of trees and shrubs approved in the permit as part of the revegetation plan under §780.12(g) of this chapter or volunteer trees and shrubs of species that meet the requirements of §816.111(c) of this part may be counted in determining whether stocking standards have been met.

(2)(i) At the time of final bond release under §§800.40 through 800.43 of this chapter, at least 80 percent of the trees and shrubs used to determine success must have been in place for 60 percent of the applicable minimum period of responsibility under §816.115 of this part.

(ii) Trees and shrubs counted in determining revegetation success must be healthy and have been in place for not less than two growing seasons. Any replanting must be done by means of transplants to allow for proper accounting of plant stocking.

(iii)(A) For purposes of paragraph (f)(2)(ii) of this section, volunteer trees and shrubs of species that meet the requirements of §816.111(c) of this part may be deemed equivalent to planted specimens two years of age or older.

(B) Suckers on shrubby vegetation can be counted as volunteer plants when it is evident that the shrub community is vigorous and expanding.

(iv) The requirements of paragraphs (f)(2)(i) and (ii) of this section will be deemed met when records of woody vegetation planted show that—

(A) No woody plants were planted during the last two growing seasons of the responsibility period; and

(B) If any replanting of woody plants took place earlier during the responsibility period, the total number planted during the last 60 percent of that period is less than 20 percent of the total number of woody plants required to meet the stocking standard.

(3) Vegetative ground cover on areas planted with trees or shrubs must be of a nature that allows for natural establishment and succession of native plants, including trees and shrubs.

(g) *Special provision for areas that are to be developed within the revegetation responsibility period.* Portions of the permit area that are to be developed for industrial, commercial, or residential use within the revegetation responsibility period need not meet production or stocking standards. For those areas, the vegetative ground cover must not be less than that required to control erosion.

(h) *Special provision for previously mined areas.* Previously mined areas need only meet a vegetative ground cover standard, unless the regulatory authority specifies otherwise. At a minimum, the cover on the revegetated previously mined area must not be less than the ground cover existing before redisturbance and must be adequate to control erosion.

(i) *Special provision for prime farmland.* For prime farmland historically used for cropland, the revegetation success standard provisions of §823.15 of this chapter apply in lieu of the requirements of paragraphs (b) through (h) of this section.

§816.131 What actions must I take when I temporarily cease mining operations?

(a)(1) Each person who temporarily ceases to conduct surface mining activities at a particular site must effectively secure surface facilities in areas in which there are no current operations, but where operations are to be resumed under an approved permit.

(2) Temporary cessation does not relieve a person of his or her obligation to comply with any provisions of the approved permit.

(b)(1) You must submit a notice of intent to temporarily cease operations to the regulatory authority before ceasing mining and reclamation operations for

§ 816.132

30 or more days, or as soon as you know that a temporary cessation will extend beyond 30 days.

(2) The notice of temporary cessation must include a statement of the—

(i) Exact number of surface acres disturbed within the permit area prior to temporary cessation;

(ii) Extent and kind of reclamation accomplished before temporary cessation; and

(iii) Backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during temporary cessation.

§ 816.132 What actions must I take when I permanently cease mining operations?

(a) Persons who permanently cease surface mining activities at a particular site must close, backfill, or otherwise permanently reclaim all disturbed areas in accordance with this chapter and the permit approved by the regulatory authority.

(b) All equipment, structures, underground openings, or other facilities must be removed and the affected land reclaimed, unless the regulatory authority approves retention of those features because they are suitable for the postmining land use or environmental monitoring.

§ 816.133 What provisions concerning postmining land use apply to my operation?

You, the permittee, must restore all disturbed areas in a timely manner to conditions that are capable of supporting—

(a) The uses they were capable of supporting before any mining, as described under § 779.22 of this chapter; or

(b) Higher or better uses approved under § 780.24(b) of this chapter.

§ 816.150 What are the general requirements for haul and access roads?

(a) *Road classification system.* (1) Each road meeting the definition of that term in § 701.5 of this chapter must be classified as either a primary road or an ancillary road.

(2) A primary road is any road that is—

(i) Used for transporting coal or spoil;

30 CFR Ch. VII (7–1–17 Edition)

(ii) Frequently used for access or other purposes for a period in excess of 6 months; or

(iii) To be retained for an approved postmining land use.

(3) An ancillary road is any road not classified as a primary road.

(b) *Performance standards.* Each road must be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to—

(1) Control or prevent erosion, siltation, and air pollution attendant to erosion, including road dust and dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices.

(2) Control or prevent damage to fish, wildlife, or their habitat and related environmental values.

(3) Control or prevent additional contributions of suspended solids to streamflow or runoff outside the permit area;

(4) Neither cause nor contribute, directly or indirectly, to a violation of applicable state or tribal water quality standards for surface water and groundwater, including, but not limited to, surface water quality standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c).

(5) Refrain from seriously altering the normal flow of water in streambeds or drainage channels.

(6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of Congress.

(7) Use nonacid- and nontoxic-forming substances in road surfacing.

(c) *Design and construction limits and establishment of design criteria.* To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design

and construction or reconstruction of roads must include appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices, and any necessary design criteria established by the regulatory authority.

(d) *Location*. (1) No part of any road may be located in the channel of an intermittent or perennial stream unless specifically approved by the regulatory authority in accordance with §780.28 of this chapter and §816.57 of this part.

(2) Roads must be located to minimize downstream sedimentation and flooding.

(e) *Maintenance*. (1) A road must be maintained to meet the performance standards of this part and any additional criteria specified by the regulatory authority.

(2) A road damaged by a catastrophic event, such as a flood or earthquake, must be repaired as soon as is practicable after the damage has occurred.

(f) *Reclamation*. A road not to be retained as part of an approved postmining land use must be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. Reclamation must include—

(1) Closing the road to traffic.

(2) Removing all bridges and culverts unless approved as part of the postmining land use.

(3) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements.

(4) Reshaping the slopes of road cuts and fills as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain.

(5) Protecting the natural drainage patterns by installing dikes or cross-drains as necessary to control surface runoff and erosion.

(6) Scarifying or ripping the roadbed, replacing topsoil or substitute material in accordance with §816.22 of this part, and revegetating disturbed surfaces in accordance with §§816.111, 816.115, and 816.116 of this chapter.

§816.151 What additional requirements apply to primary roads?

(a) Primary roads must meet the requirements of §816.150 of this part and the additional requirements of this section.

(b) *Certification*. The construction or reconstruction of primary roads must be certified in a report to the regulatory authority by a qualified registered professional engineer, or in any state that authorizes land surveyors to certify the construction or reconstruction of primary roads, a qualified registered professional land surveyor with experience in the design and construction of roads. The report must indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

(c) *Safety factor*. Each primary road embankment must have a minimum static factor of 1.3 or meet the requirements established under §780.37(c) of this chapter.

(d) *Location*. (1) To minimize erosion, a primary road must be located, insofar as is practicable, on the most stable available surface.

(2) Fords of perennial or intermittent streams are prohibited unless they are specifically approved by the regulatory authority as temporary routes during periods of road construction.

(e) *Drainage control*. In accordance with the approved plan—

(1) Each primary road must be constructed, or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to, bridges, ditches, cross drains, and ditch relief drains. The drainage control system must be designed to safely pass the peak runoff from the 10-year, 6-hour precipitation event, or any greater event specified by the regulatory authority.

(2) Drainage pipes and culverts must be installed as designed, and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets.

(3) Drainage ditches must be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment.

(4) Culverts must be installed and maintained to sustain the vertical soil

§816.180

pressure, the passive resistance of the foundation, and the weight of vehicles using the road.

(5) Natural stream channels must not be altered or relocated without the prior approval of the regulatory authority in accordance with §780.28 of this chapter and §816.57 of this part.

(6) Except as provided in paragraph (d)(2) of this section, structures for perennial or intermittent stream channel crossings must be made using bridges, culverts, low-water crossings, or other structures designed, constructed, and maintained using current prudent engineering practices. The regulatory authority must ensure that low-water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow.

(f) *Surfacing.* Primary roads must be surfaced with material approved by the regulatory authority as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

§816.180 To what extent must I protect utility installations?

You must conduct all surface coal mining operations in a manner that minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines that pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the regulatory authority.

§816.181 What requirements apply to support facilities?

(a) You must operate each support facility in accordance with the permit issued for the mine or coal preparation plant to which the facility is incident or from which its operation results.

(b) In addition to the other provisions of this part, you must locate, maintain, and use support facilities in a manner that—

(1) Prevents or controls erosion and siltation, water pollution, and damage to public or private property; and

(2) To the extent possible using the best technology currently available—

(i) Minimizes damage to fish, wildlife, and related environmental values; and

(ii) Minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions may not be in excess of limitations of state or federal law.

§816.200 [Reserved]

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

Sec.

817.1 What does this part do?

817.2 What is the objective of this part?

817.10 Information collection.

817.11 What signs and markers must I post?

817.13 What special requirements apply to drilled holes, wells, and exposed underground openings?

817.14-817.15 [Reserved]

817.22 How must I handle topsoil, subsoil, and other plant growth media?

817.34 How must I protect the hydrologic balance?

817.35 How must I monitor groundwater?

817.36 How must I monitor surface water?

817.37 How must I monitor the biological condition of streams?

817.38 How must I handle acid-forming and toxic-forming materials?

817.39 What must I do with exploratory or monitoring wells when I no longer need them?

817.40 What responsibility do I have to replace water supplies?

817.41 Under what conditions may I discharge water and other materials into an underground mine?

817.42 What Clean Water Act requirements apply to discharges from my operation?

817.43 How must I construct and maintain diversions?

817.44 What restrictions apply to gravity discharges from underground mines?

817.45 What sediment control measures must I implement?

817.46 What requirements apply to siltation structures?

817.47 What requirements apply to discharge structures for impoundments?

817.49 What requirements apply to impoundments?

817.55 What must I do with sedimentation ponds, diversions, impoundments, and treatment facilities after I no longer need them?

Surface Mining Reclamation and Enforcement, Interior

§ 817.10

- 817.56 What additional performance standards apply to mining activities conducted in or through an ephemeral stream?
- 817.57 What additional performance standards apply to mining activities conducted in or through a perennial or intermittent stream or on the surface of land within 100 feet of a perennial or intermittent stream?
- 817.59 How must I maximize coal recovery?
- 817.61 Use of explosives: General requirements.
- 817.62 Use of explosives: Preblasting survey.
- 817.64 Use of explosives: General performance standards.
- 817.66 Use of explosives: Blasting signs, warnings, and access control.
- 817.67 Use of explosives: Control of adverse effects.
- 817.68 Use of explosives: Records of blasting operations.
- 817.71 How must I dispose of excess spoil?
- 817.72–817.73 [Reserved]
- 817.74 What special requirements apply to disposal of excess spoil on a preexisting bench?
- 817.81 How must I dispose of coal mine waste?
- 817.83 What special requirements apply to coal mine waste refuse piles?
- 817.84 What special requirements apply to coal mine waste impounding structures?
- 817.87 What special requirements apply to burning and burned coal mine waste?
- 817.89 How must I dispose of noncoal mine wastes?
- 817.95 How must I protect surface areas from wind and water erosion?
- 817.97 How must I protect and enhance fish, wildlife, and related environmental values?
- 817.99 What measures must I take to prevent and remediate landslides?
- 817.100 What are the standards for conducting reclamation contemporaneously with mining?
- 817.102 How must I backfill surface excavations and grade and configure the land surface?
- 817.106 What special provisions for backfilling, grading, and surface configuration apply to previously mined areas with a preexisting highwall?
- 817.107 What special provisions for backfilling, grading, and surface configuration apply to operations on steep slopes?
- 817.111 How must I revegetate areas disturbed by mining activities?
- 817.113–817.114 [Reserved]
- 817.115 How long am I responsible for revegetation after planting?
- 817.116 What requirements apply to standards for determining revegetation success?
- 817.121 What measures must I take to prevent, control, or correct damage resulting from subsidence?
- 817.122 How and when must I provide notice of planned underground mining?
- 817.131 What actions must I take when I temporarily cease mining operations?
- 817.132 What actions must I take when I permanently cease mining operations?
- 817.133 What provisions concerning postmining land use apply to my operation?
- 817.150 What are the general requirements for haul and access roads?
- 817.151 What additional requirements apply to primary roads?
- 817.180 To what extent must I protect utility installations?
- 817.181 What requirements apply to support facilities?
- 817.200 [Reserved]
- AUTHORITY: 30 U.S.C. 1201 *et seq.*
- SOURCE: 81 FR 93418, Dec. 20, 2016, unless otherwise noted.

§ 817.1 What does this part do?

This part sets forth the minimum environmental protection performance standards for underground mining activities under the Act.

§ 817.2 What is the objective of this part?

This part is intended to ensure that all underground mining activities are conducted in an environmentally sound manner in accordance with the Act.

§ 817.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of this part and assigned it control number 1029–0047. Collection of this information is required under section 516 of SMCRA, which provides that permittees conducting underground coal mining operations must meet all applicable performance standards of the regulatory program approved under the Act. The regulatory authority uses the information collected to ensure that underground mining activities are conducted in compliance with the requirements of the applicable regulatory program. Persons intending to conduct such operations must respond to obtain a benefit. A federal agency may not

§817.11

conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Room 203-SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

§817.11 What signs and markers must I post?

(a) *General specifications.* Signs and markers required under this part must—

(1) Be posted and maintained by the person who conducts the underground mining activities;

(2) Be of a uniform design throughout the operation;

(3) Be easily seen and read;

(4) Be made of durable material; and

(5) Conform to local ordinances and codes.

(b) *Duration of maintenance.* You must maintain signs and markers during the conduct of all activities to which they pertain.

(c) *Mine and permit identification signs.*

(1) You must display identification signs at each point of access from public roads to areas of surface operations and facilities on permit areas for underground mining activities.

(2) The signs must show the name, business address, and telephone number of the person who conducts the underground mining activities and the identification number of the current SMCRA permit authorizing underground mining activities.

(3) You must retain and maintain the signs until the release of all bonds for the permit area.

(d) *Perimeter markers.* You must clearly mark the perimeter of all areas to be disturbed by surface operations or facilities before beginning mining activities on the surface of land within the permit area.

(e) *Stream buffer zone markers.* You must clearly mark the boundaries of any buffer to be maintained between surface activities and a perennial or intermittent stream in accordance

30 CFR Ch. VII (7–1–17 Edition)

with §§784.28 and 817.57 of this chapter to avoid disturbance by surface operations and facilities.

(f) *Topsoil markers.* You must clearly mark stockpiles of topsoil, subsoil, or other plant growth media segregated and stored as required in the permit in accordance with §817.22 of this part.

§817.13 What special requirements apply to drilled holes, wells, and exposed underground openings?

(a) Except as provided in paragraph (f) of this section, you must case, line, otherwise manage each exploration hole, drilled hole, borehole, shaft, well, or other exposed underground opening in a manner approved by the regulatory authority to—

(1) Prevent acid or other toxic drainage from entering groundwater and surface water.

(2) Minimize disturbance to the prevailing hydrologic balance.

(3) Ensure the safety of people, livestock, fish and wildlife, and machinery in the permit area and the adjacent area.

(b) You must prevent access to each temporarily inactive mine entry by constructing fences and barricades or other covering devices and posting signs that identify the hazardous nature of the opening. You must periodically inspect and maintain these fences and barricades in good operating condition.

(c) You must temporarily seal each exploration hole, drilled hole, borehole, shaft, well, or other exposed underground opening that the approved permit identifies for use to monitor groundwater or to return underground development waste, coal processing waste, or water to underground workings until you are ready to actually use the hole or opening for that purpose.

(d) You may retain a drilled hole or groundwater monitoring well for use as a water well under the conditions established in §817.39 of this part.

(e) Except as provided in paragraph (d) of this section, you must permanently close each exploration hole, drilled hole, borehole, well, or underground opening that mining activities uncover or expose within the permit area, unless the regulatory authority—

(1) Approves use of the hole, well, or opening for water monitoring purposes; or

(2) Authorizes other management of the hole or well.

(f)(1) Except as provided in paragraph (d) of this section, you must cap, seal, backfill, or otherwise properly manage each shaft, drift, adit, tunnel, exploratory hole, entryway or other opening to the surface when no longer needed for monitoring or any other use that the regulatory authority approves after finding that the use would not adversely affect the environment or public health and safety.

(2) Permanent closure measures taken under paragraph (f)(1) of this section must be—

(i) Consistent with §75.1771 of this title;

(ii) Designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery; and

(iii) Designed to keep acid or toxic mine drainage from entering groundwater or surface water.

(g) The requirements of this section do not apply to holes drilled and used for blasting as part of surface operations.

§§ 817.14–817.15 [Reserved]

§ 817.22 How must I handle topsoil, subsoil, and other plant growth media?

(a) *Removal and salvage.* (1)(i) You, the permittee, must remove and salvage all topsoil and other soil materials identified for salvage and use as postmining plant growth media in the soil handling plan approved in the permit under §784.12(e) of this chapter.

(ii) The soil handling plan approved in the permit under §784.12(e) of this chapter will specify which soil horizons and underlying strata, or portions thereof, you must separately remove and salvage. The plan also will specify whether some or all of those soil horizons and soil substitute materials may or must be blended to achieve an improved plant growth medium.

(iii) Except as provided in the soil handling plan approved in the permit under §784.12(e) of this chapter, you must complete removal and salvage of topsoil, subsoil, and organic matter in advance of any mining-related surface

disturbance other than the minor disturbances identified in paragraph (a)(2) of this section.

(2) Unless otherwise specified by the regulatory authority, you need not remove and salvage topsoil and other soil materials for minor disturbances that—

(i) Occur at the site of small structures, such as power poles, signs, monitoring wells, or fence lines; or

(ii) Will not destroy the existing vegetation and will not cause erosion.

(b) *Handling and storage.* (1) You must segregate and separately handle the materials removed under paragraph (a) of this section to the extent required in the soil handling plan approved in the permit pursuant to §784.12(e). You must redistribute those materials promptly on regraded areas or stockpile them when prompt redistribution is impractical.

(2) Stockpiled materials must—

(i) Be selectively placed on a stable site within the permit area;

(ii) Be protected from contaminants and unnecessary compaction that would interfere with revegetation;

(iii) Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick-growing, non-invasive vegetative cover or through other measures approved by the regulatory authority; and

(iv) Not be moved until required for redistribution unless approved by the regulatory authority.

(3) When stockpiling of organic matter and soil materials removed under paragraphs (a) and (f) of this section would be detrimental to the quality or quantity of those materials, you may temporarily redistribute those soil materials on an approved site within the permit area to enhance the current use of that site until the materials are needed for later reclamation, provided that—

(i) Temporary redistribution will not permanently diminish the capability of the topsoil of the host site; and

(ii) The redistributed material will be preserved in a condition more suitable for redistribution than if it were stockpiled.

(c) *Soil substitutes and supplements.* When the soil handling plan approved

in the permit in accordance with § 784.12(e) of this chapter provides for the use of substitutes for or supplements to the existing topsoil or subsoil, you must salvage, store, and redistribute the overburden materials selected and approved for that purpose in a manner consistent with paragraphs (a), (b), and (e) of this section.

(d) *Site preparation.* If necessary to reduce potential slippage of the redistributed material or to promote root penetration, you must rip, chisel-plow, deep-till, or otherwise mechanically treat backfilled and graded areas either before or after redistribution of soil materials, whichever time is agronomically appropriate.

(e) *Redistribution.* (1) You must redistribute the materials removed, salvaged, and, if necessary, stored under paragraphs (a) through (c) of this section in a manner that—

(i) Complies with the soil handling plan developed under § 784.12(e) of this chapter and approved as part of the permit.

(ii) Is consistent with the approved postmining land use, the final surface configuration, and surface water drainage systems.

(iii) Minimizes compaction of the topsoil and soil materials in the root zone to the extent possible and alleviates any excess compaction that may occur. You must limit your use of measures that result in increased compaction to those situations in which added compaction is necessary to ensure stability.

(iv) Protects the materials from wind and water erosion before and after seeding and planting to the extent necessary to ensure establishment of a successful vegetative cover and to avoid causing or contributing to a violation of applicable state or tribal water quality standards or effluent limitations, including, but not limited to, water quality standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), and effluent limitations established in any National Pollutant Discharge Elimination System permit issued for the operation under section 402 of the Clean Water Act, 33 U.S.C. 1342, or its state or tribal counterpart.

(v) Achieves an approximately uniform, stable thickness across the regraded area. The thickness may vary when consistent with the approved postmining land use, the final surface configuration, surface water drainage systems, and the requirement in § 817.133 of this part for restoration of all disturbed areas to conditions that are capable of supporting the uses they were capable of supporting before any mining or higher or better uses approved under § 784.24(b) of this chapter. The thickness also may vary when variations are necessary or desirable to achieve specific revegetation goals and ecological diversity, as set forth in the revegetation plan developed under § 784.12(g) of this chapter and approved as part of the permit.

(2) You must use a statistically valid sampling technique to document that soil materials have been redistributed in the locations and depths required by the soil handling plan developed under § 784.12(e) of this chapter and approved as part of the permit.

(3) The regulatory authority may choose not to require the redistribution of topsoil on the embankments of permanent impoundments or on the embankments of roads to be retained as part of the postmining land use if it determines that—

(i) Placement of topsoil on those embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation, and

(ii) The embankments will be otherwise stabilized.

(f) *Organic matter.* (1)(i) You must salvage duff, other organic litter, and vegetative materials such as tree tops and branches, small logs, and root balls. When practicable and consistent with the approved postmining land use, you may salvage organic matter and topsoil in a single operation that blends those materials.

(ii) Paragraph (f)(1)(i) of this section does not apply to organic matter from areas identified under § 783.19(b) of this chapter as containing significant populations of invasive or noxious non-native species. You must bury organic matter from those areas in the backfill

Surface Mining Reclamation and Enforcement, Interior

§ 817.34

at a sufficient depth to prevent regeneration or proliferation of undesirable species.

(2)(i) Except as otherwise provided in paragraphs (f)(2)(ii) and (iii) and (3) of this section, you must redistribute the organic matter salvaged under paragraph (f)(1) of this section across the regraded surface or incorporate it into the soil to control erosion, promote growth of vegetation, serve as a source of native plant seeds and soil inoculants to speed restoration of the soil's ecological community, and increase the moisture retention capability of the soil.

(ii) You may use vegetative debris to construct stream improvement or fish and wildlife habitat enhancement features consistent with the approved postmining land use.

(iii) You may adjust the timing and pattern of redistribution of large woody debris to accommodate the use of mechanized tree-planting equipment on sites with a forestry postmining land use.

(3)(i) The redistribution requirements of paragraph (f)(2)(i) of this section do not apply to those portions of the permit area—

(A) Upon which row crops will be planted as part of the postmining land use before final bond release under §§ 800.40 through 800.43 of this chapter;

(B) That will be intensively managed for hay production as part of the postmining land use before final bond release under §§ 800.40 through 800.43 of this chapter; or

(C) Upon which structures, roads, other impervious surfaces, or water impoundments have been or will be constructed as part of the postmining land use before final bond release under §§ 800.40 through 800.43 of this chapter.

(ii) When the circumstances described in paragraph (f)(3)(i) of this section apply, you must make reasonable efforts to redistribute the salvaged organic matter on other portions of the permit area or use woody debris to construct stream improvement or fish and wildlife habitat enhancement features consistent with the approved postmining land use. If you demonstrate, and the regulatory authority finds, that it is not reasonably possible to use all available organic matter for

these purposes, you may bury it in the backfill.

(4)(i) You may not burn organic matter.

(ii) You may bury organic matter in the backfill only as provided in paragraphs (f)(1)(ii) and (3)(ii) of this section.

§ 817.34 How must I protect the hydrologic balance?

(a) You, the permittee, must conduct all underground mining and reclamation activities in a manner that will—

(1) Minimize disturbance of the hydrologic balance within the permit and adjacent areas.

(2) Prevent material damage to the hydrologic balance outside the permit area. Material damage resulting from subsidence may not constitute material damage to the hydrologic balance outside the permit area if that damage is repaired or corrected under § 817.40 or § 817.121(c) of this part.

(3) Protect streams in accordance with §§ 784.28 and 817.57 of this chapter.

(4) Assure the replacement of water supplies to the extent required by § 817.40 of this part.

(5) Protect existing water rights under state law.

(6) Support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this part.

(7) Comply with the hydrologic reclamation plan as submitted under § 784.22 of this chapter and approved in the permit.

(8) Protect groundwater quality by using best management practices to handle earth materials and runoff in a manner that avoids the formation of acid or toxic mine drainage and by managing excavations and other disturbances to prevent or control groundwater degradation. The regulatory authority will determine the meaning of the term “best management practices” on a site-specific basis. At a minimum, the term includes equipment, devices, systems, methods, and techniques that the Director determines to be best management practices.

(9) Protect surface-water quality by using best management practices, as described in paragraph (a)(8) of this

section, to handle earth materials, groundwater discharges, and runoff in a manner that—

(i) Prevents postmining discharges of acid or toxic mine drainage.

(ii) Prevents additional contribution of suspended solids to streamflow or runoff outside the permit area to the extent possible, using the best technology currently available.

(iii) Otherwise prevents water pollution.

(10) Protect surface-water quality and flow rates by handling earth materials and runoff in accordance with the steps outlined in the hydrologic reclamation plan and the surface-water runoff control plan approved in the permit in accordance with §§ 784.22 and 780.29 of this chapter, respectively.

(b)(1) To the maximum extent practicable, you must use mining and reclamation practices that minimize water pollution, changes in flow, and adverse impacts on stream biota rather than relying upon water treatment to minimize those impacts.

(2) You must install, use, and maintain any necessary water-treatment facilities or water-quality controls if drainage control, materials handling, stabilization and revegetation of disturbed areas, diversion of runoff, mulching, and other reclamation and remedial practices are not adequate to meet the requirements of this section and § 817.42 of this part.

(c) The regulatory authority may require that you take preventive, remedial, or monitoring measures in addition to those set forth in this part to prevent material damage to the hydrologic balance outside the permit area.

(d)(1) You must examine the runoff-control structures identified under § 784.29 of this chapter within 72 hours of cessation of each occurrence of the following precipitation events:

(i) In areas with an average annual precipitation of more than 26.0 inches, an event of a size equal to or greater than that of a storm with a 2-year recurrence interval. You must use the appropriate regional Natural Resources Conservation Service synthetic storm distribution to determine peak flow for a storm with that recurrence interval.

(ii) In areas with an average annual precipitation of 26.0 inches or less, a

significant event of a size specified by the regulatory authority.

(2)(i) You must prepare a report, which must be certified by a registered professional engineer, and submit the report to the regulatory authority within 30 days of cessation of the applicable precipitation event under paragraph (d)(1) of this section. The report must address the performance of the runoff-control structures, identify and describe any material damage to the hydrologic balance outside the permit area that occurred, and identify and describe the remedial measures taken in response to that damage.

(ii) The report prepared under paragraph (d)(2)(i) of this section may include all precipitation events that occur within 30 days of cessation of the applicable precipitation event under paragraph (d)(1) of this section.

§ 817.35 How must I monitor groundwater?

(a)(1)(i) You, the permittee, must monitor groundwater in the manner specified in the groundwater monitoring plan approved in the permit in accordance with § 784.23(a) of this chapter.

(ii) You must adhere to the data collection, analysis, and reporting requirements of paragraphs (a) and (b) of § 777.13 of this chapter when conducting monitoring under this section.

(2) At a minimum, you must conduct monitoring through mining, reclamation, and the revegetation responsibility period under § 817.115 of this part for the monitored area. Monitoring must continue beyond that minimum for any additional time needed for monitoring results to demonstrate that the criteria of § 817.35(d)(1) and (2) of this section have been met, as determined by the regulatory authority.

(b)(1) You must submit groundwater monitoring data to the regulatory authority every 3 months, or more frequently if prescribed by the regulatory authority.

(2) Monitoring reports must include analytical results from each sample taken during the reporting period.

(c) When the analysis of any sample indicates noncompliance with the terms and conditions of the permit,

you must promptly notify the regulatory authority, take any applicable actions required under § 773.17(e) of this chapter, and implement any applicable remedial measures required by the hydrologic reclamation plan approved in the permit in accordance with § 784.22 of this chapter.

(d) You may use the permit revision procedures of § 774.13 of this chapter to request that the regulatory authority modify the groundwater monitoring requirements, including the parameters covered and the sampling frequency. The regulatory authority may approve your request if you demonstrate, using the monitoring data obtained under this section, that—

(1) Future adverse changes in groundwater quantity or quality are unlikely to occur.

(2) The operation has—

(i) Minimized disturbance to the hydrologic balance in the permit and adjacent areas.

(ii) Prevented material damage to the hydrologic balance outside the permit area.

(iii) Preserved or restored the biological condition of perennial and intermittent streams within the permit and adjacent areas for which baseline biological condition data was collected under § 784.19(c)(6)(vi) of this chapter when groundwater from the permit area provides all or part of the base flow of those streams.

(iv) Maintained or restored the availability and quality of groundwater to the extent necessary to support the approved postmining land uses within the permit area.

(v) Protected or replaced the water rights of other users.

(e) Whenever information available to the regulatory authority indicates that additional monitoring is necessary to protect the hydrologic balance, to detect hydrologic changes, or to meet other requirements of the regulatory program, the regulatory authority must issue an order under § 774.10(b) of this chapter requiring that you revise your permit to include the necessary additional monitoring.

(f) You must install, maintain, operate, and, when no longer needed, remove all equipment, structures, and other devices used in conjunction with

monitoring groundwater, consistent with §§ 817.13 and 817.39 of this part.

§ 817.36 How must I monitor surface water?

(a)(1)(i) You, the permittee, must monitor surface water in the manner specified in the surface-water monitoring plan approved in the permit in accordance with § 784.23(b) of this chapter.

(ii) You must adhere to the data collection, analysis, and reporting requirements of paragraphs (a) and (b) of § 777.13 of this chapter when conducting monitoring under this section.

(2) Monitoring must continue through mining and during reclamation until the regulatory authority releases the entire bond amount for the monitored area under §§ 800.40 through 800.43 of this chapter.

(b)(1) You must submit surface-water monitoring data to the regulatory authority every 3 months, or more frequently when prescribed by the regulatory authority.

(2) Monitoring reports must include analytical results from each sample taken during the reporting period.

(3) The reporting requirements of paragraph (b) of this section do not exempt you from meeting any National Pollutant Discharge Elimination System (NPDES) reporting requirements.

(c) When the analysis of any sample indicates noncompliance with the terms and conditions of the permit, you must promptly notify the regulatory authority, take any applicable actions required under § 773.17(e) of this chapter, and implement any applicable remedial measures required by the hydrologic reclamation plan approved in the permit in accordance with § 784.22 of this chapter.

(d) You may use the permit revision procedures of § 774.13 of this chapter to request that the regulatory authority modify the surface-water monitoring requirements (except those required by the NPDES permitting authority), including the parameters covered and the sampling frequency. The regulatory authority may approve your request if you demonstrate, using the monitoring data obtained under this section, that—

§817.37

(1) Future adverse changes in surface-water quantity or quality are unlikely to occur.

(2) The operation has—

(i) Minimized disturbance to the hydrologic balance in the permit and adjacent areas.

(ii) Prevented material damage to the hydrologic balance outside the permit area.

(iii) Preserved or restored the biological condition of perennial and intermittent streams within the permit and adjacent areas for which baseline biological condition data was collected under §784.19(c)(6)(vi) of this chapter.

(iv) Maintained or restored the availability and quality of surface water to the extent necessary to support the approved postmining land uses within the permit area.

(v) Not precluded attainment of any designated use of surface water under section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c).

(vi) Protected or replaced the water rights of other users.

(e) Whenever information available to the regulatory authority indicates that additional monitoring is necessary to protect the hydrologic balance, to detect hydrologic changes, or to meet other requirements of the regulatory program, the regulatory authority must issue an order under §774.10(b) of this chapter requiring that you revise your permit to include the necessary additional monitoring.

(f) You must install, maintain, operate, and, when no longer needed, remove all equipment, structures, and other devices used in conjunction with monitoring surface water.

§817.37 How must I monitor the biological condition of streams?

(a)(1)(i) You must monitor the biological condition of perennial and intermittent streams in the manner specified in the plan approved in the permit in accordance with §784.23(c) of this chapter.

(ii) You must adhere to the data collection, analysis, and reporting requirements of paragraphs (a) and (b) of §777.13 of this chapter and use a bio-assessment protocol that complies with §784.19(c)(6)(vii) of this chapter when

30 CFR Ch. VII (7–1–17 Edition)

conducting monitoring under this section.

(2) Monitoring must continue through mining and during reclamation until the regulatory authority releases the entire bond amount for the monitored area under §§800.40 through 800.43 of this chapter.

(b) You must submit biological condition monitoring data to the regulatory authority on an annual basis, or more frequently if prescribed by the regulatory authority.

(c) [Reserved]

(d) Whenever information available to the regulatory authority indicates that additional monitoring is necessary to meet the requirements of the regulatory program, the regulatory authority must issue an order under §774.10(b) of this chapter requiring that you revise your permit to include the necessary additional monitoring.

§817.38 How must I handle acid-forming and toxic-forming materials?

(a) You, the permittee, must use the best technology currently available to handle acid-forming and toxic-forming materials and underground development waste in a manner that will avoid the creation of acid or toxic mine drainage into surface water and groundwater. At a minimum, you must comply with the plan approved in the permit in accordance with §784.12(n) of this chapter and adhere to disposal, treatment, and storage practices that are consistent with other material handling and disposal provisions of this chapter.

(b) You may temporarily store acid-forming and toxic-forming materials only if the regulatory authority specifically approves temporary storage as necessary and finds in writing in the permit that the proposed storage method will protect surface water and groundwater by preventing erosion, the formation of polluted runoff, and the infiltration of polluted water into aquifers. The regulatory authority must specify a maximum time for temporary storage, which may not exceed the period until permanent disposal first becomes feasible. In addition, storage must not result in any risk of water pollution, adverse impacts to the biology of perennial or intermittent

streams, or other environmental damage.

§ 817.39 What must I do with exploratory or monitoring wells when I no longer need them?

(a) Except as provided in paragraph (b) of this section, you, the permittee, must permanently seal exploratory or monitoring wells in a safe and environmentally sound manner in accordance with § 817.13 of this part before the regulatory authority may approve full release of the bond posted for the land on which the wells are located under §§ 800.40 through 800.43 of this chapter.

(b) With the prior approval of the regulatory authority, you may transfer wells to another party for further use. The conditions of the transfer must comply with state and local laws. You will remain responsible for the proper management of the wells until full release of the bond posted for the land on which the wells are located under §§ 800.40 through 800.43 of this chapter.

§ 817.40 What responsibility do I have to replace water supplies?

(a) *Replacement of adversely-impacted water supplies.* (1) You, the permittee, must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted as a result of underground mining activities that you conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

(2) The replacement supply must be equivalent to the quantity and quality of the premining supply.

(3) Replacement includes provision of an equivalent water supply delivery system and payment of operation and maintenance expenses in excess of customary and reasonable delivery costs for the premining water supply. If you and the water supply owner agree, your obligation to pay operation and maintenance costs may be satisfied by a one-time payment in an amount that covers the present worth of the increased annual operation and maintenance costs for a period upon which you and the water supply owner agree.

(4) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, you may satisfy the replacement requirements by demonstrating that a suitable alternative water source is available and could feasibly be developed, provided you obtain written concurrence from the owner of the affected water supply.

(b) *Measures to address anticipated adverse impacts to protected water supplies.* For anticipated loss of or damage to a protected water supply, you must adhere to the requirements set forth in the permit in accordance with § 784.22(b) of this chapter.

(c) *Measures to address unanticipated adverse impacts to protected water supplies.* For unanticipated loss of or damage to a protected water supply, you must—

(1) Provide an emergency temporary water supply within 24 hours of notification of the loss. The temporary supply must be adequate in quantity and quality to meet normal household needs.

(2) Develop and submit a plan for a permanent replacement supply to the regulatory authority within 30 days of receiving notice that an unanticipated loss of or damage to a protected water supply has occurred.

(3) Provide a permanent replacement water supply within 2 years of the date of receiving notice of an unanticipated loss of or damage to a protected water supply. The regulatory authority may grant an extension if you have made a good-faith effort to meet this deadline, but have been unable to do so for reasons beyond your control.

(d) *Basis for determination of adverse impact.* The regulatory authority must use the baseline hydrologic and geologic information required under § 784.19 of this chapter and all other available information to determine whether and to what extent the mining operation adversely impacted the damaged water supply.

§ 817.41 Under what conditions may I discharge water and other materials into an underground mine?

(a) You may not discharge any water or other materials from your operation into an underground mine unless the

§ 817.42

regulatory authority specifically approves the discharge in writing, based upon a demonstration that—

(1) The discharge will be made in a manner that—

(i) Minimizes disturbances to the hydrologic balance within the permit area;

(ii) Prevents material damage to the hydrologic balance outside the permit area, including the hydrologic balance of the area in which the underground mine receiving the discharge is located;

(iii) Does not adversely impact the biology of perennial or intermittent streams; and

(iv) Otherwise eliminates public hazards resulting from surface mining activities.

(2) The discharge will not cause or contribute to a violation of applicable state or tribal water quality standards or effluent limitations, including, but not limited to, water quality standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), and effluent limitations established in any National Pollutant Discharge Elimination System permit issued for the operation under section 402 of the Clean Water Act, 33 U.S.C. 1342, or its state or tribal counterpart.

(3)(i) The discharge will be at a known rate and of a quality that will meet the effluent limitations for pH and total suspended solids in 40 CFR part 434.

(ii) The regulatory authority may approve discharges of water that exceed the effluent limitations for pH and total suspended solids in 40 CFR part 434 if the available evidence indicates that there is no direct hydrologic connection between the underground mine and other waters and that those exceedances will not be inconsistent with paragraph (a)(1) of this section.

(4) The discharge will not cause or contribute to a violation of applicable state or tribal water quality standards for groundwater.

(5) The Mine Safety and Health Administration has approved the discharge.

(6) You have obtained written permission from the owner of the mine into which the discharge is to be made and you have provided a copy of that

30 CFR Ch. VII (7–1–17 Edition)

authorization to the regulatory authority.

(b) Discharges are limited to the following materials:

(1) Water.

(2) Coal processing waste.

(3) Fly ash from a coal-fired facility.

(4) Sludge from an acid-mine-drainage treatment facility.

(5) Flue-gas desulfurization sludge.

(6) Inert materials used for stabilizing underground mines.

(7) Underground mine development waste.

§ 817.42 What Clean Water Act requirements apply to discharges from my operation?

(a) Nothing in this section, nor any action taken pursuant to this section, supersedes or modifies—

(1) The authority or jurisdiction of federal, state, or tribal agencies responsible for administration, implementation, and enforcement of the Clean Water Act, 33 U.S.C. 1251 *et seq.*; or

(2) The decisions that those agencies make under the authority of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, including decisions on whether a particular set of facts constitutes a violation of the Clean Water Act.

(b) Discharges of water from underground mining activities and from areas disturbed by underground mining activities must—

(1) Be made in compliance with all applicable water quality laws and regulations, including the effluent limitations established in the National Pollutant Discharge Elimination System permit for the operation under section 402 of the Clean Water Act, 33 U.S.C. 1342, or its state or tribal counterpart. The regulatory authority must notify the appropriate Clean Water Act authority whenever it takes action to enforce a permit condition required by § 773.17(i) of this chapter with respect to an effluent limitation in a National Pollutant Discharge Elimination System permit. The regulatory authority must initiate coordination with the Clean Water Act authority before taking enforcement action if coordination

is needed to determine whether a violation of the National Pollutant Discharge Elimination System permit exists.

(2) Not cause or contribute to a violation of applicable water quality standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), or other applicable state or tribal water quality standards.

(c) Discharges of overburden, coal mine waste, and other materials into waters subject to the jurisdiction of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, must be made in compliance with section 404 of the Clean Water Act, 33 U.S.C. 1344, and its implementing regulations.

(d) The regulatory authority will coordinate an investigation with the appropriate Clean Water Act authority whenever information available to the regulatory authority indicates that mining activities may be causing or contributing to a violation of the water quality standards to which paragraph (b)(2) of this section refers, or to a violation of section 404 of the Clean Water Act, 33 U.S.C. 1344, and its implementing regulations. If, after coordination with the appropriate Clean Water Act authority, it is determined that mining activities are causing or contributing to a Clean Water Act violation, the regulatory authority must, in addition to any action taken by the appropriate Clean Water Act authority, independently take enforcement or other appropriate action to correct the cause of the violation.

(e) You must construct water treatment facilities for discharges from the operation as soon as the need for those facilities becomes evident.

(f)(1) You must remove precipitates and otherwise maintain all water treatment facilities requiring the use of settling ponds or lagoons as necessary to maintain the functionality of those facilities.

(2) You must dispose of all precipitates removed from facilities under paragraph (f)(1) of this section either in an approved solid waste landfill or within the permit area in accordance with a plan approved by the regulatory authority.

(g) You must operate and maintain water treatment facilities until the

regulatory authority authorizes removal based upon monitoring data demonstrating that influent to the facilities meets all applicable effluent limitations without treatment and that discharges would not cause or contribute to a violation of applicable water quality standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), or other applicable state or tribal water quality standards if left untreated.

§ 817.43 How must I construct and maintain diversions?

(a) *Classification.* The term *diversion* applies to the following categories of channels that convey surface water flow:

(1) *Diversion Ditches.* Diversion ditches are channels constructed to convey surface water runoff or other flows from areas not disturbed by mining activities away from or around disturbed areas. Diversion ditches may be temporary or permanent.

(i) You must remove a temporary diversion ditch as soon as it is no longer needed. You must restore the land disturbed by the removal process in accordance with the approved permit and § 817.55 of this part. Before removing a temporary diversion ditch, you must modify or remove downstream water treatment facilities previously protected by the ditch to prevent overtopping or failure of the facilities. You must continue to maintain water treatment facilities until they are no longer needed.

(ii) You may retain a *diversion ditch* as a permanent structure if you demonstrate and the regulatory authority finds that retention of that diversion ditch would—

(A) Be environmentally beneficial;

(B) Meet the requirements of the reclamation plan approved under § 784.12 of this chapter; and

(C) Be consistent with the surface drainage pattern restoration requirements of §§ 817.56 and 817.57 of this part.

(iii) When approved in the permit, you may divert the following flows away from the disturbed area by means of temporary or permanent diversion ditches without treatment:

§ 817.44

30 CFR Ch. VII (7–1–17 Edition)

(A) Any surface runoff or other flows from mined areas abandoned before May 3, 1978.

(B) Any surface runoff or other flows from undisturbed areas.

(C) Any surface runoff or other flows from reclaimed areas for which the criteria of § 817.46 of this part for siltation structure removal have been met.

(2) *Stream diversions.* Stream diversions are temporary or permanent relocations of perennial or intermittent streams. Diversions of perennial and intermittent streams must comply with the applicable requirements of this section, § 784.28 of this chapter, and § 817.57 of this part.

(i) You must remove *temporary stream diversions* after the original stream channel is reconstructed after mining. As set forth in § 784.28(f) of this chapter, different requirements apply to temporary stream diversions depending on whether they will be in existence for less or more than 3 years.

(ii) *Permanent stream diversions* remain in their locations following mining and reclamation.

(3) *Conveyances and channels within the disturbed area.* All other conveyances and channels that are constructed within the disturbed area to transport surface water are also diversions. During mining, these channels or conveyances must deliver all captured surface water flow to siltation structures.

(i) You must remove temporary conveyances or channels when they are no longer needed for their intended purpose.

(ii) When approved in the permit, you may retain conveyances or channels that support or enhance the approved postmining land use.

(b) *Design criteria.* When the permit requires the use of siltation structures for sediment control, you must construct diversions designed to the standards of this section to convey runoff from the disturbed area to the siltation structures unless the topography will naturally direct all surface runoff or other flows to a siltation structure.

(1) You must design all diversions to—

(i) Ensure the safety of the public.

(ii) Minimize adverse impacts to the hydrologic balance, including the biol-

ogy of perennial and intermittent streams, within the permit and adjacent areas.

(iii) Prevent material damage to the hydrologic balance outside the permit area.

(2) You must design, locate, construct, maintain, and use each diversion and its appurtenant structures to—

(i) Be stable.

(ii) Provide and maintain the capacity to safely pass the peak flow of surface runoff from a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion. Flow capacity for stream diversions includes both the in-channel capacity and the flood-prone area overbank capacity. Flow capacity for diversion ditches and conveyances or channels includes only in-channel capacity, with adequate freeboard to prevent out-of-channel flow. You must use the appropriate regional Natural Resources Conservation Service synthetic storm distribution to determine peak flows.

(iii) Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area.

(iv) Comply with all applicable federal, state, tribal, and local laws and regulations.

(c) *Application to § 817.41.* You may not divert surface runoff or other flows into underground mines without approval of the regulatory authority under § 817.41 of this part.

(d) *Additional requirements.* The regulatory authority may specify additional design criteria for diversions to meet the requirements of this section.

§ 817.44 What restrictions apply to gravity discharges from underground mines?

(a)(1) You must locate and manage surface entries and accesses to underground workings to prevent or control gravity discharge of water from the mine.

(2) The regulatory authority may approve gravity discharges of water from an underground mine, other than a drift mine subject to paragraph (b) of this section, if you—

(i) Demonstrate that the untreated or treated discharge will comply with the performance standards of this part and any additional National Pollutant Discharge Elimination System permit requirements under the Clean Water Act.

(ii) Design the discharge control structure to prevent a mine pool blow-out.

(3) You must construct and maintain the discharge control structure in accordance with the design approved by the regulatory authority and any other conditions imposed by the regulatory authority.

(b) Notwithstanding anything to the contrary in paragraph (a) of this section, you must locate the surface entries and accesses of drift mines first used after the implementation of a state, federal, or federal lands program under this chapter and located in acid-producing or iron-producing coal seams in such a manner as to prevent any gravity discharge from the mine.

§ 817.45 What sediment control measures must I implement?

(a) You must design, construct, and maintain appropriate sediment control measures, using the best technology currently available to—

(1) Prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area.

(2) Meet the applicable effluent limitations referenced in § 817.42(a) of this part.

(3) Minimize erosion to the extent possible.

(b) Sediment control measures include practices carried out within the disturbed area. Sediment control measures consist of the use of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to—

(1) Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation.

(2) Shaping and stabilizing the backfilled material to promote a reduction in the rate and volume of runoff.

(3) Retaining sediment within disturbed areas.

(4) Diverting surface runoff from undisturbed areas away from disturbed areas.

(5) Using protected channels or pipes to convey surface runoff from undisturbed areas through disturbed areas so as not to cause additional erosion.

(6) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment.

(7) Treating surface runoff collected in sedimentation ponds with flocculants or other chemicals.

§ 817.46 What requirements apply to siltation structures?

(a) *Scope.* For the purpose of this section only, the phrase “disturb the land surface” does not include those areas—

(1) In which the only underground mining activities conducted on the land surface consist of diversions, siltation structures, or roads that are designed, constructed, and maintained in accordance with this part; and

(2) For which you do not plan to otherwise disturb the land surface upgradient of the diversion, siltation structure, or road.

(b) *General requirements.* (1) When siltation structures will be used to achieve the requirements of § 817.45 of this part, you must construct those structures before beginning any underground mining activities that will disturb the land surface.

(2) Upon completion of construction of a siltation structure, a qualified registered professional engineer, or, in any state that authorizes land surveyors to prepare and certify plans in accordance with § 784.25(a) of this chapter, a qualified registered professional land surveyor, must certify that the structure has been constructed as designed and as approved in the reclamation plan in the permit.

(3) Any siltation structure that impounds water must be designed, constructed and maintained in accordance with § 817.49 of this chapter.

(4) You must maintain siltation structures until removal is authorized by the regulatory authority and the

§817.47

disturbed area has been stabilized and revegetated.

(5)(i) When a siltation structure is removed, you must regrade the land upon which the structure was located and revegetate the land in accordance with the reclamation plan and §§817.111 and 817.116 of this chapter.

(ii) Paragraph (b)(5)(i) of this section does not apply to sedimentation ponds approved by the regulatory authority for retention as permanent impoundments under §817.49(b) of this part if the maintenance requirements of §800.42(c)(5) of this chapter are met.

(c) *Sedimentation ponds.* (1) When used, sedimentation ponds must—

(i) Be located as near as possible to the disturbed area and outside perennial or intermittent stream channels unless approved by the regulatory authority in the permit in accordance with §§784.28 and 817.57(c) of this chapter.

(ii) Be designed, constructed, and maintained to—

(A) Provide adequate sediment storage volume.

(B) Provide adequate detention time to allow the effluent from the ponds to meet applicable effluent limitations.

(C) Contain or treat the 10-year, 24-hour precipitation event (“design event”) unless a lesser design event is approved by the regulatory authority based on terrain, climate, other site-specific conditions, and a demonstration that the effluent limitations referenced in §817.42 of this part will be met.

(D) Provide a nonclogging dewatering device adequate to maintain the detention time required under paragraph (c)(1)(ii)(B) of this section.

(E) Minimize short circuiting to the extent possible.

(F) Provide periodic sediment removal sufficient to maintain adequate volume for the design event.

(G) Ensure against excessive settlement.

(H) Be free of sod, large roots, frozen soil, and acid-forming or toxic-forming materials.

(I) Be compacted properly.

(2) *Spillways.* A sedimentation pond must include either a combination of principal and emergency spillways or a

30 CFR Ch. VII (7–1–17 Edition)

single spillway configured as specified in §817.49(a)(9) of this part.

(d) *Other treatment facilities.* (1) You must design other treatment facilities to treat the 10-year, 24-hour precipitation event unless the regulatory authority approves a lesser design event based upon terrain, climate, other site-specific conditions, and a demonstration that the effluent limitations referenced in §817.42 of this part will be met.

(2) You must design other treatment facilities in accordance with the applicable requirements of paragraph (c) of this section.

(e) *Exemptions.* The regulatory authority may grant an exemption from the requirements of this section if—

(1) The disturbed drainage area within the total disturbed area is small; and

(2) You demonstrate that neither siltation structures nor alternate sediment control measures are necessary for drainage from the disturbed drainage area to comply with §817.42 of this part.

§817.47 What requirements apply to discharge structures for impoundments?

You must control discharges from sedimentation ponds, permanent and temporary impoundments, coal mine waste impounding structures, and diversions by energy dissipators, riprap channels, and other devices when necessary to reduce erosion, to prevent deepening or enlargement of stream channels, to control meander migration, or to minimize disturbance of the hydrologic balance. You must design discharge structures according to standard engineering design procedures.

§817.49 What requirements apply to impoundments?

(a) *Requirements that apply to both permanent and temporary impoundments.—*

(1) *MSHA requirements.* An impoundment meeting the criteria of §77.216(a) of this title must comply with the requirements of §77.216 of this title and this section.

(2) *Stability.* (i) An impoundment that meets the criteria of §77.216(a) of this

title or that includes a dam with a significant or high hazard potential classification under § 784.25(a) of this chapter must have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least 1.2.

(ii) Impoundments not included in paragraph (a)(2)(i) of this section, except for a coal mine waste impounding structure, must have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of § 784.25(e)(2) of this chapter.

(3) *Freeboard.* (i) Impoundments must have adequate freeboard to resist overtopping by waves that occur in conjunction with the typical increase in water elevation at the downwind edge of any body of water, waves resulting from sudden influxes of surface runoff from precipitation events, or waves resulting from any combination of these events or other events.

(ii) An impoundment that includes a dam with a significant or high hazard potential classification under § 784.25(a) of this chapter must comply with the freeboard hydrograph criteria in the following table:

MINIMUM AUXILIARY SPILLWAY HYDROLOGIC CRITERIA

Hazard potential classification of embankment	Design precipitation event for—	
	Auxiliary spillway hydrograph	Freeboard hydrograph
Significant	$P_{100}^1 + 0.12(PMP^2 - P_{100})$	$P_{100} + 0.40(PMP - P_{100})$
High	$P_{100} + 0.26(PMP - P_{100})$	PMP

¹ P_{100} = Precipitation event for 100-year return interval.

² PMP = Probable Maximum Precipitation event.

(4) *Foundation.* (i) Foundations and abutments for an impounding structure must be stable during all phases of construction and operation and must be designed based on adequate and accurate information on the foundation and abutment conditions.

(ii) You must conduct foundation and abutment investigations, as well as any necessary laboratory testing of foundation material, to determine the design requirements for foundation stability and control of underseepage for an impoundment that includes a dam with a significant or high hazard potential classification under § 784.25(a) of this chapter.

(iii) You must remove all vegetative and organic materials from the foundation area and excavate and prepare the foundation area to resist failure. You must install cutoff trenches if necessary to ensure stability.

(5) *Protection of impoundment slopes.* You must take measures to protect impoundment slopes from surface erosion and the adverse impacts of a sudden drawdown.

(6) *Protection of embankment faces.* Faces of embankments and surrounding areas shall be vegetated, except that faces where water is im-

pounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

(7) *Spillways.* An impoundment must include either a combination of principal and emergency spillways or a single spillway configured as specified in paragraph (a)(7)(i) of this section, designed and constructed to safely pass the applicable design precipitation event specified in paragraph (a)(7)(ii) of this section, except as set forth in paragraph (c)(2) of this section.

(i) The regulatory authority may approve a single open-channel spillway that is:

(A) Of nonerodible construction and designed to carry sustained flows; or

(B) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(ii) Except as specified in paragraph (c)(2) of this section, the required design precipitation event for an impoundment meeting the spillway requirements of paragraph (a)(7) of this section is:

(A) For an impoundment that includes a dam with a significant or high hazard potential classification under § 784.25(a) of this chapter, the design

precipitation event specified in the auxiliary spillway hydrograph column in the table in paragraph (a)(3)(ii) of this section, or any greater event specified by the regulatory authority.

(B) For an impoundment meeting the criteria of § 77.216(a) of this title, the 100-year, 6-hour event, or any greater event specified by the regulatory authority.

(C) For an impoundment not included in paragraphs (a)(7)(ii) (A) and (B) of this section, the 25-year, 6-hour event, or any greater event specified by the regulatory authority.

(8) *Highwalls.* The vertical portion of any highwall remnant within the impoundment must be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

(9) *Inspections.* Except as provided in paragraph (a)(9)(iv) of this section, a qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer must inspect each impoundment as provided in paragraph (a)(9)(i) of this section. The professional engineer or specialist must be experienced in the construction of impoundments.

(i) Inspections must be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(ii) After each inspection required by paragraph (a)(9)(i) of this section, the qualified registered professional engineer, or qualified registered professional land surveyor as specified in paragraph (a)(9)(iv) of this section, must promptly provide to the regulatory authority a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this chapter. The report must include a discussion of any appearance of instability, any structural weakness or other hazardous condition, the depth and elevation of any impounded waters, the existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

(iii) You must retain a copy of the report at or near the minesite.

(iv) In any state that authorizes land surveyors to prepare and certify plans in accordance with § 784.25(b)(1) of this chapter, a qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the criteria of § 77.216(a) of this title, or that is not classified as having a significant or high hazard potential under § 784.25(a) of this chapter, and certify and submit the report required by paragraph (a)(9)(ii) of this section, except that a qualified registered professional engineer must certify all coal mine waste impounding structures covered by § 817.84 of this chapter. The professional land surveyor must be experienced in the construction of impoundments.

(10) *Examinations.* (i) Impoundments that meet the criteria of § 77.216 of this title, or that are classified as having a significant or high hazard potential under § 784.25(a) of this chapter, must be examined in accordance with § 77.216–3 of this title.

(ii) Impoundments that are not subject to § 77.216 of this title, or that are not classified as having a significant or high hazard potential under § 784.25(a) of this chapter, must be examined at least quarterly. A qualified person designated by the operator must examine impoundments for the appearance of structural weakness and other hazardous conditions.

(11) *Emergency procedures.* If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment must promptly inform the regulatory authority of the finding and of the emergency procedures formulated for public protection and remedial action. The regulatory authority must be notified immediately if adequate procedures cannot be formulated or implemented. The regulatory authority then must notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) *Requirements that apply only to permanent impoundments.* A permanent impoundment of water may be created if authorized by the regulatory authority in the approved permit based upon the following demonstration:

(1) The size and configuration of the impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, discharges from the impoundment will not cause or contribute to a violation of applicable state or tribal water quality standards or effluent limitations, including, but not limited to, water quality standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), and effluent limitations established in the National Pollutant Discharge Elimination System permit for the operation under section 402 of the Clean Water Act, 33 U.S.C. 1342, or its state or tribal counterpart.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provide for adequate safety and access for proposed water users.

(5) The impoundment will not result in diminution of the quality or quantity of surface water or groundwater used by surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining land use.

(7) Approval of the impoundment will not result in retention of spoil piles or ridges that are inconsistent with the definition of approximate original contour.

(8) Approval of the impoundment will not result in the creation of an excess spoil fill elsewhere within the permit area.

(9) The impoundment has been designed with dimensions, features, and other characteristics that will enhance fish and wildlife habitat to the extent that doing so is not inconsistent with the intended use.

(c) *Requirements that apply only to temporary impoundments that rely primarily upon storage.* (1) In lieu of meeting the requirements in paragraph (a)(7)(i) of this section, the regulatory authority may approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event when you demonstrate, and a qualified registered

professional engineer or qualified registered professional land surveyor in accordance with § 784.25(b) of this chapter certifies, that the impoundment will safely control the design precipitation event.

(2) You must use current prudent engineering practices to safely remove the water from an impoundment constructed in accordance with paragraph (c)(1) of this section.

(3) An impoundment constructed in accordance with paragraph (c)(1) of this section must be located where failure would not be expected to cause loss of life or serious property damage, unless the impoundment meets one of the following exceptions:

(i) An impoundment that meets the criteria of § 77.216(a) of this title, or that is classified as having a significant or high hazard potential under § 784.25(a) of this chapter, and is designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or any greater event specified by the regulatory authority.

(ii) An impoundment not included in paragraph (c)(3)(i) of this section that is designed to control the precipitation of the 100-year, 6-hour event, or any greater event specified by the regulatory authority.

§ 817.55 What must I do with sedimentation ponds, diversions, impoundments, and treatment facilities after I no longer need them?

(a) Before seeking final bond release under § 800.42(d) of this chapter, you must—

(1) Remove all temporary structures and reclaim the land upon which those structures were located in accordance with the approved permit; and

(2) Ensure that all sedimentation ponds, diversions, and impoundments approved for retention after final bond release have been maintained properly and meet all applicable requirements of the approved permit and this chapter for retention as permanent structures. You must renovate the structures if necessary to meet the requirements for retention.

(b) [Reserved]

§ 817.56 What additional performance standards apply to mining activities conducted in or through an ephemeral stream?

(a) *Compliance with federal, state, and tribal water quality laws and regulations.*

(1) You may conduct mining activities in or affecting waters subject to the jurisdiction of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, only if you first obtain all necessary authorizations, certifications, and permits under that law.

(2) Mining activities must comply with all applicable state and tribal laws and regulations concerning surface water and groundwater.

(b) *Postmining surface drainage pattern and stream-channel configuration.* If you mine through an ephemeral stream, you must construct a postmining surface drainage pattern and stream-channel configurations that are consistent with the surface drainage pattern and stream-channel configurations approved in the permit in accordance with § 784.27 of this chapter.

(c) *Establishment of streamside vegetative corridors.* (1) If you mine through an ephemeral stream, you must establish a vegetative corridor at least 100 feet wide along each bank of the reconstructed stream channel. The 100-foot distance must be measured horizontally on a line perpendicular to the stream, beginning at the ordinary high water mark. The corridor must be consistent with natural vegetation patterns.

(2) When planting the streamside vegetative corridors required by paragraph (c)(1) of this section, you must—

(i) Use appropriate native species adapted to the area, unless an agency responsible for implementing section 404 of the Clean Water Act, 33 U.S.C. 1344, requires the use of non-native species.

(ii) Ensure that the species planted are consistent with the revegetation plan approved in the permit.

(iii) Include appropriate native hydrophytic vegetation, vegetation typical of floodplains, or hydrophilic vegetation characteristic of riparian areas and wetlands to the extent that the corridor contains suitable habitat for those species and the stream and the geomorphology of the area are cap-

able of supporting vegetation of that nature.

(iv) Use native trees and shrubs when planting areas within the streamside corridor that were forested at the time of application or that would revert to forest under conditions of natural succession.

(3) Paragraphs (c)(1) and (2) of this section do not require planting of hydrophytic or hydrophilic species within those portions of streamside corridors where the stream, soils, or climate are incapable of providing the moisture or other growing conditions needed to support and sustain hydrophytic or hydrophilic species. In those situations, you must plant the corridor with appropriate native species that are consistent with the baseline information concerning natural streamside vegetation included in the permit application under § 783.19 of this chapter, unless otherwise directed by an agency responsible for implementing section 404 of the Clean Water Act, 33 U.S.C. 1344.

(4) Paragraphs (c)(1) through (3) of this section do not apply to—

(i) Prime farmland historically used for cropland; or

(ii) Situations in which establishment of a streamside vegetative corridor comprised of native species would be incompatible with an approved postmining land use that is implemented before final bond release under §§ 800.40 through 800.43 of this chapter.

§ 817.57 What additional performance standards apply to mining activities conducted in or through a perennial or intermittent stream or on the surface of land within 100 feet of a perennial or intermittent stream?

(a) *Compliance with federal, state, and tribal water quality laws and regulations.*

(1) You may conduct mining activities in or affecting waters subject to the jurisdiction of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, only if you first obtain all necessary authorizations, certifications, and permits under that law.

(2) Mining activities must comply with all applicable state and tribal laws and regulations concerning surface water and groundwater.

(b) *Prohibition on mining in or within 100 feet of a perennial or intermittent*

stream. You may not conduct mining activities in or through a perennial or intermittent stream, or that would disturb the surface of land within 100 feet of a perennial or intermittent stream, unless the regulatory authority authorizes you to do so in the permit after making the findings required under § 784.28 of this chapter. The 100-foot distance must be measured horizontally on a line perpendicular to the stream, beginning at the ordinary high water mark.

(c) *Postmining surface drainage pattern and stream-channel configuration.* (1) If you mine through or permanently divert a perennial or intermittent stream, you must construct a postmining surface drainage pattern and stream-channel configurations that are consistent with the surface drainage pattern and stream-channel configurations approved in the permit in accordance with § 784.28 of this chapter.

(2) Upon completion of construction of a stream-channel diversion for a perennial or intermittent stream, or reconstruction of a stream channel after mining through a perennial or intermittent stream, you must obtain a certification from a qualified registered professional engineer that the stream-channel diversion or reconstructed stream channel has been constructed in accordance with the design approved in the permit and that it meets all engineering-related requirements of this section. This certification may be limited to the location, dimensions, and physical characteristics of the stream channel.

(d) *Establishment of streamside vegetative corridors.* (1)(i) If you mine through a perennial or intermittent stream, you must establish a vegetative corridor at least 100 feet wide along each bank of the reconstructed stream channel. The corridor must be consistent with natural vegetation patterns.

(ii) You must establish a vegetative corridor on any land that you disturb within 100 feet of a perennial or intermittent stream. The corridor must be consistent with natural vegetation patterns.

(iii) If you divert a perennial or intermittent stream, you must establish a vegetative corridor at least 100 feet

wide along each bank of the stream-channel diversion, with the exception of temporary diversions that will be in place less than 3 years. The corridor must be consistent with natural vegetation patterns.

(iv) The 100-foot distance mentioned in paragraphs (d)(1)(i) through (iii) of this section must be measured horizontally on a line perpendicular to the stream, beginning at the ordinary high water mark.

(2) When planting the streamside vegetative corridors required by paragraph (d)(1) of this section, you must—

(i) Use appropriate native species adapted to the area, unless an agency responsible for implementing section 404 of the Clean Water Act, 33 U.S.C. 1344, requires the use of non-native species.

(ii) Ensure that the species planted are consistent with the revegetation plan approved in the permit.

(iii) Include appropriate native hydrophytic vegetation, vegetation typical of floodplains, or hydrophilic vegetation characteristic of riparian areas and wetlands to the extent that the corridor contains suitable habitat for those species and the stream and the geomorphology of the area are capable of supporting vegetation of that nature.

(iv) Use native trees and shrubs when planting areas within the streamside corridor that were forested at the time of application or that would revert to forest under conditions of natural succession.

(3) Paragraphs (d)(1) and (2) of this section do not require planting of hydrophytic or hydrophilic species within those portions of streamside corridors where the stream, soils, or climate are incapable of providing the moisture or other growing conditions needed to support and sustain hydrophytic or hydrophilic species. In those situations, you must plant the corridor with appropriate native species that are consistent with the baseline information concerning natural streamside vegetation included in the permit application under § 783.19 of this chapter, unless otherwise directed by an agency responsible for implementing section 404 of the Clean Water Act, 33 U.S.C. 1344.

(4) Paragraphs (d)(1) through (3) of this section do not apply to—

(i) Prime farmland historically used for cropland; or

(ii) Situations in which establishment of a streamside vegetative corridor comprised of native species would be incompatible with an approved postmining land use that is implemented before final bond release under §§800.40 through 800.43 of this chapter.

(e) *Restoration of form.* If you mine through or permanently divert a perennial or intermittent stream, you must demonstrate successful restoration or reconstruction of the form of the stream channel in accordance with the design approved in the permit before you qualify for Phase I bond release under §800.42(b)(1) of this chapter.

(f) *Restoration of hydrologic function.* If you mine through or permanently divert a perennial or intermittent stream, you must demonstrate restoration of the hydrologic function of the reconstructed stream before you qualify for Phase II bond release under §800.42(b)(2) of this chapter. Restoration of the hydrologic function includes, but is not limited to, restoration of the flow regime, except as otherwise approved in the permit under §784.28(e)(2) of this chapter.

(g) *Restoration of ecological function.* If you mine through or permanently divert a perennial or intermittent stream, the reconstructed stream or stream-channel diversion must meet the criteria approved in the permit for determining restoration of ecological function, as established by the regulatory authority under §784.28(g) of this chapter, before you qualify for final bond release under §§800.40 through 800.43 of this chapter.

(h) *Prohibition on placement of siltation structures in perennial or intermittent streams.* (1)(i) Except as provided in paragraph (h)(2) of this section, you may not construct a siltation structure in a perennial or intermittent stream or use perennial or intermittent streams as waste treatment systems to convey surface runoff from the disturbed area to a sedimentation pond.

(ii) Paragraph (h)(1)(i) of this section does not prohibit the construction of a siltation structure in a stream channel

immediately downstream of a stream segment that is mined through.

(2) If approved in the permit, the prohibition in paragraph (h)(1) of this section will not apply to excess spoil fills, coal mine waste refuse piles, or coal mine waste impounding structures in steep-slope areas when you demonstrate, and the regulatory authority finds in writing, that use of a perennial or intermittent stream segment as a waste treatment system for sediment control or construction of a sedimentation pond or other siltation structure in a perennial or an intermittent stream would have less overall adverse impact on fish, wildlife, and related environmental values than construction of diversions and sedimentation ponds or other siltation structures on slopes above the stream.

(3) When the circumstances described in paragraph (h)(2) of this section exist, the following requirements apply:

(i) You must minimize the length of stream used as a waste treatment system to the extent possible and, when practicable, maintain an undisturbed buffer along that stream segment in accordance with paragraph (b) of this section.

(ii) You must place the sedimentation pond or other siltation structure as close to the toe of the excess spoil fill, coal mine waste refuse pile, or coal mine waste impounding structure as possible.

(iii) Following the completion of construction and revegetation of the fill or coal mine waste structure, you must—

(A) Remove and properly dispose of accumulated sediment in the siltation structure and any stream segment between the inlet of the siltation structure and the toe of the excess spoil fill or coal mine waste structure;

(B) Remove the sedimentation pond or other siltation structure; and

(C) Restore the stream segment in accordance with paragraphs (e) through (g) of this section.

(i) *Programmatic alternative.* Paragraphs (b) through (h) of this section will not apply to a state program approved under subchapter T of this chapter if that program is amended to expressly prohibit all surface mining activities, including the construction of stream-channel diversions, that

Surface Mining Reclamation and Enforcement, Interior

§ 817.62

would result in more than a de minimis disturbance of land in or within 100 feet of a perennial or intermittent stream.

§ 817.59 How must I maximize coal recovery?

You must conduct underground mining activities so as to maximize the utilization and conservation of the coal, while using the best appropriate technology currently available to maintain environmental integrity, so that re-affecting the land in the future through surface coal mining operations is minimized.

§ 817.61 Use of explosives: General requirements.

(a) *Applicability.* Sections 817.61 through 817.68 apply to surface blasting activities incident to underground coal mining, including, but not limited to, initial rounds of slopes and shafts.

(b) *Compliance with other laws and regulations.* You must comply with all applicable state and federal laws and regulations governing the use of explosives.

(c) *Requirements for blasters.* (1) No later than 12 months after the blaster certification program for a state required by part 850 of this chapter has been approved under the procedures of subchapter C of this chapter, all blasting operations in that state must be conducted under the direction of a certified blaster. Before that time, all blasting operations in that state must be conducted by competent, experienced persons who understand the hazards involved.

(2) Certificates of blaster certification must be carried by blasters or be on file at the permit area during blasting operations.

(3) A blaster and at least one other person shall be present at the firing of a blast.

(4) Any blaster who is responsible for conducting blasting operations at a blasting site must:

(i) Be familiar with the site-specific performance standards; and

(ii) Give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or who assist in the use of explosives.

(d) *Blast design.* (1) You must submit an anticipated blast design if blasting operations will be conducted within—

(i) 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or

(ii) 500 feet of an active or abandoned underground mine.

(2) You must submit the blast design required by paragraph (d)(1) of this section either as part of the permit application or, if approved by the regulatory authority, at a later date before blasting begins. Regulatory authority approval of the blast design is not required, but, as provided in paragraph (d)(5) of this section, the regulatory authority may require changes to the design.

(3) The blast design must contain—

(i) Sketches of the drill patterns, delay periods, and decking.

(ii) The type and amount of explosives to be used.

(iii) Critical dimensions.

(iv) The location and general description of structures to be protected.

(v) A discussion of design factors to be used to protect the public and meet the applicable airblast, flyrock, and ground-vibration standards in § 817.67 of this part.

(4) A certified blaster must prepare and sign the blast design.

(5) The regulatory authority may require changes to the design submitted.

§ 817.62 Use of explosives: Preblasting survey.

(a) At least 30 days before initiation of blasting, you must notify, in writing, all residents or owners of dwellings or other structures located within ½ mile of the permit area how to request a preblasting survey.

(b)(1) A resident or owner of a dwelling or structure within ½ mile of any part of the permit area may request a preblasting survey. This request must be made, in writing, directly to you or to the regulatory authority. If the request is made to the regulatory authority, the regulatory authority will promptly notify you.

(2) You must promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey.

§ 817.64

(3) You must conduct an updated survey of any subsequent additions, modifications, or renovations to the dwelling or structure, if requested by the resident or owner.

(c) You must determine the condition of the dwelling or structure and document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention; however, the assessment of these structures may be limited to surface conditions and other readily available data.

(d)(1) The person who conducted the survey must sign the written report of the survey.

(2) You must promptly provide copies of the report to the regulatory authority and to the person requesting the survey.

(3) If the person requesting the survey disagrees with the contents or recommendations of the survey, he or she may submit a detailed description of the specific areas of disagreement to both you and the regulatory authority.

(e) You must complete any surveys requested more than 10 days before the planned initiation of blasting before the initiation of blasting.

§ 817.64 Use of explosives: General performance standards.

(a)(1) You must notify, in writing, residents within $\frac{1}{2}$ mile of the blasting site and local governments of the proposed times and locations of blasting operations.

(2) You may provide this notice weekly, but in no case less than 24 hours before blasting will occur.

(b) You must conduct all blasting between sunrise and sunset, unless the regulatory authority approves nighttime blasting based upon a showing that the public will be protected from adverse noise and other impacts. The regulatory authority may specify more restrictive time periods for blasting.

(c)(1) You may conduct unscheduled blasts only where public or operator health and safety so require and for emergency blasting actions.

(2) When you conduct an unscheduled blast, you must use audible signals to

30 CFR Ch. VII (7–1–17 Edition)

notify residents within $\frac{1}{2}$ mile of the blasting site.

(3) You must document the reason for the unscheduled blast in accordance with § 817.68(c)(16) of this part.

§ 817.66 Use of explosives: Blasting signs, warnings, and access control.

(a) *Blasting signs.* Blasting signs must meet the specifications of § 817.11 of this part.

(1) You must place conspicuous signs reading “Blasting Area” along the edge of any blasting area that comes within 100 feet of any public road right-of-way and at the point where any other road provides access to the blasting area.

(2) You must place conspicuous signs reading “Warning! Explosives in Use” at all entrances to the permit area from public roads or highways. The signs must clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use and explain the marking of blasting areas and charged holes awaiting firing within the permit area.

(b) *Warnings.* You must give blast warning and all-clear signals of different character or pattern that are audible within a range of $\frac{1}{2}$ mile from the point of the blast. You must notify each person within the permit area and each person who resides or regularly works within $\frac{1}{2}$ mile of the permit area of the meaning of the signals in the blasting notification required in § 817.64(a) of this part.

(c) *Access control.* You must control access within the blasting area to prevent presence of livestock or unauthorized persons during blasting and until your authorized representative has reasonably determined that—

(1) No unusual hazards, such as imminent slides or undetonated charges, exist; and

(2) Access to and travel within the blasting area can be safely resumed.

§ 817.67 Use of explosives: Control of adverse effects.

(a) *General requirements.* You must conduct blasting in a manner that prevents—

(1) Injury to persons;

(2) Damage to public or private property outside the permit area;

Surface Mining Reclamation and Enforcement, Interior

§ 817.67

(3) Adverse impacts on any underground mine; or

(4) Change in the course, channel, or availability of surface water or groundwater outside the permit area.

(b) *Airblast*.—(1) *Limits*. (i) Airblast must not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in paragraph (e) of this section.

Lower frequency limit of measuring system in Hertz (Hz), plus or minus 3 decibels	Maximum level in decibels (dB)
0.1 Hz or lower—flat response ¹	134 peak.
2 Hz or lower—flat response	133 peak.
6 Hz or lower—flat response	129 peak.
C-weighted—slow response ¹	105 peak dBC.

¹ Only when approved by the regulatory authority.

(ii) If necessary to prevent damage, the regulatory authority must specify lower maximum allowable airblast levels than those of paragraph (b)(1)(i) of this section for use in the vicinity of a specific blasting operation.

(2) *Monitoring*. (i) You must conduct periodic monitoring to ensure compliance with the airblast standards. The regulatory authority may require airblast measurement of any or all blasts and may specify the locations at which measurements are taken.

(ii) The measuring systems must have an upper-end flat-frequency response of at least 200 Hz.

(c) *Flyrock*. Flyrock travelling in the air or along the ground must not be cast from the blasting site—

(1) More than one-half the distance to the nearest dwelling or other occupied structure;

(2) Beyond the area of control required under § 817.66(c) of this part; or

(3) Beyond the permit boundary.

(d) *Ground vibration*.—(1) *General requirements*. (i) In all blasting operations, except as otherwise authorized in paragraph (e) of this section, the maximum ground vibration must not exceed the values approved in the blasting plan required under § 784.15 of this chapter.

(ii) The maximum ground vibration for protected structures listed in paragraph (d)(2)(i) of this section must be established in accordance with either the maximum peak-particle-velocity limits of paragraph (d)(2) of this section, the scaled-distance equation of paragraph (d)(3) of this section, the blasting-level chart of paragraph (d)(4) of this section, or by the regulatory authority under paragraph (d)(5) of this section.

(iii) All structures in the vicinity of the blasting area not listed in paragraph (d)(2)(i) of this section, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines, must be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator in the blasting plan and approved by the regulatory authority.

(2) *Maximum peak particle velocity*. (i) The maximum ground vibration must not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area:

Distance (D), from the blasting site, in feet	Maximum allowable peak particle velocity for ground vibration, in inches/second ¹	Scaled-distance factor to be applied without seismic monitoring (Ds) ²
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

¹ Ground vibration must be measured as the particle velocity. Particle velocity must be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity applies to each of the three measurements.

² Applicable to the scaled-distance equation of paragraph (d)(3)(i) of this section.

(ii) You must provide a seismographic record for each blast.

(3) *Scaled-distance equation*. (i) You may use the scaled-distance equation, $W = (D/D_s)^2$, to determine the allow-

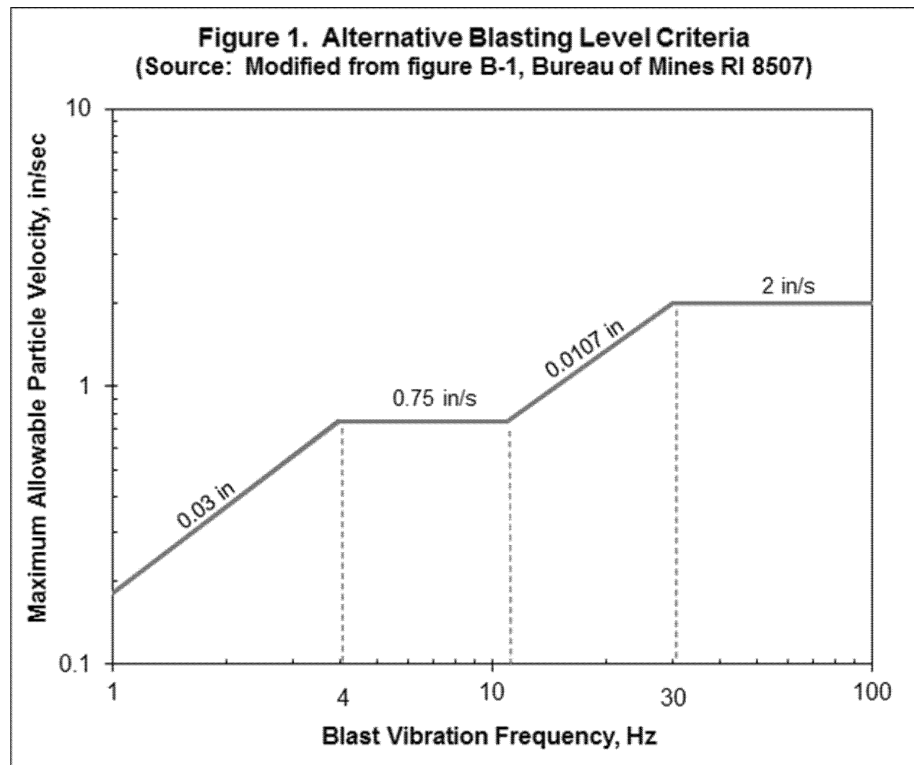
able charge weight of explosives to be detonated in any 8-millisecond period, without seismic monitoring, where W = the maximum weight of explosives, in pounds; D = the distance, in feet, from

the blasting site to the nearest protected structure; and D_s = the scaled-distance factor. The regulatory authority may initially approve the scaled-distance equation using the values for the scaled-distance factor listed in paragraph (d)(2)(i) of this section.

(ii) The regulatory authority may authorize development of a modified scaled-distance factor upon receipt of a written request by the operator, supported by seismographic records of

blasting at the minesite. The modified scale-distance factor must be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of paragraph (d)(2)(i) of this section at a 95-percent confidence level.

(4) *Blasting-level chart.* (i) You may use the ground-vibration limits in Figure 1 to determine the maximum allowable ground vibration.



(ii) If the Figure 1 limits are used, you must provide a seismographic record including both particle velocity and vibration-frequency levels for each blast. The regulatory authority must approve the method for the analysis of the predominant frequency contained in the blasting records before application of this alternative blasting criterion.

(5) The regulatory authority must reduce the maximum allowable ground vibration beyond the limits otherwise provided by this section, if determined necessary to provide damage protection.

(6) The regulatory authority may require that you conduct seismic monitoring of any or all blasts or may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(e) The maximum airblast and ground-vibration standards of paragraphs (b) and (d) of this section do not apply at the following locations:

(1) At structures owned by the permittee and not leased to another person.

(2) At structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the regulatory authority before blasting.

§ 817.68 Use of explosives: Records of blasting operations.

(a) You must retain a record of all blasts for at least 3 years.

(b) Upon request, you must make copies of these records available to the regulatory authority and to the public for inspection.

(c) The records must contain the following data:

(1) Name of the operator conducting the blast.

(2) Location, date, and time of the blast.

(3) Name, signature, and certification number of the blaster conducting the blast.

(4) Identification, direction, and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area, except those described in § 817.67(e) of this part.

(5) Weather conditions, including those which may cause possible adverse blasting effects.

(6) Type of material blasted.

(7) Sketches of the blast pattern, including number of holes, burden, spacing, decks, and delay pattern.

(8) Diameter and depth of holes.

(9) Types of explosives used.

(10) Total weight of explosives used per hole.

(11) The maximum weight of explosives detonated in an 8-millisecond period.

(12) Initiation system.

(13) Type and length of stemming.

(14) Mats or other protections used.

(15) Seismographic and airblast records, if required, which must include—

(i) Type of instrument, sensitivity, and calibration signal or certification of annual calibration;

(ii) Exact location of instrument and the date, time, and distance from the blast;

(iii) Name of the person and firm taking the reading;

(iv) Name of the person and firm analyzing the seismographic record; and

(v) The vibration and/or airblast level recorded.

(16) Reasons and conditions for each unscheduled blast.

§ 817.71 How must I dispose of excess spoil?

(a) *General requirements.* You, the permittee or operator, must mechanically transport and place excess spoil in designated disposal areas, including approved valley fills and other types of approved fills, within the permit area in a controlled manner in compliance with the requirements of this section. In general, you must place excess spoil in a manner that will—

(1) Minimize the adverse effects of leachate and surface water runoff from the fill on groundwater and surface water, including aquatic life, within the permit and adjacent areas.

(2) Ensure mass stability and prevent mass movement during and after construction.

(3) Ensure that the final surface configuration of the fill is suitable for revegetation and the approved postmining land use or uses and is compatible with the natural drainage pattern and surroundings.

(4) Minimize disturbances to, and adverse impacts on, fish, wildlife, and related environmental values to the extent possible, using the best technology currently available.

(5) Ensure that the fill will not change the size or frequency of peak flows from precipitation events or thaws in a way that would result in an increase in flooding when compared with the impacts of premining peak flows.

§817.71

30 CFR Ch. VII (7–1–17 Edition)

(6) Ensure that the fill will not cause or contribute to a violation of applicable state or tribal groundwater standards or preclude any premining use of groundwater.

(7) Ensure that the fill will not cause or contribute to a violation of applicable state or tribal water quality standards for surface water located downstream of the toe of the fill, including, but not limited to, water quality standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c).

(b) *Stability requirements.*—(1) *Static safety factor.* You must design and construct the fill to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill must be stable under all conditions of construction.

(2) *Special requirement for steep-slope conditions.* Where the slope in the disposal area exceeds 2.8h:1v (36 percent), or any lesser slope designated by the regulatory authority based on local conditions, you must construct bench cuts (excavations into stable bedrock) or rock-toe buttresses to ensure fill stability.

(c) *Compliance with permit.* You must construct the fill in accordance with the design and plans approved in the permit in accordance with §784.35 of this chapter.

(d) *Requirements for handling of organic matter and soil materials.* You must remove all vegetation, other organic matter, and soil materials from the disposal area prior to placement of the excess spoil. You must store, redistribute, or otherwise use those materials in accordance with §817.22 of this part. You may use soil substitutes and supplements if approved in the permit in accordance with §784.12(e) of this chapter.

(e) *Surface runoff control requirements.* (1) You must direct surface runoff from areas above the fill and runoff from the

surface of the fill into stabilized channels designed to—

(i) Meet the requirements of §817.43 of this part; and

(ii) Safely pass the runoff from a 100-year, 6-hour precipitation event. You must use the appropriate regional Natural Resources Conservation Service synthetic storm distribution to determine the peak flow from surface runoff from this event.

(2) You must grade the top surface of a completed fill such that the final slope after settlement will be toward properly designed drainage channels. You may not direct uncontrolled surface runoff over the outslope of the fill.

(f) *Control of water within the footprint of the fill.*—(1) *General requirements.* If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, you must design and construct underdrains and temporary diversions as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.

(2) *Temporary diversions.* Temporary diversions must comply with the requirements of §817.43 of this part.

(3) *Underdrains.* (i) You must construct underdrains that are comprised of hard rock that is resistant to weathering.

(ii) You must design and construct underdrains using current, prudent engineering practices and any design criteria established by the regulatory authority.

(iii) In constructing rock underdrains, you may use only hard rock that is resistant to weathering, such as well-cemented sandstone and massive limestone, and that is not acid-forming or toxic-forming. The underdrain must be free of soil and fine-grained, clastic rocks such as siltstone, shale, mudstone, and claystone. All rock used to construct underdrains must meet the criteria in the following table:

Test	ASTM standard	AASHTO standard	Acceptable results
Los Angeles Abrasion.	C 131 or C 535	T 96	Loss of no more than 50 percent of test sample by weight.
Sulfate Soundness.	C 88 or C 5240	T 104	Sodium sulfate test: Loss of no more than 12 percent of test sample by weight. Magnesium sulfate test: Loss of no more than 18 percent of test sample by weight.

(iv) The underdrain system must be designed and constructed to carry the maximum anticipated infiltration of water due to precipitation, snowmelt, and water from seeps and springs in the foundation of the disposal area away from the excess spoil fill.

(v) To provide a safety factor against future changes in local surface-water and groundwater hydrology, perforated pipe may be embedded within the rock underdrain to enhance the underdrain capacity to carry water in excess of the anticipated maximum infiltration away from the excess spoil fill. The pipe must be manufactured of materials that are not susceptible to corrosion and must be demonstrated to be suitable for the deep burial conditions commonly associated with excess spoil fill underdrains.

(vi) The underdrain system must be protected from material piping, clogging, and contamination by an adequate filter system designed and constructed using current, prudent engineering practices to ensure the long-term functioning of the underdrain system.

(g) *Placement of excess spoil.* (1) Using mechanized equipment, you must transport and place excess spoil in a controlled manner in horizontal lifts not exceeding 4 feet in thickness; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; and graded so that surface and subsurface drainage is compatible with the natural surroundings.

(2) You may not use any excess spoil transport and placement technique that involves end-dumping, wing-dumping, cast-blasting, gravity placement, or casting spoil downslope.

(3) *Acid-forming, toxic-forming, and combustible materials.* (i) You must handle acid-forming and toxic-forming materials in accordance with § 817.38 of this part and in a manner that will minimize adverse effects on plant growth and the approved postmining land use.

(ii) You must cover combustible materials with noncombustible materials in a manner that will prevent sustained combustion and minimize adverse effects on plant growth and the approved postmining land use.

(h) *Final configuration.* (1) The final configuration of the fill must be suitable for the approved postmining land use, compatible with the natural drainage pattern and the surrounding terrain, and, to the extent practicable, consistent with natural landforms.

(2) You may construct terraces on the outslope of the fill if required for stability, to control erosion, to conserve soil moisture, or to facilitate the approved postmining land use. The grade of the outslope between terrace benches may not be steeper than 2h: 1v (50 percent).

(3)(i) You must configure the top surface of the fill to create a topography that includes ridgelines and valleys with varied hillslope configurations when practicable, compatible with stability and postmining land use considerations, and generally consistent with the topography that existed before any mining.

(ii) The final surface elevation of the fill may exceed the elevation of the surrounding terrain when necessary to minimize placement of excess spoil in perennial and intermittent streams, provided the final configuration complies with the requirements of paragraphs (a)(3) and (h)(1) of this section.

(iii) The geomorphic reclamation requirements of paragraph (h)(3)(i) of this section do not apply in situations in which they would result in burial of a greater length of perennial or intermittent streams than traditional fill design and construction techniques.

(i) *Impoundments and depressions.* No permanent impoundments are allowed on the completed fill. You may construct small depressions if they—

(1) Are needed to retain moisture, minimize erosion, create or enhance wildlife habitat, or assist revegetation;

(2) Are not incompatible with the stability of the fill;

(3) Are consistent with the hydrologic reclamation plan approved in the permit in accordance with § 784.22 of this chapter;

(4) Will not result in elevated levels of parameters of concern in discharges from the fill; and

(5) Are approved by the regulatory authority.

(j) *Surface area stabilization.* You must provide slope protection to minimize

surface erosion at the site. You must revegetate all disturbed areas, including diversion channels that are not riprapped or otherwise protected, upon completion of construction.

(k) *Inspections and examinations.* (1) A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, must inspect the fill at least quarterly during construction, with additional complete inspections conducted during critical construction periods. The professional engineer or specialist must be experienced in the construction of earth and rock fills. Critical construction periods include, at a minimum—

(i) Foundation preparation, including the removal of all organic matter and soil materials.

(ii) Placement of underdrains and protective filter systems.

(iii) Installation of final surface drainage systems.

(2) An engineer or specialist meeting the qualifications of paragraph (k)(1) of this section also must—

(i) Conduct daily examinations during placement and compaction of fill materials or, when more than one lift is completed per day, upon completion of each 4-foot lift. As an alternative, the engineer or specialist may conduct examinations on a weekly basis if a mine representative takes photographs on a daily basis to document the lift thickness and elevation with visual reference features. The certified report required by paragraph (k)(3) of this section must include this photographic documentation.

(ii) Maintain a log recording the examinations conducted under paragraph (k)(2)(i) of this section for each 4-foot lift in each fill. The log must include a description of the specific work locations, excess spoil placement methods, compaction adequacy, lift thickness, suitability of fill material, special handling of acid-forming and toxic-forming materials, deviations from the approved permit, and remedial measures taken.

(3)(i) The qualified registered professional engineer to which paragraph (k)(1) of this section refers must provide a certified report to the regulatory authority on a quarterly basis.

(ii) In each report prepared under paragraph (k)(3)(i) of this section, the engineer must certify that the fill has been constructed and maintained as designed and in accordance with the approved plan and this chapter.

(iii) The report prepared under paragraph (k)(3)(i) of this section must identify and discuss any evidence of instability, structural weakness, or other hazardous conditions. If one of more of those conditions exists, you must submit an application for a permit revision that includes appropriate remedial design specifications.

(iv) The report prepared under paragraph (k)(3)(i) of this section must contain—

(A) A review and summary of all complete inspections conducted during the quarter under paragraph (k)(1) of this section.

(B) A review and summary of all examinations conducted during the quarter under paragraph (k)(2) of this section, including the logs maintained under paragraph (k)(2)(ii) of this section.

(C) The photographs taken under paragraph (k)(2)(i) of this section.

(iv) Each certified report prepared under paragraph (k)(3) of this section for a quarter in which construction activities include placement of underdrains and protective filter systems must include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase must be certified separately. The photographs must be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(4) You must retain a copy of each certified report prepared under paragraph (k)(3) of this section at or near the mine site.

(l) *Coal mine waste.* You may dispose of coal mine waste in excess spoil fills only if approved by the regulatory authority and only if—

(1) You demonstrate, and the regulatory authority finds in writing, that the disposal of coal mine waste in the excess spoil fill will not—

(i) Cause or contribute to a violation of applicable state or tribal water quality standards or effluent limitations, including, but not limited to, water quality standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), and effluent limitations established in any National Pollutant Discharge Elimination System permit issued for the operation under section 402 of the Clean Water Act, 33 U.S.C. 1342, or its state or tribal counterpart;

(ii) Cause or contribute to a violation of applicable state or tribal water quality standards for groundwater; or

(iii) Result in material damage to the hydrologic balance outside the permit area.

(2) The waste is placed in accordance with §§ 817.81 and 817.83 of this part.

(3) The waste is nontoxic-forming, nonacid-forming, and non-combustible.

(4) The waste is of the proper characteristics to be consistent with the design stability of the fill.

(m) *Underground disposal.* You may dispose of excess spoil in underground mine workings only in accordance with a plan approved by the regulatory authority and the Mine Safety and Health Administration under § 784.26 of this chapter.

§§ 817.72–817.73 [Reserved]

§ 817.74 What special requirements apply to disposal of excess spoil on a preexisting bench?

(a) *General requirements.* The regulatory authority may approve the disposal of excess spoil through placement on a preexisting bench on a previously mined area or a bond forfeiture site if—

(1) The proposed permit area includes the portion of the preexisting bench on which the spoil will be placed;

(2) The proposed operation will comply with the applicable requirements of § 817.102 of this part; and

(3) The requirements of this section are met.

(b) *Requirements for removal and disposition of vegetation, other organic matter, and soil materials.* You must remove all vegetation, other organic matter, topsoil, and subsoil from the disposal area prior to placement of the excess spoil and store, redistribute, or otherwise use those materials in accordance

with § 817.22 of this part. You may use soil substitutes and supplements if approved in the permit in accordance with § 784.12(e) of this chapter.

(c)(1) The fill must be designed and constructed using current, prudent engineering practices.

(2) The design must be certified by a registered professional engineer.

(3) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design must include underdrains and temporary diversions as necessary to control erosion, prevent water infiltration into the fill, and ensure stability. Underdrains must comply with the requirements of § 817.71(f)(3) of this part.

(d)(1) The spoil must be placed on the solid portion of the bench in a controlled manner and concurrently compacted as necessary to attain a long-term static safety factor of 1.3 for all portions of the fill.

(2) Any spoil deposited on any fill portion of the bench must be treated as an excess spoil fill under § 817.71 of this part.

(e) You must grade the spoil placed on the preexisting bench to—

(1) Achieve a stable slope that does not exceed the angle of repose.

(2) Eliminate the preexisting highwall to the maximum extent technically practical, using all reasonably available spoil, as that term is defined in § 701.5 of this chapter.

(3) Minimize erosion and water pollution both on and off the site.

(f) All disturbed areas, including diversion channels that are not riprapped or otherwise protected, must be revegetated upon completion of construction.

(g) You may not construct permanent impoundments on preexisting benches on which excess spoil is placed under this section.

(h) The final configuration of the fill on the preexisting bench must—

(1) Be compatible with natural drainage patterns and the surrounding area.

(2) Support the approved postmining land use.

§ 817.81 How must I dispose of coal mine waste?

(a) *General requirements.* If you, the permittee, intend to dispose of coal mine waste in an area other than the

mine workings or excavations, you must place the waste in new or existing disposal areas within a permit area in accordance with this section and, as applicable, §§817.83 and 817.84 of this part.

(b) *Basic performance standards.* You must haul or convey and place the coal mine waste in a controlled manner to—

(1) Minimize the adverse effects of leachate and surface-water runoff on groundwater and surface water, including aquatic life, within the permit and adjacent areas to the extent possible, using the best technology currently available.

(2) Ensure mass stability and prevent mass movement during and after construction.

(3) Ensure that the final disposal facility is suitable for revegetation, compatible with the natural surroundings, and consistent with the approved postmining land use.

(4) Not create a public hazard.

(5) Prevent combustion.

(6) Ensure that the disposal facility will not change the size or frequency of peak flows from precipitation events or thaws in a way that would result in an increase in flooding when compared with the impacts of premining peak flows.

(7) Ensure that the disposal facility will not cause or contribute to a violation of applicable state or tribal groundwater standards or preclude any premining use of groundwater.

(8) Ensure that the disposal facility will not cause or contribute to a violation of applicable state or tribal water quality standards for surface water located downstream of the toe of the fill, including, but not limited to, water quality standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c).

(9) Ensure that the disposal facility will not discharge acid or toxic mine drainage.

(c) *Coal mine waste from outside the permit area.* You may dispose of coal mine waste materials from activities located outside the permit area within the permit area only if approved by the regulatory authority. Approval must be based upon a showing that disposal will be in accordance with the standards of this section.

(d) *Design and construction requirements.* (1)(i) You must design and construct coal mine waste disposal facilities using current, prudent engineering practices and any design and construction criteria established by the regulatory authority.

(ii) A qualified registered professional engineer, experienced in the design and construction of similar earth and waste structures, must certify the design of the disposal facility. The engineer must specifically certify that any existing and planned underground mine workings in the vicinity of the disposal facility will not adversely impact the stability of the structure.

(iii) You must construct the disposal facility in accordance with the design and plans submitted under §784.25 of this chapter and approved in the permit. A qualified registered professional engineer experienced in the design and construction of similar earth and waste structures must certify that the facility has been constructed in accordance with the requirements of this paragraph.

(2) You must design and construct the disposal facility to attain a minimum long-term static safety factor of 1.5. The foundation and abutments must be stable under all conditions of construction.

(e) *Foundation investigations.* (1) You must perform sufficient foundation and abutment investigations, as well as any necessary laboratory testing of foundation material, to determine the design requirements for foundation stability and control of underseepage. The analyses of the foundation conditions must take into consideration the effect of any underground mine workings located in the permit and adjacent areas upon the stability of the disposal facility.

(f) *Soil handling requirements.* You must remove all vegetation, organic matter, and soil materials from the disposal area prior to placement of the coal mine waste. You must store, redistribute, or otherwise use those materials in accordance with §817.22 of this part. You may use soil substitutes and supplements if approved in the permit in accordance with §784.12(e) of this chapter.

(g) *Emergency procedures.* (1) If any examination or inspection discloses that a potential hazard exists, you must inform the regulatory authority promptly of the finding and of the emergency procedures formulated for public protection and remedial action.

(2) If adequate procedures cannot be formulated or implemented, you must notify the regulatory authority immediately. The regulatory authority then must notify the appropriate agencies that other emergency procedures are required to protect the public.

(h) *Underground disposal.* You may dispose of coal mine waste in underground mine workings only in accordance with a plan approved by the regulatory authority and the Mine Safety and Health Administration under § 784.26 of this chapter.

§ 817.83 What special requirements apply to coal mine waste refuse piles?

(a) *General requirements.* Refuse piles must meet the requirements of § 817.81 of this part, the additional requirements of this section, and the requirements of §§ 77.214 and 77.215 of this title.

(b) *Surface runoff and drainage control.* (1) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, you must design and construct the refuse pile with diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility, and ensure stability.

(2) You may not direct or divert uncontrolled surface runoff over the out-slope of the refuse pile.

(3) You must direct runoff from areas above the refuse pile and runoff from the surface of the refuse pile into stabilized channels designed to meet the requirements of § 817.43 of this part and to safely pass the runoff from the 100-year, 6-hour precipitation event. You must use the appropriate regional Natural Resources Conservation Service synthetic storm distribution to determine the peak flow from surface runoff from this event.

(4) Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile.

(5) Underdrains must comply with the requirements of § 817.71(f) of this part.

(c) *Surface area stabilization.* You must provide slope protection to minimize surface erosion at the site. You must revegetate all disturbed areas, including diversion channels that are not riprapped or otherwise protected, upon completion of construction.

(d) *Final configuration and cover.* (1) The final configuration of the refuse pile must be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the refuse pile if required for stability, erosion control, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the outslope between terrace benches may not be steeper than 2h:1v (50 percent).

(2) No permanent impoundments or depressions are allowed on the completed refuse pile.

(3) Following final grading of the refuse pile, you must cover the coal mine waste with a minimum of 4 feet of the best available, nontoxic, and non-combustible material in a manner that does not impede drainage from the underdrains. The regulatory authority may allow less than 4 feet of cover material based on physical and chemical analyses showing that the revegetation requirements of §§ 817.111 and 817.116 of this part will be met.

(e) *Inspections.* You must comply with the inspection and examination requirements of § 817.71(k) of this part.

§ 817.84 What special requirements apply to coal mine waste impounding structures?

(a) Impounding structures constructed of coal mine waste or intended to impound coal mine waste must meet the requirements of § 817.81 of this part.

(b) You may not use coal mine waste to construct impounding structures unless you demonstrate, and the regulatory authority finds in writing, that the stability of such a structure conforms to the requirements of this part and that the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment as a result of acid drainage or toxic seepage through the impounding

§817.87

structure. You must discuss the stability of the structure and the prevention and potential impact of acid drainage or toxic seepage through the impounding structure in detail in the design plan submitted to the regulatory authority in accordance with §784.25 of this chapter.

(c)(1) You must design, construct, and maintain each impounding structure constructed of coal mine waste or intended to impound coal mine waste in accordance with paragraphs (a) and (c) of §817.49 of this part.

(2) You may not retain these structures permanently as part of the approved postmining land use.

(3) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of §77.216(a) of this title must have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6-hour precipitation event, or greater event as specified by the regulatory authority.

(d) You must design spillways and outlet works to provide adequate protection against erosion and corrosion. Inlets must be protected against blockage.

(e) You must direct surface runoff from areas above the disposal facility and runoff from the surface of the facility that may cause instability or erosion of the impounding structure into stabilized channels designed and constructed to meet the requirements of §817.43 of this part and to safely pass the runoff from a 100-year, 6-hour precipitation event. You must use the appropriate regional Natural Resources Conservation Service synthetic storm distribution to determine the peak flow from surface runoff from this event.

(f) For an impounding structure constructed of or impounding coal mine waste, you must remove at least 90 percent of the water stored during the design precipitation event within the 10-day period following the design precipitation event.

30 CFR Ch. VII (7–1–17 Edition)

§817.87 What special requirements apply to burning and burned coal mine waste?

(a) You must extinguish coal mine waste fires in accordance with a plan approved by the regulatory authority and the Mine Safety and Health Administration. The plan must contain, at a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedures to be used, are involved in the extinguishing operations.

(b) You may not remove burning or burned coal mine waste from a permitted coal mine waste disposal area without a removal plan approved by the regulatory authority. Consideration must be given to potential hazards to persons working or living in the vicinity of the structure.

§817.89 How must I dispose of noncoal mine wastes?

(a)(1) You must place and store noncoal mine wastes, including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber, and other combustible materials generated during mining activities, in a controlled manner in a designated portion of the permit area.

(2) Placement and storage of noncoal wastes must ensure that leachate and surface runoff do not degrade surface water or groundwater, that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(b)(1) Final disposal of noncoal mine wastes must be in a designated disposal site within the permit area or in a state-approved solid waste disposal area.

(2) Disposal sites within the permit area must meet the following requirements:

(i) The site must be designed and constructed to ensure that leachate and drainage from the noncoal mine waste area does not degrade surface water or groundwater.

(ii) Wastes must be routinely compacted and covered to prevent combustion and wind-borne waste.

(iii) When the disposal of noncoal wastes is completed, the site must be covered with a minimum of 2 feet of soil, slopes must be stabilized, and the site must be revegetated in accordance with §§ 817.111 through 817.116 of this part.

(iv) The disposal site must be operated in accordance with all local, state and federal requirements.

(c) At no time may any noncoal mine waste be deposited in a coal mine waste refuse pile or impounding structure, nor may an excavation for a noncoal mine waste disposal site be located within 8 feet of any coal outcrop or coal storage area.

§ 817.95 How must I protect surface areas from wind and water erosion?

(a) You must protect and stabilize all exposed surface areas to effectively control erosion and air pollution attendant to erosion.

(b)(1) You must fill, regrade, or otherwise stabilize rills and gullies that form in areas that have been regraded and upon which soil or soil substitute materials have been redistributed. This requirement applies only to rills and gullies that—

(i) Disrupt the approved postmining land use or reestablishment of the vegetative cover;

(ii) Cause or contribute to a violation of applicable state or tribal water quality standards or effluent limitations, including, but not limited to, water quality standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c), and effluent limitations established in any National Pollutant Discharge Elimination System permit issued for the operation under section 402 of the Clean Water Act, 33 U.S.C. 1342, or its state or tribal counterpart;

(iii) Cause or contribute to a violation of applicable state or tribal water quality standards for groundwater; or

(iv) Result in material damage to the hydrologic balance outside the permit area.

(2) You must reapply soil materials to the filled or regraded rills and gullies when necessary to reestablish a vegetative cover. You must then replant those areas.

§ 817.97 How must I protect and enhance fish, wildlife, and related environmental values?

(a) *General requirements.* You, the permittee, must, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and achieve enhancement of those resources where practicable, as described in detail in the fish and wildlife protection and enhancement plan approved in the permit in accordance with § 784.16 of this chapter.

(b) *Requirements related to federal, state, and tribal endangered species laws.*—(1) *Requirements related to the Endangered Species Act of 1973.* (i) You may not conduct any surface mining activity that is in violation of the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* Nothing in this chapter authorizes the taking of a species listed as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, or the destruction or adverse modification of designated critical habitat unless the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as applicable, authorizes the taking of a threatened or endangered species or the destruction or adverse modification of designated critical habitat under 16 U.S.C. 1536(b)(4) or 1539(a)(1)(B).

(ii) You must promptly report to the regulatory authority the presence of any previously unreported species listed as threatened or endangered, or any previously unreported species proposed for listing as threatened or endangered, under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, within the permit or adjacent areas. This requirement applies regardless of whether the species was listed before or after permit issuance.

(iii) (A) Upon receipt of a notification under paragraph (b)(2)(ii) of this section, the regulatory authority will contact and coordinate with the appropriate state, tribal, and federal fish and wildlife agencies.

(B) The regulatory authority, in coordination with the appropriate state, tribal, and federal fish and wildlife agencies, will identify whether, and

under what conditions, you may proceed. When necessary to ensure compliance with the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, the regulatory authority will issue an order under §774.10(b) of this chapter requiring that you revise the permit.

(iv) You must comply with any species-specific protection measures required by the regulatory authority in coordination with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as applicable.

(2) *Requirements related to state or tribal endangered species laws.* (i) You must promptly report to the regulatory authority any previously unreported state-listed or tribally-listed threatened or endangered species within the permit or adjacent areas whenever you become aware of its presence. This requirement applies regardless of whether the species was listed before or after permit issuance.

(ii) (A) Upon receipt of a notification under paragraph (b)(2)(i) of this section, the regulatory authority will contact and coordinate with the appropriate state or tribal fish and wildlife agencies.

(B) The regulatory authority, in coordination with the appropriate state or tribal fish and wildlife agencies, will identify whether, and under what conditions, you may proceed. When necessary, the regulatory authority will issue an order under §774.10(b) of this chapter requiring that you revise the permit.

(c) *Bald and golden eagles.* (1) You may not conduct any underground mining activity in a manner that would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs.

(2) You must promptly report to the regulatory authority any golden or bald eagle nest within the permit area of which you become aware.

(3) Upon notification, the regulatory authority will contact and coordinate with the U.S. Fish and Wildlife Service and, when appropriate, the state or tribal fish and wildlife agency to identify whether, and under what conditions, you may proceed.

(4) Nothing in this chapter authorizes the taking of a bald or golden eagle, its nest, or any of its eggs in violation of

the Bald and Golden Eagle Protection Act, 16 U.S.C. 668-668d.

(d) *Miscellaneous protective measures for other species of fish and wildlife.* To the extent possible, using the best technology currently available, you must—

(1) Ensure that electric power transmission lines and other transmission facilities used for, or incidental to, surface mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors and other avian species with large wingspans.

(2) Locate, construct, operate, and maintain haul and access roads and sedimentation control structures in a manner that avoids or minimizes impacts on important fish and wildlife species or other species protected by state or federal law.

(3) Design fences, overland conveyors, and other potential barriers to permit passage for large mammals, except where the regulatory authority determines that such requirements are unnecessary.

(4) Fence, cover, or use other appropriate methods to exclude wildlife from ponds that contain hazardous concentrations of toxic or toxic-forming materials.

(5) Reclaim and reforest lands that were forested at the time of application and lands that would revert to forest under conditions of natural succession in a manner that enhances recovery of the native forest ecosystem as expeditiously as practicable.

(e) *Wetlands.* (1) To the extent possible, using the best technology currently available, you must avoid disturbances to wetlands and, where practicable, enhance them. If avoidance is not possible, you must restore or replace wetlands that you disturb and, where practicable, enhance them.

(2) Nothing in paragraph (e)(1) of this section authorizes destruction or degradation of wetlands in violation of section 404 of the Clean Water Act, 33 U.S.C. 1344.

(f) *Habitat of unusually high value for fish and wildlife.* To the extent possible, using the best technology currently available, you must avoid disturbances to and, where practicable, enhance riparian and other native vegetation

along rivers and streams, lentic vegetation bordering ponds and lakes, and habitat of unusually high value for fish and wildlife, as described in § 783.20(c)(3) of this chapter. If avoidance of these features is not possible, you must restore or replace those features and, where practicable, enhance them.

(g) *Vegetation requirements for fish and wildlife habitat postmining land use.* Where fish and wildlife habitat is a postmining land use, you must select and arrange the plant species to be used for revegetation to maximize the benefits to fish and wildlife. Plant species must be native to the area and must be selected on the basis of the following criteria:

(1) Their proven nutritional value for fish or wildlife.

(2) Their value as cover for fish or wildlife.

(3) Their ability to support and enhance fish or wildlife habitat after the release of performance bonds.

(4) Their ability to sustain natural succession by allowing the establishment and spread of plant species across ecological gradients. You may not use invasive plant species that are known to inhibit natural succession.

(h) *Vegetation requirements for cropland postmining land use.* Where cropland is the postmining land use, and where appropriate for wildlife-management and crop-management practices, you must intersperse the crop fields with trees, hedges, or fence rows to break up large blocks of monoculture and to diversify habitat types for birds and other animals.

(i) *Vegetation requirements for forestry postmining land uses.* Where forestry, whether managed or unmanaged, is the postmining land use, you must plant native tree and understory species to the extent that doing so is not inconsistent with the type of forestry to be practiced as part of the postmining land use. In all cases, regardless of the type of forestry to be practiced as part of the postmining land use, you must intersperse plantings of commercial species with plantings of native trees and shrubs of high value to wildlife.

(j) *Vegetation requirements for other postmining land uses.* Where residential, public service, commercial, industrial,

or intensive recreational uses are the postmining land use, you must establish—

(1) Greenbelts comprised of non-invasive native plants that provide food or cover for wildlife, unless greenbelts would be inconsistent with the approved postmining land use plan for that site.

(2)(i) A vegetated buffer at least 100 feet wide along each bank of all perennial and intermittent streams within the permit area. The width of the buffer must be measured horizontally on a line perpendicular to the stream, beginning at the ordinary high water mark. The buffer must be planted with species native to the area, including species adapted to and suitable for planting in any floodplains or other riparian habitat located within the buffer. The species planted must consist of native tree and understory species if the land was forested at the time of application or if it would revert to forest under conditions of natural succession.

(ii) Paragraph (i)(2)(i) of this section does not apply to situations in which a vegetated buffer comprised of native species would be incompatible with an approved postmining land use that is implemented before final bond release under §§ 800.40 through 800.43 of this chapter.

(k) *Planting arrangement requirements.* You must design and arrange plantings in a manner that optimizes benefits to wildlife to the extent practicable and consistent with the postmining land use.

§ 817.99 What measures must I take to prevent and remediate landslides?

(a) You must notify the regulatory authority by the fastest available means whenever a landslide occurs that has the potential to adversely affect public property, health, safety, or the environment.

(b) You must comply with any remedial measures that the regulatory authority requires in response to the notification provided in paragraph (a) of this section.

§ 817.100 What are the standards for conducting reclamation contemporaneously with mining?

(a) You must reclaim all areas disturbed by surface impacts incident to an underground coal mine as contemporaneously as practicable with the mining operations, except when the mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities under § 785.18 of this chapter. Reclamation activities include, but are not limited to, backfilling, grading, soil replacement, revegetation, and stream restoration.

(b) The regulatory authority may establish schedules that define contemporaneous reclamation.

§ 817.102 How must I backfill surface excavations and grade and configure the land surface?

(a) You, the permittee or operator, must backfill all surface excavations and grade all disturbed areas in compliance with the plan approved in the permit in accordance with § 784.12(d) of this chapter to—

(1) Restore the approximate original contour as the final surface configuration, except in the following situations:

(i) Sites for which the regulatory authority has approved a variance under § 785.16 of this chapter.

(ii) Remining operations on previously mined areas, but only to the extent specified in § 817.106(b) of this part.

(iii) Excess spoil fills constructed in accordance with § 817.71 or § 817.74 of this part.

(iv) Refuse piles constructed in accordance with § 817.83 of this part.

(v) Permanent impoundments that meet the requirements of paragraph (a)(3)(ii) of this section and § 784.35(b)(4) of this chapter.

(vi) The placement, in accordance with § 784.35(b)(3) of this chapter, of what would otherwise be excess spoil on the mined-out area to heights in excess of the premining elevation when necessary to avoid or minimize construction of excess spoil fills on undisturbed land.

(vii) Regrading of settled and revegetated spoil storage sites at the conclusion of underground mining activities,

provided the following conditions are met:

(A) The settled and revegetated storage sites are composed of spoil or non-acid-forming or non-toxic-forming underground development waste.

(B) The spoil or underground development waste is not located so as to be detrimental to the environment, the health and safety of the public, or the approved postmining land use.

(C) You demonstrate, through standard geotechnical analysis, that the spoil or underground development waste has a 1.3 static safety factor for material placed on a solid bench and a 1.5 static safety factor for material not placed on a solid bench.

(D) The surface of the spoil or underground development waste is revegetated in accordance with §§ 817.111 and 817.116 of this part.

(E) Surface runoff is controlled in accordance with § 784.29 of this chapter and §§ 817.43 and 817.45 of this part.

(F) The regulatory authority determines that disturbance of the existing spoil or underground development waste would increase environmental harm or adversely affect the health or safety of the public.

(G) The spoil is not needed to eliminate the highwall or to meet other regulatory program requirements.

(2) Minimize the creation of uniform slopes and cut-and-fill terraces. The regulatory authority may approve cut-and-fill terraces only if—

(i) They are compatible with the approved postmining land use and are needed to conserve soil moisture, ensure stability, or control erosion on final-graded slopes; or

(ii) Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land use.

(3) Eliminate all highwalls, spoil piles, impoundments, and depressions, except in the following situations:

(i) You may construct or retain small depressions if—

(A) They are needed to retain moisture, minimize erosion, create or enhance wildlife habitat, or assist revegetation;

(B) They are consistent with the hydrologic reclamation plan approved in the permit in accordance with § 784.22 of this chapter; and

(C) You demonstrate that they will not result in elevated levels of parameters of concern in discharges from the backfilled and graded area.

(ii) The regulatory authority may approve the retention of permanent impoundments if—

(A) They meet the requirements of §§ 817.49 and 817.55 of this part;

(B) They are suitable for the approved postmining land use; and

(C) You demonstrate compliance with the future maintenance provisions of § 800.42(c)(5) of this chapter.

(D) You have obtained all necessary approvals and authorizations under section 404 of the Clean Water Act, 33 U.S.C. 1344, when the impoundment is located in waters subject to the jurisdiction of the Clean Water Act, 33 U.S.C. 1251 *et seq.*

(iii) You may retain highwalls on previously mined areas to the extent provided in § 817.106(b) of this part.

(iv) You may retain modified highwall segments to the extent necessary to replace similar natural landforms removed by the mining operation. The regulatory program must establish the conditions under which these highwall segments may be retained and the modifications that must be made to the highwall to ensure that—

(A) The retained segment resembles similar landforms that existed before any mining and restores the ecological niches that those landforms provided. Nothing in this paragraph authorizes the retention of modified highwall segments in excess of the number, length, and height needed to replace similar landforms that existed before any mining.

(B) The retained segment is stable. Features that result in the creation of talus slopes for wildlife habitat are acceptable if they meet the requirements of paragraph (a)(3)(iv)(A) of this section.

(C) The retained segment does not create an increased safety hazard compared to the features that existed before any mining.

(D) The exposure of water-bearing strata, if any, in the retained segment does not adversely impact the hydrologic balance.

(v) You may retain settled and revegetated spoil storage sites under the conditions specified in paragraph (a)(1)(vii) of this section.

(4) Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides.

(5) Minimize erosion and water pollution, both on and off the site.

(6) Support the approved postmining land use.

(b) You must return all spoil to the surface excavations from which the spoil was removed. This requirement does not apply to—

(1) Excess spoil disposed of in accordance with § 817.71 or § 817.74 of this part.

(2) Spoil placed outside surface excavations in non-steep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain, provided that you comply with the following requirements:

(i) You must remove all vegetation and other organic matter from the area upon which you intend to place spoil for blending purposes. You may not burn these materials; you must store, redistribute, use, or bury them in the manner specified in § 817.22(f) of this part.

(ii) You must remove, segregate, store, and redistribute topsoil, in accordance with § 817.22 of this part, from the area upon which you intend to place spoil for blending purposes.

(3) Settled and revegetated spoil storage sites under the conditions specified in paragraph (a)(1)(vii) of this section.

(c) You must compact spoil and waste materials when necessary to ensure stability or to prevent the formation of acid or toxic mine drainage, but, to the extent possible, you must avoid compacting spoil, soil, and other materials placed in what will be the root zone of the species planted under

§ 817.106

the revegetation plan approved in the permit in accordance with § 784.12(g) of this chapter.

(d)(1) You must cover all exposed coal seams with material that is non-combustible, nonacid-forming, and nontoxic-forming.

(2) You must handle and dispose of all other combustible materials exposed, used, or produced during mining in accordance with § 817.89 of this part in a manner that will prevent sustained combustion, as approved in the permit in accordance with § 784.12(j) of this chapter.

(3) You must handle all other acid-forming and toxic-forming materials—

(i) In compliance with the plan approved in the permit in accordance with § 784.12(n) of this chapter;

(ii) In compliance with § 817.38 of this part;

(iii) In compliance with the hydrologic reclamation plan approved in the permit in accordance with § 784.22(a) of this chapter; and

(iv) In a manner that will minimize adverse effects on plant growth and the approved postmining land use.

(e) You must dispose of any coal mine waste placed in the surface excavation in accordance with §§ 817.81 and 817.83 of this part, except that a long-term static safety factor of 1.3 will apply instead of the 1.5 factor specified in § 817.81(d)(2) of this part.

(f) You must prepare final-graded surfaces in a manner that minimizes erosion and provides a surface for replacement of soil materials that will minimize slippage.

§ 817.106 What special provisions for backfilling, grading, and surface configuration apply to previously mined areas with a preexisting highwall?

(a) Remining operations on previously mined areas that contain a preexisting highwall must comply with the requirements of §§ 817.102 through 817.107 of this part, except as provided in this section.

(b) The highwall elimination requirements of § 817.102(a) of this part do not apply to remining operations for which you demonstrate in writing, to the regulatory authority's satisfaction, that the volume of all reasonably available spoil is insufficient to completely

30 CFR Ch. VII (7–1–17 Edition)

backfill the reaffected or enlarged highwall. Instead, for those operations, you must eliminate the highwall to the maximum extent technically practical in accordance with the following criteria:

(1) You must use all spoil generated by the remining operation and any other reasonably available spoil to backfill the area. You must include reasonably available spoil in the immediate vicinity of the remining operation within the permit area.

(2) You must grade the backfilled area to a slope that is compatible with the approved postmining land use and that provides adequate drainage and long-term stability.

(3) Any highwall remnant must be stable and not pose a hazard to the public health and safety or to the environment. You must demonstrate, to the satisfaction of the regulatory authority, that the highwall remnant is stable.

(4) You must not disturb spoil placed on the outslope during previous mining operations if disturbance would cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

§ 817.107 What special provisions for backfilling, grading, and surface configuration apply to operations on steep slopes?

(a) Underground mining activities on steep slopes must comply with this section and the requirements of §§ 817.102 through 817.106 of this part.

(b) You may not place the following materials on the downslope:

(1) Spoil.

(2) Waste materials of any type.

(3) Debris, including debris from clearing and grubbing, except for woody materials used to enhance fish and wildlife habitat.

(4) Abandoned or disabled equipment.

(c) You may not disturb land above the highwall unless the regulatory authority finds that disturbance will facilitate compliance with the environmental protection standards of this subchapter and the disturbance is limited to that necessary to facilitate compliance.

(d) You must handle woody materials in accordance with §817.22(f) of this part.

§817.111 How must I revegetate areas disturbed by mining activities?

(a) You, the permittee, must establish a diverse, effective, permanent vegetative cover on regraded areas and on all other disturbed areas except—

(1) Water areas approved as a postmining land use or in support of the postmining land use.

(2) The surfaces of roads approved for retention to support the postmining land use.

(3) Rock piles, water areas, and other non-vegetative features created to restore or enhance wildlife habitat under the fish and wildlife protection and enhancement plan approved in the permit in accordance with §784.16 of this chapter.

(4) Any other impervious surface, such as a building or a parking lot, approved as part of or in support of the postmining land use. This provision applies only to structures and facilities constructed before expiration of the revegetation responsibility period.

(b) The reestablished vegetative cover must—

(1) Comply with the revegetation plan approved in the permit in accordance with §784.12(g) of this chapter.

(2) Be consistent with the approved postmining land use and, except as provided in the revegetation plan approved in the permit in accordance with §784.12(g) of this chapter, the native plant communities described in §783.19 of this chapter.

(3) Be at least equal in extent of cover to the natural vegetation of the area.

(4) Be capable of stabilizing the soil surface and, in the long term, preventing erosion in excess of what would have occurred naturally had the site not been disturbed.

(5) Not inhibit the establishment of trees and shrubs when the revegetation plan approved in the permit requires the use of woody plants.

(c) Volunteer plants of species that are desirable components of the plant communities described in the permit application under §783.19 of this chapter and that are not inconsistent with

the postmining land use may be considered in determining whether the requirements of §§817.111 and 817.116 have been met.

(d) You must stabilize all areas upon which you have redistributed soil or soil substitute materials. You must use one or a combination of the following methods, unless the regulatory authority determines that neither method is necessary to stabilize the surface and control erosion—

(1) Establishing a temporary vegetative cover consisting of noncompetitive and non-invasive species, either native or domesticated or a combination thereof.

(2) Applying suitable mulch free of weed and noxious plant seeds.

(e) You must plant all disturbed areas with the species needed to establish a permanent vegetative cover during the first normal period for favorable planting conditions after redistribution of the topsoil or other plant-growth medium. The normal period for favorable planting conditions is the generally accepted local planting time for the type of plant materials approved in the permit as part of the revegetation plan under §784.12(g) of this chapter.

§§817.113–817.114 [Reserved]

§817.115 How long am I responsible for revegetation after planting?

(a) *General provisions.* (1) The period of extended responsibility for successful revegetation will begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with paragraph (d) of this section.

(2) The initial planting of small areas that are regraded and planted as a result of the removal of sediment control structures and associated structures and facilities, including ancillary roads used to access those structures, need not be considered an augmented seeding necessitating an extended or separate revegetation responsibility period. This paragraph also applies to areas upon which accumulated sediment and materials resulting from removal of

sedimentation pond embankments are spread.

(b) *Areas of more than 26.0 inches of average annual precipitation.* In areas of more than 26.0 inches of annual average precipitation, the period of responsibility will continue for a period of not less than—

(1) Five full years, except as provided in paragraph (b)(2) of this section.

(i) The vegetation parameters for grazing land, pasture land, or cropland must equal or exceed the approved success standard during the growing season of any 2 years of the responsibility period, except the first year.

(ii) On all other areas, the parameters must equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(2) Two full years for lands eligible for remining included in a permit approved under §785.25 of this chapter. The lands must equal or exceed the applicable ground cover standard during the growing season of the last year of the responsibility period.

(c) *Areas of 26.0 inches or less average annual precipitation.* In areas of 26.0 inches or less average annual precipitation, the period of responsibility will continue for a period of not less than:

(1) Ten full years, except as provided in paragraph (c)(2) of this section.

(i) The vegetation parameters for grazing land, pasture land, or cropland must equal or exceed the approved success standard during the growing season of any two years after year six of the responsibility period.

(ii) On all other areas, the parameters must equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(2) Five full years for lands eligible for remining included in a permit approved under §785.25 of this chapter. The lands must equal or exceed the applicable ground cover standard during the growing seasons of the last two consecutive years of the responsibility period.

(d) *Normal husbandry practices.* (1) The regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior ap-

proval from OSMRE in accordance with §732.17 of this chapter that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability, if those practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success.

(2) Approved practices must be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions.

§817.116 What requirements apply to standards for determining revegetation success?

(a) The regulatory authority must select standards for revegetation success and statistically valid sampling techniques for measuring revegetation success. The standards and techniques must be made available to the public in written form.

(b) The standards for success applied to a specific permit must reflect the revegetation plan requirements of §784.12(g) of this chapter. They must be based upon the following data—

(1) The plant community and vegetation information required under §783.19 of this chapter.

(2) The soil type and productivity information required under §783.21 of this chapter.

(3) The land use capability and productivity information required under §783.22 of this chapter.

(4) The postmining land use approved under §784.24 of this chapter, but only to the extent that the approved postmining land use will be implemented before final bond release under §§800.40 through 800.43 of this chapter. Otherwise, the site must be revegetated in a manner that will restore native plant communities and the revegetation success standards for the site must reflect that requirement.

(c) Except for the areas identified in §817.111(a) of this part, standards for success must include—

(1) Species diversity.

(2) Areal distribution of species.

(3) Ground cover, except for land actually used for cropland after the completion of regrading and redistribution of soil materials.

(4) Production, for land used for cropland, pasture, or grazing land either before permit issuance or after the completion of regrading and redistribution of soil materials.

(5) Stocking, for areas revegetated with woody plants.

(d) The ground cover, production, or stocking of the revegetated area will be considered equal to the approved success standard for those parameters when the measured values are not less than 90 percent of the success standard, using a 90-percent statistical confidence interval (*i.e.*, a one-sided test with a 0.10 alpha error).

(e) For all areas revegetated with woody plants, regardless of the postmining land use), the regulatory authority must specify minimum stocking and planting arrangements on the basis of local and regional conditions and after coordination with and approval by the state agencies responsible for the administration of forestry and wildlife programs. Coordination and approval may occur on either a program-wide basis or a permit-specific basis.

(f)(1) Only those species of trees and shrubs approved in the permit as part of the revegetation plan under §784.12(g) of this chapter or volunteer trees and shrubs of species that meet the requirements of §817.111(c) of this part may be counted in determining whether stocking standards have been met.

(2)(i) At the time of final bond release under §§800.40 through 800.43 of this chapter, at least 80 percent of the trees and shrubs used to determine success must have been in place for 60 percent of the applicable minimum period of responsibility under §817.115 of this part.

(ii) Trees and shrubs counted in determining revegetation success must be healthy and have been in place for not less than two growing seasons. Any

replanting must be done by means of transplants to allow for proper accounting of plant stocking.

(iii)(A) For purposes of paragraph (f)(2)(ii) of this section, volunteer trees and shrubs of species that meet the requirements of §817.111(c) of this part may be deemed equivalent to planted specimens two years of age or older.

(B) Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.

(iv) The requirements of paragraphs (f)(2)(i) and (ii) of this section will be deemed met when records of woody vegetation planted show that—

(A) No woody plants were planted during the last two growing seasons of the responsibility period; and,

(B) If any replanting of woody plants took place earlier during the responsibility period, the total number planted during the last 60 percent of that period is less than 20 percent of the total number of woody plants required to meet the stocking standard.

(3) Vegetative ground cover on areas planted with trees or shrubs must be of a nature that allows for natural establishment and succession of native plants, including trees and shrubs.

(g) *Special provision for areas that are developed within the revegetation responsibility period.* Portions of the permit area that are developed for industrial, commercial, or residential use within the revegetation responsibility period need not meet production or stocking standards. For those areas, the vegetative ground cover must not be less than that required to control erosion.

(h) *Special provision for previously mined areas.* Previously mined areas need only meet a vegetative ground cover standard, unless the regulatory authority specifies otherwise. At a minimum, the cover on the revegetated previously mined area must not be less than the ground cover existing before redisturbance and must be adequate to control erosion.

(i) *Special provision for prime farmland.* For prime farmland historically used for cropland, the revegetation success standard provisions of §823.15 of this chapter apply in lieu of the requirements of paragraphs (b) through (h) of this section.

§ 817.121 What measures must I take to prevent, control, or correct damage resulting from subsidence?

(a) *Measures to prevent or minimize damage.* (1) You, the permittee or operator, must either—

(i) Adopt measures consistent with known technology that prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands; or

(ii) Adopt mining technology that provides for planned subsidence in a predictable and controlled manner.

(2) If you employ mining technology that provides for planned subsidence in a predictable and controlled manner under paragraph (a)(1)(ii) of this section, you must take necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to non-commercial buildings and occupied residential dwellings and structures related thereto unless—

(i) You have obtained the written consent of the owners of those structures; or

(ii) The costs of those measures would exceed the anticipated costs of repair. This exception does not apply if the anticipated damage would constitute a threat to health or safety.

(3) Nothing in this part prohibits the standard method of room-and-pillar mining.

(b) You must comply with all provisions of the subsidence control plan prepared pursuant to § 784.30 of this chapter and approved in the permit.

(c) *Repair of damage to surface lands and waters.* (1) To the extent technologically and economically feasible, you must correct any subsidence-related material damage to surface lands, wetlands, streams, or water bodies by restoring the land and water features to a condition capable of maintaining the value and reasonably foreseeable uses that the land was capable of supporting before the subsidence-related damage occurred.

(2) When correction of subsidence-related material damage to wetlands or a perennial or intermittent stream is

technologically and economically infeasible, you must implement fish and wildlife enhancement measures, as approved by the regulatory authority in a permit revision, to offset the material damage.

(d) *Repair or compensation for damage to non-commercial buildings, occupied residential dwellings and related structures.*

(1) You must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining.

(2) If you select the repair option, you must fully rehabilitate, restore, or replace the damaged structure.

(3) If you select the compensation option, you must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence-related damage. You may provide compensation by the purchase, before mining, of a non-cancellable, premium-prepaid insurance policy.

(4) The requirements of paragraph (d) of this section apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

(e) *Repair or compensation for damage to other structures.* To the extent required under applicable provisions of state law, you must correct material damage resulting from subsidence caused to any structures or facilities not protected by paragraph (d) of this section by either repairing the damage or compensating the owner of the structures or facilities for the full amount of the decrease in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase before mining of a non-cancellable, premium-prepaid insurance policy.

(f) *Information to be considered in determination of causation.* The regulatory authority must consider all relevant and reasonably available information in determining whether damage to protected structures was caused by subsidence from underground mining.

(g) *Adjustment of bond amount for subsidence damage.* (1) When subsidence-related material damage to land (including wetlands, streams, and water bodies), structures or facilities protected under paragraphs (c) through (e) of this section occurs, or when contamination, diminution, or interruption to a water supply protected under §817.40 of this part occurs, the regulatory authority must require the permittee to post additional performance bond until the repair, compensation, or replacement is completed.

(2)(i) For structures protected under paragraphs (d) and (e) of this section, the amount of additional bond required under paragraph (g)(1) of this section must equal the—

(A) Estimated cost of the repairs if the repair option is selected.

(B) Decrease in value if the compensation option is selected.

(ii) For water supplies protected under §817.40 of this part, the amount of additional bond required under paragraph (g)(1) of this section must equal the estimated cost to replace the protected water supply, unless the conditions described in §817.40(a)(4) of this part apply.

(iii) For surface lands and waters to which paragraph (c) of this section applies, the amount of additional bond required under paragraph (g)(1) of this section must equal the estimated cost of restoring the land and waters to a condition capable of maintaining the value and reasonably foreseeable uses that they were capable of supporting before the material damage from subsidence occurred.

(3)(i) The requirements of paragraph (g)(1) of this section do not apply if repair, compensation, or replacement is completed within 90 days of the occurrence of damage. The regulatory authority may extend the 90-day time frame, provided that the total time allowed does not exceed one year, if you demonstrate, and the regulatory authority finds in writing, that repair of subsidence-related material damage to lands, waters, or protected structures or replacement of an adversely impacted protected water supply within 90 days would be unreasonable because—

(A) Subsidence is not complete;

(B) All probable subsidence-related material damage to lands, waters, or protected structures has not yet occurred; or

(C) All reasonably anticipated changes that may affect an adversely impacted protected water supply have not yet occurred.

(ii)(A) If you have not completed correction or repair of subsidence-related material damage to surface lands or waters or replaced adversely impacted protected water supplies within 2 years following the occurrence of that damage, the regulatory authority must initiate bond forfeiture proceedings under §800.50 of this chapter and use the funds collected to repair the surface lands and waters or replace the protected water supplies.

(B) Paragraph (g)(3)(ii)(A) of this section does not apply if—

(1) The landowner refuses to allow access to conduct the corrective measures; or

(2) You demonstrate, and the regulatory authority finds, that correction or repair of the material damage to surface lands or waters is not technologically or economically feasible. In that situation, you must complete the enhancement measures required under paragraph (c)(2) of this section.

(h) *Prohibitions and limitations on underground mining.* (1) You may not conduct underground mining activities beneath or adjacent to—

(i) Public buildings and facilities.

(ii) Churches, schools, and hospitals.

(iii) Impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more.

(2) The prohibitions of paragraph (h)(1) of this section do not apply if the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, the features or facilities listed in paragraphs (h)(1)(i) through (iii) of this section.

(3) The regulatory authority may limit the percentage of coal extracted under or adjacent to the features and facilities listed in paragraphs (h)(1)(i) through (iii) of this section if it determines that the limitation is necessary to minimize the potential for material damage to those features or facilities

§ 817.122

or to any aquifer or body of water that serves as a significant water source for any public water supply system.

(i) If subsidence causes material damage to any of the features or facilities listed in paragraphs (h)(1)(i) through (iii) of this section, the regulatory authority may suspend mining under or adjacent to those features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to those features or facilities.

(j) The regulatory authority must suspend underground mining activities under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if it finds that the mining activities pose an imminent danger to inhabitants of the urbanized areas, cities, towns, or communities.

(k) You must submit a detailed plan of the underground workings of your mine in accordance with a schedule approved by the regulatory authority. The detailed plan must include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the regulatory authority. The regulatory authority may hold the information submitted with the detailed plan as confidential, in accordance with § 773.6(d) of this chapter, upon your request.

§ 817.122 How and when must I provide notice of planned underground mining?

(a) At least 6 months prior to mining, or within that period if approved by the regulatory authority, you, the underground mine operator, must mail a notification to all owners and occupants of surface property and structures above the planned underground workings.

(b) The notification must include, at a minimum—

(1) Identification of specific areas in which mining will take place;

(2) Dates that specific areas will be undermined; and

(3) The location or locations where the subsidence control plan may be examined.

§ 817.131 What actions must I take when I temporarily cease mining operations?

(a)(1) Each person who temporarily ceases to conduct underground mining activities at a particular site must effectively support and maintain all surface access openings to underground operations and secure surface facilities in areas in which there are no current operations, but where operations are to be resumed under an approved permit.

(2) Temporary cessation does not relieve a person of his or her obligation to comply with any provisions of the approved permit.

(b)(1) You must submit a notice of intent to temporarily cease operations to the regulatory authority before ceasing mining and reclamation operations for 30 or more days, or as soon as you know that a temporary cessation will extend beyond 30 days.

(2) The notice of temporary cessation must include a statement of the—

(i) Exact number of surface acres disturbed within the permit area prior to temporary cessation;

(ii) Extent and kind of reclamation accomplished before temporary cessation; and

(iii) Backfilling, regrading, revegetation, environmental monitoring, underground opening closures, and water treatment activities that will continue during temporary cessation.

§ 817.132 What actions must I take when I permanently cease mining operations?

(a) Persons who permanently cease conducting underground mining activities at a particular site must close, backfill, or otherwise permanently reclaim all disturbed areas in accordance with this chapter and the permit approved by the regulatory authority.

(b) All underground openings, surface equipment, surface structures, or other surface facilities must be removed and the affected land reclaimed, unless the regulatory authority approves retention of those features because they are

suitable for the postmining land use or environmental monitoring.

§ 817.133 What provisions concerning postmining land use apply to my operation?

You, the permittee, must restore all disturbed areas in a timely manner to conditions that are capable of supporting—

- (a) The uses they were capable of supporting before any mining; as described under § 783.22 of this chapter; or
- (b) Higher or better uses approved under § 784.24(b) of this chapter.

§ 817.150 What are the general requirements for haul and access roads?

(a) *Road classification system.* (1) Each road meeting the definition of that term in § 701.5 of this chapter must be classified as either a primary road or an ancillary road.

(2) A primary road is any road that is—

- (i) Used for transporting coal or spoil;
- (ii) Frequently used for access or other purposes for a period in excess of 6 months; or
- (iii) To be retained for an approved postmining land use.

(3) An ancillary road is any road not classified as a primary road.

(b) *Performance standards.* Each road must be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to—

(1) Control or prevent erosion, siltation, and air pollution attendant to erosion, including road dust and dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices.

(2) Control or prevent damage to fish, wildlife, or their habitat and related environmental values.

(3) Control or prevent additional contributions of suspended solids to streamflow or runoff outside the permit area.

(4) Neither cause nor contribute, directly or indirectly, to a violation of applicable state or tribal water quality standards for surface water and groundwater, including, but not lim-

ited to, surface water quality standards established under the authority of section 303(c) of the Clean Water Act, 33 U.S.C. 1313(c).

(5) Refrain from seriously altering the normal flow of water in streambeds or drainage channels.

(6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of Congress.

(7) Use nonacid- and nontoxic-forming substances in road surfacing.

(c) *Design and construction limits and establishment of design criteria.* To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads must include appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices, and any necessary design criteria established by the regulatory authority.

(d) *Location.* (1) No part of any road may be located in the channel of an intermittent or perennial stream unless specifically approved by the regulatory authority in accordance with § 784.28 of this chapter and § 817.57 of this part.

(2) Roads must be located to minimize downstream sedimentation and flooding.

(e) *Maintenance.* (1) A road must be maintained to meet the performance standards of this part and any additional criteria specified by the regulatory authority;

(2) A road damaged by a catastrophic event, such as a flood or earthquake, must be repaired as soon as is practicable after the damage has occurred.

(f) *Reclamation.* A road not to be retained as part of an approved postmining land use must be reclaimed

§ 817.151

30 CFR Ch. VII (7–1–17 Edition)

in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. Reclamation must include—

- (1) Closing the road to traffic.
- (2) Removing all bridges and culverts unless approved as part of the postmining land use.
- (3) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements.
- (4) Reshaping the slopes of road cuts and fills as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain.
- (5) Protecting the natural drainage patterns by installing dikes or cross-drains as necessary to control surface runoff and erosion.
- (6) Scarifying or ripping the roadbed, replacing topsoil or substitute material in accordance with § 817.22 of this part, and revegetating disturbed surfaces in accordance with §§ 817.111, 817.115, and 817.116 of this chapter.

§ 817.151 What additional requirements apply to primary roads?

(a) Primary roads must meet the requirements of § 817.150 of this part and the additional requirements of this section.

(b) *Certification.* The construction or reconstruction of primary roads must be certified in a report to the regulatory authority by a qualified registered professional engineer, or in any state that authorizes land surveyors to certify the construction or reconstruction of primary roads, a qualified registered professional land surveyor, with experience in the design and construction of roads. The report must indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

(c) *Safety factor.* Each primary road embankment must have a minimum static factor of 1.3 or meet the requirements established under § 784.37(c) of this chapter.

(d) *Location.* (1) To minimize erosion, a primary road must be located, insofar as is practicable, on the most stable available surface.

(2) Fords of perennial or intermittent streams are prohibited unless they are specifically approved by the regulatory authority as temporary routes during periods of road construction.

(e) *Drainage control.* In accordance with the approved plan—

(1) Each primary road must be constructed (or reconstructed) and maintained to have adequate drainage control, using structures such as, but not limited to bridges, ditches, cross drains, and ditch relief drains. The drainage control system must be designed to safely pass the peak runoff from the 10-year, 6-hour precipitation event, or any greater event specified by the regulatory authority.

(2) Drainage pipes and culverts must be installed as designed, and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets.

(3) Drainage ditches must be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment.

(4) Culverts must be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road.

(5) Natural stream channels must not be altered or relocated without the prior approval of the regulatory authority in accordance with § 784.28 of this chapter and § 817.57 of this part.

(6) Except as provided in paragraph (d)(2) of this section, structures for perennial or intermittent stream channel crossings must be made using bridges, culverts, low-water crossings, or other structures designed, constructed, and maintained using current prudent engineering practices. The regulatory authority must ensure that low-water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow.

(f) *Surfacing.* Primary roads must be surfaced with material approved by the regulatory authority as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

Surface Mining Reclamation and Enforcement, Interior

§ 819.15

§ 817.180 To what extent must I protect utility installations?

You must conduct all underground coal mining operations in a manner that minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines that pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the regulatory authority.

§ 817.181 What requirements apply to support facilities?

(a) You must operate each support facility in accordance with the permit issued for the mine or coal preparation plant to which the facility is incident or from which its operation results.

(b) In addition to the other provisions of this part, you must locate, maintain, and use support facilities in a manner that—

(1) Prevents or controls erosion and siltation, water pollution, and damage to public or private property; and

(2) To the extent possible using the best technology currently available—

(i) Minimizes damage to fish, wildlife, and related environmental values; and

(ii) Minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions may not be in excess of limitations of state or federal law.

§ 817.200 [Reserved]

PART 819—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS-AUGER MINING

Sec.

819.1 Scope.

819.11 Auger mining: General.

819.13 Auger mining: Coal recovery.

819.15 Auger mining: Hydrologic balance.

819.17 Auger mining: Subsidence protection.

819.19 Auger mining: Backfilling and grading.

819.21 Auger mining: Protection of underground mining.

AUTHORITY: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

SOURCE: 48 FR 19322, Apr. 28, 1983, unless otherwise noted.

§ 819.1 Scope.

This part sets environmental protection performance standards for surface coal mining and reclamation operations involving auger mining.

§ 819.11 Auger mining: General.

(a) Auger mining operations shall be conducted in accordance with the requirements of part 816 of this chapter, except as provided in this part.

(b) The regulatory authority may prohibit auger mining, if necessary to—

(1) Maximize the utilization, recoverability, or conservation of the solid-fuel resource, or

(2) Protect against adverse water-quality impacts.

§ 819.13 Auger mining: Coal recovery.

(a) Auger mining shall be conducted so as to maximize the utilization and conservation of the coal in accordance with § 816.59 of this chapter.

(b) Auger mining shall be planned and conducted to maximize recoverability of mineral reserves remaining after the operation and reclamation are complete.

(c) Each person who conducts auger mining operations shall leave areas of undisturbed coal, as approved by the regulatory authority, to provide access for future underground mining activities to coal reserves remaining after augering is completed, unless it is established that the coal reserves have been depleted or are so limited in thickness or extent that it will not be practicable to recover the remaining coal. This determination shall be made by the regulatory authority upon presentation of appropriate technical evidence by the operator.

§ 819.15 Auger mining: Hydrologic balance.

(a) Auger mining shall be planned and conducted to minimize disturbances of the prevailing hydrologic balance in accordance with the requirements of §§ 816.41 and 816.42 of this chapter.

§819.17

30 CFR Ch. VII (7–1–17 Edition)

(b) All auger holes, except as provided in paragraph (c) of this section, shall be—

(1) Sealed within 72 hours after completion with an impervious and non-combustible material, if the holes are discharging water containing acid-or toxic-forming material. If sealing is not possible within 72 hours, the discharge shall be treated commencing within 72 hours after completion to meet applicable effluent limitations and water-quality standards until the holes are sealed; and

(2) Sealed with an impervious non-combustible material, as contemporaneously as practicable with the augering operation, as approved by the regulatory authority, if the holes are not discharging water containing acid-or toxic-forming material.

(c) Auger holes need not be sealed with an impervious material so as to prevent drainage if the regulatory authority determines that—

(1) The resulting impoundment of water may create a hazard to the environment or public health or safety, and

(2) The drainage from the auger holes will—

(i) Not pose a threat of pollution to surface water, and

(ii) Comply with the requirements of §§816.41 and 816.42 of this chapter.

§819.17 Auger mining: Subsidence protection.

Auger mining shall be conducted in accordance with the requirements of §817.121 (a) and (c) of this chapter.

§819.19 Auger mining: Backfilling and grading.

(a) *General.* Auger mining shall be conducted in accordance with the backfilling and grading requirements of §§816.102 and 816.104 through 816.106 of this chapter.

(b) *Remining.* Where auger mining operations affect previously mined areas that were not reclaimed to the standards of this chapter and the volume of all reasonably available spoil is demonstrated in writing to the regulatory authority to be insufficient to completely backfill the highwall, the highwall shall be eliminated to the maximum extent technically practical

in accordance with the following criteria:

(1) The person who conducts the auger mining operation shall demonstrate to the regulatory authority that the backfill, designed by a qualified registered professional engineer, has a minimum static safety factor for the stability of the backfill of at least 1.3.

(2) All spoil generated by the auger mining operation and any associated surface coal mining and reclamation operation, and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil shall include spoil generated by the mining operation and other spoil located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to the public safety or significant damage to the environment. For this purpose, the permit area shall include spoil in the immediate vicinity of the auger mining operation.

(3) The coal seam mined shall be covered with a minimum of 4 feet of nonacid-, nontoxic-forming material and the backfill graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

(4) Any remnant of the highwall shall be stable and not pose a hazard to the public health and safety or to the environment.

(5) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

§819.21 Auger mining: Protection of underground mining.

Auger holes shall not extend closer than 500 feet (measured horizontally) to any abandoned or active underground mine workings, except as approved in accordance with §816.79 of this chapter.

**PART 820—SPECIAL PERMANENT
PROGRAM PERFORMANCE
STANDARDS—ANTHRACITE
MINES IN PENNSYLVANIA**

Sec.

820.1 Scope.

820.2 Objective.

820.11 Performance standards: Anthracite mines in Pennsylvania.

AUTHORITY: Secs. 102, 201, 501, 503, 504, 529, Pub. L. 95-97, 91 Stat. 448, 449, 467, 470, 471, 514 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1279).

§ 820.1 Scope.

This part sets forth environmental protection performance standards for anthracite surface coal mining and reclamation operations in Pennsylvania.

[44 FR 15449, Mar. 13, 1979]

§ 820.2 Objective.

This part implements subsection 529(a) of the Act, which requires the Secretary to adopt special performance standards for anthracite mines regulated by special environmental protection performance standards of a State as of the date of enactment of the Act.

[44 FR 15449, Mar. 13, 1979]

§ 820.11 Performance standards: Anthracite mines in Pennsylvania.

Anthracite mines in Pennsylvania, as specified in section 529 of the Act, shall comply with its approved State program, including Commonwealth of Pennsylvania statutes and regulations, and revisions thereto that are approved by OSM pursuant to part 732 of this chapter.

[47 FR 44943, Oct. 12, 1982]

**PART 822—SPECIAL PERMANENT
PROGRAM PERFORMANCE
STANDARDS—OPERATIONS IN
ALLUVIAL VALLEY FLOORS**

Sec.

822.1 Scope.

822.10 Information collection.

822.11 Essential hydrologic functions.

822.12 Protection of agricultural activities.

822.13 Monitoring.

AUTHORITY: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

SOURCE: 48 FR 29822, June 28, 1983, unless otherwise noted.

§ 822.1 Scope.

This part sets forth additional requirements for surface coal mining and reclamation operations on or which affect alluvial valley floors in the arid and semiarid regions of the country.

§ 822.10 Information collection.

The information collection requirements contained in § 822.13 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0049. The information is being collected to meet the requirements of sections 510(b)(5) and 515(b)(10)(F) of the Act which provide the information collection requirements and performance standards for alluvial valley floors. This information will be used to enable the regulatory authority to assess the impact of the proposed operation during the permanent regulatory program. The obligation to respond is mandatory.

§ 822.11 Essential hydrologic functions.

(a) The operator of a surface coal mining and reclamation operation shall minimize disturbances to the hydrologic balance by preserving throughout the mining and reclamation process the essential hydrologic functions of an alluvial valley floor not within the permit area.

(b) The operator of a surface coal mining and reclamation operation shall minimize disturbances to the hydrologic balance within the permit area by reestablishing throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors.

§ 822.12 Protection of agricultural activities.

(a) *Prohibitions.* Surface coal mining and reclamation operations shall not: (1) Interrupt, discontinue, or preclude farming on alluvial valley floors; or (2) cause material damage to the quantity or quality of water in surface or underground water systems that supply alluvial valley floors.

§ 822.13

(b) *Statutory exclusions.* The prohibitions of paragraph (a) of this section shall not apply—

(1) Where the premining land use of an alluvial valley floor is undeveloped rangeland which is not significant to farming;

(2) Where 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;

(3) To any surface coal mining and reclamation operation that, in the year preceding August 3, 1977—

(i) Produced coal in commercial quantities and was located within or adjacent to an alluvial valley floor; or

(ii) Obtained specific permit approval by the State regulatory authority to conduct surface coal mining and reclamation operations within an alluvial valley floor; or

(4) To any land that is the subject of an application for renewal or revision of a permit issued pursuant to the Act which is an extension of the original permit, insofar as: (i) The land was previously identified in a reclamation plan submitted under either part 780 or 784 of this chapter, and (ii) the original permit area was excluded from the protection of paragraph (a) of this section for a reason set forth in paragraph (b)(3) of this section.

§ 822.13 Monitoring.

(a) A monitoring system shall be installed, maintained, and operated by the permittee on all alluvial valley floors during surface coal mining and reclamation operations and continued until all bonds are released in accordance with Subchapter J of this chapter. The monitoring system shall provide sufficient information to allow the regulatory authority to determine that—

(1) The essential hydrologic functions of alluvial valley floors are being preserved outside the permit area or reestablished within the permit area throughout the mining and reclamation process in accordance with § 822.11;

(2) Farming on lands protected under § 822.12 is not being interrupted, discontinued, or precluded; and

(3) The operation is not causing material damage to the quantity or qual-

30 CFR Ch. VII (7-1-17 Edition)

ity of water in the surface or underground systems that supply alluvial valley floors protected under § 822.12.

(b) Monitoring shall be conducted at adequate frequencies to indicate long-term trends that could affect compliance with §§ 822.11 and 822.12.

(c) All monitoring data collected and analyses thereof shall routinely be made available to the regulatory authority.

PART 823—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS—OPERATIONS ON PRIME FARMLAND

Sec.

823.1 Scope and purpose.

823.4 Responsibilities.

823.11 Applicability.

823.12 Soil removal and stockpiling.

823.14 Soil replacement.

823.15 Revegetation and restoration of soil productivity.

AUTHORITY: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*; Pub. L. 100-34.

SOURCE: 48 FR 21463, May 12, 1983, unless otherwise noted.

§ 823.1 Scope and purpose.

This part sets forth special environmental protection performance, reclamation, and design standards for surface coal mining and reclamation operations on prime farmland.

§ 823.4 Responsibilities.

(a) The U.S. Soil Conservation Service within each State shall establish specifications for prime farmland soil removal, storage, replacement, and reconstruction.

(b) The regulatory authority within each State shall use the soil-reconstruction specifications of paragraph (a) of this section to carry out its responsibilities under § 785.17 and subchapter J of this chapter.

§ 823.11 Applicability.

The requirements of this part shall not apply to—

(a) Coal preparation plants, support facilities, and roads of surface and underground mines that are actively used over extended periods of time and where such uses affect a minimal amount of land. Such uses shall meet

Surface Mining Reclamation and Enforcement, Interior

§ 823.14

the requirements of part 816 of this chapter for surface mining activities and of part 817 of this chapter for underground mining activities;

(b) Disposal areas containing coal mine waste resulting from underground mines that is not technologically and economically feasible to store in underground mines or on non-prime farmland. The operator shall minimize the area of prime farmland used for such purposes.

(c) Prime farmland that has been excluded in accordance with § 785.17(a) of this chapter.

[48 FR 21463, May 12, 1983, as amended at 53 FR 40839, Oct. 18, 1988]

EFFECTIVE DATE NOTE: At 50 FR 7278, Feb. 21, 1985, § 823.11, paragraph (a) was suspended "insofar as it excludes from the requirements of part 823 those coal preparation plants, support facilities, and roads that are surface mining activities".

§ 823.12 Soil removal and stockpiling.

(a) Prime farmland soils shall be removed from the areas to be disturbed before drilling, blasting, or mining.

(b) The minimum depth of soil and soil materials to be removed and stored for use in the reconstruction of prime farmland shall be sufficient to meet the requirements of § 823.14(b).

(c) Soil removal and stockpiling operations on prime farmland shall be conducted to—

(1) Separately remove the topsoil, or remove other suitable soil materials where such other soil materials will create a final soil having a greater productive capacity than that which exist prior to mining. If not utilized immediately, this material shall be placed in stockpiles separate from the spoil and all other excavated materials; and

(2) Separately remove the B or C soil horizon or other suitable soil material to provide the thickness of suitable soil required by § 823.14(b), except as approved by the regulatory authority where the B or C soil horizons would not otherwise be removed and where soil capabilities can be retained. If not utilized immediately, each horizon or other material shall be stockpiled separately from the spoil and all other excavated materials. Where combinations of such soil materials created by mixing have been shown to be equally or

more favorable for plant growth than the B horizon, separate handling is not necessary.

(d) Stockpiles shall be placed within the permit area where they will not be disturbed or be subject to excessive erosion. If left in place for more than 30 days, stockpiles shall meet the requirements of § 816.22 or § 817.22 of this chapter.

[48 FR 21463, May 12, 1983, as amended at 53 FR 40839, Oct. 18, 1988]

§ 823.14 Soil replacement.

(a) Soil reconstruction specifications established by the U.S. Soil Conservation Service shall be based upon the standards of the National Cooperative Soil Survey and shall include, as a minimum, physical and chemical characteristics of reconstructed soils and soil descriptions containing soil-horizon depths, soil densities, soil pH, and other specifications such that reconstructed soils will have the capability of achieving levels of yield equal to, or higher than, those of nominated prime farmland in the surrounding area.

(b) The minimum depth of soil and substitute soil material to be reconstructed shall be 48 inches, or a lesser depth equal to the depth to a subsurface horizon in the natural soil that inhibits or prevents root penetration, or a greater depth if determined necessary to restore the original soil productive capacity. Soil horizons shall be considered as inhibiting or preventing root penetration if their physical or chemical properties or water-supplying capacities cause them to restrict or prevent penetration by roots of plants common to the vicinity of the permit area and if these properties or capacities have little or no beneficial effect on soil productive capacity.

(c) The operator shall replace and regrade the soil horizons or other root-zone material with proper compaction and uniform depth.

(d) The operator shall replace the B horizon, C horizon, or other suitable material specified in § 823.12(c)(2) to the thickness needed to meet the requirements of paragraph (b) of this section. In those areas where the B or C horizons were not removed but may have been compacted or otherwise damaged

§ 823.15

30 CFR Ch. VII (7-1-17 Edition)

during the mining operation, the operator shall engage in deep tilling or other appropriate means to restore pre-mining capabilities.

(e) The operator shall replace the topsoil or other suitable soil materials specified in § 823.12(c)(1) as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original surface soil layer, as determined by the soil survey.

[48 FR 21463, May 12, 1983, as amended at 53 FR 40839, Oct. 18, 1988]

§ 823.15 Revegetation and restoration of soil productivity.

(a) Following prime farmland soil replacement, the soil surface shall be stabilized with a vegetative cover or other means that effectively controls soil loss by wind and water erosion.

(b) Prime farmland soil productivity shall be restored in accordance with the following provisions:

(1) Measurement of soil productivity shall be initiated within 10 years after completion of soil replacement.

(2) Soil productivity shall be measured on a representative sample or on all of the mined and reclaimed prime farmland area using the reference crop determined under paragraph (b)(6) of this section. A statistically valid sampling technique at a 90-percent or greater statistical confidence level shall be used as approved by the regulatory authority in consultation with the U.S. Soil Conservation Service.

(3) The measurement period for determining average annual crop production (yield) shall be a minimum of 3 crop years prior to release of the operator's performance bond.

(4) The level of management applied during the measurement period shall be the same as the level of management used on nonmined prime farmland in the surrounding area.

(5) Restoration of soil productivity shall be considered achieved when the average yield during the measurement period equals or exceeds the average yield of the reference crop established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices.

(6) The reference crop on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland. Where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth shall be chosen as one of the reference crops.

(7) Reference crop yields for a given crop season are to be determined from—

(i) The current yield records of representative local farms in the surrounding area, with concurrence by the U.S. Soil Conservation Service; or

(ii) The average county yields recognized by the U.S. Department of Agriculture, which have been adjusted by the U.S. Soil Conservation Service for local yield variation within the county that is associated with differences between nonmined prime farmland soil and all other soils that produce the reference crop.

(8) Under either procedure in paragraph (b)(7) of this section, the average reference crop yield may be adjusted, with the concurrence of the U.S. Soil Conservation Service, for—

(i) Disease, pest, and weather-induced seasonal variations; or

(ii) Differences in specific management practices where the overall management practices of the crops being compared are equivalent.

PART 824—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS—MOUNTAINTOP REMOVAL MINING OPERATIONS

Sec.

824.1 Scope.

824.2 Objectives.

824.11 What special performance standards apply to mountaintop removal mining operations?

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

§ 824.1 Scope.

This part sets forth special environmental protection performance, reclamation, and design standards for surface coal mining activities constituting mountaintop removal mining.

[44 FR 15452, Mar. 13, 1979]

Surface Mining Reclamation and Enforcement, Interior

§ 825.2

§ 824.2 Objectives.

The objectives of this part are to—

- (a) Enhance coal recovery;
- (b) Reclaim the land to equal or higher postmining use; and
- (c) Protect and enhance environmental and other values protected under the Act and this chapter.

[44 FR 15452, Mar. 13, 1979]

§ 824.11 What special performance standards apply to mountaintop removal mining operations?

(a) *Applicability.* This section applies to all operations for which the regulatory authority has approved a permit under § 785.14 of this chapter.

(b) *Performance standards.* (1) You, the permittee, must comply with all applicable requirements of this subchapter and the regulatory program, other than the approximate original contour restoration requirements of § 816.102(a)(1) of this chapter and the thick overburden requirements of § 816.105 of this chapter.

(2)(i) You must retain an outcrop barrier, consisting of the toe of the lowest coal seam and its associated overburden, of sufficient width to prevent slides and erosion. You must construct drains through the barrier to the extent necessary to prevent saturation of the backfill.

(ii) The outcrop barrier requirement in paragraph (b)(2)(i) of this section does not apply if the proposed mine site was mined prior to May 3, 1978, and the toe of the lowest coal seam has already been removed.

(iii) You may remove a coal barrier adjacent to a head-of-hollow fill after the elevation of the fill attains the elevation of the coal barrier if the head-of-hollow fill provides the stability otherwise ensured by the retention of a coal barrier.

(iv) The regulatory authority may allow removal of the outcrop barrier required by paragraph (b)(2)(i) of this section if the regulatory program establishes standards for and requires construction of a barrier comprised of alternative materials that will provide equivalent stability.

(3) The final graded slopes must be less than 1v:5h, so as to create a level plateau or gently rolling configuration. The outcrops of the plateau may not

exceed 1v:2h except where engineering data substantiate, and the regulatory authority finds in writing and includes in the permit under § 785.14 of this chapter that an alternative configuration will achieve a minimum static safety factor of 1.5.

(4) You must grade the plateau or gently rolling contour to drain inward from the outslope, except at specified points where it drains over the outslope in stable and protected channels.

(5) You must place sufficient spoil on the mountaintop bench to achieve the approved postmining land use. You must place all spoil material not retained on the mountaintop bench in accordance with the excess spoil disposal requirements of § 816.71 or § 816.74 of this chapter.

(6) You must prevent damage to natural watercourses in accordance with the finding made by the regulatory authority under § 785.14 of this chapter.

[81 FR 93445, Dec. 20, 2016]

PART 825—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS—SPECIAL BITUMINOUS COAL MINES IN WYOMING

Sec.

825.1 Scope.

825.2 Special bituminous coal mines in Wyoming.

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

SOURCE: 47 FR 33432, Aug. 2, 1982, unless otherwise noted.

§ 825.1 Scope.

This part establishes requirements for certain bituminous surface coal mining activities located west of the 100th meridian west longitude in Wyoming which existed on January 1, 1972, and for surface coal mining activities immediately adjacent thereto which began development after August 3, 1977, in accordance with section 527 of the Act.

§ 825.2 Special bituminous coal mines in Wyoming.

Special bituminous coal mines in Wyoming, as specified in section 527 of

the Act, shall comply with the approved State program, including Wyoming statutes and regulations, and revisions thereto.

**PART 827—PERMANENT PROGRAM
PERFORMANCE STANDARDS—
COAL PREPARATION PLANTS NOT
LOCATED WITHIN THE PERMIT
AREA OF A MINE**

Sec.

827.1 Scope.

827.11 General requirements.

827.12 What performance standards apply to coal preparation plants?

827.13 Coal preparation plants: Interim performance standards.

AUTHORITY: 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34.

SOURCE: 48 FR 20401, May 5, 1983, unless otherwise noted.

§ 827.1 Scope.

This part sets forth requirements for coal preparation plants operated in connection with a coal mine but outside the permit area for a specific mine.

[53 FR 47391, Nov. 22, 1988]

§ 827.11 General requirements.

Each person who operates a coal preparation plant subject to this part shall obtain a permit in accordance with § 785.21 of this chapter, obtain a bond in accordance with subchapter J of this chapter, and operate that plant in accordance with the requirements of this part.

§ 827.12 What performance standards apply to coal preparation plants?

Except as provided in § 827.13 of this part, construction, operation, maintenance, modification, reclamation, and removal activities at coal preparation plants must comply with the following provisions of part 816 of this chapter: §§ 816.11, 816.22, 816.34 through 816.57, 816.71, 816.74, 816.79, 816.81 through 816.97, 816.100, 816.102, 816.104, 816.106, 816.111 through 816.116, 816.131 through 816.133, 816.150, 816.151, and 816.181.

[81 FR 93445, Dec. 20, 2016]

§ 827.13 Coal preparation plants: Interim performance standards.

(a) Persons operating or who have operated coal preparation plants after July 6, 1984, which were not subject to this chapter before July 6, 1984, shall comply with the applicable interim or permanent program performance standards of the State in which such plants are located, as follows:

(1) If located in a State in which either interim or permanent program performance standards apply to such plants, the applicable program standards of the State program shall apply;

(2) If located in a State with a State program which must be amended in order to regulate such plants, the interim program performance standards in subchapter B of this chapter shall apply; and

(3) If located in a State with a Federal program, all such plants shall be subject to the interim program performance standards in subchapter B of this chapter.

(b) After a person described in paragraph (a) of this section obtains a permit to operate a coal preparation plant, the performance standards specified in § 827.12 shall be applicable to the operation of that plant instead of those specified in paragraph (a) of this section.

[52 FR 17730, May 11, 1987]

**PART 828—SPECIAL PERMANENT
PROGRAM PERFORMANCE
STANDARDS—IN SITU PROC-
ESSING**

Sec.

828.1 Scope.

828.2 Objectives.

828.11 In situ processing: Performance standards.

828.12 In situ processing: Monitoring.

AUTHORITY: Secs. 102, 201, 501, 503, 504, 510, 515, 516, 517, 701; Pub. L. 95–87, 91 Stat. 448, 449, 467, 470, 471, 480, 486, 498, 516 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1260, 1265, 1266, 1267, 1291).

Surface Mining Reclamation and Enforcement, Interior

§ 828.12

§ 828.1 Scope.

This part sets forth special environmental protection performance, reclamation and design standards for in situ processing activities.

[44 FR 15455, Mar. 13, 1979]

§ 828.2 Objectives.

This part is intended to ensure that all in situ processing activities are conducted in a manner which preserves and enhances environmental values in accordance with the Act. This part provides additional performance, reclamation and design standards to reflect the nature of in situ processing.

[44 FR 15455, Mar. 13, 1979]

§ 828.11 In situ processing: Performance standards.

(a) The person who conducts in situ processing activities shall comply with 30 CFR 817 and this section.

(b) In situ processing activities shall be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:

(1) Avoiding discharge of fluids into holes or wells, other than as approved by the regulatory authority;

(2) Injecting process recovery fluids only into geologic zones or intervals approved as production zones by the regulatory authority;

(3) Avoiding annular injection between the wall of the drill hole and the casing; and

(4) Preventing discharge of process fluid into surface waters.

(c) Each person who conducts in situ processing activities shall submit for approval as part of the application for permit under 30 CFR 785.22, and follow after approval, a plan that ensures that all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard and caused by the mining and recovery process are

promptly treated, confined, or disposed of, in a manner that prevents contamination of ground and surface waters, damage to fish, wildlife and related environmental values, and threats to the public health and safety.

(d) Each person who conducts in situ processing activities shall prevent flow of the process recovery fluid:

(1) Horizontally beyond the affected area identified in the permit; and

(2) Vertically into overlying or underlying aquifers.

(e) Each person who conducts in situ processing activities shall restore the quality of affected ground water in the permit area and adjacent area, including ground water above and below the production zone, to the approximate premining levels or better, to ensure that the potential for use of the ground water is not diminished.

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

[44 FR 15455, Mar. 13, 1979, as amended at 48 FR 14822, Apr. 5, 1983]

§ 828.12 In situ processing: Monitoring.

(a) Each person who conducts in situ processing activities shall monitor the quality and quantity of surface and ground water and the subsurface flow and storage characteristics, in a manner approved by the regulatory authority under 30 CFR 817.41, to measure changes in the quantity and quality of water in surface and ground water systems in the permit area and in adjacent areas.

(b) Air and water quality monitoring shall be conducted in accordance with monitoring programs approved by the regulatory authority as necessary according to appropriate Federal and State air and water quality standards.

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

[44 FR 15455, Mar. 13, 1979, as amended at 48 FR 14822, Apr. 5, 1983; 48 FR 44781, Sept. 30, 1983]

SUBCHAPTER L—PERMANENT PROGRAM INSPECTION AND ENFORCEMENT PROCEDURES

PART 840—STATE REGULATORY AUTHORITY: INSPECTION AND ENFORCEMENT

Sec.

840.1 Scope.

840.10 Information collection.

840.11 Inspections by State regulatory authority.

840.12 Right of entry.

840.13 Enforcement authority.

840.14 Availability of records.

840.15 Public participation.

840.16 Compliance conference.

AUTHORITY: 30 U.S.C. 1201 *et seq.*, unless otherwise noted.

SOURCE: 47 FR 35633, Aug. 16, 1982, unless otherwise noted.

§ 840.1 Scope.

This part sets forth the minimum requirements for the Secretary's approval of the provisions for inspection and enforcement by a State of surface coal mining and reclamation operations and of coal exploration operations which substantially disturb the natural land surface, where a State is the regulatory authority under an approved State program.

§ 840.10 Information collection.

(a) The collections of information contained in part 840 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0051. The information is being collected by States for use in assessing penalties as evidence in enforcement cases and as an inspection management record. The obligation to respond is required to obtain a benefit in accordance with 30 U.S.C. 1201 *et seq.*

(b) Public reporting burden for this information is estimated to average 3.7 hours per response, including the time for the 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 infor-

mation, including suggestions for reducing the burden, to the Information Collection Clearance Officer (MS-202), 1951 Constitution Ave, NW., Washington, DC 20240.

[59 FR 60883, Nov. 28, 1994, as amended at 75 FR 60276, Sept. 29, 2010]

§ 840.11 Inspections by State regulatory authority.

(a) The State regulatory authority shall conduct an average of at least one partial inspection per month of each active surface coal mining and reclamation operation under its jurisdiction, and shall conduct such partial inspections of each inactive surface coal mining and reclamation operation under its jurisdiction as are necessary to ensure effective enforcement of the approved State program. A partial inspection is an on-site or aerial review of a person's compliance with some of the permit conditions and requirements imposed under an approved State program.

(b) The State regulatory authority shall conduct an average of at least one complete inspection per calendar quarter of each active or inactive surface coal mining and reclamation operation under its jurisdiction. A complete inspection is an on-site review of a person's compliance with all permit conditions and requirements imposed under the State program, within the entire area disturbed or affected by the surface coal mining and reclamation operations.

(c) The State regulatory authority shall conduct such inspections of coal explorations as are necessary to ensure compliance with the approved State program.

(d)(1) Aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

(2) Any potential violation observed during an aerial inspection shall be investigated on site within three days:

provided, that any indication of a condition, practice or violation constituting cause for the issuance of a cessation order under section 521(a)(2) of the Act shall be investigated on site immediately. *And provided further,* That an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of paragraphs (a) and (b) of this section.

(e) The inspections required under paragraphs (a), (b), (c) and (d) of this section shall:

(1) Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

(2) Occur without prior notice to the permittee or any agent or employee of such permittee, except for necessary on-site meetings; and

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of the approved State program.

(f) For the purposes of this section, an inactive surface coal mining and reclamation operation is one for which:

(1) The State regulatory authority has secured from the permittee the written notice provided for under §816.131(b) or §817.131(b) of this chapter; or

(2) Reclamation Phase II as defined at §800.40 of this chapter has been completed and the liability of the permittee has been reduced by the State regulatory authority in accordance with the State program.

(g) Abandoned site means a surface coal mining and reclamation operation for which the regulatory authority has found in writing that:

(1) All surface and underground coal mining and reclamation activities at the site have ceased;

(2) The regulatory authority or the Office has issued at least one notice of violation or the initial program equivalent, and either:

(i) Is unable to serve the notice despite diligent efforts to do so; or

(ii) The notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent;

(3) The regulatory authority:

(i) Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(ii) Is taking action pursuant to section 518(e), 518(f), 521(a)(4) or 521(c) of the Act or their regulatory program counterparts to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(4) Where the site is, or was, permitted and bonded:

(i) The permit has either expired or been revoked; and

(ii) The regulatory authority has initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance bond.

(h) In lieu of the inspection frequency established in paragraphs (a) and (b) of this section, the regulatory authority shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

(1) In selecting an alternate inspection frequency authorized under the paragraph above, the regulatory authority shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (h)(2) of this section. Following the inspection and public notice, the regulatory authority shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

(i) How the site meets each of the criteria under the definition of an abandoned site under paragraph (g) of this section and thereby qualifies for a reduction in inspection frequency;

§ 840.12

(ii) Whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

(iii) The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

(iv) The degree to which erosion and sediment control is present and functioning;

(v) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

(vi) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

(vii) Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(2) The public notice and opportunity to comment required under paragraph (h)(1) of this section shall be provided as follows:

(i) The regulatory authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.

(ii) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the regulatory authority where written comments on the reduced inspection frequency may

be submitted, and the closing date of the comment period.

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

[47 FR 35633, Aug. 16, 1983, as amended at 48 FR 44781, Sept. 30, 1983; 53 FR 24882, June 30, 1988; 59 FR 60883, Nov. 28, 1994]

§ 840.12 Right of entry.

(a) Within its jurisdiction, the State regulatory authority shall have authority that grants its representatives a right of entry to, upon, and through any coal exploration or surface coal mining and reclamation operation without advance notice upon presentation of appropriate credentials. No search warrant shall be required, except that a State may provide for its use with respect to entry into a building.

(b) The State regulatory authority shall have authority that authorizes its representatives to inspect any monitoring equipment or method of exploration or operation and to have access to and copy any records required under the approved State program. This authority shall provide that the representatives may exercise such rights at reasonable times, without advance notice, upon presentation of appropriate credentials. No search warrant shall be required, except that a State may provide for its use with respect to entry into a building.

§ 840.13 Enforcement authority.

(a) The civil and criminal penalty provisions of each State program shall contain penalties which are no less stringent than those set forth in section 518 of the Act and shall be consistent with 30 CFR part 845.

(b) The enforcement provisions of each State program shall contain sanctions which are no less stringent than those set forth in section 521 of the Act and shall be consistent with §§ 843.11, 843.12, 843.13, and subchapters G and J of this chapter.

(c) The procedural requirements of each State program relating to the penalties and sanctions mentioned in paragraphs (a) and (b) of this section shall be the same as or similar to those provided in sections 518 and 521 of the Act, respectively, and consistent with

Surface Mining Reclamation and Enforcement, Interior

§ 840.16

parts 843 and 845 and subchapters G and J of this chapter.

(d) Nothing in the Act or this part shall be construed as eliminating any additional enforcement rights or procedures which are available under State law to a State regulatory authority, but which are not specifically enumerated in sections 518 and 521 of the Act.

[47 FR 35633, Aug. 16, 1982, as amended at 59 FR 54356, Oct. 28, 1994; 75 FR 60276, Sept. 29, 2010]

EDITORIAL NOTE: For a document suspending §840.13(a) in part, see 45 FR 51548, Aug. 4, 1980.

§ 840.14 Availability of records.

(a) Each State regulatory authority shall make available to the Director, upon request, copies of all documents relating to applications for and approvals of existing, new, or revised coal exploration approvals or surface coal mining and reclamation operations permits and all documents relating to inspection and enforcement actions.

(b) Copies of all records, reports, inspection materials, or information obtained by the regulatory authority shall be made immediately available to the public in the area of mining until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area, except—

(1) As otherwise provided by Federal law; and

(2) For information not required to be made available under §§772.15 and 773.6(d) of this chapter or paragraph (d) of this section.

(c) The State regulatory authority shall ensure compliance with paragraph (b) by either:

(1) Making copies of all records, reports, inspection materials, and other subject information available for public inspection at a Federal, State or local government office in the county where the mining is occurring or proposed to occur; or,

(2) At the regulatory authority's option and expense, providing copies of subject information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur, *Provided*, That the

regulatory authority shall maintain for public inspection, at a Federal, State or local government office in the county where the mining is occurring or proposed to occur, a description of the information available for mailing and the procedure for obtaining such information.

(d) In order to protect preparation for hearings and enforcement proceedings, the Director and the State regulatory authority may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials.

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

[47 FR 35633, Aug. 16, 1982, as amended at 48 FR 44781, Sept. 30, 1983; 65 FR 79670, Dec. 19, 2000]

§ 840.15 Public participation.

Each State program shall provide for public participation in enforcement of the State program consistent with that provided by 30 CFR parts 842, 843 and 845 and 43 CFR part 4.

§ 840.16 Compliance conference.

(a) The State program may provide for compliance conferences between a permittee and an authorized representative of the regulatory authority as described in paragraphs (b) through (e) of this section.

(b) A permittee may request an on-site compliance conference with an authorized representative of the regulatory authority to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of section 517 of the Act and §840.11.

(c) The State regulatory authority may accept or refuse any request to conduct a compliance conference under paragraph (b).

(d) The authorized representative at any compliance conference shall review such proposed conditions and practices in order to advise whether any such condition or practice may become a violation of any requirement of the Act, the approved State program, or any applicable permit or exploration approval.

(e) Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the regulatory authority or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such compliance conference; or

(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

PART 842—FEDERAL INSPECTIONS AND MONITORING

Sec.

842.1 Scope.

842.11 Federal inspections and monitoring.

842.12 Requests for Federal inspections.

842.13 Right of entry.

842.14 Review of adequacy and completeness of inspections.

842.15 Review of decision not to inspect or enforce.

842.16 Availability of records.

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

SOURCE: 47 FR 35635, Aug. 16, 1982, unless otherwise noted.

§ 842.1 Scope.

This part sets forth general procedures governing Federal inspections under the permanent regulatory program.

§ 842.11 Federal inspections and monitoring.

(a) Authorized representatives of the Secretary shall conduct inspections of surface coal mining and reclamation operations as necessary—

(1) To monitor and evaluate the administration of approved State programs. Such monitoring and evaluation inspections shall be conducted jointly with the State regulatory authority where practical and where the State so requests;

(2) To develop or enforce Federal programs and Federal lands programs;

(3) To enforce those requirements and permit conditions imposed under a State program not being enforced by a State, under section 504(b) or section

521(b) of the Act, part 733 of this chapter, or as provided in this section; and

(4) To determine whether any notice of violation or cessation order issued during an inspection authorized under this section has been complied with.

(b)(1) An authorized representative of the Secretary shall immediately conduct a Federal inspection:

(i) When the authorized representative has reason to believe on the basis of information available to him or her (other than information resulting from a previous Federal inspection) that there exists a violation of the Act, this chapter, the applicable program, or any condition of a permit or an exploration approval, or that there exists any condition, practice, or violation which creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause a significant, imminent environmental harm to land, air or water resources and—

(ii)(A) There is no State regulatory authority or the Office is enforcing the State program under section 504(b) or 521(b) of the Act and part 733 of this chapter; or

(B)(1) The authorized representative has notified the state regulatory authority of the possible violation and more than ten days have passed since notification and the State regulatory authority has failed to take appropriate action to cause the violation to be corrected or to show good cause for such failure and to inform the authorized representative of its response. After receiving a response from the State regulatory authority, before inspection, the authorized representative shall determine in writing whether the standards for appropriate action or good cause for such failure have been met. Failure by the State regulatory authority to respond within the ten days shall not prevent the authorized representative from making the determination, and will constitute a waiver of the state regulatory authority's right to request review under paragraph (b)(1)(iii) of this section.

(2) For purposes of this subchapter, an action or response by a State regulatory authority that is not arbitrary, capricious, or an abuse of discretion

under the state program shall be considered “appropriate action” to cause a violation to be corrected or “good cause” for failure to do so.

(3) Appropriate action includes enforcement or other action authorized under the State program to cause the violation to be corrected.

(4) Good cause includes:

(i) Under the State program, the possible violation does not exist;

(ii) The State regulatory authority requires a reasonable and specified additional time to determine whether a violation of the State program does exist;

(iii) The State regulatory authority lacks jurisdiction under the State program over the possible violation or operation;

(iv) The State regulatory authority is precluded by an administrative or judicial order from an administrative body or court of competent jurisdiction from acting on the possible violation, where that order is based on the violation not existing or where the temporary relief standards of section 525(c) or 526(c) of the Act have been met; or

(v) With regard to abandoned sites as defined in § 840.11(g) of this chapter, the State regulatory authority is diligently pursuing or has exhausted all appropriate enforcement provisions of the State program.

(C) The person supplying the information supplies adequate proof that an imminent danger to the public health and safety or a significant, imminent environmental harm to land, air or water resources exists and that the State regulatory authority has failed to take appropriate action.

(iii)(A) The authorized representative shall immediately notify the state regulatory authority in writing when in response to a ten-day notice the state regulatory authority fails to take appropriate action to cause a violation to be corrected or to show good cause for such failure. If the State regulatory authority disagrees with the authorized representative’s written determination, it may file a request, in writing, for informal review of that written determination by the Deputy Director. Such a request for informal review may be submitted to the appropriate OSMRE field office or to the office of

the Deputy Director in Washington, DC. The request must be received by OSMRE within 5 days from receipt of OSMRE’s written determination.

(B) Unless a cessation order is required under § 843.11, or unless the state regulatory authority has failed to respond to the ten-day notice, no Federal inspection action shall be taken or notice of violation issued regarding the ten-day notice until the time to request informal review as provided in § 842.11(b)(1)(iii)(A) has expired or, if informal review has been requested, until the Deputy Director has completed such review.

(C) After reviewing the written determination of the authorized representative and the request for informal review submitted by the State regulatory authority, the Deputy Director shall, within 15 days, render a decision on the request for informal review. He shall affirm, reverse, or modify the written determination of the authorized representative. Should the Deputy Director decide that the State regulatory authority did not take appropriate action or show good cause, he shall immediately order a Federal inspection or reinspection. The Deputy Director shall provide to the State regulatory authority and to the permittee a written explanation of his decision, and if the ten-day notice resulted from a request for a Federal inspection under § 842.12 of this part, he shall send written notification of his decision to the person who made the request.

(2) An authorized representative shall have reason to believe that a violation, condition or practice exists if the facts alleged by the informant would, if true, constitute a condition, practice or violation referred to in paragraph (b)(1)(i) of this section.

(c) The Office, when acting as the regulatory authority under a Federal program or a Federal lands program and when enforcing a State program, in whole or in part, pursuant to section 504(b) of section 521(b) of the Act and part 733 of this chapter, shall conduct inspections of all coal exploration and surface coal mining and reclamation operations under its jurisdiction. The Office shall—

(1) With respect to active surface coal mining and reclamation operations:

(i) Conduct an average of at least one partial inspection per month of each active surface coal mining and reclamation operation. A partial inspection is an on-site or aerial review of a person's compliance with some of the permit requirements and conditions imposed under an applicable program.

(A) Aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

(B) Any potential violation observed during an aerial inspection shall be investigated on site within three calendar days: *Provided*, That any indication of a condition, practice or violation constituting cause for issuance of a cessation order under section 521(a)(2) shall be investigated on site immediately, *And provided further*, That an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of paragraphs (a) and (b) of this section.

(ii) Conduct an average of at least one complete inspection per calendar quarter of each active surface coal mining and reclamation operation. A complete inspection is an on-site review of a person's compliance with all permit conditions and requirements imposed under the applicable program within the entire area disturbed or affected by surface coal mining and reclamation operations.

(2) With respect to inactive surface coal mining and reclamation operations:

(i) Conduct an average of at least one complete inspection per calendar quarter of each inactive surface coal mining and reclamation operation; and

(ii) Conduct such partial inspections of each inactive surface coal mining and reclamation operation as are necessary to ensure effective enforcement of the regulatory program and the Act.

(iii) For purposes of this section, an inactive surface coal mining and reclamation operation is one for which—

(A) The Office has secured from the permittee the written notice provided for under §§ 816.131(b) or 817.131(b) of this chapter; or,

(B) Reclamation Phase II as defined at § 800.40 of this chapter has been completed.

(3) With respect to coal exploration operations, conduct such inspections as are necessary to ensure compliance with the Act by those coal explorations which substantially disturb the natural land surface.

(d) The inspections required under paragraphs (a), (b), and (c) of this section shall:

(1) Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

(2) Occur without prior notice to the permittee or any agent or employee of such permittee, except for necessary on-site meetings; and

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of the applicable program.

(e) Abandoned site means a surface coal mining and reclamation operation for which the Office has found in writing that:

(1) All surface and underground coal mining and reclamation activities at the site have ceased;

(2) The Office has issued at least one notice of violation or the initial program equivalent, and either:

(i) Is unable to serve the notice despite diligent efforts to do so; or

(ii) The notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent;

(3) The Office:

(i) Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(ii) Is taking action pursuant to sections 518(e), 518(f), 521(a)(4) or 521(c) of the Act or their regulatory program counterparts to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(4) Where the site is, or was, permitted or bonded:

(i) The permit has either expired or been revoked; and

(ii) The Office has initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance bond.

(f) In lieu of the inspection frequency established in paragraph (c) of this section, the office shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar-year.

(1) In selecting an alternate inspection frequency authorized under the paragraph above, the office shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (f)(2) of this section. Following the inspection and public notice, the office shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

(i) How the site meets each of the criteria under the definition of an abandoned site under paragraph (e) of this section and thereby qualifies for a reduction inspection frequency;

(ii) Whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harms to land, air or water resources;

(iii) The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

(iv) The degree to which erosion and sediment control is present and functioning;

(v) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

(vi) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with time; and

(vii) Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(2) The public notice and opportunity to comment required under paragraph (f)(1) of this section shall be provided as follows:

(i) The office shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.

(ii) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the office where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

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

[47 FR 35635, Aug. 16, 1982, as amended at 48 FR 44781, Sept. 30, 1983; 53 FR 24882, June 30, 1988; 53 FR 26744, July 14, 1988; 59 FR 60884, Nov. 28, 1994; 75 FR 60276, Sept. 29, 2010]

§ 842.12 Requests for Federal inspections.

(a) A person may request a Federal inspection under § 842.11(b) by furnishing to an authorized representative of the Secretary a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation, condition or practice referred to in § 842.11(b)(1)(i) exists and that the State regulatory authority, if any, has been notified, in

writing, of the existence of the violation, condition or practice. The statement shall set forth a phone number and address where the person can be contacted.

(b) The identity of any person supplying information to the Office relating to a possible violation or imminent danger or harm shall remain confidential with the Office, if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under the Freedom of Information Act (5 U.S.C. 552) or other Federal law.

(c) If a Federal inspection is conducted as a result of information provided to the Office by a person as described in paragraph (a) of this section, the person shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the Secretary during the inspection. Such person has a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which he or she supplied information, but only if he or she is in the presence of and is under the control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(d) Within ten days of the Federal inspection or, if there is no Federal inspection, within 15 days of receipt of the person's written statement, the Office shall send the person the following.

(1) If a Federal inspection was made, a description of the enforcement action taken, which may consist of copies of the Federal inspection report and all notices of violation and cessation orders issued as a result of the inspection, or an explanation of why no enforcement action was taken;

(2) If no Federal inspection was conducted, an explanation of the reason why; and

(3) An explanation of the person's right, if any, to informal review of the action or inaction of the Office under § 842.15.

(e) The Office shall give copies of all materials in paragraphs (d)(1) and (d)(2) of this section within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the person supplying information shall be removed unless disclosure of his or her identity is permitted under paragraph (b) of this section.

§ 842.13 Right of entry.

(a) Each authorized representative of the Secretary conducting a Federal inspection under § 842.11:

(1) Shall have a right of entry to, upon, and through any coal exploration or surface coal mining and reclamation operation 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, and inspect any monitoring equipment or method of exploration or operation required under the applicable program; and,

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

(b) No search warrant shall be required with respect to any activity under paragraph (a) of this section, except that a search warrant may be required for entry into a building.

§ 842.14 Review of adequacy and completeness of inspections.

Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration operation may notify the Director or his or her designee in writing of any alleged failure on the part of the Office to make adequate and complete or periodic Federal inspections. The notification shall include sufficient information to create a reasonable belief that the regulations of this part are not being complied with and to demonstrate that the person is or may be adversely affected. The Director or his or her designee shall within 15 days of receipt of the notification determine whether adequate and complete or periodic inspections have been made. The Director or his or her designee shall furnish the complainant

with a written statement of the reasons for such determination and the actions, if any, taken to remedy the non-compliance.

§ 842.15 Review of decision not to inspect or enforce.

(a) Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ask the Director or his or her designee to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for Federal inspection under § 842.12. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

(b) The Director or his or her designee shall conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the person who is or may be adversely affected shall not be disclosed unless confidentiality has been waived or disclosure is required under the Freedom of Information Act or other Federal law.

(c) Informal review under this section shall not affect any right to formal review under section 525 of the Act or to a citizen's suit under section 520 of the Act.

(d) Any determination made under paragraph (b) of this section shall constitute a decision of OSM within the meaning of 43 CFR 4.1281 and shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR part 4.

§ 842.16 Availability of records.

(a) Copies of all records, reports, inspection materials, or information obtained by the Office under Title V of the Act, this chapter, a Federal program or Federal lands program, and a State program being enforced by the Office under section 504(b) or 521(b) of the Act and part 733 of this chapter or §§ 842.11 or 842.12 shall be made immediately available to the public in the

area of mining until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area, except—

(1) As otherwise provided by Federal law; and

(2) For information not required to be made available under § 772.15, § 773.6(d), or § 840.14(d) of this chapter.

(b) The Office shall ensure compliance with paragraph (a) of this section by either:

(1) Making copies of all such records, reports, inspection materials, and other information available for public inspection at a Federal, State or local government office in the county where the mining is occurring or is proposed to occur; or

(2) At the Office's option and expense, providing copies of such information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur, provided that the Office shall maintain for public inspection at a Federal, State, or local government office in the county where the mining is occurring or is proposed to occur a description of the information available for mailing and the procedure for obtaining such information.

(c) Copies of documents and information required to be made available under paragraph (a) of this section shall be provided to the State regulatory authority, if any.

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

[47 FR 35635, Aug. 16, 1982, as amended at 48 FR 44781, Sept. 30, 1983; 65 FR 79670, Dec. 19, 2000]

PART 843—FEDERAL ENFORCEMENT

Sec.

843.1 Scope.

843.5 Definitions.

843.11 Cessation orders.

843.12 Notices of violation.

843.13 Suspension or revocation of permits: Pattern of violations.

843.14 Service of notices of violation, cessation orders, and show cause orders.

843.15 Informal public hearing.

843.16 Formal review of citations.

843.17 Failure to give notice and lack of information.

§ 843.1

- 843.18 Inability to comply.
843.20 Compliance conference.
843.22 Enforcement actions at abandoned sites.
843.25 Energy Policy Act enforcement in States with approved State programs.

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

SOURCE: 47 FR 35637, Aug. 16, 1982, unless otherwise noted.

§ 843.1 Scope.

This part sets forth general rules regarding enforcement by the Office of the Act, this chapter, any Federal program, the Federal lands program, State programs being enforced by the Office in whole or in part under section 504(b) or 521(b) of the Act and part 733 of this chapter and (in limited circumstances) under § 842.11 or § 842.12 of this chapter, and all conditions of permits and coal exploration approvals or permits imposed under any of these programs, the Act, or this chapter.

§ 843.5 Definitions.

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

Unwarranted failure to comply means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of the Act due to indifference, lack of diligence, or lack of reasonable care.

[47 FR 35637, Aug. 16, 1982, as amended at 65 FR 79670, Dec. 19, 2000]

§ 843.11 Cessation orders.

(a)(1) An authorized representative of the Secretary shall immediately order a cessation of surface coal mining and reclamation operations or of the relevant portion thereof, if he or she finds, on the basis of any Federal inspection, any condition or practice, or any violation of the Act, this chapter, any applicable program, or any condition of an exploration approval or permit imposed under any such program, the Act, or this chapter which:

- (i) Creates an imminent danger to the health or safety of the public; or
- (ii) Is causing or can reasonably be expected to cause significant, immi-

30 CFR Ch. VII (7–1–17 Edition)

nent environmental harm to land, air, or water resources.

(2) Surface coal mining operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources unless such operations:

(i) Are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations; or

(ii) Were conducted lawfully without a permit under the interim regulatory program because no permit has been required for such operations by the State in which the operations were conducted.

(3) If the cessation ordered under paragraph (a)(1) of this section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the Secretary shall impose affirmative obligations on the permittee to abate the imminent danger or significant environmental harm. The order shall specify the time by which abatement shall be accomplished.

(b)(1) When a notice of violation has been issued under § 843.12(a) and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, the authorized representative of the Secretary shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the portion relevant to the violation.

(2) A cessation order issued under this paragraph (b) shall require the permittee to take all steps the authorized representative of the Secretary deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) A cessation order issued under paragraphs (a) or (b) of this section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable

specificity: (1) The nature of the condition, practice or violation; (2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate; (3) the time established for abatement, if appropriate; and (4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice or violation resulting in the issuance of the cessation order has been abated or until vacated, modified or terminated in writing by an authorized representative of the Secretary, or until the order expires pursuant to section 521(a)(5) of the Act and § 843.15.

(d) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(e) An authorized representative of the Secretary may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.

(f) An authorized representative of the Secretary shall terminate a cessation order by written notice to the permittee when he or she determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of the Office to assess civil penalties for those violations under part 845 of this chapter.

(g) Within 60 days after issuing a cessation order, OSM will notify in writing the permittee, the operator, and any person who has been listed or identified by the applicant, permittee, or OSM as an owner or controller of the operation, as defined in § 701.5 of this chapter.

[47 FR 35637, Aug. 16, 1982, as amended at 54 FR 8992, Mar. 2, 1989; 54 FR 13823, Apr. 5, 1989; 62 FR 19461, Apr. 21, 1997; 65 FR 79670, Dec. 19, 2000]

§ 843.12 Notices of violation.

(a)(1) An authorized representative of the Secretary shall issue a notice of violation if, on the basis of a Federal

inspection carried out during the enforcement of a Federal program or Federal lands program or during Federal enforcement of a State program under section 504(b) or 521(b) of the Act and part 733 of this chapter, he finds a violation of the Act, this chapter, the applicable program or any condition of a permit or an exploration approval imposed under such program, the Act, or this Chapter, which does not create an imminent danger or harm for which a cessation order must be issued under § 843.11.

(2) When, on the basis of any Federal inspection other than one described in paragraph (a)(1) of this section, an authorized representative of the Secretary determines that there exists a violation of the Act, the State program, or any condition of a permit or exploration approval required by the Act which does not create an imminent danger or harm for which a cessation order must be issued under § 843.11, the authorized representative shall give a written report of the violation to the State and to the permittee so that appropriate action can be taken by the State. Where the State fails within ten days after notification to take appropriate action to cause the violation to be corrected, or to show good cause for such failure, subject to the procedures of § 842.11(b)(1)(iii) of this chapter, the authorized representative shall reinspect and, if the violation continues to exist, shall issue a notice of violation or cessation order, as appropriate. No additional notification to the State by the Office is required before the issuance of a notice of violation if previous notification was given under § 842.11(b)(1)(ii)(B) of this chapter.

(b) A notice of violation issued under this section shall be in writing signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

(1) The nature of the violation;

(2) The remedial action required, which may include interim steps;

(3) A reasonable time for abatement, which may include time for accomplishment of interim steps; and

(4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

(c) An authorized representative of the Secretary may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in paragraph (f) of this section. An extended abatement date pursuant to this section shall not be granted when the permittee's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

(d)(1) If the permittee fails to meet the time set for abatement the authorized representative shall issue a cessation order under § 843.11(b).

(2) If the permittee fails to meet the time set for accomplishment of any interim step the authorized representative may issue a cessation order under § 843.11(b).

(e) An authorized representative of the Secretary shall terminate a notice of violation by written notice to the permittee when he determines that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the Office to assess civil penalties for those violations under 30 CFR part 845.

(f) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

(2) Where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and

as to which he or she has no other effective legal remedy;

(3) Where the permittee cannot abate within 90 days due to a labor strike;

(4) Where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

(5) Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

(g) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(h) If any of the conditions in paragraph (f) of this section exists, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the Director or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of § 843.12(c) and (f). In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The authorized representative's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.

(i) Any determination made under paragraph (h) of this section shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR 4.1281 and the regulations at 43 CFR part 4.

(j) No extension granted under paragraph (h) of this section may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of paragraph (h) of this section.

[47 FR 35637, Aug. 16, 1982, as amended at 53 FR 26744, July 14, 1988]

§ 843.13 Suspension or revocation of permits: Pattern of violations.

(a)(1) The Director shall issue an order to a permittee requiring him or her to show cause why his or her permit and right to mine under the Act should not be suspended or revoked, if the Director determines that a pattern of violations of any requirements of the Act, this chapter, the applicable program, or any permit condition required by the Act exists or has existed, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage. The Director shall promptly file a copy of any order to show cause with the Office of Hearings and Appeals and the State regulatory authority, if any.

(2) The Director may determine that a pattern of violations exists or has existed, based upon two or more Federal inspections of the permit area within any 12-month period, after considering the circumstances, including:

(i) The number of violations, cited on more than one occasion, of the same or related requirements of the Act, this chapter, the applicable program, or the permit;

(ii) The number of violations, cited on more than one occasion, of different requirements of the Act, this chapter, the applicable program, or the permit; and

(iii) The extent to which the violations were isolated departures from lawful conduct.

(3) The Director shall promptly review the history of violations of any

permittee who has been cited for violations of the same or related requirements of the Act, this chapter, the applicable program, or the permit during three or more Federal inspections of the permit area within any 12-month period. If, after such review, the Director determines that a pattern of violations exists or has existed, he or she shall issue an order to show cause as provided in paragraph (a)(1) of this section.

(4)(i) In determining the number of violations within any 12-month period, the Director shall consider only violations issued as a result of a Federal inspection carried out—

(A) During enforcement of a Federal program or a Federal lands program;

(B) During the interim program and before the applicable State program was approved pursuant to section 502 or 504 of the Act; or

(C) During Federal enforcement of a State program in accordance with section 504(b) or 521(b) of the Act.

(ii) The Director may not consider violations issued as a result of inspections other than those mentioned in paragraph (a)(4)(i) of this section in determining whether to exercise his or her discretion under paragraph (a)(2) of this section, except as evidence of the willful or unwarranted nature of the permittee's failure to comply.

(b) If the permittee files an answer to the show cause order and requests a hearing under 43 CFR part 4, a public hearing shall be provided as set forth in that part. The Office of Hearings and Appeals shall give thirty days written notice of the date, time and place of the hearing to the Director, the permittee, the State regulatory authority, if any, and any intervenor. Upon receipt of the notice, the Director shall publish it, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations, and shall post it at the State or field office closest to those operations.

(c) Within sixty days after the hearing, and within the time limits set forth in 43 CFR part 4, the Office of Hearings and Appeals shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. If the Office of

§ 843.14

Hearings and Appeals revokes or suspends the permit and the permittee's right to mine under the Act, the permittee shall immediately cease surface coal mining operations on the permit area and shall:

(1) If the permit and the right to mine under the Act are revoked, complete reclamation within the time specified in the order; or

(2) If the permit and the right to mine under the Act are suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

(d) Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the Director shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this section, and shall issue an order to show cause as appropriate pursuant to § 845.15(b)(2) of this chapter.

§ 843.14 Service of notices of violation, cessation orders, and show cause orders.

(a) A notice of violation, cessation order, or show cause order shall be served on the person to whom it is directed or his or her designated agent promptly after issuance, as follows:

(1) By tendering a copy at the coal exploration or surface coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the permittee or his or her designated agent, or by any means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Serv-

30 CFR Ch. VII (7-1-17 Edition)

ice shall be complete upon tender of the notice or order or of the certified mail and shall not be deemed incomplete because of refusal to accept.

(b) Designation by any person of an agent for service of notices and orders shall be made in writing to the appropriate State or field office of the Office.

(c) The Office shall furnish copies of notices and orders to the State regulatory authority, if any, promptly after their issuance. The Office may furnish copies to any person having an interest in the coal exploration, surface coal mining and reclamation operation, or the permit area.

[47 FR 35637, Aug. 16, 1982, as amended at 56 FR 28445, June 20, 1991]

§ 843.15 Informal public hearing.

(a) Except as provided in paragraphs (b) and (c) of this section, a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the Office and the person to whom the notice or order was issued. The Office of Surface Mining office nearest to the mine site shall be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the Office. Expiration of a notice or order shall not affect the Office's right to assess civil penalties with respect to the period during which the notice or order was in effect. No hearing will be required where the condition, practice, or violation in question has been abated or the hearing has been waived. For purposes of this section only, "mining" includes (1) extracting coal from the earth or from coal waste piles and transporting it within or from the permit area, and (2) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than at a mine site.

(b) A notice of violation or cessation order shall not expire as provided in paragraph (a) of this section if the informal public hearing has been waived, or if, with the consent of the person to

whom the notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of this subsection:

(1) The informal public hearing will be deemed waived if the person to whom the notice or order was issued:

(i) Is informed, by written notice served in the manner provided in paragraph (b)(2) of this section, that he or she will be deemed to have waived an informal public hearing unless he or she requests one within 30 days after service of the notice; and

(ii) Fails to request an informal public hearing within that time.

(2) The written notice referred to in paragraph (b)(1)(i) of this section shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than 5 days after the notice or order is served on such person.

(3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if his or her request is received on or after the 21st day after service of the notice or order. The extension of time shall be equal to the number of days elapsed after the 21st day.

(c) The Office shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to that notice or order; and

(3) The State regulatory authority, if any.

(d) The Office shall also post notice of the hearing at the State or field office closest to the mine site and, where practicable, publish it in a newspaper of general circulation in the area of the mine.

(e) Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings, shall not govern informal public hearings. An informal public hearing shall be conducted by a representative of the Office, who may accept oral or written arguments and any other relevant information from any person attending.

(f) Within five days after the close of the informal public hearing, the Office shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to—

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to the notice or order; and

(3) The State regulatory authority, if any.

(g) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under section 518(b), 521(a)(4), or 525 of the Act.

(h) The person conducting the hearing for the Office shall determine whether or not the mine site should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the mine site will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or of the required remedial action.

§ 843.16 Formal review of citations.

(a) A person issued a notice of violation or cessation order under § 843.11 or § 843.12, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for hearing under 43 CFR part 4, within 30 days after receiving notice of the action.

(b) The filing of an application for review and request for a hearing under this section shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

§ 843.17 Failure to give notice and lack of information.

No notice of violation, cessation order, show cause order, or order revoking or suspending a permit may be vacated for failure to give the notice to the State regulatory authority required under § 842.11(b)(1)(ii)(B) of this chapter or because it is subsequently determined that the Office did not have information sufficient, under §§ 842.11(b)(1) and 842.11(b)(2) of this chapter, to justify an inspection.

§ 843.18

§ 843.18 Inability to comply.

(a) No cessation order or notice of violation issued under this part may be vacated because of inability to comply.

(b) Inability to comply may not be considered in determining whether a pattern of violations exists.

(c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under part 845 of this chapter and of the duration of the suspension of a permit under § 843.13(c).

§ 843.20 Compliance conference.

(a) A permittee may request an on-site compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of section 517 of the Act and § 842.11.

(b) The Office may accept or refuse any request to conduct a compliance conference under paragraph (a). Where the Office accepts such a request, reasonable notice of the scheduled date and time of the compliance conference shall be given to the permittee.

(c) The authorized representative at any compliance conference shall review such proposed conditions and practices as the permittee may request in order to determine whether any such condition or practice may become a violation of any requirement of the Act of any applicable permit or exploration approval.

(d) Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the Office or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such conference; or

(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

30 CFR Ch. VII (7-1-17 Edition)

§ 843.22 Enforcement actions at abandoned sites.

The Office may refrain from issuing a notice of violation or cessation order for a violation at an abandoned site, as defined in § 842.11(e) of this chapter, if abatement of the violation is required under any previously issued notice or order.

[53 FR 24882, June 30, 1988]

§ 843.25 Energy Policy Act enforcement in States with approved State programs.

(a) *State-by-State determinations.* By July 31, 1995, OSM will determine for each State with an approved State regulatory program whether:

(1) Direct Federal enforcement of the Energy Policy Act and implementing Federal regulations will occur under paragraph (b) of this section with respect to some or all surface coal mining operations in each State, or

(2) The procedures of §§ 843.11 and 843.12(a)(2) will apply to State enforcement of the Energy Policy Act, or

(3) A combination of direct Federal enforcement and State enforcement will occur.

(4) Before making this determination, OSM will consult with each affected State and provide an opportunity for public comment. OSM will publish its determination in the FEDERAL REGISTER.

(b) *Interim Federal enforcement.* (1) If OSM determines under paragraph (a) that direct Federal enforcement is necessary, §§ 817.41(j), 817.121(c)(2), and 817.121(c)(4) of this chapter will apply to each underground mining operation subject to that determination that is conducted in a State with an approved State regulatory program.

(2) If OSM determines under paragraph (a) of this section that direct Federal enforcement is necessary, the provisions of § 843.12(a)(2) will not apply to direct Federal enforcement actions under this paragraph (b). When, on the basis of any Federal inspection under this paragraph, an authorized representative determines that a violation of § 817.41(j) or § 817.121(c)(2) exists, the authorized representative must issue a notice of violation or cessation order, as appropriate.

(3) This paragraph (b) will remain effective in a State with an approved State regulatory program until the State adopts, and OSM approves, under part 732 of this chapter, provisions consistent with §§ 817.41(j) and 817.121(c)(2) of this chapter. After these provisions are approved, this paragraph will remain effective only for violations of §§ 817.41(j) and 817.121(c)(2) that are not regulated by the State regulatory authority.

[60 FR 16750, Mar. 31, 1995]

PART 845—CIVIL PENALTIES

Sec.

845.1 Scope.

845.2 Objective.

845.11 How assessments are made.

845.12 When penalty will be assessed.

845.13 Point system for penalties.

845.14 Determination of amount of penalty.

845.15 Assessment of separate violations for each day.

845.16 Waiver of use of formula to determine civil penalty.

845.17 Procedures for assessment of civil penalties.

845.18 Procedures for assessment conference.

845.19 Request for hearing.

845.20 Final assessment and payment of penalty.

845.21 Use of civil penalties for reclamation.

AUTHORITY: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, 31 U.S.C. 3701, Pub. L. 100-202, and Pub. L. 100-446.

SOURCE: 47 FR 35640, Aug. 16, 1982, unless otherwise noted.

§ 845.1 Scope.

This part covers the assessment of civil penalties under section 518 of the Act with respect to cessation orders and notices of violation issued under part 843 (Federal Enforcement), except for the assessment of individual civil penalties under section 518(f), which is covered in part 846.

[53 FR 3675, Feb. 8, 1988]

§ 845.2 Objective.

Civil penalties are assessed under section 518 of the Act and this part to deter violations and to ensure maximum compliance with the terms and purposes of the Act on the part of the coal mining industry.

§ 845.11 How assessments are made.

The Office shall review each notice of violation and cessation order in accordance with the assessment procedures described in 30 CFR 845.12, 845.13, 845.14, 845.15, and 845.16 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

§ 845.12 When penalty will be assessed.

(a) The Office shall assess a penalty for each cessation order.

(b) The Office shall assess a penalty for each notice of violation, if the violation is assigned 31 points or more under the point system described in 30 CFR 845.13.

(c) The Office may assess a penalty for each notice of violation assigned 30 points or less under the point system described in 30 CFR 845.13. In determining whether to assess a penalty, the Office shall consider the factors listed in 30 CFR 845.13(b).

§ 845.13 Point system for penalties.

(a) The Office shall use the point system described in this section to determine the amount of the penalty and, in the case of notices of violation, whether a mandatory penalty should be assessed as provided in 30 CFR 845.12(b).

(b) Points shall be assigned as follows:

(1) *History of previous violations.* The Office shall assign up to 30 points based on the history of previous violations. One point shall be assigned for each past violation contained in a notice of violation. Five points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration or surface coal mining operation. Points shall be assigned as follows:

(i) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and

§ 845.13

30 CFR Ch. VII (7–1–17 Edition)

thereafter it shall be counted for only one year.

(ii) No violation for which the notice or order has been vacated shall be counted; and

(iii) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) *Seriousness*. The Office shall assign up to 30 points based on the seriousness of the violation, as follows:

(i) *Probability of occurrence*. The Office shall assign up to 15 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

Probability of Occurrence	Points
None	0
Insignificant	1–4
Unlikely	5–9
Likely	10–14
Occurred	15

(ii) *Extent of potential or actual damage*. The Office shall assign up to 15 points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

(A) If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration or permit area, the Office shall assign zero to seven points, depending on the duration and extent of the damage or impact.

(B) If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration or permit area, the Office shall assign eight to fifteen points, depending on the duration and extent of the damage or impact

(iii) *Alternative*. In the case of a violation of an administrative requirement, such as a requirement to keep records, the Office shall, in lieu of paragraphs (b)(2) (i) and (ii), assign up to 15 points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) *Negligence*. (i) The Office shall assign up to 25 points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the no-

tice or order, either through act or omission. Points shall be assessed as follows:

(A) A violation which occurs through no negligence shall be assigned no penalty points for negligence;

(B) A violation which is caused by negligence shall be assigned 12 points or less, depending on the degree of negligence;

(C) A violation which occurs through a greater degree of fault than negligence shall be assigned 13 to 25 points, depending on the degree of fault.

(ii) In determining the degree of negligence involved in a violation and the number of points to be assigned, the following definitions apply:

(A) *No negligence* means an inadvertent violation which was unavoidable by the exercise of reasonable care.

(B) *Negligence* means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act or this Chapter due to indifference, lack or diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care.

(C) *A greater degree of fault than negligence* means reckless, knowing, or intentional conduct.

(iii) In calculating points to be assigned for negligence, the acts of all persons working on the coal exploration or surface coal mining and reclamation site shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage.

(4) Good faith in attempting to achieve compliance.

(i) The Office shall add points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows:

Degree of good faith	Points
Rapid compliance	– 1 to – 10.
Normal compliance	0.

Surface Mining Reclamation and Enforcement, Interior

§ 845.15

(ii) The following definitions shall apply under paragraph (b)(4)(i) of this section:

(A) Rapid compliance means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

(B) Normal compliance means the person to whom the notice or order was issued abated the violation within the time given for abatement.

(iii) If the consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.

§ 845.14 Determination of amount of penalty.

The Office shall determine the amount of any civil penalty by converting the total number of points assigned under 30 CFR 845.13 to a dollar amount, according to the following schedule:

Points	Dollars
1	64
2	129
3	193
4	257
5	321
6	386
7	450
8	514
9	578
10	643
11	707
12	771
13	835
14	900
15	965
16	1,029
17	1,093
18	1,158
19	1,222
20	1,286
21	1,350
22	1,415
23	1,479
24	1,543
25	1,607
26	1,929
27	2,250
28	2,571
29	2,770
30	3,215
31	3,536
32	3,857
33	4,179
34	4,500
35	4,822

Points	Dollars
36	5,143
37	5,465
38	5,786
39	6,107
40	6,428
41	6,751
42	7,072
43	7,393
44	7,715
45	8,036
46	8,358
47	8,679
48	9,001
49	9,322
50	9,643
51	9,964
52	10,287
53	10,608
54	10,929
55	11,251
56	11,572
57	11,893
58	12,215
59	12,537
60	12,858
61	13,179
62	13,501
63	13,823
64	14,144
65	14,465
66	14,787
67	15,108
68	15,429
69	15,751
70	16,073

[47 FR 35640, Aug. 16, 1982, as amended at 62 FR 63276, Nov. 28, 1997; 66 FR 58647, Nov. 21, 2001; 70 FR 70701, Nov. 22, 2005; 74 FR 34493, July 15, 2009; 79 FR 18447, Apr. 2, 2014; 81 FR 44541, July 8, 2016; 82 FR 9354, Feb. 6, 2017]

§ 845.15 Assessment of separate violations for each day.

(a) The Office may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the Office shall consider the factors listed in 30 CFR 845.13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which is assigned more than 70 points under § 845.13(b), the Office shall assess a penalty for a minimum of two separate days.

(b) In addition to the civil penalty provided for in paragraph (a) of this

§ 845.16

section, whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to section 521(a) of the Act, 30 U.S.C. 1271(a), a civil penalty of not less than \$2,411 will be assessed for each day during which such failure to abate continues, except that:

(1)(i) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under section 525(c) of the Act, after a determination that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the Office of Hearings and Appeals issues a final order with respect to the violation in question; and

(ii) If the person to whom the notice or order was issued initiates review proceedings under section 526 of the Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to section 526(c) of the Act, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court;

(2) Such penalty for the failure to abate the violation shall not be assessed for more than 30 days for each such violation. If the permittee has not abated the violation within the 30-day period, the Office shall take appropriate action pursuant to section 518(e), 518(f), 521(a)(4), or 521(c) of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate.

[47 FR 35640, Aug. 16, 1982, as amended at 62 FR 63277, Nov. 28, 1997; 66 FR 58647, Nov. 21, 2001; 70 FR 70701, Nov. 22, 2005; 81 FR 44541, July 8, 2016; 82 FR 9354, Feb. 6, 2017]

§ 845.16 Waiver of use of formula to determine civil penalty.

(a) The Director, upon his own initiative or upon written request received within 15 days of issuance of a notice of violation or a cessation order, may waive the use of the formula contained in 30 CFR 845.13 to set the civil penalty, if he or she determines that, tak-

30 CFR Ch. VII (7–1–17 Edition)

ing into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the Director shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the Act, this chapter, any applicable program, or any condition of any permit or exploration approval. The basis for every waiver shall be fully explained and documented in the records of the case.

(b) If the Director waives the use of the formula, he or she shall use the criteria set forth in 30 CFR 845.13(b) to determine the appropriate penalty. When the Director has elected to waive the use of the formula, he or she shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

§ 845.17 Procedures for assessment of civil penalties.

(a) Within 15 days of service of a notice or order, the person to whom it was issued may submit written information about the violation to the Office and to the inspector who issued the notice of violation or cessation order. The Office shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) The Office shall serve a copy of the proposed assessment and of the work sheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, or by any alternative means consistent with the rules governing service of a summons or complaint under rule 4 of the Federal Rules of Civil Procedure, within 30 days of the issuance of the notice or order.

(1) If a copy of the proposed assessment and work sheet or the certified mail is tendered at the address of that person required under 30 CFR 816.11, or at any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such documents, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

(2) Failure by the Office to serve any proposed assessment within 30 days shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed—

(i) Proves actual prejudice as a result of the delay; and,

(ii) Makes a timely objection to the delay. An objection shall be timely only if made in the normal course of administrative review.

(c) Unless a conference has been requested, the Office shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The Office shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in paragraph (b), within 30 days after the date the violation is abated.

[47 FR 35640, Aug. 16, 1982, as amended at 56 FR 28446, June 20, 1991]

§ 845.18 Procedures for assessment conference.

(a) The Office shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within 30 days from the date the proposed assessment or reassessment is received.

(b)(1) The Office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by section 554 of title 5 of the United States Code, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date the conference request is received or the end of the abatement period, whichever is later: *Provided*, That a failure by the Office to hold such conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

(2) The Office shall post notice of the time and place of the conference at the State or field office closest to the mine

at least 5 days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The conference officer shall consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer shall either:

(i) Settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer on behalf of the Office and by the person assessed; or

(ii) Affirm, raise, lower, or vacate the penalty.

(4) An increase or reduction of a proposed civil penalty assessment of more than 25 percent and more than \$500 shall not be final and binding on the Secretary, until approved by the Director or his or her designee.

(c) The conference officer shall promptly serve the person assessed with a notice of his or her action in the manner provided in 30 CFR 845.17(b) and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

(d)(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by the Office within 30 days after the date of signing, the Office may enforce the agreement or rescind it and proceed according to paragraph (b)(3)(ii) within 30 days from the date of the rescission.

(e) The conference officer may terminate the conference when he or she determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

(f) At formal review proceedings under sections 518, 521(a)(4), and 525 of the Act, no evidence as to statements made or evidence produced by one

§ 845.19

party at a conference shall be introduced as evidence by another party or to impeach a witness.

[47 FR 35640, Aug. 16, 1982, as amended at 53 FR 3675, Feb. 8, 1988; 56 FR 10063, Mar. 8, 1991]

§ 845.19 Request for hearing.

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Office of Hearings and Appeals (to be held in escrow as provided in paragraph (b) of this section) within 30 days from receipt of the proposed assessment or reassessment or 30 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under 30 CFR 843.16.

(b) The Office of Hearings and Appeals shall transfer all funds submitted under paragraph (a) of this section to the Office, which shall hold them in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in 30 CFR 845.20.

[47 FR 35640, Aug. 16, 1982, as amended at 56 FR 10063, Mar. 8, 1991]

§ 845.20 Final assessment and payment of penalty.

(a) If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in § 845.19, the proposed assessment shall become a final order of the Secretary and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the Secretary, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to paragraph (c) of this section, the escrowed funds shall be transferred to the Office in payment of the penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this

30 CFR Ch. VII (7–1–17 Edition)

part, the Office shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the rate of 6 percent or at the prevailing Department of the Treasury rate, whichever is greater.

(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the Office within 15 days after the order is mailed to such person.

§ 845.21 Use of civil penalties for reclamation.

(a) To the extent authorized in the applicable annual appropriations act or other relevant statute, the Director of OSMRE may utilize money collected by the United States pursuant to the assessment of civil penalties under section 518 of the Act for reclamation of lands adversely affected by coal mining practices after August 3, 1977, until such funds are expended.

(b) The Director may allocate funds at his discretion for reclamation projects on lands within any State or on Federal lands or Indian lands based on the following priorities:

(1) Emergency projects as defined in § 700.5 of this chapter;

(2) Reclamation projects which qualify as priority 1 under section 403 of the Act;

(3) Reclamation Projects which qualify as priority 2 under section 403 of the Act; and

(4) Reclamation of Federal bond forfeiture sites.

(c) Notwithstanding paragraph (b) of this section, at his discretion, the Director may allocate funds for any other reclamation project which constitutes a danger to the environment or to the public health and safety.

[53 FR 16017, May 4, 1988, as amended at 54 FR 19342, May 4, 1989; 73 FR 67631, Nov. 14, 2008]

PART 846—INDIVIDUAL CIVIL PENALTIES

Sec.

846.1 Scope.

846.12 When an individual civil penalty may be assessed.

Surface Mining Reclamation and Enforcement, Interior

§ 846.17

846.14 Amount of individual civil penalty.

846.17 Procedure for assessment of individual civil penalty.

846.18 Payment of penalty.

AUTHORITY: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

SOURCE: 53 FR 3675, Feb. 8, 1988, unless otherwise noted.

§ 846.1 Scope.

This part covers the assessment of individual civil penalties under section 518(f) of the Act.

§ 846.12 When an individual civil penalty may be assessed.

(a) Except as provided in paragraph (b) of this section, the Office may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.

(b) The Office shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the Office to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days.

§ 846.14 Amount of individual civil penalty.

(a) In determining the amount of an individual civil penalty assessed under § 846.12, the Office shall consider the criteria specified in section 518(a) of the Act, including:

(1) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation;

(2) The seriousness of the violation, failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and

(3) The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

(b) The penalty will not exceed \$16,073 for each violation. Each day of a continuing violation may be deemed a

separate violation and the Office may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the Secretary, until abatement or compliance is achieved.

[53 FR 3675, Feb. 8, 1988, as amended at 62 FR 63277, Nov. 28, 1997; 70 FR 70701, Nov. 22, 2005; 74 FR 34493, July 15, 2009; 79 FR 18448, Apr. 2, 2014; 81 FR 44541, July 8, 2016; 82 FR 9354, Feb. 6, 2017]

§ 846.17 Procedure for assessment of individual civil penalty.

(a) *Notice.* The Office shall serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

(b) *Final order and opportunity for review.* The notice of proposed individual civil penalty assessment shall become a final order of the Secretary 30 days after service upon the individual unless:

(1) The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203 (Phone: 703-235-3800), in accordance with 43 CFR 4.1300 *et seq.*; or

(2) The Office and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.

(c) *Service.* For purposes of this section, service shall be performed on the individual to be assessed an individual civil penalty, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice of proposed assessment and included information or of the certified

§ 846.18

mail and shall not be deemed incomplete because of refusal to accept.

[53 FR 3675, Feb. 8, 1988, as amended at 56 FR 28446, June 20, 1991; 67 FR 5204, Feb. 5, 2002]

§ 846.18 Payment of penalty.

(a) *No abatement or appeal.* If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the final order.

(b) *Appeal.* If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with 43 CFR 4.1300 *et seq.*, the penalty shall be due upon issuance of a final administrative order affirming, increasing or decreasing the proposed penalty.

(c) *Abatement agreement.* Where the Office and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the Office stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

(d) *Delinquent payment.* Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty shall be subject to interest at the rate established by the U.S. Department of the Treasury for late charges on late payments to the Federal Government. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the FEDERAL REGISTER and on Treasury's Web site. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties may result in one or more of the actions specified in § 870.23(a) through (f) of this chapter. Delinquent penalties are subject to late payment penalties specified in § 870.21(c) of this chapter and processing

30 CFR Ch. VII (7–1–17 Edition)

and handling charges specified in § 870.21(d) of this chapter.

[53 FR 3675, Feb. 8, 1988, as amended at 73 FR 67631, Nov. 14, 2008]

PART 847—ALTERNATIVE ENFORCEMENT

Sec.

847.1 Scope.

847.2 General provisions.

847.11 Criminal penalties.

847.16 Civil actions for relief.

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

SOURCE: 65 FR 79671, Dec. 19, 2000, unless otherwise noted.

§ 847.1 Scope.

This part governs the use of measures provided in sections 518(e), 518(g) and 521(c) of the Act for criminal penalties and civil actions to compel compliance with provisions of the Act.

§ 847.2 General provisions.

(a) Whenever a court of competent jurisdiction enters a judgment against or convicts a person under these provisions, we must update AVS to reflect the judgment or conviction.

(b) The existence of a performance bond or bond forfeiture cannot be used as the sole basis for determining that an alternative enforcement action is unwarranted.

(c) Each State regulatory program must include provisions for civil actions and criminal penalties that are no less stringent than those in this part and include the same or similar procedural requirements.

(d) Nothing in this part eliminates or limits any additional enforcement rights or procedures available under Federal or State law.

§ 847.11 Criminal penalties.

Under sections 518(e) and (g) of the Act, we, the regulatory authority, may request the Attorney General to pursue criminal penalties against any person who—

(a) Willfully and knowingly violates a condition of the permit;

(b) Willfully and knowingly fails or refuses to comply with—

(1) Any order issued under section 521 or 526 of the Act; or

Surface Mining Reclamation and Enforcement, Interior

§ 847.16

(2) Any order incorporated into a final decision issued by the Secretary under the Act (except for those orders specifically excluded under section 518(e) of the Act); or

(c) Knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the regulatory program or any order or decision issued by the Secretary under the Act.

[65 FR 79671, Dec. 19, 2000, as amended at 72 FR 68031, Dec. 3, 2007]

§ 847.16 Civil actions for relief.

(a) Under section 521(c) of the Act, we, the regulatory authority, may request the Attorney General to institute a civil action for relief whenever you, the permittee, or your agent—

(1) Violate or fail or refuse to comply with any order or decision that we issue under the Act or regulatory program;

(2) Interfere with, hinder, or delay us in carrying out the provisions of the Act or its implementing regulations;

(3) Refuse to admit our authorized representatives onto the site of a surface coal mining and reclamation operation;

(4) Refuse to allow our authorized representatives to inspect a surface coal mining and reclamation operation;

(5) Refuse to furnish any information or report that we request under the Act or regulatory program; or

(6) Refuse to allow access to, or copying of, those records that we determine necessary to carry out the provisions of the Act and its implementing regulations.

(b) A civil action for relief includes a permanent or temporary injunction, restraining order, or any other appropriate order by a district court of the United States for the district in which the surface coal mining and reclamation operation is located or in which you have your principal office.

(c) Temporary restraining orders will be issued in accordance with Rule 65 of the Federal Rules of Civil Procedure, as amended.

(d) Any relief the court grants to enforce an order under paragraph (b) of this section will continue in effect until completion or final termination of all proceedings for review of that order under the Act or its implementing regulations unless, beforehand, the district court granting the relief sets aside or modifies the order.

[65 FR 79671, Dec. 19, 2000, as amended at 72 FR 68031, Dec. 3, 2007]

SUBCHAPTER M—TRAINING, EXAMINATION, AND CERTIFICATION OF BLASTERS

PART 850—PERMANENT REGULATORY PROGRAM REQUIREMENTS—STANDARDS FOR CERTIFICATION OF BLASTERS

Sec.

850.1 Scope.

850.5 Definition.

850.10 Information collection.

850.12 Responsibility.

850.13 Training.

850.14 Examination.

850.15 Certification.

AUTHORITY: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

SOURCE: 48 FR 9492, Mar. 4, 1983, unless otherwise noted.

§ 850.1 Scope.

This part establishes the requirements and the procedures applicable to the development of regulatory programs for training, examination, and certification of persons engaging in or directly responsible for the use of explosives in surface coal mining operations.

§ 850.5 Definition.

As used in this part—

Blaster means a person directly responsible for the use of explosives in surface coal mining operations who is certified under this part.

§ 850.10 Information collection.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0080. The information is being collected to meet the requirements of sections 503, 515, and 719 of Pub. L. 95-87. This information will be used by the regulatory authority to assist in implementing the blaster certification program. The obligation to respond is mandatory.

§ 850.12 Responsibility.

(a) The regulatory authority is responsible for promulgating rules governing the training, examination, certification and enforcement of a blaster

certification program for surface coal mining operations. When the regulatory authority is a State, the State shall submit these rules of the Office of Surface Mining for approval under parts 731 and 732 of this chapter.

(b) The regulatory authority shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or implementation of a Federal program or within 12 months after March 4, 1983 of this rule, whichever is later. The Director may approve an extension of the 12-month period upon a demonstration of good cause.

[48 FR 9492, Mar. 4, 1983, as amended at 48 FR 44781, Sept. 30, 1983]

§ 850.13 Training.

(a) The regulatory authority shall establish procedures which require that—

(1) Persons seeking to become certified as blasters receive training including, but not limited to, the technical aspects of blasting operations and State and Federal laws governing the storage, transportation, and use of explosives; and

(2) Persons who are not certified and who are assigned to a blasting crew or assist in the use of explosives receive direction and on-the-job training from a blaster.

(b) The regulatory authority shall ensure that courses are available to train persons responsible for the use of explosives in surface coal mining operations. The courses shall provide training and discuss practical applications of—

(1) Explosives, including—

(i) Selection of the type of explosive to be used;

(ii) Determination of the properties of explosives which will produce desired results at an acceptable level of risk; and

(iii) Handling, transportation, and storage;

(2) Blast designs, including—

Surface Mining Reclamation and Enforcement, Interior

§ 850.15

- (i) Geologic and topographic considerations;
 - (ii) Design of a blast hole, with critical dimensions;
 - (iii) Pattern design, field layout, and timing of blast holes; and
 - (iv) Field applications;
- (3) Loading blastholes, including priming and boosting;
- (4) Initiation systems and blasting machines;
- (5) Blasting vibrations, airblast, and flyrock, including—
- (i) Monitoring techniques, and
 - (ii) Methods to control adverse affects;
- (6) Secondary blasting applications;
- (7) Current Federal and State rules applicable to the use of explosives;
- (8) Blast records;
- (9) Schedules;
- (10) Preblasting surveys, including—
- (i) Availability,
 - (ii) Coverage, and
 - (iii) Use of in-blast design;
- (11) Blast-plan requirements;
- (12) Certification and training;
- (13) Signs, warning signals, and site control;
- (14) Unpredictable hazards, including—
- (i) Lightning,
 - (ii) Stray currents,
 - (iii) Radio waves, and
 - (iv) Misfires.

§ 850.14 Examination.

- (a) The regulatory authority shall ensure that candidates for blaster certification are examined by reviewing and verifying the—
- (1) Competence of persons directly responsible for the use of explosives in surface coal mining operations through a written examination in technical aspects of blasting and State and Federal laws governing the storage, use, and transportation of explosives; and
- (2) Practical field experience of the candidates as necessary to qualify a person to accept the responsibility for blasting operations in surface coal mining operations. Such experience shall demonstrate that the candidate possesses practical knowledge of blasting techniques, understands the hazards involved in the use of explosives, and otherwise has exhibited a pattern of conduct consistent with the accept-

ance of responsibility for blasting operations.

- (b) Applicants for blaster certification shall be examined, at a minimum, in the topics set forth in § 850.13(b).

§ 850.15 Certification.

(a) *Issuance of certification.* The regulatory authority shall certify for a fixed period those candidates examined and found to be competent and to have the necessary experience to accept responsibility for blasting operations in surface coal mining operations.

(b) *Suspension and revocation.* (1) The regulatory authority, when practicable, following written notice and opportunity for a hearing, may, and upon a finding of willful conduct, shall suspend or revoke the certification of a blaster during the term of the certification or take other necessary action for any of the following reasons:

- (i) Noncompliance with any order of the regulatory authority.
- (ii) Unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs.
- (iii) Violation of any provision of the State or Federal explosives laws or regulations.
- (iv) Providing false information or a misrepresentation to obtain certification.

(2) If advance notice and opportunity for hearing cannot be provided, an opportunity for a hearing shall be provided as soon as practical following the suspension, revocation, or other adverse action.

(3) Upon notice of a revocation, the blaster shall immediately surrender to the regulatory authority the revoked certificate.

(c) *Recertification.* The regulatory authority may require the periodic reexamination, training, or other demonstration of continued blaster competency.

(d) *Protection of certification.* Certified blasters shall take every reasonable precaution to protect their certificates from loss, theft, or unauthorized duplication. Any such occurrence shall be reported immediately to the certifying authority.

§ 850.15

30 CFR Ch. VII (7–1–17 Edition)

(e) *Conditions.* The regulatory authority shall specify conditions for maintaining certification which shall include the following:

(1) A blaster shall immediately exhibit his or her certificate to any authorized representative of the regu-

latory authority or the Office upon request.

(2) Blasters' certifications shall not be assigned or transferred.

(3) Blasters shall not delegate their responsibility to any individual who is not a certified blaster.

SUBCHAPTERS N–O [RESERVED]

SUBCHAPTER P—PROTECTION OF EMPLOYEES

PART 865—PROTECTION OF EMPLOYEES

Sec.

865.1 Scope.

865.11 Protected activity.

865.12 Procedures for filing an application for review of discrimination.

865.13 Investigation and conference procedures.

865.14 Request for hearing.

865.15 Formal adjudicatory proceedings.

AUTHORITY: Secs. 201, 501, 502 and 703, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201.)

SOURCE: 42 FR 62712, Dec. 13, 1977, unless otherwise noted. Redesignated at 44 FR 15312, Mar. 13, 1979.

§ 865.1 Scope.

This part establishes procedures regarding—

(a) The reporting of acts of discriminatory discharge or other acts of discrimination under the Act caused by any person. Forms of discrimination include, but are not limited to: Firing, suspension, transfer or demotion, denial or reduction of wages and benefits, coercion by promises of benefits or threats of reprisal, and interference with the exercise of any rights afforded under the Act;

(b) The investigation of applications for review and holding of informal conferences about the alleged discrimination; and

(c) The request for formal hearings with the Office of Hearings and Appeals.

§ 865.11 Protected activity.

(a) No person shall discharge or in any other way discriminate against or cause to be fired or discriminated against any employee or any authorized representative of employees because that employee or representative has—

(1) Filed, instituted or caused to be filed or instituted any proceedings under the Act by—

(i) Reporting alleged violations or dangers to the Secretary, the State Regulatory Authority, or the employer or his representative.

(ii) Requesting an inspection or investigation; or

(iii) Taking any other action which may result in a proceeding under the Act.

(2) Made statements, testified, or is about to do so—

(i) In any informal or formal adjudicatory proceeding;

(ii) In any informal conference proceeding;

(iii) In any rulemaking proceeding;

(iv) In any investigation, inspection or other proceeding under the Act;

(v) In any judicial proceeding under the Act.

(3) Has exercised on his own behalf or on behalf of others any right granted by the Act.

(b) Each employer conducting operations which are regulated under this Act, shall within 30 days from the effective day of these regulations, provide a copy of this part to all current employees and to all new employees at the time of their hiring.

[42 FR 62712, Dec. 13, 1977; 43 FR 2722, Jan. 19, 1978. Redesignated at 44 FR 15312, Mar. 13, 1979]

§ 865.12 Procedures for filing an application for review of discrimination.

(a) *Who may file.* Any employee, or any authorized representative of employees, who believes that he has been discriminated against by any person in violation of § 865.11(a) of this part may file an application for review. For the purpose of these regulations, an application for review means the presentation of a written report of discrimination stating the reasons why the person believes he has been discriminated against and the facts surrounding the alleged discrimination.

(b) *Where to file.* The employee or representative may file the application for review at any location of the Office and each office shall maintain a log of all filing.

(c) *Time for filing.* The employee or representative shall file an application for review within 30 days after the alleged discrimination occurs. An application is considered filed—

§ 865.13

(1) On the date delivered if delivered a person to the Office, or

(2) On the date mailed to the Office.

(d) *Running of the time of filing.* The time for filing begins when the employee knows or has reason to know of the alleged discriminatory activity.

§ 865.13 Investigation and conference procedures.

(a) Within 7 days after receipt of any application for review, the Office shall mail a copy of the application for review to the person alleged to have caused the discrimination, shall file the application for review with the Office of Hearings and Appeals and shall notify the employee and the alleged discriminating person that the Office will investigate the complaint. The alleged discriminating person may file a response to the application for review within 10 days after he receives the copy of the application for review. The response shall specifically admit, deny or explain each of the facts alleged in the application unless the alleged discriminating person is without knowledge in which case he shall so state.

(b) The Office shall initiate an investigation of the alleged discrimination with 30 days after receipt of the application for review. The Office shall complete the investigation with 60 days of the date of the receipt of the application for review. If circumstances surrounding the investigation prevent completion within the 60-day period, the Office shall notify the person who filed the application for review and the alleged discriminating person of the delay, the reason for the delay, and the expected completion date for the investigation.

(c) Within 7 days after completion of the investigation the Office shall invite the parties to an informal conference to discuss the findings and preliminary conclusions of the investigation. The purpose of the informal conference is to attempt to conciliate the matter. If a complaint is resolved at an informal conference, the terms of the agreement will be recorded in a written document that will be signed by the alleged discriminating person, the employee and the representative of the Office. If the Office concludes on the basis of a subsequent investigation that any party

30 CFR Ch. VII (7-1-17 Edition)

to the agreement has failed in any material respect to comply with the terms of any agreement reached during an informal conference, the Office shall take appropriate action to obtain compliance with the agreement.

(d) Following the investigation and any informal conference held, the Office shall complete a report of investigation which shall include a summary of the results of the conference. Copies of this report shall be available to the parties in the case.

§ 865.14 Request for hearing.

(a) If the Office determines that a violation of this part has probably occurred and was not resolved at an informal conference, the Director shall request a hearing on the employee's behalf before the Office of Hearings and Appeals within 10 days of the scheduled informal hearing. The parties shall be notified of the determination. If the Director declines to request a hearing the employee shall be notified within 10 days of the scheduled informal conference and informed of his right to request a hearing on his own behalf.

(b) The employee may request a hearing with the Office of Hearings and Appeals after 60 days have elapsed from the filing of his application.

§ 865.15 Formal adjudicatory proceedings.

(a) Formal adjudication of a complaint filed under this part shall be conducted in the Office of Hearings and Appeals under 43 CFR part 4.

(b) A hearing shall be held as promptly as possible consistent with the opportunity for discovery provided for under 43 CFR part 4.

(c) Upon a finding of violation of § 865.11 of this part, the Secretary shall order the appropriate affirmative relief including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. At the request of the employee a sum equal to the aggregate amount of all costs and expenses including attorneys'

Surface Mining Reclamation and Enforcement, Interior

§ 865.15

fees which have been reasonably incurred by the employee for, or in connection with, the institution and prosecution of the proceedings shall be assessed against the person committing the violation.

(d) On or after 10 days after filing an application for review under this part the Secretary or the employee may seek temporary relief in the Office of Hearings and Appeals under 43 CFR part 4.

SUBCHAPTER R—ABANDONED MINE LAND RECLAMATION

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

Sec.

870.1 Scope.

870.5 Definitions.

870.10 Information collection.

870.11 Applicability.

870.12 Reclamation fee.

870.13 Fee rates.

870.14 Determination of percentage-based fees.

870.15 Reclamation fee payment.

870.16 Acceptable payment methods.

870.17 Filing the OSM-1 Form.

870.18 General rules for calculating excess moisture.

870.19 How to calculate excess moisture in HIGH-rank coals.

870.20 How to calculate excess moisture in LOW-rank coals.

870.21 Late payments.

870.22 Maintaining required production records.

870.23 Consequences of noncompliance.

AUTHORITY: 28 U.S.C. 1746, 30 U.S.C. 1201 *et seq.*, and Pub. L. 105-277.

SOURCE: 47 FR 28593, June 30, 1982, unless otherwise noted.

§ 870.1 Scope.

This part sets out our procedures to collect fees for the Fund and to report coal production.

[73 FR 67631, Nov. 14, 2008]

§ 870.5 Definitions.

As used in this Part—

Anthracite, bituminous and subbituminous coal means all coals other than lignite coal.

Calendar quarter means a 3-month period within a calendar year. The first calendar quarter begins on January 1 of the calendar year and ends on the last day of March. The second calendar quarter begins on the first day of April and ends on the last day of June. The third calendar quarter begins on the first day of July and ends on the last day of September. The fourth calendar quarter begins on the first day of October and ends on the last day of December.

Excess moisture means the difference between total moisture and inherent moisture, calculated according to § 870.19 for high-rank coals or the difference between total moisture and inherent moisture calculated according to § 870.20 for low-rank coals.

Expended means that moneys have been obligated, encumbered, or committed for reclamation by contract by the OSM, State, or Tribe for work to be accomplished or services to be rendered.

Fee compliance officer means any person authorized by the Secretary to exercise authority in matters relating to this part.

In situ coal mining means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, bore hole mining, and fluid recovery mining. At this time, part 870 considers only in situ gasification.

Inherent moisture means moisture that exists as an integral part of the coal seam in its natural state, including water in pores, but excluding that present in macroscopically visible fractures, as determined according to § 870.19(a) or § 870.20(a).

Lignite coal means consolidated lignite coal having less than 8,300 British thermal units per pound, moist and mineral-matter-free. Moist, mineral-matter free British thermal units per pound are determined by Parr's formula, equation 3, on page 222 of "Standard Specification for Classification of Coals by Rank," in American Society for Testing and Materials ASTM D 388-77 (Philadelphia, 1977). Parr's formula follows:

Moist, Mn-Free Btu=
 $(Bu - 50S) / [100 - (1.08A + 0.55S)] \times 100$

where:

Mn = Mineral matter

Btu = British thermal units per pound (calorific value)

A = percentage of ash, and

S = percentage of sulfur

Surface Mining Reclamation and Enforcement, Interior

§ 870.12

“Moist” refers to coal containing its natural inherent or bed moisture, but not including water adhering to the surface of the coal.

Mineral owner means any person or entity owning 10 percent or more of the mineral estate for a permit. If no single mineral owner meets the 10 percent rule, then the largest single mineral owner shall be considered to be the mineral owner. If there are several persons who have successively transferred the mineral rights, information shall be provided on the last owner(s) in the chain prior to the permittee, i.e. the person or persons who have granted the permittee the right to extract the coal.

Reclaimed coal means coal recovered from a deposit that is not in its original geological location, such as refuse piles or culm banks or retaining dams and ponds that are or have been used during the mining or preparation process, and stream coal deposits. Reclaimed coal operations are considered to be surface coal mining operations for fee liability and calculation purposes.

Surface coal mining means the extraction of coal from the earth by removing the materials over the coal seam before recovering the coal and includes auger coal mining. For purposes of subchapter R, reclaiming coal operations are considered surface coal mining.

Ton means 2,000 pounds avoirdupois (0.90718 metric ton).

Total moisture means the measure of weight loss in an air atmosphere under rigidly controlled conditions of temperature, time and air flow, as determined according to either § 870.19(a) or § 870.20(a).

Underground coal mining means the extraction of coal from the earth by developing entries from the surface to the coal seam before recovering the coal by underground extraction methods, and includes in situ mining.

Value means gross value at the time of initial bona fide sale, transfer of ownership, or use by the operator, but does not include the reclamation fee required by this part.

[47 FR 28593, June 30, 1982, as amended at 53 FR 19726, May 27, 1988; 59 FR 28168, May 31, 1994; 60 FR 9980, Feb. 22, 1995; 62 FR 60142, Nov. 6, 1997; 73 FR 67631, Nov. 14, 2008]

§ 870.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of part 870 and the OSM-1 Form and assigned control number 1029-0063. The information is used to maintain a record of coal produced nationwide each calendar quarter, the method of coal removal, the type of coal, and the basis for coal tonnage reporting. Persons must respond to meet the requirements of SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[73 FR 67631, Nov. 14, 2008]

§ 870.11 Applicability.

The regulations in this part apply to all surface and underground coal mining operations except—

(a) The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him;

(b) The extraction of coal as an incidental part of Federal, State, or local government-financed highway or other construction;

(c) 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 commercial use or sale

(1) In accordance with part 702 of this chapter for Federal program States and on Indian lands or

(2) In any twelve consecutive months in a State with an approved State program until counterpart regulations pursuant to part 702 of this chapter have been incorporated into the State program and in accordance with such counterpart regulations, thereafter; and

(d) The extraction of less than 250 tons of coal within twelve consecutive months.

[47 FR 28593, June 30, 1982, as amended at 54 FR 52123, Dec. 20, 1989; 54 FR 52123, Dec. 20, 1989; 73 FR 67631, Nov. 14, 2008]

§ 870.12 Reclamation fee.

(a) The operator shall pay a reclamation fee on each ton of coal produced

§ 870.13

30 CFR Ch. VII (7–1–17 Edition)

for sale, transfer, or use, including the products of in situ mining.

(b) The fee shall be determined by the weight and value at the time of initial bona fide sale, transfer of ownership, or use by the operator.

(1) The initial bona fide sale, transfer of ownership, or use shall be determined by the first transaction or use of the coal by the operator immediately after it is severed, or removed from a reclaimed coal refuse deposit.

(2) The value of the coal shall be determined F.O.B. mine.

(3) The weight of each ton shall be determined by the actual gross weight of the coal.

(i) Impurities that have not been removed prior to the time of initial bona fide sale, transfer of ownership, or use by the operator, excluding excess moisture for which a reduction has been taken pursuant to § 870.18, shall not be deducted from the gross weight.

(ii) Operators selling coal on a clean coal basis shall retain records that show run-of-mine tonnage, and the basis for the clean coal transaction.

(iii) Insufficient records shall subject the operator to fees based on raw tonnage data.

(c) If the operator combines surface mined coal, including reclaimed coal, with underground mined coal before the coal is weighed for fee purposes, the higher reclamation fee shall apply, unless the operator can substantiate the amount of coal produced by surface mining by acceptable engineering calculations or other reports which the Director may require.

(d) The reclamation fee shall be paid after the end of each calendar quarter

beginning with the calendar quarter starting October 1, 1977.

[47 FR 28593, June 30, 1982, as amended at 53 FR 19726, May 27, 1988; 59 FR 28169, May 31, 1994; 69 FR 56130, Sept. 17, 2004]

§ 870.13 Fee rates.

(a) *Fees for coal produced for sale, transfer, or use through September 30, 2007—*(1) *Surface mining fees.* The fee for anthracite, bituminous, and subbituminous coal, including reclaimed coal, is 35 cents per ton unless the value of such coal is less than \$3.50 per ton, in which case the fee is 10 percent of the value.

(2) *Underground mining fees.* The fee for anthracite, bituminous, and subbituminous coal is 15 cents per ton unless the value of such coal is less than \$1.50 per ton, in which case the fee is 10 percent of the value.

(3) *Surface and underground mining fees for lignite coal.* The fee for lignite coal is 10 cents per ton unless the value of such coal is less than \$5.00 per ton, in which case the fee charged is 2 percent of the value.

(4) *In situ coal mining fees.* The fee for in situ mined coal, except lignite coal, is 15 cents per ton based on Btu's per ton in place equated to the gas produced at the site as certified through analysis by an independent laboratory. The fee for in situ mined lignite is 10 cents per ton based on the Btu's per ton of coal in place equated to the gas produced at the site as certified through analysis by an independent laboratory.

(b) *Fees for coal produced for sale, transfer, or use from October 1, 2007, through September 30, 2012.* Fees for coal produced for sale, transfer, or use from October 1, 2007, through September 30, 2012, are shown in the following table:

Type of fee	Type of coal	Amount of fee
(1) Surface mining fee	Anthracite, bituminous, and subbituminous, including reclaimed.	(i) If value of coal is \$3.15 per ton or more, fee is 31.5 cents per ton. (ii) If value of coal is less than \$3.15 per ton, fee is 10 percent of the value.
(2) Underground mining fee	Anthracite, bituminous, and subbituminous.	(i) If value of coal is \$1.35 per ton or more, fee is 13.5 cents per ton. (ii) If value of coal is less than \$1.35 per ton, fee is 10 percent of the value.
(3) Surface and underground mining fee.	Lignite	(i) If value of coal is \$4.50 per ton or more, fee is 9 cents per ton. (ii) If value of coal is less than \$4.50 per ton, fee is 2 percent of the value.

Surface Mining Reclamation and Enforcement, Interior

§ 870.15

Type of fee	Type of coal	Amount of fee
(4) In situ coal mining fee	All types other than lignite	13.5 cents per ton based on Btu's per ton in place equated to the gas produced at the site as certified through analysis by an independent laboratory.
(5) In situ coal mining fee	Lignite	9 cents per ton based on the Btu's per ton of coal in place equated to the gas produced at the site as certified through analysis by an independent laboratory.

(c) *Fees for coal produced for sale, transfer, or use from October 1, 2012, through September 30, 2021.* The fees for coal produced for sale, transfer, or use

from October 1, 2012, through September 30, 2021, are shown in the following table:

Type of fee	Type of coal	Amount of fee
(1) Surface mining fee	Anthracite, bituminous, and subbituminous, including re-claimed coal.	(i) If value of coal is \$2.80 per ton or more, fee is 28 cents per ton. (ii) If value of coal is less than \$2.80 per ton, fee is 10 percent of the value.
(2) Underground mining fee	Anthracite, bituminous, and subbituminous.	(i) If value of coal is \$1.20 per ton or more, fee is 12 cents per ton. (ii) If value of coal is less than \$1.20 per ton, fee is 10 percent of the value.
(3) Surface and underground mining fee.	Lignite	(i) If value of coal is \$4.00 per ton or more, fee is 8 cents per ton. (ii) If value of coal is less than \$4.00 per ton, fee is 2 percent of the value.
(4) In situ coal mining fee	All types other than lignite	12 cents per ton based on Btu's per ton in place equated to the gas produced at the site as certified through analysis by an independent laboratory.
(5) In situ coal mining fee	Lignite	8 cents per ton based on the Btu's per ton of coal in place equated to the gas produced at the site as certified through analysis by an independent laboratory.

[47 FR 28593, June 30, 1982, as amended at 69 FR 56130, Sept. 17, 2004; 73 FR 67631, Nov. 14, 2008]

§ 870.14 Determination of percentage-based fees.

(a) If you pay a fee based on a percentage of the value of coal, you must include documentation supporting the claimed coal value with your fee payment and production report. We may review this information and any additional documentation we may require, including examination of your books and records. We may accept the valuation you claim, or we may determine another value of the coal.

(b) If we determine that a higher fee must be paid, you must pay the additional fee together with interest computed under § 870.21.

[73 FR 67632, Nov. 14, 2008]

§ 870.15 Reclamation fee payment.

(a) You must pay the reclamation fee based on calendar quarter tonnage no later than 30 days after the end of each calendar quarter.

(b) Along with any fee payment due, you must submit to us a completed Coal Sales and Reclamation Fee Report (OSM-1 Form). You can file the OSM-1 Form either in paper format or in electronic format as specified in § 870.17. On the OSM-1 Form, you must report:

(1) The tonnage of coal sold, used, or transferred;

(2) The name and address of any person or entity who is the owner of 10 percent or more of the mineral estate for a given permit; and

(3) The name and address of any person or entity who purchases 10 percent or more of the production from a given permit, during the applicable quarter.

(c) If no single mineral owner or purchaser meets the 10 percent criterion in paragraphs (b)(2) and (b)(3) of this section, then you must report the name and address of the largest single mineral owner and purchaser. If several persons have successively transferred the mineral rights, you must include

§ 870.16

30 CFR Ch. VII (7–1–17 Edition)

on the OSM–1 Form information on the last owner(s) in the chain before the permittee, i.e. the person or persons who have granted the permittee the right to extract the coal.

(d) At the time of reporting, you may designate the information required by paragraphs (b) and (c) of this section as confidential.

[73 FR 67632, Nov. 14, 2008]

§ 870.16 Acceptable payment methods.

(a) If you owe total quarterly reclamation fees of \$25,000 or more for one or more mines, you must:

(1) Use an electronic fund transfer mechanism approved by the U.S. Department of the Treasury;

(2) Forward payments by electronic transfer;

(3) Include the applicable Master Entity No.(s) (Part 1–Block 4 on the OSM–1 Form), and OSM Document No.(s) (Part 1–upper right corner of the OSM–1 Form) on the wire message; and

(4) Use our approved form or approved electronic form to report coal tonnage sold, used, or for which ownership was transferred to the address indicated in the Instructions for Completing the OSM–1 Form.

(b) If you owe less than \$25,000 in quarterly reclamation fees for one or more mines, you may:

(1) Forward payments by electronic transfer in accordance with the procedures specified in paragraph (a) of this section; or

(2) Submit a check or money order payable to the Office of Surface Mining Reclamation and Enforcement in the same envelope with the OSM–1 Form to: Office of Surface Mining Reclamation and Enforcement, P.O. Box 360095M, Pittsburgh, Pennsylvania 15251.

(c) If you pay more than \$25,000 by a method other than an electronic fund transfer mechanism approved by the U.S. Department of the Treasury, you will be in violation of the Surface Mining Control and Reclamation Act of 1977, as amended.

[73 FR 67632, Nov. 14, 2008]

§ 870.17 Filing the OSM–1 Form.

(a) *Filing an OSM–1 Form electronically.* You may submit a quarterly elec-

tronic OSM–1 Form in place of a quarterly paper OSM–1 Form. Submitting the OSM–1 Form electronically is optional. If you submit your form electronically, you must use a methodology and medium approved by us and do one of the following:

(1) Maintain a properly notarized paper copy of the identical OSM–1 Form for review and approval by our Fee Compliance auditors (in order to comply with the notary requirement in SMCRA); or

(2) Submit an electronically signed and dated statement made under penalty of perjury that the information contained in the OSM–1 Form is true and correct.

(b) *Filing a paper OSM–1 Form.* Alternatively, you may submit a quarterly paper OSM–1 Form. If you choose to submit your form on paper, you must do one of the following:

(1) Submit a properly notarized copy of the OSM–1 Form; or

(2) Submit the OSM–1 Form with a signed and dated statement made under penalty of perjury that the information contained in the form is true and correct. Under the unsworn statement option, you must sign the following statement: “I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].”

[73 FR 67632, Nov. 14, 2008]

§ 870.18 General rules for calculating excess moisture.

If you are an operator who mined coal after June 1988, you may deduct the weight of excess moisture in the coal to determine reclamation fees you owe under 30 CFR 870.12(b)(3)(i). Excess moisture is the difference between total moisture and inherent moisture. To calculate excess moisture in HIGH-rank coal, follow § 870.19. To calculate excess moisture in LOW-rank coal, follow § 870.20. Report your calculations on the OSM–1 form, Coal Reclamation Fee Report, for every calendar quarter in which you claim a deduction. Some cautions:

(a) You or your customer may do any test required by §§ 870.19 and 870.20. But whoever does a test, you are to keep test results and all related records for at least six years after the test date.

(b) If OSM disallows any or all of an allowance for excess moisture, you must submit an additional fee plus interest computed according to § 870.21(a) and penalties computed according to § 870.21(c).

(c) The following definitions are applicable to §§ 870.19 and 870.20. ASTM standards D4596-93, *Standard Practice for Collection of Channel Samples of Coal in a Mine*; D5192-91, *Standard Practice for Collection of Coal Samples from Core*; and, D1412-93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30 °C* are incorporated by reference as published in the 1994 Annual Book of ASTM Standards, Volume 05.05. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Each applicable ASTM standard is incorporated as it exists on the date of the approval, and a notice of any change in it will be published in the FEDERAL REGISTER. You may obtain copies from the ASTM, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. A copy of the ASTM standards is available for inspection at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC, 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.

(1) *As-shipped coal* means raw or prepared coal that is loaded for shipment from the mine or loading facility.

(2) *Blended coal* means coals of various qualities and predetermined quantities mixed to control the final product.

(3) *Channel sample* means a sample of coal collected according to ASTM standard D4596-93 from a channel extending from the top to the bottom of a coal seam.

(4) *Commingled coal* means coal from different sources and/or types combined prior to shipment or use.

(5) *Core sample* means a cylindrical sample of coal that represents the

thickness of a coal seam penetrated by drilling according to ASTM standard D5192-91.

(6) *Correction factor* means the difference between the equilibrium moisture and the inherent moisture in low rank coals for the purpose of § 870.20(a).

(7) *Equilibrium moisture* means the moisture in the coal as determined through ASTM standard D1412-93.

(8) *High-rank coals* means anthracite, bituminous, and subbituminous A and B coals.

(9) *Low-rank coals* means subbituminous C and lignite coals.

(10) *Slurry pond* means any natural or artificial pond or lagoon used for the settlement and draining of the solids from the slurry resulting from the coal washing process.

(11) *Tipple coal* means coal from a mine or loading facility that is ready for shipment.

[62 FR 60142, Nov. 6, 1997, as amended at 73 FR 67633, Nov. 14, 2008]

§ 870.19 How to calculate excess moisture in HIGH-rank coals.

Here are the requirements for calculating the excess moisture in high-rank coals for a calendar quarter. ASTM standards D2234-89, *Standard Test Methods for Collection of a Gross Sample of Coal*; D3302-91, *Standard Test Method for Total Moisture in Coal*; D5192-91, *Standard Practice for Collection of Coal Samples from Core*; D1412-93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30 °C*; and, D4596-93, *Standard Practice for Collection of Channel Samples of Coal in a Mine* are incorporated by reference as published in the 1994 Annual Book of ASTM Standards, Volume 05.05. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Each applicable ASTM standard is incorporated as it exists on the date of the approval, and a notice of any change in it will be published in the FEDERAL REGISTER. You may obtain copies from the ASTM, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. A copy of the ASTM standards is available for inspection at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951

§ 870.19

30 CFR Ch. VII (7–1–17 Edition)

Constitution Avenue, NW., Washington, DC, 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.

(a)(1) Calculate the excess moisture percentage using one of these equations:

$$EM = TM - IM$$

or

$$EM = TM - \left(IM \times \frac{100 - TM}{100 - IM} \right)$$

(2) EM equals excess moisture percentage. TM equals total as-shipped moisture percentage calculated according to Table 1 of this section. IM equals inherent moisture percentage calculated according to Table 2 of this section.

(b) Multiply the excess moisture percentage by the tonnage from the bonafide sales, transfers of ownership, or uses by the operator during the quarter.

Table 1

Calculating TOTAL moisture percentage in HIGH-rank coals ¹	
Collect and test each day you ship or use coal ▼	Convert daily test results to quarterly figures and report them ▼
Collect a sample of as-shipped or used coal. Follow procedures in ASTM D2234-89. Test the sample for daily total moisture percentage. Follow laboratory procedures in ASTM D3302-91. Obtain prior OSM approval for use of other procedures.	1. Multiply daily total moisture percentage by daily tonnage shipped or used. You now have daily total moisture tonnage. 2. Add up daily total moisture tonnage for the quarter. 3. Add up daily tonnage shipped or used in the quarter. 4. Divide 2 by 3. Report this total moisture percentage in high-rank coal for the quarter on OSM-1, Coal Reclamation Fee Report.

¹ See §870.19 for the incorporation by reference of the ASTM standards.

Table 2

Calculating INHERENT moisture percentage in HIGH-rank coals ¹	
Choose from 3 ways to collect and test ▼	Choose from 2 ways to time the tests and convert the results for quarterly reporting ▼
First Collect a core sample². Follow procedures in ASTM D5192-91. Test the sample to estimate inherent moisture. Follow laboratory procedures in ASTM D1412-93.	First Collect and test once each quarter. Report test results for that quarter on OSM-1. Test results need no converting; they are in quarterly units already.
Or second Collect a channel sample. Follow procedures in ASTM D4596-93. Test the sample to estimate inherent moisture. Follow laboratory procedures in ASTM D1412-93 or ASTM D3302-91.	Or second Create a 24-month baseline and update as follows: <i>For reporting months 1-24 . . .</i> Collect and test one sample each month. Each quarter, calculate a weighted average percentage of inherent moisture: ● Multiply a month's inherent moisture percentage by tons produced or shipped. ● You now have the month's inherent moisture tonnage. ● Add up 3 months of that inherent moisture tonnage. ● Divide by tons produced or shipped in those 3 months. Report the quarter's weighted average percentage on OSM-1.
Or third Collect a sample of blended coal, as-shipped coal, tippie coal, commingled coal, or coal from slurry ponds. Follow procedures in ASTM D2234-89. Test the sample to estimate inherent moisture. Follow laboratory procedures in ASTM D1412-93.	<i>For all subsequent months . . .</i> Collect and test one sample for inherent moisture every 12 months. Calculate—and report in the following 4 quarters—one updated rolling average percentage: ● Add to the annual sample percentage the inherent moisture percentages for the preceding 23 tests. ● Divide by 24. Report the weighted average percentage on OSM-1.
¹ See §870.19 for the incorporation by reference of the ASTM standards. ² Core sampling was approved by the ASTM effective January 1, 1992.	

[62 FR 60143, Nov. 6, 1997]

§ 870.20 How to calculate excess moisture in LOW-rank coals.

Here are the requirements for calculating the excess moisture in low-rank coals for a calendar quarter. ASTM standards D2234-89, *Standard Test Methods for Collection of a Gross Sample of Coal*; D3302-91, *Standard Test Method for Total Moisture in Coal*; and, D1412-93, *Standard Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30 °C* are incorporated by reference as published in the 1994 Annual Book of ASTM Standards, Volume 05.05. The Director of the

Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Each applicable ASTM standard is incorporated as it exists on the date of the approval, and a notice of any change in it will be published in the FEDERAL REGISTER. You may obtain copies from the ASTM, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428. A copy of the ASTM standards is available for inspection at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW.,

§ 870.20

30 CFR Ch. VII (7–1–17 Edition)

Washington, DC, 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.

(a)(1) Calculate the excess moisture percentage using one of these equations:

$$EM = TM - IM$$

or

$$EM = TM - \left(IM \times \frac{100 - TM}{100 - IM} \right)$$

(2) EM equals excess moisture percentage. TM equals total as-shipped moisture percentage calculated according to Table 1 of this section. IM equals inherent moisture percentage calculated according to Tables 2 and 3 of this section.

(b) Multiply the excess moisture percentage by the tonnage from the bona fide sales, transfers of ownership, or uses by the operator during the quarter.

Table 1

Calculating TOTAL moisture percentage in LOW-rank coals ¹	
Collect and test each day you ship or use coal ▼	Convert test results to quarterly figures and report them ▼
Collect a sample of as-shipped or used coal. Follow procedures in ASTM D2234-89.	Convert daily total moisture percentage to quarterly total moisture percentage:
Test the sample for daily total moisture percentage. Follow laboratory procedures in ASTM D3302-91.	1. Multiply daily total moisture percentage by daily tonnage shipped or used. You now have daily total moisture tonnage.
Obtain prior OSM approval for use of other procedures.	2. Add up daily total moisture tonnage for the quarter.
	3. Add up daily tonnage shipped or used in the quarter.
	4. Divide 2 by 3.
	Report this total moisture percentage in low-rank coal for the quarter on OSM-1, Coal Reclamation Fee Report.

¹ See §870.20 for the incorporation by reference of the ASTM standards.

Table 2

Calculating INHERENT moisture percentage in LOW-rank coals ¹	
Collect and test once a month ▼	Convert test results to quarterly figures and report them ▼
Collect 1 sample of as-shipped coal. Follow procedures in ASTM D2234-89.	Calculate inherent moisture percentage for the quarter: ● Average the 3 equilibrium moisture results from your monthly tests. ● Add to this average a Correction Factor that you calculate for the first quarter according to Table 3 below.
Test the sample for equilibrium moisture. Follow laboratory procedures in ASTM D1412-93.	Report this inherent moisture percentage for the quarter on OSM-1.
¹ See §870.20 for the incorporation by reference of the ASTM standards.	

Table 3

Calculating the Correction Factor for Table 2 ¹	
Collect and test in the first quarter a deduction is taken▼	Convert test results into a correction factor for all quarterly reports ▼
Collect 15 samples that are representative of the entire seam from a freshly exposed, unweathered coal seam face. Follow procedures in ASTM D1412-93 Appendix X1.	Use the test results to calculate a correction factor: ● Average the 15 inherent moisture results from your tests. ● Average the 15 equilibrium moisture results from your tests. ● Subtract the average equilibrium moisture from the average inherent moisture.
Test each sample for two things: ● Inherent moisture ● Equilibrium moisture. Follow laboratory procedures in ASTM D1412-93 Appendix X1.	You now have a correction factor for the first quarter the deduction is taken, and all later quarters. Use it in Table 2 above. You may change the correction factor at any time by repeating the steps in this table. A correction factor applies to only the bench you sample. If you mine multiple benches or seams simultaneously, you may combine the sample results from the different benches or seams to calculate an average correction factor. You may update the correction factor by repeating the procedures or incorporating new test results with the initial result.
¹ See §870.20 for the incorporation by reference of the ASTM standards.	

[62 FR 60146, Nov. 6, 1997, as amended at 75 FR 60276, Sept. 29, 2010]

§ 870.21 Late payments.

(a) Fee payments postmarked later than 30 days after the calendar quarter for which the fee was owed are subject to interest. Late reclamation fee payments are subject to interest at the rate established by the U.S. Department of the Treasury for late charges on payments to the Federal Government. The Treasury current value of

funds rate is published annually in the FEDERAL REGISTER and on Treasury's Web site.

(b) We will charge interest on unpaid reclamation fees from the 31st day following the end of the calendar quarter for which the fee payment is owed to the date of payment. If you are delinquent, we will bill you monthly and initiate whatever action is necessary

§ 870.22

30 CFR Ch. VII (7–1–17 Edition)

to collect full payment of all fees and interest.

(c) When a reclamation fee debt is more than 91 days overdue, a 6 percent annual penalty on the amount owed for fees will begin and will run until the date of payment. This penalty is in addition to the interest described in paragraph (a) of this section.

(d) For all delinquent fees, interest, and penalties, you must pay a processing and handling charge that we will set based upon the following components:

(1) For debts referred to a collection agency, the amount charged to us by the collection agency;

(2) For debts we processed and handled, a standard amount we set annually based upon similar charges by collection agencies for debt collection;

(3) For debts referred to the Office of the Solicitor within the U.S. Department of the Interior, but paid before litigation, the estimated average cost to prepare the case for litigation as of the time of payment;

(4) For debts referred to the Office of the Solicitor within the U.S. Department of the Interior, and litigated, the estimated cost to prepare and litigate a debt case as of the time of payment; and

(5) If not otherwise provided for, all other administrative expenses associated with collection, including, but not limited to, billing, recording payments, and follow-up actions.

(e) We will not charge prejudgment interest on any processing and handling charges.

[73 FR 67633, Nov. 14, 2008]

§ 870.22 Maintaining required production records.

(a) If you engage in or conduct a surface coal mining operation, you must maintain up-to-date records that contain at least the following information:

(1) The tons of coal you produced, bought, sold, or transferred, the amount of money you received per ton, the name of person to whom you sold or transferred the coal, and the date of each sale or transfer;

(2) The tons of coal you used and your date of your consumption;

(3) The tons of coal you stockpiled or inventoried that are not classified as

sold for fee computation purposes under § 870.12; and

(4) For in situ coal mining operations, the total Btu value of gas you produced, the Btu value of a ton of coal in a place certified at least semiannually by an independent laboratory, and the amount of money you received for gas sold, transferred, or used.

(b) We must have access to your records of any surface coal mining operation for review. Your records must be available to us at reasonable times.

(c) We may inspect and copy any of your books or records that are necessary to substantiate the accuracy of your OSM-1 Form and payments. If the fee is paid at the maximum rate, we will not copy information relative to price. We will protect all copied information as authorized or required by the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

(d) You must maintain your books and records for 6 years from the end of the calendar quarter in which the fee was due or paid, whichever is later.

(e) If you do not maintain or make available your books and records as required in this section, we will estimate the fee due under this part through use of average production figures based upon the nature and acreage of your coal mining operation.

(1) We will assess the fee at the amount we estimate plus an additional 20 percent to account for possible error in our fee liability estimate.

(2) After you receive our fee liability estimate, you may request that we revise that estimate based upon your information. However, you must demonstrate that our fee liability estimate is incorrect. You may do this by providing adequate documentation that we find to be acceptable and comparable to the information required in § 870.19(a).

[73 FR 67633, Nov. 14, 2008]

§ 870.23 Consequences of noncompliance.

If you do not maintain adequate records, provide us with access to records of a surface coal mining operation, or pay overdue reclamation fees, including interest on late payments or

Surface Mining Reclamation and Enforcement, Interior

§ 872.10

underpayments, we may take one or more of the following actions:

- (a) Start a legal action against you;
- (b) Report you to the Internal Revenue Service;
- (c) Report you to State agencies responsible for taxation;
- (d) Report you to credit bureaus;
- (e) Refer you to collection agencies;
- or
- (f) Take some other appropriate action against you.

[73 FR 67633, Nov. 14, 2008]

PART 872—MONEYS AVAILABLE TO ELIGIBLE STATES AND INDIAN TRIBES

Sec.

- 872.1 What does this Part do?
- 872.5 Definitions.
- 872.10 Information collection.
- 872.11 Where do moneys in the Fund come from?
- 872.12 Where do moneys distributed from the Fund and other sources go?
- 872.13 What moneys does OSM distribute each year?
- 872.14 What are State share funds?
- 872.15 How does OSM distribute and award State share funds?
- 872.16 Are there any restrictions on how States may use State share funds?
- 872.17 What are Tribal share Funds?
- 872.18 How does OSM distribute and award Tribal share funds?
- 872.19 Are there any restrictions on how Indian tribes may use Tribal share funds?
- 872.20 What will OSM do with unappropriated AML funds currently allocated to the Rural Abandoned Mine Program?
- 872.21 What are historic coal funds?
- 872.22 How does OSM distribute and award historic coal funds?
- 872.23 Are there any restrictions on how you may use historic coal funds?
- 872.24 What are Federal expense funds?
- 872.25 Are there any restrictions on how OSM may use Federal expense funds?
- 872.26 What are minimum program make up funds?
- 872.27 How does OSM distribute and award minimum program make up funds?
- 872.28 Are there any restrictions on how you may use minimum program make up funds?
- 872.29 What are prior balance replacement funds?
- 872.30 How does OSM distribute and award prior balance replacement funds?
- 872.31 Are there any restrictions on how you may use prior balance replacement funds?

872.32 What are certified in lieu funds?

872.33 How does OSM distribute and award certified in lieu funds?

872.34 Are there any restrictions on how you may use certified in lieu funds?

872.35 When will OSM reduce the amount of prior balance replacement funds or certified in lieu funds distributed to you?

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

SOURCE: 73 FR 67634, Nov. 14, 2008, unless otherwise noted.

§ 872.1 What does this part do?

This part sets forth procedures and general responsibilities for managing funds received under Title IV of the Surface Mining Control and Reclamation Act of 1977, as amended.

§ 872.5 Definitions.

As used in this part—

Allocate means to identify moneys in our records at the time they are received by the Fund. The allocation process identifies moneys in the Fund by the type of funds collected, including the specific State or Indian tribal share.

Award means to approve our grant agreement authorizing you to draw down and expend program funds.

Distribute means to annually assign funds to a specific State or Indian tribe. After distribution, funds are available for award in a grant to that specific State or Indian tribe.

Indian Abandoned Mine Reclamation Fund or *Indian Fund* means a separate fund that an Indian tribe established to account for moneys we award under parts 885 or 886 of this chapter or other moneys these regulations authorize to be deposited in the Indian Fund.

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and part 884 of this chapter.

State Abandoned Mine Reclamation Fund or *State Fund* means a separate fund that a State established to account for moneys we award under parts 885 or 886 of this chapter or other moneys these regulations authorize to be deposited in the State Fund.

§ 872.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and

§ 872.11

Budget (OMB) has approved the information collection requirements of part 872 and assigned it control number 1029-0054. The information is used to determine whether States and Indian tribes will be granted funds for reclamation activities. States and Indian tribes must respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

§ 872.11 Where do moneys in the Fund come from?

Revenue to the Fund includes—

(a) Reclamation fees we collect under section 402 of SMCRA and part 870 of this chapter;

(b) Amounts we collect from charges for use of land acquired or reclaimed with moneys from the Fund under part 879 of this chapter;

(c) Moneys we recover through satisfaction of liens filed against privately owned lands reclaimed with moneys from the Fund under part 882 of this chapter;

(d) Moneys we recover from the sale of lands acquired with moneys from the Fund or by donation;

(e) Moneys donated to us for the purpose of abandoned mine land reclamation; and

(f) Interest and any other income earned from investment of the Fund. We will credit interest and other income only to the Secretary's share.

§ 872.12 Where do moneys distributed from the Fund and other sources go?

(a) Each State or Indian tribe with an approved reclamation plan must establish an account to be known as a State or Indian Abandoned Mine Reclamation Fund. These funds will be managed in accordance with the OMB Circular A-102.

(b) Revenue for the State and Indian Abandoned Mine Reclamation Funds will include—

(1) Amounts we granted for purposes of conducting the approved reclamation plan;

(2) Moneys collected from charges for uses of land acquired or reclaimed with

30 CFR Ch. VII (7-1-17 Edition)

moneys from the State or Indian Abandoned Mine Reclamation Fund under part 879 of this chapter;

(3) Moneys recovered through the satisfaction of liens filed against privately owned lands;

(4) Moneys the State or Indian tribe recovered from the sale of lands acquired under Title IV of SMCRA; and

(5) Such other moneys as the State or Indian tribe decides should be deposited in the State or Indian Abandoned Mine Reclamation Fund for use in carrying out the approved reclamation program.

(c) Moneys deposited in State or Indian Abandoned Mine Reclamation Funds must be used to carry out the reclamation plan approved under part 884 of this chapter and projects approved under § 886.27 of this chapter.

§ 872.13 What moneys does OSM distribute each year?

(a) Under Title IV of SMCRA, each Federal fiscal year we must distribute to you, the States and Indian tribes with approved reclamation plans, the moneys listed in this section. We distribute all Fund moneys and other moneys from the Treasury that have been designated for mandatory distribution. We provide information to you showing how we calculated your distribution. We distribute the following moneys:

(1) State share funds to uncertified States as described in § 872.14;

(2) Tribal share funds to uncertified Indian tribes as described in § 872.17;

(3) Historic coal funds to uncertified States and Indian tribes as described in § 872.21;

(4) Minimum program make up funds to eligible uncertified States and Indian tribes as described in § 872.26;

(5) Prior balance replacement funds to certified and uncertified States and Indian tribes as described in § 872.29; and

(6) Certified in lieu funds to certified States and Indian tribes as described in § 872.32.

(b) We calculate annual fee collections for coal produced in the previous Federal fiscal year on a net cash basis. This means that we use collections that are paid for the current Federal fiscal year to adjust fees that were

Surface Mining Reclamation and Enforcement, Interior

§ 872.18

overpaid or underpaid in prior fiscal years.

(c) We distribute any Congressionally-appropriated funds for grants to you out of the Federal expense funds when the appropriation becomes available.

(d) You may apply for any or all distributed funds at any time after the distribution using the procedures in part 885 of this chapter for certified States and Indian tribes or part 886 for uncertified States and Indian tribes.

§ 872.14 What are State share funds?

“State share funds” are moneys we distribute to you from your State share of the Fund each Federal fiscal year under section 402(g)(1)(A) of SMCRA. Your State share of the Fund is 50 percent of the reclamation fees we collected from within your State (excluding fees collected on Indian lands) and allocated to you, the State, in the Fund for coal produced in the previous fiscal year.

§ 872.15 How does OSM distribute and award State share funds?

(a) To be eligible to receive State share funds, you must meet the following criteria:

(1) You must have and maintain an approved reclamation plan under part 884 of this chapter; and

(2) You cannot be certified under section 411(a) of SMCRA.

(b) If you meet the eligibility requirements in paragraph (a) of this section, we will distribute and award these State share funds to you as follows:

(1) We annually distribute State share funds to you as shown in the following table:

For the Federal fiscal year(s) beginning . . .	The amount of State share funds we annually distribute to you will be . . .
(i) October 1, 2007 and October 1, 2008.	50 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production.
(ii) October 1, 2009 and October 1, 2010.	75 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production.
(iii) October 1, 2011 and continuing through September 30, 2022.	100 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production.

For the Federal fiscal year(s) beginning . . .	The amount of State share funds we annually distribute to you will be . . .
(iv) October 1, 2022 (fiscal year 2023).	The amount remaining in your State share of the Fund.

(2) We award these funds to you in grants according to the provisions of part 886 of this chapter.

§ 872.16 Are there any restrictions on how States may use State share funds?

Yes. You may only use State share funds for:

(a) Coal reclamation under § 874.12 of this chapter;

(b) Water supply restoration under § 874.14 of this chapter;

(c) Noncoal reclamation under § 875.12 of this chapter that is requested under section 409(c) of SMCRA;

(d) Deposit into an acid mine drainage abatement and treatment fund under part 876 of this chapter;

(e) Land acquisition under § 879.11 of this chapter; and

(f) Maintenance of the AML inventory under section 403(c) of SMCRA.

§ 872.17 What are Tribal share funds?

“Tribal share funds” are moneys we distribute to you from your Tribal share of the Fund each Federal fiscal year under section 402(g)(1)(B) of SMCRA. Your Tribal share of the Fund is 50 percent of the reclamation fees we collected and allocated to you, the Indian tribe(s), in the Fund for coal produced in the previous fiscal year from the Indian lands in which you have an interest.

§ 872.18 How will OSM distribute and award Tribal share funds?

(a) To be eligible to receive Tribal share funds, you must meet the following criteria:

(1) You must have and maintain an approved reclamation plan under part 884 of this chapter; and

(2) You cannot be certified under section 411(a) of SMCRA.

(b) If you meet the eligibility requirements in paragraph (a) of this section, we will distribute and award these Tribal share funds to you as follows:

§ 872.19

(1) We annually distribute Tribal share funds to you as shown in the following table:

For the Federal fiscal year(s) beginning . . .	The amount of Tribal share funds we annually distribute to you will be . . .
(i) October 1, 2007 and October 1, 2008.	50 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production.
(ii) October 1, 2009 and October 1, 2010.	75 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production.
(iii) October 1, 2011 and continuing through September 30, 2022.	100 percent of your 50 percent share of reclamation fees collected on prior fiscal year coal production.
(iv) October 1, 2022 (fiscal year 2023).	The amount remaining in your Tribal share of the Fund.

(2) We award these funds to you in grants according to the provisions of part 886 of this chapter.

§ 872.19 Are there any restrictions on how Indian tribes may use Tribal share funds?

Yes. You may only use Tribal share funds for:

- (a) Coal reclamation under § 874.12 of this chapter;
- (b) Water supply restoration under § 874.14 of this chapter;
- (c) Noncoal reclamation under § 875.12 of this chapter that is requested under section 409(c) of SMCRA;
- (d) Deposit into an acid mine drainage abatement and treatment fund under part 876 of this chapter;
- (e) Land acquisition under § 879.11 of this chapter; and
- (f) Maintenance of the AML inventory under section 403(c) of SMCRA.

§ 872.20 What will OSM do with unappropriated AML funds currently allocated to the Rural Abandoned Mine Program ?

Under section 402(h)(4)(B) of SMCRA, we will make available any moneys that remain allocated to RAMP and that were not appropriated or moved to other allocations before December 20, 2006, for possible transfer to the three United Mine Workers of America (UMWA) health care plans described in section 402(h)(2) of SMCRA.

30 CFR Ch. VII (7–1–17 Edition)

§ 872.21 What are historic coal funds?

(a) “Historic coal funds” are moneys provided under section 402(g)(5) of SMCRA based on the amount of coal produced before August 3, 1977, in your State or on Indian lands in which you have an interest. Under the Surface Mining Control and Reclamation Act Amendments of 2006, which were enacted as Division C, Title II, Subtitle A of P.L. 109-432, each year we allocate and distribute 30 percent of annual AML fee collections for coal produced in the previous fiscal year plus 60 percent of any other revenue to the Fund as historic coal funds to supplement grants to States and Indian tribes.

(b) Historic coal funds also include moneys we reallocate under sections 401(f)(3)(A)(i), 411(h)(1)(A)(ii), and 411(h)(4) of SMCRA, including:

- (1) The moneys we reallocate based on prior balance replacement funds distributed under § 872.29, which will be available to supplement grants beginning with Federal fiscal year 2023; and
- (2) The moneys we reallocate based on certified in lieu funds distributed under § 872.32, which will be available to supplement grants in Federal fiscal years 2009 through 2022.

§ 872.22 How does OSM distribute and award historic coal funds?

(a) To be eligible to receive historic coal funds, you must meet the following criteria:

- (1) You must have and maintain an approved reclamation plan under part 884 of this chapter;
- (2) You cannot be certified under section 411(a) of SMCRA; and
- (3) You must have unfunded Priority 1 and 2 coal problems remaining under sections 403(a)(1) and (2) of SMCRA.

(b) If you meet the eligibility requirements in paragraph (a) of this section, we distribute these moneys to you using a formula based on the amount of coal historically produced before August 3, 1977, in your State or from the Indian lands concerned.

(c) We annually distribute historic coal funds to you as shown in the following table:

Surface Mining Reclamation and Enforcement, Interior

§ 872.25

For the Federal fiscal years beginning . . .	The amount of historic coal funds we annually distribute to you will be . . .
(1) October 1, 2007 and October 1, 2008.	50 percent of the amount we calculate using the formula described in paragraph (b) of this section.
(2) October 1, 2009 and October 1, 2010.	75 percent of the amount we calculated using the formula described in paragraph (b) of this section.
(3) October 1, 2011 and continuing through September 30, 2022.	100 percent of the amount we calculate using the formula described in paragraph (b) of this section.
(4) October 1, 2022 (fiscal year 2023), and thereafter.	100 percent of the amount we calculate using the formula described in paragraph (b) of this section until funds are no longer available or you have reclaimed your remaining Priority 1 and 2 coal problems.

(d) In any given year, we will only distribute to you the historic coal funds that you need to reclaim your unfunded Priority 1 or 2 coal problems. Your distribution of State or Tribal share funds under § 872.14 or § 872.17 plus your distribution of historic coal funds along with unused funds from prior allocations could be more than you need to reclaim your remaining high priority problems. If that occurs, we will reduce the historic coal funds we distribute to you to the amount that you need to fully fund reclamation of all your remaining Priority 1 or 2 coal problems.

(e) We award these funds to you in grants according to the provisions of part 886 of this chapter.

§ 872.23 Are there any restrictions on how you may use historic coal funds?

Yes. You may only use historic coal funds for:

- (a) Coal reclamation under § 874.12 of this chapter;
- (b) Water supply restoration under § 874.14 of this chapter;
- (c) Noncoal reclamation under § 875.12 of this chapter that is requested under section 409(c) of SMCRA;
- (d) Deposit into an acid mine drainage abatement and treatment fund under part 876 of this chapter;
- (e) Land acquisition under § 879.11 of this chapter; and
- (f) Maintenance of the AML inventory under section 403(c) of SMCRA.

§ 872.24 What are Federal expense funds?

“Federal expense funds” are moneys available in the Fund that are not allocated or distributed as State share funds (§ 872.14), Tribal share funds (§ 872.17), historic coal funds (§ 872.21), or minimum program make up funds (§ 872.26). Congress must appropriate Federal expense funds before we may expend them.

§ 872.25 Are there any restrictions on how OSM may use Federal expense funds?

(a) We may use Federal expense funds only for the purposes in sections 402(g)(3)(A) through (D) and 402(g)(4) of SMCRA, which include the following:

(1) The Small Operator Assistance Program under section 507(c) of SMCRA (not more than \$10 million annually);

(2) Emergency projects under State, Tribal, and Federal programs under section 410 of SMCRA;

(3) Nonemergency projects in States and on lands within the jurisdiction of Indian tribes that do not have an approved abandoned mine reclamation program under section 405 of SMCRA;

(4) The Secretary’s administration of Title IV of SMCRA and this subchapter; and

(5) Projects authorized under section 402(g)(4) in States and on lands within the jurisdiction of Indian tribes that do not have an approved abandoned mine reclamation program under section 405 of SMCRA.

(b) We will not deduct moneys that we have annually allocated or distributed as Federal expense funds under sections 402(g)(3)(A) through (D) or (4) of SMCRA for any State or Indian tribe from moneys we annually allocate or distribute to a State or Indian tribe under the authority of sections 402(g)(1) or (5) of SMCRA.

(c) We expend moneys under the authority in section 402(g)(3)(C) of SMCRA only in States or on Indian lands where the State or Indian tribe does not have an abandoned mine reclamation program approved under section 405 of SMCRA.

§ 872.26

30 CFR Ch. VII (7–1–17 Edition)

§ 872.26 What are minimum program make up funds?

(a) “Minimum program make up funds” are additional moneys we distribute each Federal fiscal year to eligible States and Indian tribes to make up the difference between their total distribution of other funds and \$3 million. The source of these funds is moneys in the Secretary’s 20 percent share of the Fund that are authorized for mandatory distribution.

(b) To be eligible to receive funds under this section, you must meet the following criteria:

(1) You must have and maintain an approved reclamation plan under part 884 of this chapter;

(2) You cannot have certified under section 411(a) of SMCRA;

(3) The total amount you receive annually from State share funds (§872.14) or Tribal share funds (§872.17), historic coal funds (§872.21), and prior balance replacement funds (§872.29) must be less than \$3 million; and

(4) You must need more than the total of funds you will receive from State or Tribal share, historic coal, and prior balance replacement funds to reclaim Priority 1 and 2 coal problems under sections 403(a)(1) and (2) of SMCRA in your State or on Indian lands within your jurisdiction.

(c) We will make funds available to the States of Missouri and Tennessee under this section to reclaim Priority 1 and 2 coal problems included in the AML inventory, provided each State has a reclamation plan approved under part 884 of this chapter.

§ 872.27 How does OSM distribute and award minimum program make up funds?

(a) If you meet the eligibility requirements in §872.26(b), we will distribute these minimum program make up funds to you as follows:

(1) We calculate your total distribution under this part by first adding, in order, your prior balance replacement funds distribution (§872.29), your applicable State or Tribal share funds distribution (§872.14 or §872.17), and your historic coal funds distribution (§872.21). If the sum of these funds is less than \$3 million, we calculate the amount of minimum program make up

funds to add to your distribution under this section to increase it to that level.

(2) For each of the Federal fiscal years 2007 through 2022, we add minimum program make up funds to your combined distribution of prior balance replacement, State or Tribal share, and historic coal funds as shown in the following table:

For each of the Federal fiscal years beginning . . .	The amount of minimum program make up funds we add to your distribution will be . . .
(i) October 1, 2007 and October 1, 2008.	50 percent of the amount that we calculated should be added under paragraph (a)(1) of this section.
(ii) October 1, 2009 and October 1, 2010.	75 percent of the amount that we calculated should be added under paragraph (a)(1) of this section.
(iii) October 1, 2011 and continuing through September 30, 2022.	100 percent of the amount that we calculated should be added under paragraph (a)(1) of this section as long as you have at least \$3 million of Priority 1 and 2 coal problems remaining.
(iv) October 1, 2022 and thereafter.	to the extent funds are available, 100 percent of the amount that we calculated should be added under paragraph (a)(1) until you have less than \$3 million of Priority 1 and 2 coal problems remaining.

(b) We award these funds to you in grants according to the provisions of part 886 of this chapter.

§ 872.28 Are there any restrictions on how you may use minimum program make up funds?

Yes. You may only use minimum program make up funds for:

(a) Priority 1 and 2 coal reclamation under sections 403(a)(1) and (2) of SMCRA;

(b) Priority 3 reclamation that is part of Priority 1 or 2 coal reclamation under sections 403(a)(1) or (2) of SMCRA and §874.13 of this chapter;

§ 872.29 What are prior balance replacement funds?

“Prior balance replacement funds” are moneys we must distribute to you instead of the moneys we allocated to your State or Tribal share of the Fund before October 1, 2007, but did not distribute to you because Congress did not appropriate them. They come from general funds of the United States

Surface Mining Reclamation and Enforcement, Interior

§ 872.33

Treasury that are otherwise unappropriated. Under section 411(h)(1) of SMCRA, we distribute prior balance replacement funds to you, the State or Indian tribe, for seven years starting in the Federal fiscal year beginning October 1, 2008.

§ 872.30 How does OSM distribute and award prior balance replacement funds?

(a) We distribute prior balance replacement funds to you as follows:

(1) In an amount equal to the aggregate, unappropriated amount allocated to you before October 1, 2007, under sections 402(g)(1)(A) or (B) of SMCRA;

(2) If you are, or are not, certified under section 411(a) of SMCRA; and

(3) Subject to § 872.35, in seven equal annual installments beginning with the 2008 Federal fiscal year which starts on October 1, 2007.

(b) We award these funds to you in grants according to the provisions of part 885 of this chapter for certified States and Indian tribes or part 886 of this chapter for uncertified States and Indian tribes.

(c) At the same time we distribute prior balance replacement funds to you under this section, we transfer the same amount to historic coal funds from moneys in your State or Tribal share of the Fund that were allocated to you before October 1, 2007. The transferred funds will be available for annual grants under § 872.21 for the Federal fiscal year beginning October 1, 2022, and annually thereafter. We will allocate, distribute, and award the transferred funds according to the provisions of §§ 872.21, 872.22, and 872.23.

§ 872.31 Are there any restrictions on how you may use prior balance replacement funds?

(a) Yes. If you are certified under section 411(a) of SMCRA, you may only use prior balance replacement funds for those purposes your State legislature or Tribal council establishes, giving priority to addressing the impacts of mineral development.

(b) Yes. If you are not certified under section 411(a) of SMCRA, you may only use prior balance replacement funds for the purposes in section 403 of SMCRA, which include:

(1) Reclamation of coal problems under § 874.12 of this chapter;

(2) Water supply restoration under § 874.14 of this chapter; and

(3) Maintenance of the AML inventory.

§ 872.32 What are certified in lieu funds?

“Certified in lieu funds” are moneys that we distribute to you, the certified State or Indian tribe, in lieu of moneys allocated to your State or Tribal share of the Fund after October 1, 2007. Certified in lieu funds come from general funds of the United States Treasury that are otherwise unappropriated. Beginning with the 2009 Federal fiscal year which starts on October 1, 2008, we distribute certified in lieu funds to you under section 411(h)(2) of SMCRA.

§ 872.33 How does OSM distribute and award certified in lieu funds?

(a) You must be certified under section 411(a) of SMCRA to receive certified in lieu funds.

(b) If you meet the eligibility requirement in paragraph (a) of this section, we distribute these certified in lieu funds to you as follows:

(1) Starting in the Federal fiscal year that begins on October 1, 2008, we annually distribute funds to you based on 50 percent of reclamation fees received for coal produced during the previous Federal fiscal year in your State or on Indian lands within your jurisdiction;

(2) The funds we annually distribute to you are in lieu of moneys we otherwise would distribute to you from State share funds under § 872.14 or Tribal share funds under § 872.17 had you not been excluded from receiving those funds under section 401(f)(3)(B) of SMCRA; and

(3) Subject to § 872.35, we annually distribute certified in lieu funds to you as shown in the following table:

In the Federal fiscal year(s) beginning on . . .	The amount of certified in lieu funds we annually distribute to you will be equal to . . .
(i) October 1, 2008	25 percent of your 50 percent share of annual reclamation fee collections.
(ii) October 1, 2009	50 percent of your 50 percent share of annual reclamation fee collections.
(iii) October 1, 2010	75 percent of your 50 percent share of annual reclamation fee collections.

§ 872.34

In the Federal fiscal year(s) beginning on . . .	The amount of certified in lieu funds we annually distribute to you will be equal to . . .
(iv) October 1, 2011, and thereafter.	100 percent of your 50 percent share of annual reclamation fee collections.

(c) We award these funds to you in grants according to the provisions of part 885 of this chapter.

(d) At the same time we distribute certified in lieu funds to you under this section, we transfer the same amount to historic coal funds and make those funds available for annual grants under § 872.21 that same Federal fiscal year. We allocate, distribute, and award the transferred funds according to the provisions of §§ 872.21, 872.22, and 872.23.

(e) We will distribute to you the amounts we withhold under paragraph (b) of this section in two equal annual installments. We will do this in Federal fiscal years 2018 and 2019.

§ 872.34 Are there any restrictions on how you may use certified in lieu funds?

There are no limitations or restrictions on the use of certified in lieu funds in the Surface Mining Control and Reclamation Act Amendments of 2006 which were enacted as Division C, Title II, Subtitle A of P.L. 109-432.

§ 872.35 When will OSM reduce the amount of prior balance replacement funds or certified in lieu funds distributed to you?

(a) In any fiscal year in which the amount of Treasury funds required to be transferred under §§ 872.30 and 872.33 of this chapter and under section 402(i)(1) of SMCRA exceeds the maximum annual limit of \$490 million, we will adjust the amount of these payments to reduce them to the level of the cap. Each distribution or transfer for the FY will be reduced by the same percentage.

(b) We will not include amounts under section 402(h)(5)(A) as part of this calculation.

PART 873—FUTURE RECLAMATION SET-ASIDE PROGRAM

Sec.
873.1 Scope.
873.11 Applicability.

30 CFR Ch. VII (7-1-17 Edition)

873.12 Future set-aside program criteria.

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

SOURCE: 59 FR 28170, May 31, 1994, unless otherwise noted.

§ 873.1 Scope.

This part provides requirements for the award of grants to States or Indian tribes for the establishment of special trust accounts that will provide funds for coal reclamation purposes after September 30, 1995.

§ 873.11 Applicability.

The provisions of this part apply to funds awarded, as defined in § 872.5 of this chapter, under section 402(g)(6)(A) of SMCRA before its amendment on December 20, 2006, and their use by the States or Indian tribes for coal reclamation purposes after September 30, 1995.

[73 FR 67638, Nov. 14, 2008]

§ 873.12 Future set-aside program criteria.

(a) Any State or Indian tribe may receive and retain, without regard to the limitation referred to in section 402(g)(1)(D) of SMCRA, up to 10 percent of the total of the funds distributed annually to such State or Indian tribe under sections 402(g)(1) and (5) of SMCRA for a future set-aside fund if such amounts were awarded before December 20, 2006. The State or Indian tribe must deposit all set-aside funds awarded into a special fund established under State or Indian tribal law. The State or Indian tribe must expend amounts awarded (together with all interest earned on such amounts) solely to achieve the priorities stated in section 403(a) of SMCRA.

(b) Moneys the State or Indian tribe deposited in the special fund account, together with any interest earned, are considered State or Indian tribal monies.

[73 FR 67638, Nov. 14, 2008]

PART 874—GENERAL RECLAMATION REQUIREMENTS

Sec.
874.1 Scope.
874.5 Definitions.
874.10 Information collection.

Surface Mining Reclamation and Enforcement, Interior

§ 874.12

- 874.11 Applicability.
- 874.12 Eligible coal lands and water.
- 874.13 Reclamation objectives and priorities.
- 874.14 Water supply restoration.
- 874.15 Limited liability.
- 874.16 Contractor eligibility.
- 874.17 AML agency procedures for reclamation projects receiving less than 50 percent government funding.

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

SOURCE: 47 FR 28596, June 30, 1982, unless otherwise noted.

§ 874.1 Scope.

This part establishes land and water eligibility requirements, reclamation objectives and priorities, and reclamation contractor responsibility.

[59 FR 28171, May 31, 1994]

§ 874.5 Definitions.

As used in this Part—

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and part 884 of this chapter.

[73 FR 67638, Nov. 14, 2008]

§ 874.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of part 874 and assigned it control number 1029-0113. This information is used to ensure that appropriate reclamation projects involving the incidental extraction of coal are conducted under the authority of section 528(2) of SMCRA and that selected projects contain sufficient environmental safeguards. Persons must respond to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[73 FR 67639, Nov. 14, 2008]

§ 874.11 Applicability.

You must comply with the requirements in this part for—

- (a) Reclamation projects using monies from the Fund;
- (b) Reclamation projects using prior balance replacement funds provided to

uncertified States and Indian tribes under § 872.29 of this chapter; or

(c) Coal reclamation projects by certified States and Indian tribes required to maintain certification under section 411(a) of SMCRA and the agreement required by §§ 875.13(a)(3) and 875.14(b) of this chapter to maintain that certification.

[73 FR 67639, Nov. 14, 2008]

§ 874.12 Eligible coal lands and water.

Coal lands and water are eligible for reclamation activities if—

(a) They were mined for coal or affected by coal mining processes;

(b) They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and

(c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal government, or as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund or any prior balance replacement funds provided under § 872.29 of this chapter may be used.

(d) Notwithstanding paragraphs (a), (b), and (c) of this section, coal lands and waters in a State or on Indian lands damaged and abandoned after August 3, 1977, by coal mining processes are also eligible for funding if the Secretary finds in writing that:

(1) They were mined for coal or affected by coal mining processes; and

(2) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and:

(i) The date on which the Secretary approved a State regulatory program pursuant to section 503 of the Act (30 U.S.C. 1253) for a State or September 28, 1994, for an Indian tribe, and that any funds for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or

(ii) November 5, 1990, that the surety of the mining operator became insolvent during such period and that, as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site; and

(3) The site qualifies as a priority 1 or 2 site pursuant to section 403(a)(1) and (2) of the Act. Priority will be given to those sites that are in the immediate vicinity of a residential area or that have an adverse economic impact upon a community.

(e) An uncertified State or Indian tribe may expend funds made available under paragraphs 402(g)(1) and (5) of SMCRA and prior balance replacement funds under section 411(h)(1) of SMCRA for the reclamation and abatement of any site eligible under paragraph (d) of this section, if the State or Indian tribe, with the concurrence of the Secretary, makes the findings required in paragraph (d) of this section and the State or Indian tribe determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water eligible under paragraphs (a), (b), or (c) of this section that qualify as a Priority 1 or 2 site under section 403(a) of SMCRA.

(f) With respect to lands eligible under paragraph (d) or (e) of this section, moneys available from sources outside the Fund or that are ultimately recovered from responsible parties must either be used to offset the cost of the reclamation or transferred to the Fund if not required for further reclamation activities at the permitted site.

(g) If reclamation of a site covered by an interim or permanent program permit is carried out under the Abandoned Mine Land Program, the permittee of the site shall reimburse the Abandoned Mine Land Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. Neither the Secretary nor a State or Indian tribe performing reclamation under paragraph (d) or (e) of this section shall be held liable for any violations of any performance standards or reclamation requirements specified in

Title V of the Act nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in Title V of the Act.

(h) Surface coal mining operations on lands eligible for remining pursuant to section 404 of the Act shall not affect the eligibility of such lands for reclamation activities after the release of the bonds or deposits posted by any such operation as provided by § 800.40 of this chapter. If the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, funds available under this title may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if conditions warrant the Secretary shall immediately exercise his/her authority under section 410 of the Act.

[47 FR 28596, June 30, 1982, as amended at 59 FR 28171, May 31, 1994; 73 FR 67639, Nov. 14, 2008]

§ 874.13 Reclamation objectives and priorities.

(a) When you conduct reclamation projects under this part you may follow OSM's "Final Guidelines for Reclamation Programs and Projects" (66 FR 31250, June 11, 2001) and the expenditures must reflect the following priorities in the order stated:

(1) *Priority 1:* The protection of public health, safety, and property from extreme danger of adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:

(i) Have been degraded by the adverse effects of coal mining practices; and

(ii) Are adjacent to a site that has been or will be addressed to protect the public health, safety, and property from extreme danger of adverse effects of coal mining practices.

(2) *Priority 2:* The protection of public health and safety from adverse effects of coal mining practices, including the restoration of land and water resources and the environment that:

(i) Have been degraded by the adverse effects of coal mining practices; and

(ii) Are adjacent to a site that has been or will be addressed to protect the public health and safety from adverse effects of coal mining practices.

Surface Mining Reclamation and Enforcement, Interior

§ 874.15

(3) *Priority 3*: The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity. Priority 3 land and water resources that are geographically contiguous with existing or remediated Priority 1 or 2 problems will be considered adjacent under paragraphs (a)(1)(ii) or (a)(2)(ii) of this section.

(b) This paragraph applies to State or Tribal share funds available under §§ 872.14 and 872.17 of this chapter and historic coal funds available under § 872.21 of this chapter. You may expend these funds to reclaim Priority 3 lands and waters, if either of the following conditions applies:

(1) You have completed all of the Priority 1 and Priority 2 reclamation in the jurisdiction of your State or Indian tribe; or

(2) The expenditure for Priority 3 reclamation is made in conjunction with the expenditure of funds for Priority 1 or Priority 2 reclamation projects including past, current, and future Priority 1 or Priority 2 reclamation projects. Expenditures under this paragraph must either:

(i) Facilitate the Priority 1 or Priority 2 reclamation; or

(ii) Provide reasonable savings towards the objective of reclaiming all Priority 3 land and water problems within the jurisdiction of your State or Indian tribe.

[73 FR 67639, Nov. 14, 2008]

§ 874.14 Water supply restoration.

(a) Any State or Indian tribe that has not certified completion of all coal-related reclamation under section 411(a) of SMCRA may expend funds under §§ 872.16, 872.19, 872.23, and 872.31 of this chapter for water supply restoration projects. For purposes of this section, "water supply restoration projects" are those that protect, repair, replace, construct, or enhance facilities related to water supplies, including water distribution facilities and treatment plants that have been adversely affected by coal mining practices. For

funds awarded before December 20, 2006, any uncertified State or Indian tribe may expend up to 30 percent of the funds distributed to it for water supply restoration projects.

(b) If the adverse effect on water supplies referred to in this section occurred both prior to and after August 3, 1977, the project shall remain eligible, notwithstanding the criteria specified in 30 CFR 874.12(b), if the State or Indian tribe finds in writing, as part of its eligibility opinion, that such adverse effects are due predominately to effects of mining processes undertaken and abandoned prior to August 3, 1977.

(c) If the adverse effect on water supplies referred to in this section occurred both prior to and after the dates (and under the criteria) set forth under section 402(g)(4)(B) of the Act, the project shall remain eligible, notwithstanding the criteria specified in 30 CFR 874.12(b), if the State or Indian tribe finds in writing, as part of its eligibility opinion, that such adverse effects are due predominately to the effects of mining processes undertaken and abandoned prior to those dates.

(d) Enhancement of facilities or utilities under this section shall include upgrading necessary to meet any local, State, or Federal public health or safety requirement. Enhancement shall not include, however, any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

[59 FR 28171, May 31, 1994, as amended at 73 FR 67639, Nov. 14, 2008]

§ 874.15 Limited liability.

No State or Indian tribe shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved State or Indian tribe abandoned mine reclamation plan. This section shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or Indian tribe. For purposes of this section, reckless, willful, or wanton misconduct shall constitute gross negligence or intentional misconduct.

[59 FR 28172, May 31, 1994]

§ 874.16 Contractor eligibility.

To receive moneys from the Fund or Treasury funds provided to uncertified States and Indian tribes under § 872.29 of this chapter or to certified States or Indian tribes for coal AML reclamation as required to maintain certification under section 411(a) of SMCRA, every successful bidder for an AML contract must be eligible under §§ 773.12, 773.13, and 773.14 of this chapter at the time of contract award to receive a permit or be provisionally issued a permit to conduct surface coal mining operations.

[73 FR 67639, Nov. 14, 2008]

§ 874.17 AML agency procedures for reclamation projects receiving less than 50 percent government funding.

This section tells you, the AML agency, what to do when considering an abandoned mine land reclamation project as government-financed construction under part 707 of this chapter. This section only applies if the level of funding for the construction will be less than 50 percent of the total cost because of planned coal extraction.

(a) *Consultation with the Title V regulatory authority.* In consultation with the Title V regulatory authority, you must make the following determinations:

(1) You must determine the likelihood of the coal being mined under a Title V permit. This determination must take into account available information such as:

- (i) Coal reserves from existing mine maps or other sources;
- (ii) Existing environmental conditions;
- (iii) All prior mining activity on or adjacent to the site;
- (iv) Current and historic coal production in the area; and
- (v) Any known or anticipated interest in mining the site.

(2) You must determine the likelihood that nearby or adjacent mining activities might create new environmental problems or adversely affect existing environmental problems at the site.

(3) You must determine the likelihood that reclamation activities at the

site might adversely affect nearby or adjacent mining activities.

(b) *Concurrence with the Title V regulatory authority.* If, after consulting with the Title V regulatory authority, you decide to proceed with the reclamation project, then you and the Title V regulatory authority must concur in the following determinations:

(1) You must concur in a determination of the limits on any coal refuse, coal waste, or other coal deposits which can be extracted under the part 707 exemption or counterpart State/Indian Tribe laws and regulations.

(2) You must concur in the delineation of the boundaries of the AML project.

(c) *Documentation.* You must include in the AML case file:

(1) The determinations made under paragraphs (a) and (b) of this section;

(2) The information taken into account in making the determinations; and

(3) The names of the parties making the determinations.

(d) *Special requirements.* For each project, you must:

(1) Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrologic balance;

(2) Ensure that the reclamation project is conducted in accordance with the provisions of 30 CFR subchapter R;

(3) Develop specific-site reclamation requirements, including performance bonds when appropriate in accordance with State procedures; and

(4) Require the contractor conducting the reclamation to provide prior to the time reclamation begins applicable documents that clearly authorize the extraction of coal and payment of royalties.

(e) *Limitation.* If the reclamation contractor extracts coal beyond the limits of the incidental coal specified in paragraph (b)(1) of this section, the contractor must obtain a permit under Title V of SMCRA for such coal.

[64 FR 7483, Feb. 12, 1999]

PART 875—CERTIFICATION AND NONCOAL RECLAMATION

Sec.

875.1 Scope.

875.5 Definitions.

875.10 Information collection.

875.11 Applicability.

875.12 Eligible lands and water prior to certification.

875.13 Certification of completion of coal sites.

875.14 Eligible lands and water after certification.

875.15 Reclamation priorities for noncoal program.

875.16 Exclusion of certain noncoal reclamation sites.

875.17 Land acquisition authority—noncoal.

875.18 Lien requirements.

875.19 Limited liability.

875.20 Contractor eligibility.

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

SOURCE: 47 FR 28596, June 30, 1982, unless otherwise noted.

§ 875.1 Scope.

This part establishes land and water eligibility requirements and for noncoal reclamation.

§ 875.5 Definitions.

As used in this part—

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and part 884 of this chapter.

[73 FR 67640, Nov. 14, 2008]

§ 875.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of part 875 and assigned it control number 1029-0103. This information establishes procedures and requirements for State and Indian tribes to conduct noncoal reclamation under abandoned mine land funding. The information is needed to assure compliance with SMCRA and the Omnibus Budget Reconciliation Act of 1990. Persons must respond to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collec-

tion of information unless it displays a currently valid OMB control number.

[73 FR 67640, Nov. 14, 2008]

§ 875.11 Applicability.

(a) If you are a State or Indian tribe that has not certified under section 411(a) of SMCRA, you must follow these noncoal reclamation requirements when you use State share funds under § 872.16, Tribal share funds under § 872.19, or historic coal funds under § 872.23 to conduct reclamation projects on lands or water affected by mining of minerals and materials other than coal.

(b) If you are a State or Indian tribe that has certified under section 411(a) of the Act—

(1) You must use State share or Tribal share funds distributed to you under section 402(g)(1) of the Act before October 1, 2007, in accordance with this part; and

(2) You may use prior balance replacement funds distributed to you under section 411(h)(1) of the Act, certified in lieu funds distributed to you under section 411(h)(2) of the Act, or both, to—

(i) Maintain certification as required by §§ 875.13 and 875.14 of this part; or

(ii) Conduct a noncoal reclamation project in accordance with the requirements of this part.

[73 FR 67640, Nov. 14, 2008, as amended at 80 FR 6446, Feb. 5, 2015]

§ 875.12 Eligible lands and water prior to certification.

Noncoal lands and water are eligible for reclamation if:

(a) They were mined or affected by mining processes;

(b) They were mined and left or abandoned in either an unreclaimed or inadequately reclaimed condition prior to August 3, 1977;

(c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government or by the State as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited

§ 875.13

bond is insufficient to pay the total cost of reclamation, moneys sufficient to complete the reclamation may be sought under part 886 of this chapter;

(d) The reclamation has been requested by the Governor of the State or equivalent head of the Indian tribe; and

(e) The reclamation is necessary to protect the public health, safety, general welfare, and property from extreme danger of adverse effects of noncoal mining practices.

[59 FR 28172, May 31, 1994, as amended at 73 FR 67640, Nov. 14, 2008]

§ 875.13 Certification of completion of coal sites.

(a) The Governor of a State, or the equivalent head of an Indian tribe, may submit to the Secretary a certification of completion of coal sites. The certification must express the finding that the State or Indian tribe has achieved all existing known coal-related reclamation objectives for eligible lands and waters under section 404 of SMCRA or has instituted the necessary processes to reclaim any remaining coal related problems. In addition to the above finding, the certification of completion must contain:

(1) A description of both the rationale and the process used to arrive at the above finding for the completion of all coal-related reclamation under section 403(a)(1) through (3).

(2) A brief summary and resolution of all relevant public comments concerning coal-related impacts, problems, and reclamation projects received by the State or Indian tribe prior to preparation of the certification of completion.

(3) A State or Indian tribe agreement to acknowledge and give top priority to any coal-related problem(s) that may be found or occur after submission of the certification of completion and during the life of the approved abandoned mine reclamation program.

(b) After review and verification of the information contained in the certification of completion, the Director shall provide notice in the FEDERAL REGISTER and opportunity for public comment. After receipt and evaluation of all public comments and a determination by the Director that the cer-

30 CFR Ch. VII (7–1–17 Edition)

tification is correct, the Director shall concur with the certification and provide final notice of such concurrence in the FEDERAL REGISTER. This concurrence shall be based upon the State's or Indian tribes commitment to give top priority to any coal problem which may thereafter be found or occur.

(c) Following concurrence by the Director, a State or Indian tribe may implement a noncoal reclamation program pursuant to provisions in section 411 of SMCRA.

(d) The Director may, on his or her own initiative, make the certification referred to in paragraph (a) of this section on behalf of your State or Indian tribe if:

(1) Based upon information contained in the AML inventory, the Director determines that all coal reclamation projects meeting the priorities described in § 874.13(a) of this chapter in the jurisdiction of your State or Indian tribe have been completed; and

(2) Before making any determination, the Director provides the public an opportunity to comment through a notice in the FEDERAL REGISTER.

[59 FR 28172, May 31, 1994, as amended at 73 FR 67640, Nov. 14, 2008]

§ 875.14 Eligible lands and water after certification.

(a) Following certification, eligible noncoal lands, waters, and facilities are those—

(1) Which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status before August 3, 1977. However, for Federal lands, waters, and facilities under the jurisdiction of the Forest Service, the eligibility date is August 28, 1974. For Federal lands, waters and facilities under the jurisdiction of the Bureau of Land Management, the eligibility date is November 26, 1980; and

(2) For which there is no continuing reclamation responsibility under State or other Federal laws.

(b) If eligible coal problems are found or occur after certification, you must submit to us a plan that describes the approach and funds that will be used to address those problems in a timely manner. You may address any eligible

coal problems with the certified in lieu funds that you have already received or will receive from §872.32 of this chapter. You may also use the prior balance replacement funds received from §872.29 of this chapter to address coal problems subsequent to certification. Any coal reclamation projects that you do must conform to sections 401 through 410 of SMCRA and part 874 of this chapter.

[73 FR 67640, Nov. 14, 2008]

§ 875.15 Reclamation priorities for noncoal program.

(a) This section applies to reclamation projects involving the restoration of lands and water adversely affected by past mineral mining; projects involving the protection, repair, replacement, construction, or enhancement of utilities (such as those relating to water supply, roads, and other such facilities serving the public adversely affected by mineral mining and processing practices); and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices.

(b) Following certification pursuant to §875.13, the projects and construction of public facilities identified in paragraph (a) of this section shall reflect the following priorities in the order stated:

(1) The protection of public health, safety, general welfare and property from the extreme danger of adverse effects of mineral mining and processing practices;

(2) The protection of public health, safety, and general welfare from the adverse effects of mineral mining and processing practices; and

(3) The restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

(c) Enhancement of facilities or utilities shall include upgrading necessary to meet local, State, or Federal public health or safety requirements. Enhancement shall not include, however, any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

(d) Notwithstanding the requirements specified in paragraph (b) of this

section, where the Governor of a State or the equivalent head of an Indian tribe, after determining that there is a need for activities or construction of specific public facilities related to the coal or minerals industry in States or on Tribal lands impacted by coal or minerals development, submits a grant application as required by paragraph (e) of this section and the Director concurs in such need, as set forth in paragraph (f) of this section, the Director may grant funds made available under section 402(g)(1) of the Act, 30 U.S.C. 1232, to carry out such activities or construction.

(e) To qualify for funding pursuant to the authority in paragraph (d) of this section, a State or Indian tribe must submit a grant application that specifically sets forth:

(1) The need or urgency for the activity or the construction of the public facility;

(2) The expected impact the project will have on the coal or minerals industry in the State or Indian tribe;

(3) The availability of funding from other sources and, if other funding is provided, its percentage of the total costs involved;

(4) Documentation from other local, State, and Federal agencies with oversight for such utilities or facilities regarding what funding resources they have available and why this specific project is not being fully funded by their agency;

(5) The impact on the State or Indian tribe, the public, and the minerals industry if the activity or facility is not funded;

(6) The reason why this project should be selected before a priority project relating to the protection of the public health and safety or the environment from the damages caused by past mining activities; and

(7) An analysis and review of the procedures used by the State or Indian tribe to notify and involve the public in this funding request and a copy of all comments received and their resolution by the State or Indian tribe.

(f) After review of the information contained in the application, the Director will, if necessary to ensure adequate public notification, prepare a FEDERAL REGISTER notice regarding

§ 875.16

the State's or Indian Tribe's submission and provide for public comment. The Director will then:

- (1) Evaluate any comments received;
- (2) Determine whether the funding meets the requirements of this part;
- (3) Determine whether the funding is in the best interest of the State or Indian tribe AML program;
- (4) If the determinations under paragraphs (f)(2) and (f)(3) of this section are positive, approve the request for funding the activity or construction; and
- (5) Approve funding under paragraph (f)(4) of this section only at a cost commensurate with its benefits towards achieving the purposes of the Surface Mining Control and Reclamation Act of 1977.

[59 FR 28173, May 31, 1994, as amended at 68 FR 9502, Feb. 27, 2003]

§ 875.16 Exclusion of certain noncoal reclamation sites.

(a) You, the uncertified State or Indian tribe, may not use moneys from the Fund or from prior balance replacement funds provided under § 872.29 of this chapter for the reclamation of sites and areas designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or that have been listed for remedial action under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*).

(b) You, the certified State or Indian tribe, may not reclaim sites and areas designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or that have been listed for remedial action under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*) using—

- (1) Moneys distributed from the Fund under section 402(g)(1) of the Act.
- (2) Prior balance replacement funds distributed to you under section 411(h)(1) of the Act where you are conducting reclamation under the provisions of this part.
- (3) Certified in lieu funds distributed to you under section 411(h)(2) of the

30 CFR Ch. VII (7–1–17 Edition)

Act where you are conducting reclamation under the provisions of this part.

[73 FR 67640, Nov. 14, 2008, as amended at 80 FR 6446, Feb. 5, 2015]

§ 875.17 Land acquisition authority—noncoal.

The requirements of parts 877 (Rights of Entry) and 879 (Acquisition, Management and Disposition of Lands and Water) of this chapter apply to a State's or Indian tribe's noncoal reclamation projects conducted under this part, except that, for purposes of this section, the term “noncoal” replaces all references to “coal” in parts 877 and 879 of this chapter.

[80 FR 6446, Feb. 5, 2015]

§ 875.18 Lien requirements.

The lien requirements found in part 882—Reclamation on Private Land shall apply to a State's or Indian tribe's noncoal reclamation program under section 411 of the Act, except that for purposes of this section, references made to coal shall not apply. In lieu of the term *coal*, the word *noncoal* should be used.

[59 FR 28173, May 31, 1994]

§ 875.19 Limited liability.

No State or Indian tribe conducting noncoal reclamation activities under the provisions of this part is liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved State or Indian tribe abandoned mine reclamation plan. This section does not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or Indian tribe. For purposes of the preceding sentence, reckless, willful, or wanton misconduct will constitute gross negligence or intentional misconduct.

[80 FR 6446, Feb. 5, 2015]

§ 875.20 Contractor eligibility.

Every successful bidder for any contract by an uncertified State or Indian tribe under this part, or for any contract by a certified State or Indian tribe to undertake a noncoal reclamation project under this part, must be

Surface Mining Reclamation and Enforcement, Interior

§ 876.12

eligible under §§ 773.12, 773.13, and 773.14 of this chapter at the time of contract award to receive a permit or be provisionally issued a permit to conduct surface coal mining operations. This section applies only to any contracts by a certified State or Indian tribe that are for coal reclamation or that are for a noncoal reclamation project under this part.

[80 FR 6446, Feb. 5, 2015]

PART 876—ACID MINE DRAINAGE TREATMENT AND ABATEMENT PROGRAM

Sec.

876.1 Scope.

876.10 Information collection.

876.12 Eligibility.

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

SOURCE: 59 FR 28174, May 31, 1994, unless otherwise noted.

§ 876.1 Scope.

This part establishes the requirements and procedures for the preparation, submission and approval of State or Indian tribe Acid Mine Drainage Treatment and Abatement Programs.

§ 876.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of part 876 and assigned it control number 1029-0104. OSM will use the information to determine if the State's or Indian tribe's Acid Mine Drainage Abatement and Treatment Programs is in compliance with legislative mandate. States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[73 FR 67641, Nov. 14, 2008]

§ 876.12 Eligibility.

(a) Beginning December 20, 2006, any uncertified State or Indian tribe having an approved reclamation program may receive and retain, without regard to the limitation in section 402(g)(1)(D)

of SMCRA, up to 30 percent of the total of the funds distributed annually to that State or Indian tribe under section 402(g)(1) of SMCRA (State or Tribal share) and section 402(g)(5) of SMCRA (historic coal funds). For funds awarded before December 20, 2006, any uncertified State or Indian tribe may retain up to 10 percent of the funds distributed to it for an acid mine drainage fund. All amounts set aside under this section must be deposited into an acid mine drainage abatement and treatment fund established under State or Indian tribal law.

(b) Before depositing funds under this part, an uncertified State or Indian tribe must:

(1) Establish a special fund account providing for the earning of interest on fund balances; and

(2) Specify that moneys in the account may only be used for the abatement of the causes and treatment of the effects of acid mine drainage in a comprehensive manner within qualified hydrologic units (as defined in paragraph (c) of this section) affected by coal mining practices.

(c) As used in paragraph (b) of this section, "qualified hydrologic unit" means a hydrologic unit:

(1) In which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner that adversely impacts biological resources; and

(2) That contains lands and waters that are:

(i) Eligible under section 404 of SMCRA and include any of the priorities described in section 403(a) of SMCRA; and

(ii) The subject of the expenditure from the forfeiture of a bond required under section 509 of SMCRA or from other State sources to abate and treat acid mine drainage.

(d) After the conditions specified in paragraphs (a) and (b) of this section are met, OSM may approve a grant and the State or Indian tribe may deposit moneys into the special fund account. The moneys so deposited, together with any interest earned, must be considered State or Indian tribal moneys.

[73 FR 67641, Nov. 14, 2008]

PART 877—RIGHTS OF ENTRY

Sec.

877.1 Scope.

877.10 Information collection.

877.11 Written consent for entry.

877.13 Entry and consent to reclaim.

877.14 Entry for emergency reclamation.

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

SOURCE: 47 FR 28597, June 30, 1982, unless otherwise noted.

§ 877.1 Scope.

This part establishes procedures for entry upon lands or property by OSMRE, States, and Indian tribes for reclamation purposes. For certified States or Indian tribes conducting noncoal reclamation projects under the provisions of part 875, the term “noncoal” replaces all references to “coal” in this part.

[80 FR 6446, Feb. 5, 2015]

§ 877.10 Information collection.

The information collection requirements contained in §§ 877.11 and 877.13(b) were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned clearance number 1029–0055. This information is being collected to meet the mandate of section 407 of the Act, which provides that States or Indian tribes, pursuant to an approved reclamation program, may use the police power, if necessary, to effect entry upon private lands to conduct reclamation activities or exploratory studies if the landowner's consent is refused or the landowner is not available.

This information will be used by the regulatory authority to ensure that the State/Indian tribe has sufficient programmatic capability to conduct reclamation activities on private lands. The obligation to respond is mandatory.

§ 877.11 Written consent for entry.

Written consent from the owner of record and lessee, or their authorized agents, is the preferred means for obtaining agreements to enter lands in order to carry out reclamation activities. Nonconsensual entry by exercise of the police power will be undertaken

only after reasonable efforts have been made to obtain written consent.

§ 877.13 Entry and consent to reclaim.

(a) OSM, the State, or Indian tribe or its agents, employees, or contractors may enter upon land to perform reclamation activities or conduct studies or exploratory work to determine the existence of the adverse effects of past coal mining if consent from the owner is obtained.

(b) If consent is not obtained, then, prior to entry under this section, the OSM, State, or Indian tribe shall find in writing, with supporting reasons that—

(1) Land or water resources have been or may be adversely affected by past coal mining practices;

(2) The adverse effects are at a state where, in the interest of the public health, safety, or the general welfare, action to restore, reclaim, abate, control, or prevent should be taken; and

(3) The owner of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices is not known or readily available, or the owner will not give permission for OSM, State, or Indian tribe or its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the effects of past coal mining practices.

(c) If consent is not obtained, OSM, State, or Indian tribe shall give notice of its intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by this section. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of where the findings required by this section may be inspected or obtained.

Surface Mining Reclamation and Enforcement, Interior

§ 879.11

§ 877.14 Entry for emergency reclamation.

(a) OSM, its agents, employees, or contractors shall have the right to enter upon any land where an emergency exists and on any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary to protect the public health, safety, or general welfare.

(b) Prior to entry under this section, OSM shall make a written finding with supporting reasons that the situation qualifies as an emergency in accordance with the requirements set out in section 410 of the Act.

(c) Notice to the owner shall not be required prior to entry for emergency reclamation. OSM shall make reasonable efforts to notify the owner and obtain consent prior to entry, consistent with the emergency conditions that exist. Written notice shall be given to the owner as soon after entry as practical in accordance with the requirements set out in § 877.13(c) of this chapter.

PART 879—ACQUISITION, MANAGEMENT, AND DISPOSITION OF LANDS AND WATER

Sec.

879.1 Scope.

879.5 Definitions.

879.11 Land eligible for acquisition.

879.12 Procedures for acquisition.

879.13 Acceptance of gifts of land.

879.14 Management of acquired land.

879.15 Disposition of reclaimed land.

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

SOURCE: 47 FR 28597, June 30, 1982, unless otherwise noted.

§ 879.1 Scope.

This part establishes procedures for acquisition of eligible land and water resources for emergency abatement activities and reclamation purposes by you, a State or Indian tribe, with an approved reclamation program that has not certified completion of coal reclamation or a certified State or Indian tribe conducting noncoal reclamation activities under part 875 of this chapter, or by us. It also provides pro-

cedures for the management and disposition of lands acquired by the State, the Indian tribe, or us. For certified States or Indian tribes conducting noncoal reclamation projects under the provisions of part 875, the term “noncoal” replaces all references to “coal” in this part.

[80 FR 6446, Feb. 5, 2015]

§ 879.5 Definitions.

As used in this part—

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and part 884 of this chapter.

[73 FR 67641, Nov. 14, 2008]

§ 879.11 Land eligible for acquisition.

(a)(1) We may acquire land adversely affected by past coal mining practices with moneys from the Fund.

(2) You, an uncertified State or Indian tribe or a certified State or Indian tribe conducting noncoal reclamation projects under part 875 of this chapter, may acquire land adversely affected by past coal mining practices with moneys from the Fund or with prior balance replacement funds and certified in lieu funds provided under §§ 872.29 and 872.32 of this chapter, provided that we first approve the acquisition in writing.

(3) Before acquiring land under paragraph (a)(1) of this section or approving land acquisition under paragraph (a)(2) of this section, we must make a finding that the land acquisition is necessary for successful reclamation and that—

(i) The acquired land will serve recreation, historic, conservation, and reclamation purposes or provide open space benefits after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; and

(ii) Permanent facilities will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. For the purposes of this paragraph, “permanent facility” means any structure that is built, installed, or established to serve a particular purpose or any manipulation or modification of the

§ 879.12

site that is designed to remain after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

(b) You, an uncertified State or Indian tribe or a certified State or Indian tribe conducting noncoal reclamation projects under part 875 of this chapter, if approved in advance by us, may acquire coal refuse disposal sites, including the coal refuse, with moneys from the Fund and with prior balance replacement funds and certified in lieu funds provided under §§ 872.29 and 872.32 of this chapter. We, OSMRE, also may use moneys from the Fund to acquire coal refuse disposal sites, including the coal refuse.

(1) Before the approval of the acquisition, the reclamation program seeking to acquire the site will make a finding in writing that the acquisition is necessary for successful reclamation and will serve the purposes of the reclamation program.

(2) Where an emergency situation exists and a written finding as set forth in § 877.14 of this chapter has been made, we may acquire lands where public ownership is necessary and will prevent recurrence of the adverse effects of past coal mining practices.

(c) Land adversely affected by past coal mining practices may be acquired by us if the acquisition is an integral and necessary element of an economically feasible plan or project to construct or rehabilitate housing which meets the specific requirements in section 407(h) of SMCRA.

(d) Land or interests in land needed to fill voids, seal abandoned tunnels, shafts, and entryways or reclaim surface impacts of underground or surface mines may be acquired by the OSM, State, or Indian tribe if OSM finds that acquisition is necessary under part 875 of this chapter.

(e) The OSM, State, or Indian tribe which acquires land under this part shall acquire only such interests in the land as are necessary for the reclamation work planned or the postreclamation use of the land. Interests in improvements on the land, mineral rights, or associated water rights may be acquired if—

(1) The customary practices and laws of the State in which the land is lo-

30 CFR Ch. VII (7–1–17 Edition)

cated will not allow severance of such interests from the surface estate; or

(2) Such interests are necessary for the reclamation work planned or for the postreclamation use of the land; and

(3) Adequate written assurances cannot be obtained from the owner of the severed interest that future use will not be in conflict with the reclamation to be accomplished.

[47 FR 28597, June 30, 1982, as amended at 73 FR 67641, Nov. 14, 2008; 80 FR 6446, Feb. 5, 2015]

§ 879.12 Procedures for acquisition.

(a) An appraisal of all land or interest in land to be acquired shall be obtained by the OSM, State, or Indian tribe. The appraisal shall state the fair market value of the land as adversely affected by past mining.

(b) When practical, acquisition shall be by purchase from a willing seller. The amount paid for land or interests in land acquired shall reflect the fair market value of the land or interests in land as adversely affected by past mining.

(c) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

(d) The OSM, State, or Indian tribe which acquires land under this part shall comply, at a minimum, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601, *et seq.*, and 41 CFR part 114–50.

§ 879.13 Acceptance of gifts of land.

(a) The OSM, State, or Indian tribe under an approved reclamation plan may accept donations of title to land or interests in land if the land proposed for donation meets the requirements set out in § 879.11.

(b) Offers to make a gift of land or interest in land to the U.S. Government shall be in writing and comply with U.S. Department of the Interior regulations for land donations. The States and Indian tribes may use procedures provided by applicable State or Indian tribal law.

§ 879.14 Management of acquired land.

Land acquired under this part may be used for any lawful purpose that is consistent with the necessary reclamation activities. Procedures for collection of user charges or the waiver of such charges by the OSM, State, or Indian tribe shall provide that all user fees collected shall be deposited in the appropriate Abandoned Mine Reclamation Fund.

§ 879.15 Disposition of reclaimed land.

(a) Prior to the disposition of any land acquired under this part, OSM, State, or Indian tribe shall publish a notice of proposed land disposition, hold public hearings, if required, and make written findings in accordance with the authority contained in section 407(g)(2) of the Act.

(b) OSM may transfer administrative responsibility for land acquired by OSM to any Federal Department or Agency, with or without cost to that Department or Agency. OSM may transfer title for land acquired by OSM to any State or Indian tribe or to any agency or political subdivision of a State or Indian tribe, with or without cost to that entity, for the purposes set out in paragraphs (e) or (f) of this section. The agreement under which a transfer is made shall specify—

(1) The purposes for which the land may be used, which shall be consistent with the authorization under which the land was acquired; and

(2) That the title of administrative responsibility for the land shall revert to OSM, State, or Indian tribe if, at any time in the future, OSM finds that the land is not used for the purposes specified.

(c) OSM may accept title for abandoned and unreclaimed land to be reclaimed and administered by OSM. If a State or Indian tribe transfers land to OSM under this section, that State or Indian tribe shall have a preference right to purchase such land from OSM after reclamation is completed. The price to be paid by the State or Indian tribe shall be the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the State or Indian tribe.

(d) OSM may sell land acquired and reclaimed under this part, except that

acquired for housing under § 879.11(c), to the State or local government at less than fair market value but in no case less than purchase price plus reclamation cost provided such land is used for a valid public purpose.

(e) OSM may transfer or sell land acquired for housing under § 879.11(c), with or without monetary consideration, to any State or political subdivision of a State, to an Indian tribe, or to any firm, association, or corporation. The conditions of transfer or sale shall be in accordance with section 407(h) of the Act.

(f) OSM may transfer title for land acquired for housing under § 879.11(c) by grants or commitments for grants, or may advance money under such terms and conditions as required, to—

(1) Any State or Indian tribe; or

(2) A department, agency, or instrumentality of a State; or

(3) Any public body or nonprofit organization designated by a State.

(g)(1) OSM may sell or authorize the States or Indian tribes to sell land acquired under this part by public sale if—

(i) Such land is suitable for industrial, commercial, residential, or recreational development;

(ii) Such development is consistent with local, State, or Federal land use plans for the area in which the land is located; and

(iii) Retention by OSM, State, or Indian tribe, or disposal under other paragraphs of this section is not in the public interest.

(2) Disposal procedures will be in accordance with section 407(g) of the Act and applicable State or Indian tribal requirements.

(3) States may transfer title or administrative responsibility for land to cities, municipalities, or quasi-governmental bodies, provided that the State provide for the reverter of the title or administrative responsibility if the land is no longer used for the purposes originally proposed.

(h) You must return all moneys received from disposal of land under this part to us. We will handle all moneys

received under this paragraph as unused funds in accordance with §§ 885.19 and 886.20 of this chapter.

[47 FR 28597, June 30, 1982, as amended at 73 FR 67642, Nov. 14, 2008; 80 FR 6447, Feb. 5, 2015]

PART 880—MINE FIRE CONTROL

Sec.

880.1 Scope.

880.5 Definitions.

880.11 Qualifications of projects.

880.12 Cooperative agreements.

880.13 Project implementation.

880.14 Administration of contributions.

880.15 Assistance by States or Indian tribes, local authorities, and private parties.

880.16 Civil rights.

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

SOURCE: 48 FR 37378, Aug. 18, 1983, unless otherwise noted.

§ 880.1 Scope.

Projects for the control or extinguishment of outcrop or underground fires in coal formations under the authority of the Act of August 31, 1954 (30 U.S.C. 551–558); section 205(a)(2) of the Appalachian Regional Development Act of 1965 (Pub. L. 89–4, 79 Stat. 5), and the Energy Policy Act of 1992 (Pub. L. 102–486).

[59 FR 52377, Oct. 17, 1994]

§ 880.5 Definitions.

As used in the regulations in this part and in cooperative agreements, entered into pursuant to the regulations in this part:

(a) *Government* means the United States of America;

(b) *Commission* means the Appalachian Regional Development Commission established by section 101 of the Appalachian Regional Development Act of 1965;

(c) *Local authorities* means the State or local governmental bodies organized and existing under the authority of State laws, including, but not limited to, a county, city, township, town, or borough;

(d) *Approved abandoned mine reclamation program* means a program meeting the requirements defined in section 405 of PL 95–87, as amended;

(e) *Operating coal mine* means a coal mine for which the regulatory author-

ity has not terminated its jurisdiction as set out under 30 CFR 700.11(d)(1);

(f) *Inactive coal mine* means a coal mine for which the regulatory authority has terminated its jurisdiction as set out under 30 CFR 700.11(d)(1);

(g) *Project* means a project whose purpose is to control or extinguish fires in coal formations.

(h) *Reclamation plan* or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and part 884 of this chapter.

[48 FR 37378, Aug. 18, 1983. Redesignated and amended at 59 FR 52377, Oct. 17, 1994; 73 FR 67642, Nov. 14, 2008]

§ 880.11 Qualifications of projects.

The purpose of all projects is to prevent injury and loss of life, protect public health, conserve natural resources, or protect public and private property. Federal funds cannot be used to fund projects in privately owned operating coal mines. Further, any such cooperative agreement that is entered into under the Energy Policy Act of 1992 with an AML State eligible to receive funds from the Appalachian Regional Development Commission is not subject to review by that Commission.

[59 FR 52377, Oct. 17, 1994]

§ 880.12 Cooperative agreements.

(a) OSM shall, upon application by a State or Indian tribe with an approved abandoned mine reclamation program, enter into a cooperative agreement with the State or Indian tribe to control or extinguish fires in coal formations.

(b) OSM may conduct coal formation fire control projects in States not having an approved abandoned mine reclamation program or on Indian lands if the tribe does not have an approved abandoned mine reclamation program. However, upon application by such a State or Indian tribe, OSM may enter into a cooperative agreement with the State or Indian tribe and the local authorities to control or extinguish fires in coal formations. OSM shall require in connection with any project for the control or extinguishment of fires in any inactive coal mine on lands not owned or controlled by the United

Surface Mining Reclamation and Enforcement, Interior

§ 880.15

States or any of its agencies, except where such project is necessary for the protection of lands or other property owned or controlled by the United States or any of its agencies in such a State that: (1) the State or the person owning or controlling such lands contribute on a matching basis 50 percent of the cost of planning and executing such project, or (2) if such State or person furnishes evidence satisfactory to the Secretary of an inability to make the immediately matching contribution herein provided for, that such State or person pay the Government, within such time as the Secretary shall determine, an amount equal to 50 percent of the cost of planning and executing such project. If the project is funded by the Appalachian Regional Commission, the Federal share shall not exceed 75 percent of the cost of the project.

(c) OSM is authorized to conduct fire control projects on lands owned or controlled by the United States. However, upon application by another Federal agency having jurisdiction for lands owned or controlled by the United States, or a State or Indian tribe having an approved abandoned mine reclamation program and agreements with Federal agencies to conduct such projects on Federal lands within its boundaries, OSM may enter into an agreement with either the other Federal agency or State or Indian tribe to control or extinguish fires in coal formations. There are no cost sharing requirements for this type of project.

[59 FR 52378, Oct. 17, 1994]

§ 880.13 Project implementation.

(a) Under cooperative agreements with States or Indian tribes having an approved AML reclamation plan:

(1) States or Indian tribes will design, plan, and engineer a method of operation for control or extinguishment of the outcrop or underground mine fire, and will execute the project through a project contract, or, if the work is to be done in phases, a series of project contracts.

(2) If OSM assistance is required, OSM will be reimbursed by the State or Indian tribe for all costs incurred, including OSM employees' time.

(b) In States and on Indian lands under the jurisdiction of tribes not having approved AML reclamation plans and on Federal lands, OSM has the authority to design, plan, and engineer a method of operation for control or extinguishment of the outcrop or underground mine fire, and will execute the project through a project contract, or, if the work is to be done in phases, a series of project contracts. OSM, may, at its discretion, delegate authority to perform this work to States or Indian tribes or other Federal agencies.

[59 FR 52378, Oct. 17, 1994]

§ 880.14 Administration of contributions.

Financial contributions made by a State or Indian tribe, local authorities, or another Federal agency will be deposited in a trust fund in the Treasury of the United States. These contributions can be withdrawn by OSM and expended by the organization executing the project (OSM, a State, Indian tribe, or another Federal agency) pursuant to the cooperative agreement as necessary in performance of the project work. Withdrawals and expenditures from the trust fund will be made only for costs connected with the project. Any part of the money contributed by a State, Indian tribe, local authority, or another Federal agency for an individual project that remains unexpended upon the completion or termination of project will be returned to the State, Indian tribe, local authority, or other Federal agency.

[59 FR 52378, Oct. 17, 1994]

§ 880.15 Assistance by States or Indian tribes, local authorities, and private parties.

States Indian tribes, local authorities, or private parties, as may be appropriate in each particular project, and without cost or charge to project costs may:

(a) Provide assistance in planning and engineering the project, as requested by the organization executing the project;

(b) Furnish best available information, data, and maps on the location of the project and the location of water,

§ 880.16

sewer, and power lines within the project area, and maps or plats showing properties and lands on which releases, consents, or rights or interests in lands have been obtained;

(c) Obtain and deliver to OSM releases, proper consent or the necessary rights or interests in lands, and other documents required by OSM for approval of the project, and in form and substance satisfactory to OSM;

(d) Furnish a certification in form and substance satisfactory to OSM that the releases, consents, or the necessary rights or interests in lands, are from all the legal property owners within the project area;

(e) Agree to indemnify and hold the Government harmless should any property owner within the project area make any claim for damage resulting from the work within the project area if releases, consents or rights or interests were not obtained from such property owner by the State or local authorities;

(f) Grant to the Government the right to enter upon streets, roads, and other land owned or controlled by the State or the local authorities overlying or adjacent to the project fire area, and to conduct thereon the operations referred to in the cooperative agreement and project contract, and agree to hold the Government harmless from any claim for damage arising out of the project operations to property owned, possessed or controlled by the State or local authorities in the vicinity of the project area;

(g) Furnish noncombustible materials suitable for implementing the planned fire control work. This material may be waste or borrow material obtained at the site or brought in from off-site.

(h) Maintain and perform maintenance work on the project as may be provided in the cooperative agreement;

(i) Agree not to mine or permit mining of coal or other minerals on property owned or controlled by the State or local authorities, if required by OSM, to assure the success of, or protection to, the project work and the control or extinguishment of the fire, and for such period of time as may be required by OSM; and

30 CFR Ch. VII (7-1-17 Edition)

(j) If necessary, procure the enactment of State or local laws providing for the control and extinguishment of outcrop and underground fires in coal formations on State or privately owned lands and the cooperation of the State or local authorities in the work and the requisite authority to permit the States or local authorities to meet the obligations imposed by the regulations in this part of a cooperative agreement.

[51 FR 5493, Feb. 13, 1986. Redesignated at 59 FR 52377, Oct. 17, 1994, and amended at 59 FR 52378, Oct. 17, 1994]

§ 880.16 Civil rights.

State and local authorities shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and all requirements imposed by or pursuant to the regulations of the Department of the Interior entitled "Non-discrimination in Federally-assisted Programs of the Department of the Interior-Effectuation of Title VI of the Civil Rights Act of 1964" (43 CFR part 17) and shall give assurances of compliance in such form as may be required by the Director.

[48 FR 37378, Aug. 18, 1983. Redesignated at 59 FR 52378, Oct. 17, 1994]

PART 881—SUBSIDENCE AND STRIP MINE REHABILITATION, APPALACHIA

Sec.

881.1 Purpose and scope.

881.2 Definitions.

881.3 Qualification of projects.

881.4 Application of contribution.

881.5 Cooperative agreements.

881.6 Project contract.

881.7 Administration of contributions.

881.8 Withholding of payments.

881.9 Reports.

881.10 Obligations of States or local authorities.

881.11 Nondiscrimination.

881.12 Civil rights.

AUTHORITY: Sec. 205, 79 Stat. 13 (40 U.S.C. App. 205), and Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

SOURCE: 48 FR 37379, Aug. 18, 1983, unless otherwise noted.

Surface Mining Reclamation and Enforcement, Interior

§ 881.4

§ 881.1 Purpose and scope.

The regulations in this part provide for contributions by the Secretary with respect to projects in the Appalachian Region for the sealing and filling of voids in abandoned coal mines or for the reclamation and rehabilitation of existing strip and surface mine areas under the authority of subsection (a)(1) of section 205 of the Appalachian Regional Development Act of 1965 (Pub. L. 89-4, 79 Stat. 5)

§ 881.2 Definitions.

As used in the regulations in this part and in cooperative agreements entered into pursuant to the regulations in this part:

(a) *Government* means the United States of America;

(b) *Commission* means the Appalachian Regional Development Commission established by section 101 of the Appalachian Regional Development Act of 1965;

(c) *State* means any one of the States listed in section 403 of the Appalachian Regional Development Act of 1965; and

(d) *Local authorities* or *local bodies of government* means a county, city, township, town, or borough, and other local governmental bodies organized and existing under authority or State laws.

§ 881.3 Qualification of projects.

(a) Projects for the reclamation and rehabilitation of strip-mined areas will be considered only if all of the lands embraced within the project are lands owned by the Federal Government, a State, or local bodies of government.

(b) Projects must be submitted by a State to the Commission and receive the approval of that body.

§ 881.4 Application of contribution.

(a) A State in its application for contribution to a project shall fully describe the conditions existing in the project area and give a full justification for the project in terms of the relationship of the potential benefits that will result from the project to the estimated costs of the project and in terms of the improvement, on a continuing basis, to the economic potential of the State or area which the project will bring about. If the project

entails the reclamation and rehabilitation of strip and surface mined areas, the application shall state the uses to which the lands will be put.

(b) Before submitting a project to the Secretary for approval, the Director shall obtain from the State the following:

(1) Copies of inspection procedures, designs, plans and methods of engineering proposed for the construction, installation, services or work to be performed to accomplish the objectives of the project;

(2) Accurate information, data, and maps of the location of the project, the area involved, and, if the project consists of work designed to prevent or alleviate subsidence, information, data, and maps (if available) of the seams of coal to be filled or flushed;

(3) The proposed advertisement for bids for each project contract, which advertisement shall include suitable references concerning the fact that the project is one to the cost of which the Government will contribute under the Appalachian Regional Development Act of 1965, and that the State's acceptance of liability arising out of any bid shall be subject to contribution by the Government under the provisions of a cooperative agreement with the Government for that purpose;

(4) The proposed project contract, together with specifications and drawings pertaining to the equipment, materials, labor and work to be performed by the project contractor;

(5) Releases, proper consent or the necessary rights or interests in lands and coal formations, for gaining access to and carrying out work in or on the project, and other documents required by OSM for approval of the project, and in form and substance satisfactory to OSM;

(6) Certifications or documents, as may be required by OSM, indicating public ownership or control of subsurface coal or mineral rights accompanied by appropriate resolutions from the State or local authorities to indemnify and hold the Government harmless should any property owner within the project area make any claim for damage resulting from the work within the project area if releases, consents or rights or interests were not obtained

§ 881.5

from such property owner by the State or local authorities, and not to mine or permit mining of coals or other minerals in property owned or controlled by the State or local authorities.

(7) If the project is for the rehabilitation or reclamation of a strip mine area, evidence satisfactory to the Secretary that the State or local authority owns the lands upon which the project is proposed to be carried out, and that effective installation, operation, and maintenance safeguards will be enforced;

(8) The estimated total cost of the proposed project and, if the work is proposed to be performed in phases, the estimated cost of each phase.

(c) If the Secretary approves the project, the Director will submit to the State a cooperative agreement establishing the estimated cost of the project in the amount approved by the Secretary.

§ 881.5 Cooperative agreements.

(a) Each project shall be covered by a cooperative agreement between the Government, as represented by the Director, and the State. The agreement shall establish the total estimated cost of the project and, if the project is to be accomplished in phases, the estimated cost of each phase. The maximum obligations of the parties to share the cost of the project shall be stated in terms of the total estimated cost of the project and, if project is to be accomplished in phases, in terms of the estimated cost of each phase. Other responsibilities of the parties shall also be described in the agreement, as may be agreed upon and as may be in conformity with these regulations, to meet the needs and requirements of a particular project.

(b) The Government's obligation to contribute funds may be less than but shall not exceed 75 percent of the total estimated cost of the project. The obligation of the State (and, if appropriate, the local authorities) to contribute funds may be more but shall not be less than 25 percent of the total estimated cost of the project.

(c) None of the funds contributed by the Government or by the State shall be used for operating or maintaining the project or for the purchase of culm,

30 CFR Ch. VII (7-1-17 Edition)

rock, spoil, or other filling or flushing material.

(d) The Director may, without approval by the Secretary execute amendments to a cooperative agreement which will cover (1) acceptance of a bid on a proposed project contract that does not exceed by more than 20 percent the estimated cost, initially established in the cooperative agreement, of the work covered by the proposed project contract, and (2) the estimated costs of additional work under a project contract, if the estimated cost, initially established in the cooperative agreement, of the work covered by the project contract will not be increased by more than 20 percent.

§ 881.6 Project contract.

(a) Upon approval of the project by the Secretary, execution of the cooperative agreement, and receipt of an acceptable bid, the State shall carry out and execute the project through a project contract, or, if the work is to be done in phases, a series of project contracts, entered into by the State and its contractors or suppliers for the construction, installation, services or work to be performed.

(b) Project contracts shall be entered into only with the lowest responsible bidder pursuant to suitable procedures for advertising and competitive bidding. The Government's obligation to contribute to the cost of a project, or a phase of a project, is limited to the estimated costs established in the cooperative agreement. If the bids on work to be done under a proposed project contract exceed the estimated cost of the work established in the cooperative agreement, the State should not enter into the project contract unless the cooperative agreement has been amended to provide for an increase in contributions sufficient to meet the increase in costs, or unless the State wishes to assume the excess cost of the project.

(c) OSM shall be advised of the time and place of the opening of bids on a proposed project contract and may have a representative present.

(d) If the State amends a project contract, or issues a change order thereunder, and the amendment or change order results in an expenditure under

the project contract in excess of the estimated cost of the work established in the cooperative agreement, the Government shall be under no obligation to contribute to such excess costs unless the cooperative agreement has been amended to provide for an increase in contributions by the parties sufficient to meet such excess costs.

(e) The State shall furnish the Director, in duplicate, a certified true executed copy of each project contract with related plans, specifications, and drawings annexed thereto, promptly upon its execution.

(f) The State shall include in each project contract provisions to the effect that—

(1) Regardless of any agreement between the State and the Government respecting contributions by the Government to the cost of the contract under the provisions of section 205(a)(1) of the Appalachian Regional Development Act of 1965 (Pub. L. 89-4, 79 Stat. 5), the Government shall not be considered to be a party to the contract or in any manner liable thereunder. Neither the Government nor any of its officers, agents, or employees shall be responsible for any loss, expense, damages to property, or injuries to persons, which may arise from or be incident to the use and occupation of any property affected by the operations contemplated under the project, or for damages to the property of the contractor, or for injuries to the person of the contractor, or for damages to the property, or injuries to the contractor's officers, agents, servants, or employees, or others who may be on said premises at their invitation or the invitation of any of them, and the State and the project contractor shall hold the Government and any of its officers, agents, or employees, harmless from all such claims.

(2) The Secretary of the Interior or the Director of OSM or their authorized representative may enter upon and inspect the project at any reasonable time and may confer with the contractor and the State regarding the conduct of project operations.

(3) All laborers and mechanics employed by the contractor or subcontractors on the project shall be paid wages at rates not less than those pre-

vailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5). The Secretary of Labor shall have with respect to such labor standards, the authority and functions set forth in Reorganization Plan Number 14 of 1950 (15 FR 3176, 64 Stat. 1267, 5 U.S.C. 133-133z-15), and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948, as amended; 40 U.S.C. 276(c)).

(4) To assure the use of local labor to the maximum extent practicable in the implementation of a project:

(i) Every contractor or subcontractor undertaking to do work on the project which is or reasonably may be done as onsite work, in carrying out such contract work shall give preference to qualified persons who regularly reside in the labor area as designated by the U.S. Department of Labor wherein such project is situated, or the subregion, or the Appalachian counties of the State wherein such project is situated, except:

(A) To the extent that qualified persons regularly residing in the area are not available;

(B) For the reasonable needs of any such contractor or subcontractor, to employ supervisory or specially experienced individuals necessary to assure an efficient execution of the contract;

(C) For the obligation of any such contractor or subcontractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that in no event shall the number of non-resident persons employed under paragraph (f)(4)(i)(C) exceed 20 percent of the total number of employees employed by such contractor and his subcontractors on such project.

(ii) Every such contractor and subcontractor shall furnish the appropriate U.S. Employment Service offices with a list of all positions for which laborers, mechanics, and other employees may be required.

(iii) Every such contractor and subcontractor shall furnish periodic reports to the contracting agency on the extent to which local labor has been used in carrying out the contract work.

§ 881.7

§ 881.7 Administration of contributions.

(a) The Government's contribution to a State will be made only pursuant to a cooperative agreement and only upon the basis of payments made, or that are then due and payable, by the State under a project contract between the State and its contractor for the construction, installation, services or work performed on individual projects and shall not exceed 75 percent of such amounts.

(b) The State shall submit to the Director, not more often than once a month and for each cooperative agreement, a separate voucher which describes each payment made or that is due and payable by the State under a project contract. The amounts claimed under each voucher shall be certified by the State as proper charges under the project contract, and the State shall also certify that the amounts have either been paid or are due and payable thereunder. Insofar as the Government's contribution payments related to amounts due and payable rather than amounts already paid, the State shall disburse such funds together with the funds contributed by the State, promptly upon receipt from the Government.

(c) The State shall maintain suitable records and accounts of its transactions with and payments to project contractors, and the Government may inspect and audit such accounts and records during normal business hours and as it may deem necessary.

§ 881.8 Withholding of payments.

Whenever the Secretary, after reasonable notice and opportunity for hearing, finds that there is a failure by the State to expend funds in accordance with the terms and conditions governing the Government's contribution for an approved project, he shall notify the State that further payments will not be made to the State from available appropriations until he is satisfied that there will no longer be any such failure. Until the Secretary is so satisfied, payment of any financial contribution to the State shall be withheld.

30 CFR Ch. VII (7-1-17 Edition)

§ 881.9 Reports.

At such times and in such detail as the Secretary shall require, the State shall furnish to the Secretary a statement with respect to each project showing the work done, the status of the project, expenditures, and amounts obligated, and such other information as may be required.

§ 881.10 Obligations of States or local authorities.

(a) The State shall have full responsibility for installing, operating, and maintaining projects constructed pursuant to the regulations in this part.

(b) The State shall give evidence, satisfactory to the Secretary, that it will enforce effective safeguards with respect to installation, operation, and maintenance.

(c) The State shall agree that neither the Government nor any of its officers, agents, or employees shall be responsible for any loss, expense, damages to property, or injuries to persons, which may arise from or be incident to work upon, or to the use and occupation of any property affected by operations under, the project, and the State shall agree to hold the Government and its officers, agents, or employees harmless from all such claims.

(d) In order to assure effective safeguards with respect to installation, operation, and maintenance, the State or local authority will be required to own (or control), the land, subsurface, or coal seams in instances such as the following:

(1) If the objective of the project is to prevent or alleviate subsidence, the State or local authority shall have or acquire such subsurface and underground rights or interests in such coal seams or coal measures as may be required to assure the stability and continued existence of the project and to such an extent as will give reasonable assurance that the work will not be disturbed in the future.

(2) If the objective of the project is to rehabilitate or reclaim strip-mined areas, the land shall be owned by the Federal, State, or local body of government. Such ownership shall comprise such mineral, subsurface and underground rights and interests as will assure that no further mining operations

Surface Mining Reclamation and Enforcement, Interior

§ 882.10

will be conducted upon or under the land in the future.

(3) If the objective of the project is to seal abandoned open shafts, slopes, air holes and other mine openings to underground workings where public safety hazards exist, or to control or prevent erosion, water pollution, or discharge of harmful mine waters, the State shall have or acquire such right, title or interest in the lands as will assure the stability and continued existence of the project work.

(4) The extent of ownership or control necessary shall be determined with respect to each individual project.

(e) The State or local authorities, shall agree not to mine or permit the mining of coal or other minerals in the land or property owned or controlled by the State or local authorities, if required by OSM to assure the success or protection of the project work for such period of time as may be required by OSM.

(f) Upon request of OSM, the State or local authority shall furnish and disclose the nature and extent of its right, title, or interest in lands within, or which may be affected by, the project and submit an analysis, in writing, of the title situation, the effectiveness, extent and strength of the title which has been acquired, and an opinion as to the protection which the documents conveying the various rights, titles, and interests in the land afford the project work and as to any defects in the title.

(g) If necessary, State and local authorities shall procure the enactment of State or local laws or ordinances providing authority to participate in the work and projects conducted pursuant to the regulations in this part on lands owned by the State, the local authorities, or private persons, and the requisite authority to permit the State or local authorities to meet the obligations imposed by the regulations in this part or a cooperative agreement and to enter into project contracts of the kind and nature contemplated for the work to be performed.

§ 881.11 Nondiscrimination.

The State shall comply with the provisions of section 301 of Executive Order 11246 (Sept. 24, 1965; 30 FR 12319,

12935) and shall incorporate the provisions prescribed by section 202 of Executive Order 11246 in each project contract, and shall undertake and agree to assist and cooperate with the Director and the Secretary of Labor, obtain and furnish information, carry out sanctions and penalties, and refrain from dealing with debarred contractors, all as provided in said section 301.

§ 881.12 Civil rights.

State or local authorities shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and all requirements imposed by or pursuant to the regulations of the Department of the Interior entitled "Nondiscrimination in Federally-assisted Programs of the Department of the Interior—Effectuation of Title VI of the Civil Rights Act of 1964" (43 CFR part 17) and shall give assurances of compliance in such forms as may be required by the Director.

PART 882—RECLAMATION ON PRIVATE LAND

Sec.

882.1 Scope.

882.10 Information collection.

882.12 Appraisals.

882.13 Liens.

882.14 Satisfaction of liens.

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

SOURCE: 47 FR 28599, June 30, 1982, unless otherwise noted.

§ 882.1 Scope.

This part authorizes reclamation on private land and establishes procedures for recovery of the cost of reclamation activities conducted on privately owned land by the OSM, State, or Indian tribe.

§ 882.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of part 882 and assigned it control number 1029-0057. This information is being collected to meet the mandate of section 408 of SMCRA, which allows the State or Indian tribe to file liens on private property that has been reclaimed under certain conditions. This information

§ 882.12

30 CFR Ch. VII (7–1–17 Edition)

will be used by the regulatory authority to ensure that the State or Indian tribe has sufficient programmatic capability to file liens to recover costs for reclaiming private lands. States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[73 FR 67642, Nov. 14, 2008]

§ 882.12 Appraisals.

(a) A notarized appraisal of private land to be reclaimed which may be subject to a lien under § 882.13 shall be obtained from an independent appraiser. The appraisal shall state—

(1) The estimated market value of the property in its unreclaimed condition; and

(2) The estimated market value of the property as reclaimed.

(b) This appraisal shall be made prior to start of reclamation activities. The agency shall furnish to the appraiser information of sufficient detail in the form of plans, factual data, specifications, etc., to make such appraisals. When reclamation requires more than 6 months to complete, an updated appraisal under paragraph (a)(2) of this section shall be made to determine if the increase in value as originally appraised has actually occurred. Such updated appraisal shall not include any increase in value of the land as unreclaimed. If the updated appraised value results in lower increase in value, such increase shall be used as a basis for the lien. However, an increase in value resulting from the updated appraisal shall not be considered in determining a lien. OSM shall provide appraisal standards for Federal projects, and the State or Indian tribes shall provide appraisal standards for State or Indian tribal projects consistent with generally acceptable appraisal practice.

§ 882.13 Liens.

(a) OSM, State, or Indian tribe has the discretionary authority to place or waive a lien against land reclaimed if the reclamation results in a significant

increase in the fair market value; except that—

(1) A lien must not be placed against the property of a surface owner who did not consent to, participate in or exercise control over the mining operation which necessitated the reclamation work.

(2) The basis for making a determination of what constitutes a significant increase in market value or what factual situation constitutes a waiver of lien will be made by OSM, State, or Indian tribe pursuant to the Congressional intent expressed in section 408 of the Act and consistent with State or Indian tribal laws governing liens.

(3) A lien may be waived if findings made prior to construction indicate that the reclamation work to be performed on private land shall primarily benefit the health, safety, or environmental values of the greater community or area in which the land is located; or if the reclamation is necessitated by an unforeseen occurrence, and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the unforeseen occurrence; and

(4) OSM, State, or Indian tribe may waive the lien if the cost of filing it, including indirect costs to OSM, State, or Indian tribe, exceeds the increase in fair market value as a result of reclamation activities.

(b) If a lien is to be filed, the OSM, State, or Indian tribe shall, within 6 months after the completion of the reclamation work, file a statement in the office having responsibility under applicable law for recording judgments and placing liens against land. Such statement shall consist of notarized copies of the appraisals obtained under § 882.12 and may include an account of moneys expended for the reclamation work. The amount reported to be the increase in value of the property shall constitute the lien to be recorded in compliance with existing Federal, State or Indian tribal laws: *Provided, however,* That prior to the time of the actual filing of the proposed lien, the landowner shall be notified of the amount of the proposed lien and shall be allowed a reasonable time to prepay that amount instead of allowing the

Surface Mining Reclamation and Enforcement, Interior

§ 884.13

lien to be filed against the property involved.

(c) Within 60 days after the lien is filed the landowner may petition under local law to determine the increase in market value of the land as a result of reclamation work. Any aggrieved party may appeal in the manner provided by local law.

[47 FR 28599, June 30, 1982, as amended at 73 FR 67642, Nov. 14, 2008]

§ 882.14 Satisfaction of liens.

(a) A lien placed on private property shall be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property.

(b) The OSM, State, or Indian tribe which files a lien on private property shall maintain or renew it from time to time as may be required under State or local law.

(c) Moneys derived from the satisfaction of liens established under this part shall be deposited in the appropriate abandoned mine reclamation fund account.

PART 884—STATE RECLAMATION PLANS

Sec.

884.1 Scope.

884.5 Definitions.

884.11 State eligibility.

884.13 Content of proposed State reclamation plan.

884.14 State reclamation plan approval.

884.15 State reclamation plan amendments.

884.16 Suspension of plan.

884.17 Other uses by certified States and Indian tribes.

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

SOURCE: 47 FR 28600, June 30, 1982, unless otherwise noted.

§ 884.1 Scope.

This part establishes the procedures and requirements for the preparation, submission and approval of State reclamation plans.

§ 884.5 Definitions.

As used in this part—

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we ap-

proved under section 405 of SMCRA and part 884 of this chapter.

[73 FR 67642, Nov. 14, 2008]

§ 884.11 State eligibility.

You, a State or Indian tribe, are eligible to submit a reclamation plan if you have eligible lands or water as defined in § 700.5 of this chapter within your jurisdiction. We may approve your proposed reclamation plan if you have an approved State regulatory program under section 503 of SMCRA, and you meet the other requirements of this chapter and SMCRA. The States of Tennessee and Missouri are exempt from the requirement for an approved State regulatory program by section 402(g)(8)(B) of SMCRA. The Navajo, Hopi, and Crow Indian tribes are exempt from the requirement for an approved regulatory program by section 405(k) of SMCRA.

[73 FR 67642, Nov. 14, 2008]

§ 884.13 Content of proposed State reclamation plan.

(a) *Requirements applicable to all eligible States and Indian tribes.* You must submit the proposed reclamation plan to the Director in writing. The plan must include the information in paragraphs (a)(1) through (6) of this section.

(1) A designation by the Governor of the State or the governing authority of the Indian tribe of the agency authorized to administer the State or Tribal reclamation program and to receive and administer grants under part 885 or part 886 of this chapter.

(2) A legal opinion from the State Attorney General or the chief legal officer of the State agency that the designated agency has the authority under State law to conduct the program in accordance with the requirements of Title IV of the Act.

(3) A description of the policies and procedures to be followed by the designated agency in conducting the reclamation program, including—

(i) The purposes of the State reclamation program;

(ii) The specific criteria, consistent with section 403 of the Act for ranking and identifying projects to be funded;

(iii) The coordination of reclamation work among the State reclamation

§ 884.14

program, the Rural Abandoned Mine Program administered by the Soil Conservation Service, the reclamation programs of any Indian tribes located within the States, and OSM's reclamation programs; and

(iv) Policies and procedures regarding land acquisition, management and disposal under 30 CFR part 879;

(v) Policies and procedures regarding reclamation on private land under 30 CFR part 882;

(vi) Policies and procedures regarding rights of entry under 30 CFR part 877; and

(vii) Public participation and involvement in the preparation of the State reclamation plan and in the State reclamation program.

(4) A description of the administrative and management structure to be used in conducting the reclamation program, including—

(i) The organization of the designated agency and its relationship to other State organizations or officials that will participate in or augment the agency's reclamation capacity;

(ii) The personnel staffing policies which will govern the assignment of personnel to the State reclamation program;

(iii) The purchasing and procurement systems to be used by the agency. Such systems shall meet the requirements of Office of Management and Budget Circular A-102, Attachment 0; and

(iv) The accounting system to be used by the agency, including specific procedures for the operation of the State Abandoned Mine Reclamation Fund.

(5) A general description, derived from available data, of the reclamation activities to be conducted under the State reclamation plan, including the known or suspected eligible lands and waters within the State which require reclamation, including—

(i) A map showing the general location or known or suspected eligible lands and waters;

(ii) A description of the problems occurring on these lands and waters; and

(iii) How the plan proposes to address each of the problems occurring on these lands and waters.

(6) A general description, derived from available data, of the conditions

30 CFR Ch. VII (7-1-17 Edition)

prevailing in the different geographic areas of the State where reclamation is planned, including—

(i) The economic base;

(ii) Significant esthetic, historic or cultural, and recreational values; and

(iii) Endangered and threatened plant, fish, and wildlife and their habitat.

(b) *Additional requirement applicable to certified States and Indian tribes.* If you are a certified State or Indian tribe, the plan must include a commitment to address eligible coal problems found or occurring after certification as required in §§ 875.13(a)(3) and 875.14(b) of this chapter.

[47 FR 28600, June 30, 1982, as amended at 73 FR 67642, Nov. 14, 2008; 75 FR 60276, Sept. 29, 2010; 80 FR 6447, Feb. 5, 2015]

§ 884.14 State reclamation plan approval.

(a) The Director shall act upon a State reclamation plan within 90 days after submittal. A State reclamation plan shall not be approved until the Director has—

(1) Held a public hearing on the plan within the State which submitted it, or made a finding that the State provided adequate notice and opportunity for public comment in the development of the plan;

(2) Solicited and considered the views of other Federal agencies having an interest in plan;

(3) Determined that the State has the legal authority, policies, and administrative structure necessary to carry out the proposed plan;

(4) Determined that the proposed plan meets all the requirements of this subchapter;

(5) Determined that the State has an approved State regulatory program; and

(6) Determined that the proposed plan is in compliance with all applicable State and Federal laws and regulations.

(b) If the Director disapproves a proposed State reclamation plan, the Director shall advise the State in writing of the reasons for disapproval. The State may submit a revised proposed State reclamation plan at any time under the procedures of this section.

Surface Mining Reclamation and Enforcement, Interior

§ 884.17

§ 884.15 State reclamation plan amendments.

(a) A State may, at any time, submit to the Director a proposed amendment or revision to its approved reclamation plan. If the amendment or revision changes the objectives, scope or major policies followed by the State in the conduct of its reclamation program, the Director shall follow the procedures set out in § 884.14 in approving or disapproving an amendment or revision of a State reclamation plan.

(b) The Director shall promptly notify the State of all changes in the Act, the Secretary's regulations or other circumstances which may require an amendment to the State reclamation plan.

(c) The State shall promptly notify OSM of any conditions or events that prevent or impede it from administering its State reclamation program in accordance with its approved State reclamation plan.

(d) State reclamation plan amendments may be required by the Director when—

(1) Changes in the Act or regulations of this chapter result in the approved State reclamation plan no longer meeting the requirements of the Act or this chapter; or

(2) The State is not conducting its State reclamation program in accordance with the approved State reclamation plan.

(e) If the Director determines that a State reclamation plan amendment is required, the Director, after consultation with the State, shall establish a reasonable timetable which is consistent with established administrative or legislative procedures in the State for submitting an amendment to the reclamation plan.

(f) Failure of a State to submit an amendment within the timetable established under paragraph (e) of this section or to make reasonable or diligent efforts in that regard may result in either the suspension of the reclamation plan under § 884.16, reduction, suspension or termination of existing AML grants under § 886.18, or the withdrawal from consideration for approval

of all grant applications submitted under § 886.15.

[51 FR 9444, Mar. 19, 1986]

§ 884.16 Suspension of plan.

(a) The Director may suspend a State reclamation plan in whole or in part, if he determines that—

(1) Approval of the State regulatory program has been withdrawn in whole or in part;

(2) The State is not conducting the State reclamation program in accordance with its approved State reclamation plan; or

(3) The State has not submitted a reclamation plan amendment within the time specified under § 884.15.

(b) If the Director determines that the plan should be suspended, the Director shall notify the State by mail, return receipt requested, of the proposed action. The notice of proposed suspension shall state the reasons for the proposed action. Within 30 days the State must show cause why such action should not be taken. The Director shall afford the State an opportunity for consultation, including a hearing if requested by the State and performance of remedial action prior to the notice of suspension.

(c) The Director shall notify the State of his decision in writing. The decision of the Director shall be final.

(d) The Director shall lift the suspension if he determines that the deficiencies that led to suspension have been corrected.

[47 FR 28600, June 30, 1982, as amended at 51 FR 9444, Mar. 19, 1986]

§ 884.17 Other uses by certified States and Indian tribes.

(a) The reclamation plan for a certified State or Indian tribe may provide for the construction of specific public facilities related to the coal or minerals industries in States impacted by coal or minerals development. This form of assistance is available when the Governor of the State or the head of a governing body of an Indian tribe determines there is a need for such activities or construction and the Director concurs.

(b) Grant applications for uses other than coal reclamation by certified

States and Indian tribes may be submitted in accordance with §885.15 of this chapter.

[47 FR 28600, June 30, 1982, as amended at 73 FR 67642, Nov. 14, 2008; 80 FR 6447, Feb. 5, 2015]

PART 885—GRANTS FOR CERTIFIED STATES AND INDIAN TRIBES

Sec.

- 885.1 What does this part do?
- 885.5 Definitions.
- 885.10 Information collection.
- 885.11 Who is eligible for a grant?
- 885.12 What can I use grant funds for?
- 885.13 What are the maximum grant amounts?
- 885.14 How long is my grant?
- 885.15 How do I apply for a grant?
- 885.16 What responsibilities do I have after OSMRE approves my grant?
- 885.17 How can my grant be amended?
- 885.18 What audit, accounting, and administrative requirements must I meet?
- 885.19 What happens to unused funds from my grant?
- 885.20 What must I report?
- 885.21 What happens if I do not comply with applicable Federal law or the terms of my grant?
- 885.22 When and how can my grant be terminated for convenience?

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

SOURCE: 73 FR 67642, Nov. 14, 2008, unless otherwise noted.

§ 885.1 What does this part do?

This part sets forth procedures for grants to you, a State or Indian tribe that has certified under §875.13 of this chapter that all known coal reclamation problems in your State or on Indian lands within your jurisdiction have been addressed. OSM's "Final Guidelines for Reclamation Programs and Projects" (66 FR 31250, June 11, 2001) may be used if applicable.

§ 885.5 Definitions.

As used in this part—

Award means to approve our grant agreement authorizing you to draw down and expend program funds.

Distribute means to annually assign funds to a specific State or Indian tribe. After distribution, funds are available for award in a grant to that specific State or Indian tribe.

Reclamation plan or *State reclamation plan* means a plan that a State or In-

dian tribe submitted and that we approved under section 405 of SMCRA and part 884 of this chapter.

§ 885.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements for all Title IV grants and assigned clearance number 1029-0059. This information is being collected to obtain an estimate from you, the certified State or Indian tribe, of the funds you believe necessary to implement your program and to provide OSM with a means to measure performance results under the Government Performance and Results Act through your obligations of funds. Certified States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

§ 885.11 Who is eligible for a grant?

You are eligible for grants under this part if:

- (a) You are a State or Indian tribe with a reclamation plan approved under part 884 of this chapter; and
- (b) You have certified under §875.13 of this chapter that all known coal problems in your State or on Indian lands in your jurisdiction have been addressed.

§ 885.12 What can I use grant funds for?

(a) For all awards under this part, you must use moneys for activities authorized in SMCRA and included in your approved reclamation plan or described in the grant application. In addition, you may use moneys granted under this part to administer your approved reclamation program.

(b)(1) You may use grant funds as established for each type of funds you receive.

(2) You may use prior balance replacement funds as provided under §872.31 of this chapter.

(3) You may use certified in lieu funds as provided under §872.34 of this chapter.

(4) You may use the following moneys for noncoal reclamation projects under section 411 of the Act and part 875 of this chapter:

(i) Moneys that may be available to you from the Fund.

(ii) Prior balance replacement funds made available under §872.31 of this chapter.

(iii) Certified in lieu funds as provided under §872.34 of this chapter.

(c) You may use grant funds for any allowable cost as determined by the OMB cost principles in Circular A-87.

[73 FR 67642, Nov. 14, 2008, as amended at 80 FR 6447, Feb. 5, 2015]

§ 885.13 What are the maximum grant amounts?

(a) You may apply at any time for a grant of any or all of the Title IV funds that are available to you.

(b) We will not award an amount greater than the total funds distributed to your State or Indian tribe in the current annual fund distribution less any previous awards of current year funds, plus any funds distributed to you in previous years but not awarded, plus any unexpended funds recovered from previous grants and made available to you under §885.19 of this chapter.

(c) Funds for the current fiscal year are available for award after the annual fund distribution described in §872.13 of this chapter.

(d) Whenever you request it, we will give you information on the amounts and types of funds that are currently available to you.

§ 885.14 How long is my grant?

The performance period for your grant will be the time period you request in your grant application.

§ 885.15 How do I apply for a grant?

(a) You must use application forms and procedures specified by OSM.

(b) We award your grant as soon as practicable but no more than 30 days after we receive your complete application.

(c) If your application is not complete, we inform you as soon as practicable of the additional information we need to receive from you before we can process the award.

(d) You must agree to expend the funds of the grant in accordance with SMCRA, applicable Federal laws and regulations, and applicable OMB and Treasury Circulars.

§ 885.16 What responsibilities do I have after OSMRE approves my grant?

(a) When we award your grant, we send you a written grant agreement stating the terms of the grant.

(b) After you are awarded a grant, you may assign functions and funds to other Federal, State, or local organizations. However, we will hold you responsible for the overall administration of that grant, including the proper use of funds and reporting.

(c) The grant award constitutes an obligation of Federal funds. You accept the grant and its conditions once you initiate work under the agreement or draw down awarded funds.

(d) Although we have approved the grant agreement, you must ensure that any applicable laws, clearances, permits, or requirements are met before you expend funds for projects other than coal reclamation under part 874.

(e) If you conduct a coal reclamation project under part 874 of this chapter or noncoal reclamation project under part 875 of this chapter, you must not expend any construction funds until you receive a written authorization from us to proceed on an individual project. Our authorization to proceed ensures that both you and we have taken all actions necessary to ensure compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and any other applicable laws, clearances, permits, or requirements.

(f) To the extent technologically and economically feasible, you must use fuel other than petroleum or natural gas for all public facilities that are planned, constructed, or modified in whole or in part with Title IV grant funds.

(g) You must not expend more funds than we have awarded. Our award of any grant does not commit or obligate the United States to award any continuation grant or to enter into any

§ 885.17

grant revision, including grant increases to cover cost overruns.

[73 FR 67642, Nov. 14, 2008, as amended at 80 FR 6447, Feb. 5, 2015]

§ 885.17 How can my grant be amended?

(a) A grant amendment is a change of terms or conditions of the grant agreement. An amendment may be initiated by you or by us.

(b) You must promptly notify us in writing, or we must promptly notify you in writing, of events or proposed changes that may require a grant amendment.

(c) All requirements and procedures for grant amendments follow 43 CFR part 12.

(d) We must award your amended grant agreement within 20 days of receiving your request.

§ 885.18 What audit, accounting, and administrative requirements must I meet?

(a) You must comply with the audit requirements of the OMB Circular A-133.

(b) You must follow procedures governing grant accounting, payment, records, property, and management contained in 43 CFR part 12.

§ 885.19 What happens to unused funds from my grant?

All program grant funds are available until expended. If there are any unexpended funds after your grant is completed, we deobligate the funds when we close your grant. We make these unused funds available for re-award to the same certified State or Indian tribe to which they were originally distributed. You may apply for unused funds whenever you choose to request them either in a new grant award or as an amendment to an existing open grant.

§ 885.20 What must I report?

(a) For each grant, you must annually report to us the performance and financial information that we request.

(b) Upon completion of each grant, you must report to us final performance and financial information that we request.

(c) You must use the AML inventory to maintain a current list of AML

30 CFR Ch. VII (7-1-17 Edition)

problems and to report annual reclamation accomplishments with grant funds.

(1) If you conduct coal reclamation projects or noncoal reclamation projects under part 875 of this chapter, you must update the AML inventory for each reclamation project as you fund it.

(2) You must update the AML inventory for each reclamation project you complete as you complete it.

(3) We must approve any amendments to the AML inventory after December 20, 2006. We define *amendment* as any coal problems added to the AML inventory in a new or existing problem area.

[73 FR 67642, Nov. 14, 2008, as amended at 80 FR 6447, Feb. 5, 2015]

§ 885.21 What happens if I do not comply with applicable Federal law or the terms of my grant?

If you or your subgrantee materially fails to comply with an award, a reclamation plan, or a Federal statute or regulation, including statutes relating to nondiscrimination, we may take appropriate remedial actions. Enforcement actions and procedures must follow 43 CFR part 12.

§ 885.22 When and how can my grant be terminated for convenience?

Either you or we may terminate the grant for convenience following the procedures in 43 CFR part 12.

PART 886—RECLAMATION GRANTS FOR UNCERTIFIED STATES AND INDIAN TRIBES

Sec.

886.1 What does this part do?

886.5 Definitions.

886.10 Information collection.

886.11 Who is eligible for a grant?

886.12 What can I use grant funds for?

886.13 What are the maximum grant amounts?

886.14 How long will my grant be?

886.15 How do I apply for a grant?

886.16 After OSM approves my grant, what responsibilities do I have?

886.17 How can my grant be amended?

886.18 What audit and administrative requirements must I meet?

886.19 How must I account for grant funds?

886.20 What happens to unused funds from my grant?

886.21 What must I report?

Surface Mining Reclamation and Enforcement, Interior

§ 886.12

- 886.22 What records must I maintain?
886.23 What actions can OSM take if I do not comply with the terms of my grant?
886.24 What procedures will OSM follow to reduce, suspend, or terminate my grant?
886.25 How can I appeal a decision to reduce, suspend, or terminate my grant?
886.26 When and how can my grant be terminated for convenience?
886.27 What special procedures apply to Indian lands not subject to an approved Tribal reclamation program?

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

SOURCE: 73 FR 67644, Nov. 14, 2008, unless otherwise noted.

§ 886.1 What does this part do?

This part sets forth procedures for grants to you, an uncertified State or Indian tribe, to reclaim eligible lands and water and conduct other activities necessary to carry out your approved reclamation plan. OSM's "Final Guidelines for Reclamation Programs and Projects" (66 FR 31250, June 11, 2001) may be used as applicable.

§ 886.5 Definitions.

As used in this Part—

Award means to approve our grant agreement authorizing you to draw down and expend program funds.

Distribute means to annually assign funds to a specific State or Indian tribe. After distribution, funds are available for award in a grant to that specific State or Indian tribe.

Reclamation plan or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and part 884 of this chapter.

§ 886.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of part 886, and Forms OSM-47, OSM-49, and OSM-51, and assigned clearance number 1029-0059. This information is being collected to obtain an estimate from you the uncertified State or Indian tribe of the funds you believe necessary to implement your reclamation program and to provide OSM with a means to measure performance results under the Government Performance and Results Act through State and Tribal obligations of funds. Uncertified States

and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

§ 886.11 Who is eligible for a grant?

You are eligible for grants under this part if:

- (a) You are a State or Indian tribe with a reclamation plan approved under part 884 of this chapter; and
- (b) You have not certified that all known coal problems in your State or on Indian lands in your jurisdiction have been addressed.

§ 886.12 What can I use grant funds for?

(a) You must use moneys granted under this part to administer your approved reclamation program and to carry out the specific reclamation and other activities authorized in SMCRA as included in your reclamation plan or your grant application.

(b) We award grants for reclamation of eligible lands and water in accordance with sections 404 and 409 of SMCRA and §§874.12 and 875.12 of this chapter, and in accordance with the priorities stated in section 403 of SMCRA and §874.13 of this chapter.

(c) You may use grant funds as established in this chapter for each type of funds you receive in your AML grant. You may use State share funds as provided in §872.16 of this chapter; Tribal share funds as in §872.19 of this chapter; historic coal funds as in §872.23 of this chapter; minimum program make up funds as in §872.28 of this chapter; prior balance replacement funds as in §872.31 of this chapter; and Federal expense funds as in §872.25 of this chapter and in the appropriation.

(d) You may use grant funds for acquisition of land or interests in land, and any mineral or water rights associated with the land, for up to 90 percent of the costs.

(e) You may use grant funds only for costs which are allowable as determined by OMB cost principles in Circular A-87.

§ 886.13

§ 886.13 What are the maximum grant amounts?

(a) You may apply at any time for a grant of any or all of the program funds that are available to you.

(b) We will not award an amount greater than the total funds distributed to your State or Indian tribe in the current annual fund distribution, less any previous awards of current year funds, plus any funds distributed to you in previous years but not awarded, plus any unexpended funds recovered from previous grants and made available to you under § 886.20 of this chapter.

(c) Funds for the current fiscal year are available for award after the annual fund distribution described in § 872.13 of this chapter.

(d) Whenever you request it, we will give you information on the amounts and types of funds that are currently available to you.

§ 886.14 How long will my grant be?

(a) We approve a grant period on the basis of the information contained in the grant application showing that projects to be funded will fulfill the objectives of SMCRA and the approved reclamation plan.

(b) The grant period is normally for 3 years.

(c) We may extend the grant period at your request. We normally approve one extension for up to one additional year.

(d) The grant period for funding your administrative costs does not normally exceed the first year of the grant.

(e) We award grants containing State or Tribal share funds distributed to you in Fiscal Years 2008, 2009, or 2010 for a budget period of five or three years at your request.

§ 886.15 How do I apply for a grant?

(a) You must use application forms and procedures specified by OSM.

(b) We approve or disapprove your grant application within 60 days of receipt.

(c) If we do not approve your application, we inform you in writing of the reasons for disapproval. We may propose modifications if appropriate. You may resubmit the application or appropriate revised portions of the applica-

30 CFR Ch. VII (7–1–17 Edition)

tion. We process the revised application as an original application.

(d) You must agree to carry out activities funded by the grant in accordance with SMCRA, applicable Federal laws and regulations, and applicable OMB and Treasury Circulars.

(e) We do not require complete copies of plans and specifications for projects either before the grant is approved or at the start of the project. However, after the start of the project, we may review your plans and specifications at your office, the project site, or any other appropriate site.

§ 886.16 After OSM approves my grant, what responsibilities do I have?

(a) When we award your grant, we send you a written grant agreement stating the terms of the grant.

(b) After you are awarded a grant, you may assign functions and funds to other Federal, State, or local agencies. However, we will hold you responsible for the overall administration of that grant, including the proper use of funds and reporting.

(c) The grant award constitutes an obligation of Federal funds. You accept the grant and its conditions once you initiate work under the agreement or draw down awarded funds.

(d) Although we have approved the grant agreement, you must not expend any construction funds until you receive a written authorization to proceed with reclamation on the individual project. Our Authorization to Proceed ensures that both you and we have taken all actions necessary to ensure compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and any other applicable laws, clearances, permits, or requirements.

(e) You must enter coal problems in the AML inventory before you expend funds on design or construction activities for a site. We must approve any amendments to the AML inventory made after December 20, 2006. For purposes of this section, we define “amendment” as any coal problem added to the AML inventory in a new or existing problem area and any Priority 3 coal problem in the AML inventory that is elevated to either Priority 1 or Priority 2 status.

(1) For emergency projects conducted under section 410 of SMCRA, our finding that an emergency condition exists constitutes our approval for the abandoned mine lands problem to be entered into the AML inventory.

(2) We must approve amendments to the AML inventory for non-emergency coal problems before you, the State or Indian tribe, begin project development or design or use funds for construction activities. In projects where development and design is minimal, this approval may occur during the Authorization to Proceed process.

(f) To the extent technologically and economically feasible, you must use fuel other than petroleum or natural gas for all public facilities that are planned, constructed, or modified in whole or in part with abandoned mine land grant funds.

(g) You must not expend more funds than we have awarded. Our award of any grant does not commit or obligate the United States to award any continuation grant or to enter into any grant revision, including grant increases to cover cost overruns.

§ 886.17 How can my grant be amended?

(a) A grant amendment is a change of the terms or conditions of the grant agreement. An amendment may be initiated by you or by us.

(b) You must promptly notify us in writing, or we must promptly notify you in writing, of events or proposed changes that may require a grant amendment.

(c) All procedures for grant amendments follow 43 CFR part 12.

(d) We must approve or disapprove the amendment within 30 days of receiving your request.

§ 886.18 What audit and administrative requirements must I meet?

(a) You must comply with the audit requirements of the OMB Circular A-133.

(b) You must follow administrative procedures governing grant payments, property, and related requirements contained in 43 CFR part 12.

§ 886.19 How must I account for grant funds?

You must do all of the following in accordance with the requirements of 43 CFR part 12:

(a) Accurately and timely account for grant funds;

(b) Adequately safeguard all funds, property, and other assets and assure that they are used solely for authorized purposes;

(c) Provide a comparison of actual amounts spent with budgeted amounts for each grant;

(d) Request any cash advances as closely as possible to the actual time of the disbursement; and

(e) Design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 886.20 What happens to unused funds from my grant?

(a) If there are any unexpended funds after your grant is completed, we deobligate the funds when we close your grant. We treat unused funds as follows:

(1) We transfer any State share funds under § 872.14 of this chapter or Tribal share funds under § 872.17 that were not expended within three years of the date they were awarded in a grant, except five years for funds awarded in Fiscal Years 2008, 2009, and 2010, to historic coal funds, § 872.21 of this chapter. We distribute any funds transferred to historic coal in the next annual distribution in the same way as historic coal funds from fee collections during that fiscal year.

(2) We hold any unused Federal expense funds under § 872.24 of this chapter for distribution to any State or Indian tribe as needed for the activity for which the funds were appropriated.

(3) We make unused funds of all other types available for re-award to the same State or Indian tribe to which they were originally distributed. This includes historic coal funds under § 872.21 of this chapter, minimum program make up funds under § 872.26 of this chapter, and prior balance replacement funds under § 872.29 of this chapter.

(b) If you have any State share funds or Tribal share funds that were distributed to you in an annual distribution

§ 886.21

30 CFR Ch. VII (7–1–17 Edition)

under § 872.15 or § 872.18 of this chapter but that were not awarded to you in grant within 3 years of the date they were distributed, or 5 years for funds distributed in Fiscal Years 2008, 2009, and 2010, we transfer the unawarded funds to the historic coal fund under § 872.21 of this chapter and distribute them in the next annual distribution.

§ 886.21 What must I report?

(a) For each grant, you must annually report to us the performance and financial information that we specify.

(b) Upon completion of each grant, you must submit to us final performance, financial, and property reports, and any other information that we specify.

(c) When you complete each reclamation project, you must update the AML inventory.

§ 886.22 What records must I maintain?

You must maintain complete records in accordance with 43 CFR part 12. Your records must support the information you reported to us. This includes, but is not limited to, books, documents, maps, and other evidence. Accounting records must document procedures and practices sufficient to verify:

(a) The amount and use of all Title IV funds received; and

(b) The total direct and indirect costs of the reclamation program for which you received the grant.

§ 886.23 What actions can OSM take if I do not comply with the terms of my grant?

(a) If you, or your subgrantee, fail to comply with the terms of your grant, we may take one or more of the following remedial actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending your correction of the deficiency;

(2) Disallow (that is, deny both use of Federal funds and matching credit for non-Federal funds) all or part of the cost of the activity or action not in compliance;

(3) Wholly or partly reduce, suspend or terminate the current award for your program;

(4) Withhold further grant awards for the program; or

(5) Take other remedies that may be legally available.

(b) If we terminate your State regulatory administration and enforcement grant, provided under part 735 of this chapter, for failure to implement, enforce, or maintain an approved State regulatory program or any part thereof, we will terminate the grant awarded under this part. This paragraph does not apply to the States of Missouri or Tennessee under section 402(g)(8)(B) of SMCRA, or to the Navajo, Hopi and Crow Indian tribes under section 405(k) of SMCRA.

(c) If you fail to enforce the financial interest provisions of part 705 of this chapter, we will terminate the grant.

(d) If you fail to submit reports required by this part or part 705 of this chapter, we take appropriate remedial actions. We may terminate the grant.

(e) If you fail to submit a reclamation plan amendment as required by § 884.15 of this chapter, we may reduce, suspend, or terminate all existing AML grants in whole or in part or may refuse to process all future grant applications.

(f) If you are not in compliance with all Federal statutes relating to non-discrimination, including but not limited to the following, we will terminate the grant:

(1) Title VI of the Civil Rights Act of 1964, Public Law 88–352, 78 Stat. 252 (42 U.S.C. 2000d *et seq.*). “Nondiscrimination in Federally Assisted Programs,” which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations in 43 CFR part 17.

(2) Executive Order 11246, as amended by Executive Order 11375, “Equal Employment Opportunity,” requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex, or national origin, and the implementing regulations in 40 CFR part 60.

(3) Section 504 of the Rehabilitation Act of 1973, Public Law 93–112, 87 Stat.

355 (29 U.S.C. 794), as amended by Executive Order 11914, "Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs."

§ 886.24 What procedures will OSM follow to reduce, suspend, or terminate my grant?

We will use the following procedures to reduce, suspend, or terminate your grant:

(a) We must give you at least 30 days written notice of intent to reduce, suspend, or terminate a grant. An OSM official authorized to approve your grant must sign our notice of intent. We must send this notice by certified mail, return receipt requested. Our notice must include the reasons for the proposed action and the proposed effective date of the action.

(b) We must give you opportunity for consultation and remedial action before we reduce or terminate a grant.

(c) We must notify you in writing of the termination, suspension, or reduction of the grant. The notice must be signed by the authorized approving official and sent by certified mail, return receipt requested.

(d) Upon termination, you must refund to us that remaining portion of the grant money not encumbered. However, you may retain any portion of the grant that is required to meet contractual commitments made before the effective date of termination.

(e) You must not make any new commitments of grant funds after receiving notification of our intent to terminate the grant without our approval.

(f) We may allow termination costs as determined by applicable Federal cost principles listed in OMB Circular A-87.

§ 886.25 How can I appeal a decision to reduce, suspend, or terminate my grant?

(a) Within 30 days of our decision to reduce, suspend, or terminate a grant, you may appeal the decision to the Director.

(1) You must include in your appeal a statement of the decision being appealed and the facts that you believe justify a reversal or modification of the decision.

(2) The Director must decide the appeal within 30 days of receipt.

(b) Within 30 days of a decision by the Director to reduce, suspend, or terminate a grant, you may appeal the decision to the Department of the Interior's Office of Hearings and Appeals. You must include in the appeal a statement of the decision being appealed and the facts that you believe justify a reversal or modification of the decision.

§ 886.26 When and how can my grant be terminated for convenience?

Either you or we may terminate or reduce a grant if both parties agree that continuing the program would not produce benefits worth the additional costs. We will handle a termination for convenience as an amendment to the grant to be approved by the OSM official authorized to approve your grant.

§ 886.27 What special procedures apply to Indian lands not subject to an approved Tribal reclamation program?

(a) This section applies to Indian lands not subject to an approved Tribal reclamation program. The Director is authorized to mitigate emergency situations or extreme danger situations arising from past mining practices and begin reclamation of other areas determined to have high priority on such lands.

(b) The Director is authorized to receive proposals from Indian tribes for projects that should be carried out on Indian lands subject to this section and to carry out these projects under parts 872 through 882 of this chapter.

(c) For reclamation activities carried out under this section on Indian lands, the Director shall consult with the Indian tribe and the Bureau of Indian Affairs office having jurisdiction over the Indian lands.

(d) If a proposal is made by an Indian tribe and approved by the Director, the Tribal governing body shall approve the project plans. The costs of the project may be charged against Federal expense funds under § 872.25 of this chapter.

(e) Approved projects may be carried out directly by the Director or through such arrangements as the Director may

make with the Bureau of Indian Affairs or other agencies.

PART 887—SUBSIDENCE INSURANCE PROGRAM GRANTS

Sec.

887.1 Scope.

887.5 Definitions.

887.10 Information collection.

887.11 Eligibility for grants.

887.12 Coverage and amount of grants.

887.13 Grant period.

887.15 Grant administration requirements and procedures.

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

SOURCE: 51 FR 5493, Feb. 13, 1986, unless otherwise noted.

§ 887.1 Scope.

This part sets forth the procedures for grants to you, a State or Indian tribe with an approved reclamation plan to establish, administer, and operate a self-sustaining individual State or Indian tribe administered program to insure private property against damages caused by land subsidence resulting from underground coal mining.

[73 FR 67647, Nov. 14, 2008]

§ 887.5 Definitions.

As used in this part—

Establishment—means either the development of a subsidence insurance program or the administration or operation of a subsidence insurance program.

Private property—means any or all of the following: dwellings and improvements, commercial and industrial structures, utilities, underground structures such as sewers, pipes, wells and septic systems, sidewalks and driveways, and land.

Reclamation plan or State reclamation plan means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and part 884 of this chapter.

Self-sustaining means maintaining an insurance rate structure which is designed to be actuarially sound. Self-sustaining requires that State or Indian tribal subsidence insurance programs provide for recovery of payments made in settlement for damages from any party responsible for the damages under the law of the State or

Indian tribe. Actuarial soundness implies that funds are sufficient to cover expected losses and expenses including a reasonable allowance for underwriting services and contingencies. Self-sustaining must not preclude the use of funds from other non-Federal sources.

State or Indian tribe administered means administered either directly by a State or Indian tribe or for a State or Indian tribe through a State or Indian tribal authorized commission, board, contractor such as an insurance company, or other entity subject to State or Indian tribal direction.

[51 FR 5493, Feb. 13, 1986, as amended at 73 FR 67647, Nov. 14, 2008]

§ 887.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the OMB has approved the information collection requirements of part 887 and assigned it control number 1029–0107. This information is being collected to support State and Indian tribal grant requests for moneys for the establishment, administration, and operation of self-sustaining State or Indian tribal administered subsidence insurance programs. States and Indian tribes are required to respond to obtain a benefit in accordance with SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[73 FR 67647, Nov. 14, 2008]

§ 887.11 Eligibility for grants.

You are eligible for grants under this part if you are a State or Indian tribe with a reclamation plan approved under part 884 of this chapter. If you are uncertified, you must have State share funds available under § 872.14 of this chapter or Tribal share funds available under § 872.17 of this chapter. If you have certified completion of coal reclamation under section 411(a) of SMCRA, you must have certified in lieu funds available under § 872.32 of this chapter, or prior balance replacement funds available under § 872.29 of this chapter if the State legislature or

Surface Mining Reclamation and Enforcement, Interior

§ 887.15

Tribal council has established this purpose.

[73 FR 67647, Nov. 14, 2008]

§ 887.12 Coverage and amount of grants.

(a) You may use moneys granted under this part to develop, administer, and operate a subsidence insurance program to insure private property against damages caused by subsidence resulting from underground coal mining. The moneys may be used to cover your costs for services and materials according to OMB cost principles, Circular A-87. You may use eligible grant moneys to cover capitalization requirements and initial reserve requirements mandated by applicable State or Tribal law provided use of such moneys is consistent with the 43 CFR part 12.

(b) You must submit a grant application under the procedures of part 885 of this chapter for certified States and Indian tribes or part 886 of this chapter for uncertified States or Indian tribes. Your application must include the following:

(1) A narrative statement describing how the subsidence insurance program is “State or Indian tribe administered”; and

(2) A narrative statement describing how the funds requested will achieve a self-sustaining individual State or Indian tribe administered program to insure private property against subsidence resulting from underground coal mining.

(c) Grants awarded to you under this part cannot exceed a cumulative total over the lifetime of the program of \$3 million.

(d) You may not use grant moneys from the Fund for lands that are ineligible for reclamation funding under Title IV of SMCRA.

(e) Insurance premiums must be considered program income and must be used to further eligible subsidence insurance program objectives in accordance with 43 CFR part 12.

[73 FR 67647, Nov. 14, 2008]

§ 887.13 Grant period.

The grant funding period must not exceed 8 years from the time we approve the grant. You must return any unexpended funds remaining at the end of any grant period to us according to 43 CFR part 12.

[73 FR 67647, Nov. 14, 2008]

§ 887.15 Grant administration requirements and procedures.

The requirements and procedures for grant administration set forth in part 885 of this chapter for reclamation grants to certified States and Indian tribes or in part 886 of this chapter for reclamation grants to uncertified States and Indian tribes must be used for subsidence insurance funds in grants.

[73 FR 67647, Nov. 14, 2008]

SUBCHAPTER S [RESERVED]

SUBCHAPTER T—PROGRAMS FOR THE CONDUCT OF SURFACE MINING OPERATIONS WITHIN EACH STATE

PART 900—INTRODUCTION

Sec.

900.1 Scope.

900.2 Objectives.

900.4 Responsibilities.

900.11 Organization of this subchapter.

900.12 State regulatory programs.

900.13 Federal programs and Federal coal exploration programs.

900.14 Abandoned mine land programs.

900.15 Federal lands program cooperative agreements.

AUTHORITY: Secs. 102, 201, 405, 503, 504, 505 and 523 of Pub. L. 95-87 (30 U.S.C. 1202, 1211, 1235, 1253, 1254, and 1273).

SOURCE: 48 FR 6334, Feb. 11, 1983, unless otherwise noted.

§ 900.1 Scope.

This part sets forth the purpose and organization of parts 901-955 of this subchapter.

[51 FR 19461, May 29, 1986]

§ 900.2 Objectives.

The objective of this part is to provide an introduction to the synopsis of the approved State programs, the Abandoned Mined Lands Reclamation programs, the cross referencing provisions of Federal programs and the full texts of State and Federal cooperative agreements for regulation of mining on Federal lands. The introduction explains the content and authority of the permanent regulatory programs.

§ 900.4 Responsibilities.

(a) Each State that has surface coal mining and reclamation operations or coal exploration activities on non-Federal, non-Indian lands must have either an approved State program or a promulgated Federal program as required by Title V of the Act and 30 CFR chapter VII, subchapter C. Approval of a State program and promulgation of a Federal program are described in the paragraphs below.

(b) Under section 503 of the Act and 30 CFR parts 730, 731 and 732 a State in which there are coal exploration activities or surface mining and reclama-

tion operations must submit a State program to the Secretary for approval if it wishes to assume exclusive regulatory jurisdiction on non-Federal and non-Indian lands within its borders. The State programs must meet the requirements of the Act and 30 CFR chapter VII, subchapter C.

(c) Pursuant to section 504 of SMCRA and 30 CFR 736.11, OSM must promulgate and implement a Federal program in each State in which the Director reasonably expects coal exploration or surface coal mining and reclamation operations to exist on non-Federal and non-Indian lands at any time before June, 1985, and either: (1) The State does not submit a State program, (2) the Secretary of the Interior finally disapproves the program submitted by the State, or (3) the Secretary of the Interior withdraws approval of the State program.

(d) Under section 405 of SMCRA and 30 CFR part 884, each State having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA, may submit to the Secretary a State Reclamation Plan, demonstrating its capability for administering an abandoned mine reclamation program. Title IV provides that the Secretary may approve the plan once the State has an approved regulatory program under Title V of SMCRA. If the Secretary determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of Title IV, the Secretary shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans.

(e) States with approved programs may enter into cooperative agreements with OSM in order to become the regulatory authority for coal mining on Federal lands, in accordance with 30 CFR chapter VII, subchapter D.

Surface Mining Reclamation and Enforcement, Interior

§ 901.10

§ 900.11 Organization of this subchapter.

Parts 901 through 950 are reserved for each State alphabetically. The program applicable within each State is codified in the part for that State. In addition, part 955 establishes rules pursuant to part 850 of this chapter for the training, examination and certification of blasters by OSM for surface coal mining operations in States with Federal programs and on Indian lands.

[51 FR 19461, May 29, 1986]

§ 900.12 State regulatory programs.

(a) Upon approval of a State regulatory program the Secretary will publish a final rule to be codified under the applicable part number assigned to the State. The full text will not appear below. Notification of the approval of the program and the dates on which any amendments were submitted will appear. Also included below are the addresses of OSM Headquarters, field and State Regulatory Authority offices where copies of the State programs are available for inspection and copying.

(b) Provisions of approved State regulatory programs or permits issued pursuant to an approved State regulatory program may be enforced by the Secretary or his authorized agents pursuant to sections 504(b) and 521 of the Act and part 842 of this chapter.

§ 900.13 Federal programs and Federal coal exploration programs.

The rules for each Federal program and Federal coal exploration program are codified below under the assigned part for the particular State. Rules governing the training, examination and certification of blasters for surface coal mining operations in States with Federal programs are codified in part 955, and referenced by each Federal program.

[51 FR 19461, May 29, 1986]

§ 900.14 Abandoned mine land programs.

Programs for reclamation of abandoned mine lands are codified under the applicable part for the State. The date of submittal and approval and the addresses at which copies of the pro-

gram are available appear below in the applicable part for each State.

§ 900.15 Federal lands program cooperative agreements.

The full text of any State and Federal cooperative agreement for the regulation of coal exploration and mining on Federal lands is published below under the applicable part. In addition, those requirements of a State program which are applicable on Federal lands in the State shall be specified.

PART 901—ALABAMA

Sec.

901.1 Scope.

901.10 State regulatory program approval.

901.15 Approval of Alabama regulatory program amendments.

901.16 Required regulatory program amendments. [Reserved]

901.20 Approval of Alabama abandoned mine land reclamation plan.

901.25 Approval of Alabama abandoned mine land reclamation plan amendments.

901.30 State-Federal cooperative agreement.

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

§ 901.1 Scope.

This part contains all rules applicable only within Alabama that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[47 FR 22057, May 20, 1982]

§ 901.10 State regulatory program approval.

The Secretary conditionally approved the Alabama regulatory program, as resubmitted on January 11, 1982, and clarified in a meeting with OSM on April 9, 1982, and in a letter to OSM on May 14, 1982, effective May 20, 1982. He removed the last condition of program approval effective July 18, 1996. Copies of the approved program are available at:

(a) Alabama Surface Mining Reclamation Commission, 1811 Second Avenue, 2nd Floor, P.O. Box 2390, Jasper, AL 35502.

(b) Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, Barber Business Park, 135 Gemini Circle, Homewood, AL 35209.

[64 FR 20165, Apr. 26, 1999]

§ 901.15 Approval of Alabama regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these

amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
November 24, 1982 .. August 29, 1983	July 27, 1983	Recodification of ASMC Rules
	March 2, 1984	Ala. Code 9-16-75, 79(1)(a), 87(d), 89(h)(2), 90(b)(10)(b.1), 92(a)(4), 93(f), 94(a), (e), 95 (f), 99(2), 105; ASMC Rules 880-X--: 2A-.06(xx), (yy), (fff), (www)(5), (kkkkkk)(1); 5A-.02(1)(i), .17(1)(n), .18, .36; 8C-.09; 8D-.05(1)(b), (4); 8E-.06(2), (5)(a); 8F-.07, .08(1)(d), (p), (2), .09(2)(e); 8G-.05(1)(b), (4); 8H-.06(2), (5)(a); 8I-.07(1)(d), (2), (p), .08(2)(e), .09; 8J-.09(4)(i), .11; 8K-.05(4)(a), .12(1)(a), (b); 8N-.07, (c), .08, .09, .13(d); 10A-.03; 10B-.06(a); 10C-.03, .30 through .35, .34-4(e)(2), .64(3); 10D-.03, .28-32, .31-4(e)(2), .62(3); 10G-.01, .07(a); 10J; 11C-.02(1)(b), (2)(b).
November 28, 1983 ..	July 5, 1984	ASMC Rules 880-X-8C-.06; 10C-.13, .17, .20, .27, .36; 10D-.13, .17, .20, .25, .33; Ala. revised systems Ch. V, § 731.14(f), (g)(9).
January 9, 1984	September 27, 1984	ASMC Rules 880-X-10C-.30(c); 10D-.28(3); 12A-.01 through .08; and other items.
May 22, 1985	July 19, 1985	ASMC Rules 880-X-2E.
April 2, 1985	December 3, 1985 ..	Staffing levels.
May 7, 1986	August 14, 1986	Ala. Senate Bill 445.
May 20, 1986	September 8, 1986	ASMC Rules 880-X-2A-.06, 8J-.11.
November 22, 1989 ..	February 5, 1991	ASMC Rules 880-X-2A-.06; 2B-.01; 7B-.07; 7D-.10; 8A-.07; 8B-.06; 8C-.08; 8D-.08, .14; 8E-.05, .06, .10, .11; 8F-.08, .14, .18; 8G-.08, .14; 8H-.05, .06, .10, .11; 8I-.07, .14, .18; 8J-.04, .08; 8K-.05 through .09, .11 through .16; 8M-.07 through .12; 10B-.04, .05, .06; 10C-.08, .12, .14, .24, .26, .28, .37 through .49, .52 through .56, .58 through .61, .63; 10D-.08, .12, .14, .23, .24, .26, .34 through .45, .48, .49, .52, .53, .54, .55, .57, .59, .60, .61; 10F-.03; 10G; 10I-.04, .06; 11A-.04; 11B-.02; 11C-.02; 11D-.10; 11E.
July 16, 1990	February 28, 1991 ..	ASMC Rules 880-X-2A-.07(1)(c); 2E-.01 through .11.
July 16, 1990	July 3, 1991	ASMC Rules 880-X-2A-.06, .07; 8B-.03; 8C-.01 through .07, .09, .10; 8F-.11, .17, .19; 8I-.12, .17, .19; 8J-.08; 9A-.04; 9B-.04; 9C-.03, (7), .04; 9D-.02; 9E-.05; 10B-.01, .02, .06, .07; 10C-.17, .20, .62, .67 through .71; 10D-.17, .20, .56, .65 through .69; 10G-.05.
November 22, 1989, July 16, 1990, Au- gust 1, 1991.	May 11, 1992	ASMC Rules 880-X-2A-.06, .07(3); 6A-.06; 8D-.05, .06; 8G-.05, .06; 8I-.10; 8K-.10, .11, .17, .18; 10C-.40, .45, .62; 10D-.56, .58; 11C-.02.
June 23, 1993	October 21, 1993 ...	ASMC Rules 880-X-8D-.05(8), .09(2); 8F-.08(2)(j); 8G-.05(8), .09(2); 8I-.07(2)(j), .16(1); 8K-.10(1)(a); 10C-.41(1); 10J-.03(f); 12A-.07.
March 28, 1997	December 22, 1997	880-X-5A-.22(1)(a), (1)(b) and (2); 880-X-6A-.06(k); 880-X-7B-.07(5); 880-X-9E-.05(2) and (3); 880-X-10C-.23(2)(a), .36(13)(b) and (b)(1), (15)(b)(3), and (16)(a), .38(1)(d) through (1)(f), .40(3)(a); 880-X-10D-.33(13)(b) and (b)(1), (15)(b)(3), and (16)(a), .34(1)(d) through (1)(f), and .36(3)(a).
April 14, 1998	July 6, 1998	Code of Ala. Sections 9-16-83(c) and (h); 9-16-91(e).
August 4, 1998	December 4, 1998 ..	880-X-2A-.06; .08; 880-X-6A-.06(d)3.; 880-X-8F-.08(1)(e), (l) and (o); .09(2)(d); .11(1), (1)(b) and (c), (2), (3)(c), (6); .20; 880-X-8H-.06(1)(e)3.(iv); 880-X-8I-.07(1)(e),(l) and (o); .10(1), (2), (2) (b), (g) and (h); .12(1), (1) (b) and (c), (2), (3)(c), (6); .20; 880-X-8J-.13; 880-X-8K-.10(2)(d), (3)(m); 880-X-8N-.07(c); .10; .13(1), (1) (c), (e) and (f), (2); 880X-9D-.02(1)(c); 880-X-10C-.17(1) (a) and (c), (3)(b); .20(1)(a), (d), (e), (f)1., (i)2.(i) and (iii), (l), (3)(b)1. and 2.; .38(1); .54; .55; .62(3); 880-X-10D-.12(9); .17(1) (a) and (c), (3)(b); .20(1) (a), (d), (e), (f)1., (i)2. (i) and (iii), (l), (3)(b)1.and 2.; .34(1); .56(3); .58; 880-X-10G-.03(2); .04(3)(b); 880-X-11B-.02 (8)(d), (9); 880-X-11D-.11(1).
August 17, 1999	June 8, 2000	ASMCRA sections 9-16-91(e)(1), (e)(3), (e)(4); and (f).
April 11, 2000	June 22, 2000	880-X-2A-.06; 880-X-2D-.04(1) and .06; 880-X-8I-.08(2)(d); 880-X-8I-.10(2)(h).
August 28, 2001	February 5, 2002	ASMC Rules 880-X-2A-.06; 7B-.06(a) through (g), .07 through .12; 8C-.05(1)(g), .06(2)(e); 8D-.06(3); and 8F-.14(1)(2).
October 17, 2002	April 10, 2003	ASMC 880-X-1B; 880-X-6A-.06(g)2(ii)(l).
July 18, 2008	September 23, 2008	ASMC 880-X-8B-.07 and 880-X-11D-.06.
January 5, 2010	February 22, 2011 ..	ASMCRA sections 9-16-73; 9-16-74; 9-16-77; 9-16-78; 9-16-81(a) through (d) and (f); and 9-16-93(b) through (f).
October 28, 2010	May 24, 2011	Sections 880-X-6A-.07, 880-X-6A-.08, and 880-X-12A-.09.
June 26, 2012	February 19, 2013 ..	ASMC sections 880-X-10C-.62(1)(c) and (d); 880-X-10C-.62(2)(c)(iv), (e), and (g); 880-X-10D-.56(1)(c) and (d); and 880-X-10D-.56 (2)(c)(iv), (e), and (g).
March 18, 2016	October 26, 2016 ...	Alabama Code 880-X-5A-.35.

Surface Mining Reclamation and Enforcement, Interior

§ 901.30

[62 FR 9933, Mar. 5, 1997, as amended at 62 FR 66821, Dec. 22, 1997; 63 FR 35807, July 1, 1998; 63 FR 66987, Dec. 4, 1998; 65 FR 36338, June 8, 2000; 65 FR 38727, June 22, 2000; 67 FR 5207, Feb. 5, 2002; 68 FR 17548, Apr. 10, 2003; 73 FR 54681, Sept. 23, 2008; 76 FR 9646, Feb. 22, 2011; 76 FR 30010, May 24, 2011; 78 FR 11579, Feb. 19, 2013; 81 FR 74304, Oct. 26, 2016]

§ 901.16 Required regulatory program amendments. [Reserved]

§ 901.20 Approval of Alabama abandoned mine land reclamation plan.

The Secretary approved the Alabama abandoned mine land reclamation plan, as submitted on May 29, 1981, and revised on August 13, 1981, effective May 20, 1982. Copies of the plan are available at:

(a) Alabama Department of Industrial Relations, 649 Monroe Street, Montgomery, AL 36131.

(b) Office of Surface Mining Reclamation and Enforcement, Birmingham

Field Office, Barber Business Park, 135 Gemini Circle, Homewood, AL 35209.

[64 FR 20166, Apr. 26, 1999]

§ 901.25 Approval of Alabama abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
June 15, 1987	July 7, 1988	Alabama policies and procedures for land acquisition, management and disposal of property, and reclamation on private lands.
April 25, 1990	August 31, 1990	Emergency program.
June 26, 1992	January 12, 1993	Ranking and selection of AML projects.
October 1, 1993	June 30, 1994	Eligibility and definition of AML.
December 5, 1994	August 15, 1995	Ranking and selection of AML projects; administrative and management structure.

[62 FR 9934, Mar. 5, 1997]

§ 901.30 State-Federal cooperative agreement.

The Governor of the State of Alabama and the Secretary of the Department of the Interior (Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

ARTICLE I: INTRODUCTION, PURPOSE AND RESPONSIBLE AGENCIES

A. *Authority:* This agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an Agreement for State regulation of surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation of surface coal mining and reclamation operations in Alabama subject to the Federal lands program (30 CFR parts 740-746), consistent with State

and Federal Acts governing such activities, and the Alabama State Program (Program).

B. *Purpose:* The purposes of this Agreement are to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations; (b) minimize inter-governmental overlap and duplication; and (c) provide uniform and effective application of the Program on all lands in Alabama in accordance with the Act, the Program, and this Agreement.

C. *Responsible Administrative Agencies:* The Alabama Surface Mining Commission (ASMC) shall be responsible for administering this Agreement on behalf of the Governor. The Office of Surface Mining (OSM) shall administer this Agreement on behalf of the Secretary.

ARTICLE II: EFFECTIVE DATE

After it has been signed by the Secretary and the Governor, this Agreement shall be effective 30 days after publication in the FEDERAL REGISTER as a final rule. This

§ 901.30

Agreement shall remain in effect until terminated as provided in Article XI.

ARTICLE III: DEFINITIONS

The terms and phrases used in this Agreement which are defined in the Act, 30 CFR 700, 701, and 740, the approved State Program and the State Act, and in the rules and regulations promulgated pursuant to those Acts, shall be given the meanings set forth in said definitions. Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the approved State Program will apply, except in the case of a term which defines the Secretary's continuing responsibilities under the Act and other laws.

ARTICLE IV: APPLICABILITY

In accordance with the Federal lands program in 30 CFR part 745, the laws, regulations, terms and conditions of the Program are applicable to lands in Alabama subject to the Federal lands program except as otherwise stated in this Agreement, the Act, 30 CFR 745.13, or other applicable laws or regulations.

ARTICLE V: GENERAL REQUIREMENTS

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement.

A. *Authority of State Agency:* ASMC has and shall continue to have the authority under State law to carry out this Agreement.

B. *Funds:* Upon application by ASMC and subject to appropriations, OSM shall provide the State with the funds to defray the costs associated with carrying out responsibilities under this Agreement as provided in section 705(c) of the Act and 30 CFR 735.16. Such funds shall cover the full cost of carrying out these responsibilities provided that such cost does not exceed the estimated cost the Federal government would have expended in regulating surface coal mining operations on Federal lands in Alabama in the absence of an agreement. If the State requests funds and sufficient funds have not been appropriated to OSM, OSM and the ASMC shall promptly meet to decide on appropriate measures that will insure that mining operations are regulated in accordance with the Program. If agreement cannot be reached, then either party may terminate the Agreement in accordance with 30 CFR 745.15. Funds provided to the State under this Agreement shall be adjusted in accordance with Office of Management and Budget Circular A-102, Attachment E.

C. *Reports and Records:* ASMC shall make annual reports to OSM containing information with respect to compliance with the terms of this Agreement, pursuant to 30 CFR 745.12(d). Upon request, ASMC and OSM shall exchange information developed under this

30 CFR Ch. VII (7-1-17 Edition)

Agreement, except where prohibited by Federal law.

OSM shall provide ASMC with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement.

D. *Personnel:* ASMC shall have the necessary personnel to fully implement this agreement in accordance with the provisions of the Act and the approved State Program.

E. *Equipment and Laboratories:* ASMC will assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed which are necessary to carry out the requirements of the Agreement.

F. *Permit Application Fees and Civil Penalties:* The amount of the fee accompanying an application for a permit shall be determined in accordance with section 15 of the Alabama Surface Mining Control and Reclamation Act of 1981, Section 880-X-8B-.07 of the State regulations, and the applicable provisions of the State Program and Federal law. All permit fees and civil penalties collected from operations on Federal lands will be retained by the State and shall be deposited with the State Treasurer in the Alabama Surface Mining Fund. The financial status report submitted pursuant to 30 CFR 735.26 shall include the amount of fees collected during the prior State fiscal year.

ARTICLE VI: REVIEW OF PERMIT APPLICATION PACKAGE

A. *Submission of Permit Application Package:* ASMC and the Secretary shall require an operator proposing to conduct surface coal mining operations on Federal lands covered by this Agreement to submit a permit application package (PAP) in an appropriate number of copies to ASMC. ASMC shall furnish OSM with an appropriate number of copies of the PAP. The PAP shall be in the form required by ASMC and include any supplemental information required by OSM or the Federal land management agency. At a minimum, the PAP shall include the information necessary for ASMC to make a determination of compliance with the State Program and for the appropriate Federal agency to make a determination of compliance with applicable requirements of Federal laws and regulations for which it is responsible.

B. *Review Procedures Where Leased Federally-Owned Coal Is Not Involved:*

1. ASMC shall assume primary responsibility for the analysis, review and approval or disapproval of the permit application component of the PAP required by 30 CFR 740.13 for surface coal mining and reclamation operations under the Federal lands program in Alabama not requiring a mining plan under 30 CFR 746.11. ASMC shall be the

primary point of contact for operators regarding decisions on the PAP and will be responsible for informing the applicant of determinations.

2. Upon receipt of a PAP that involves surface coal mining and reclamation operations on Federal lands not containing leased Federal coal, ASMC shall (1) transmit a copy of the complete PAP to the Federal land management agency with a request for review pursuant to 30 CFR 740.13(c)(4), and (2) provide OSM with a complete copy of the PAP and any additional information necessary to allow OSM to determine whether the operations are prohibited or limited by the requirements of section 522(e) (1) or (2) of the Federal Act (30 U.S.C. 1272(e)) and 30 CFR part 761 with respect to areas designated therein by Congress as unsuitable for mining. Except as specified by paragraph 5 of this article, ASMC shall be responsible for obtaining, in a timely manner, the views and determinations of any other Federal agencies with jurisdiction or responsibility over Federal lands affected by a PAP in Alabama.

3. OSM will provide technical assistance to ASMC when requested if available resources allow and will process requests for determinations of compatibility and valid existing rights under 30 CFR part 761 relating to areas designated by Congress under section 522(e)(1) or (2) as unsuitable for mining. OSM will be responsible for ensuring that any information OSM receives from an applicant is promptly sent to ASMC. OSM shall have access to ASMC files concerning mines on Federal lands. The Secretary reserves the right to act independently of ASMC to carry out his responsibilities under laws other than the Federal Act. A copy of all resulting correspondence with the applicant that may have a bearing on decisions regarding the PAP shall be sent to the State.

4. ASMC shall review the PAP for compliance with the Program.

5. Prior to making a decision on a PAP for proposed surface coal mining and reclamation operations for which there is no other concurrent Secretarial action that would trigger compliance with section 7 of the Endangered Species Act, 16 U.S.C. 1536, ASMC shall obtain the written concurrence of OSM regarding the effect the proposed operations would have on threatened and endangered species and critical habitat in the area affected by the proposed operations, and shall include in any permit that is issued for such operations any terms or conditions which OSM may require to avoid the likelihood of actions which would jeopardize the continued existence of any such species or result in the destruction or adverse modification of its critical habitat.

6. The permit issued by ASMC shall incorporate any terms or conditions imposed by the Federal land management agency, including conditions relating to post-mining

land use, and shall condition the initiation of surface coal mining and reclamation operations on compliance with the requirements of the Federal land management agency. After issuing the decision on the PAP, ASMC shall send a notice to the applicant, the Federal land management agency, and OSM with a copy of the permit and written findings.

C. Review Procedures Where Leased Federally-Owned Coal is Involved:

1. ASMC shall assume primary responsibility for the analysis, review and approval or disapproval of the permit application component of the PAP for surface coal mining and reclamation operations on Federal lands in Alabama where a mining plan is required by 30 CFR 746.11. OSM, as requested, shall assist the State in this analysis and review. The Department of the Interior (Department) shall concurrently carry out its responsibilities under the Mineral Leasing Act (MLA), the National Environmental Policy Act (NEPA), and other applicable Federal laws that cannot be delegated to the State. The Department shall carry out these responsibilities in accordance with the Federal lands program and this Agreement in a timely manner so as to avoid, to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the Program. Responsibilities and decisions which can be delegated to the State under other applicable Federal laws may be specified in working agreements between OSM and the State without amendment to this Agreement. The Secretary will consider the information in the PAP and, where appropriate, make decisions required by the Federal Act, MLA, NEPA, and other Federal laws.

2. ASMC will be the primary point of contact for operators regarding the review of the PAP, except on matters concerned exclusively with 43 CFR parts 3480-3487, administered by the Bureau of Land Management (BLM). ASMC will be responsible for informing the applicant of all joint State-Federal determinations. The Secretary may act independently of the State to carry out responsibilities under laws other than the Federal Act or provisions of the Act not covered by the Program, and in instances of disagreement over the Act and the Federal lands program. ASMC shall send to OSM, copies of any correspondence with the applicant and any information received from the applicant regarding the mining plan including the operation and reclamation plan portion of the permit application. OSM shall send to ASMC copies of all independent correspondence with the applicant which may have a bearing on the PAP. As a matter of practice, OSM will not independently initiate contacts with applicants regarding completeness or deficiencies of the PAP with respect to matters covered by the Program.

3. ASMC shall assume the responsibilities listed in 30 CFR 740.4(c) (1), (2), (4), (5), and (6). OSM shall retain the responsibilities listed in 30 CFR 740.4(c)(3) and the exceptions specified in (c)(7) (i) through (vii). OSM shall assist the State in carrying out its responsibilities by:

(a) Distributing copies of the PAP to, and coordinating the review of the PAP among, all Federal agencies which have responsibilities relating to decisions on the PAP. This shall be done in a manner which ensures timely identification, communication and resolution of issues relating to those Federal agencies' statutory requirements. OSM shall request that such other Federal agencies furnish their findings and any requests for additional data to OSM within 45 calendar days of their receipt of the PAP.

(b) Providing ASMC with the analyses and conclusions of other Federal agencies.

(c) Addressing conflicts and difficulties of the other Federal agencies in a timely manner.

(d) Assisting in scheduling joint meetings as necessary between State and Federal agencies.

(e) Where OSM is assisting ASMC in reviewing the permit application, furnish the State with the work product within 45 calendar days of receipt of the State's request for such assistance, or earlier if mutually agreed upon by OSM and the State.

(f) Exercising its responsibilities in a timely manner as set forth in a mutually agreed upon schedule, governed to the extent possible by the deadlines established in the Program.

(g) Assuming all responsibility for ensuring compliance with any Federal lessee protection bond requirement.

4. Review of the PAP:

(a) OSM and ASMC shall coordinate with each other during the review process as needed. ASMC shall keep OSM informed of findings during the review process which bear on the responsibilities of other Federal agencies. OSM shall ensure that any information OSM receives which has a bearing on decisions regarding the PAP is promptly sent to ASMC.

(b) The State shall review the PAP for compliance with the Program.

(c) OSM shall review the PAP for compliance with the Act and the requirements of other Federal laws and regulations. OSM and ASMC shall develop a work plan and schedule for PAP review and each shall identify a person as the project leader. The OSM project leader shall serve as the primary point of contact between OSM and ASMC throughout the review process. Not later than 50 days after receipt of the PAP, OSM shall furnish ASMC with its preliminary findings on the PAP and specify any requirements for additional data. To the extent practicable, the State shall provide OSM all

available information that may aid OSM in preparing any findings.

(d) ASMC shall provide to OSM written findings indicating whether the PAP is in compliance with the Program, and a technical analysis of the PAP.

(e) ASMC may proceed to issue a permit in accordance with the Program prior to the necessary Secretarial decision on the mining plan, provided that ASMC advises the operator in the permit that Secretarial approval of a mining plan must be obtained before the operator may conduct surface coal mining operations on Federal lands. ASMC shall reserve the right to amend or rescind any requirements of the approved permit to conform with any terms or conditions imposed by the Secretary in his approval of the mining plan.

5. Prior to acting on a permit revision or renewal, ASMC shall consult with OSM on whether such revision or renewal constitutes a mining plan modification under 30 CFR 746.18. OSM shall inform the State within 30 days of receiving notice of a proposed revision or renewal, whether any permit revision or renewal constitutes a mining plan modification. Permit revisions which do not constitute mining plan modifications shall be approved solely by the State.

OSM may establish criteria consistent with 30 CFR 746.18 to determine which permit revisions and renewals clearly do not constitute mining plan modifications. If such criteria are promulgated, revisions or renewals which do not constitute mining plan modifications in accordance with the criteria may be approved by ASMC before it submits copies of the revision or renewal to OSM.

ARTICLE VII: INSPECTIONS

A. ASMC shall conduct inspections on Federal lands and prepare and file inspection reports in accordance with the Program.

B. ASMC shall, subsequent to conducting any inspection, and on a timely basis, file with OSM a legible copy of the completed State inspection report.

C. ASMC shall be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by the Agreement, except as described hereinafter. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR parts 842 and 843 and its obligations under laws other than the Act.

D. OSM shall ordinarily give the ASMC reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity

Surface Mining Reclamation and Enforcement, Interior

§ 901.30

to join in the inspection. When OSM is responding to a citizen complaint of an imminent danger to the public health and safety, or of significant, imminent environmental harm to land, air or water resources, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact ASMC no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger or significant imminent environmental harm shall be referred to ASMC for action. The Secretary reserves the right to conduct inspections without prior notice to ASMC to carry out his responsibilities under the Federal Act.

ARTICLE VIII: ENFORCEMENT

A. ASMC shall have primary enforcement authority under the Act concerning compliance with the requirements of this Agreement and the Program. Enforcement authority given to the Secretary under other laws and orders, including but not limited to those listed in appendix A, is reserved to the Secretary.

B. During any joint inspection by OSM and ASMC, ASMC shall have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation, and assessment of penalties. The ASMC shall inform OSM prior to issuance of any decision to suspend or revoke a permit.

C. During any inspection made solely by OSM or any joint inspection where the ASMC and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR parts 843 and 845. Such enforcement actions shall be based on the standards in the approved Program, the Act, or both, and shall be taken using the procedures and penalty system contained in 30 CFR parts 843 and 845.

D. The ASMC and the Department shall promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining permits subject to this Agreement, and of all actions taken with respect to such violations.

E. Personnel of the State and representatives of the Department shall be mutually available to serve as witnesses in enforcement actions taken by either party.

F. This Agreement does not limit the Department's authority to enforce violations of Federal law which establish standards and requirements which are authorized by laws other than the Act.

ARTICLE IX: BONDS

A. ASMC and the Secretary shall require each operator covered by the Federal lands program to submit a single performance bond payable to Alabama and the United States to cover the operator's responsibilities

under the Federal Act and the Program. Such performance bond shall be conditioned upon compliance with all requirements of the Federal Act, the Program and any other requirements imposed by the Department or the Federal land management agency. Such bond shall provide that if this Agreement is terminated, the bond shall be payable only to the United States to the extent that lands covered by the Federal lands program are involved.

B. Prior to releasing the operator from any obligation under such bond, the ASMC shall obtain the concurrence of OSM. The ASMC shall also advise OSM of annual adjustment to the performance bond, pursuant to the Program. Departmental concurrence shall include coordination with other Federal agencies having authority over the lands involved.

Such bond shall be subject to forfeiture with the consent of OSM, in accordance with the procedures and requirements of the Program.

C. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 30 CFR subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of the Act.

ARTICLE X: DESIGNATING LAND AREAS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING OPERATIONS

A. When either ASMC or OSM receives a petition to designate lands areas unsuitable for all or certain types of surface coal mining operations that could impact adjacent Federal and non-Federal lands, the agency receiving the petition shall (1) notify the other of receipt and the anticipated schedule for reaching a decision; and (2) request and fully consider data, information and views of the other.

B. Authority to designate State and private lands as unsuitable for mining is reserved to the State. Authority to designate Federal lands as unsuitable for mining is reserved to the Secretary.

ARTICLE XI: TERMINATION OF COOPERATIVE AGREEMENT

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XII: REINSTATEMENT OF COOPERATIVE AGREEMENT

If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

ARTICLE XIII: AMENDMENT OF COOPERATIVE AGREEMENT

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

ARTICLE XIV: CHANGES IN STATE OR FEDERAL STANDARDS

A. The Department or the State may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party shall, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations and request necessary legislative action. Such changes shall be made under the procedures of 30 CFR part 732 for changes to the State Program and under the procedures of section 501 of the Act for changes to the Federal lands program.

B. ASMC and the Department shall provide each other with copies of any changes to their respective laws, rules, regulations and standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XV: CHANGES IN PERSONNEL AND ORGANIZATION

Each party to this Agreement shall notify the other, when necessary, of any changes in personnel, organization and funding or other changes that will affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

ARTICLE XVI: RESERVATION OF RIGHTS

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or Secretary may have under other laws or regulations, including but not limited to those listed in appendix A.

Dated: July 16, 1985.

Signed:

George C. Wallace,
Governor of Alabama.

Dated: June 28, 1985.

Signed:

Ann McLaughlin,
Under Secretary of the Interior.

APPENDIX A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations including 43 CFR parts 3480-3487.

3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR part 1500.

4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR part 402.

5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR part 800.

6. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

7. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

8. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

9. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

10. Executive Order 1593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

11. Executive Order 11988 (May 24, 1977), for flood plain protection. Executive Order 11990 (May 24, 1977), for wetlands protection.

12. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

13. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

14. The Constitution of the United States.

15. The Constitution of the State and State Law.

[50 FR 30921, July 30, 1985]

PART 902—ALASKA

Sec.

902.1 Scope.

902.10 State regulatory program approval.

902.15 Approval of Alaska regulatory program amendments.

902.16 Required program amendments

902.20 Approval of Alaska abandoned mine land reclamation plan.

902.25 Approval of Alaska abandoned mine land reclamation plan amendments.

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

§ 902.1 Scope.

This part contains all rules applicable only within Alaska that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[48 FR 12889, Mar. 23, 1983]

§ 902.10 State regulatory program approval.

The Alaska State program as submitted on July 23, 1982, and as amended and clarified on December 13, 1982, and January 11, 1983, is approved effective May 2, 1983. Beginning on that date,

Surface Mining Reclamation and Enforcement, Interior

§ 902.15

the Alaska Department of Natural Resources shall be deemed the regulatory authority in Alaska for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the Alaska permanent regulatory program. Copies of the approved program are available at the following addresses:

(a) Department of Natural Resources, Division of Mining and Water Management, 3601 C Street, Suite 800, Anchorage, AK 99503-5925, Telephone: (907) 762-2149.

(b) Office of Surface Mining Reclamation and Enforcement, Western Re-

gional Coordinating Center, Technical Library, 1999 Broadway, Suite 3320, Denver, Colorado 80202-5733.

[60 FR 33724, June 29, 1995, as amended at 60 FR 54593, Oct. 25, 1995]

§ 902.15 Approval of Alaska regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
November 12, 1983 .. May 28, 1985, November 16, 1986, February 24, 1987. February 2, 1990	December 23, 1983 February 22, 1988 .. August 19, 1992	Redesignation of title 11, Ch 90 of the AAC. 11 AAC 90.065(b), .077(d), .331(a)(3), .461(f), .601 (d) through (g), .625, .627(a), (b), .751(a), .907(d), (g); Articles 15 through 17. 11 AAC 90.021(c), .023(a)(1), (2), (3), (b)(1), (2), .025(a)(1), (2), (b), (c), .041(a), (b), .043(b), (c), .045(b)(4), .057, .071(2)(D), .077(b)(5), (11), (d), .081(a)(1), (2), (3), (b), (c), .085(a)(1), (2), (3)(A) through (E), (4), (b)(3), (4), (c)(3), (4), (5)(A) through (D), .089(a), (c), .099(a), .101(c)(1), (2)(A) through (F), (3)(A), (B), (C), (4), (5)(A), (B), (6), .119(d), (e), .121(c), .125(a)(7) through (13), .127(4), (5)(A), (B), (C), (6), .129 (a)(6), (7), (8), .141(a)(1), .163(a)(2) (A) through (G), (b)(2), (3), (c)(1), (2), (3)(A), (B), .173(a)(1), (2), (3), .175(4)(D), .181(a)(5)(A), (B), (6), .185(a)(3), (4), (5), .207(c)(5)(C), .213(g), (h), .323(a) through (d), .325(b), (c), (d)(1), (2), (3), (g)(3), .327(b)(2), .331(b)(1), (2), (3), (c), (d)(2), (3), (4), (e), (f), (g), .333, .336(a), (b)(1), (2), (c)(1) through (9), (d)(1), (2), (3), (e), (f), .337(a), (b), (c)(1) through (7), (d), (e), (g), .338(1) through (7), .343, .345(a), (b)(1) through (5), (c), (d), (e)(1) through (6), (f) through (i), .349(2)(A), .353(a)(1), (2), (3), .371(d)(1) through (4), .373(b), (c), (d), .375(b), (e) through (h), .379(b), (c), (e) through (j), .381(a), (b), .391(b), (e), (g), (i), (k), (l), (m)(1) through (6), (n), (o), (p)(3) through (7), (q), (r), .395(a)(1) through (5), (b), .397(a), (b), (c)(1) through (5), (d) through (g), .399, .401(a), (b)(1), (2), (3), (c), (d), (e), .403, .405, .407(a) through (d), (f) through (j), .409, .435, .441(a), (b), (c), .443(a), (b), (c)(1)(A) through (F), (e)(2), (3), (4), (f) through (k), .451(b)(1), (5), .455(1) through (4), .457(b), (c)(5), .635(a), (b)(1), (2), (c), (d)(1), (2), (3), (e)(1), (2), (3), (f), (g), (h), .703(e), .705(a) through (e), .901(c), .907(b), (i), .911(18) through (21), (51), (110), (118), (122), (j).
January 26, 1995	September 17, 1996	11 AAC 05.010(a)(11)(D), 90.002, .003, .011, .025(a), (b), (c), .045(a), .049(2), (D) through (H), .083(b)(10), (11), (12), (3), (b), (c), .097, .099, .149(d), (1), .163(a), (b), (1), (c), (3)(B), (4), (5), .207(f)(1), (2), (4) through (7), .337(f), .345(e), .375, .391(b), (h), .401(e), .407(e), .409, .423(b), (h), .443(d)(1), (k), .491(a), (1), (6), (7), (8), (c)(4) through (8), (e), (f), .901(e), .907(c) through (h), (j).
December 12, 1996 .. July 30, 1998	March 31, 1997	11 AAC 90.207(f) (3) and (8).
	February 22, 1999 ..	11 AAC 90.002(a), (b), and (c), and 90.011(a) concerning permitting requirements; 90.025(a), (b), and (c) concerning permit application requirements; 90.045(a), 90.049(a), 90.083(b), and 90.097 concerning environmental resource requirements; 90.149(d) concerning alluvial valley floors; 90.163(a) and (d) concerning exploration; 90.207(f) concerning self-bonding; 90.337(f) concerning impoundment inspections; 90.375(f) concerning blasting; 90.391(h) and (s), 90.401(e), and 90.407(e) concerning coal mine waste; 90.423(b) and (h) concerning fish and wildlife; 90.443(d) and (k) concerning backfilling and grading; 90.491(e) and (f) concerning roads; 90.901(e) concerning termination of jurisdiction; 90.907(c) and (j) concerning public availability of information; and 90.911(92) concerning the definition of "road."

§ 902.16

30 CFR Ch. VII (7–1–17 Edition)

Original amendment submission date	Date of final publication	Citation/description
May 11, 2004	November 29, 2005	11 AAC 90.043(b); 90.045(a), (b), (c), (d), and (e); 90.057; 90.085(a)(5) and (c); 90.089(a)(1); 90.101(a) and (b); 90.173(a)(2), (b)(2) and (3); 90.179(a)(3), (b)(1) through (4) and (c); 90.185(a)(4) and (5); 90.201(d) and (f); 90.211(a); 90.331(d)(1); deletion of 90.311(g); 90.321(e); 90.323(a) through (c); 90.325(b) and (c); 90.327(b)(2); 90.331(e) and (h); 90.336(a), (b)(1) and (2), and (g); 90.337(a); 90.345(e); 90.349(i); 90.375(f) and (g); 90.391(b), (c), (h)(2), (i), and (n); 90.395(a); 90.397(a); 90.401(a), (d), and (e); 90.407(c) and (f); 90.443(a), (k)(2), (i), and (m); 90.447(c)(1); 90.461(b), (g), (h) and (i); 90.491(f)(1), (3) and (4); 90.601(h) and (i); 90.629(a); 90.631(a); 90.635(a) and (b); 90.637(a) and (b); 90.639(a) through (c); 90.641(a) through (d); 90.650 through 90.658; 90.701(a), (b), (c)(1) and (2), and (d)(1) and (2); 90.901(a)(2); and 90.911.

[62 FR 9934, Mar. 5, 1997, as amended at 62 FR 15117, Mar. 31, 1997; 64 FR 8514, Feb. 22, 1999; 70 FR 71394, Nov. 29, 2005]

§ 902.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), Alaska is required to submit to OSM by the specified date the following written, proposed program amendments, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Alaska's established administrative or legislative procedures.

(a) By October 19, 1992, Alaska shall amend its program as follows:

(1) At 11 AAC 90.023(f)(3) by providing ownership and control regulations to meet the requirements of OSM's May 11, 1989, 30 CFR 732 notification.

(2)–(13) [Reserved]

(14) At 11 AAC 90.457(c)(3) to require consultation with, and approval by the State forestry and wildlife agencies with regard to the minimum planting and stocking arrangements for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products postmining land use as required at 30 CFR 816.116(b)(3)(i).

(15) To resubmit standards for revegetation success per the requirement at 30 CFR 816.116(a)(1).

(16)–(17) [Reserved]

(b) [Reserved]

[57 FR 37423, Aug. 19, 1992, as amended at 61 FR 48842, Sept. 17, 1996; 62 FR 15117, Mar. 31, 1997; 64 FR 8514, Feb. 22, 1999; 70 FR 71394, Nov. 29, 2005]

§ 902.20 Approval of Alaska abandoned mine land reclamation plan.

The Alaska Reclamation Plan, as submitted on August 17, 1983, is approved effective December 23, 1983. Copies of the approved plan are available at:

(a) Department of Natural Resources, Division of Mining and Water Management, 3601 C Street, Suite 800, Anchorage, AK 99503–5925, Telephone: (907)762–2149.

(b) Office of Surface Mining Reclamation and Enforcement, Western Regional Coordinating Center, Technical Library, 1999 Broadway, Suite 3320, Denver, Colorado 80202–5733.

[60 FR 33724, June 29, 1995, as amended at 60 FR 54593, Oct. 25, 1995]

§ 902.25 Approval of Alaska abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original Amendment submission date	Date of final publication	Citation/description
May 28, 1992	November 16, 1992	Emergency response reclamation program.

[62 FR 9935, Mar. 5, 1997]

Surface Mining Reclamation and Enforcement, Interior

§ 903.700

PART 903—ARIZONA

Sec.

903.700 Arizona Federal program.

903.701 General.

903.702 Exemption for coal extraction incidental to the extraction of other minerals.

903.707 Exemption for coal extraction incidental to government-financed highway or other construction.

903.736 Permit fees.

903.761 Areas designated unsuitable for surface coal mining by act of Congress.

903.762 Criteria for designating areas as unsuitable for surface coal mining operations.

903.764 Process for designating areas unsuitable for surface coal mining operations.

903.772 Requirements for coal exploration.

903.773 Requirements for permits and permit processing.

903.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

903.775 Administrative and judicial review of decisions.

903.777 General content requirements for permit applications.

903.778 Permit applications—Minimum requirements for legal, financial, compliance, and related information.

903.779 Surface mining permit applications—Minimum requirements for information on environmental resources.

903.780 Surface mining permit applications—Minimum requirements for reclamation and operation plan.

903.783 Underground mining permit applications—Minimum requirements for information on environmental resources.

903.784 Underground mining permit applications—Minimum requirements for reclamation and operation plan.

903.785 Requirements for permits for special categories of mining.

903.795 Small operator assistance program.

903.800 Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

903.815 Performance standards—Coal exploration.

903.816 Performance standards—Surface mining activities.

903.817 Performance standards—Underground mining activities.

903.819 Special performance standards—Auger mining.

903.822 Special performance standards—Operations in alluvial valley floors.

903.823 Special performance standards—Operations on prime farmland.

903.824 Special performance standards—Mountaintop removal.

903.827 Special performance standards—Coal preparation plants not located within the permit area of a mine.

903.828 Special performance standards—In situ processing.

903.842 Federal inspections.

903.843 Federal enforcement.

903.845 Civil penalties.

903.846 Individual civil penalties.

903.955 Certification of blasters.

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

SOURCE: 60 FR 18716, Apr. 12, 1995, unless otherwise noted.

§ 903.700 Arizona Federal program.

(a) This part establishes a Federal program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and applies to all coal exploration and surface coal mining and reclamation operations in Arizona conducted on non-Federal and non-Indian lands. To the extent required by 30 CFR part 740, this part also applies to surface coal mining and reclamation operations on Federal lands in Arizona.

(b) Some rules in this part cross-reference pertinent parts of the permanent program rules in this chapter. The full text of a cross-referenced rule is in the permanent program rule cited under the relevant section of the Arizona Federal program.

(c) The following provisions of Arizona law generally provide for more stringent environmental control and regulation of some aspects of surface coal mining and reclamation operations than do the provisions of the Surface Mining Control and Reclamation Act of 1977, and the regulations in this chapter. Therefore, pursuant to section 505(b) of the Act, OSM will not generally construe such laws to be inconsistent with the Act, unless in a particular instance OSM determines that the rules in this chapter establish more stringent environmental or land use controls:

(1) The Arizona Department of Agriculture has authority to abate public nuisances, including noxious weeds and noxious weed seeds, under A.R.S. section 3-231 to 3-242. Violation of this statute is a misdemeanor.

(2) It is unlawful to injure any bird or harass any bird upon its nest or remove the nests or eggs of any bird without prior authorization of the Arizona Game and Fish Commission. A.R.S. section 17-236.

§ 903.701

(3) A bridge, dam, dike or causeway may not be constructed over or in a navigable river or other navigable water without the authorization of the Governor. A.R.S. Section 18-301.

(4) The Department of Mineral Resources has jurisdiction over the mining of minerals, and oil and gas under Title 27 of the Arizona Revised Statutes. One of the functions of that Department is the prevention and elimination of hazardous dust conditions. A.R.S. Section 27-128. Violation of orders of State mine inspectors respecting dust prevention and control is a misdemeanor.

(5) Roads leading into waste dump areas and tailing areas from inhabited or public areas are required to be blocked off and warning signs posted on the perimeter of such areas. A.R.S. Section 27-317.

(6) The primary responsibility for the control and abatement of air pollution rests with the Arizona Department of Environmental Quality and its Hearing Board. The Department is responsible for the establishment and enforcement of air pollution emission standards and ambient air quality standards as a part of a comprehensive air quality plan for Arizona. A.R.S. Title 49.

(7) The Arizona Department of Water Resources has jurisdiction over State water, including "surface waters." "Surface waters" means "the waters of all sources, flowing in streams, canyons, ravines or other natural channels, or in definite underground channels, whether perennial or intermittent, flood, waste or surplus water, and of lakes, ponds and springs on the surface. For the purposes of administering this title, surface water is deemed to include Central Arizona Project Water." A.R.S. Section 45-101. It is a misdemeanor to knowingly use the water of another, or divert water from a stream, waste water or obstruct water flowing into a water work. A.R.S. Section 45-112. Possession of water lawfully denied to the possessor is prima facie evidence of one's guilt. A.R.S. Section 45-112. If water is to be used for mining purposes the water rights may be severed from the land rights and transferred separately. The separation and transference of water

30 CFR Ch. VII (7-1-17 Edition)

rights is subject to numerous limitations, under A.R.S. Section 45-172.

(8) Dams are defined as "any artificial barrier, including appurtenant works for the impounding or diversion of water except those barriers for the purpose of controlling liquid borne material, twenty-five feet or more in height or the storage capacity of which will be more than fifty acre feet, but does not include any such barrier which is or will be less than six feet in height, regardless of storage capacity, or which has or will have a storage capacity not in excess of fifteen acre feet, regardless of height." A.R.S. Section 45-701. The construction, operation, repair or alteration of any dam without the prior approval of the Director of Water Resources is a misdemeanor. A.R.S. Section 45-702 to Section 45-716.

(d) Any Arizona law or regulation which may be found to interfere with the purposes and achievements of the Act, shall be preempted and superseded to the extent that the State law or regulation is inconsistent with, or precludes implementation of, requirements of the Act or this chapter under the Federal program for Arizona. The Director shall publish a notice to that effect in the FEDERAL REGISTER following the procedures set forth in § 730.11(a) of this chapter.

(e) The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 in its approval of the information collection requirements contained in the permanent regulatory program.

§ 903.701 General.

(a) Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and part 701 of this chapter apply to coal exploration and surface coal mining and reclamation operations in Arizona.

(b) Beginning on May 12, 1995, each surface coal mining and reclamation operation in Arizona must comply with Subchapter B of this chapter until issuance of a permanent program permit under the provisions of Subchapter C of this chapter.

(c) Records required by § 700.14 of this chapter to be made available locally to the public shall be made available in the county recorder's office of the

Surface Mining Reclamation and Enforcement, Interior

§ 903.773

county in which an operation is located, and at the OSM Albuquerque Field Office.

§ 903.702 Exemption for coal extraction incidental to the extraction of other minerals.

Part 702 of this chapter, *Exemption for Coal Extraction Incidental to the Extraction of Other Minerals*, applies to any person who conducts coal extraction incidental to the extraction of other minerals for purposes of commercial use or sale.

§ 903.707 Exemption for coal extraction incident to government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction*, applies to surface coal mining and reclamation operations.

§ 903.736 Permit fees.

Section 736.25 of this chapter, *Permit fees* applies to any person who makes application for a permit to conduct surface coal mining and reclamation operations in Arizona.

§ 903.761 Areas designated unsuitable for surface coal mining by act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, applies to surface coal mining operations.

§ 903.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, applies to surface coal mining operations.

§ 903.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitions, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities, applies to surface coal mining op-

erations beginning June 24, 1996, one year after the effective date of this program.

§ 903.772 Requirements for coal exploration.

(a) Part 772 of this chapter, *Requirements for Coal Exploration*, applies to any person who conducts coal exploration. For those applications where § 772.12 of this chapter applies, the requirements of paragraphs (b) through (d) of this section shall apply in place of § 772.12(c) (1) and (3) and § 772.12(d)(1) of this chapter.

(b) The applicant, upon receipt of notification from the regulatory authority of the submission of an administratively complete application for an exploration permit, must:

(1) Publish one public notice of the filing in a newspaper of general circulation in the county of the proposed exploration area; and

(2) Provide proof of this publication to the regulatory authority within one week of publication.

(c) Any person having an interest which is or may be adversely affected, shall have the right to file written comments within 30 days after the notice is published.

(d) The regulatory authority shall act upon an administratively complete application for a coal exploration permit and any written comments within 15 days from the close of the comment period unless additional time is necessary due to the number or complexity of the issues. The regulatory authority may approve a coal exploration permit only if based upon a complete and accurate application.

§ 903.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, *Requirements for Permits and Permit Processing*, applies to any person who applies for a permit for surface coal mining and reclamation operations.

(b) The Secretary will coordinate, to the extent practicable, his/her responsibilities under the following Federal laws with the relevant Arizona laws to avoid duplication:

Federal law	State law
(1) Clean Water Act, as amended, 33 U.S.C. 1251 et seq	A.R.S. Title 49, Art. 2, Sec 221–225; A.R.S. Title 49, Art. 3, Sec 241–251; A.R.S. Title 49, Art. 10, Sec 361–363; A.R.S. Title 49, Art. 11, Sec 371–381.
(2) Clean Air Act, as amended, 42 U.S.C. 7401 et seq	A.R.S. Title 49.
(3) Resource Conservation and Recovery Act, 42 U.S.C. 3251, et seq.	A.R.S. Title 49, sections 921–932.
(4) National Environmental Policy Act, 42 U.S.C. 4321 et seq ..	A.R.S. Title 49, section 104.
(5) Archeological and Historic Preservation Act, 16 U.S.C. 469 et seq.	Arizona Antiquities Act—A.R.S. Title 41 secs. 821, 841–846, 861, 862, 865, 1352.
(6) National Historic Preservation Act, 16 U.S.C. 470 et seq	A.R.S. Title 13 Secs. 3702, 3702.1; Title 41 secs. 511, 511.04, 821, 861, 862, 1352; Title 44 sec. 123.
(7) Section 208 of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.	A.R.S. Sections 49–101, 201 and 371.
(8) Endangered Species Act, 16 U.S.C. 1531 et seq	A.R.S. Title 17 Section 231A.2 Arizona Admin. Code Title 18 Chapter 10, Article 1.
(9) Fish and Wildlife Coordination Act, 16 U.S.C. 661–667.	
(10) Noise Control Act, 42 U.S.C. 4903.	
(11) Bald Eagle Protection Act, 16 U.S.C. 668–668(d)	A.R.S. Title 17 Section 235.

(c) No person may conduct coal exploration operations that result in removal of more than 250 tons of coal in one location or surface coal mining and reclamation operations:

(1) Without a permit issued by the Secretary as required under 30 CFR part 772 or 773; and

(2) Without permits, leases and/or certificates required by the State of Arizona, including, but not limited to the following:

(i) Municipal planning statutes (A.R.S. Section 9–461 to 9–462.01); County planning and zoning statutes (A.R.S. Sections 11–322 *et seq.*, 11–803, 11–808, 11–821);

(ii) Statutes governing perfection and recordation of mining claims (A.R.S. Section 27–201 to 27–210);

(iii) Statutes requiring mineral exploration permits (A.R.S. Section 27–251 to 27–256);

(iv) Solid waste and air pollution discharge permits, installation and operation permits required for equipment causing air pollution and water pollution discharge permits (A.R.S. Title 49);

(v) Mineral prospecting permits for State lands (A.R.S. Section 37–231);

(vi) Permits for discharge into or use of State waters and permits for secondary use of reservoir waters (A.R.S. Title 45).

(d) In addition to the requirements of part 773 of this chapter, the following permit application review procedures apply:

(1) Any person applying for a permit must submit at least five copies of the

application to OSM’s Western Support Center (WSC) in Denver, Colorado.

(2) WSC shall review an application for administrative completeness and acceptability for further review, and notify the applicant in writing of the findings. WSC may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness, stating specifically what information must be supplied; or

(iii) Determine the application administratively complete and acceptable for further review.

(3) When WSC determines the application to be administratively complete, it will notify the applicant. Upon such notification, the applicant must publish the public notice required by § 773.6(a)(1) of this chapter.

(4) A representative of WSC may visit the proposed permit area if necessary to determine whether the operation and reclamation plans are consistent with actual site conditions. WSC will provide the applicant advance notice of the time of the visit.

(5) In determining the completeness of an application, WSC will consider whether the information provided in the application is adequate for OSM to comply with the National Environmental Policy Act, 42 U.S.C. 4322. If necessary, WSC may require specific additional information from the applicant as any environmental review progresses.

Surface Mining Reclamation and Enforcement, Interior

§ 903.774

(e) In addition to the information required by subchapter G of this chapter, WSC may require an applicant to submit supplemental information to ensure compliance with applicable Federal laws and regulations other than the Act and 30 CFR chapter VII.

(f) In making a decision on an application, the regulatory authority shall

review any written comments or objections it has received and the records of any informal conference or hearing it has held on the application. The regulatory authority shall issue a written decision in accordance with the timeframes in the following table:

If * * *	And * * *	Then a written decision shall be issued * * *
OSM has not prepared an EIS	An informal conference has not been held.	Within 60 days of the close of the comment period.
OSM has not prepared an EIS	An informal conference has been held.	Within 60 days of the conclusion of the informal conference (unless additional time is needed because of the number or complexity of the issues).
OSM has prepared an EIS		No earlier than 30 days after the Environmental Protection Agency publishes the notice of availability of the final EIS in the FEDERAL REGISTER.

(g) OSM will consider withholding information from public disclosure under § 773.6(d) of this chapter if the applicant labels the information confidential and submits it separately from the rest of the application.

(1) If the applicant submits information identified as confidential, the notice required by § 773.6(a)(1) of this chapter shall state this and identify the type of information that the applicant has submitted.

(2) OSM shall determine the qualification of any application information labeled confidential within 10 days of the last publication of the notice required under § 773.6(a)(1) of this chapter, unless additional time is necessary to obtain public comment or in the event of unforeseen circumstances.

[60 FR 18716, Apr. 12, 1995, as amended at 65 FR 79671, Dec. 19, 2000]

§ 903.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, *Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights*, applies to any such actions involving surface coal mining and reclamation operations permits, except as specified in this section.

(b) No revision to an approved mining or reclamation plan shall be effective until reviewed and approved by WSC.

(c) Any significant revision to the approved mining or reclamation plan shall be subject to the public notice

and hearing provisions of §§ 903.773(d)(3) and 773.6(b) and (c) of this chapter before it is approved and implemented. Any revision to an approved reclamation plan that may have the potential to adversely affect the achievement of reclamation and the post-mining land use is a significant permit revision. In addition, WSC will consider the following factors, as well as other relevant factors, in determining the significance of a proposed revision:

(1) Changes in production or recoverability of the coal resource;

(2) Environmental effects;

(3) Public interest in the operation, or likely interest in the proposed revision; and

(4) Possible adverse impacts from the proposed revision on fish or wildlife, endangered species, bald or golden eagles, or cultural resources.

(d) The regulatory authority will approve or disapprove non-significant permit revisions within a reasonable time after receiving a complete and accurate revision application. Significant revisions and renewals shall be approved or disapproved under the provisions of § 903.773(f).

(e) Any person having an interest that is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, may submit written comments on the application to WSC. Comments may be submitted within 30 days of either the publication of the newspaper notice required by § 774.17(b)(2) of this chapter, or receipt

§ 903.775

of an administratively complete application, whichever is later. For purposes of this paragraph, a person includes, but is not limited to an official of any Federal, State, or local government agency.

(f) Within 30 days from the last publication of the newspaper notice, written comments or objections to an application for significant revision or renewal of a permit may be submitted to the regulatory authority by:

(1) Any person having an interest that is or may be adversely affected by the decision on the application; or

(2) Public entities notified under § 773.6(a)(3) of this chapter of the proposed mining operations on the environment within their areas of responsibility.

[60 FR 18716, Apr. 12, 1995, as amended at 65 FR 79671, Dec. 19, 2000]

§ 903.775 Administrative and judicial review of decisions.

Part 775 of this chapter, *Administrative and Judicial Review of Decisions*, applies to all decisions on permits.

§ 903.777 General content requirements for permit applications.

(a) Part 777 of this chapter, *General Content Requirements for Permit Applications*, applies to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

(b) Any person who wishes to conduct surface coal mining and reclamation operations must file a complete application as early as possible before the date the permit is desired and pay to OSM a permit fee in accordance with § 903.736.

(c) Any person who wishes to revise a permit shall submit a complete application as early as possible before the desired approval date of the permit revision and shall pay a permit fee in accordance with 30 CFR 777.17.

§ 903.778 Permit applications—Minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, applies to any person

30 CFR Ch. VII (7–1–17 Edition)

who submits an application for a permit to conduct surface coal mining and reclamation operations.

§ 903.779 Surface mining permit applications—Minimum requirements for information on environmental resources.

(a) Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, applies to any person who submits an application to conduct surface coal mining and reclamation operations.

(b) Each permit application must include a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area.

§ 903.780 Surface mining permit applications—Minimum requirements for reclamation and operation plan.

Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, applies to any person who submits an application to conduct surface coal mining and reclamation operations.

§ 903.783 Underground mining permit applications—Minimum requirements for information on environmental resources.

(a) Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, applies to any person who submits an application to conduct underground coal mining operations.

(b) Each permit application must include a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area.

§ 903.784 Underground mining permit applications—Minimum requirements for reclamation and operation plan.

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, applies to any person who

submits an application to conduct underground coal mining operations.

§ 903.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for permits for Special Categories of Mining*, applies to any person who submits an application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 903.795 Small operator assistance program.

Part 795 of this chapter, *Small Operator Assistance Program*, applies to any person who submits an application for assistance under the small operator assistance program.

§ 903.800 Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

(a) Part 800 of this chapter, *Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs*, applies to all surface coal mining and reclamation operations, except for § 800.40(a)(1) of this chapter regarding the bond release application, for which paragraph (b) of this section substitutes.

(b) The permittee may file an application with the regulatory authority for the release of all or part of a performance bond. The application must be filed no later than 30 days before the end of the vegetation growing season in order to allow time for the regulatory authority to properly evaluate the completed reclamation operations. The appropriate times or seasons for the evaluation of certain types of reclamation shall be identified in the mining and reclamation plan required in subchapter G of this chapter and approved by the regulatory authority.

§ 903.815 Performance standards—Coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration*, applies to any person who conducts coal exploration.

§ 903.816 Performance standards—Surface mining activities.

(a) Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, applies to any person who conducts surface mining activities, except § 816.116(a)(1) of this chapter regarding revegetation success standards, for which paragraph (b) of this section substitutes.

(b) Standards for success shall be those identified at § 816.116(a)(2) and (b) of this chapter. Statistically valid sampling techniques for measuring success shall be included in the mining and reclamation plan and approved by the regulatory authority.

§ 903.817 Performance standards—Underground mining activities.

(a) Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities*, applies to any person who conducts underground mining activities, except § 817.116(a)(1) of this chapter regarding revegetation success standards, for which paragraph (b) of this section substitutes.

(b) Standards for success shall be those identified at § 817.116(a)(2) and (b) of this chapter. Statistically valid sampling techniques for measuring success shall be included in the mining and reclamation plan and approved by the regulatory authority.

§ 903.819 Special performance standards—Auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining*, applies to any person who conducts surface coal mining operations that include auger mining.

§ 903.822 Special performance standards—Operations in alluvial valley floors.

Part 822 of this chapter, *Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors*, applies to any person who conducts surface coal mining and reclamation operations on alluvial valley floors.

§ 903.823

§ 903.823 Special performance standards—Operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland*, applies to any person who conducts surface coal mining and reclamation operations on prime farmland.

§ 903.824 Special performance standards—Mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal*, applies to any person who conducts surface coal mining and reclamation operations constituting mountaintop removal mining.

§ 903.827 Special performance standards—Coal preparation plants not located within the permit area of a mine.

Part 827 of this chapter, *Permanent Program Performance Standards—Coal Preparation Plants Not Located Within the Permit Area of a Mine*, applies to any person who conducts surface coal mining and reclamation operations which include the operation of a coal preparation plant not located within the permit area of a mine.

§ 903.828 Special performance standards—In situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, applies to any person who conducts surface coal mining and reclamation operations that include the in situ processing of coal.

§ 903.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections*, applies to all coal exploration and surface coal mining and reclamation operations.

(b) In addition to the requirements of part 842 of this chapter, OSM will furnish copies of inspection reports when requested by a designated Arizona State agency with jurisdiction over mining.

§ 903.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement*, applies regarding enforcement action on coal exploration and

30 CFR Ch. VII (7–1–17 Edition)

surface coal mining and reclamation operations.

(b) In addition to the requirements of part 843 of this chapter, OSM will furnish copies of enforcement actions and orders to show cause, upon request, to a designated Arizona State agency with jurisdiction over mining.

§ 903.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties*, applies to the assessment of civil penalties for violations on coal exploration and surface coal mining and reclamation operations.

§ 903.846 Individual civil penalties.

Part 846 of this chapter, *Individual Civil Penalties*, applies to the assessment of individual civil penalties under section 518(f) of the Act.

§ 903.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, applies to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 904—ARKANSAS

Sec.

904.1 Scope.

904.10 State regulatory program approval.

904.12 State program provisions and amendments not approved.

904.15 Approval of Arkansas regulatory program amendments.

904.16 [Reserved]

904.20 Approval of Arkansas abandoned mine land reclamation plan.

904.25 Approval of Arkansas abandoned mine land reclamation plan amendments.

904.26 Required plan amendments.

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

§ 904.1 Scope.

This part contains all rules applicable only within Arkansas which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[45 FR 77015, Nov. 21, 1980]

Surface Mining Reclamation and Enforcement, Interior

§ 904.15

§ 904.10 State regulatory program approval.

The Secretary conditionally approved the Arkansas regulatory program, as submitted on February 18, 1980, amended on May 29, 1980, and July 2, 1980, and clarified on July 29, 1980, August 8, 1980, August 14, 1980, and August 29, 1980, effective November 21, 1980. He fully approved the Arkansas regulatory program, as amended on September 2, 1980, January 19, 1981, and March 12, 1981, effective January 22, 1982. Copies of the approved program are available at:

(a) Arkansas Department of Environmental Quality, 8001 National Drive, P.O. Box 8913, Little Rock, AR 72219-8913.

(b) Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 East Skelly Drive, Suite 470, Tulsa, OK 74135-6548.

[64 FR 20166, Apr. 26, 1999]

§ 904.12 State program provisions and amendments not approved.

The following amendments to the Arkansas Surface Coal Mining and Rec-

lamation Code as submitted to OSMRE on May 1, 1987, are hereby disapproved:

(a) ASCMRC part 722, all revisions and additions which address surface coal mining and reclamation operations previously exempted under the 2-acre exemption rule of section 528 of SMCRA.

(b) [Reserved]

[53 FR 9884, Mar. 28, 1988, as amended at 54 FR 47355, Nov. 14, 1989; 67 FR 35029, May 17, 2002]

§ 904.15 Approval of Arkansas regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
December 7, 1983	March 16, 1984	ASCMRC 771.25 (a)(2); 776(c)(1), (2), (4), (5)(i), (ii); 842(c).
May 21, 1985	August 15, 1985	ASCMRC 843.12; 845.18 through .20.
December 17, 1984 ..	December 2, 1985 ..	ASCMRC 816.61-S, -U, .62, .64, -U, .65, .67, .68; 850.1, .5, .12 through .15.
March 10, 1986	March 28, 1988	ASCMRC 701.5; 761.12(b)(2), (e)(1), (2), (3); .15; 762.5; 764.13, .15(a)(1); 771.23(c)(4); 776.12, (a)(3)(vi), .14(a); 778.14(c); 779.14(a), (b)(1), .17; 780.18(b)(4), .21; 784.20(a)(1), (2), (b)(1), (e); 785.13(e), (5), (i), (j), (k), .17(b)(1)(ii); 786.1(d), .11(a), .15(a)(4), .16(a), .17(a)(1), .19(d)(8), .29(c); 788.18(d); 795.13, .14(d)(4), .19(a)(5); 800.11(h), .13(g); 805.13(b), .14(a); 806.11(b), (d)(2)(v); 807.11(d)(2)(v); 808.14(c); 815.15(a); 816.41(d), .42(a)(7), .43, .44(b)(3), .46, .49, .52(a)(4), .53, .55(d), .57(a)(2), .71 through .74, .79, .81, .83, .84, .87, .89, .97(b), (d)(10), .102(a)(2), (b), (f), .107, .111, .116, .126-U(a), (e), (f), .133(b)(1), .150, .151; 819.11(c)(1), (2); 823.12(a)(1), .15; 826.12(c); 827.11; 842.16(a); 843.11(a)(2), (3); 845.12(b), .13(b)(2), .15(b)(1)(i), (ii), (2); 1000(6), (10), (13), (16), (19), (51).
November 4, 1987	June 1, 1988	ASCMRC 776.12(a)(3), (b); 780.31; 786.19(p).
December 22, 1988 ..	November 14, 1989	ASCMRC 705.11(a), .13(a), .15; 780.16(b)(3)(i), (ii), (c); 784.21; 816.97(b); 817.97; 846.1, .5, .12, .14, .18; 1000(50).
December 18, 1989 ..	November 23, 1990	ASCMRC 778.13(a), (5), (6), (7), (b), (1) through (5), (c), (g), (h), .14(c), (d); 786.5(c), .17(c), (d), .19(i), .27(d), .30(a), (b), (c), .31(a), (b), (c); 843.11(g).
September 20, 1990	June 14, 1991	ASCMRC 700.10(d), part 702.
September 27, 1990	July 18, 1991	ASCMRC 700.10(a); 701.5; 776.11(b); 780.21(f), .37(f), (g), (h), .38; 784.27; 800.11(b)(2); 815.15(c)(2), (3), (4), .17(a), (b); 816.49(b)(7), (c)(2), .84(b)(2), (f), .116(b)(3), (c)(4), .117, .150 (b), (d), (f), .152(a), (c); 1000(d)(2), (8), (30) through (36), (44), (47).
October 11, 1991	April 23, 1992	ASCMRC 816.116(c)(2).

Original amendment submission date	Date of final publication	Citation/description
April 11, 1991, September 25, 1991.	August 19, 1992	ASCMRC 701.5, .11(c)(1); 707.12; 761.5 defining VER and public roads; 764.15(a)(7); 770.5, .6(a), (b), (c); 771.23(e)(1), (2); 772; 779.11, .12(a), (b), .15(a), .16(a), (b)(2), .17, .18(a), .20(a), .21(a), .22(a), (c), .24(g), (k), .25, .25(d) through (h), (j), .27(a), (b)(5), (d)(1), (2); 780.11, .14(b), (2), .18(b)(3), .23(b), .25(a), (b), .37(e); 783.14(a) through (d); 785.16(a), .17(a), (b); 786.5(b), .14(b)(3), .19(c); 788.13(b); 805.13(d); 806.12(e)(6)(iii), (g)(7)(iii); 808.12(c), .14(a), (b); 810.11; 815, .2(b), (c), .11(c), .15(a) through (d), (f) through (k); 816.13, .41(a), .43(e), .51–S(b), .52(a)(1), (2), .54, .65(f), .95(a), (b), .101(b)(1), .102(a), (g), .103, .104(a), (b), (3), .106, .107, .115, .133(c); 823.1, .14(c); 826.12(b); 827.12(m); 828.11(e), .12(a); 1000(d)(1), (3), (4), (5), (7), (9), (11), (12), (14), (15), (17), (18), (20) through (29), (37) through (43), (45), (46), (48), (49).
March 31, 1993	November 17, 1994	ACA 15–58–104(11), 503(a)(2)(A), (B), (C).
August 26, 1994	June 30, 1995	ASCMRA 4(18), (19), 5(b)(1), 13(k).
April 2, 1996	April 29, 1997	ASCMRC 700.10(b); 701.5; 771.25(b); 779.13; .15; .16; .17; .20; .22; .25(k); 780.21(f)(3)(v); .23, .25(a)(2) through (f); 783.13; .15; .16; .17; .20; .22; 784.14; .15; .16; .20; 785.25; 786.17(c)(4); .19; 795.12; .13; .16; .17; .19; Parts 800, 805 through 808; 816.41(e); .46(a)(3), (b)(2), (c)(2); .49; .81(a), (c)(2), (3), (4); .82; .85; .86; .88; .89(d); .91; .92; .93; .112; .116(c)(2), (3), (4); .121–U(a), (c) through (g); .122–U; .124–U; .126–U; 827.12(g); 842.11(c)(1) through (4); (d), (e), (f); 842.14.
February 6, 1998	September 16, 1998	ASCMRC 701.5; 761.5(d); 780.14(c); 780.18(b)(7), .25(a)(3)(i), .35(b); 785.15(b)–(c), .16(a), (c)(6), and (d), .17(d)(5); 815.15(k); 816.11(g), .21, .22, .23, .24, .25, .43(e), (f)(5), .44(c), .46, .48(b), .56, .74, .102, .103, .104–S, .105–S, .106, .107(a)–(b); part 823; part 826; 845.18(b) and .19(a).
August 27, 1998	November 25, 1998	ASCMRC 701.5; 816.116(b)(1), (2), (3)(iv), (4), (5); Policy Guidelines for Phase III Revegetation Success Standards for Pasture and Previously Mined Areas, Cropland, Forest Products, Recreation and Wildlife Habitat, Industrial/Commercial and Residential Revegetation.
March 1, 2002	August 15, 2001	Sections 761.5 definitions of “valid existing rights” & “public buildings;” 761.11–.15; 761.16; 761.17; 761.200(a); 762.14–.15; 764.15(a)(7); 776.12; 778.16(c); 780.31(a)(2); 780.33; 780.37; 786.11(a)(4) & (a)(5); 786.14(c); and 786.19(d)(1) & (d)(4)–(d)(8); regulatory authority name change to Arkansas Department of Environmental Quality; and recodification of the statutes to Arkansas Code Annotated Title 15, Chapter 58, Subchapters 1–5.
August 13, 2001	May 17, 2002	ASCMRC 845.18(a); Phase II and III Revegetation Success Standards for Grazingland; and Phase III Revegetation Success Standards for Prime Farmland.

[62 FR 9935, Mar. 5, 1997, as amended at 62 FR 23135, Apr. 29, 1997; 62 FR 31474, June 9, 1997; 63 FR 49429, Sept. 16, 1998; 63 FR 65067, Nov. 25, 1998; 66 FR 42742, Aug. 15, 2001; 67 FR 35029, May 17, 2002]

§ 904.16 [Reserved]

§ 904.20 Approval of Arkansas abandoned mine land reclamation plan.

The Secretary approved the Arkansas abandoned mine land reclamation plan, as submitted on July 7, 1982, effective May 2, 1983. Copies of the approved plan are available at:

(a) Arkansas Department of Environmental Quality, 8001 National Drive, P.O. Box 8913, Little Rock, AR 72219–8913.

(b) Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 East Skelly Drive, Suite 470, Tulsa, OK 74135–6548.

[64 FR 20166, Apr. 26, 1999]

§ 904.25 Approval of Arkansas abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Surface Mining Reclamation and Enforcement, Interior

§ 905.700

Original amendment submission date	Date of final publication	Citation/description
March 31, 1993	July 19, 1993	ACA 15–58–401(b), (c).
October 6, 1993	January 5, 1994	ACA 15–58–401(b)(2).
April 2, 1996	April 29, 1997	ASCMRC 874.5; .12(a)(4) through (8).
June 16, 1999	September 20, 1999	Definitions; Purposes of the state reclamation program; Identification of eligible lands and water; Ranking and selection procedures; Coordination of reclamation work; Acquisition management and disposition of land and water; Reclamation on private land; Rights of entry; Public participation; Organizational structure; Personnel and staffing policies; Purchasing and procurement systems; Management accounting; and Abandoned mine land problem description.
September 22, 1999	January 14, 2000 ...	Subheading B. Identification of Eligible Lands and Water [30 CFR 884.13(c)(2)].
August 13, 2001	May 17, 2002	ASCMRC 874.12(b)(4); 874.13(d); and 874.14(a)(2).

[62 FR 9936, Mar. 5, 1997, as amended at 62 FR 23135, Apr. 29, 1997; 64 FR 50756, Sept. 20, 1999; 65 FR 2332, Jan. 14, 2000; 67 FR 35029, May 17, 2002]

§ 904.26 Required plan amendments.

Pursuant to 30 CFR 884.15, Arkansas is required to submit for OSM's approval the following proposed plan amendment by the date specified.

(a)–(b) [Reserved]

[59 FR 542, Jan. 5, 1994]

PART 905—CALIFORNIA

Sec.

905.700 California Federal Program.

905.701 General.

905.702 Exemption for coal extraction incidental to the extraction of other minerals.

905.707 Exemption for coal extraction incident to government-financed highway or other construction.

905.761 Areas designated unsuitable for surface coal mining by act of Congress.

905.762 Criteria for designating areas as unsuitable for surface coal mining operations.

905.764 Process for designating areas unsuitable for surface coal mining operations.

905.772 Requirements for coal exploration.

905.773 Requirements for permits and permit processing.

905.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

905.775 Administrative and judicial review of decisions.

905.777 General content requirements for permit applications.

905.778 Permit applications—Minimum requirements for legal, financial, compliance, and related information.

905.779 Surface mining permit applications—Minimum requirements for information on environmental resources.

905.780 Surface mining permit applications—Minimum requirements for reclamation and operation plan.

905.783 Underground mining permit applications—Minimum requirements for information on environmental resources.

905.784 Underground mining permit applications—Minimum requirements for reclamation and operation plan.

905.785 Requirements for permits for special categories of mining.

905.795 Small operator assistance program.

905.800 Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

905.815 Performance standards—Coal exploration.

905.816 Performance standards—Surface mining activities.

905.817 Performance standards—Underground mining activities.

905.819 Special performance standards—Auger mining.

905.822 Special performance standards—Operations in alluvial valley floors.

905.823 Special performance standards—Operations on prime farmland.

905.824 Special performance standards—Mountaintop removal.

905.827 Special performance standards—Coal preparation plants not located within the permit area of a mine.

905.828 Special performance standards—In situ processing.

905.842 Federal inspections.

905.843 Federal enforcement.

905.845 Civil penalties.

905.846 Individual civil penalties.

905.955 Certification of blasters.

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

SOURCE: 53 FR 26575, July 13, 1988, unless otherwise noted.

§ 905.700 California Federal Program.

(a) This part contains all rules that are applicable to surface coal mining operations in California which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 905.701

30 CFR Ch. VII (7-1-17 Edition)

(b) Certain of the rules in this part cross-reference pertinent parts of the permanent program regulations in this Chapter. The full text of a cross-referenced rule is in the permanent program rule cited under the relevant section of the California Federal program.

(c) This part applies to all coal exploration and surface coal mining and reclamation operations in California conducted on non-Federal and non-Indian lands. To the extent required by 30 CFR part 740, this part also applies to operations on Federal lands in California.

(d) The information collection requirements contained in this part have already been approved by the Office of Management and Budget under 44 U.S.C. 3507 in its approval of the information collection requirements contained in the permanent regulatory program.

(e) The following provisions of California law generally provide for more stringent land use and environmental control and regulation of some aspects of surface coal mining operations than do the provisions of the Surface Mining Control and Reclamation Act of 1977, and the regulations in this chapter. Therefore, pursuant to section 505(b) of SMCRA, these provisions shall not generally be considered to be inconsistent with SMCRA unless, in a particular instance, the Federal program regulations establish more stringent environmental or land use controls:

(1) The California Environmental Quality Act, Cal. Pub. Res. Code section 21000 *et seq.* (West 1986).

(2) The Porter-Cologne Water Quality Control Act, Cal. Water Code section 13000 *et seq.* (West 1971).

(3) California Hazardous Waste Control Law, Cal. Health & Safety Code section 25100 *et seq.* (West 1984).

(4) The State Underground Storage of Hazardous Substances Law, Cal. Health & Safety Code section 25280 *et seq.* (West 1984).

(5) California Coastal Act of 1976, Cal. Pub. Res. Code Section 30000 *et seq.* (West 1986).

(6) The Z'berg-Nejedly Forest Practice Act of 1973, Cal. Pub. Res. Code section 4511 *et seq.* (West 1984).

(7) Cal. Pub. Res. Code section 4656 (West 1984), requiring a permit for mining in State forests.

(f) The following are the California laws that generally interfere with the achievement of the purposes and requirements of SMCRA and are, in accordance with section 504(g) of SMCRA, preempted and superseded. Other California laws may in an individual situation interfere with the purposes and achievements of SMCRA and may be preempted and superseded with respect to the performance standards of §§ 905.815 through 905.828 as they affect a particular coal exploration or surface mining operation by publication of a notice to that effect in the FEDERAL REGISTER.

(1) The California Surface Mining and Reclamation Act of 1975, Cal. Pub. Res. Code section 2710 *et seq.* (West 1984), as it relates to coal mining, except to the extent that it regulates other activities that are not regulated by SMCRA.

(2) Cal. Labor Code section 7990 *et seq.* (West Supp. 1988) (licensing of blasters), except as it applies to other activities that are not regulated by SMCRA.

(3) California Solid Waste Management and Resource Recovery Act of 1972, Cal. Gov. Code section 66770 *et seq.* (West 1983), except to the extent that it regulates other activities that are not regulated by SMCRA.

§ 905.701 General.

(a) Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and part 701 of this chapter shall apply to coal exploration and surface coal mining and reclamation operations in California.

(b) Beginning on the effective date of this program, each surface coal mining and reclamation operation in California shall comply with subchapter B of this chapter until issuance of a permanent program permit under the provisions of subchapter C of this chapter.

(c) Records required by § 700.14 of this chapter to be made available locally to the public shall be made available in the OSMRE Albuquerque Field Office.

Surface Mining Reclamation and Enforcement, Interior

§ 905.773

§ 905.702 Exemption for coal extraction incidental to the extraction of other minerals.

Part 702 of this chapter, *Exemption for Coal Extraction Incidental to the Extraction of Other Minerals*, shall apply to any person who conducts coal extraction incidental to the extraction of other minerals for purposes of commercial use or sale.

[54 FR 52123, Dec. 20, 1989]

§ 905.707 Exemption for coal extraction incident to government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§ 905.761 Areas designated unsuitable for surface coal mining by act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply to surface coal mining operations.

§ 905.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mining operations.

§ 905.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitions, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mining

operations beginning one year after the effective date of this program.

§ 905.772 Requirements for coal exploration.

(a) Part 772 of this chapter, *Requirements for Coal Exploration*, shall apply to any person who conducts coal exploration. For applications where § 772.12 applies, the requirements of paragraphs (b) through (d) apply in place of § 772.12(c) (1) and (3) and § 772.12(d)(1).

(b) Upon submission of an administratively complete application for an exploration permit, the applicant shall publish one public notice of the filing in a newspaper of general circulation in the county of the proposed exploration area, and provide proof of this publication to the regulatory authority within one week after the newspaper notice is published.

(c) Any person having an interest which is or may be adversely affected, shall have the right to file written comments for 10 days after the advertisement appears in the newspaper.

(d) The regulatory authority shall act upon an administratively complete application for a coal exploration permit and any written comments within 15 days from the close of the comment period. The approval of a coal exploration permit shall be based only on a complete and accurate application.

§ 905.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, *Requirements for Permits and Permit Processing*, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) The Secretary shall coordinate, to the extent practicable, his responsibilities under the following Federal laws with the relevant California State laws to avoid duplication:

Federal law	State law
(1) Clean Water Act, as amended, 33 U.S.C. 1251 <i>et seq.</i>	The Porter-Cologne Water Quality Control Act, Cal. Pub. Res. Code section 13000 <i>et seq.</i> (West 1971).
(2) Clean Air Act, as amended, 42 U.S.C. 7401 <i>et seq.</i>	California Air Pollution Control Laws, Cal. Health & Safety Code section 39000 <i>et seq.</i> (West 1986).
(3) Resource Conservation and Recovery Act, 42 U.S.C. 3251 <i>et seq.</i>	Hazardous Waste Control Law, Cal. Health & Safety Code section 25100 <i>et seq.</i> (West 1984); Solid Waste Mgmt. and Resource Recovery Act of 1972, Cal. Gov. Code section 66770 <i>et seq.</i> (West 1983).
(4) National Environmental Policy Act, 42 U.S.C. 4321 <i>et seq.</i>	California Environmental Quality Act (CEQA), Cal. Pub. Res. Code section 21000 (West 1986).

Federal law	State law
(5) Archeological and Historic Preservation Act, 16 U.S.C. 469a.	CEQA.
(6) National Historic Preservation Act, 16 U.S.C. 470 <i>et seq.</i>	CEQA.
(7) Coastal Zone Management Act, 16 U.S.C. 1451, 1453–1464.	California Coastal Act of 1976, Cal. Pub. Res. Code section 30000 <i>et seq.</i> (West 1986).
(8) Section 208 of the Clean Water Act, as amended, 33 U.S.C. 1251 <i>et seq.</i>	The Porter-Cologne Act.
(9) Endangered Species Act, 16 U.S.C. 1531 <i>et seq.</i>	California Endangered Species Act of 1984, Cal. Fish & Game Code section 2060 <i>et seq.</i> (West Supp. 1988).
(10) Fish and Wildlife Coordination Act, 16 U.S.C. 661–667	
(11) Noise Control Act, 42 U.S.C. 4903	California Noise Control Act of 1973, Cal. Health & Safety Code section 46000 <i>et seq.</i> (West Supp. 1986).
(12) Bald Eagle Protection Act, 16 U.S.C. 668–668(d)	

(c) Where applicable, no person shall conduct coal exploration operations which result in the removal of more than 250 tons in one location or surface coal mining and reclamation operations without a permit issued by the Secretary pursuant to 30 CFR parts 772 and 773 and permits, leases and/or certificates required by the State of California, including compliance with the Porter-Cologne Water Quality Control Act, Cal. Pub. Res. Code section 13000 *et seq.*; the California Water Code section 1200 *et seq.*; the California Air Pollution Control Laws, Cal. Health & Safety Code section 39000 *et seq.*; the Hazardous Waste Control Law, Cal. Health & Safety Code section 25100 *et seq.*; the State Underground Storage of Hazardous Substances Law, Cal. Health & Safety Code section 25280 *et seq.*; the Solid Waste Management and Resource Recovery Act of 1972, Cal. Gov. Code section 66770 *et seq.*; the California Environmental Quality Act, Cal. Pub. Res. Code section 21000; the California Coastal Act of 1976, Cal. Pub. Res. Code section 30000 *et seq.*; the Z'berg-Nejedly Forest Practice Act of 1973, Cal. Pub. Res. Code section 4511 *et seq.*; and the California Public Resources Code section 4656.

(d) In addition to the requirements of part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Western Field Operations office (WFO) in Denver, Colorado.

(2) The WFO shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The WFO may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) When the application is judged administratively complete, the applicant shall be advised by the WFO to file the public notice required by §773.6 of this chapter.

(4) A representative of the WFO shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(5) Adequacy of information to allow the WFO to comply with the National Environmental Policy Act, 42 U.S.C. 4332, and the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, shall be considered in the determination of a complete application. The WFO may require specific additional information from the applicant as any environmental review progresses when such specific information is needed.

(e) In addition to the information required by subchapter G of this chapter, the WFO may require an applicant to submit supplemental information to

ensure compliance with applicable Federal laws and regulations other than the Act.

(f) The regulatory authority shall review the application for a permit, written comments and objections submitted; and records of any informal conference or hearing held on the application and, where there is no environmental impact statement (EIS) and the WFO has found, pursuant to 36 WFO 800.4(d) and 800.5(b), that the operation will not affect historic properties, issue a written decision within 60 days from the close of the comment period or if an informal conference is held under § 773.6(c), 60 days from the close of the informal conference. Where an EIS has been prepared for the application and/or the WFO must comply with 36 CFR 800.5 (d) or (e), the written decision shall be issued within 60 days from the Environmental Protection Agency's publication of the notice of availability of the final EIS in the FEDERAL REGISTER or the completion of OSMRE's responsibilities under 36 CFR part 800, whichever is later.

(g) Only application information that is labeled confidential by the applicant and submitted separately from the remainder of the application will be reviewed by OSMRE for withholding from disclosure under § 773.6(d).

(1) If the application contains information identified as confidential by the applicant, the public notice required by § 905.773(d)(3) must identify the type of information considered to be confidential.

(2) OSMRE shall determine in regard to qualification of any application information labeled confidential within 10 days of the last publication of the notice required under § 905.773(d)(3) of this chapter, unless additional time is necessary to obtain public comment or in the event of unforeseen circumstances.

[60 FR 18716, Apr. 12, 1995, as amended at 65 FR 79672, Dec. 19, 2000]

§ 905.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, *Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights*, shall apply to any such actions involving surface coal

mining and reclamation operations permits, except as specified below.

(b) Any revision to the approved mining or reclamation plan will be subject to review and approval by the WFO. A significant revision to the reclamation plan will be subject to the public notice and hearing provisions of §§ 905.773(d)(3) and 773.6 (b) and (c) prior to approval and implementation. A revision to the reclamation plan will be considered significant if it has the potential to adversely affect the achievement of reclamation as specified in the approved plan.

(c) The regulatory authority will approve or disapprove non-significant permit revisions within 30 days of receipt of the administratively complete revision. Significant revisions and renewals will be approved or disapproved under the provisions of § 905.773(f).

(d) In addition to the requirements of part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within 30 days of the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter, or receipt of an administratively complete application, whichever is later.

(e) Within 30 days from the last publication of the newspaper notice, written comments or objections on an application for significant revision, or renewal of a permit under § 774.15 of this chapter may be submitted to the regulatory authority by any person having an interest that is or may be adversely affected by the decision on the application, or by public entities notified under § 773.6(a)(3) of this chapter with respect to the effects of the proposed mining operations on the environment within their areas of responsibility.

[60 FR 18716, Apr. 12, 1995, as amended at 65 FR 79672, Dec. 19, 2000]

§ 905.775 Administrative and judicial review of decisions.

Part 775 of this chapter, *Administrative and Judicial Review of Decisions*, shall apply to all decisions on permits.

§ 905.777

§ 905.777 General content requirements for permit applications.

(a) Part 777 of this chapter, *General Content Requirements for Permit Applications*, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

(b) Any person who wishes to conduct new surface coal mining and reclamation operations shall file a complete application as early as possible prior to the date permit issuance is desired and shall pay to the Secretary a permit fee in accordance with 30 CFR 777.17.

(c) Any person who wishes to revise a permit shall submit a complete application as early as possible prior to the date approval of the permit revision is desired and to pay a permit fee in accordance with 30 CFR 777.17.

§ 905.778 Permit application—Minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 905.779 Surface mining permit applications—Minimum requirements for information on environmental resources.

(a) Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

(b) In addition to the requirements of part 779, the permit application shall contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area.

§ 905.780 Surface mining permit applications—Minimum requirements for reclamation and operation plan.

Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Reclamation and Oper-*

30 CFR Ch. VII (7–1–17 Edition)

ation Plan, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 905.783 Underground mining permit applications—Minimum requirements for information on environmental resources.

(a) Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to conduct underground coal mining operations.

(b) In addition to the requirements of part 783, the permit application shall contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area.

§ 905.784 Underground mining permit applications—Minimum requirements for reclamation and operation plan.

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application for a permit to conduct underground coal mining operations.

§ 905.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining*, shall apply to any person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 905.795 Small operator assistance program.

Part 795 of this chapter, *Small Operator Assistance Program*, shall apply to any person making application for assistance under the small operator assistance program.

§ 905.800 Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

(a) Part 800 of this chapter, *Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs*, shall apply to all surface coal mining and reclamation operations, except for § 800.40(a)(1) regarding the bond release application, for which paragraph (b) of this section substitutes and except as provided in paragraphs (c) and (d) of this section.

(b) The permittee may file an application with the regulatory authority for the release of all or part of a performance bond. The application shall be filed no later than 30 days prior to the end of the vegetation growing season in order to evaluate properly the completed reclamation operations. The appropriate season for evaluating reclaimed operations shall be identified in the mining and reclamation plan required by subchapter G of this chapter approved by the regulatory authority.

(c) The following bonds are acceptable for compliance with the California Federal Program.

- (1) A surety bond;
- (2) A collateral bond;
- (3) A self-bond; or
- (4) A combination of these bonding methods.

(d) A permittee may replace existing bonds with other bonds that provide equivalent coverage.

§ 905.815 Performance standards—Coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration*, shall apply to any person who conducts coal exploration.

§ 905.816 Performance standards—Surface mining activities.

(a) Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, shall apply to any person who conducts surface mining activities, except for § 816.116(a)(1) regarding revegetation success standards, for which paragraph (c) of this section substitutes.

(b) All operators shall comply with the Porter-Cologne Water Quality Control Act, Cal. Pub. Res. Code section

13000 *et seq.*; the California Water Code section 1200 *et seq.*; the California Air Pollution Control Laws, Cal. Health & Safety Code section 39000 *et seq.*; the Hazardous Waste Control Law, Cal. Health & Safety Code section 25100 *et seq.*; the State Underground Storage of Hazardous Substances Law, Cal. Health & Safety Code section 25280 *et seq.*; the Solid Waste Management and Resource Recovery Act of 1972, Cal. Gov. Code section 66770 *et seq.*; the California Environmental Quality Act, Cal. Pub. Res. Code section 21000; the California Coastal Act of 1976, Cal. Pub. Res. Code section 30000 *et seq.*; the Z'berg-Nejedly Forest Practice Act of 1973, Cal. Pub. Res. Code section 4511 *et seq.*; the California Public Resources Code section 4656; and regulations promulgated pursuant to these laws.

(c) Standards for success shall be those identified in § 816.116(a)(2) of this chapter. Statistically valid sampling techniques for measuring success shall be included in the mining and reclamation plan, and approved by the regulatory authority.

§ 905.817 Performance standards—Underground mining activities.

(a) Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities*, shall apply to any person who conducts underground mining activities, except for § 817.116(a)(1) regarding revegetation success standards, for which paragraph (c) of this section substitutes.

(b) All operators shall comply with the Porter-Cologne Water Quality Control Act, Cal. Pub. Res. Code section 13000 *et seq.*; the California Water Code section 1200 *et seq.*; the California Air Pollution Control Laws, Cal. Health & Safety Code section 39000 *et seq.*; the Hazardous Waste Control Law, Cal. Health & Safety Code section 25100 *et seq.*; the State Underground Storage of Hazardous Substances Law, Cal. Health & Safety Code section 25280 *et seq.*; the Solid Waste Management and Resource Recovery Act of 1972, Cal. Gov. Code section 66770 *et seq.*; the California Environmental Quality Act, Cal. Pub. Res. Code section 21000; the California Coastal Act of 1976, Cal. Pub. Res. Code section 30000 *et seq.*; the Z'berg-Nejedly Forest Practice Act of 1973, Cal. Pub.

§ 905.819

Res. Code section 4511 *et seq.*; the California Public Resources Code section 4656; and regulations promulgated pursuant to these laws.

(c) Standards for success shall be those identified in §817.116(a)(2) of this chapter. Statistically valid sampling techniques for measuring success shall be included in the mining and reclamation plan, and approved by the regulatory authority.

§ 905.819 Special performance standards—Auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining*, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 905.822 Special performance standards—Operations in alluvial valley floors.

Part 822 of this chapter, *Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors*, shall apply to any person who conducts surface coal mining and reclamation operations on alluvial valley floors.

§ 905.823 Special performance standards—Operations on prime farmland.

Part 832 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland*, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmland.

§ 905.824 Special performance standards—Mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal*, shall apply to any person who conducts surface coal mining and reclamation operations constituting mountaintop removal mining.

§ 905.827 Special performance standards—Coal preparation plants not located within the permit area of a mine.

Part 827 of this chapter, *Permanent Program Performance Standards—Coal Preparation Plants Not Located Within the Permit Area of a Mine*, shall apply

30 CFR Ch. VII (7–1–17 Edition)

to any person who conducts surface coal mining and reclamation operations which include the operation of a coal preparation plant not located within the permit area of a mine.

§ 905.828 Special performance standards—In situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, shall apply to any person who conducts surface coal mining and reclamation operations which include the in situ processing of coal.

§ 905.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections*, shall apply to all coal exploration and surface coal mining and reclamation operations.

(b) In addition to the requirements of part 842, copies of inspection reports will be furnished, upon request, to the California Division of Mining and Geology.

§ 905.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement*, shall apply regarding enforcement action on coal exploration and surface coal mining and reclamation operations.

(b) In addition to the requirements of part 843, copies of enforcement actions and orders to show cause will be furnished, upon request, to the California Division of Mining and Geology.

§ 905.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties*, shall apply to the assessment of civil penalties for violations on coal exploration and surface coal mining and reclamation operations.

§ 905.846 Individual civil penalties.

Part 846 of this chapter, *Individual Civil Penalties*, shall apply to the assessment of individual civil penalties under section 518(f) of SMCRA.

§ 905.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining operations.

Surface Mining Reclamation and Enforcement, Interior

§ 906.15

PART 906—COLORADO

Sec.

906.1 Scope.

906.10 State regulatory program approval.

906.15 Approval of Colorado regulatory program amendments.

906.16 Required program amendments.

906.20 Approval of Colorado abandoned mine land reclamation plan.

906.25 Approval of Colorado abandoned mine land reclamation plan amendments.

906.30 State-Federal cooperative agreement.

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

§ 906.1 Scope.

This part contains all rules applicable only within Colorado that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[45 FR 82211, Dec. 15, 1980]

§ 906.10 State regulatory program approval.

The Colorado State program as submitted on February 29, 1980, and amended and clarified on June 11, 1980, was conditionally approved, effective December 15, 1980. Beginning on that date, the Colorado Department of Natural Resources was deemed the regulatory authority in Colorado for sur-

face coal mining and reclamation operations and for coal exploration operations on non-Federal and non-Indian lands. Copies of the approved program are available for review at:

(a) Colorado Department of Natural Resources, Division of Minerals and Geology, Centennial Building, room 215, 1313 Sherman Street, Denver, CO 80203.

(b) Office of Surface Mining Reclamation and Enforcement, Western Regional Coordinating Center, Technical Library, 1999 Broadway, Suite 3320, Denver, Colorado 80202-5733.

[47 FR 56350, Dec. 16, 1982, as amended at 59 FR 17932, Apr. 15, 1994; 60 FR 54593, Oct. 25, 1995]

§ 906.15 Approval of Colorado regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
January 11, 1982, February 25, 1982.	December 16, 1982	2 CCR 407-2, 1.03.3(2), 1.03.4(2)(a); 2.02.2(3); 2.03.4(3); 2.05.3(6), .4(2)(c), .6, .6(3)(a), (c), .6(4), .6(6)(f); 2.06.12, .5(1), .6(2)(j), .8(3)(b), .8(5); 2.08.4(1)(f), .4(5)(b), (c); 3.02.1(5)(b); 3.05.1(1)(a), .1(7); 4.05.2(2), .3(5), (6), .4, .6(3)(c), .6(9); 4.06.5; 4.15.7(2)(d), .8(7), (8); 4.16.2(1); 4.21.2(1), (2); 5.03.6.
January 11, 1982, February 25, 1982, May 26, 1983, August 2, 1983.	May 1, 1984	CRS 34-33-108, 2 CCR 407-2, 1.13, 2.07.6(3), 4.05.2(7).
August 28, 1985	November 15, 1985	CCR 407-2, 5.03.2(1), 5.04.5(2)
August 28, 1984, March 12, 1985.	February 5, 1986	2 CCR 407-2, 1.04(95), (111); 1.14; 1.15; 2.02.1, .2(2), .(g), .3(1)(c), (e); 2.03.5(3), .9(1); 2.04.4, .8(1), .9(1), .10(4), .12(1), (2), (4), 2.05.3(4)(a), .5(1)(a); 2.07.5(1)(b); 2.10.1(1), (2), (3), .2(4), .3(1); 4.03; 4.06.1(2), .2(1), (2)(a), (4)(a), .4(1); 4.07.1(2), .3(1), (2); 4.08.3(2)(b), .4(1)(b), .4(10), .6(2); 4.15.1(2)(a), (d), .1(4), .2, .4, .5, .6(3), .8(2), (3), (4), (7), (8), .9; 4.16.2, .3; 4.18(3), (4); 4.21.1, .4(1); 4.30.1(2); 5.02.2, 5.03.2(2), 5.04.6(4).
January 23, 1986	May 30, 1986	2 CCR 407-2, 5.03.3(2)(b).
January 27, 1986, May 13, 1986.	July 1, 1986	2 CCR 407-2, 1.04; 6.01-4; blaster training program; blaster certification examination.
August 18, 1986	February 5, 1987	2 CCR 407-2, 2.02.2(2)(g); 2.04.12(1); 2.10.1(1); 4.06.1(2), .2(2)(a), .2(4)(a); 4.21.4(1); The Handbook Memorandum, "Alternative to Topsoil Stockpiles," which interprets 4.06.1(2).
November 25, 1986 ..	May 7, 1987	2 CCR 407-2, 4.15.7(2)(d).
May 26, 1987	March 31, 1989	2 CCR 407-2, 1.04(25), (57), (59), (71), (116), (120), (153); 1.05.1; 2.03.7(3); 2.04.9(1), .12; 2.05.4(2), .6(6)(f); 2.06.2(4), (5), (8), (9), (10), .6(1), (2); 2.07.6(2)(d), (e); 3.02.1(4), (5), (6), .2(4), .4(1), (2); 3.03.1(2), .2(5), (6); 3.04.2(5), (6); 4.06.2(2), (4), (5), (6); 4.15.1(1), .2, .7(2), (3), .8(2), (3), (4), (7), (9); 4.18; 4.20.1(3), .4(1), (3); 4.25.5(2), (3); 5.02.4(1); 5.03.3(5); 5.04.3(2), (3); 7.03(3)(f); 7.04(5); 7.06.2(1), (2), .3(1), (2), .5(2).
October 14, 1988	June 6, 1989	2 CCR 407-2, 2.05.6(4)(b), 2.07.6(2)(e), 2.10.3(1)(g).

§ 906.16

30 CFR Ch. VII (7–1–17 Edition)

Original amendment submission date	Date of final publication	Citation/description
August 23, 1988	December 11, 1989	2 CCR 407–2, 1.04; 2.02.3, .5; 2.03, .3, .5; 2.04.4, .6, .7, .13; 2.05.3, .4, .6; 2.06.3, .7, .8; 2.07.3, .4, .5; 2.08.4, .5, .6; 2.09.2, .3, .5, .6, .8; 2.10.3; 3.02.4; 3.03.2; 4.05.1 through .6, .8, .9, .13, .16; 4.07.2; 4.08.1, .2, .4, .5, .6; 4.09, .1 through .4; 4.10, .1 through .4; 4.11, .1 through .5; 4.14.1, .2, .6; 4.17; 4.21.4; 4.24.2 through .5; 5.04.3; 7.08.
July 18, 1989	January 14, 1991 ...	2 CCR 407–2, 1.01(9); 1.04(64), (70a), (83a), (115), (153); 1.10.2(2), .4(1); 2.02.3(1)(c), .7(2)(a); 2.03.4, .5(3), (4); 2.04.7(1)(a); 2.05.3(4)(a), (b), .6(2)(c); 2.06.8(3)(c); 2.07.6(1)(b),(d), (2)(h), (10)(c), .7(4), (5); 4.05.3(1), (7), (8), (9), .4(1), (2)(b), .6(3)(c), (d), (e), (4), (5), (6), (11), (11i), (11j), (11k), (12), (13), (13b), .8(1), (2), .9(1)(a), (e), (f), (3), (3a), (3b), (4), (5), (12), (13), (13c); 4.08.1(3), .4(6)(c), .5(4)(c), (11); 4.09.1(10), .2(2)(a), (3); 4.11.5(3)(b), (d); 4.21.4(7), (7)(c); 4.23.2(7); 4.25.1(2); 5.02.2(4)(b); 5.03.2(1)(d), .5(1)(d), (4)(e); 5.04.7(2), (3), (4).
April 11, 1991	July 22, 1991	2 CCR 407–2, 3.03.3; 4.05.3(1)(c), (d), (e), .8(1); 4.14.1(1)(e); 5.02.2(8), (9); 5.04.(7)(1).
March 19, 1993	January 19, 1994 ...	2 CCR 407–2, 1.04(103a); 4.14.1(2)(a), (f), (g), (h), .2(1), (1a), (1b); 4.27.4, (1).
June 30, 1993	June 1, 1994	2 CCR 407–2, 1.04(111) through (111c); 2.05.3(3)(a), (c), (9)(a), (10)(a) through (e), .4(2); 4.03.1(1)(a), (b), (d), (e), (2)(b), (3)(c), (e), (6)(c), (7)(a), (b), .2(1)(a), (b), (e), (f), (2)(b), (3)(c), (e), (6)(a), (c), (7)(a), (b), .3(1)(a), (b), (2)(b), (3)(c), (6)(c), (7)(f); 4.08.4(10) through (b), .6(1); 4.09.3(2)(c); 4.11.4(3); 4.14.2(2), (c); 4.21.4(3)(b), (c), (d); 4.26.2(2), (b), (c); Policy statements in the 11/03/93 revised amendment, “Statement of Basis, Specific Statutory Authority and Purpose”.
April 18, 1994	December 6, 1994 ..	2 CCR 407–2, 1.04(25), (116); 3.02.1(4), (7), .2(4)(b), (d), .4(1)(b), (c), (2)(b) through (e); 3.03.1(2), (3)(b), (d), (e), .2(1)(b), (2), (4)(c), (5)(a), (b); 3.06; 4.15.10(2), (3); 4.25.5(3)(a).
March 18, 1994	May 15, 1995	Memorandum of Understanding (MOU).
July 12, 1995	December 14, 1995	2 CCR 1.04(21), (80), (92), (111), (132), .05.1(1)(b); 2.03.3(4), .7(1), .05.3(3)(c)(iv), (8)(c), .6(2)(iii)(A), .06.6(2), .8(5), (c)(i)(A), (B), .07.2; 3.02.2(5), .3(c), .4(1)(b)(2), (c)(ix), (1)(d), (i); 3.03.1(2)(b); 4.08.6(1), .15.10(3), .20.3(2).
November 20, 1995 ..	February 21, 1996 ..	2CCR 5.03.6, (4)(e).
February 25, 1997	May 30, 1997	2 CCR 407–2, Rules 1.01(9); 1.04 (4), (12), (21), (41), (149); 1.13; 2.05.3 (3)(b)(i)(D), (3)(c)(ii); 2.06.2(4); 2.06.6(2)(a)(i); 2.08.5(2)(b)(ii); 2.08.6(6); 3.02.4(2)(d)(i); 3.05.5(1); 4.02.2(2); 4.03.1(1)(e); 4.05.6 (6)(a), (11)(h); 4.07.3(3)(f), (g); 4.30 .1(3), .2(3); 5.02.41 (1), (2); 5.03.3(5).
May 12, 2000	November 24, 2000	Rules 1.04 (31a), (71), (81a), (86a), (93a), (115) and (137a); 2.05.3(4), (4)(a)(iii), (iv), (v) and (vii), and (4)(b); 2.05.3(8)(a)(iii), (iv), (v) and (vi); 2.07.3(3)(b) and (c); 2.07.6(2)(c) and (3)(b)(iv); 4.05.2(1), (2), (3)(a), (4), (5) and (6); 4.05.6; 4.05.7; 4.05.9; 4.05.13(1)(a) through (c); 4.05.18(1)(a) through (c); 4.21.4(10) and 4.28.3(16).
March 27, 2003	March 24, 2005	1.04(71)(f)&(g), 2.04.13(1)(e), 2.06.6(2)(a),(g), 2.06.8(4)(a)(i), 2.06.8(5)(b)(i), 2.07.6(1)(a)(ii), 2.07.6(2)(n), 2.08.4(6)(c)(iii), 3.03.2(1)(e), 3.03.2(5)(a), 4.03.1(4)(e), 4.05.2, 4.06.1(2), 4.15.1(5), 4.15.4(5), 4.15.7(1), 4.15.7(2), 4.15.7(3)(b), 4.15.7(3)(f), 4.15.7(4), 4.15.7(5), 4.15.7(5)(a), 4.15.7(5)(b), 4.15.7(5)(c), 4.15.7(5)(d), 4.15.7(5)(e), 4.15.7(5)(f), 4.15.7(5)(g), 4.15.8(3)(a), 4.15.8(4), 4.15.8(7), 4.15.8(8), 4.15.9, 4.15.11, 4.15.11(1)(a), 4.15.11(1)(b), 4.15.11(1)(c), 4.15.11(2), 4.15.11(3), 4.25.2(4).

[62 FR 9936, Mar. 5, 1997, as amended at 62 FR 33747, June 23, 1997; 65 FR 70486, Nov. 24, 2000; 70 FR 14999, Mar. 24, 2005]

§ 906.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), Colorado is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Colorado’s established administrative or legislative procedures.

(a)–(e) [Reserved]

(f) By September 30, 1994, Colorado shall submit an amendment to revise Rules 4.03.1(1)(e) and 4.03.2(1)(e) to clearly indicate that the variance from compliance with design criteria for roads may not be applied to Colorado’s counterparts to the Federal regulations for all roads at 30 CFR 816.150 and 817.150, and primary roads at 30 CFR 816.151 (a), (c), (d), and (e), and 817.151 (a), (c), (d), and (e).

(g) [Reserved]

(h) By February 12, 1996, Colorado shall revise Rule 1.04(111), to delete the exemption for regulation of public

Surface Mining Reclamation and Enforcement, Interior

§ 906.30

roads under Colorado's program, or otherwise modify its program to qualify the exemption for public roads to consider the degree of effect that mining use has on the road.

[56 FR 1372, Jan. 14, 1991, as amended at 56 FR 33384, July 22, 1991; 59 FR 28260, June 1, 1994; 59 FR 62583, Dec. 6, 1994; 60 FR 64122, Dec. 14, 1995; 61 FR 26801, May 29, 1996; 65 FR 70487, Nov. 24, 2000]

§ 906.20 Approval of Colorado abandoned mine land reclamation plan.

The Colorado Abandoned Mine Land Reclamation Plan, as submitted on February 16, 1982, and as subsequently revised, is approved effective June 11, 1982. Copies of the approved plan are available at:

(a) Colorado Department of Natural Resources, Division of Minerals and Geology, 1313 Sherman Street, Room 215, Denver, CO 80203.

Original amendment submission date	Date of final publication	Citation/description
April 29, 1985	January 9, 1986	Reclamation of noncoal sites.
October 29, 1996 and June 15, 2005.	September 18, 2006	Colorado Inactive Mine Reclamation Plan, Chapter VI.

[62 FR 9937, Mar. 5, 1997, as amended at 71 FR 54585, Sept. 18, 2006]

§ 906.30 State-Federal cooperative agreement.

The Governor of the State of Colorado, acting through the Mined Land Reclamation Division (MLRD), and the Secretary of the Department of the Interior, acting through the Assistant Secretary for Energy and Minerals, and the Office of Surface Mining (OSM), enter into a Cooperative Agreement (Agreement) to read as follows.

ARTICLE I: INTRODUCTION AND PURPOSE

1. This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an Agreement for the regulation and control of surface coal mining operations on Federal lands.

This Agreement provides for State regulation, consistent with the Act, the Federal lands program (30 CFR part 745) and the Colorado State Program (Program) for surface coal mining and reclamation operations, on Federal lands.

(b) Office of Surface Mining Reclamation and Enforcement, Western Regional Coordinating Center, Technical Library, 1999 Broadway, Suite 3320, Denver, Colorado 80202-5733.

[60 FR 54593, Oct. 25, 1995]

§ 906.25 Approval of Colorado abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

2. The purpose of this Agreement is to (a) foster Federal-State cooperation in the regulation of surface coal mining; (b) eliminate intergovernmental overlap and duplication; and (c) provide uniform and effective application of the Program on all non-Indian lands in Colorado, in accordance with the Act and the Program.

ARTICLE II: EFFECTIVE DATE

3. After being signed by the Secretary and the Governor, the Agreement shall be effective upon publication in the FEDERAL REGISTER as a final rule.

This Agreement shall remain in effect until terminated as provided in Article XI.

ARTICLE III: SCOPE

4. Under this Agreement, the laws, regulations, terms, and conditions of the Program conditionally approved effective December 15, 1980, 30 CFR part 906, or as hereinafter amended in accordance with 30 CFR 732.17, for the administration of the Act, are applicable to Federal lands within the State except as otherwise stated in this Agreement, the Act, 30 CFR 745.13, or other applicable laws.

Orders and decisions issued by MLRD in accordance with the State Program that are

appealable, shall be appealed to the State reviewing authority. Orders and decisions issued by the Department that are appealable, shall be appealed to the Department of the Interior's Office of Hearings and Appeals.

ARTICLE IV: REQUIREMENTS FOR AGREEMENT

5. The Governor and the Secretary affirm that they will comply with all of the provisions of this Agreement and will continue to meet all the conditions and requirements specified in this Article.

A. *Responsible Administrative Agency:* The MLRD shall be responsible for administering this Agreement on behalf of the Governor on Federal lands throughout the State. The Assistant Secretary for Energy and Minerals, or designee, shall administer this Agreement on behalf of the Secretary in accordance with the regulations in 30 CFR Chapter VII.

B. *Authority of State Agency:* The MLRD has and shall continue to have the authority under State law to carry out this Agreement.

C. *Funds:* Upon application by the MLRD and subject to appropriations, the Department shall provide the State with the funds to defray the costs associated with carrying out responsibilities under this Agreement as provided in section 705(c) of the Act and 30 CFR 735.16. If sufficient funds have not been appropriated to OSM, OSM and MLRD shall promptly meet to decide on appropriate measures that will insure that mining operations are regulated in accordance with the Program. If agreement cannot be reached, then either party may terminate the Agreement.

Funds provided to the State shall be adjusted in accordance with Office of Management and Budget Circular A-102, Attachment E.

D. *Reports and Records:* The MLRD shall make annual reports to the Director of OSM (Director) containing information with respect to compliance with the terms of this Agreement, pursuant to 30 CFR 745.12(c). The MLRD and the Director shall exchange, upon request, except where prohibited by Federal law, information developed under this Agreement. The Director shall provide the MLRD with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement.

E. *Personnel:* The MLRD shall have the necessary personnel to fully implement this Agreement in accordance with the provisions of the Act and the approved Program. If sufficient funds have not been appropriated, OSM and MLRD shall promptly meet to decide on appropriate measures that will insure that mining operations are regulated in accordance with the Program.

F. *Equipment and Laboratories:* The MLRD shall assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and

analyses can be performed which are necessary to carry out the requirements of this Agreement.

G. *Permit Application Fees:* The amount of the fee accompanying an application for a permit shall be determined in accordance with section 34-33-110(1) Colorado Revised Statutes (CRS 1973), as amended. All permit fees shall be retained by the State and deposited with the State Treasurer in the General Fund. The Financial Status Report submitted pursuant to 30 CFR 735.26 shall include a report of the amount of fees collected during the prior State fiscal year.

ARTICLE V: DEFINITIONS

6. Terms and phrases used in this Agreement which are defined in the Act, 30 CFR parts 700, 701 and 740 and as defined in the Program shall be given the meaning set forth in said definitions. Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the approved State Program will apply, except in the case of a term which defines the Secretary's continuing responsibilities under the Act and other laws.

ARTICLE VI: POLICIES AND PROCEDURES: REVIEW OF A PERMIT APPLICATION TO CONDUCT SURFACE COAL MINING AND RECLAMATION OPERATIONS OR AN APPLICATION FOR A PERMIT REVISION OR PERMIT RENEWAL

7. The MLRD and the Director shall require an operator on Federal lands to submit a permit application package or an application for a permit revision or renewal in an appropriate number of copies to the MLRD and OSM. Any documentation or information prepared by the operator for the sole purpose of complying with the 3-year requirement of section 7(c) of the Mineral Leasing Act (MLA) will be submitted directly to the Minerals Management Service (MMS). If such documentation is submitted as part of a permit application, a copy of the entire package will be forwarded to the MMS by OSM.

The permit application package or application for a permit revision or renewal shall be in the format required by the MLRD and include any supplemental information required by the Department. The permit application package or application for a permit revision or renewal shall satisfy the requirements of 30 CFR 741.12(b) and 30 CFR 741.13, and include the information required by, or necessary for, the MLRD and the Department to make a determination of compliance with:

- (a) Section 34-33-101, *et seq.*, CRS 1973, as amended;
- (b) Regulations of the Colorado Mined Land Reclamation Board for Coal Mining;
- (c) Applicable terms and conditions of the Federal coal lease;

(d) Applicable requirements of the MMS's 30 CFR part 211 regulations pertaining to the Mineral Leasing Act requirements unless previously submitted to the MMS; and

(e) Applicable requirements of the approved Program and other Federal laws including, but not limited to, those identified in 30 CFR Chapter VII, Subchapter D, and appendix A of this Agreement.

8. The MLRD shall assume primary responsibility pursuant to sections 510(a) and 523(c) of the Act for the analysis, review, and approval of the permit application or application for a permit revision or renewal according to the standards of the approved Program. The Director shall assist the MLRD in the analysis of the permit application or application for a permit revision or renewal and coordinate with the other appropriate Federal agencies as specified by the Secretary according to the procedures set forth in appendix B. The Department shall concurrently carry out its responsibilities which cannot be delegated to the State under the MLA, National Environmental Policy Act (NEPA), and other public laws (including, but not limited to, those in appendix A) according to the procedures set forth in appendix B so as, to the maximum extent possible, not to duplicate the responsibilities of the State as set forth in this Agreement and the Program. The Secretary shall consider the information submitted in the permit application package and, when appropriate, make the decisions required by the Act, MLA, NEPA and other public laws as described above.

9. As a matter of practice the Department will not independently initiate contacts with the applicant regarding permit application packages or applications for permit revisions or renewals. However, the Department reserves the right to act independently of the MLRD to carry out its statutory responsibilities under the Act, MLA, NEPA and other public laws provided, however, that the Department shall send copies of all relevant correspondence to the MLRD.

10. The MLRD shall maintain a file of all original correspondence with the applicant and any information received from the applicant which may have a bearing on decisions regarding the permit application or application for a permit revision or renewal.

11. OSM shall have access to MLRD files for mines on Federal lands. MLRD will provide OSM copies of information OSM deems necessary.

12. To the fullest extent allowed by State and Federal law, the Director and MLRD shall cooperate so that duplication will be eliminated in conducting the review and analysis of the permit application package or application for a permit revision or renewal.

ARTICLE VII: INSPECTIONS

13. The MLRD shall conduct inspections on Federal lands and prepare and file inspection reports in accordance with the Program.

14. The MLRD shall, subsequent to conducting any inspection, and on a timely basis, file with the Director a copy of each inspection report. Such report shall adequately describe (1) the general conditions of the lands under the permit; (2) the manner in which the operations are being conducted; and (3) whether the operator is complying with applicable performance and reclamation requirements.

15. The MLRD will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described hereinafter. Nothing in this Agreement shall prevent Federal inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR parts 842 and 743, as part 743 relates to obligations under laws other than the Act.

16. OSM shall ordinarily give the MLRD reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity to join in the inspection. When OSM is responding to a citizen complaint of an imminent danger to the public health and safety or significant, imminent environmental harm to land, air or water resources, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact MLRD no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger shall be referred to MLRD for action. The Secretary reserves the right to conduct inspections without prior notice to MLRD to carry out his responsibilities under the Federal Act.

ARTICLE VIII: ENFORCEMENT

17. MLRD shall be the primary enforcement authority under the Act concerning compliance with the requirements of this Agreement and the Program. Enforcement authority given to the Secretary under other laws and orders including, but not limited to, those listed in appendix A is reserved to the Secretary.

18. During any joint inspection by OSM and MLRD, MLRD shall have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation, and assessment of penalties. The MLRD shall consult OSM prior to issuance of any decision to suspend or revoke a permit.

19. During any inspection made solely by OSM or any joint inspection where the

§ 906.30

MLRD and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR parts 843 and 845. Such enforcement action shall be based on the performance standards included in the regulations of the approved Program, and shall be taken using the procedures and penalty system contained in 30 CFR parts 843 and 845.

20. The MLRD and the Department shall promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining permits subject to this Agreement and of all actions taken with respect to such violations.

21. Personnel of the State and representatives of the Department shall be mutually available to serve as witnesses in enforcement actions taken by either party.

22. This Agreement does not limit the Department's authority to enforce violations of Federal law which establish standards and requirements which are authorized by laws other than the Act.

ARTICLE IX: BONDS

23. For all surface coal mining operations on Federal lands, the MLRD and the Secretary shall require each operator to submit a single performance bond payable to the State and to the United States, if required by Federal regulations, to cover the operator's responsibilities under the Act and the Program. Such performance bond shall be conditioned upon compliance with all requirements of the Act, the Program and any other requirements imposed by the Department under the MLA, as amended. If the Agreement is terminated, all bonds will revert to being payable only to the United States to the extent that Federal lands are involved. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 30 CFR subpart 3473 or a lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of the Act.

24. Prior to releasing the operator from an obligation under a performance bond required by the Program, the MLRD shall obtain the concurrence of OSM. The MLRD shall also advise OSM of annual adjustments to the performance bond, pursuant to the Program. Departmental concurrence shall include coordination with other Federal agencies having authority over the lands involved.

25. The operator's performance bond shall be subject to forfeiture with the consent of OSM, in accordance with the procedures and requirements of the Program.

30 CFR Ch. VII (7-1-17 Edition)

ARTICLE X: DESIGNATING LAND AREAS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING OPERATIONS

26. The MLRD and the Director shall cooperate with each other in the review and processing of petitions to designate lands as unsuitable for surface coal mining operations. When either agency receives a petition that could impact adjacent Federal and non-Federal lands, respectively, the agency receiving the petition shall (1) notify the other of receipt and of the anticipated schedule for reaching a decision; and (2) request and fully consider data, information and views of the other.

The authority to designate State and private lands as unsuitable for mining is reserved to the State. The authority to designate Federal lands as unsuitable for mining is reserved to the Secretary or his designated representative.

ARTICLE XI: TERMINATION OF COOPERATIVE AGREEMENT

27. This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XII: REINSTATEMENT OF COOPERATIVE AGREEMENT

28. If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

ARTICLE XIII: AMENDMENT OF COOPERATIVE AGREEMENT

29. This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

ARTICLE XIV: CHANGES IN STATE OR FEDERAL STANDARDS

30. The Department or the State may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party shall, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations and request necessary legislative action. Such changes shall be made under the procedures of 30 CFR part 732 for changes to the State Program and under the procedures of section 501 of the Act for changes to the Federal lands program.

31. The MLRD and the Department shall provide each other with copies of any changes to their respective laws, rules, regulations and standards pertaining to the enforcement and administration of this Agreement.

Surface Mining Reclamation and Enforcement, Interior

§ 906.30

ARTICLE XV: CHANGES IN PERSONNEL AND ORGANIZATION

32. Each party to this Agreement shall notify the other, when necessary, of any changes in personnel, organization and funding or other changes that will affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

ARTICLE XVI: RESERVATION OF RIGHTS

33. In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws or regulations, including but not limited to those listed in appendix A.

Dated: September 27, 1982.

Richard D. Lamm,
Governor of Colorado.

Dated: September 20, 1982.

Donald Paul Hodel,
Acting Secretary of the Interior.

APPENDIX A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations including 30 CFR part 211.
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations including 40 CFR part 1500.
4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations including 50 CFR part 402.
5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR part 800.
6. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.
7. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.
8. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.
9. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*
10. Executive Order 1593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.
11. Executive Order 11988 (May 24, 1977), for flood plain protection. Executive Order 11990 (May 24, 1977), for wetlands protection.
12. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

13. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

14. The Constitution of the United States.

15. The Constitution of the State and State Law.

APPENDIX B—PROCEDURE FOR COOPERATIVE REVIEW OF PERMIT APPLICATION PACKAGES AND APPLICATIONS FOR PERMIT REVISIONS OR RENEWALS FOR FEDERAL COAL MINES IN COLORADO

I: Point of Contact and Coordination for the Review of Permit Applications and Applications for Permit Revisions or Renewals

A. The Colorado Mined Land Reclamation Division (MLRD) will:

1. Be the point of contact and coordinate communications with the applicant on issues concerned with the development, review and approval of the permit application package or application for permit revision or renewal.

2. Communicate with the applicant on issues of concern to the Office of Surface Mining (OSM) and promptly advise OSM of such issues and communications.

3. Provide OSM with a monthly report on the status of each permit application, or application for permit revision or renewal.

B. OSM will:

1. Be responsible for coordinating the review of the permit application package with all Federal agencies which have responsibilities related to approval of the package.

2. Be responsible for ensuring that any information OSM receives which has a bearing on decisions regarding the permit application package or application for a permit revision or renewal is sent promptly to MLRD.

C. Minerals Management Service (MMS) will:

1. Receive any documentation and information required by the 30 CFR part 211 regulations.

2. Be the point of contact with the applicant on issues concerned exclusively with the 30 CFR part 211 regulations.

3. Provide MLRD and OSM with copies of pertinent correspondence.

II: Receipt and Distribution of the Permit Application Package and Applications for Permit Revision or Renewal

A. MLRD will:

1. Receive from the applicant the appropriate number of copies of the permit application package, application for a permit revision or renewal, or the review correspondence from the applicant.

2. Identify an application manager responsible for coordinating the review and notify OSM.

3. Upon receipt of an application, MLRD will meet with OSM to discuss the application and agree upon a work plan and schedule.

B. OSM will:

1. Receive from the applicant the appropriate number of copies of the permit application package, application for a permit revision or renewal, or the review correspondence from the applicant.

2. Distribute copies of the permit application package and the identity of the MLRD application manager to other Federal agencies as required.

C. OSM, MMS and the Federal land management agency (FLMA) will: Each identify an application manager upon receipt of the application package. OSM will notify MLRD and all Federal agencies of the identity of the application managers.

III: Determination of Completeness

A. MLRD will:

1. Determine the completeness of a permit application package or application for a permit revision or renewal in accordance with section 34–33–118(1) CRS 1973, as amended and as defined in rule 1.04(30) of the Regulations of the Colorado Mined Land Reclamation Board for Coal Mining promulgated pursuant to the Colorado Surface Coal Mining Reclamation Act.

2. Issue public notice of a complete application in accordance with the procedures of section 34–33–118(2) CRS 1973, as amended.

IV: Determination of Preliminary Findings of Substantive Adequacy

A. MLRD will:

1. Consult with MMS, FLMA, OSM, and other appropriate Federal agencies to review the filed application for preliminary findings of substantive adequacy (henceforth “preliminary findings”) and to assess the need for additional data requirements in their respective areas of responsibility.

2. Arrange meetings and field examinations with the interested parties, as necessary, to determine the preliminary findings.

3. Advise the applicant of the preliminary findings upon the advice and consent of FLMA, MMS, OSM and other Federal agencies specified by the Secretary.

4. Transmit the letter(s) informing the applicant of the preliminary findings with copies to FLMA, MMS, OSM and other Federal agencies specified by the Secretary.

5. Furnish the Director with copies of correspondence with the applicant and all information received from the applicant as requested.

B. OSM will:

1. At the request of MLRD, assist as possible in the review of the permit application package or application for a permit revision or renewal. In any case where assistance has been agreed upon, furnish MLRD with preliminary findings within 45 calendar days of receipt of the request.

2. Work with other Federal agencies involved in the review to insure timely response and resolution of issues of particular concern regarding their statutory requirements.

3. Within 30 days from notification of completeness, initiate NEPA compliance procedures and procedures required by other laws which OSM has responsibility for and has not delegated to the State.

4. Participate, as arranged, in meetings and field examinations.

C. FLMA will:

1. Review the permit application package or application for permit revision or renewal for preliminary findings as to whether the applicant’s proposed post-mining land use is consistent with FLMA’s land use plan, and as to the adequacy of measures to protect Federal resources not covered by the rights granted by the Federal coal lease.

2. Furnish OSM with preliminary findings and with any specific requirements for additional data, within 45 calendar days of FLMA’s receipt of the permit application package or application for a permit revision or renewal.

3. Participate, as arranged, in meetings and field examinations.

D. MMS will:

1. Review the permit application package or application for a permit revision or renewal in regard to MLA requirements addressed in such application.

2. Furnish OSM with preliminary findings and with any specific requirements for additional data within 45 calendar days of MMS’s receipt of the permit application package or application for a permit revision or renewal.

3. Participate, as arranged, in meetings and field examinations.

E. Other appropriate Federal agencies specified by the Secretary will:

1. Review the permit application package or application for a permit revision or renewal for preliminary findings in regard to their responsibilities under law.

2. Furnish OSM with preliminary findings within 45 calendar days of receipt of the application with specific requirements for additional data.

3. Participate, as arranged, in meetings and field examinations.

V: Findings of Technical Adequacy and NEPA Compliance

A. MLRD will:

1. Develop and coordinate the technical review of the permit application package or application for a permit revision or renewal. The review will include representatives of MLRD, MMS, FLMA, OSM and other appropriate Federal agencies specified by the Secretary.

2. Coordinate with OSM for the purpose of eliminating duplication, and provide to OSM a complete technical analysis pursuant to

the approved Program that will serve as the technical base for any Environmental Analysis (EA) or Environmental Impact Statement (EIS) which may be necessary to determine NEPA compliance for each permit application package.

3. Coordinate, for the purpose of eliminating duplication, with MMS to conduct a technical analysis that will assist the MMS in making findings as may be necessary to determine compliance with the MLA.

4. Coordinate, for the purpose of eliminating duplication, with FLMA to conduct a technical analysis of issues regarding post-mining land use and the adequacy of measures to protect Federal resources not covered by the rights granted by the lease.

5. Coordinate, for the purposes of eliminating duplication, with other appropriate Federal agencies specified by the Secretary, to conduct a technical analysis of issues within their jurisdiction.

B. OSM will:

1. At the request of MLRD, assist as possible in the review of the application for technical adequacy in a timely manner as set forth by a schedule. Such schedule will be governed by the deadlines set forth in the Colorado Surface Coal Mining Reclamation Act and shall be developed by MLRD in cooperation with OSM.

2. Resolve conflicts and difficulties between other Federal agencies in a timely manner.

3. As soon as possible after receipt of the permit application package, determine the need for an EA or an EIS, pursuant to NEPA, with the assistance of FLMA, MMS, MLRD and other appropriate agencies, as arranged.

4. Publish notices of NEPA documents as required by Federal law and regulations.

5. Take the leadership role for the development of the EA and EIS including identification of areas where additional data is necessary.

6. Provide MLRD with the analysis and conclusions of the appropriate Federal agencies regarding those elements of the package which the Secretary cannot delegate to the State.

C. MMS will:

1. Review the permit application package or application for a permit revision or renewal for compliance with 30 CFR part 211.

2. Furnish MLRD, through OSM, findings on compliance in a timely manner as set forth by schedule. Such schedule will be governed by the statutory deadlines set forth in the Colorado Surface Coal Mining Reclamation Act and shall be developed by MLRD in cooperation with MMS.

3. Participate, as arranged, in meetings and field examinations.

D. FLMA will:

1. Determine whether the permit application or application for a permit revision or renewal provides for post-mining land use

consistent with FLMA's land use plan and determine the adequacy of measures to protect Federal resources under FLMA's jurisdiction not covered by the rights granted by the Federal coal lease.

2. Furnish MLRD, through OSM, its determination on the technical adequacy in a timely manner as set forth by schedule. Such schedule will be governed by the statutory time limits set forth in the Colorado Surface Coal Mining Reclamation Act and shall be developed by MLRD in cooperation with FLMA.

3. Participate, as arranged, in meetings and field examinations.

E. Other appropriate Federal agencies specified by the Secretary will:

1. Review the permit application package or application for a permit revision or renewal in regard to their responsibilities under law.

2. Furnish MLRD, through OSM, findings on compliance with other applicable Federal laws and regulations in a timely manner as set forth by schedule. Such schedule will be governed by the statutory deadlines set forth in the Colorado Surface Coal Mining Reclamation Act and shall be developed in cooperation with MLRD.

3. Participate, as arranged, in meetings and field examinations.

VI: Preparation of the Decision Document and Transmittal

A. MLRD will:

1. Prepare a finding of compliance with the Program as approved by the Secretary and the regulations promulgated thereunder, which will consist of an analysis of critical issues raised during the course of the review and the resolution of those issues.

2. Assist OSM in the preparation of the decision document for the permit application package or application for a permit revision or renewal, unless the work plan and schedule agreed upon provides otherwise. MLRD will provide OSM with:

a. a brief but comprehensive discussion of the need for the proposal and alternatives to the proposal;

b. a finding of compliance prepared under A.1;

c. all other specific written findings required under section 34-33-114 CRS 1973, as amended.

3. Consider the comments of OSM, MMS, FLMA and other appropriate Federal agencies when assisting in the preparation of the decision document.

B. OSM will:

1. Prepare the approved NEPA compliance finding.

2. Prepare the decision document with the assistance of MLRD unless the work plan and schedule agreed upon provides otherwise. The decision document shall contain the following:

Pt. 910

a. an analysis of the environmental impacts of the proposal and alternatives to the proposal prepared in compliance with NEPA, CEQ regulations and OSM's NEPA Compliance Handbook;

b. the determinations and recommendations of FLMA;

c. the memorandum of recommendation from the MMS to the Assistant Secretary for Energy and Minerals, with regard to MLA requirements;

d. the comments of other appropriate Federal agencies specified by the Secretary; and

e. the relevant information submitted by MLRD as specified by A.2. of this Article.

3. Transmit the decision document to the Secretary.

C. FLMA will: Provide written concurrence on the decision document to OSM with regard to post-mining land use and the adequacy of measures to protect Federal resources not covered by rights granted by the Federal coal lease.

D. MMS will: Provide written concurrence on the decision document to OSM with regard to MMS responsibilities.

E. Other agencies will: Provide written concurrence on the decision document to OSM with regard to their responsibilities.

VII: Decision and Permit Issuance

A. The Secretary will:

1. Evaluate the analysis and conclusions as necessary to determine whether he concurs in the decision document insofar as it relates to his statutorily required decisions.

2. Inform the MLRD immediately of this decision. The reason for not approving shall be specified and recommendations for remedy shall be specified.

B. MLRD will:

1. Issue the permit, permit revision, or permit renewal for surface coal mining and reclamation operations after making a finding of compliance with the approved Program in the manner set forth in this Cooperative Agreement.

2. Advise the operator in the permit of the necessity of obtaining Secretarial approval, for those statutory requirements which have not been delegated to the State, prior to directly affecting Federal lands, and if necessary, prohibit the operator from directly affecting Federal lands under the permit, revised permit, or permit renewal until after the Secretary's approval has been received.

3. Reserve the right to modify the permit, permit revision, or permit renewal, when appropriate, in order to resolve conflicts between the permit requirements and the requirements of other laws, rules and regulations administered by the Secretary, so that all requirements placed upon an operation are consistent and uniform.

30 CFR Ch. VII (7-1-17 Edition)

VIII: Resolution of Conflict

A. Every effort will be made to resolve errors, omissions and conflicts on data and data analysis at the State and field level.

B. Areas of disagreement between the State and the Department shall be referred to the Governor and the Secretary for resolution.

[47 FR 44217, Oct. 6, 1982]

PART 910—GEORGIA

Sec.

910.700 Georgia Federal program.

910.701 General.

910.702 Exemption for coal extraction incidental to the extraction of other minerals.

910.707 Exemption for coal extraction incidental to government-financed highway or other construction.

910.761 Areas designated unsuitable for surface coal mining by Act of Congress.

910.762 Criteria for designating areas as unsuitable for surface coal mining operations.

910.764 Process for designating areas unsuitable for surface coal mining operations.

910.772 Requirements for coal exploration.

910.773 Requirements for permits and permit processing.

910.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

910.775 Administrative and judicial review of decisions.

910.777 General content requirements for permit applications.

910.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

910.779 Surface mining permit applications—minimum requirements for information on environmental resources.

910.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

910.783 Underground mining permit applications—minimum requirements for information on environmental resources.

910.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

910.785 Requirements for permits for special categories of mining.

910.795 Small operator assistance.

910.800 General requirements for bonding of surface coal mining and reclamation operations.

910.815 Performance standards—coal exploration.

910.816 Performance standards—surface mining activities.

910.817 Performance standards—underground mining activities.

Surface Mining Reclamation and Enforcement, Interior

§ 910.702

- 910.819 Special performance standards—
auger mining.
- 910.823 Special performance standards—op-
erations on prime farmland.
- 910.824 Special performance standards—
mountaintop removal.
- 910.827 Special performance standards—coal
processing plants and support facilities
not located at or near the minesite or
not within the permit area for a mine.
- 910.828 Special performance standards—in
situ processing.
- 910.842 Federal inspections.
- 910.843 Federal enforcement.
- 910.845 Civil penalties.
- 910.846 Individual civil penalties.
- 910.955 Certification of blasters.

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

SOURCE: 47 FR 36399, Aug. 19, 1982, unless
otherwise noted.

§ 910.700 Georgia Federal program.

(a) This part contains all rules that
are applicable to surface coal mining
operations in Georgia which have been
adopted under the Surface Mining Con-
trol and Reclamation Act of 1977.

(b) The rules in this part cross-ref-
erence pertinent parts of the perma-
nent program regulations in this chap-
ter. The full text of a rule is in the per-
manent program rule cited under the
relevant section of the Georgia Federal
program.

(c) The rules in this part apply to all
surface coal mining operations in Geor-
gia conducted on non-Federal and non-
Indian lands. The rules in subchapter D
of this chapter apply to operations on
Federal lands in Georgia.

(d) The information collection re-
quirements contained in this part do
not require approval by the Office of
Management and Budget under 44
U.S.C. 3507 because there are fewer
than ten respondents annually.

(e) The following provisions of Geor-
gia laws provide, where applicable, for
more stringent environmental control
and regulation of surface coal mining
operations than do the provisions of
the Act and the regulations in this
chapter. Therefore, pursuant to section
505(b) of the Act, they shall not be con-
strued to be inconsistent with the Act:

(1) Georgia Code Ann. section 56-412
pertaining to limitation of risks for in-
surance companies.

(2) Georgia Code Ann. section 414-1306
pertaining to the limitation on loan
amounts made by banks.

(3) Georgia Safe Dams Act of 1978 and
the Rules for Dam Safety, Chapter 391-
3-8 of the Rules of the Department of
Natural Resources, Environmental
Protection Division.

(4) Chapter 391-34 of the rules of the
Department of Natural Resources,
Environmental Protection Division, per-
taining to solid waste management.

(5) Georgia Seed Laws and Rules and
Regulations containing the Noxious
Weed List.

(f) The following are Georgia laws
that interfere with the achievement of
the purposes and requirements of the
act and are, in accordance with Section
504(g) of the Act, preempted and super-
seded:

(1) The Georgia Surface Mining Act
of 1968, Georgia Code Ann. Section 43-
1401 *et seq.*, but not to the extent that
it regulates surface coal mining oper-
ations which affect two acres or less or
are otherwise not regulated by the Sur-
face Mining Control and Reclamation
Act.

(2) Rules for Land Reclamation,
Georgia Department of Natural Re-
sources, Environmental Protection Di-
vision, Chapter 391-3-3(1976), but not to
the extent that such regulations apply
to surface coal mining operations
which affect two areas or less or are
otherwise not regulated by the Surface
Mining Control and Reclamation Act.

[47 FR 36399, Aug. 19, 1982, as amended at 52
FR 13806, Apr. 24, 1987]

§ 910.701 General.

Sections 700.5, 700.11, 700.12, 700.13,
700.14, 700.15 and part 701 of this chap-
ter shall apply to surface coal mining
operations in Georgia.

§ 910.702 Exemption for coal extrac- tion incidental to the extraction of other minerals.

Part 702 of this chapter, *Exemption for
Coal Extraction Incidental to the Extrac-
tion of Other Minerals*, shall apply to
any person who conducts coal extrac-
tion incidental to the extraction of
other minerals for purposes of commer-
cial use or sale.

[54 FR 52123, Dec. 20, 1989]

§910.707

§910.707 Exemption for coal extraction incident to government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§910.761 Areas designated unsuitable for surface coal mining by Act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply to surface coal mining and reclamation operations.

§910.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mine operations beginning on April 9, 1983.

§910.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mine operations beginning on April 9, 1983.

§910.772 Requirements for coal exploration.

(a) Part 772 of this chapter, *Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such reviews, set-

30 CFR Ch. VII (7-1-17 Edition)

ting forth the reasons and the additional time that is needed.

[52 FR 13806, Apr. 24, 1987, as amended at 53 FR 4977, Feb. 19, 1988]

§910.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, *Requirements for Permits and Permit Processing*, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and negotiate the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by §910.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required §773.6 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control

structures, roads, and other significant features contained in the application marked by flags.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) Issuance of permits shall also be coordinated with permits issued pursuant to the Georgia Water Quality Control Act, section 17-501; the Georgia Solid Waste Management Act, section 43-1681; the Georgia Air Quality Act of 1973; the Georgia Hazardous Waste Management Act of 1979; the Georgia Groundwater Use Act; and the rules of the Georgia Fire Safety Commission on blasters' permits.

(e) The Secretary shall provide for coordination of review and issuance of permits for surface mining and reclamation operations with applicable requirements of the Georgia Wildflower Preservation Act of 1973, section 43-1801 *et seq.*; the Georgia Endangered Wildlife Act of 1973, section 43-2101 *et seq.*; the Georgia Heritage Trust Act of 1975, section 43-2301 *et seq.*; and the Georgia Cave Protection Act of 1977, section 43-2501 *et seq.*

[52 FR 13806, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

§910.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, *Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights*, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSMRE.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§773.6, 773.19(b) (1) and (2), and 778.21 and of part 775.

(2) OSMRE shall make every effort to approve or disapprove an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If

additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by §774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever, is later.

[52 FR 13807, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

§910.775 Administrative and judicial review of decisions.

Part 775 of this chapter, *Administrative and Judicial Review of Decisions*, shall apply to all decisions on permits.

[52 FR 13807, Apr. 24, 1987]

§910.777 General content requirements for permit applications.

Part 777 of this chapter, *General Content Requirements for Permit Applications*, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

[52 FR 13807, Apr. 24, 1987]

§910.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

[52 FR 13807, Apr. 24, 1987]

§910.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§910.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

(a) Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirement for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

(b) The application for a permit shall also demonstrate compliance with the air quality control standards in Chapter 391-3-1 of the Rules and Regulations for Air Quality Control of the Georgia Department of Natural Resources.

§910.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who submits an application to conduct underground mining operations.

§910.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

(a) Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct underground mining.

(b) The applicant for a permit to conduct underground mining operations shall demonstrate compliance with Chapter 391-3-1 of the Rules and Regulations of the Georgia Department of Natural Resources.

§910.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining*, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations.

§910.795 Small operator assistance.

Part 795 of this chapter, *Small Operator Assistance*, shall apply to any person making application for assistance under the small operator assistance program.

§910.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, *General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs*, shall apply to all surface coal mining and reclamation operations.

§910.815 Performance standards—coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration*, shall apply to any person conducting coal exploration operations.

§910.816 Performance standards—surface mining activities.

(a) Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, shall apply to any person who conducts surface coal mining and reclamation operations.

(b) No person shall conduct surface coal mining operations except in compliance with the Georgia Safe Dams Act and Rules for Safety of the Natural Resources, Environmental Protection Division; the Solid Waste Management Rules of the Georgia Department of Natural Resources, Environmental Protection Division, Chapter 391-3-4; and the Georgia Seed Laws and Regulation 4.

[47 FR 36399, Aug. 19, 1982, as amended at 52 FR 13807, Apr. 24, 1987]

§910.817 Performance standards—underground mining activities.

(a) Part 817 of this chapter, *Permanent Program Performance Standards—*

Surface Mining Reclamation and Enforcement, Interior

§ 910.955

Underground Mining Activities, shall apply to any person who conducts underground mining operations.

(b) No person shall conduct surface coal mining operations except in compliance with the Georgia Safe Dams Act and Rules for Safety of the Natural Resources, Environmental Protection Division; the Solid Waste Management Rules of the Georgia Department of Natural Resources, Environmental Protection Division, Chapter 391-3-4; and the Georgia Seed Laws and Regulation 4.

[47 FR 36399, Aug. 19, 1982, as amended at 52 FR 13807, Apr. 24, 1987]

§ 910.819 Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining*, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 910.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland*, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§ 910.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal*, shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 910.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine*, shall apply to any person who conducts surface coal mining and reclamation operations which includes the operation of coal processing plants

and support facilities not located at or near the minesite or not within the permit area for a mine.

§ 910.828 Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, shall apply to any person who conducts in situ processing activities.

§ 910.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections*, shall apply to all exploration and surface coal mining and reclamation operations.

(b) The Office will furnish a copy of any inspection report or enforcement action taken to the Georgia Department of Natural Resources upon request.

§ 910.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement*, shall apply when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) The Office will furnish a copy of each enforcement action and order to show cause issued pursuant to this section to the Georgia Department of Natural Resources upon request.

§ 910.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties*, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

§ 910.846 Individual civil penalties.

Part 846 of this chapter, *Individual Civil Penalties*, shall apply to the assessment of individual civil penalties under section 518(f) of the Act.

[53 FR 3676, Feb. 8, 1988]

§ 910.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19461, May 29, 1986]

PART 912—IDAHO

Sec.

912.700 Idaho Federal program.

912.701 General.

912.702 Exemption for coal extraction incidental to the extraction of other minerals.

912.707 Exemption for coal extraction incidental to Government-financed highway or other construction.

912.761 Areas designated unsuitable for surface coal mining by act of Congress.

912.762 Criteria for designating areas as unsuitable for surface coal mining operations.

912.764 Process for designating areas unsuitable for surface coal mining operations.

912.772 Requirements for coal exploration.

912.773 Requirements for permits and permit processing.

912.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

912.775 Administrative and judicial review of decisions.

912.777 General content requirements for permit applications.

912.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

912.779 Surface mining permit applications—minimum requirements for information on environmental resources.

912.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

912.783 Underground mining permit applications—minimum requirements for information on environmental resources.

912.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

912.785 Requirements for permits for special categories of mining.

912.795 Small operator assistance.

912.800 General requirements for bonding of surface coal mining and reclamation operations.

912.815 Performance standards—coal exploration.

912.816 Performance standards—surface mining activities.

912.817 Performance standards—underground mining activities.

912.819 Special performance standards—auger mining.

912.822 Special performance standards—operations in alluvial valley floors.

912.823 Special performance standards—operations on prime farmland.

912.824 Special performance standards—mountaintop removal.

912.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

912.828 Special performance standards In situ processing.

912.842 Federal inspections.

912.843 Federal enforcement.

912.845 Civil penalties.

912.846 Individual civil penalties.

912.955 Certification of blasters.

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

SOURCE: 48 FR 16222, Apr. 14, 1983, unless otherwise noted.

§ 912.700 Idaho Federal program.

(a) This part contains all rules that are applicable to surface coal mining operations in Idaho which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the Idaho Federal program.

(c) The rules in this part apply to all surface coal mining operations in Idaho conducted on non-Federal and non-Indian lands. The rules in subchapter D of this chapter apply to operations on Federal lands in Idaho.

(d) The recordkeeping and reporting requirements of this part are the same as those of the permanent program regulations which have been approved by the Office of Management and Budget under 44 U.S.C. 3507.

(e) The following provisions of Idaho laws provide, where applicable, for more stringent environmental control and regulation of surface coal mining operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to Section 505(b) of the Act, they shall not be construed to be inconsistent with the Act.

(1) Idaho Code Section 47-1503(20) pertaining to the definition of “operator.”

(2) Idaho Code Section 47-1509(c) regarding reclamation of disturbed land of less than 2 acres.

(3) Idaho Code Section 47-1513(c) providing for assessment of anticipated costs of reclamation against an operator.

(4) Idaho Code Sections 47-1513 (f) and (g) providing for assessment of civil penalties in addition to bond forfeiture.

Surface Mining Reclamation and Enforcement, Interior

§912.772

(5) Idaho Code Sections 47-1301 *et seq.* and Rules 1 through 20 promulgated thereunder pertaining to regulation of dredge mining.

(6) Idaho Code Sections 18-4301 and 18-7019 providing for punishment for interference with water sources used in mining operations.

(7) Idaho Code Section 42-1713 requiring a fee to be paid by each owner of a dam, reservoir or mine tailing impoundment structure.

(8) Idaho Code Section 42-1718 (Supp.) providing for assessment against an operator for costs incurred in correction deficiencies in dams and impoundment structures.

(f) The following Idaho statute and regulations interfere with the achievement of the purposes and goals of the Act. Therefore, in accordance with section 504(g) of the Act, they are preempted and superseded with respect to surface coal mining and reclamation, except as they apply to surface coal mining operations affecting two acres or less, or which otherwise are not regulated by the Surface Mining Control and Reclamation Act:

The Idaho Surface Mining Act, Idaho Code Sections 47-1501—47-1524, as amended, and all regulations issued thereunder (with the exception of Sections 47-1503(20), 47-1509(c), 47-1513(c), and 47-1513 (f) and (g), and all regulations issued thereunder).

[48 FR 16222, Apr. 14, 1983, as amended at 52 FR 13807, Apr. 24, 1987]

§912.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and part 701 of this chapter shall apply to surface coal mining and reclamation operations in Idaho.

§912.702 Exemption for coal extraction incidental to the extraction of other minerals.

Part 702 of this chapter, *Exemption for Coal Extraction Incidental to the Extraction of Other Minerals*, shall apply to any person who conducts coal extraction incidental to the extraction of other minerals for purposes of commercial use or sale.

[54 FR 52123, Dec. 20, 1989]

§912.707 Exemption for coal extraction incidental to Government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incidental to Government-Financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§912.761 Areas designated unsuitable for surface coal mining by act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply to surface coal mining and reclamation operations.

§912.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface mining and reclamation operations.

§912.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mining and reclamation operations.

§912.772 Requirements for coal exploration.

(a) Part 772 of this chapter, *Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

[52 FR 13807, Apr. 24, 1987]

§912.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, *Requirements for Permits and Permit Processing*, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and negotiate the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by §912.773(b)(2)(ii) by the specified date, the office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by §773.6 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(c) In addition to the information required by subchapter G of this chapter,

the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) Where applicable, no person shall conduct surface coal exploration operations which result in the removal of more than 250 tons in one location, or surface coal mining operations without permits issued and/or certificates required by the State of Idaho, pursuant to Idaho Code sections 47-704, 47-1317, 47-1318, 47-1319, 47-1317 (Supp.), and 39-101 *et seq.* (Supp.).

[52 FR 13808, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

§912.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, *Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights*, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSMRE.

(1) Significant revisions shall be processed as if they were new applications in accordance with the public notice and hearing provisions of §§773.6, 773.19(b)(1) and (b)(2), and 778.21 and of part 775.

(2) OSMRE shall make every effort to approve or disapprove an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirement of part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required

Surface Mining Reclamation and Enforcement, Interior

§912.815

by §774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

[52 FR 13808, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

§912.775 Administrative and judicial review of decisions.

Part 775 of this chapter, *Administrative and Judicial Review of Decisions*, shall apply to all decisions on permits.

[52 FR 13808, Apr. 24, 1987]

§912.777 General content requirements for permit applications.

Part 777 of this chapter, *General Content Requirements for Permit Applications*, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

[52 FR 13808, Apr. 24, 1987]

§912.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Permit Applications—Minimum Requirements for Legal, Financial, Compliance and Related Information*, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

[52 FR 13808, Apr. 24, 1987]

§912.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§912.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§912.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who submits an application to conduct underground coal mining operations.

§912.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct underground coal mining.

§912.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining*, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§912.795 Small operator assistance.

Part 795 of this chapter, *Small Operator Assistance*, shall apply to any person making application for assistance under the small operator assistance program.

§912.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, *General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs*, shall apply to all surface coal mining and reclamation operations.

§912.815 Performance standards—coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration*, shall apply to any person conducting coal exploration operations.

§912.816

§912.816 Performance standards—surface mining activities.

Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, shall apply to any person who conducts surface coal mining and reclamation operations.

§912.817 Performance standards—underground mining activities.

Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities*, shall apply to any person who conducts underground coal mining operations.

§912.819 Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining*, shall apply to any person who conducts surface coal mining operations which include auger mining.

§912.822 Special performance standards—operations in alluvial valley floors.

Part 822 of this chapter, *Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors*, shall apply to any person who conducts surface coal mining and reclamation operations on alluvial valley floors.

§912.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland*, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§912.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal*, shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

30 CFR Ch. VII (7–1–17 Edition)

§912.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine*, shall apply to any person who conducts surface coal mining and reclamation operations which includes the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

§912.828 Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, shall apply to any person who conducts in situ processing activities.

§912.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections*, shall apply to all exploration and surface coal mining and reclamation operations.

(b) The Secretary will furnish a copy of each inspection report regarding inspections conducted pursuant to this section to the Office of the Idaho Attorney General upon request.

§912.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement*, shall apply when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) The Office will furnish a copy of each enforcement action and order to show cause issued pursuant to this section to the Office of the Idaho Attorney General upon request.

§912.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties*, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

Surface Mining Reclamation and Enforcement, Interior

§ 913.15

§ 912.846 Individual civil penalties.

Part 846 of this chapter, *Individual Civil Penalties*, shall apply to the assessment of individual civil penalties under section 518(f) of the Act.

[53 FR 3676, Feb. 8, 1988]

§ 912.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

PART 913—ILLINOIS

Sec.

913.1 Scope.

913.10 State regulatory program approval.

913.15 Approval of Illinois regulatory program amendments.

913.16 [Reserved]

913.17 State regulatory program provisions and amendments disapproved.

913.20 Approval of Illinois abandoned mine land reclamation plan.

913.25 Approval of Illinois abandoned mine land reclamation plan amendments.

913.30 State-Federal cooperative agreement.

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

§ 913.1 Scope.

This part contains all rules applicable only within Illinois that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[47 FR 23883, June 1, 1982]

§ 913.10 State regulatory program approval.

The Secretary conditionally approved the Illinois regulatory program,

as submitted on March 3, 1980, amended and clarified on June 16, 1980, resubmitted on December 22, 1981, clarified in a meeting with OSM on March 18 and 19, 1982, and clarified in material submitted April 13, 1982, effective June 1, 1982. He fully approved the Illinois regulatory program, as amended on March 28, 1986, and March 22, 1987, effective September 6, 1989. Copies of the approved program are available at:

(a) Illinois Department of Natural Resources, Office of Mines and Minerals, Land Reclamation Division, One Natural Resources Way, Springfield, Illinois 62701-1787.

(b) Illinois Department of Natural Resources, Office of Mines and Minerals, Land Reclamation Division, Southern District Field Office, 503 E. Main Street, Benton, IL 62812.

(c) Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204.

[64 FR 20166, Apr. 26, 1999, as amended at 69 FR 42870, July 19, 2004]

§ 913.15 Approval of Illinois regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
March 3, 1980	November 23, 1982	62 IAC 1823.14(a).
November 30, 1982 ..	May 25, 1983	62 IAC 1807.11(d), 1816.64(a).
July 27, 1983	October 13, 1983 ...	62 IAC 1786.19(h).
August 11, 1983	November 10, 1983	62 IAC 1817.65, 1843.12.
March 16, 1984	September 28, 1984	62 IAC 1785.17(a).
September 27, 1984	January 11, 1985 ...	62 IAC 1816.190, 1817.190.
December 23, 1983 ..	October 30, 1985 ...	62 IAC 1850.
May 30, 1985, June 2, 1986.	December 10, 1986	62 IAC 1816.111 through 117, 1817.111 through 117, 1823, 1825.
March 28, 1986, May 22, 1987.	October 25, 1988, January 4, 1989.	62 IAC 1700, 1701, 1705, 1760, 1761, 1762, 1764, 1770 through 1780, 1782 through 1788, 1795, 1800, 1801, 1805 through 1808, 1815 through 1819, 1824 through 1828, 1840, 1843, 1845.

Original amendment submission date	Date of final publication	Citation/description
July 17, 1989	August 29, 1990	62 IAC 1700.11; 1701; 1761.11; 1761.12; 1772.12; 1773.5, .11, .15, .17, .19, .20, .21; 1774.15, .17; 1778.13, .14; 1779.12; 1780.16, .21, .31; 1783.12; 1784.14, .17, .21; 1800.21, .40, .60; 1816.49, .61, .64, .67, .68, .83, .97, .99, .102; 1817.49, .61, .64, .66, .67, .68, .83, .97, .122; 1843.11; 1846.
July 26, 1990	May 6, 1991	62 IAC 1700.11(d), (e); 1761.11(a), .12; 1772.12(b)(8)(D); 1773.15(b)(1), .20(b)(2)(B), (c)(2), .21(b); 1778.13(b), (c)(5), (i), (j), .14(c), (e); 1779.12, (b); 1780.16(a)(1)(B)(i), .21(f)(3)(C), (D)(v), .31(a)(1), (b); 1783.12(b); 1784.14(e)(3)(C)(v), .17(a)(1), (b), .21(a)(1)(B)(i), (2)(C); 1800.21(d), .40(a)(2), (b)(2), (e); 1816.49(a)(1), (10), .67, .97(b); 1817.49(a)(1), (10), .66(d), .67, .97(b); 1843.11; 1846.5, .14(a)(3).
March 5, 1991	August 2, 1991	1773.19(b)(1), (2), (3); 20 ILCR 720 § 2.11(d).
February 1, 1991	December 13, 1991	62 IAC 1700.11(a), (a)(2), (c); 1701, appendix A; 1702; 1761.11(a), (d)(2), .12(c), (1), (2); 1772.11(b)(5), 14(a), (b); 1773.5, .11(a), (b)(1)(C), .15(b)(1), (B), .17(h); 1774.13(b)(1); 1778.14(c); 1780.16(b)(3)(B), .21(f), .37(a)(5), (7), (b), .39; 1784.14(e), .21(a)(2)(C), .24(a)(5), (7), (b), .30; 1816.49(a)(1), (3)(A), (B), (5)(A), (10)(B), .68(a)(18), (19), .84(b)(2), (f), .111(a)(4), (b)(1), (5), .116(a)(2)(C), (D), (E), (3), (C), (D), (E), (4)(A)(iii), (D), (b)(2), .117(a), (1), (3), (5), (b), (c), (d)(1) through (6), .150 (a) through (f), .151, appendix A; 1817.49(a)(1), (3)(A), (B), (5)(A), (10)(B), .68(a)(18), (19), .84(b)(2), (f), .116(a)(2)(C), (D), (E), (3), (C), (D), (E), (b)(2), .117(a), (1), (3), (5), (b), (c), (d)(1) through (6), .150 (a) through (f), .151; 1823.14(g), .15(b)(3).
June 22, 1992	September 3, 1993	62 IAC 1701, appendix A; 1702.11(a)(2), (f)(1), (2), .17(c)(1), (2), (3); 1705.21; 1761.11(g), .12(b)(2), (c), (4), (d)(1), (g); 1764.19(d); 1772.12(e)(2); 1773.13(a)(1)(E), .15(b)(1)(B), (3), (c)(12), (d), .20(b)(2)(B), .21(c); 1774.11(c), .13(b)(2)(E), (d)(2), (4), (5), .15(f); 1775; 1777.17(a) through (d); 1778.15(a), (e); 1779.19(b); 1780.21(b)(1)(B), .38; 1783.19(b); 1784.14(b)(1)(B), .27; 1785.13(a), (g); 1800.11(a), .40(a)(3), (e), (f) through (h), .50(c)(2) through (5); 1816.49(a)(9)(B), (c)(2), .84(b)(2), .116(a)(3)(A) through (E), (b)(2), .117(a)(1), (2), (5), (d)(6), .151(b); 1817.49(a)(9)(B), (c)(2), .84(b)(2), .116(a)(3)(A) through (E), (b)(2), .117(a)(1), (2), (5), (d)(6), .151(b), .182(d); 1827.12(b); 1843.12(i), .13(c), (e) through (k), .14(a)(2), .15(a), .16, .17, .20, .21; 1845.12(c), (d), .13(b)(4)(A) through (D), .17(b), (b)(2)(B), (c), .18(a)(2), (c), .19, .20(a); 1846.17(b)(1), .18(b); 1847.1 through .9; 1848.1, .2, .3, 5 through .9, .11, .12, .13, .15 through .22.
August 17, 1993	February 2, 1994	225 ILCS 720 §§ 2.11 (a), (b), (c), (g); 6.01(b).
September 9, 1994 ...	November 21, 1994	225 ILCS 720, §§ 2.02(b); 3.15(e); 9.07(a).
March 3, 1995	July 11, 1995	Executive Order Number 2, §§ I(C), II(C), III, IV(F).
February 3, 1995	May 29, 1996	62 IAC 1700.11, .16; 1701, Appendix A; 1761.11; 1772.11, .12; 1773.15, .20, .22 through .25; 1774.13; 1778.15; 1779.25; 1780.23; 1783.22; 1784.15; 1785.17, .23; 1795.1, .4, .6, .9, .12; 1800.5, .20, .21; 1816/1817.13, .22, .41, .46, .79, .97, .116, .117, .151, 190; 1816, appendix A; 1817.121; 1825.14; 1840.11, .17; 1843.13, .23; 1845.12; 1847.3, .4 through .7; 1848.5; 1850.14 through .17.
March 4, 1996	July 18, 1996	Self-bonding; 62 IAC 1800.4(c) through (f); 1800.5(c); 1800.11(a), (e); 1800.23.
June 22, 1992	October 22, 1997 ...	62 IAC 1816.116(a)(2)(C); 1817.116(a)(2)(C); Non-augmentation Policy Statement.
August 5, 1997	April 8, 1998	62 IAC 1816.116(c)(3)(F); 1817.116(a)(3)(F); Interpretation Statement, Program Procedures, and Evaluation Criteria for 62 IAC 1816.116(a)(3)(F) and 1817.116(a)(3)(F).
March 28, 1996 and February 26, 1998.	February 9, 1999	225 ILCS 720/1.03, 7.03, and 7.04; 62 IAC 1701, appendix A; 1761.12; 1764.13 and .15; 1773.11 and .15; 1774.11 and .13; 1778.14; 1785.17; 1800.40; 1816.46, .49, .64, .66, .67, .83, .116, and .117; 1817.46, .49, .61, .62, .66, .67, .83, .116, and .117; 1823.1, .11, .12, and .14; 1825.11; 1840.1 and .11; 1847.3 and .9; 1850.13, .14, .15, and .16.
August 2, 1999	December 6, 1999 ..	62 IAC 1701, appendix A; 1784.14(b)(1), (b)(1)(A) (i) and (ii), (b)(1)(B), (e)(3)(D); 1784.20(a), (a)(1) and (2), (b), (b)(1) through (10); 1817.41(j); 1817.121(a)(1) through (4), (c)(1) through (3).
August 2, 1999	December 27, 1999	62 IAC 1800.15(b)(2); 1847.3(a).
August 2, 1999	April 7, 2000	62 IAC 1701, Appendix A; 1780.25(a), (a)(1)(A), (a)(2), (a)(2)(A) and (B), (a)(3), (a)(3)(A), (b), (f); 1784.14(a); 1784.16(a), (a)(1)(A), (a)(2), (a)(2)(A) and (B), (a)(3), (a)(3)(A) and (B), (b)(1), (f); 1784.20(b), (b)(2); 1800.13(c), (d)(2); 1800.40(a)(1), (2), and (3), (b)(2); 1816.46(c)(2); 1816.49(a)(1) and (2), (a)(4)(A) and (B), (a)(5), (a)(6)(A), (a)(10)(A) and (C), (a)(11), (b)(9)(A) and (C), (c)(1) and (2), (c)(2)(B), (c)(2)(B)(i) and (ii); 1816.89(b); 1816.111(b)(5), (d); 1816.116(a), (b)(2); 1817.41(c), (d), (e); 1817.46(c)(2); 1817.49(a)(1) and (3), (a)(4)(A) and (B), (a)(5), (a)(6)(A), (a)(10)(A), (B), and (C), (a)(11), (b)(7) and (8); (b)(9)(A) and (C), (c)(1), (c)(2), (c)(2)(B)(i) and (ii); 1817.89(b); 1817.101(a); 1817.111(d); 1817.116(a)(2)(C), (b)(2); 1823.14(d); 1840.14(b), (c)(2).
June 28, 2001	November 21, 2001	225 ILCS 720/1.03(a)(9–a), 1.04(a) and (c), 105, 2.08(e), 6.07(f), 6.08(i), 7.03(b), 7.04(a), 9.01.

Surface Mining Reclamation and Enforcement, Interior

§ 913.25

Original amendment submission date	Date of final publication	Citation/description
October 15, 2001	May 17, 2002	62 IAC 1700.11(a), (b); 1700.12(a), (d); 1773.12; 1773.13; 1773.15(a), (b), (c); 1777.17; 1778.15(e); 1780.21(a), (b), (e), (f), (g), (i), (j); 1784.14(a), (e); 1785.23(d), (e); 1800.11(a); 1800.40(a), (c), (d), (e); 1816.41(c), (d), (e); 1816.113(b); 1816.116(a); 1816.117(a), (c), (d), (e); 1816.190(b); 1817.64; 1817.66(b); 1817.113(b); 1817.116(a); 1817.117(a), (c), (d), (e); 1825.14(a), (b), (e); 1843.13(a), (c), (d); 1846.17(b); 1847.3(a), (b), (e), (f), (i), (j); 1847.9.
April 8, 2002	July 7, 2003	62 IAC 1701.Appendix A; 1761.5; 1761.11; 1761.12; 1761.14; 1761.15; 1761.16; 1761.17; 1762.14; 1762.15; 1772.12; 1773.13(a)(1)(E), (d); 1773.15(c)(3)(B), (c)(11), (c)(13); 1778.15(e); 1778.16(c); 1780.31(a)(2); 1780.33; 1784.17(a)(2); 1784.18; 1800.40(b)(2); 1816.116(a)(2)(C); 1847.9(a).
December 10, 2004 ..	May 19, 2005	225 ILCS 720/1.04; 62 IAC 1700.17, 1700.18; 1761.11(e)(1), 1761.14(b), 1761.16(b)(3); 1762.15; 1772.12(b)(14); 1773.15(c)(3).
February 1, 2005	November 29, 2005	62 IAC 1816.116(a)(2)(C), (a)(3)(C) and (a)(3)(E), (a)(4), (a)(4)(C) and (D), (a)(6); 1816. appendix A; 1817.42; 1817.43(a)(2)(D), (b)(3), (c)(3); 1817.116(a)(2)(C), (a)(3)(C) and (a)(3)(E), (a)(4), (b)(2); 1817.121(c), (c)(2); 1823.15(b)(2) and (b)(3).

[62 FR 9937, Mar. 5, 1997, as amended at 62 FR 54768, Oct. 22, 1997; 63 FR 17098, Apr. 8, 1998; 64 FR 6200, Feb. 9, 1999; 64 FR 68030, Dec. 6, 1999; 64 FR 72277, Dec. 27, 1999; 65 FR 18242, Apr. 7, 2000; 66 FR 58375, Nov. 21, 2001; 67 FR 35035, May 17, 2002; 68 FR 40141, July 7, 2003; 70 FR 28824, May 19, 2005; 70 FR 71400, Nov. 29, 2005]

§ 913.16 [Reserved]

§ 913.17 State regulatory program provisions and amendments disapproved.

(a) The proposed definition of “previously mined area” in 62 IAC 1701.5, as submitted by Illinois on May 22, 1987, is disapproved to the extent that it includes lands subject to the reclamation standards of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

(b) In 62 IAC 1761.11(c) and 1761.12(e)(1), as submitted by Illinois on May 22, 1987, the phrase “publicly owned” is disapproved to the extent that it modifies the term “places listed on the National Register of Historic Places” or an equivalent term.

(c) The proposed revisions to the definition of “valid existing rights” in 62 IAC 1701.Appendix A, also known as 62 IAC 1701.5, as submitted by Illinois on May 22, 1987, are disapproved to the extent that they expand the “needed for and adjacent” test to allow claims of valid existing rights for lands for which the applicant obtained the requisite property rights after August 3, 1977.

(d) In 62 IAC 1816.68(a) and 1817.68(a), as submitted by Illinois on July 17, 1989, the deletion of “wind velocity and direction” from the list of factors re-

quired in the blast records is disapproved.

[53 FR 43138, Oct. 25, 1988, as amended at 54 FR 123, Jan. 4, 1989; 55 FR 35314, Aug. 29, 1990]

§ 913.20 Approval of Illinois abandoned mine land reclamation plan.

The Secretary approved the Illinois abandoned mine land reclamation plan, as submitted on July 20, 1980, effective June 1, 1982. Copies of the approved plan are available at:

(a) Illinois Department of Natural Resources, Office of Mines and Minerals, Abandoned Mine Land Reclamation Division, One Natural Resources Way, Springfield, Illinois 62701-1787.

(b) Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204-1521.

[64 FR 20166, Apr. 26, 1999, as amended at 69 FR 42870, July 19, 2004]

§ 913.25 Approval of Illinois abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director’s decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this

table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
January 19, 1984	June 11, 1984	Emergency reclamation program.
September 6, 1989 ...	February 14, 1990 ..	Non-coal reclamation.
June 29, 1990	November 2, 1990 ..	Procedures for public participation, ranking and selection of reclamation projects, liens, bids and contracts.
August 13, 1992	January 14, 1993 ...	Ch. 96½, par. 8001.03; 8002.13.
July 2, 1993	September 21, 1993	20 ILCS 1920 §§ 2.11, .13; 62 IAC 2501.37.
April 10, 1995	July 11, 1995	Executive Order No. 2 (1995), part I(C); part II(D); part III(A), (C); part IV(F).
October 22, 1998	January 22, 1999 ...	Illinois Plan Narrative; 62 IAC 2501.1, .4, .7, .8, .10, .11, .13, .16, .19, .22, .25, .28, .31, and .40; 44 IAC 1150.10, 20, .30, .100, .200, .300, .400, .500, .700, .800, .900, .1000, .1100, .1200, .1300, .1325, and .1350.

[62 FR 9938, Mar. 5, 1997, as amended at 64 FR 3419, Jan. 22, 1999; 69 FR 42870, July 19, 2004]

§ 913.30 State-Federal cooperative agreement.

The Governor of the State of Illinois (Governor) and the Secretary of the Department of the Interior (Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

ARTICLE I: INTRODUCTION, PURPOSES AND RESPONSIBLE AGENCIES

A. *Authority*: This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under section 503 of SMCRA, 30 U.S.C. 1253, to elect to enter into an agreement for State regulation of surface coal mining and reclamation operations (including surface operations and surface impacts incident to underground mining operations) on Federal lands. This Agreement provides for State regulation of coal exploration operations not subject to 43 CFR part 3480, subpart 3480 through 3487, and surface coal mining and reclamation operations in Illinois on Federal lands (30 CFR Chapter VII Subchapter D), consistent with SMCRA and State and Federal laws governing such activities and the Illinois State Program (Program).

B. *Purposes*: The purposes of this Agreement are to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations and coal exploration operations not subject to 43 CFR part 3480, subparts 3480 through 3487; (b) minimize intergovernmental overlap and duplication; and (c) provide uniform and effective application of the Program on all lands in Illinois in accordance with SMCRA, the Program, and this Agreement.

C. *Responsible Administrative Agencies*: The Land Reclamation Division (LRD) of the Illi-

nois Department of Mines and Minerals will be responsible for administering this Agreement on behalf of the Governor. The Office of Surface and Mining Reclamation and Enforcement (OSMRE) will administer this Agreement on behalf of the Secretary.

ARTICLE II: EFFECTIVE DATE

After being signed by the Secretary and the Governor, this Agreement will take effect 30 days after publication in the FEDERAL REGISTER as a final rule. This Agreement will remain in effect until terminated as provided in Article XI.

ARTICLE III: DEFINITIONS

The terms and phrases used in this Agreement which are defined in SMCRA, 30 CFR parts 700, 701 and 740, the Program, and this Agreement including the State Act [Ill. Rev. Stat. Ch 96½, Section 7901 *et seq.* (1985)], and the rules and regulations promulgated pursuant to those Acts, will be given the meanings set forth in said definitions. Where there is a conflict between the above reference State and Federal definitions, the definitions used in the Program will apply.

ARTICLE IV: APPLICABILITY

In accordance with the Federal lands program, the laws, regulations, terms and conditions of the Program and this Agreement are applicable to Federal lands in Illinois except as otherwise stated in this Agreement, SMCRA, 30 CFR 740.4, 740.11(a) and 745.13, and other applicable laws, Executive Orders, or regulations.

ARTICLE V: GENERAL REQUIREMENTS

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement.

A. *Authority of State Agency*: IRD has and will continue to have the authority under State law to carry out this Agreement.

B. *Funds*: 1. Upon application by LRD and subject to appropriations, OSMRE will provide the State with the funds to defray the costs associated with carrying out its responsibilities under this Agreement as provided in section 705(c) of SMCRA, the grant agreement, and 30 CFR 735.16. Such funds will cover the full cost incurred by LRD in carrying out these responsibilities, provided that such cost does not exceed the estimated cost the Federal government would have expended on such responsibilities in the absence of this Agreement.

2. OSMRE's Springfield Field Office and OSMRE's Eastern Field Operations office will work with LRD to estimate the amount the Federal government would have expended for regulation of Federal lands in Illinois in the absence of this Agreement.

3. OSMRE and the State will discuss the OSMRE Federal lands cost estimate. After resolution of any issues, LRD will include the Federal lands cost estimate in the State's annual regulatory grant application submitted to OSMRE's Springfield Field Office.

The State may use the existing year's budget totals, adjusted for inflation and workload considerations in estimating regulatory costs for the following grant year. OSMRE will notify LRD as soon as possible if such projections are unrealistic.

4. If LRD applies for a grant but sufficient funds have not been appropriated to OSMRE, OSMRE and LRD will promptly meet to decide on appropriate measures that will insure that surface coal mining and reclamation operations on Federal lands in Illinois are regulated in accordance with the Program. If agreement cannot be reached, either party may terminate the Agreement in accordance with Article XI of this Agreement.

5. Funds provided to the LRD under this Agreement will be adjusted in accordance with Office of Management and Budget Circular A-102, Attachment E.

C. *Reports and Records*: LRD will make annual reports to OSMRE containing information with respect to compliance with the terms of this Agreement pursuant to 30 CFR 745.12(d). Upon request, LRD and OSMRE will exchange information developed under this Agreement, except where prohibited by Federal or State law.

OSMRE will provide LRD with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. LRD comments on the report will be appended before transmission to the Congress, unless necessary to respond to a request by a date certain, or to other interested parties.

D. *Personnel*: Subject to adequate appropriations and grant awards, the LRD will maintain the necessary personnel to fully implement this Agreement in accordance

with the provisions of SMCRA, the Federal lands program, and the Program.

E. *Equipment and Laboratories*: Subject to adequate appropriations and grant awards, the LRD will assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed which are necessary to carry out the requirements of the Agreement.

F. *Permit Application Fees and Civil Penalties*: The amount of the fee accompanying an application for a permit for surface coal mining and reclamation operations on Federal lands in Illinois will be determined in accordance with section 2.05 of the Illinois State Act, 62 Ill. Adm. Code 1771.25, and the applicable provisions of the Program and Federal law. All permit fees, civil penalties and fines collected from operations on Federal lands will be retained by the State and will be deposited with the State Treasurer. Permit fees will be considered program income. Civil penalties and fines will not be considered program income. The financial status report submitted pursuant to 30 CFR 735.26 will include a report of the amount of fees, penalties, and fines collected during the State's prior fiscal year.

ARTICLE VI: REVIEW OF PERMIT APPLICATION PACKAGE

A. *Submission of Permit Application Package*

1. LRD and the Secretary require an applicant proposing to conduct surface coal mining and reclamation operations on Federal lands covered by this Agreement to submit a permit application package (PAP) in an appropriate number of copies to LRD. LRD will furnish OSMRE and other Federal agencies with an appropriate number of copies of the PAP. The PAP will be in the form required by LRD and will include any supplemental information required by OSMRE, the Federal land management agency, and other agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP.

At a minimum, the PAP will satisfy the requirements of 30 CFR 740.13(b) and include the information necessary for LRD to make a determination of compliance with the Program and for OSMRE and the appropriate Federal agencies to make determinations of compliance with applicable requirements of SMCRA, the Federal lands program, and other Federal laws, Executive Orders, and regulations for which they are responsible.

2. For any outstanding or pending permit applications on Federal lands being processed by OSMRE prior to the effective date of this Agreement, OSMRE will maintain sole permit decision responsibility. After the final decision, all additional responsibilities shall pass to LRD pursuant to the terms of this Agreement.

B. Review Procedures Where There is No Leased Federal Coal Involved

1. LRD will assume the responsibilities for review of permit applications where there is no leased Federal coal to the extent authorized in 30 CFR 740.4(c) (1), (2), (4), (6) and (7). In addition to consultation with the Federal Land Management Agency pursuant to 30 CFR 740.4(c)(2), LRD will be responsible for obtaining, except for non-significant revisions, the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. LRD will request such Federal agencies to furnish their findings or any requests for additional information to LRD within 45 calendar days of the date of receipt of the PAP. OSMRE will assist LRD in obtaining this information, upon request.

Responsibilities and decisions which can be delegated to LRD under other applicable Federal laws may be specified in working agreements between OSMRE and the State, with the concurrence of any Federal agency involved, and without amendment to this agreement.

2. LRD will assume primary responsibility for the analysis, review and approval or disapproval of the permit application component of the PAP required by 30 CFR 740.13 for surface coal mining and reclamation operations in Illinois on Federal lands not requiring a mining plan pursuant to the Mineral Leasing Act (MLA). LRD will review the PAP for compliance with the Program and State Act and regulations. LRD will be the primary point of contact for applicants regarding decisions on the PAP and will be responsible for informing the applicant of determinations.

3. The Secretary will make his determinations under SMCRA that cannot be delegated to the State. Some of which have been delegated to OSMRE.

4. OSMRE and LRD will coordinate with each other during the review process as needed. OSMRE will provide technical assistance to LRD when requested, if available resources allow. LRD will keep OSMRE informed of findings made during the review process which bear on the responsibilities of OSMRE or other Federal agencies. OSMRE may provide assistance to LRD in resolving conflicts with Federal land management agencies. OSMRE will be responsible for ensuring that any information OSMRE receives from an applicant is promptly sent to LRD. OSMRE will have access to LRD files concerning operations on Federal lands. OSMRE will send to LRD copies of all resulting correspondence between OSMRE and the applicant that may have a bearing on decisions regarding the PAP. The Secretary reserves the right to act independently of LRD to

carry out his responsibilities under laws other than SMCRA.

5. LRD will make a decision on approval or disapproval of the permit on Federal lands.

(a) Any permit issued by LRD will incorporate any lawful terms or conditions imposed by the Federal land management agency, including conditions relating to post-mining land use, and will be conducted on compliance with the requirements of Federal land management agency.

(b) The permit will include lawful terms and conditions required by other applicable Federal laws and regulations.

(c) After making its decision on the PAP, LRD will send a notice to the applicant, OSMRE, the Federal land management agency, and any agency with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP.

A copy of the permit and written findings will be submitted to OSMRE upon request.

C. Review Procedures Where Leased Federal Coal is Involved

1. LRD will assume the responsibilities listed in 30 CFR 740.4(c) (1), (2), (3), (4), (6) and (7), to the extent authorized.

In accordance with 30 CFR 740.4(c)(1), LRD will assume primary responsibility for the analysis, review and approval, disapproval or conditional approval of the permit application component of the PAP for surface coal mining and reclamation operations in Illinois where a mining plan is required, including applications for revisions, renewals and transfer sale and assignment of such permits. OSMRE will, at the request of the State, assist to the extent possible in this analysis and review.

LRD will be the primary point of contact for applicants regarding the review of the PAP for compliance with the Program and State law and regulations. LRD will be responsible for informing the applicant of all joint State-Federal determinations.

LRD will to the extent authorized, consult with the Federal land management agency and the Bureau of Land Management (BLM) pursuant to 30 CFR 740.4(c)(2) and (3), respectively. On matters concerned exclusively with regulations under 43 CFR part 3480, Subparts 3480 through 3487, BLM will be primary contact with the applicant. BLM will inform LRD of its actions and provide LRD with a copy of documentation on all decisions.

LRD will send the OSMRE copies of any correspondence with the applicant and any information received from the applicant regarding the PAP. OSMRE will send to LRD copies of all OSMRE correspondence with the applicant which may have a bearing on the PAP. As a matter of practice, OSMRE will not independently initiate contacts with applicants regarding completeness or

Surface Mining Reclamation and Enforcement, Interior

§ 913.30

deficiencies of the PAP with respect to matters covered by the Program.

LRD will also be responsible for obtaining the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. LRD will request all Federal agencies to furnish their findings or any requests for additional information to LRD within 45 days of the date of receipt of the PAP. OSMRE will assist LRD in obtaining this information, upon request of LRD.

LRD will be responsible for approval and release of performance bonds under 30 CFR 740.4(c)(4) in accordance with Article IX of this agreement, and for review and approval of exploration operations not subject to 43 CFR part 3480, subparts 3480-3487, under 30 CFR 740.4(c)(6).

LRD will prepare documentation to comply with the requirements of NEPA under 30 CFR 740.4(c)(7); however, OSMRE will retain the responsibility for the exceptions in 30 CFR 740.4(c)(7)(i)-(vii).

2. The Secretary will concurrently carry out his responsibilities under 30 CFR 740.4(a) that cannot be delegated to LRD under the Federal lands program, MLA, the National Environmental Policy Act (NEPA), this Agreement, and other applicable Federal laws. The Secretary will carry out these responsibilities in a timely manner and will avoid, to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the Program. The Secretary will consider the information in the PAP and, where appropriate, make decisions required by SMCRA, MLA, NEPA, and other Federal laws.

Responsibilities and decisions which can be delegated to the State under other applicable Federal laws may be specified in working agreements between OSMRE and LRD, with concurrence of any Federal agency involved, and without amendment to this Agreement.

Where necessary to make the determination to recommend that the Secretary approve the mining plan, OSMRE will consult with and obtain the concurrences of the BLM, the Federal land management agency and other Federal agencies as required.

The Secretary reserves the right to act independently of LRD to carry out his responsibilities under laws other than SMCRA or provisions of SMCRA not covered by the Program, and in instances of disagreement over SMCRA and the Federal lands program.

3. OSMRE will assist LRD in carrying out LRD's responsibilities by:

(a) Coordinating resolution of conflicts and difficulties between LRD and other Federal agencies in a timely manner.

(b) Assisting in scheduling joint meetings, upon request, between State and Federal agencies.

(c) Where OSMRE is assisting LRD in reviewing the PAP, furnishing to LRD the work product within 50 calendar days of receipt of the State's request for such assistance, unless a different time is agreed upon by OSMRE and LRD.

(d) Exercising its responsibilities in a timely manner, governed to the extent possible by the deadlines established in the Program.

4. Review of the PAP: (a) OSMRE and LRD will coordinate with each other during the review process as needed. LRD will keep OSMRE informed of findings made during the review process which bear on the responsibilities of OSMRE or other Federal agencies. OSMRE will ensure that any information OSMRE receives which has a bearing on decisions regarding the PAP is promptly sent to LRD.

(b) LRD will review the PAP for compliance with the Program and State law and regulations.

(c) OSMRE will review the operation and reclamation plan portion of the permit application, and any other appropriate portions of the PAP for compliance with the non-delegable responsibilities of SMCRA and for compliance with the requirements of other Federal laws and regulations.

(d) OSMRE and LRD will develop a work plan and schedule for PAP review and each will identify a person as the project leader. The project leaders will serve as the primary points of contact between OSMRE and LRD throughout the review process. Not later than 50 days after receipt of the PAP, unless a different time is agreed upon, OSMRE will furnish LRD with its review comments on the PAP and specify any requirements for additional data. To the extent practicable, LRD will provide OSMRE all available information that may aid OSMRE in preparing any findings.

(e) LRD will prepare a State decision package, including written findings and supporting documentation, indicating whether the PAP is in compliance with the Program. The review and finalization of the State decision package will be conducted in accordance with procedures for processing PAPs agreed upon by LRD and OSMRE.

(f) LRD may make a decision on approval or disapproval of the permit on Federal lands in accordance with the Program prior to the necessary Secretarial decision on the mining plan, provided that LRD advises the operator in the permit that Secretarial approval of the mining plan must be obtained before the operator may conduct coal development or mining operations on the Federal lease. LRD will reserve the right to amend or rescind any requirements of the permit to conform with any terms or conditions imposed by the Secretary in his approval of the mining plan.

(g) The permit will include, as applicable, terms and conditions required by the lease

issued pursuant to the MLA and by any other applicable Federal laws and regulations, including conditions imposed by the Federal land management agency relating to post-mining land use, and those of other affected agencies, and will be conditioned on compliance with the requirements of the Federal land management agency with jurisdiction.

(h) After making its decision on the PAP, LRD will send a notice to the applicant, OSMRE, the Federal land management agency, and any agency with jurisdiction or responsibility over Federal land affected by operations proposed in the PAP. A copy of the written findings and the permit will also be submitted to OSMRE.

5. OSMRE will provide technical assistance to LRD when requested, if available resources allow. OSMRE will have access to LRD files concerning operations on Federal lands.

D. Review Procedures for Permit Revisions; Renewals; and Transfer Assignment or Sale of Permit Rights

1. Any permit revision or renewal for an operation on Federal lands will be reviewed and approved or disapproved by LRD after consultation with OSMRE on whether such revision or renewal constitutes a mining plan modification pursuant to 30 CFR 746.18. OSMRE will inform LRD within 30 days of receiving a copy of a proposed revision or renewal, whether the permit revision, or renewal constitutes a mining plan modification. Where approval of a mining plan modification is required, OSMRE and LRD will follow the procedures outlined in paragraphs C.1. through C.5. of this Article.

2. OSMRE may establish criteria consistent with 30 CFR 746.18 to determine which permit revisions and renewals clearly do not constitute mining plan modifications.

3. Permit revisions or renewals on Federal lands which are determined by OSMRE not to constitute mining plan modifications under paragraph D.1. of this Article or that meet the criteria for not being mining plan modifications as established under paragraph D.2. of this Article will be reviewed and approved following the procedures set forth in 62 Ill. Adm. Code 1774 and paragraphs B.1. through B.5. of this Article.

4. Transfer, assignment or sale of permit rights on Federal lands shall be processed in accordance with 62 Ill. Adm. Code 1774 and 30 CFR 740.13(e).

ARTICLE VII: INSPECTIONS

A. LRD will conduct inspections on Federal lands in accordance with 30 CFR 740.4(c)(5) and prepare and file inspection reports in accordance with the Program.

B. LRD will, subsequent to conducting any inspection pursuant to 30 CFR 740.4(c)(5), and

on a timely basis, file with OSMRE a legible copy of the completed State inspection report.

C. LRD will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by the agreement, except as described hereinafter. Nothing in this Agreement will prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR parts 842 and 843 and its obligations under laws other than SMCRA.

D. OSMRE will ordinarily give LRD reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity to join in the inspection.

When OSMRE is responding to a citizen complaint of an imminent danger to the public health and safety, or of significant, imminent environmental harm to land, air or water resources, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact LRD no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger or significant, imminent environmental harm will be referred to LRD for action. The Secretary reserves the right to conduct inspections without prior notice to LRD to carry out his responsibilities under SMCRA.

ARTICLE VIII: ENFORCEMENT

A. LRD will have primary enforcement authority under SMCRA concerning compliance with the requirements of this Agreement and the Program in accordance with 30 CFR 740.4(c)(5). Enforcement authority given to the Secretary under other Federal laws and Executive orders including, but not limited to, those listed in appendix A (attached) is reserved to the Secretary.

B. During any joint inspection by OSMRE and LRD, LRD will have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation, and assessment of penalties. LRD will inform OSMRE prior to issuance of any decision to suspend or revoke a permit on Federal lands.

C. During any inspection made solely by OSMRE or any joint inspection where LRD and OSMRE fail to agree regarding the propriety of any particular enforcement action, OSMRE may take any enforcement action necessary to comply with 30 CFR parts 843 and 845. Such enforcement action will be based on the standards in the Program, SMCRA, or both, and will be taken using the procedures and penalty system contained in 30 CFR parts 843 and 845.

D. LRD and OSMRE will promptly notify each other of all violations of applicable

Surface Mining Reclamation and Enforcement, Interior

§ 913.30

laws, regulations, orders, or approved mining permits subject to this Agreement, and of all actions taken with respect to such violations.

E. Personnel of LRD and the Department of the Interior, including OSMRE, will be mutually available to serve as witness in enforcement actions taken by either party.

F. This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than SMCRA.

ARTICLE IX: BONDS

A. LRD and the Secretary will require each operator who conducts operations on Federal lands to submit a performance bond payable to the State of Illinois and the United States to cover the operator's responsibilities under SMCRA and the Program. Such performance bond will be conditioned upon compliance with all requirements of the SMCRA, the Program, State rules and regulations, and any other requirements imposed by the Secretary or the Federal land management agency. Such bond will provide that if this Agreement is terminated, the portion of the bond covering the Federal lands will be payable only to the United States. LRD will advise OSMRE of annual adjustments to the performance bond pursuant to the program.

B. Performance bonds will be subject to release and forfeiture in accordance with the procedures and requirements of the Program. Where surface coal mining and reclamation operations are subject to an approved mining plan, a performance bond shall be released by the State after the release is concurred in by OSMRE.

C. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of SMCRA.

ARTICLE X: DESIGNATING LAND AREAS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING AND RECLAMATION OPERATIONS AND ACTIVITIES AND VALID EXISTING RIGHTS AND COMPATIBILITY DETERMINATIONS

A. Unsuitability Petitions

1. Authority to designate Federal lands as unsuitable for mining pursuant to a petition, including the authority to make substantial legal and financial commitment determinations pursuant to section 522(a)(6) of SMCRA, is reserved to the Secretary.

2. When either LRD or OSMRE receives a petition to designate land areas unsuitable for all or certain types of surface coal mining operations that could impact adjacent Federal or non-Federal lands pursuant to section 522(c) of SMCRA, the agency receiving the petition will notify the other of its receipt and the anticipated schedule for

reaching a decision, and request and fully consider data, information and recommendations of the other. OSMRE will coordinate with the Federal land management agency with jurisdiction over the petition area, and will solicit comments from the agency.

B. Valid Existing Rights and Compatibility Determinations

The following actions will be taken when requests for determinations of VER pursuant to section 522(e) of SMCRA or for determinations of compatibility pursuant to section 522(e)(2) of SMCRA, and received prior to or at the time of submission of a PAP that involves surface coal mining and reclamation operations and activities:

1. For Federal lands within the boundaries of any areas specified under section 522(e)(1) of SMCRA, OSMRE will determine whether VER exists for such areas.

For private inholdings within section 522(e)(1) areas, LRD, with the consultation and concurrence of OSMRE, will determine whether surface coal mining operations on such lands will or will not affect the Federal interest (Federal lands as defined in section 701(4) of SMCRA). OSMRE will process VER determination requests on private inholdings within the boundaries of section 522(e)(1) areas where surface coal mining operations affects the Federal interest.

2. For Federal lands within the boundaries of any national forest where proposed operations are prohibited or limited by section 522(e)(2) of SMCRA and 30 CFR 761.11(b), OSMRE will make the VER determinations.

OSMRE will process requests for determinations of compatibility under section 522(e)(2) of SMCRA.

3. For Federal lands, LRD will determine whether any proposed operation will adversely affect any publicly owned park and, in consultation with the State Historic Preservation Officer, places listed in the National Register of Historic Places, with respect to the prohibitions or limitations of section 522(e)(3) of SMCRA. LRD will make the VER determination for such lands using the State Program. LRD will coordinate with any affected agency or agency with jurisdiction over the proposed surface coal mining and reclamation operations.

In the case that VER is determined not to exist under section 522(e)(3) of SMCRA or 30 CFR 761.11(c), no surface coal mining operations will be permitted unless jointly approved by LRD and the Federal, State or local agency with jurisdiction over the publicly owned park or historic place.

4. LRD will process and make determinations of VER on Federal lands, using the State Program, for all areas limited or prohibited by section 522(e)(4) and (5) of SMCRA as unsuitable for mining. For operations on Federal lands, LRD will coordinate with any affected agency or agency with jurisdiction

over the proposed surface coal mining and reclamation operation.

ARTICLE XI: TERMINATION OF COOPERATIVE AGREEMENT

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XII: REINSTATEMENT OF COOPERATIVE AGREEMENT

If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

ARTICLE XIII: AMENDMENT OF COOPERATIVE AGREEMENT

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

ARTICLE XIV: CHANGES IN STATES OR FEDERAL STANDARDS

A. The Secretary or the Governor may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party will, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations or request necessary legislative action. Such changes will be made under the procedures of 30 CFR part 732 for changes to the Program and under the procedures of section 501 of SMCRA for changes to the Federal lands program.

B. LRD and the Secretary will provide each other with copies of any changes to their respective laws, rules, regulations or standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XV: CHANGES IN PERSONNEL AND ORGANIZATION

Each party to this Agreement will notify the other, when necessary, of any changes in personnel, organization and funding, or other changes that may affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

ARTICLE XVI: RESERVATION OF RIGHTS

This Agreement will not be construed as waiving or preventing the assertion of any rights in this Agreement that the State or the Secretary may have under laws other than SMCRA or their regulations, including but not limited to those listed in appendix A. Dated: September 17, 1987.

James R. Thompson,
Governor of Illinois.

Dated: October 22, 1987.

Donald Paul Hodel,
Secretary of the Interior.

APPENDIX A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations, including 43 CFR part 3480.

3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR part 1500.

4. The Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR part 402.

5. The Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 *et seq.*; 48 Stat. 401.

6. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR part 800.

7. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

8. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

9. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

10. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. *et seq.*

11. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

12. Executive Order 11988 (May 24, 1977), for flood plain protection.

13. Executive Order 11990 (May 24, 1977), for wetlands protection.

14. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

15. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

16. The Constitution of the United States.

17. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

18. 30 CFR Chapter VII.

19. The Constitution of the State of Illinois.

20. Illinois Surface Coal Mining Land Conservation and Reclamation Act [Ill. Rev. State. 1979, Ch. 96 1/2/par. 7901 *et seq.*]

21. Illinois Department of Mines and Minerals, Coal Mining and Reclamation Permanent Program, Rules and Regulations, 62 Ill. Adm. Code 1700-1850.

[52 FR 45329, Nov. 27, 1987]

PART 914—INDIANA

Sec.

914.1 Scope.

914.10 State regulatory program approval.

Surface Mining Reclamation and Enforcement, Interior

§ 914.15

914.15 Approval of Indiana regulatory program amendments.

914.16 Required program amendments.

914.17 State regulatory program and proposed program amendment provisions not approved.

914.20 Approval of Indiana abandoned mine land reclamation plan.

914.25 Approval of Indiana abandoned mine land reclamation plan amendments.

914.30 State-Federal Cooperative Agreement.

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

§ 914.1 Scope.

This part contains all rules applicable only within Indiana that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[47 FR 32107, July 26, 1982]

§ 914.10 State regulatory program approval.

The Secretary conditionally approved the Indiana regulatory program, as submitted on March 3, 1980, amended and clarified on June 4, 1980, resubmitted on September 28, 1981, and clarified on December 8, 1981, April 8, 1982, May 18-19, 1982 and May 26, 1982, effective July 29, 1982. He fully ap-

proved the Indiana program, as amended on April 19 and 28, 1983, effective August 19, 1983. Copies of the approved program are available at:

(a) Indiana Department of Natural Resources, Division of Reclamation, R.R. 2, Box 129, Jasonville, IN 47438-9517.

(b) Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, Room 301, 575 North Pennsylvania Street, Indianapolis, IN 46204-1521.

[64 FR 20166, Apr. 26, 1999, as amended at 69 FR 55352, Sept. 14, 2004]

§ 914.15 Approval of Indiana regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
September 1, 1982 ...	December 17, 1982	Revision to permit application forms to require applicant to certify that all reclamation fees had been paid.
December 9, 1982	March 4, 1983	310 IAC 12-2-7, -9; 12-3-1, -12(c)(2), -21(b)(4), -25, -37(a), -47(b), -48, -59(b)(4), -74(a), -81, -97, -102(c); 12-4-5, -10(e)(1), -16; 12-5-3, -18, -24(f), -51, -84, -90(f), -115, -123(b), -149, -152; 12-6-6(d), (f), -6.5, -16(b)(3)(ii); 12-7-4(f).
April 19 and 28, 1983	August 19, 1983	IC 13-4.1-2-3, 13-4.1-4-5(c), 13-4.1-7-5, 13-4.1-11-11(i), 13-4.1-14-2(a); 310 IAC 12-1-3; 12-3-12, -39, -63, -76, -112, -118; 12-4-3, -4, -7, -17; 12-5-19, -36, -41, -71.5, -85, -101, -105, -139.5; 12-6-1, -4, -5, -6.5, -9, -15, -16.
March 5, 1984	July 10, 1984	IC 13-4.1-2-4, 13-4.1-3-3, 13-4.1-4-3, 13-4.1-5-7.
March 19, 1984	October 19, 1984 ...	310 IAC 12-2-8; 12-3-43, -118; 12-5-6, -34, -35, -36, -38, -40; 12-5-73, -100, -100.5, -101, -103.
February 7, 1985	May 13, 1985	IC 13-4-6-1.5, -1.6; 13-4.1-1-7; 13-4.1-3-1, -3.5; 13-4.1-5-8; 13-4.1-6-9; 13-4.1-8-1; 13-4.1-10-1; 13-4.1-12-1, -2.
December 7, 1984	May 15, 1985	310 IAC 12-2-11; 12-3-46, -80, -96, -97, -98; 12-5-3, -6, -11, -12, -12.1, -13, -14, -15, -18, -19, -20, -21, -23, -24, -44, -54, -54.1, -55, -55.1, -56, -56.1, -57, -57.1, -69, -73, -77, -78, -78.1, -79, -80, -81, -84, -85, -86, -87, -89, -90, -108, -118, -119, -119.1, -120, -121, -121.1, -137, -147, -150, -150.1, -151, -152, -153, -154; 12-6-2, -9.1.
May 29, 1984	May 16, 1985	310 IAC 0.5; Policy statement dated October 16, 1984.
February 18, 1985	June 5, 1985	310 IAC 12-3-26, -64, -106, -107, -108.
December 10 and 16, 1985.	March 14, 1986	310 IAC 0.5-1-1 through -5, -8 through -13, -15 through -19; 12-5-148; advisory letter from Indiana State Office of the Attorney General dated April 23, 1985.
September 4, 1985 ...	March 17, 1986	310 IAC 12-1-3; 12-5-33, -99; 12-8-1 through 12-8-9; blaster training program.
January 31, 1986	May 13, 1986	310 IAC 12-3-121; 12-5-34, -36, -100, -101; 12-6-11, -12, -12.5.
May 29, 1986	August 14, 1986	310 IAC 12-3-8.
September 24, 1986	January 21, 1987 ...	310 IAC 12-5-56.1, -121.1.
June 11, 1986, November 7, 1986.	April 1, 1987	IC 4-21.5; 4-22-1; 13-4-6-9; 13-4.1-1-3, -5; 13-4.1-3-3, -4, -6; 13-4.1-4-1, -3, -7; 13-4.1-7-1, -5, -6; 13-4.1-8-1; 13-4.1-11-5, -6, -8, -12; 13-4.1-14-1; 310 IAC 12-8-4, -8.

Original amendment submission date	Date of final publication	Citation/description
June 11, 1986, May 4, 1987.	February 16, 1988 ..	IC 13–4.1–1–8, 13–4.1–3.2, 13–4.1–6–8, 13–4.1–12–6.
April 10, 1987	March 22, 1988	310 IAC 12–5–12.1(a)(3)(i), –78.1(a)(3)(i).
August 13, 1987	November 10, 1988 ..	IC 13–4.1–6–4; 13–4.1–11–3, –4.
August 13, 1987, June 12, 1989.	October 11, 1989 ...	310 IAC 12–1–3; 12–2–7; 12–3–104, –104.1; 12–5–155, –156.
September 28, 1988	November 1, 1989 ..	310 IAC 12–5–18, –19, –84, –85.
March 18, 1988	December 15, 1989 ..	IC 13–4.1–11–10, 35–44–1–3.
November 8, 1989	April 5, 1990	IC 13–4.1–10–3.
March 18, 1988	April 23, 1990	IC 13–4.1–6–5, 13–4.1.6.3–1 through –13.
December 5, 1989, May 16, 1990.	August 10, 1990	310 IAC 12–3–111; 12–5–148; 12–6–8, –9, –16; 12–8–9.
December 4, 1989, August 9, 1990.	September 24, 1990	IC 13–4.1–2–2, 13–4.1–11–5.
August 15, 1989, December 5, 1989.	January 18, 1991 ...	310 IAC 0.6–1, 12–6–6.5.
October 24, 1990	March 15, 1991	Intervention in hearings by those who may be adversely affected by the outcome of the proceedings.
December 11, 1990 ..	March 21, 1991	310 IAC 12–0.5, 12–0.5–25(c), 12–1–3.
September 29, 1988, February 15, 1991.	August 2, 1991	310 IAC 12–5–29, –94; IC 4–26–3–27.8; 13–4.1–2, –4, –5; 14–3; Non-code provision at § 46 of Senate Enrolled Act 362 concerning the Bureau of Mine Reclamation.
June 4, 1991	November 27, 1991, December 13, 1991.	IC 13–4.1–3–2; 13–4.1–6–9; 13–4.1–6.3–11(2), –13; 13–4.1–10–1; 13–4.1–11–6.
July 11, 1991	December 13, 1991	310 IAC 0.7–3–5.
March 18, 1988	April 20, 1992	IC 13–4.1–6–8, 13–4.1–6.5.
May 22 and 23, 1991	May 29, 1992	310 IAC 12–5–64, –64.1 through .3, –65, –128, –128.1 through .3, –129.
June 4, 1991	June 23, 1992	IC 13–4.1.
May 23, 1991	September 14, 1992	310 IAC 12–5–145 through –148, –148.5.
May 7, 1992	December 17, 1992	310 IAC 12–3–8, –9; 12–8–4, –8; 12–9–1 through –4.
March 18, 1988, February 15, 1991, July 10, 1991.	December 30, 1992	IC 13–4.1–1–3; 13–4.1–2–4; 13–4.1–3–3, –3.1; 13–4.1–4–2, –3.1, –5; 13–4.1–14–1; SEA 121, § 8; 310 IAC 12–0–5–48; 12–0.5–59; 12–2–1, –2; 12–3–13, –29, –38, –52, –67, –75, –84, –112, –121.
July 16, 1992	January 14, 1993 ...	IC 13–4.1–1–1, 13–4.1–3–2(c), –3(c), –3.5(a)(1), (5).
December 2, 1992 ..	May 17, 1993	310 IAC 12–3–87.1; 12–5–130.1, –131.1.
November 13, 1992 ..	June 24, 1993	310 IAC 12–0.5; 12–3–19, .1, –20, –111, –112, –119.5, .6; 12–6–5.
January 4, 1993	August 2, 1993	310 IAC 12–5–64.1 through .3, –128.1, .3; –145; –148.5.
March 26, 1992	August 16, 1993	310 IAC 12–0.5–6, –32.5, –90.5, –91.5; 12–2–6, –7; 12–3–6, –30.5, –33, –46.5, –47, –57, –68.5, –71, –78, –80.5, –81, –94, .1, –98, –106, –110, –116, –127, –128, –131; 12–4–3, –16; 12–5–16, –24, –27, –30, –32, –39, –42, –43, .1, –48, –51, .1, –57.5, –82, –92, –95, –97, –99, –100, –104, –106, –107, .1, –115, –119.1, –121.5, –131, –144.
August 8, 1992	September 3, 1993	310 IAC 12–0.5–5.5, –32.6, .7, .8, –72.5, –78.5; 12–1–5 through –12.
April 19, 1993	September 21, 1993	IC 13–4.1–1–5, 13–4.1–6.5–8(d).
February 24, 1993 ...	November 18, 1993	310 IAC 0.6–1–5, –13; 0.7–3–5; 12–6–6.5.
July 2, 1993	June 16, 1994	310 IAC 12–0.5–6, –23, –53, –55, –64, –72, –104, –111, –116, –139.
April 2, 1993	July 15, 1994	310 IAC 0.6–1–2, .5, –9, –17.
October 1, 1993	July 27, 1994	310 IAC 13–4.1–4–3(a)(10).
June 15, 1994	October 20, 1994 ...	310 IAC 0.6–1–5, –13; 0.7–3–5.
August 11, 1994	December 13, 1994	310 IAC 12–4–16(c)(3).
September 26, 1994	February 2, 1995 ...	Amendment #94–4 to the Indiana program to correct typographical, clerical, spelling errors.
December 7, 1994	March 10, 1995	310 IAC 12–8–4.1, –8.1.
March 21, 1994	April 4, 1995	IC 13–4.1–6–9; 13–4.1–9–2.5; 13–4.1–2–4; 13–4.1–4–3, –5; 13–4.1–6–7; 13–4.1–11–6, –8, –12; 13–4.1–12–1; 13–4.1–13–1; 13–4.1–15–9.
January 31, 1995	April 7, 1995	310 IAC 12–5–54.1.
March 18, 1994, August 25, 1994.	April 20, 1995	310 IAC 12–3–87, .1(c)(2), (7); 12–5–130, .1(c)(2), (g), (h), –131; Amendment #94–2 to the Indiana program.
May 3, 1995	September 14, 1995	310 IAC 12–5–64.1(c), –128.1(c); correction of typographical, clerical, spelling errors.
May 11, 1995	October 16, 1995 ...	310 IAC 12–0.5–2, –15, –57, –95, –99.
December 30, 1993 ..	November 9, 1995 ..	310 IAC 12–0.5–109.5, –110.5, –122.5; 12–1–5; 12–3–31, –48, –69, –78, –82, –97, –106; 12–4–5, –7; 12–5–3, –4; 12–6–20 through –24; 12–7–4, –5, –6; Amendment #93–7, part I.
September 11, 1995	April 8 and 10, 1996	IC 13–4.1; 14–2–285.5; 14–8, –2–144.5; 14–34, –2–4, –4–8.5, –10.5, –10–2(b)(23), –13–1, –2, –19–2.
March 18, 1984	May 28, 1996	310 IAC 12–3–87.1(c)(2); 12–5–130.1(c)(2), –132.
September 26, 1994	October 29, 1996 ...	310 IAC 12–0.5–78.7, –91.5, –109; 12–3–30, –32, –33, –34, –41, –47, –49, –55, –55.1, –68, –70, –71, –81, –83, –90.5, –91; 12–5–17, –20, –21(a)(3), –24(a)(9)(B), –27, –31, –39, –41, –42, –44, –48, –50, –69, –70, –83, –86, –87(a)(3), –90(a)(9)(B), –92, –96, –104, –105, –106, 108, –112, –114, –127, –137, –137.5(2), –144; 12–6–19.

Surface Mining Reclamation and Enforcement, Interior

§ 914.16

Original amendment submission date	Date of final publication	Citation/description
January 13, 1997	August 25, 1997	310 IAC 12-3-130 (4), (5), -131, -132, -132.5, -133, -134, -134.1, -134.5, -135.
January 14, 1997	August 25, 1997	310 IAC 12-0.5-39.5, 72.1, 75.5, 77.5, 107.5; 12-3-81, 87.1; 12-5-94, 130.1.
March 7, 1997	September 8, 1997	310 IAC 12-1-7(a), (15)(A), (17); 12-1-7.1 (a) through (c); 12-1-11(b), (c) (1) through (3), (d) (1) through (3).
September 11, 1995	November 4, 1997	IC 14-8-2-42.5, -49.5, -49.6, -274.5; 14-34-5-10; 14-34-6-14.3, -14.6; 14-34-7-0.5, -0.6, -0.7, -2.5, -4 (b), (d) through (g), -4.1, -5, -7, -7.1, -8, -9, -10, -11, -12, -13.
March 6, 1998	July 24, 1998	310 IAC 12-3-46(a), (b)(2) through (b)(5); 12-3-80(a), (b)(2) through (b)(5); 12-3-110 (f), (g); 12-5-32(a), (b); 12-5-97(a), (b).
March 6, 1998	September 29, 1998	310 IAC 12-0.5-6(a) through (c); 12-3-78(a) and (b); 12-5-98(a), (c) and (d); and 12-5-145.5.
May 15, 1998	March 16, 1999	IC14-8-2-117.3, 14-34-4-18, 14-34-5-7(b) through (d), -8, -8.1, -8.2(1) through (3), -8.2(5)(A) through (5)(C), -8.3, -8.4(a) through (c)(1), -8.4(c)(2)(A) through (J) and (L), -8.5-8.6.
March 8, 1999	June 14, 1999	310 IAC 12-3-31(a)(3), (c); 12-3-48(a)(3); 12-3-69(a)(3), (c)(3), (d); 12-3-106(a)(8).
May 7, 1999	August 12, 1999	310 IAC 12-3-109(a) through (d); 12-3-114(b), (e), and (f); 12-3-115(b); 12-4-12(b)(4), (b)(6)(A)(ii), and (c); 12-4-16(a), (c), and (d); 12-6-2(a), (b), (c), and (e).
July 1, 1999	October 26, 1999	310 IAC 12-8-4.1; -8.1.
August 2, 1999	November 22, 1999	310 IAC 12-5-64.1(c) and 128.1(c).
August 31, 1999	January 7, 2000	310 12-5-159; IC 14-34-2-6(b) and (c).
February 25, 2000	May 26, 2000	IC 14-34-6-15(b) and (c).
February 4, 2000	June 5, 2000	310 IAC 0.6-1-1 through 17 [repealed]; 310 IAC 0.7-3-5 [repealed]; 312 IAC 3-1-1 through 18.
August 21, 2001	November 16, 2001	Recodification of rules from 310 IAC 12 to 312 IAC 25; nonsubstantive revisions to those rules; substantive revisions to 312 IAC 25-1-8, 25-4-17, 25-4-18, 25-4-45, 25-4-58, 25-4-59, 25-4-113, and 25-4-118.
September 3, 2003	December 31, 2003	312 IAC 25-1-45.5, 60.5, 109.5; 25-4-43(4), 47(b)(9), 85(b)(8), 93(4); 25-6-12.5, 76.5.
June 2, 2004	September 14, 2004	IC 14-8-2-117.3; 14-34-6-7, 14-34-6-10(b)(2); 14-34-8-4(g) and (h), 14-34-8-6, 14-34-8-11(a), (b), (e), and (f); 2004-71-32.
June 2, 2004	October 1, 2004	312 IAC 25-6-31(c); 25-9-5(g); 25-9-8(b)(3) and (c).
May 19, 2004	November 29, 2004	312 IAC 25-1-8; 25-1-75.5; 25-1-155.5; 25-4-17(a)(1), (d), (e), and (f); 25-4-45(b)(4); 25-4-49(a), (c), (d), (f), and (g); 25-4-87(a), (c), (d), (f), and (g); 25-4-102(d)(1), (e), and (f); 25-4-105.5; 25-4-113(f) and (g); 25-4-114(d); 25-4-115(a)(3) and (13); 25-4-118(4) and (8); 25-5-7(b); 25-5-16(b) and (c); 25-6-17(a)(3), (b)(2), (d)(2), and (d)(3); 25-6-20(a) and (c); 25-6-23(a)(2) and (4)(C); 25-6-25; 25-6-66(2); 25-6-81(a)(3), (d)(2) and (3); 25-6-84(a) and (c); 25-6-130(2); 25-7-1(a), (d)(2), (f), and (g); 25-7-20.
October 23, 2006	May 21, 2007	312 IAC 25-4-102(a)(1) and (3); (b); (d)(4), (6), and (8); (e)(3); (f)(5); 25-6-143(b)(3) and (8), (c).
.....	October 18, 2007	312 IAC 25-1-57; 25-4-87; 25-5-16(a), (b) [new], and (c) [formerly (b)]; 25-6-20; 25-6-66; and 25-7-1.
May 25, 2011	July 16, 2012	Sections: 312 IAC 25-1-10.5, 25-1-32.5, 25-1-48, 25-1-51.5, 25-1-75.1, 25-4-18, 25-4-23, 25-4-59, 25-4-64, 25-4-115.1, 25-4-122.1, 25-4-122.2, 25-4-122.3, 25-4-127, 25-5-7; 25-5-16, 25-6-59, 25-6-93, 25-6-94, 25-6-95, and 25-7-5.

[62 FR 9939, Mar. 5, 1997, as amended at 62 FR 44896, 44898 Aug. 25, 1997; 62 FR 47140, Sept. 8, 1997; 62 FR 59578, Nov. 4, 1997; 63 FR 39729, July 24, 1998; 63 FR 51829, Sept. 29, 1998; 64 FR 12896, Mar. 16, 1999; 64 FR 31693, June 14, 1999; 64 FR 43913, Aug. 12, 1999; 64 FR 57567, Oct. 26, 1999; 64 FR 63684, Nov. 22, 1999; 65 FR 1063, Jan. 7, 2000; 65 FR 34094, May 26, 2000; 65 FR 35575, June 5, 2000; 66 FR 57659, Nov. 16, 2001; 68 FR 75422, Dec. 31, 2003; 69 FR 55352, Sept. 14, 2004; 69 FR 58832, Oct. 1, 2004; 69 FR 69287, Nov. 29, 2004; 72 FR 28454, May 21, 2007; 72 FR 59009, Oct. 18, 2007; 77 FR 41685, July 16, 2012]

§ 914.16 Required program amendments.

Pursuant to 30 CFR 732.17, Indiana is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a)-(ee) [Reserved]

[49 FR 20286, May 14, 1984]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 914.16, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 914.17

30 CFR Ch. VII (7–1–17 Edition)

§ 914.17 State regulatory program and proposed program amendment provisions not approved.

(a) The amendment at Indiana Code 14–34–5–7(a) submitted on May 14, 1998, concerning permit revisions is hereby disapproved effective March 16, 1999.

(b) The amendment at Indiana Code 14–34–5–8.2(4) submitted on May 14, 1998 concerning postmining land use changes is not approved effective August 15, 2001.

(c) The amendment at Indiana Code 14–34–5–8.4(c)(2)(K) submitted by Indiana on May 14, 1998, concerning minor field revisions of temporary cessation of mining is hereby disapproved effective March 16, 1999.

(d) The amendment at 312 IAC 25–5–16 new subsections (d) through (j) submitted on December 6, 2006, concerning requirements for performance bond releases is not approved effective October 18, 2007.

(e) The phrase “unless waived by all parties” contained in paragraph 312 IAC 25–5–16(j)(2) submitted on May 25, 2011, concerning performance bond releases, is not approved effective July 16, 2012.

[64 FR 12896, Mar. 16, 1999, as amended at 66 FR 42750, Aug. 15, 2001; 77 FR 41685, July 16, 2012]

§ 914.20 Approval of Indiana abandoned mine land reclamation plan.

The Secretary approved the Indiana abandoned mine land reclamation plan, as submitted on December 7, 1981, on July 26, 1982, effective July 29, 1982. Copies of the approved plan are available at:

(a) Indiana Department of Natural Resources, Division of Reclamation, R.R. 2, Box 129, Jasonville, IN 47438–9517.

(b) Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, Room 301, 575 North Pennsylvania Street, Indianapolis, IN 46204–1521.

[64 FR 20166, Apr. 26, 1999]

§ 914.25 Approval of Indiana abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director’s decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
January 22, 1988	November 29, 1988	Project selection reclamation coordination, land acquisition, rights of entry, lien consideration, public participation, procurement, accounting systems, endangered and threatened species listing, revised administrative and management structure of the plan.
December 6, 1991	May 11 and October 6, 1992.	Revisions to the Indiana State Reclamation Plan corresponding to 30 CFR 884.13(c)(1), (2), (3), (5), (7), (d)(1), (e)(1), (2), (f)(1).
November 17, 1992 ..	October 26, 1994 ...	Emergency response reclamation program.
July 23, 1997	March 16, 1998	Indiana plan §§ 884.13(c)(2) through (7), (d)(1) through (3), (f)(2), (3); emergency response reclamation program.
June 2, 2004	September 14, 2004	IC 14–34–19–15.

[62 FR 9940, Mar. 5, 1997, as amended at 63 FR 12652, Mar. 16, 1998; 69 FR 55352, Sept. 14, 2004; 69 FR 69287, Nov. 29, 2004]

§ 914.30 State-Federal Cooperative Agreement.

enter into a Cooperative Agreement (Agreement) to read as follows:

STATE-FEDERAL COOPERATIVE AGREEMENT

The Governor of the State of Indiana (Governor) and the Secretary of the Department of the Interior (Secretary)

Surface Mining Reclamation and Enforcement, Interior

§ 914.30

ARTICLE I: INTRODUCTION, PURPOSES AND RESPONSIBLE AGENCIES

A. Authority

This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under section 503 of SMCRA, 30 U.S.C. 1253, to elect to enter into an Agreement for the State regulation of surface coal mining and reclamation operations (including surface operations and surface impacts incident to underground mining operations) on Federal lands. This Agreement provides for State regulation of coal exploration operations not subject to 43 CFR part 3400 and surface coal mining and reclamation operations in Indiana on Federal lands (30 CFR Chapter VII Subchapter D), consistent with SMCRA and State and Federal laws governing such activities and the Indiana State Program (Program).

B. Purposes

The purposes of this Agreement are to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations and coal exploration operations not subject to 43 CFR part 3400; (b) minimize intergovernmental overlap and duplication; and (c) provide uniform and effective application of the Program on all lands in Indiana in accordance with SMCRA, the Program, and this Agreement.

C. Responsible Administrative Agencies

The Natural Resource Commission (NRC) and the Division of Reclamation (DOR) of the Indiana Department of Natural Resources will be responsible for administering this Agreement on behalf of the Governor under the approved Indiana Regulatory Program. The Office of Surface and Mining Reclamation and Enforcement (OSM) will administer this Agreement on behalf of the Secretary.

ARTICLE II: EFFECTIVE DATE

After being signed by the Secretary and the Governor, this Agreement will take effect 30 days after publication in the FEDERAL REGISTER as a final rule. This Agreement will remain in effect until terminated as provided in Article XI.

ARTICLE III: DEFINITIONS

The terms and phrases used in this Agreement which are defined in SMCRA, 30 CFR Parts 700, 701 and 740, the Program, including the OSM approved State Act (I.C. 14-34), and the rules and regulations promulgated pursuant to those Acts, will be given the meanings set forth in said definitions. Where there is a conflict between the above referenced State

and Federal definitions, the definitions used in the Program will apply.

ARTICLE IV: APPLICABILITY

In accordance with the Federal lands program, the laws, regulations, terms and conditions of the Program are applicable to Federal lands in Indiana except as otherwise stated in this Agreement, SMCRA, 30 CFR 740.4, 740.11(a) and 745.13, and other applicable laws, Executive Orders, or regulations.

ARTICLE V: GENERAL REQUIREMENTS

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement.

A. *Authority of State Agency:* DOR and NRC have and will continue to have the authority under State law to carry out this Agreement.

B. *Funds:* 1. Upon application by DOR and subject to appropriations, OSM will provide the State with the funds to defray the costs associated with carrying out its responsibilities under this Agreement as provided in section 705(c) of SMCRA, the grant agreement, and 30 CFR 735.16. Such funds will cover the full cost incurred by DOR and NRC in carrying out these responsibilities, provided that such cost does not exceed the estimated cost the Federal government would have expended on such responsibilities in the absence of this Agreement.

2. OSM's Indianapolis Field Office and OSM's Mid-Continent Region Coordinating Center office will work with DOR to estimate the amount the Federal government would have expended for regulation of Federal lands in Indiana in the absence of this Agreement.

3. OSM and the State will discuss the OSM Federal lands cost estimate. After resolution of any issues, DOR will include the Federal lands cost estimate in the State's annual regulatory grant application submitted to OSM's Indianapolis Field Office.

The State may use the existing year's budget totals, adjusted for inflation and workload considerations in estimated regulatory costs for the following grant year. OSM will notify DOR as soon as possible if such projections are not acceptable.

4. If DOR applies for a grant but sufficient funds have not been appropriated to OSM, OSM and DOR will promptly meet to decide on appropriate measures that will insure that surface coal mining and reclamation operations on Federal lands in Indiana are regulated in accordance with the Program. If agreement cannot be reached, either party may terminate the Agreement in accordance with Article XI of this Agreement.

5. Funds provided to the DOR under this Agreement will be adjusted in accordance

with Office of Management and Budget Common Rule for Uniform Administration Requirements for Grants and Cooperative Agreements to State and Local Governments.

C. Reports and Records: DOR will make annual reports to OSM containing information with respect to compliance with the terms of this Agreement pursuant to 30 CFR 745.12(d). Upon request, DOR and OSM will exchange information developed under this Agreement, except where prohibited by Federal or State law.

OSM will provide DOR with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. DOR comments on the report will be appended before transmission to the Congress, unless necessary to respond to a request by a date certain, or to other interested parties.

D. Personnel: Subject to adequate appropriations and grant awards, the DOR will maintain the necessary personnel to fully implement this Agreement in accordance with the provisions of SMCRA, the Federal lands program, and the Program.

E. Equipment and Laboratories: Subject to adequate appropriations and grant awards, the DOR will assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed which are necessary to carry out the requirements of the Agreement.

F. Permit Application Fees and Civil Penalties: The amount of the fee accompanying an application for a permit for surface coal mining and reclamation operations on Federal lands in Indiana will be determined in accordance with the approved Indiana Program. All permit fees, civil penalties and fines collected from operations on Federal lands will be retained by the State and will be deposited within the Natural Resources Reclamation Division Fund. Permit fees will be considered program income. Civil penalties and fines will not be considered program income. The financial status report submitted pursuant to 30 CFR 735.26 will include a report of the amount of fees, penalties, and fines collected on such permits during the State's prior fiscal year.

ARTICLE VI: REVIEW OF PERMIT APPLICATION PACKAGE

A. Submission of Permit Application Package:

1. DOR and the Secretary require an applicant proposing to conduct surface coal mining and reclamation operations on Federal lands covered by this Agreement to submit a permit application package (PAP) in an appropriate number of copies to DOR. DOR will furnish OSM and other Federal agencies with an appropriate number of copies of the PAP. The PAP will be in the form required by

DOR and will include any supplemental information required by OSM, the Federal land management agency, and other agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP.

At a minimum, the PAP will satisfy the requirements of 30 CFR 740.13(b) and include the information necessary for DOR to make a determination of compliance with the Program and for OSM and the appropriate Federal agencies to make determinations of compliance with applicable requirements of SMCRA, the Federal lands program, and other Federal laws, Executive Orders, and regulations for which they are responsible.

2. For any outstanding or pending permit applications on Federal lands being processed by OSM prior to the effective date of this Agreement, OSM will maintain sole permit decision responsibility. After the final decision, all additional responsibilities shall pass to DOR pursuant to the terms of this Agreement along with any attendant fees, fines, or civil penalties therefrom.

B. Review Procedures Where There is No Leased Federal Coal Involved:

1. DOR will assume the responsibilities for review of PAPs where there is no leased Federal coal to the extent authorized in 30 CFR 740.4(c)(1), (2), (4), (6) and (7). In addition to consultation with the Federal land management agency pursuant to 30 CFR 740.4(c)(2), DOR will be responsible for obtaining, except for non-significant revisions, the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. DOR will request such Federal agencies to furnish their findings or any requests for additional information to DOR within 45 calendar days of the date of receipt of the PAP. OSM will assist DOR in obtaining this information, upon request. Responsibilities and decisions which can be delegated to DOR under other applicable Federal laws may be specified in working agreements between OSM and the State, with the concurrence of any Federal agency involved, and without amendment to this Agreement.

2. DOR will assume responsibility for the analysis, review and approval, disapproval, or conditional approval of the permit application component of the PAP required by 30 CFR 740.13 for surface coal mining and reclamation operations in Indiana on Federal lands not requiring a mining plan pursuant to the Mineral Leasing Act (MLA). DOR will review the PAP for compliance with the Program and the OSM approved State Act and regulations. DOR will be the primary point of contact for applicants regarding decisions on the PAP and will be responsible for informing the applicant of determinations.

Surface Mining Reclamation and Enforcement, Interior

§ 914.30

3. The Secretary will make his determinations under SMCRA that cannot be delegated to the State. Some of which have been delegated to OSM.

4. OSM and DOR will coordinate with each other during the review process as needed. OSM will provide technical assistance to DOR when requested, if available resources allow. DOR will keep OSM informed of findings made during the review process which bear on the responsibilities of OSM or other Federal agencies. OSM may provide assistance to DOR in resolving conflicts with Federal land management agencies. OSM will be responsible for ensuring that any information OSM receives from an applicant is promptly sent to DOR. OSM will have access to DOR files concerning operations on Federal lands. OSM will send to DOR copies of all resulting correspondence between OSM and the applicant that may have a bearing on decisions regarding the PAP. The Secretary reserves the right to act independently of DOR to carry out his responsibilities under laws other than SMCRA.

5. DOR will make a decision on approval, disapproval or conditional approval of the permit on Federal lands.

(a) Any permit issued by DOR will incorporate any lawful terms or conditions imposed by the Federal land management agency, including conditions relating to post-mining land use, and will be conducted in compliance with the requirements of the Federal land management agency.

(b) The permit will include lawful terms and conditions required by other applicable Federal laws and regulations.

(c) After making its decision on the PAP, DOR will send a notice to the applicant, OSM, the Federal land management agency, and any agency with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. A copy of the permit and written findings will be submitted to OSM upon request.

C. Review Procedures Where Leased Federal Coal Is Involved:

1. DOR will assume the responsibilities listed in 30 CFR 740.4(c)(1), (2), (3), (4), (6) and (7), to the extent authorized.

In accordance with 30 CFR 740.4(c)(1), DOR will assume responsibility for the analysis, review and approval, disapproval, or conditional approval of the permit application component of the PAP for surface coal mining and reclamation operations in Indiana where a mining plan is required, including applications for revisions, renewals and transfer sale and assignment of such permits. OSM will, at the request of the State, assist to the extent possible in this analysis and review.

DOR will be the primary point of contact for applicants regarding the review of the

PAP for compliance with the Program and State law and regulations.

DOR will be responsible for informing the applicant of all joint State-Federal determinations.

DOR will to the extent authorized, consult with the Federal land management agency and the Bureau of Land Management (BLM) pursuant to 30 CFR 740.4(c)(2) and (3), respectively. On matters concerned exclusively with regulations under 43 CFR part 3480, Subparts 3480 through 3487, BLM will be the primary contact with the applicant. BLM will inform DOR of its actions and provide DOR with a copy of documentation on all decisions.

DOR will send the OSM copies of any correspondence with the applicant and any information received from the applicant regarding the PAP. OSM will send to DOR copies of all correspondence with the applicant which may have a bearing on the PAP. As a matter of practice, OSM will not independently initiate contacts with applicants regarding completeness or deficiencies of the PAP with respect to matters covered by the Program.

DOR will also be responsible for obtaining the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. DOR will request all Federal agencies to furnish their findings or any requests for additional information to DOR within 45 days of the date of receipt of the PAP. OSM will assist DOR in obtaining this information, upon request of DOR.

DOR will be responsible for approval and release of performance bonds under 30 CFR 740.4(c)(4) in accordance with Article IX of this Agreement, and for review and approval under 30 CFR 740.4(c)(6) of exploration operations not subject to 43 CFR part 3480, Subparts 3480-3487.

DOR will prepare documentation to comply with the requirements of NEPA under 30 CFR 740.4(c)(7); however, OSM will retain the responsibility for the exceptions in 30 CFR 740.4(c)(7)(i)-(vii).

2. The Secretary will concurrently carry out his responsibilities under 30 CFR 740.4(a) that cannot be delegated to DOR under the Federal lands program, MLA, the National Environmental Policy Act (NEPA), this Agreement, and other applicable Federal laws. The Secretary will carry out these responsibilities in a timely manner and will avoid to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the Program. The Secretary will consider the information in the PAP and, where appropriate, make decisions required by SMCRA, MLA, NEPA, and other Federal laws.

Responsibilities and decisions which can be delegated to the State under other applicable Federal laws may be specified in working agreements between OSM and DOR, with concurrence of any Federal agency involved, and without amendment to this Agreement.

Where necessary to make the determination to recommend that the Secretary approve the mining plan, OSM will consult with and obtain the concurrences of the BLM, the Federal land management agency and other Federal agencies as required.

The Secretary reserves the right to act independently of DOR to carry out his responsibilities under laws other than SMCRA or provisions of SMCRA not covered by the Program, and in instances of disagreement over SMCRA and the Federal lands program.

3. OSM will assist DOR in carrying out DOR's responsibilities by:

(a) Coordinating resolution of conflicts and difficulties between DOR and other Federal agencies in a timely manner.

(b) Assisting in scheduling joint meetings, upon request, between State and Federal agencies.

(c) Where OSM is assisting DOR in reviewing the PAP, furnishing to DOR the work product within 50 calendar days of receipt of the State's request for such assistance, unless a different time is agreed upon by OSM and DOR.

(d) Exercising its responsibilities in a timely manner, governed to the extent possible by the deadlines established in the Program.

4. Review of the PAP:

(a) OSM and DOR will coordinate with each other during the review process as needed. DOR will keep OSM informed of findings and technical analyses made during the review process which bear on the responsibilities of OSM or other Federal agencies. OSM will ensure that any information it receives which has a bearing on decisions regarding the PAP is promptly sent to DOR.

(b) DOR will review the PAP for compliance with the Program and State law and regulations.

(c) OSM will review the operation and reclamation plan portion of the permit application, and any other appropriate portions of the PAP for compliance with the non-delegable responsibilities of SMCRA and for compliance with the requirements of other Federal laws and regulations.

(d) OSM and DOR will develop a work plan and schedule for PAP review and each will identify a person as the project leader. The project leaders will serve as the primary points of contact between OSM and DOR throughout the review process. Not later than 50 days after receipt of the PAP, unless a different time is agreed upon, OSM will furnish DOR with its review comments on the PAP and specify any requirements for additional data. To the extent practicable,

DOR will provide OSM all available information that may aid OSM in preparing any findings.

(e) DOR will prepare a State decision package, including written findings and supporting documentation, indicating whether the PAP is in compliance with the Program. The review and finalization of the State decision package will be conducted in accordance with procedures for processing PAPs agreed upon by DOR and OSM.

(f) DOR may make a decision on approval or disapproval of the permit on Federal lands in accordance with the Program prior to the necessary Secretarial decision on the mining plan, provided that DOR advises the operator in the permit that Secretarial approval of the mining plan must be obtained before the operator may conduct coal development or mining operations on the Federal lease. DOR will reserve the right to amend or rescind any requirements of the permit to conform with any terms or conditions imposed by the Secretary in his approval of the mining plan.

(g) The permit will include, as applicable, terms and conditions required by the lease issued pursuant to the MLA and by any other applicable Federal laws and regulations, including conditions imposed by the Federal land management agency relating to post-mining land use, and those of other affected agencies, and will be conditioned on compliance with the requirements of the Federal land management agency with jurisdiction.

(h) After making its decision on the PAP, DOR will send a notice to the applicant, OSM, the Federal land management agency, and any agency with jurisdiction or responsibility over Federal land affected by operations proposed in the PAP. A copy of the written findings and the permit will also be submitted to OSM.

5. OSM will provide technical assistance to DOR when requested, if available resources allow. OSM will have access to DOR files concerning operations on Federal lands.

D. Review Procedures for Permit Revisions; Renewals; and Transfer Assignment or Sale of Permit Rights:

1. Any permit revision or renewal for an operation on Federal lands will be reviewed and approved or disapproved by DOR after consultation with OSM on whether such revision or renewal constitutes a mining plan modification pursuant to 30 CFR 746.18. OSM will inform DOR within 30 days of receiving a copy of a proposed revision or renewal, whether the permit revision, or renewal constitutes a mining plan modification. Where approval of a mining plan modification is required, OSM and DOR will follow the procedures outlined in paragraphs C.1. through C.5. of this Article.

Surface Mining Reclamation and Enforcement, Interior

§ 914.30

2. OSM may establish criteria consistent with 30 CFR 746.18 to determine which permit revisions and renewals clearly do not constitute mining plan modifications.

3. Permit revisions or renewals on Federal lands which are determined by OSM not to constitute mining plan modifications under paragraph D.1. of this Article or that meet the criteria for not being mining plan modifications as established under paragraph D.2. of this Article will be reviewed and approved following the procedures set forth under Indiana law and the State Program and paragraphs B.1. through B.5. of this Article.

4. Transfer, assignment or sale of permit rights on Federal lands shall be processed in accordance with Indiana law and the State Program and 30 CFR 740.13(e).

ARTICLE VII: INSPECTIONS

A. DOR will conduct inspections on Federal lands in accordance with 30 CFR 740.4(c)(5) and prepare and file inspection reports in accordance with the Program.

B. DOR will, subsequent to conducting any inspection pursuant to 30 CFR 740.4(c)(5), and on a timely basis, file with OSM a legible copy of the completed State inspection report.

C. DOR will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by the Agreement, except as described hereinafter. Nothing in this Agreement will prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department of the Interior may conduct any inspections necessary to comply with 30 CFR parts 842 and 843 and its obligations under laws other than SMCRA.

D. OSM will give DOR reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity to join in the inspection.

When OSM is responding to a citizen complaint of an imminent danger to the public health and safety, or of significant, imminent environmental harm to land, air or water resources, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact DOR no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger or significant, imminent environmental harm will be referred to DOR for action. The Secretary reserves the right to conduct inspections without prior notice to DOR to carry out his responsibilities under SMCRA.

ARTICLE VIII: ENFORCEMENT

A. DOR will have primary enforcement authority under SMCRA concerning compli-

ance with the requirements of the Agreement and the Program in accordance with 30 CFR 740.4(c)(5). Enforcement authority given to the Secretary under other Federal laws and Executive orders including, but not limited to, those listed in appendix A (attached) is reserved to the Secretary.

B. During any joint inspection by OSM and DOR, DOR will have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation, and assessment of penalties. DOR will inform OSM prior to issuance of any decision to suspend or revoke a permit on Federal lands.

C. During any inspection made solely by OSM or any joint inspection where DOR and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR parts 843, 845, and 846. Such enforcement action will be based on the standards in the Program, SMCRA, or both, and will be taken using the procedures and penalty system contained in 30 CFR parts 843, 845, and 846.

D. DOR and OSM will promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining permits subject to this Agreement, and of all actions taken with respect to such violations.

E. Personnel of DOR and the Department of the Interior, including OSM, will be mutually available to serve as witness in enforcement actions taken by either party.

F. This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than SMCRA.

ARTICLE IX: BONDS

A. DOR and the Secretary will require each operator who conducts operations on Federal lands to submit a performance bond payable to the State of Indiana and the United States to cover the operator's responsibilities under SMCRA and the Program. Such performance bond will be conditioned upon compliance with all requirements of the SMCRA, the Program, State rules and regulations, and any other requirements imposed by the Secretary or the Federal land management agency. Such bond will provide that if this Agreement is terminated, the portion of the bond covering the Federal lands will be payable only to the United States. DOR will advise OSM of annual adjustments to the performance bond pursuant to the Program.

B. Performance bonds will be subject to release and forfeiture in accordance with the procedures and requirements of the Program. Where surface coal mining and reclamation operations are subject to an approved mining plan, a performance bond shall be released by the State after the release is concurred in by OSM.

C. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of SMCRA.

ARTICLE X: DESIGNATING LAND AREAS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING AND RECLAMATION OPERATIONS AND ACTIVITIES AND VALID EXISTING RIGHTS (VER) AND COMPATIBILITY DETERMINATIONS

A. Unsuitability Petitions

1. Authority to designate Federal lands as unsuitable for mining pursuant to a petition, including the authority to make substantial legal and financial commitment determinations pursuant to section 522(a)(6) of SMCRA, is reserved to the Secretary.

2. When either DOR or OSM receives a petition to designate land areas unsuitable for all or certain types of surface coal mining operations that could impact adjacent Federal or non-Federal lands pursuant to section 522(c) of SMCRA, the agency receiving the petition will notify the other of its receipt and the anticipated schedule for reaching a decision, and request and fully consider data, information and recommendations of the other. OSM will coordinate with the Federal land management agency with jurisdiction over the petition area, and will solicit comments from the agency.

B. Valid Existing Rights and Compatibility Determinations

The following actions will be taken when requests for determinations of VER pursuant to section 522(e) of SMCRA or for determinations of compatibility pursuant to section 522(e)(2) of SMCRA, and received prior to or at the time of submission of a PAP that involves surface coal mining and reclamation operations and activities:

1. For Federal lands within the boundaries of any areas specified under section 522(e)(1) of SMCRA, OSM will determine whether VER exists for such areas.

For private in holdings within section 522(e)(1) areas, DOR, with the consultation and concurrence of OSM, will determine whether surface coal mining operations on such lands will or will not affect the Federal interest (Federal lands as defined in section 701(4) of SMCRA). OSM will process VER determination requests on private in holdings within the boundaries of section 522(e)(1) areas where surface coal mining operations affects the Federal interest.

2. For Federal lands within the boundaries of any national forest where proposed operations are prohibited or limited by section 522(e)(2) of SMCRA and 30 CFR 761.11(b), OSM will make the VER determinations. OSM will process requests for determinations of

compatibility under section 522(e)(2) of SMCRA.

3. For Federal lands, DOR will determine whether any proposed operation will adversely affect any publicly owned park and, in consultation with the State Historic Preservation Officer, places listed in the National Register of Historic Sites, with respect to the prohibitions or limitations of section 522(e)(3) of SMCRA. DOR will make the VER determination for such lands using the State Program. DOR will coordinate with any affected agency or agency with jurisdiction over the proposed surface coal mining and reclamation operations.

In the case that VER is determined not to exist under section 522(e)(3) of SMCRA or 30 CFR 761.11(c), no surface coal mining operations will be permitted unless jointly approved by DOR and the Federal, State or local agency with jurisdiction over the publicly owned park or historic place.

4. DOR will process and make determinations of VER on Federal lands, using the State Program, for all areas limited or prohibited by section 522(e)(4) and (5) of SMCRA as unsuitable for mining. For operations on Federal lands, DOR will coordinate with any affected agency or agency with jurisdiction over the proposed surface coal mining and reclamation operation.

ARTICLE XI: TERMINATION OF COOPERATIVE AGREEMENT

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XII: REINSTATEMENT OF COOPERATIVE AGREEMENT

If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

ARTICLE XIII: AMENDMENT OF COOPERATIVE AGREEMENT

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

ARTICLE XIV: CHANGES IN STATE OR FEDERAL STANDARDS

A. The Secretary or the Governor may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party will, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations or request necessary legislative action. Such changes will be made under the procedures of 30 CFR part 732 for changes to the Program and under the procedures of section 501 of SMCRA for changes to the Federal lands program.

Surface Mining Reclamation and Enforcement, Interior

§ 915.10

B. DOR and the Secretary will provide each other with copies of any changes to their respective laws, rules, regulations or standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XV: CHANGES IN PERSONNEL AND ORGANIZATION

Each party to this Agreement will notify the other, when necessary, of any changes in personnel, organization and funding, or other changes that may affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

ARTICLE XVI: RESERVATION OF RIGHTS

This Agreement will not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under laws other than SMCRA or their regulations including but not limited to those listed in appendix A.

Dated: October 26, 1999.

Frank O'Bannon,
Governor of Indiana.

Bruce Babbitt,
Secretary of the Interior.

APPENDIX A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations, including 43 CFR part 3480.
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR part 1500.
4. The Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR part 402.
5. The Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 *et seq.*; 48 Stat. 401.
6. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR part 800.
7. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.
8. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.
9. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.
10. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. *et seq.*
11. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.
12. Executive Order 11988 (May 24, 1977), for flood plain protection.

13. Executive Order 11990 (May 24, 1977), for wetlands protection.

14. The Mineral Leasing Act for Acquired Lands, 30 U.S. 351 *et seq.*, and implementing regulations.

15. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

16. The Constitution of the United States.

17. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

18. 30 CFR Chapter VII.

19. The Constitution of the State of Indiana.

20. Indiana Surface Coal Mining and Reclamation Act (P.L. 1-1995, SEC. 27) at Ind. Code 14-34 *et seq.*

21. Indiana Department of Natural Resources, Coal Mining and Reclamation Operations, Rules and Regulations, 310 Ind. Admin. Code 12.

[64 FR 70580, Dec. 17, 1999]

PART 915—IOWA

Sec.

915.1 Scope.

915.10 State regulatory program approval.

915.15 Approval of Iowa regulatory program amendments.

915.16 Required program amendments. [Reserved]

915.20 Approval of Iowa abandoned mine land reclamation plan.

915.25 Approval of Iowa abandoned mine land reclamation plan amendments.

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

§ 915.1 Scope.

This part contains all rules applicable only within Iowa which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[46 FR 5891, Jan. 21, 1981]

§ 915.10 State regulatory program approval.

The Secretary approved the Iowa regulatory program, as submitted February 28, 1980, and amended and clarified on June 11, 1980, and December 15, 1980, effective April 10, 1981. Copies of the approved program are available at:

(a) Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation, Henry A. Wallace Building, E. 9th and Grand Streets, Des Moines, IA 50319.

(b) Office of Surface Mining Reclamation and Enforcement, Mid-Continent Regional Coordinating Center, Alton

§915.15**30 CFR Ch. VII (7–1–17 Edition)**

Federal Building, 501 Belle Street,
Alton, IL 62002.

[64 FR 20166, Apr. 26, 1999]

**§915.15 Approval of Iowa regulatory
program amendments.**

The following is a list of the dates
amendments were submitted to OSM,

the dates when the Director's decision
approving all, or portions of these
amendments, were published in the
FEDERAL REGISTER and the State cita-
tions or a brief description of each
amendment. The amendments in this
table are listed in order of the date of
final publication in the FEDERAL REG-
ISTER.

Original amendment submission date	Date of final publi- cation	Citation/description
October 1, 1981	May 26, 1982	IAC 780–4.6(8), 4.35(13).
June 3, 1982	September 8, 1982	IC 83–14.2, .7(a).
September 28, 1982	January 4, 1983	IAC 4.311(2); 4.322(13); 4.522(11); 4.523(15), (38), (60); 4.55(1), (5).
May 9, 1984	December 7, 1984	IAC 4.523(63), 4.322(14).
January 31, 1985	May 24, 1985	IAC 780–4.6(83), .42(1)(83).
July 25 and 26, 1985	May 9, 1986	IAC 780–4.6(1), (4), .35(1), (6), .37(2), .321(8), .361(9); and 780-Chapter 26.
June 16, 1986	October 7, 1986	Iowa Senate File 2175: State Government Reorganization Bill.
August 12, 1986	December 11, 1986	IAC 4.522(15)c, g.
April 28, 1987	October 7, 1987	I.C. 83.7.
June 9, 1988	December 9, 1988	I.C. 83.26.
December 26, 1990 ..	November 6, 1991 ..	IAC 27–40.1 through .7, .11, .12, .13, .21, .22, .23, .30 through .39, .41, .51, .61 through .68, .71 through .74, .81, .82, .91 through .99.
November 23, 1992 ..	February 8, 1994	IAC 27–40.1, .3 through .7, .11, .12, .13, .21, .22, .23, .30 through .39, .41, .51, .61 through .68, .71, .73, .74, .75, .81, .82, .92.
April 13, 1994	April 6, 1995	IAC 27–40.3(207), .4(9), .31(14), .32(207), .51(7), .63(20), .74(3), .75(2).
December 4, 1996	April 7, 1997	IAC 40.4(10); .38 (2) and (3); 64 (6) through (9).
September 28, 1998 ..	November 26, 1999 ..	Revegetation Success Guidelines dated April 1999 (partial approval).
August 17, 2001	December 27, 2001 ..	Sections III.H, IV.E, and V.A.2(l) of Iowa's April 1999 Revegetation Success Standards and Statistically Valid Sampling Techniques.
June 14, 2002	November 6, 2002 ..	IAC 27–40.71(207).
February 24, 2004	June 1, 2004	IAC 27–40.1(1), 40.1(4); 40.3(207); 40.4(207), 40.4(2), 40.4(3), 40.4(9), 40.4(11); 40.5(207); 40.6(207), 40.6(2); 40.7(207); 40.11(207); 40.12(207); 40.13(207); 40.21(207), 40.21(4) through 40.21(6); 40.22(207), 40.22(2); 40.23(207); 40.30(207), 40.30(1), 40.30(4); 40.31(207), 40.31(1) through 40.31(9), 40.31(12) through 40.31(15); 40.32(207), 40.32(1), 40.32(2), 40.32(4); 40.33(207); 40.34(207), 40.34(2), 40.34(3); 40.35(207), 40.35(3); 40.36(207); 40.37(207), 40.37(4); 40.38(207), 40.38(2), 40.38(3); 40.39(207); 40.41(207); 40.51(207); 40.61(207), 40.61(4); 40.62(207); 40.63(207), 40.63(6), 40.63(9); 40.64(207), 40.64(4), 40.64(6); 49.65(207); 40.66(207); 40.67(207); 40.71(207); 40.73(2)g, 40.73(4)d; 40.74(207), 40.74(9); 40.75(207), 40.75(2); 40.81(207); 40.82(207); 40.92(8).
December 27, 2004 ..	May 3, 2005	Section III.F and Section IV.A and G of Iowa's April 1999 Revegetation Success Standards and Statistically Valid Sampling Techniques.
August 19, 2005	January 31, 2006	IAC 27C40.41(3) and 40.41(4).
August 25, 2011	May 2, 2012	Sections: IAC 27–40.1(17A, 207)(1); 40.3(207); 40.4(207); 40.5(207); 40.6(207); 40.7(207); 40.11(207); 40.12(207); 40.13(207); 40.21(207)(3) and (7); 40.22(207)(1); 40.23(207); 40.30(207); 40.31(207) (9), (10), and (11); 40.32(207)(7); 40.33(207); 40.34(207); 40.35(207); 40.36(207)(2); 40.37(207); 40.38(207)(6); 40.39(207)(2) and (3); 40.41(207); 40.51(207); 40.61(207); 40.62(207); 40.63(207); 40.64(207); 40.65(207); 40.66(207); 40.67(207); 40.71(207); 40.74(207); 40.75(207); 40.81(207); 40.82(207); 40.91(17A, 207); 40.92(17A, 207)(8); 40.93(17A, 207); 40.94(17A, 207); 40.95(17A, 207); 40.96(17A, 207); 40.97(17A, 207); 40.98(17A, 207); and 40.99(17A, 207).

[62 FR 9940, Mar. 5, 1997, as amended at 62 FR 16492, Apr. 7, 1997; 64 FR 66390, Nov. 26, 1999; 66 FR 66747, Dec. 27, 2001; 67 FR 67524, Nov. 6, 2002; 69 FR 30825, June 1, 2004; 70 FR 22794, May 3, 2005; 71 FR 5007, Jan. 31, 2006; 77 FR 25871, May 2, 2012]

**§915.16 Required program amend-
ments. [Reserved]**

as submitted on December 17, 1982, ef-
fective March 28, 1983. Copies of the ap-
proved plan are available at:

**§915.20 Approval of Iowa abandoned
mine land reclamation plan.**

(a) Iowa Department of Agriculture
and Land Stewardship, Division of Soil

The Secretary approved the Iowa
abandoned mine land reclamation plan,

Surface Mining Reclamation and Enforcement, Interior

§ 916.15

Conservation, Henry A. Wallace Building, E. 9th and Grand Streets, Des Moines, IA 50319.

(b) Office of Surface Mining Reclamation and Enforcement, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, IL 62002.

[64 FR 20167, Apr. 26, 1999]

§ 915.25 Approval of Iowa abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all or portions of these amendments were published in the FEDERAL REGISTER, and the State citations or a brief description of each amendment. The amendments in this table are listed in the order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
June 14, 2002	December 5, 2002	Emergency response reclamation program; AMLR Plan sections I. through IV., V.B. and C.; Iowa Code (IC) 207.21 subsection 2.a.(2) through 2.b. and subsection 3.d.; 207.23; and 207.29.

[67 FR 72379, Dec. 5, 2002]

PART 916—KANSAS

Sec.

916.1 Scope.

916.10 State regulatory program approval.

916.12 State regulatory program and proposed program amendment provisions not approved.

916.15 Approval of Kansas regulatory program amendments.

916.16 Required regulatory program amendments. [Reserved]

916.20 Approval of Kansas abandoned mine land reclamation plan.

916.25 Approval of Kansas abandoned mine land reclamation plan amendments.

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

§ 916.1 Scope.

This part contains all rules applicable only within Kansas which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[46 FR 5898, Jan. 21, 1981]

§ 916.10 State regulatory program approval.

The Secretary conditionally approved the Kansas regulatory program, as submitted on February 26, 1980, and amended on October 31, 1980, effective January 21, 1981. He fully approved the Kansas program, as amended on May 20, 1981, effective April 14, 1982. Copies

of the approved program are available at:

(a) Kansas Department of Health and Environment, Surface Mining Section, 4033 Parkview Drive, Frontenac, KS 66763.

(b) Office of Surface Mining Reclamation and Enforcement, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, IL 62002.

[64 FR 20167, Apr. 26, 1999]

§ 916.12 State regulatory program and proposed program amendment provisions not approved.

(a) The following provisions of the Kansas Administrative Regulations (K.A.R.) as submitted on April 23, 1986, and January 26, 1988, are disapproved: Paragraphs (c) and (d) of K.A.R. 47-9-1 insofar as they incorporate by reference 30 CFR 816.133(d) and 817.133(d), which establish criteria for variances from approximate original contour requirements.

(b) [Reserved]

[53 FR 39470, Oct. 7, 1988]

§ 916.15 Approval of Kansas regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision

§916.16

30 CFR Ch. VII (7-1-17 Edition)

approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
May 20, 1981	April 14, 1982	MLCRA 49-411, 412, 413, 414, 416, 421, 49-422, 422a, 430.
November 16, 1982 ..	March 1, 1983	MLCRA 49-403, 49-405c, 49-406, 49-420; § 10 of House Bill 2182; K.A.R. 47-2-21, 47-8-10, 47-8-11.
March 16, 1984	June 8, 1984	MLCRA 49-406; K.A.R. 47-1-10.
December 21, 1984 ..	April 11, 1985	K.A.R. 47-15-13.
April 4, 1985	November 15, 1985	K.S.A. 1984 Supp. 49-406(g); K.A.R. 47-1-11; 47-2-75; 47-3-42, (a)(23), (45); 47-5; 47-8-9(a), (j); 47-9-1, 2, 3; 47-13-4, 5, 6; 47-15; Memoranda of understanding with Fish and Game Commission, Division of Water Resources, Department of Health and Environment, State Geological Survey, State Historical Society, State Water Office, State Conservation Commission and State Fire Marshal.
April 23, 1986	May 26, 1987	K.A.R. 47-1-4; 47-2-7, 17, 44, 53, a, 75; 47-3-2, 3, a, 4, 21, 40, 42; 47-4-14, 15; 47-6-3, 4, 5, 6; 47-7-2; 47-8-2, 9, a, 10; 47-9-1, 3, 4; 47-10-1; 47-11-8; 47-12-4; 47-15-1a.
August 5, 1987	December 31, 1987	K.S.A. 49-431; K.A.R. 47-9-1.
April 29, 1988	October 5, 1988	K.S.A. 49-402, 404, 405, a through d; 407 through 410, 413, 415, 416, a, 417, 420, 421a, 426 through 429, 432, 433; K.S.A. 1987 Supplement 49-403, 406, 422a.
January 26, 1988	October 7, 1988	K.A.R. 47-2-75; 47-3-42(a); 47-7-2; 47-9-1 (c), (d); 47-10-1; 47-12-4.
June 8, 1990	February 19, 1991 ..	The revegetation guidance document entitled "Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success".
June 29, 1989	September 13, 1991	K.A.R. 47-1-1, 3, 4, 8, 9, 10, 11; 47-2-14, 21, 53, 67, 75; 47-3-1, 2, 3a, 42; 47-4-14a, 15, 16, 17; 47-5-5a, 16; 47-6-1 through 4, 6 through 10; 47-7-2; 47-8-9, 11; 47-9-1, 2, 4; 47-10-1; 47-11-8; 47-12-4; 47-13-4 through 7; 47-15-1a, 3, 4, 7, 8, 15, 17.
June 29, 1989	April 13, 1992, September 9, 1994.	"Guidelines for repair of rills and gullies in Kansas".
June 3, 1991	August 19, 1992	Statistical sample adequacy.
July 10, 1992	June 14 and August 30, 1993.	K.A.R. 47-1-9; 47-2-14, 53a, 58, 67, 75; 47-3-2, 3a, 42; 47-4-14a, 15; 47-5-5a, 16; 47-6-1 through 4, 6, through 10; 47-7-2; 47-8-9, 11; 47-9-1, 4; 47-10-1; 47-11-8; 47-12-4; 47-13-4, 5; 47-14-4, 7; 47-15-1a, 4, 7, 8.
September 14, 1993	June 3, 1994	K.A.R. 47-2-75(e)(6); 47-4-14a(b), (c)(7), (11), (d), (2)(F), (6)(E)(iii), (iv); 47-5-5a(a)(10), (b), (14), (15), (16), (19), (20), (c)(7)(C); 47-6-7(h)(2); 47-9-1(c)(17), (43), (46), (d)(17), (39), (44); 47-15-1a, (b)(6), (9), (21).
August 9, 1995	November 27, 1995	Alternative sampling method for determining woody stem density.
May 7, 1997	March 3, 1998	K.A.R. 47-1-1, 3, 4, 8, 9, 10, 11; 47-2-14, 21, 53, 53a, 58, 64, 67, 74, 75; 47-3-1, 2, 3a, 42; 47-4-14a, 47-4-15; 47-4-16; 47-4-17; 47-5-5a; 47-5-16; 47-6-1, 2, 3, 4, 6, 7, 8, 9, 10; 47-7-2; 47-8-9, 11; 47-9-1, 2, 4; 47-10-1; 47-11-8; 47-12-4; 47-13-4, 5, 6; 47-14-7; 47-15-1a; 47-15-3, 4, 7, 8, 15, 17.
October 9, 2001	February 26, 2002.	Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success dated January 2002.
July 24, 2002	March 25, 2003	K.A.R. 47-2-75; 47-3-2, 42; 47-4-14a(c)(2); 47-5-5a, 17; 47-6-1, 2(d)(2), 3, 4, 6, 8, 9, 10, 11; 47-7-2; 47-8-9; 47-9-1, 4; 47-10-1; 47-11-8; 47-12-4; 47-13-4; 47-14-7; 47-15-1a.
November 19, 2007 ..	November 28, 2008	Revegetation Success Guidelines; Normal Husbandry Practices; Kansas Regulations: K.A.R. 47-4-14a(c)(2), (d)(2)(A), (d)(3)(A); K.A.R. 47-5-5a(a)(4), (a)(5), (a)(9), and (a)(11) through (a)(13).

[62 FR 9941, Mar. 5, 1997, as amended at 63 FR 10317, Mar. 3, 1998; 67 FR 8716, Feb. 26, 2002; 68 FR 14326, Mar. 25, 2003; 73 FR 72351, Nov. 28, 2008]

§916.16 Required regulatory program amendments. [Reserved]

§916.20 Approval of Kansas abandoned mine land reclamation plan.

The Secretary conditionally approved the Kansas abandoned mine land reclamation plan, as submitted on

October 1, 1981, effective February 1, 1982. He fully approved the Kansas plan, as amended by Kansas House Bill No. 2994 on April 14, 1982, and Kansas House Bill No. 2516 on May 2, 1983, and removed all conditions prohibiting the funding of State abandoned mine land construction grants, effective June 3,

Surface Mining Reclamation and Enforcement, Interior

§ 917.10

1983. Copies of the approved plan are available at:

(a) Kansas Department of Health and Environment, Surface Mining Section, 4033 Parkview Drive, Frontenac, KS 66763.

(b) Office of Surface Mining Reclamation and Enforcement, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, IL 62002.

[64 FR 20167, Apr. 26, 1999]

§ 916.25 Approval of Kansas abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
April 29, 1988	October 5, 1988	Reorganization of the Regulatory Authority. House Bill 3009 eliminated the Kansas Mined Land Conservation and Reclamation Board and transferred its functions and staff to the Kansas Department of Health and Environment.
September 30, 1988 June 29 and July 26, 1989.	January 10, 1989 ... November 30, 1989	Approval of emergency reclamation program. KAR 47-16-1, -16-2, -16-4 through -8; policy and procedures for project ranking and selection; organization structure; public participation.
October 25, 1991	April 13, 1992	KAR 47-16-5(b), -6.
May 7, 1997	March 3, 1998	K.A.R. 47-16-1 through 47-16-11.
March 17, 1998	June 8, 1998	Section 884.13(c)(2) and (d)(3).
July 24, 2002	March 25, 2003	K.A.R. 47-16-9(a), 47-16-10(b), and 47-16-12.

[62 FR 9941, Mar. 5, 1997, as amended at 63 FR 10317, Mar. 3, 1998; 63 FR 31112, June 8, 1998; 68 FR 14326, Mar. 25, 2003]

PART 917—KENTUCKY

Sec.

917.1 Scope.

917.10 State regulatory program approval.

917.11 Conditions of State regulatory program approval.

917.12 State regulatory program and proposed program amendment provisions not approved.

917.13 State statutory and regulatory provisions set aside.

917.15 Approval of Kentucky regulatory program amendments.

917.16 Required regulatory program amendments.

917.17 State regulatory program amendments not approved.

917.20 Approval of the Kentucky abandoned mine reclamation plan.

917.21 Approval of Kentucky abandoned mine land reclamation plan amendments.

917.30 State-Federal cooperative agreement.

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

§ 917.1 Scope.

This part contains all rules applicable only within Kentucky that have

been adopted under the Surface Mining Control and Reclamation Act of 1977.

[47 FR 21434, May 18, 1982]

§ 917.10 State regulatory program approval.

The Kentucky State program as resubmitted on December 30, 1981, and amended and clarified on February 22, 1982, was conditionally approved, effective May 18, 1982. Beginning on that date, the Kentucky Department for Natural Resources and Environmental Protection was deemed the regulatory authority in Kentucky for surface coal mining and reclamation operations and for coal exploration operations on non-Federal and non-Indian lands. Copies of the approved program are available for review at:

(a) Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503-2922.

(b) Department for Surface Mining Reclamation and Enforcement, Number

2, Hudson Hollow Complex, Frankfort, Kentucky 40601.

[48 FR 251, Jan. 4, 1983, as amended at 59 FR 17929, Apr. 15, 1994]

§917.11 Conditions of State regulatory program approval.

The approval of the Kentucky State program is subject to the state revising its program to correct the deficiencies listed in this section. The program revisions may be made, as appropriate, to the statute, to the regulations, to the program narrative, or by means of a legal opinion. This section indicates, for the general guidance of the State, the component of the program to which the Secretary recommends the change be made.

(a)–(p) [Reserved]

[47 FR 21434, May 18, 1982, as amended at 49 FR 33247, Aug. 22, 1984; 49 FR 37587, Sept. 25, 1984; 50 FR 8610, Mar. 4, 1985; 50 FR 23003, May 30, 1985]

§917.12 State regulatory program and proposed program amendment provisions not approved.

(a) The Director does not approve the following provisions of the proposed program amendment concerning permit renewals that Kentucky submitted on April 23, 1998:

(1) The phrase “* * * if a permit has expired or * * *” in KRS 350.060(16).

(2) The following sentence in KRS 350.060(16): “Upon the submittal of a permit renewal application, the operator or permittee shall be deemed to have timely filed the permit renewal application and shall be entitled to continue, under the terms of the expired permit, the surface coal mining operation, pending the issuance of the permit renewal.”

(b) Subsections (2) through (6) of the amendment submitted as House Bill 599 on May 9, 2000, are hereby not approved, effective June 20, 2001.

(c) The amendment submitted by letter dated April 12, 2002, proposing a new section of the Kentucky Revised Statutes at Chapter 350 and referenced as Kentucky House Bill 405, is hereby not approved, effective November 20, 2002.

(d) The phrase “* * * coal mining activities and * * *” in KRS 350.445(3)(g) is not approved.

(e) The exemption from the engineer inspection requirements of subsection 9 for an impoundment with no embankment structure, that is completely incised, or is created by a depression left by backfilling and grading, that is not a sedimentation pond or coal mine waste impoundment and is not otherwise intended to facilitate active mining at section 1(9)(c) at 405 KAR 16/18:100 is not approved. The exemption from examination for an impoundment with no embankment structure, that is completely incised or created by a depression left by backfilling and grading but not meeting MSHA requirements at 30 CFR 77.216 or not meeting the Class B and C classifications at section 1(10)(b) is not approved to the extent that it is not implemented and managed in accordance with the provisions of OSM Directive TSR-2.

(f) The changes to Kentucky’s Notice of Assessment of Civil Penalties and Penalty Assessment Conference Officer’s Report that specify that prepayment of a proposed assessment or penalty is no longer required are not approved.

[65 FR 29953, May 10, 2000, as amended at 66 FR 33023, June 20, 2001; 67 FR 70009, Nov. 20, 2002; 68 FR 2199, Jan. 16, 2003; 68 FR 42274, July 17, 2003; 71 FR 54589, Sept. 18, 2006]

§917.13 State statutory and regulatory provisions set aside.

(a) The following provision of Kentucky Revised Statute at KRS 350.060(22) is inconsistent with section 701(28) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside effective December 1, 1985:

“(22) All operations involving the crushing, screening, or loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site, shall be exempt from the requirements of this chapter.”

(b) Reserved]

(c) The following portions of the Kentucky Revised Statute at KRS 350.060(16) are inconsistent with section 506 of SM CRA and less effective than 30 CFR 843.11 and are set aside effective September 6, 2000:

The specific wording is the phrase “if a permit has expired or . . .” and the following sentence:

Surface Mining Reclamation and Enforcement, Interior

§ 917.15

Upon the submittal of a permit renewal application, the operator or permittee shall be deemed to have timely filed the permit renewal application and shall be entitled to continue, under the terms of the expired permit, the surface coal mining operation, pending the issuance of the permit renewal.

[50 FR 47728, Nov. 20, 1985, as amended at 65 FR 53911, Sept. 6, 2000]

§ 917.15 Approval of Kentucky regulatory program amendments.

(a) The following is a list of the dates amendments were submitted to OSM,

the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
May 28, 1982	January 4, 1983	405 KAR 1:005 § 6; 3:005 § 6; 7:020 § 1(11), (70), (117); 7:030 § 1; 7:040 § 5(1), 10(2), (7); 7:090 § 4(1), (6); § 6; 7:095, 8:010 § 6(1), (2), 13(1), 20(5), 21(2)(a)(4), (b)(1), 22(1), (2)(a), (a)(2), (2)(c)(1), (4), (5), (6); 8:020 § 2(2)(h); 8:030 § 23(4); 12:010 § 3(5)(a), (b); 16:140 § 2(1)(d); 18:140 § 2(1)(d); 24:020 § 3(5), (7), 4(6); 24:030 § 4(4), 8(7), 9.
May 28, 1982	May 13, 1983	KRS 151.250(3); 350.010, .035, .062(9), .093 § 2, .425, .990; 405 KAR 16:020 § 4.
January 11, 1983	May 20, 1983	405 KAR 7:020 § 1(13), (27), (34), (57); 12:010 § 6; 16:060 §§ 1(3), 9(2), 11(1), .090 §§ 2, 5(5), .110 § 2(2), .130 § 2(2), .220 § 4; 18:060 §§ 7(3), 9(1), (3), .090 §§ 2, 5(5), .110 § 2(2), .130 § 2(2), .230 § 4; 24:030 § 3.
February 1, 1983	October 12, 1983	Technical Reclamation Memorandum #9.
October 31, 1983	November 25, 1983	405 KAR 7:020E, .030E.
January 10, 1984	April 13, 1984	"Kentucky's Plan for Transition to Primacy".
May 1, 1984	August 22, 1984	KRS 350.010, .032, .093(2), .250(1), (3), (4); 355.060(5)(g).
October 31, 1983	September 25, 1984	405 KAR 1:030, .040, .050; 7:020, .030, .090; 8:030, .040; 16:060, .090, .140; 18:090, .140.
October 31, 1983	October 3, 1984	405 KAR 8:050 § 2; 16:190; 18:190.
October 12, 1984	March 4, 1985	405 KAR 7:020 § 1(87), (118), .030 § 3(1)(e).
August 3, 1984	May 30, 1985	KRS Chapter 350, .032, .060, .135, .990; 405 KAR 16:020.
August 29, 1985	November 20, 1985	Paragraph D of "Field Enforcement Procedures" in § II of the State program plan; 405 KAR 7:090 §§ 11(2)(a), 12(3); 24:030 defining "substantial legal and financial commitments".
December 4, 1984	December 10, 1985	405 KAR 7:070; 16:120; 18:120.
June 6, 1984, December 17, 1985.	January 24, 1986	405 KAR 1:015; 3:015; 7:015.
August 13, 1985	March 3, 1986	405 KAR 7:020, .080; 8:030, .040; 12:010, .020; 16:050, .110, .130, .170; 18:050, .110, .130, .170; 20:030.
September 16, 1985, December 10, 1985.	March 17, 1986	405 KAR 7:015; 10:030.
December 10, 1985	April 4, 1986	405 KAR 7:090, § 11(2)(a).
December 3, 1985	April 9, 1986	405 KAR 7:020E; 8:050E; 20:070E.
August 3, 1984	May 27, 1986	KRS 350.066 through .070; 405 KAR 10:035.
April 29, 1986	July 15, 1986	KRS Chapter 350 contained in Senate Bills 130, 374; KRS 350.470 through .550 contained in House Bill 285; KRS 350.060(22) contained in House Bill 757; KRS 350.990 contained in House Bill 839.
August 30, 1985, September 16, 1985, February 7, 1986.	August 27, 1986	405 KAR 7:020, .060; 8:030, .040, .050; 16:010, .060, .080, .190; 18:060, .080, .190; 20:040, .070; documents incorporated by reference: "Soil Conservation Service, Kentucky Standards and Specifications for Land Restoration, Currently Mined Prime Farmland;" "Kentucky Prime Farmland Revegetation and Crop Production After Mining;" "Estimated Crop Yields on Prime Farmland Soils in Western Kentucky Coalfields;" "Estimated Crop Yields on Prime Farmland Soils in Eastern Kentucky Coalfields".
September 5, 1986	March 9, 1987	405 KAR 10:200.
February 27, 1987	December 31, 1987	405 KAR 16:060 § 11; 18:060 § 11, .190 § 2.
June 17, 1987	March 10, 1988	405 KAR 7:070.
April 29, 1988	October 6, 1988	405 KAR 7:090.
May 28, 1987	October 7, 1988	KRS 350.032 contained in House Bill 869.
July 5, 1989	December 15, 1989	405 KAR 8:010, .020, .030, .040; 24:040.
April 29, 1986	April 9, 1990	KRS 350.032.
April 21, 1988	August 10, 1990	KRS 350.020, .060, .064, .093, .130, .131, .151.
August 15, 1989	November 1, 1990	405 KAR 8:010 § 20(3), (5).
July 15, 1988	December 31, 1990	405 KAR 7:015, .020, .030, .090; 8:010, .020, .050; 10:010, .020, .030, .040, .050; 16:010, .070, .080, .100, .110, .120, .150, .190; 18:010, .070, .080, .100, .110, .120, .150, .190; 20:010, .060; 24:020, .030, .040.

Original amendment submission date	Date of final publication	Citation/description
May 8, 1990	February 6, 1991	KRS chapter 350 contained in Senate Bill 255; 350.010, .053, .054, .057, .060, .070, .085, .090, .093, .110, .113, .130, .139, .151, .990; 224.083.
January 9, 1991	April 16, 1991	405 KAR 10:040 § 2(4)(b)1.
January 24, 1991	September 23, 1991	405 KAR 7:020 § 1; 8:010 §§ 13(4), (5), 18(5), 25(1) through (4), :030 §§ 1(4), 2, 3, :040 §§ 1(3), 2, 3; 12:020 § 3(6).
June 28, 1991	April 15, 1992	405 KAR 7:080.
September 18, 1989	August 18, 1992	405 KAR 10:200; KRS 350.710–710.
June 28, 1991	October 1, 1992	405 7:001, § 1, :015 § 4(6), (7), :020, :021, § 1, :030 § 3(1) through (4), :035, §§ 1 through 9; 8:001 § 1, :020 §§ 1, 1(1), (2)(c), 2, (1), (2)(g), 4, 4(c)(5); 10:001 § 1, :200 §§ 1, 2, 4(4), 5(3), 6(1), (2), 7(1), (d), (e), (f), (j), (2), (d), (e), (i); 12:001 § 1; 16:001 § 1, :190 § 7(2), :210 §§ 1(1), 2, 3, 4; 18:001 § 1, :190 § 5(2), :220 §§ 1(1), 2, 3, 4; 20:001 § 1, :010 §§ 2, 3, 4; 24:001 § 1.
March 13, 1992	December 9, 1992 ..	405 KAR 8:030(20), (36), :040(20), (36); 16:180(1), (2), (3); 18:180(1), (2), (3).
July 30, 1992	December 17, 1992	KRS Chapter 350 §§ 350.550, .553, .560, .597.
June 28, 1991	January 12, 1993 ...	405 KAR 8:010 §§ 5(1)(c), (d), 12(1)(a), 14(8), 20(2)(a)10, (3)(a), (d)23, (f), 20(5) through (7).
July 30, 1992	March 26, 1993	KRS Chapter 350 contained in House Bill 844 and Senate Bill 381; 350.010, .0281, .130(1), .260, .450(4)(c), .705(1) (b), (c); numerous other sections on “applicant,” “permit applicant,” “permittee,” “person,” “operator”.
June 28, 1991	June 8, 1993	405 KAR 16:200, 18:200, TRM No. 19 (Field Sampling Techniques for Determining Ground Cover, Productivity, and Stocking Success of Reclaimed Surface Mined Lands), the use of average county yield data found in Kentucky Agricultural Statistics, a report published annually by the Kentucky Agricultural Statistics Service.
July 28, 1992	August 6, 1993	KRS 350 contained in Senate Bill 318; 405 KAR 7:001, 7:090, :091, :092; 8:001; 12:020.
July 21, 1992	October 1, 1993	405 KAR 1:007, 3:007, 7:030 § 4.
May 21, 1993	February 24, 1994 ..	405 KAR 10:050 Statutory and regulatory citations, sections Necessity and Function, 1(1), 2(4), (5); 12:001 section Necessity and Function, (29), (30); 12:010 Statutory and regulatory citations, sections Necessity and Function, 3(2), (5)(a), (b), 4(1), (3).
June 28, 1991	May 26, 1994	405 KAR 8:030 §§ 1(4)(a), (b), 2(3), (4), (5)(a), (11), (12), 3(5), 4(2), 5(4), 10, 37–MRP, 38–MRP; 8:040 §§ 1(3)(a), (b), 2(3), (4), (11), (12), 3(5), 4(2), 5(4), 10, 37–MRP, 38–MRP.
April 26, 1994	September 1, 1994 ..	405 KAR 7:080 sections Necessity and Function, 1, 3, 4, 5, 6(4), (5), (8)(b), 7(1)(b), (3), 8, 10(2) (a), (b), 11(1), (d), (e).
April 18, 1994	September 16, 1994 ..	KRS 350.010, 350(1) through (32).
October 3, 1994	February 15, 1995 ..	405 KAR 7:080 §§ 5(2), (a), (b), 6, 8(2)(a)(11), (b)(11), 11(1), (e).
April 29, 1994	June 27, 1995	KRS 42.470(1)(c); 132; 136; 138; 139; 177.977; 211.390(1), .392(1), (2), (5), (6), (8); 350.010 (1), (2), (9), (16), (22), (23), .0285, .0301(1), (4), .0305, .032(2), (4), .070(1), .085(1), (7), .095(1), (2), .421, (1), (2), .560(1); 351.070(13), (14); 352.420(3).
August 2, 1994	December 7, 1995 ..	405 KAR 16:010 §§ 1, 6, 7, 8; 18:010 §§ 4, 5, 6.
August 15, 1996	August 29, 1997	KRS 350.131(3), 350.150(1), Chapter 350 Section 3, KRS 350.0301(1), 350.990(1).
November 3, 1997	July 31, 1998	Staffing and budget levels.
June 28, 1991	August 4, 1998	405 KAR 16:200 § 1(7)(b) and 18:200 § 1(7)(b).
April 23, 1998	May 10, 2000	KRS 350.060(16) [partial approval]; 350.131(2); 350.139(1); 350.990 (1), (3), (4), (9), and (11).
May 9, 2000	June 20, 2001	House Bill 599, subsection (1).
May 4, 1999	December 26, 2001 ..	KAR 10:010 Sections 2(2), 5(1), 5(2) and bond forms SME–42(6/99 ed.) and SME–42–F(6/99 ed.)
December 22, 1998 ..	February 5, 2002	405 KAR 7:097 approved (in-kind reclamation)
May 9, 2000	April 30, 2002	House Bill 502, part IX, Subsection 36(b), KRS 350.085(6).
January 25, 2001	May 7, 2002	405 KAR 18:210, Sections 1(4), 2(2), and 3(4).
January 28, 2000	June 19, 2002	405 KAR 20:060 § 3(3)(b) 2000 and (c).
April 25, 2002	November 6, 2002 ..	2002 HB 809, Kentucky Revised Statutes at Chapter 350.
May 9, 2000	January 16, 2003 ...	House Bill 792, KRS 350.445(3) (except for a portion of (3)(g)).
June 25, 2002	May 8, 2003	KAR 16:090 Sections 1(1), (2), 4, 5(2) and (6) and 18:090 Sections 1(1), (2), 4, 5(2) and (6).
July 30, 1997	July 17, 2003	405 KAR 8:001 section 1(50); 16:001 section 1(50), (51), (69); 16:090 sections 1 through 5; 16:100 section 1(1),(3),(5),(6),(10), section 2(1); 16:160 section 1(1),(2),(3), section 2(2), section 3(1),(3), section 4; 18:001 section 1(52), (53), (72); 18:090 sections 1 through 5; 18:100 section 1(1),(3),(5),(6),(10), section 2(1); and 18:160 section 1(1),(2),(3), section 2(2), section 3(1),(3) and section (4).

Surface Mining Reclamation and Enforcement, Interior

§ 917.17

Original amendment submission date	Date of final publication	Citation/description
July 30, 1997	August 11, 2004	405 KAR 8:001 Section 1(3), (20), (24), (46), (60), (65), (69), (86) and (108), Section 2(1) and (2); 405 KAR 8:030 Section 3(3)(d)1, Section 11(2)(a), Section 12(4)(a) and (b), Section 13(1)(b) and (3), Section 14(5), Section 15(5), Section 16, Section 20(3), Section 23(1)(g), Section 24(4)(e), Section 26(3), Section 27(2)(e), Section 32(3)(e), Section 34, Section 37(1)(b), Section 38(1) and (2); 405 KAR 8:040 Section 3(3)(d)1, Section 11(2)(a) and (4)(a), (b), Section 13(1)(b)2 and (3), Section 14(5), Section 15(5), Section 16, Section 20(3), Section 26, Section 32(1)(b)5 and (3)(e), Section 34, Section 37(1)(b), Section 39(1) and (2); 405 KAR 16:001 Section 1(3), (32), (46), (53), (63)- deleted, (81), (98), (99), (108), Section 2(1) and (2), 405 KAR 16:060 Section 1(4)(b), Section 2(2), Section 4(1), Section 8(1)(a), (b), (2)(a)-(e); 405 KAR 18:001 (3), (6), (24), (35), (49), (55), (61), (62)- deleted, (67), (68), (84), (100), (109), Section 2(1) and (2); 405 KAR 18:060 Section 1(4)(b), Section 2(2), Section 4(1), Section 12(1)(a), (b), (2)(a)-(e); 405 KAR 18:210 Section 1(1), (2) and (3), Section (1) and (3), Section 3, Section 4 and Section 5.
May 14, 2004	December 20, 2004	KRS 350.280, subsections (1) (b), (1) (c), 1(e), 1(f), (2), (3), (4); subsections 4(a)-(d), (5), (6), (7) and (8) are deleted.
June 28, 1991 with record material submitted July 29, 2004.	May 3, 2005	405 KAR 16:200 Section 1(7)(a) and (7)(d) and 405 KAR 18:200 Section 1 (7)(a) and (7)(d).
March 28, 2006	September 18, 2006	Easements of necessity, deletion of outdated language in KRS Chapter 350.
September 14, 2009	March 9, 2011	405 KAR 16:140, Disposal of coal mine waste. 405 KAR 18:140, Disposal of coal mine waste.

(b) The Director is deferring his decision on the enforcement provisions of section 720 of the Act from its effective date (October 24, 1992), to the effective date of KRS 350.421(1) and (2) (July 15, 1994).

[62 FR 9942, Mar. 5, 1997]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 917.15, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 917.16 Required regulatory program amendments.

(a)-(b) [Reserved]

(c) Pursuant to 30 CFR 732.17, Kentucky is required, prior to implementation of the following statutory amendments, to submit to the Director proposed regulations to implement the amendments, and to receive the Director's approval of the regulations:

(1)-(3) [Reserved]

(d) Pursuant to 30 CFR 732.17, Kentucky is required to submit for OSM's approval the following proposed amendments by the dates specified:

(1)-(4) [Reserved]

(5) [Reserved]

(e)-(m) [Reserved]

(n) By October 5, 1998, Kentucky shall amend the Kentucky program, or provide a written description of an amendment together with a timetable for en-

actment which is consistent with established administrative or legislative procedures in the State, to delete the term "haul roads" at sections 1(7)(b) of 405 KAR 16:200 and 18:200.

(o) [Reserved]

[50 FR 23687, June 5, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 917.16, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 917.17 State regulatory program amendments not approved.

(a) The amendment to Kentucky's regulations at 405 KAR 16:060 Section 8(4)(c); 18:060 Section 12(4)(c) and 18:210 Section 3(5)(c) which were originally submitted by Kentucky on July 30, 1997 and later amended are disapproved.

(b) The amendment at Kentucky Revised Statute 350.060(22) submitted by Kentucky on May 26, 1982, and the legal opinion (insofar as it relates to this amendment) and Reclamation Advisory Memorandum No. 33 submitted by Kentucky on October 28, 1983, are hereby disapproved effective September 17, 1985.

(c) The amendment to Kentucky's program transferring \$3,840,000 from the Kentucky Bond Pool Fund to the Commonwealth's General Fund for the 2002-2003 fiscal year is not approved.

§917.20

(d) The addition of the word “abated” to modify the term “violation” in paragraph (4)(a) of section 3 of Chapter 7:090 of Title 405 of the Kentucky Administrative Regulations, as submitted to OSMRE by letter dated April 27, 1988, is hereby disapproved. The effect of the disapproval is to continue the requirement that any person who chooses not to contest the fact of violation (whether abated or not) or the assessment shall pay the assessment in full within 30 days of the date the final assessment order was mailed.

[49 FR 50720, Dec. 31, 1984, as amended at 50 FR 37659, Sept. 17, 1985; 51 FR 29919, Aug. 21, 1986; 53 FR 39261, Oct. 6, 1988; 53 FR 39473, Oct. 7, 1988; 63 FR 40827, July 31, 1998; 69 FR 26503, May 13, 2004; 69 FR 48787, Aug. 11, 2004; 70 FR 11123, Mar. 8, 2005]

§917.20 Approval of the Kentucky abandoned mine reclamation plan.

The Kentucky Abandoned Mine Reclamation Plan as submitted on June 4, 1981, is approved. Copies of the approved program are available at the following locations:

(a) Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503-2922.

(b) Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Division of Abandoned

30 CFR Ch. VII (7-1-17 Edition)

Lands, 618 Teton Trail, Frankfort, Kentucky 40601.

[59 FR 17929, Apr. 15, 1994; 59 FR 27239, May 26, 1994]

§917.21 Approval of Kentucky abandoned mine land reclamation plan amendments.

(a) The Kentucky Amendment, submitted to OSM on December 8, 1982, is approved. You may receive a copy from:

(1) Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Division of Abandoned Lands, 618 Teton Trail, Frankfort, Kentucky 40601; or

(2) Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503-2922.

(b) The Kentucky Abandoned Mine Reclamation Amendment, submitted to OSM on March 25, 1985, is approved. Copies may be obtained at the addresses listed in paragraph (a) of this section.

(c) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
June 24, 1992	December 17, 1992	Chapter 3—Goals and Obligations, Chapter 15—Maps of Eligible Lands and Waters.
May 5, 1994	July 29, 1994	Chapter 5—Coordination with Ramp, Indian, and Other Reclamation Programs.

(d) The Kentucky Abandoned Mine Land Reclamation Plan amendment, submitted to OSM on April 29, 2002, is approved with the following exceptions. The word “or,” which appears at the end of paragraph 1 of the section entitled “Lands for Permanent Facilities,” is not approved. We are approving the State of Kentucky's incorporation by reference of the Federal AML Enhancement Rule into their regulations. This approval is subject to the restrictions placed upon the Federal

regulation by the court in *Kentucky Resources Council v. Norton*, 2002 U.S. App. Lexis 11365, Slip. Op. at 5. (D.C. Cir. May 30, 2002) The “Reclamation Agreements” provision at the end of Chapter 12 only applies to AML reclamation projects authorized through the Federal AML grant process. Copies may be obtained at the address listed in (a)(2) of this section for OSM or the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Division of Abandoned Mine

Surface Mining Reclamation and Enforcement, Interior

§ 917.30

Lands, 2521 Old Lawrenceburg Road, Frankfort, Kentucky 40601.

(e) The Kentucky AMLR Plan amendment submitted on April 23, 2007, and consisting of revisions to KRS Chapter 350 that correspond to changes to the Federal Surface Mining Control and Reclamation Act of 1977 resulting from the Relief and Health Care Act of 2006, is approved.

[62 FR 9943, Mar. 5, 1997, as amended at 68 FR 65843, Nov. 24, 2003; 72 FR 59479, Oct. 22, 2007]

§ 917.30 State-Federal cooperative agreement.

COOPERATIVE AGREEMENT

The Governor of the Commonwealth of Kentucky (the Governor) and the Secretary of the Department of the Interior (the Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

ARTICLE I: INTRODUCTION, PURPOSE, AND RESPONSIBLE AGENCIES

A. Authority

This Agreement is authorized by Section 523(c) of the Surface Mining Control and Reclamation Act (Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an Agreement for the regulation and control of coal exploration operations not subject to 43 CFR Group 3400 and surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation consistent with the Act, the Federal lands program (30 CFR Chapter VII, Subchapter D) and the approved Kentucky State Program (Program) for surface coal mining and reclamation operations on Federal lands.

B. Purposes

The purposes of this Agreement are to (a) foster Federal-State cooperation on the regulation of surface coal mining and reclamation operations and coal exploration operations not subject to 43 CFR Group 3400, (b) minimize intergovernmental duplication of effort, and (c) provide for uniform and effective application of the Program on all lands in Kentucky in accordance with the Act and the Program.

C. Responsible Administrative Agencies

The Kentucky Natural Resources and Environmental Protection Cabinet (NREPC), acting through the Department for Surface Mining Reclamation and Enforcement

(DSMRE), shall be responsible for administering this Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSM) shall administer this Agreement on behalf of the Secretary.

ARTICLE II: EFFECTIVE DATE

After being signed by the Secretary and the Governor, this Agreement shall be effective on October 1, 1998. This Agreement shall remain in effect until terminated as provided for in Article XI.

ARTICLE III: DEFINITIONS

The terms and phrases used in this Agreement, which are defined in the Act, 30 CFR Parts 700, 701 and 740 and defined in the KRS 350 and the rules and regulations promulgated pursuant to that Act, shall have the same meanings as set forth in said definitions. Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the approved State Program will apply except in the case of a term which defines the Secretary's continuing responsibilities under the Act or other laws.

ARTICLE IV: APPLICABILITY

In accordance with the Federal lands program, the laws, regulations, terms and provisions of the Program are applicable to Federal lands in Kentucky except as otherwise stated in this Agreement, The Act, 30 CFR 740.4 and 745.13 or other applicable Federal laws, Executive Orders or regulations.

Orders and decisions issued by the NREPC in accordance with the Program that are appealable shall be appealed to the reviewing authority in accordance with the Program. Orders and decisions issued by the Secretary or his authorized agents that are appealable shall be appealed to the Department of the Interior's Office of Hearings and Appeals.

ARTICLE V: GENERAL REQUIREMENTS

The Governor and the Secretary affirm that they will comply with all provisions of this Agreement.

A. Authority of State Agency

NREPC has and shall continue to have the authority under State law to carry out this agreement.

B. Funding

Upon application by NREPC, and subject to appropriations, OSM will provide the State with funds to defray the costs associated with carrying out its responsibilities under this Agreement as provided in Section 705(c) of the Act and 30 CFR part 735. Such funds will cover the full cost incurred by

§917.30

NREPC in carrying out those responsibilities. The amount of the grant will be determined using the procedures specified in the Federal Assistance Manual Chapter 3-10 and appendix III.

For purposes of this agreement, actual costs of NREPC's administration of its approved program on Federal lands in accordance with this agreement shall be that percentage of NREPC's total program expenditures during any specific grant period that equals the percentage of Federal lands within all lands under permit in the State of Kentucky for that specific grant period.

If NREPC applies for a grant but sufficient funds have not been appropriated to OSM, OSM and NREPC will meet to decide upon appropriate measures that will insure that mining operations on Federal lands located in Kentucky are regulated in accordance with the approved Program. The NREPC also reserves the right to terminate this agreement should OSM be unable to adequately fund this program.

C. Reports and Records

NREPC will make annual reports to OSM containing information with respect to compliance with terms of this Agreement pursuant to 30 CFR 745.12(d).

Upon request, NREPC and OSM will exchange information generated under this Agreement, except where prohibited by Federal or State law.

OSM will provide NREPC with a copy of any final evaluation reports prepared concerning State administration and enforcement of this Agreement. NREPC comments on the report will be attached before being sent to the Congress or other interested parties.

D. Personnel

NREPC shall have the personnel necessary to fully implement this Agreement in accordance with the provision of the Act, applicable regulations, the Federal lands program and the approved Program.

E. Equipment and Facilities

NREPC will assure itself access to equipment, laboratories and facilities to perform all inspections, investigations, studies, tests and analyses that are necessary to carry out the requirements of this Agreement.

F. Permit Application Fees and Civil Penalties

The amount of the fee accompanying an application for a permit for operations on Federal lands in Kentucky shall be determined in accordance with KRS 350.060 and Federal law. All permit fees and civil penalties collected from operations on Federal lands will be retained by the State. Permit fees shall be considered Program income. Civil penalties shall not be considered Pro-

30 CFR Ch. VII (7-1-17 Edition)

gram income. The financial status report submitted to OSM pursuant to 30 CFR 735.26 shall include the amount of fees and civil penalties collected and attributable to Federal lands during the prior State fiscal year.

ARTICLE VI: REVIEW OF PERMIT APPLICATION PACKAGE

A. Responsibilities

NREPC will assume primary responsibility for the analysis, review, and approval, disapproval, or conditional approval of the permit application component of the permit application package (PAP) required by 30 CFR 740.13 for surface coal mining and reclamation operations in Kentucky on Federal lands. NREPC will assume the responsibilities for review of permit applications to the extent authorized in 30 CFR 740.4(c)(1), (2), (3), (4), (6), and (7).

For proposals to conduct surface coal mining operations involving leased Federal coal, OSM is responsible for preparing a mining plan decision document in accordance with 30 CFR 746.13 and obtaining the Secretary's approval.

The Bureau of Land Management (BLM) is responsible for matters concerned exclusively with regulations under 43 CFR Group 3400.

The Secretary reserves the right to act independently of NREPC to carry out responsibilities under laws other than the Act or provisions of the Act not covered by the Program, and in instances of disagreement over the Act and the Federal lands program. The Secretary will make determinations under the Act that cannot be delegated to the State, some of which have been delegated to OSM.

Responsibilities and decisions which can be delegated to NREPC under other applicable Federal laws may be specified in working agreements between OSM and the State with the concurrence of any Federal agency involved and without amendment to this agreement.

B. Permit Application Package

NREPC shall require an applicant proposing to conduct surface coal mining and reclamation operations on Federal lands to submit a PAP with an appropriate number of copies to NREPC. NREPC will furnish OSM, the Federal land management agency, and any other agency with jurisdiction or responsibility over Federal lands affected by operations proposed in the PAP with an appropriate number of copies of the PAP. The PAP will be in the form required by NREPC and will include any supplemental information required by OSM, the Federal land management agency, and any other agency with jurisdiction or responsibility over Federal lands affected by operations proposed in the PAP.

At a minimum, the PAP will satisfy the requirements of 30 CFR 740.13(b) and include the information necessary for NREPC to make a determination of compliance with the Program, and for OSM, the appropriate Federal land management agencies, and any other agencies with jurisdiction or responsibilities over Federal lands affected by operations proposed in the PAP to make determinations of compliance with applicable requirements of the Act, the Federal lands program, other Federal laws, Executive Orders, and regulations for which they are responsible.

C. Review Procedures

NREPC will be the primary point of contact for applicants regarding the review of the PAP for compliance with the Program and State laws and regulations. OSM will review the applicable portions of the PAP for compliance with the non-delegated responsibilities of the Act and for compliance with the requirements of other Federal laws, Executive Orders, and regulations.

OSM and NREPC will develop a work plan and schedule for PAP reviews that comply with the time limitations established by the approved State program, and each agency will designate a person as the Federal lands liaison. The Federal lands liaisons will serve as the primary points of contact between OSM and NREPC throughout the review process. Not later than 45 calendar days after receipt of an administratively complete PAP, unless a different schedule is agreed upon, OSM will furnish NREPC with its review comments on the PAP and specify any requirements for additional data.

OSM and NREPC will coordinate with each other during the review process as needed. NREPC will send to OSM copies of any correspondence with the applicant and any information received from the applicant regarding the PAP.

OSM will send to NREPC copies of all OSM correspondence which may have a bearing on the PAP.

OSM will provide technical assistance to NREPC when requested, and will have access to NREPC files concerning operations on Federal lands. NREPC will keep OSM informed of findings made during the review process which bear on the responsibilities of OSM or other Federal agencies.

D. Coordination Between NREPC, OSM, and Other Federal Agencies

NREPC will, to the extent authorized, consult with the Federal land management agency and BLM pursuant to 30 CFR 740.4(c)(2) and (3), respectively. NREPC will also be responsible for obtaining the comments and determinations of other agencies with jurisdiction or responsibility over the Federal lands affected by the operations pro-

posed in the PAP. NREPC will request all Federal agencies to furnish their findings or any request for additional information to NREPC within 45 calendar days of the date of receipt of the PAP. OSM will, upon request, assist NREPC in obtaining such information.

In accordance with 30 CFR 745.12(g)(2), where lands containing leased Federal coal are involved, NREPC will provide OSM, in the form specified by OSM in consultation with NREPC, with written findings indicating that each permit application is in compliance with the terms of the regulatory program and a technical analysis of each permit application to assist OSM in meeting its responsibilities under other applicable Federal laws and regulations.

Where leased Federal coal is involved, OSM will consult with and obtain the concurrences of BLM, the Federal land management agency, and any other agency with jurisdiction or responsibility over the Federal lands affected by the operations proposed in the PAP as required to make its recommendation for the Secretary's decision on the mining plan.

Where BLM contacts the applicant in carrying out its responsibilities under 43 CFR Group 3400, BLM will immediately inform NREPC of its actions and provide NREPC with a copy of documentation of all decisions within 5 calendar days.

E. Permit Application Decision and Permit Issuance

NREPC will prepare a State decision package, including written findings and supporting documentation, indicating whether the PAP is in compliance with the Program. NREPC will make the decision on approval, disapproval, or conditional approval of the permit on Federal lands.

Any permit issued by NREPC will incorporate any lawful terms or conditions imposed by the Federal land management agency, including conditions relating to post-mining land use, and will be conditioned upon compliance with the requirements of the Federal land management agency.

NREPC may make a decision on approval, disapproval, or conditional approval of the permit on Federal lands in accordance with the Program prior to the necessary Secretarial decision on the mining plan when leased Federal coal is involved, provided that NREPC advises the operator in the permit that Secretarial approval of the mining plan must be obtained before the operator may conduct surface coal mining operations on the Federal lease. NREPC will reserve the right to amend or rescind any requirements of the permit to conform with any terms or conditions imposed by the Secretary in the approval of the mining plan.

After making its decision on the PAP, NREPC will send a notice to the applicant,

§917.30

OSM, the Federal land management agencies, and any other agency with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. A copy of the permit and written findings will be provided to OSM upon request.

F. Review Procedures for Permit Revisions; Renewals; and Transfer, Assignment, or Sale of Permit Rights

Any permit revision or renewal for a surface coal mining and reclamation operation on Federal lands will be reviewed and approved, or disapproved, by NREPC after consultation with OSM on whether such revision or renewal constitutes a mining plan modification pursuant to 30 CFR 746.18. OSM will inform NREPC within 10 calendar days of receiving a copy of a proposed permit revision or renewal, whether the permit revision or renewal constitutes a mining plan modification.

Transfer, assignment, or sale of permit rights on Federal lands shall be processed in accordance with the Program and 30 CFR 740.13(e).

ARTICLE VII: INSPECTIONS

NREPC will conduct inspections of all surface coal mining and reclamation operations on Federal lands, in accordance with 30 CFR 740.4(c)(5) and the Program and prepare and file inspection reports in accordance with the Program. NREPC, subsequent to conducting any inspection pursuant to 30 CFR 740.4(c)(5), and in a timely fashion which will not exceed 45 calendar days, will file with OSM's Lexington Field Office a legible copy of the completed State inspection report.

NREPC will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described herein-after. Nothing in this Agreement will prevent inspections by authorized Federal or State land management agencies for purposes other than those covered by this Agreement. The Department of the Interior acting through OSM, the Federal land management agency or any other agency with jurisdiction or responsibility over Federal lands to be affected under the proposed PAP, may conduct any inspections necessary to comply with obligations under 30 CFR Parts 842 and 843 and any laws other than the Act.

OSM will give NREPC reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide NREPC inspectors with an opportunity to accompany OSM inspectors. When OSM is responding to a citizen complaint of an imminent danger to the public health and safety, or of significant, imminent environmental harm to land, air or water resources pursuant to 30 CFR 842.11(b)(1)(ii)(c), it will contact NREPC and

30 CFR Ch. VII (7-1-17 Edition)

provide the opportunity for a joint Federal/State inspection. Inability of NREPC to make an immediate joint inspection will not be cause for OSM to delay a Federal inspection where a citizen has alleged, and OSM has reason to believe, that an imminent danger to the public health and safety, or significant, imminent environmental harm to land, air or water resources exists. All citizen complaints which do not involve an imminent danger or significant, imminent environmental harm will be referred to NREPC for action in accordance with OSM regulations, policies, and procedures.

ARTICLE VIII: ENFORCEMENT

NREPC will have primary enforcement authority under the Act concerning compliance with the requirements of this Agreement and the Program in accordance with 30 CFR 740.4(c)(5). Enforcement authority given to the Secretary under other Federal laws and Executive Orders including, but not limited to, those listed in appendix A (attached) is reserved to the Secretary.

During any joint inspections by OSM and NREPC, NREPC will have primary responsibility for enforcement procedures including issuance of orders of cessation, notices of violation, and assessment of penalties. NREPC will inform OSM prior to issuance of any decision to suspend or revoke a permit on Federal lands.

During any inspection made solely by OSM or any joint inspection where NREPC and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR Parts 843, 845, and 846. Such enforcement action will be based on the standards in the Program, the Act, or both, and will be taken using the procedures and penalty system contained in 30 CFR Parts 843, 845, and 846.

NREPC and OSM will within 5 calendar days notify each other of all violations of applicable laws, regulations, orders, or approved mining permits subject to this Agreement, and of all actions taken with respect to such violations.

Personnel of NREPC and OSM will be mutually available to serve as witnesses in enforcement actions taken by either party.

This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than the Act.

ARTICLE IX: BONDS

NREPC and the Secretary will require each permittee who conducts operations on Federal lands to submit a performance bond payable to the State of Kentucky for an amount adequate to cover the operator's responsibilities under the Act and Program. Such performance bond will be conditioned upon compliance with all requirements of the Act, the

Surface Mining Reclamation and Enforcement, Interior

§ 917.30

Program, State rules and regulations, and any other requirements imposed by the Department of the Interior. Such bond will state on its face that in the event the Federal Lands Cooperative Agreement between Kentucky and the U.S. Department of the Interior is terminated, the portion of the bond covering the Federal lands increment(s) shall be assigned to the United States. The bond shall also state that if subsequent to the forfeiture of the bond, the Cooperative Agreement is terminated, any unspent or uncommitted proceeds of the portion of the bond covering the Federal lands increment(s) shall be assigned to and forwarded to the United States. NREPC will advise OSM within 30 calendar days of any adjustments to the performance bond made pursuant to the Program.

Prior to releasing the permittee from any obligation under such bond for surface coal mining operations involving leased Federal coal, NREPC will obtain the concurrence of OSM. OSM concurrence will include coordination with the Federal land management agency and any other agency with jurisdiction or responsibility over Federal lands affected by the surface coal mining and reclamation operation.

Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by Section 715 of the Act. Where Federal lease bonds or protections are required, OSM or the appropriate Federal agency is responsible for the collection and maintenance of such bonds.

ARTICLE X: DESIGNATING AREAS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING AND RECLAMATION OPERATIONS AND ACTIVITIES, VALID EXISTING RIGHTS (VER), AND COMPATIBILITY DETERMINATIONS

A. Unsuitability Petitions

1. Authority to designate Federal lands as unsuitable for mining pursuant to a petition is reserved to the Secretary.

2. When either NREPC or OSM receives a petition to designate land areas unsuitable for all or certain types of surface coal mining operations that could impact adjacent Federal or non-Federal lands pursuant to Section 522(c) of the Act, the agency receiving the petition will notify the other agency of receipt within 5 calendar days and of the anticipated schedule for reaching a decision, and request and fully consider data, information and recommendations of the other agency. OSM will coordinate with the Federal land management agency and any other agency with jurisdiction or responsibility over Federal lands within or adjacent to the

petition area and will solicit comments from these agencies.

B. VER and Compatibility Determinations

The following actions will be taken when requests for determinations of VER pursuant to Section 522(e)(1) or (2) of the Act or for determinations of compatibility pursuant to Section 522(e)(2) of the Act are received:

1. For Federal lands where proposed operations are prohibited or limited by Section 522(e)(1) or (2) of the Act and 30 CFR 761.11(a) or (b), OSM will make the VER determination.

2. OSM will process requests for determinations of compatibility under Section 522(e)(2) of the Act and 30 CFR 761.11(b) and 761.12(c).

ARTICLE XI: TERMINATION OF COOPERATIVE AGREEMENT

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XII: REINSTATEMENT OF COOPERATIVE AGREEMENT

If this Agreement has been terminated in whole or in part, it may be reinstated under the provisions of 30 CFR 745.16. The Secretary reserves the powers and authority specified in 30 CFR 745.13.

ARTICLE XIII: AMENDMENT OF COOPERATIVE AGREEMENT

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

ARTICLE XIV: CHANGES IN STATE OR FEDERAL STANDARDS

The Secretary or NREPC may, from time to time, promulgate new or revised performance or reclamation requirements or enforcement and administrative procedures. Each party will, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations or request necessary legislative action.

Such changes will be made under the procedures of 30 CFR part 732 for changes to the Program and under the procedures of Section 501 of the Act for changes to the Federal lands program.

NREPC and OSM will provide each other with copies of any changes to their respective laws, rules, regulations, policy statements, guidelines or standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XV: CHANGES IN PERSONNEL AND ORGANIZATION

Each party to this Agreement will notify the other, when necessary, of any changes in personnel, organization and funding, or other

Pt. 918

changes that may affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

ARTICLE XVI: RESERVATION OF RIGHTS

This Agreement will not be construed as waiving or preventing the assertion of any rights in this Agreement that the State or the Secretary may have under laws other than the Act or their regulations, including but not limited to those listed in Appendix A.

Dated: August 18, 1998.

Paul E. Patton,
Commonwealth of Kentucky.

Dated: September 24, 1998.

Bruce Babbitt,
Secretary of the Interior.

APPENDIX A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations, including 43 CFR part 3480.

3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR part 1500.

4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR part 402.

5. The Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 *et seq.*, 48 Stat. 401.

6. The Bald and Golden Eagle Protection Act of 1940, as amended, 16 U.S.C. 668-668d, and implementing regulations.

7. The Migratory Bird Treaty Act, as amended, 16 U.S.C. 701-718h *et seq.*

8. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR part 800.

9. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

10. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

11. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

12. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

13. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

14. Executive Order 11988 (May 24, 1977), for flood plain protection.

15. Executive Order 11990 (May 24, 1977), for wetlands protection.

30 CFR Ch. VII (7-1-17 Edition)

16. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

17. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

18. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa *et seq.*, as amended.

19. The Constitution of the United States.

20. The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

21. 30 CFR Chapter VII.

22. The Constitution of the Commonwealth of Kentucky and State Law.

[63 FR 53257, Oct. 2, 1998]

PART 918—LOUISIANA

Sec.

918.1 Scope.

918.10 State regulatory program approval.

918.15 Approval of Louisiana regulatory program amendments.

918.16 Required program amendments.

918.20 Approval of Louisiana abandoned mine land reclamation plan.

918.25 Approval of Louisiana abandoned mine land reclamation plan amendments.

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

§918.1 Scope.

This part contains all rules applicable only within Louisiana which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[45 FR 67343, Oct. 10, 1980]

§918.10 State regulatory program approval.

The Secretary approved the Louisiana regulatory program, as submitted on January 3, 1980, and resubmitted on September 4, 1980, effective October 10, 1980. Copies of the approved program are available at:

(a) Louisiana Department of Natural Resources, Office of Conservation, Injection and Mining Division, 625 N. 4th Street, P.O. Box 94275, Baton Rouge, LA 70804-9275.

(b) Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 East Skelly Drive, Suite 470, Tulsa, OK 74135-6548.

[64 FR 20167, Apr. 26, 1999]

Surface Mining Reclamation and Enforcement, Interior

§ 918.25

§ 918.15 Approval of Louisiana regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these

amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
January 19, 1990	May 8, 1991	Chapters 1, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 35, 37, 39, 41, 43, 45, 47, 51, 53, 55, 59, 63, 65, 69.
August 14, 1990	May 21, 1991	Policy statements—PS-1, PS-2, PS-3 regarding requirements at LSMR 5353.C, 3127, 5321; 107.C, Chapter 4.
November 12, 1991 ..	October 28, 1992 ..	LSMR 107.G.1, 2; 53123.A, .1, .2, .3, .4, .B.1.b, .d, .2.a, .b, .3.b, .B.2.a, .4, .7, .9; Policy Statement PS-4 interpreting LSMR 2523; LSMR 53125.
May 3, 1994	September 20, 1994	LSMR 53123.B.4.a.
November 2, 1994	January 24, 1995	LSMR 5423.B.4.a; Policy Statement PS-5.
December 4, 1997	March 11, 1998	LSMR section 105.
October 24, 1997	May 8, 1998	Sections 105.; 2537.A.11.; 2725.A., A.2., A.3., A.3.a., C.1., F; 2907.C.5.; 3705.A.2., A.2.a., A.2.b.; 3711.A., B.1. through B.6.; 3717.A., A.2., A.3.; 4501.A.3., A.4.; 5333.A.1. through A.13.; 5411.A.; 5413.A.; 5503.A.2.; 5507.A.4.; 6507.A.2.; 6913.B.; 6915.B.1.; 6917.A.; 7105.C.
August 23, 1999	December 7, 1999 ..	R.S. 30:907(B)(16) through (20); (C); and 927(2).
June 1, 2001	December 14, 2001	Revegetation Success Standards for Pastureland.
August 3, 2001	February 26, 2002.	LSMR Sections 105, 1105, 1107.B through F, 1109, 2111.A.8, 2113.B.4, and 2323.
October 2, 2001	November 15, 2002	LAC Sections 5423.B.1.e. and 8.a.; 5424; 5425; and policy document titled, "Reclamation Phase III Revegetation Success Standards for Post-Mining Land Use of Wildlife Habitat.
March 4, 2010	March 9, 2011	Sections 105; 2913; 3113 C., D., E., F., G., H.; 3114; 3115 A. 17, 18, 19; 3127; 3129; 3131; 3133; 3135; 3137; Chapter 35 title; 3521; 3523; 3517 C.1.; 2304; 2305 A.1., A.2.c., d., e., A.3., A.4.; 2307 A.1., A.3.; 5414; 6501 G.

[62 FR 9943, Mar. 5, 1997, as amended at 63 FR 11830, Mar. 11, 1998; 63 FR 25394, May 8, 1998; 63 FR 38881, July 20, 1998; 64 FR 68291, Dec. 7, 1999; 66 FR 64749, Dec. 14, 2001; 67 FR 8719, Feb. 26, 2002; 67 FR 69129, Nov. 15, 2002; 76 FR 12856, Mar. 9, 2011]

§ 918.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), Louisiana is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed, that meets the requirements of SMCRA and 30 CFR chapter VII and a timetable for enactment that is consistent with Louisiana's established administrative or legislative procedures.

(a)–(b) [Reserved]

[60 FR 4544, Jan. 24, 1995]

§ 918.20 Approval of Louisiana abandoned mine land reclamation plan.

The Secretary approved the Louisiana abandoned mine land reclamation plan, as submitted on February 3, 1986, effective December 10, 1986. Copies of the approved plan are available at:

(a) Louisiana Department of Natural Resources, Office of Conservation, In-

jection and Mining Division, 625 N. 4th Street, P.O. Box 94275, Baton Rouge, LA 70804-9275.

(b) Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 East Skelly Drive, Suite 470, Tulsa, OK 74135-6548.

[64 FR 20167, Apr. 26, 1999]

§ 918.25 Approval of Louisiana abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
February 3, 1986	November 10, 1986	Approval of AMLR program.
June 12, 1989	April 9, 1990	Certification for Noncoal reclamation.
March 4, 2010	March 9, 2011	Section 8509.

[62 FR 9944, Mar. 5, 1997, as amended at 76 FR 12856, Mar. 9, 2011]

PART 920—MARYLAND

Sec.

920.1 Scope.

920.10 State program approval.

920.12 State program provisions disapproved.

920.15 Approval of Maryland regulatory program amendments.

920.16 Required program amendments.

920.20 Approval of Maryland abandoned mine plan.

920.25 Approval of Maryland abandoned mine land reclamation plan amendments.

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

§ 920.1 Scope.

This part contains all rules applicable only within Maryland that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[45 FR 79449, Dec. 1, 1980]

§ 920.10 State program approval.

The Maryland State program submitted on March 3, 1980, as amended and clarified on June 16, 1980, and as further amended on April 9, 1980, June 3, 1981, and October 23, 1981, is approved effective February 18, 1982. Copies of the approved program, as amended are available for review at:

(a) Maryland Department of Natural Resources, Water Resources Administration, Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532.

(b) Office of Surface Mining Reclamation and Enforcement, Harrisburg

Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, Fourth and Market Streets, Harrisburg, Pennsylvania 17101.

[50 FR 47385, Nov. 18, 1985, as amended at 59 FR 17929, Apr. 15, 1994]

§ 920.12 State program provisions disapproved.

The following provision of the Maryland permanent regulatory program submission is hereby disapproved: COMAR 08.13.09.41D, which proposes that in lieu of a civil penalty assessment, the regulatory authority may order a suspension of strip mining operations for an appropriate period of time such that the economic impact on the operator is equivalent to the amount of the civil penalty which would have been assessed for the violation.

[45 FR 79449, Dec. 1, 1980]

§ 920.15 Approval of Maryland regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
October 28, 1982	February 8, 1984	COMAR 08.13.09.01B(24), .02K(2)(d), .05A(5), (12), (13), .07B(3), H(1), (3), .25A(4).
May 28, 1984, October 5, 1984.	January 22, 1985 ...	Blaster certification program; COMAR 08.13.09.02, .25; and other items.
January 30, 1985	September 10, 1985	COMAR 08.13.09.02, .25.
January 13, 1984, June 8, 1984, August 7, 1984, October 10 1984, November 9, 1984.	November 18, 1985	COMAR 08.13.09, 08.13.09.07, .15B(2)(c), C(3), F(3), H(2), (5), I(1)(b), (c), (2)(a), J(4), (5), (6)(a), .40B, F(4) through (7); M.C.A. §§ 7–504(a), (c), 7–505.1(e), 7–506(c)(3), (h), 7–507(c)(2), 7–511(a), (b), 7–514.6.

Surface Mining Reclamation and Enforcement, Interior

§ 920.15

Original amendment submission date	Date of final publication	Citation/description
January 14, 1986, May 15, 1986.	December 12, 1986	COMAR 08.13.09.07A, B, C, G(2), (5)(a), (k); M.C.A. §§ 7-504(D), 7-505(g), 7-506(c), 7-507(c)(1), 7-514(C).
March 18, 1986, April 23, 1986.	January 30, 1987 ...	COMAR 08.13.09.01B(14), .03, G, H, .28, E.
July 8, 1987, June 10, 1988.	June 5, 1990	M.C.A. §§ 7-505(a), (b)(2)(iii), (c)(1), (2), (d)(1), I, II, III, (2); 7-506; § 2; 7-511(A), (B); 7-513; 7-514(a); 7-517(D).
March 30, 1989	January 11, 1991 ...	COMAR 08.13.09.01, .02, .13, .17, .28, .31 through .34, .42, .43.
June 15, 1989	March 21, 1991	M.C.A. §§ 7-5A-05(c), (d); 7-5A-05.1; 7-5A-13(c), (d); 7-5A-13.2; 7-203(H); 7-205(B), (C); 7-501(n); 7-505(c), (d), (k); 7-507(a), (b), (c)(3); 7-509(A); 7-510(b); 7-514(d).
September 28, 1990, November 21, 1990.	April 26, 1991	COMAR 08.13.09.06, B, .43K(7), N(7).
March 27, 1989	May 22, 1991	COMAR 08.13.09.01, .02, .04, .05, .08, .10, .11, .26, .40.
March 23, 1990	June 21, 1991	COMAR 08.13.09.02, .05, .10, .11.
October 31, 1989	August 9, 1991	COMAR 08.13.09.01B, .02K, O, .23D, E, I, J, .24A, C, D, F, H, I, .35A, C through G, .41, B through G.
December 6, 1990	December 2, 1991 ..	COMAR 08.13.09.01B(59), .02H, i, i(1), (3), (4), (5), (11), .04L(2) through (6), M(1), (3), .05D(9), E, F, .40G(10).
June 10, 1988, June 14, 1989, June 15, 1989.	December 5, 1991 ..	COMAR 08.13.09.15A through F, H, I, (2)(b), (4), (a), (b), J, L, M; M.C.A. §§ 7-507.1, 7-514, .1, .2, 7-519, 7-5A-05.2, 7-5A-09(c), 7-5A-10(d).
May 7, 1991, May 16, 1991.	January 10, 1992 ...	COMAR 08.13.09.43A, B(1), (e), (3) through (6), K(7), (8), N(7).
January 23, 1992	September 24, 1992	COMAR 08.13.09.03D(7), .11G(7), .33C(1).
June 11, 1992	November 16, 1992	M.C.A. §§ 7-101(k), 7-501(o), 7-5A-01(h).
July 14, 1992	December 17, 1992	M.C.A. §§ 7-205(b)(2), (c); 7-206; 7-505(a), (c), (d), (5), (f), (j).
June 23, 1992	December 30, 1992	M.C.A. § 7-508(b)(2).
October 21, 1992	May 17, 1993	COMAR 08.13.09.24B.
February 23, 1993	June 17, 1993	COMAR 08.13.02.01(B), (E), (M), .02A, C(2), .03E, J, M, .04B, C, .06, .07A, B, .08, .09, .10, A, B.
February 7, 1992	June 22, 1993	COMAR 08.13.09.23E, .24H, I, .41C.
February 5, 1993	July 6, 1993	COMAR 08.13.09.04B(3)(c), (4), C(2)(e), G(4), (5), (6), H(1), (2)(b), I, (1), J(1), (a), (2) through (5), (7), L, .27A, B, (8), (13), (14), (15), D; 08.20.04.02C, D, .03B(5), .07D, E, F, .08A, B(2), .09, .10A, .11, A, (1), B, D through G, .13; 08.20.23.01A, B, (8), (13), (14) (15), D.
February 25, 1994	June 30, 1994	COMAR 08.13.02.01 through .05, .07, .11 through .15; 08.20.02.18; 08.20.13.01, .03(C), (D), .04(D), .10(D), .11, .12; 08.20.14.13(A), (C), (E).
May 16, 1994, May 31, 1994.	November 14, 1994	M.C.A. §§ 7-501(o), (v); 7-504 (b) through (d); 7-517.1; COMAR 08.13.09.24H(1)(q), (3)(c).
June 16, 1995	November 9, 1995 ..	M.C.A. §§ 7-505, Code 7-515; COMAR 08.20.16.02A, .03A, .08A, B.
October 26, 1995	March 25, 1996	M.C.A. §§ 7-501(m), (w); 7-505(1)(2); 7-511(b)(2)(I), (II), (III); COMAR 08.20.14.14.
August 5, 1996	March 26, 1997	M.C.A. §§ 15-514(a)(4), 15-514.1.
January 7, 1997	March 23, 1998	COMAR 26.20.26.05 A (1) through (5), B (1) through (4), C (1) through (5), D (1) through (3), E, 26.20.14.06 B(3), B(4), B(8), 26.20.14.09 B(2) (b), (c), (d), and (e).
October 9, 1997	April 20, 1998	COMMAR 26.20.01.02B(49), 26.20.14.05 B, C & D, 26.20.14.08.D(2) through (4), 26.20.29.07.B(8), B(9) and (C), deletion of 08.20.14.14.
March 6, 1997	May 13, 1998	COMAR 26.20.14.01B, 26.20.14.03, 26.20.14.04, Actuarial Study.
August 25, 1998	April 13, 1999	COMAR 26.20.34.06G, 26.20.34.09G, deletion of 26.20.06.02.
August 22, 1997	July 8, 1999	Chapter 223, 1997 Laws of Maryland, Section 15-204(a)(4).
May 27, 1999	November 22, 1999	COMAR 26.20.01.02B(82), 26.20.02.13 BB(1) through BB(8)&CC, 26.20.19.01A through G, 26.20.19.02 A, B&C, 26.20.19.03 A&D, 26.20.19.04 A(1) through (4)&C, 26.20.19.06D, 26.20.19.07(1) through (6).
July 10, 2000	November 8, 2000 ..	COMAR 26.20.12.02 B(1)(a) revision to the definition of "government-financed construction." COMAR 26.20.12.04, Addition of subsection 04, "Government Funded Reclamation Projects."
April 11, 2000	June 18, 2001	COMAR 26.20.01.02B(72-1), 26.20.02.01C and D, 26.20.02.13M, 26.20.03.05(5), 26.20.14.09A(5), 26.20.31.02H, I, J, & K.
May 7, 2001	October 5, 2001	Section 15-204 (4)(5) of the Annotated Code of the Public General Laws of Maryland, Environment.
October 22, 2002	April 29, 2003	COMAR 26.20.01.02 (51-1), (81-1); 26.20.02.15B,C,D; 26.20.02.16E; 26.20.13.05A,B,C,D; 26.20.13.07A,B,C,D,E; 26.20.13.09D; 26.20.14.13D.
November 25, 2002 ..	July 17, 2003	COMAR 26.20.02.13 U, V(1) and (3), AA(1); 26.20.21.01-1; 26.20.21.08 A(1) through (3), B(1) and (2), C, D(2), E(3); 26.20.21.09D(1).
September 16, 2003	March 11, 2004	COMAR 26.20.03.07.A, B; 26.20.03.11; 26.20.05.01, A, B, C, and L; and 26.20.25.02.D.
January 7, 2004	June 17, 2004	M.C.A. Section 15-505(d)(6), (d)(7)(i)1., (d)(7)(i)2., (d)(7)(i)2.A., (d)(7)(i)2.B., and (d)(7)(iii).
May 4, 2004	September 14, 2004	COMAR 26.20.10.01B(7)(a) and (b), 01-1, 02, 02C, 03A, B, C, D(2) and H, 04, 05, 06, and 07.
January 29, 2007	June 15, 2007	MAC 15-517(c); 15-517(d)(1); and 15-517(e).

§ 920.16

30 CFR Ch. VII (7–1–17 Edition)

[62 FR 9944, Mar. 5, 1997, as amended at 62 FR 14308, Mar. 26, 1997; 62 FR 32687, June 17, 1997; 63 FR 13784, Mar. 23, 1998; 63 FR 19406, Apr. 20, 1998; 63 FR 26453, May 13, 1998; 64 FR 17980, Apr. 13, 1999; 64 FR 36785, July 8, 1999; 64 FR 63688, Nov. 22, 1999; 65 FR 66931, Nov. 8, 2000; 65 FR 78416, Dec. 15, 2000; 66 FR 32746, June 18, 2001; 66 FR 50829, Oct. 5, 2001; 68 FR 22604, Apr. 29, 2003; 68 FR 42281, July 17, 2003; 69 FR 11515, Mar. 11, 2004; 69 FR 33850, June 17, 2004; 69 FR 55355, Sept. 14, 2004; 72 FR 33155, June 15, 2007]

§ 920.16 Required program amendments.

Pursuant to 30 CFR 732.17, Maryland is required to submit for OSMRE's approval the following proposed program amendments by the dates specified.

(a)–(o) [Reserved]

[51 FR 44790, Dec. 12, 1986, as amended at 56 FR 19282, Apr. 26, 1991; 56 FR 37851, Aug. 9, 1991; 56 FR 63659, Dec. 5, 1991; 57 FR 62222, Dec. 30, 1992; 58 FR 33912, June 22, 1993; 63 FR 13784, Mar. 23, 1998; 63 FR 26454, May 13, 1998; 64 FR 17980, Apr. 13, 1999; 64 FR 36786, July 8, 1999; 66 FR 50829, Oct. 5, 2001]

§ 920.20 Approval of Maryland abandoned mine plan.

The Maryland Abandoned Mine Plan, as submitted on March 8, 1982, is approved. Copies of the approved program are available at the following locations:

(a) Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation

Center, Third Floor, Suite 3C, Fourth and Market Streets, Harrisburg, Pennsylvania 17101.

(b) Maryland Department of Natural Resources, Water Resources Administration, Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532.

[59 FR 17929, Apr. 15, 1994]

§ 920.25 Approval of Maryland abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
September 4, 1992 ... August 19, 1993	March 22, 1993 December 9, 1994 ..	Chapters 1, 5, 11 of Plan—Expenditure of Funds. Chapter 1 of Plan—Project Ranking & Selection.

[62 FR 9945, Mar. 5, 1997]

PART 921—MASSACHUSETTS

Sec.

921.700 Massachusetts Federal program.

921.701 General.

921.702 Exemption for coal extraction incidental to the extraction of other minerals.

921.707 Exemption for coal extraction incidental to Government-financed highway or other construction.

921.761 Areas designated unsuitable for surface coal mining by Act of Congress.

921.762 Criteria for designating areas as unsuitable for surface coal mining operations.

921.764 Process for designating areas unsuitable for surface coal mining operations.

921.772 Requirements for coal exploration.

921.773 Requirements for permits and permit processing.

921.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

921.775 Administrative and judicial review of decisions.

921.777 General content requirements for permit applications.

921.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

921.779 Surface mining permit applications—minimum requirements for information on environmental resources.

921.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

921.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Surface Mining Reclamation and Enforcement, Interior

§ 921.702

- 921.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
- 921.785 Requirements for permits for special categories of mining.
- 921.795 Small operator assistance.
- 921.800 General requirements for bonding of surface coal mining and reclamation operations.
- 921.815 Performance standards—coal exploration.
- 921.816 Performance standards—surface mining activities.
- 921.817 Performance standards—underground mining activities.
- 921.819 Special performance standards—auger mining.
- 921.823 Special performance standards—operations on prime farmland.
- 921.824 Special performance standards—mountaintop removal.
- 921.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
- 921.828 Special performance standards—in situ processing.
- 921.842 Federal inspections.
- 921.843 Federal enforcement.
- 921.845 Civil penalties.
- 921.846 Individual civil penalties.
- 921.955 Certification of blasters.

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

SOURCE: 48 FR 41004, Sept. 12, 1983, unless otherwise noted.

§ 921.700 Massachusetts Federal program.

(a) This part contains all rules that are applicable to surface coal mining operations in Massachusetts which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the Massachusetts Federal program.

(c) The rules in this part apply to all surface coal mining operations in Massachusetts conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in Massachusetts.

(d) The recordkeeping and reporting requirements of this part are the same as those of the permanent program regulations which have been approved by

the Office of Management and Budget under 44 U.S.C. 3507.

(e) There are no Massachusetts laws which provide more stringent environmental control and regulation of surface coal mining operations than do the provisions of the Surface Mining and Reclamation Act and the regulations in 30 CFR chapter VII.

(f) The following are Massachusetts laws that interfere with the achievement of the purposes and requirements of the Act and are, in accordance with section 504(g) of the Act, preempted and superseded insofar as they apply to surface coal mining operations regulated under the Act:

(1) The Coal Mining Regulatory and Reclamation Act of 1977, as amended, Mass. Ann. Laws. Ch. 21B, Sections 1–15.

(2) Statutes governing licenses for minerals exploration, Mass. Ann. Laws Ch. 21, section 54–56.

(g) The Secretary may grant a limited variance from the performance standards of §§ 921.815 through 921.828 of this part if the applicant for coal exploration approval or a surface mining permit submitted pursuant to §§ 921.772 through 921.785 demonstrates in the application that:

(1) Such a variance is necessary because of the nature of Massachusetts' terrain, climate, biological, chemical or other relevant physical conditions; and

(2) The proposed variance is not less effective than the environmental protection requirements of the regulations in this program and is consistent with the Act.

[48 FR 41004, Sept. 12, 1983, as amended at 52 FR 13808, Apr. 24, 1987]

§ 921.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15, and part 701 of this chapter shall apply to surface coal mining and reclamation operations in Massachusetts.

§ 921.702 Exemption for coal extraction incidental to the extraction of other minerals.

Part 702 of the chapter, *Exemption for Coal Extraction Incidental to the Extraction of Other Minerals*, shall apply to

§ 921.707

any person who conducts coal extraction incidental to the extraction of other minerals for purposes of commercial use or sale.

[54 FR 52123, Dec. 20, 1989]

§ 921.707 Exemption for coal extraction incidental to Government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§ 921.761 Areas designated unsuitable for surface coal mining by Act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply to surface coal mining and reclamation operations.

§ 921.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mine operations.

§ 921.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities, are applicable in Massachusetts beginning on May 28 1983.

§ 921.772 Requirements for coal exploration.

(a) Part 772 of this chapter, *Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to

30 CFR Ch. VII (7-1-17 Edition)

complete such review, setting forth the reasons and the additional time that is needed.

[52 FR 13809, Apr. 24, 1987]

§ 921.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, *Requirements for Permits and Permit Processing*, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the applications to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and negotiate the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 921.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.6 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control

structures, roads, and other significant features contained in the application marked by flags.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) No person shall conduct coal exploration which results in the removal of more than 250 tons of coal nor shall any person conduct surface coal mining operations without a permit issued by the Secretary pursuant to 30 CFR part 773 and applicable permits issued pursuant to the laws of the State of Massachusetts, including: The Historic and Scenic Rivers Act, Mass. Ann. Laws Ch. 21, sections 8-17B; Massachusetts Register of Historic Places, Mass. Ann. Laws Ch. 152 and the regulations (950 CMR 71); Historical Preservation Statutes, Mass. Ann. Laws Ch. 9, sections 26-27(D); real property statutes. Mass Ann. Laws Ch. 184, sections 31-32; statutes governing State forests and parks, Mass. Ann. Laws Ch. 132, sections 40-46; of the Wetlands Protection Act Ch. 131, sections 40-46; statutes and rules governing dredging permits, Mass. Ann. Laws Ch. 21A; section 14, 310 CMR 9.01 *et seq.*; the Massachusetts Hazardous Waste Management Act Ch. 21C, sections 1-14; the Massachusetts Clean Water Act Ch. 21, sections 26-53; statutes governing the construction of roads, drains, or ditches, Mass. Ann. Laws Ch. 252, Sections 15-18; statutes governing drilling or removal of sand or any minerals, Mass. Ann. Laws Ch. 132A, Sections 13-181 and statutes governing use, storage, and handling of explosives, Mass. Ann. Laws Ch. 148, Sections 9-19.

(e) The Secretary shall provide for coordination of review and issuance of a coal exploration or surface coal mining and reclamation permit with the review and issuance of other Federal and State permits listed in this subpart and part 773 of this chapter.

[52 FR 13809, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

§ 921.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, *Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights*, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSMRE.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.6, 773.19(b) (1) and (2), and 778.21 and of part 775.

(2) OSMRE shall make every effort to approve or disapprove an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

[52 FR 13809, Apr. 24, 1987, as amended at 65 FR 79672 Dec. 19, 2000]

§ 921.775 Administrative and judicial review of decisions.

Part 775 of this chapter, *Administrative and Judicial Review of Decisions*, shall apply to all decisions on permits.

[52 FR 13809, Apr. 24, 1987]

§ 921.777

§ 921.777 General content requirements for permit applications.

Part 777 of this chapter, *General Content Requirements for Permit Applications*, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

[52 FR 13809, Apr. 24, 1987]

§ 921.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Permit Applications—Minimum Requirements for Legal, Financial, Compliance and Related Information*, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

[52 FR 13809, Apr. 24, 1987]

§ 921.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 921.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 921.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who submits an application to conduct underground coal mining and reclamation operations.

30 CFR Ch. VII (7–1–17 Edition)

§ 921.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct underground coal mining operations.

§ 921.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining*, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 921.795 Small operator assistance.

Part 795 of this chapter, *Small Operator Assistance*, shall apply to any person making application for assistance under the small operator assistance program.

§ 921.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, *General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs*, shall apply to all surface coal mining and reclamation operations.

§ 921.815 Performance standards—coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration*, shall apply to any person conducting coal exploration operations.

§ 921.816 Performance standards—surface mining activities.

Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, shall apply to any person who conducts surface coal mining and reclamation operations.

§ 921.817 Performance standards—underground mining activities.

Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities*, shall apply to

any person who conducts underground coal mining operations.

§ 921.819 Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining*, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 921.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland*, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§ 921.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal*, shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 921.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine*, shall apply to any person who conducts surface coal mining and reclamation operations which includes the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

§ 921.828 Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, shall apply to any person who conducts in situ processing activities.

§ 921.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections*, shall apply to all explo-

ration and surface coal mining and reclamation operations.

(b) The Secretary will furnish copies of inspection reports and reports of any enforcement actions taken to the Massachusetts Department of Environmental Management upon request.

§ 921.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement*, shall apply when enforcement action is required for violations on exploration and surface coal mining and reclamation operations.

(b) The Office will furnish a copy of any enforcement document to the Massachusetts Department of Environmental Management upon request.

§ 921.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties*, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

§ 921.846 Individual civil penalties.

Part 846 of this chapter, *Individual Civil Penalties*, shall apply to the assessment of individual civil penalties under section 518(f) of the Act.

[53 FR 3676, Feb. 8, 1988]

§ 921.955 Certification of blasters.

Parts 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

PART 922—MICHIGAN

Sec.

922.700 Michigan Federal program.

922.701 General.

922.702 Exemption for coal extraction incidental to the extraction of other minerals.

922.707 Exemption for coal extraction incidental to government-financed highway or other construction.

922.761 Areas designated unsuitable for surface coal mining by act of Congress.

922.762 Criteria for designating areas as unsuitable for surface coal mining operations.

§ 922.700

30 CFR Ch. VII (7–1–17 Edition)

- 922.764 Process for designating areas unsuitable for surface coal mining operations.
- 922.772 Requirements for coal exploration.
- 922.773 Requirements for permits and permit processing.
- 922.774 Revision; renewal; and transfer, assignment, or sale of permit rights.
- 922.775 Administrative and judicial review of decisions.
- 922.777 General content requirements for permit applications.
- 922.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.
- 922.779 Surface mining permit applications—minimum requirements for information on environmental resources.
- 922.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.
- 922.783 Underground mining permit applications—minimum requirements for information on environmental resources.
- 922.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
- 922.785 Requirements for permits for special categories of mining.
- 922.795 Small operator assistance.
- 922.800 General requirements for bonding of surface coal mining and reclamation operations.
- 922.815 Performance standards—coal exploration.
- 922.816 Performance standards—surface mining activities.
- 922.817 Performance standards—underground mining activities.
- 922.819 Special performance standards—auger mining.
- 922.823 Special performance standards—operations on prime farmland.
- 922.824 Special performance standards—mountaintop removal.
- 922.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
- 922.828 Special performance standards—in situ processing.
- 922.842 Federal inspections.
- 922.843 Federal enforcement.
- 922.845 Civil penalties.
- 922.846 Individual civil penalties.
- 922.955 Certification of blasters.

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

SOURCE: 47 FR 47162, Oct. 22, 1982, unless otherwise noted.

§ 922.700 Michigan Federal program.

(a) This part contains all rules that are applicable to surface coal mining operations in Michigan which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the Michigan Federal program.

(c) The rules in this part apply to all surface coal mining operations in Michigan conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in Michigan.

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of Michigan laws provide, where applicable, for more stringent environmental control and regulation of surface coal mining operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to section 505(b) of the Act, they shall not be construed to be inconsistent with the Act:

(1) The Michigan Reclamation of Mining Lands, Act 92 (1970), MCL section 425.181 *et seq.* as amended, to the extent that it regulates surface coal mining operations which affect two acres or less; or where less than 250 tons of coal are removed or intended to be removed for commercial use or sale in one location or; or where the extraction of coal is incidental to the extraction of other minerals and where coal does not exceed 16 $\frac{2}{3}$ per centum of the tonnage of minerals removed for purposes of commercial use or sale; or coal explorations subject to section 512 of the Act (30 U.S.C. 1262) or; where the extraction of coal is an incidental part of Federal, State, or local government-financed highway or other construction.

(2) Michigan Farmland and Open Space Preservation Act, MCL section 554.701, pertaining to land use restrictions including mineral extraction.

(3) Michigan Solid Waste Regulations pertaining to solid waste management, MCL section 299.401, R-325.3231.

(4) Michigan noxious weed statute and regulations containing the noxious weed list, MCL section 243.61.

(f) The following are Michigan laws that interfere with the achievement of the purposes and requirements of the Act and are, in accordance with section 504(g) of the Act, preempted and superseded:

The Michigan Reclamation of Mining Lands Act, MCL section 425.181 *et seq.*, as amended, but not to the extent that it regulates surface coal mining operations which affect two acres or less; or where less than 250 tons of coal are removed or intended to be removed for commercial use in one location; or where the extraction of coal is incidental to the extraction of other minerals and where coal does not exceed 16 $\frac{2}{3}$ per centum of the tonnage of minerals removed for purposes of commercial use or sale; or coal explorations subject to section 512 of the Act (30 U.S.C. 1262); or where the extraction of coal is an incidental part of Federal, State, or local government-financed highway or other construction.

[47 FR 47162, Oct. 22, 1982, as amended at 52 FR 13810, Apr. 24, 1987]

§ 922.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and part 701 of this chapter shall apply to surface coal mining operations in Michigan.

§ 922.702 Exemption for coal extraction incidental to the extraction of other minerals.

Part 702 of this chapter, *Exemption for Coal Extraction Incidental to the Extraction of Other Minerals*, shall apply to any person who conducts coal extraction incidental to the extraction of other minerals for purposes of commercial use or sale.

[54 FR 52123, Dec. 20, 1989]

§ 922.707 Exemption for coal extraction incident to government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§ 922.761 Areas designated unsuitable for surface coal mining by act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply to surface coal mining and reclamation operations.

§ 922.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mine operations beginning May 28, 1983.

§ 922.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mine operations beginning one year after May 28, 1983.

§ 922.772 Requirements for coal exploration.

(a) Part 772 of this chapter, *Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

[52 FR 13810, Apr. 24, 1987]

§ 922.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, *Requirements for Permits and Permit Processing*, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and negotiate the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 922.773(b)(2)(ii) by the specified date, the office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.6 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) Where applicable, no person shall conduct surface coal exploration oper-

ations which result in the removal of more than 250 tons in one location, or surface coal mining operations without permits issued pursuant to the: Michigan Construction and Maintenance Act, MCL section 254.25, pertaining to the alteration of watercourses; Michigan Dams in Streams or Rivers Act of 1963, MCL section 281.131; Michigan Explosives Act of 1970, MCL section 29.41, pertaining to the use of explosives (permit is issued by an officer of a local police or sheriff's department or a designated officer of the State police); Michigan Hazardous Waste Management Act of 1980, MCL section 299.501; Michigan Inland Lake and Streams Act of 1972, MCL section 281.951; Michigan Mineral Wells Act of 1969, MCL section 319.211; Michigan Sand Dune Protection and Management Act of 1976, MCL section 281.651; Michigan Solid Waste Management Act of 1978, MCL section 299.401; Michigan Water Resources Commission Act, MCL section 323.1; Michigan Water Resources Commission General Rules, R-323.1001 *et seq.*; Michigan Water Quality Standards, R-323.1041; the Michigan Wetland Protection Act of 1969, MCL section 281.701; Michigan Aboriginal Records and Antiquities Act, MCL section 299.51; Michigan Great Lakes Submerged Lands Act, MCL section 322.701 and the Michigan Historical Activities Act, MCL section 399.201.

(e) The Secretary shall provide for the coordination of review and issuance of permits for surface mining and reclamation operations with applicable requirements of the Michigan Air Pollution Act of 1965, MCL section 336.11 and the Michigan Administrative Rules for Air Pollution Control, R-336.1101 *et seq.*; the Michigan Control and Eradication of Noxious Weeds Act, MCL section 247.61; the Michigan Endangered Species Act of 1974, MCL section 299.221 and the Michigan Hazardous Waste Management Act of 1980. The Secretary shall further coordinate review of permits, where applicable, with the appropriate State agencies concerning compliance with the Michigan Farmland and Open Space Preservation Act, MCL section 554.71.

[52 FR 13810, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

§ 922.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, *Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights*, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSMRE.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.6, 773.19(b) (1) and (2), and 778.21 and of part 775.

(2) OSMRE shall make every effort to approve or disapprove an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition the requirements of part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

[52 FR 13810, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

§ 922.775 Administrative and judicial review of decisions.

Part 775 of this chapter, *Administrative and Judicial review of Decisions*, shall apply to all decisions on permits.

[52 FR 13811, Apr. 24, 1987]

§ 922.777 General content requirements for permit applications.

Part 777 of this chapter, *General Content Requirements for Permit Applications*, shall apply to any person who ap-

plies for a permit to conduct surface coal mining and reclamation operations.

[52 FR 13811, Apr. 24, 1987]

§ 922.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

[52 FR 13811, Apr. 24, 1987]

§ 922.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to conduct surface mining and reclamation operations.

§ 922.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations on non-Federal and non-Indian lands.

§ 922.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who submits an application to conduct underground mining operations.

§ 922.784

§ 922.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct underground mining.

§ 922.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining*, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 922.795 Small operator assistance.

Part 795 of this chapter, *Small Operator Assistance*, shall apply to any person making application for assistance under the small operator assistance program.

§ 922.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, *General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs*, shall apply to all surface coal mining and reclamation operations.

§ 922.815 Performance standards—coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration*, shall apply to any person conducting coal exploration operations.

§ 922.816 Performance standards—surface mining activities.

Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, shall apply to any person who conducts surface coal mining and reclamation operations.

§ 922.817 Performance standards—underground mining activities.

Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities*, shall apply to

30 CFR Ch. VII (7–1–17 Edition)

any person who conducts underground mining operations.

§ 922.819 Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining*, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 922.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland*, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§ 922.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal*, shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 922.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities not Located at or near the Minesite or not within the Permit Area for a Mine*, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of coal processing plants and support facilities not located at or near the minesite and not within the permit area for a mine.

§ 922.828 Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, shall apply to any person who conducts in situ processing activities.

Surface Mining Reclamation and Enforcement, Interior

§ 924.15

§ 922.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections*, shall apply to all exploration and surface coal mining and reclamation operations.

(b) In addition to the requirements of part 842, the Secretary will furnish a copy of each inspection report regarding inspections conducted pursuant to this subpart to the Michigan Department of Natural Resources upon request.

§ 922.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement*, shall apply when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) The Office will furnish a copy of each enforcement action document and order to show cause issued pursuant to this subpart to the Michigan Department of Natural Resources, Geological Survey Division upon request.

§ 922.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties*, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

§ 922.846 Individual civil penalties.

Part 846 of this chapter, *Individual Civil Penalties*, shall apply to the assessment of individual civil penalties under section 518(f) of the Act.

[53 FR 3676, Feb. 8, 1988]

§ 922.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

PART 924—MISSISSIPPI

Sec.

924.1 Scope.

924.10 State program approval.

924.15 Approval of Mississippi regulatory program amendments.

924.16 Required program amendments.

924.17 State regulatory program provisions and amendments not approved.

924.20 Approval of Mississippi abandoned mine land reclamation plans.

924.25 Approval of Mississippi abandoned mine land reclamation plan amendments.

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

§ 924.1 Scope.

This part contains all rules applicable only within the State of Mississippi which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[45 FR 58525, Sept. 4, 1980]

§ 924.10 State program approval.

(a) The Mississippi State program, as submitted on August 2, 1979, and resubmitted on May 27, 1980, is approved, effective September 4, 1980. Copies of the approved program are available at:

(1) Mississippi Department of Environmental Quality, Office of Geology, Southport Center, 2380 Highway 80 West, Jackson, Mississippi 39289-1307. Telephone (601) 961-5530.

(2) Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 135 Gemini Circle, Birmingham, Alabama 34209. Telephone (205) 290-7282.

(b) [Reserved]

[45 FR 58525, Sept. 4, 1980, as amended at 59 FR 17930, Apr. 15, 1994; 63 FR 43320, Aug. 13, 1998]

§ 924.15 Approval of Mississippi regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

§ 924.16

30 CFR Ch. VII (7–1–17 Edition)

Original amendment submission date	Date of final publication	Citation/description
May 6, 1997	January 9, 1998	MSCMRL 53–9–3; 5; 7; 9; 11; 13; 15; 17; 19; 21; 23; 25; 26; 27; 28; 29; 31; 32; 33; 35; 37; 39; 41; 43; 45; 47; 49; 51; 53; 55; 57; 59; 61; 63; 65; 67; 69; 71; 73; 75; 77; 79; 81; 83; 85; 87; 89; 91.
March 26, 1998	June 25, 1998	MSCMRL 53–9–26; 45(4)(b); 69(1)(c)(i) and (4); 77(5).
March 26, 1998	August 13, 1998	Subpart I, Chapters 1 through 7; subpartII, Chapters 9 through 15; subpartIII, Chapters 17 through 37; subpartIV, Chapters 39 through 47; subpartV, Chapters 49 through 71; Policy Statement No. PS–1.
July 1, 1999	October 26, 1999 ...	Sections 105; 407; 413; 1105 (c)–(d); 2103; 2105; 2313; 3113; 3119; 3121; 3301(b); 3509; 3713; 4301; 4303(g)(6); 4501(c); 4701(a); 5333(b)(3)(A); 5349; 5359; 5377; 5391; 5393; 53111; 5703; 5903; 6501(c)(4); 6511 (a), (l)(1), & (n)(9).
September 28, 2001	December 3, 2002 ..	Sections 105; 1103; 1105; 1106; 1107(a), (b), (f), and (h); 2103(b)(14), (c), (d), (e), and (f); 3114; 53103(a) and (b); 53111(a)(4) and (5); 6511(c); and appendix A: Revegetation Success Guidelines
April 5, 2006	December 10, 2008	MSCMR 53–9–71(4) Sections: 105, 1101, and 1105.
July 26, 2012	October 29, 2013 ...	MSCMR Sections: 105; 1106; 2305; 2902; 3102; 3112; 3113; 3115(m), (n) and (o); 3127; 3128; 3129; 3130; 3131; 3133; 3135; 3136; 3137; 3138; 3139; 5396; 7301; 7303; 7305; and 7307.

[63 FR 1361, Jan. 9, 1998, as amended at 63 FR 34599, June 25, 1998; 63 FR 43320, Aug. 13, 1998; 64 FR 57570, Oct. 26, 1999; 67 FR 71831, Dec. 3, 2002; 73 FR 74945, Dec. 10, 2008; 78 FR 64401, Oct. 29, 2013]

§ 924.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), Mississippi is required to submit to OSM by the specified date the following written, proposed program amendments, or a description of the amendments to be proposed, that meet the requirements of SMCRA and 30 CFR chapter VII and a timetable for enactment that is consistent with Mississippi's established administrative or legislative procedures.

(a)–(n) [Reserved]

[63 FR 1362, Jan. 9, 1998, as amended at 63 FR 34599, June 25, 1998; 63 FR 43321, Aug. 13, 1998; 64 FR 57571, Oct. 26, 1999; 67 FR 71832, Dec. 3, 2002]

§ 924.17 State regulatory program provisions and amendments not approved.

The proposed language in section 53–9–55(3), as submitted by Mississippi on May 6, 1997, that allows the commission to promulgate regulations regarding a waiver from the requirement to post a penalty payment bond upon a showing by the operator of an inability to post the bond is disapproved.

[63 FR 1362, Jan. 9, 1998]

Original amendment submission date	Date of final publication	Citation/description
August 11, 2014	March 30, 2015	Certification that the State has reclaimed all lands adversely impacted by past coal mining.

§ 924.20 Approval of Mississippi abandoned mine land reclamation plans.

The Mississippi abandoned mine land reclamation plan as submitted on April 5, 2006, and June 11, 2007, and as revised is approved. Copies of the approved plan are available at:

Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209

Mississippi Department of Environmental Quality, Office of Geology, 2380 Highway 80 West, Jackson, Mississippi 39289–1307

[72 FR 54832, Sept. 27, 2007]

§ 924.25 Approval of Mississippi abandoned mine land reclamation plan amendments.

The following is a list of the dates on which the State of Mississippi submitted amendments to OSMRE, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER, and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

[80 FR 16563, Mar. 30, 2015]

PART 925—MISSOURI

Sec.

925.1 Scope.

925.10 State regulatory program approval.

925.12 State program provisions and amendments disapproved.

925.15 Approval of Missouri regulatory program amendments.

925.16 Required program amendments.

925.20 Approval of the Missouri abandoned mine land reclamation plan.

925.25 Approval of Missouri abandoned mine land reclamation plan amendments.

AUTHORITY: 30 U.S.C. 1201 *et seq.***§ 925.1 Scope.**

This part contains all rules applicable only within Missouri that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[45 FR 77027, Nov. 21, 1980]

§ 925.10 State regulatory program approval.

The Secretary approved the Missouri regulatory program, as submitted on February 1, 1980, and amended and clarified on May 14, 1980, effective November 21, 1980. He fully approved the Missouri program, as amended on September 7, 1982, and October 13, 1982, effective January 17, 1983. Copies of the approved program are available at:

(a) Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102.

(b) Office of Surface Mining Reclamation and Enforcement, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, IL 62002.

[64 FR 20167, Apr. 26, 1999]

§ 925.12 State program provisions and amendments disapproved.

(a) The amendment at 10 CSR 40-4.030(4)(A), submitted on December 14 and 18, 1987, is disapproved insofar as it would exempt from prime farmland performance standards coal preparation plants, support facilities, and roads associated with surface coal mining activities.

(b) The amendment at 10 CSR 40-4.030(4)(B), submitted on December 14 and 18, 1987, is disapproved insofar as it would exempt from prime farmland performance standards water bodies as a postmining land use.

(c) The definitions of “coal processing plant” and “coal preparation plant” at 10 CSR 40-8.010(1)(A)18, submitted on December 14 and 18, 1987, are disapproved insofar as they exempt from regulation certain facilities where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation, if they do not separate coal from its impurities.

(d) The amendments at 10 CSR 40-3.040(10)(O)3.C and 40-3.200(10)(O)3.C, submitted on October 5, 2000, concerning temporary impoundment design are disapproved effective May 9, 2001.

(e) The amendment at 10 CSR 40-3.240, submitted on October 5, 2000, concerning air resource protection is disapproved effective May 9, 2001, to the extent that it is missing pertinent requirements relating to control of erosion and air pollution.

(f) The amendment at 10 CSR 40-8.070(2)(C)1.A(II)(a), submitted on October 5, 2000, concerning the definition of cumulative measurement period is disapproved effective May 9, 2001, to the extent that it uses October 1, 1990, for determining the end of the period for which cumulative production and revenue is reported.

[53 FR 43869, Oct. 31, 1988, as amended at 66 FR 23604, May 9, 2001]

§ 925.15 Approval of Missouri regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
December 3, 1980, March 12, 1981, September 7, 1982, October 13, 1982, April 13, 1983	July 23, 1982	10 CSR 40–2.080; 40–3.050; 40–3.100(4)(B); 40–6.010(6), .070, .090(3), (4)(C); 40–7.030(1)(E), .040(2)(C); 40–8.030(5) through (13)(A).
September 7, 1982, October 13, 1982, April 13, 1983	January 17, 1983 ...	10 CSR 40–8.030(6)(B)1, (C), (7)(A), (D), (8)(A)1, (E), (9)(A)2, (B), (10)(A), (13)(B), .050(8), .060.
March 13, 1986	May 8, 1984	RSMo 444: .805, .830, .950, .955, .960, .965, .970; 10 CSR 40–3.120, .270; 40–4.030; 40–7.010, .011, .020, .021, .030, .031, .040, .041, .050; 40–8.030.
February 4, 1987	January 7, 1987	10 CSR 40–2.090(6); 40–7.031(3)(B); 40–8.030(1), (6), (7), (17), .040(3), (7), (8).
June 22, 1987	February 26, 1988 ..	10 CSR 40–2.090(5); 40–3.040(2), (6), (17), .110(1), .120(7), .200(2), (16), .270(7); 40–7.011(2), (3), .021(2), .031, .041(1), (2), (3); 40–8.030(6), (18); RSMo 444: .950, .960, .965.
December 14 and 18, 1987.	June 16, 1988	10 CSR 40–3.010(6), .050, .110(6), .120(8)(A), (D), .170, .210; 40–6.010(3)(C), (5)(C), .030(2)(C), .050(4), .070(2)(C), (6), (7), (8), .090(4), (6), (9), (10), (11), .100(2)(C); 40–8.040(3).
August 3, 1988	October 31, 1988 ...	10 CSR 40–2.090(6)(B); 40–3.050(1)(E), .210(1)(E); 40–4.010, .030(4)(C), (5), (6), (7)(A), (B)(1) through (8); 40–6.010(6)(A), .020, .040(16), .060(1)(E), (G), (J), (K), (4)(B), (C), (D), .110(16); 40–7.021(4)(B); 40–8.010(1)(A)5, 15, 16, 17, 19, 20, 25, 47, 48, 92, .030(3)(B), .050, .070(2); RSMo 444.730, .800, .805, .950.
July 8, 1988	December 11, 1989	10 CSR 40–3.050(1)(C), (D), (2)(F), (3)(B), (5)(B), (D), .210(1)(C), (D), (2)(F), (5)(B), (D), .160; 40–4.030(4), (7)(B)6; 40–6.070(8)(J), (K), (L), (N), (O).
March 18, 1988	January 8, 1990	10 CSR 40–3.200(2)(B); RSMo 444.535.7(2), .815.6(2).
June 5, 1989	June 5, 1990	10 CSR 40–3.100(2), .120(1), (6)(A), (6)(B)3, (7)(C)2, .250(1)(B), .270(1), (6)(A), (B)3, (7)(C)2; 40–6.040(3)(B), (11)(B), (C), (D), .050(7)(B), (C), (14)(B), .070(8)(E), .110(3)(B), (11)(B), (C), (D), .120(8)(B), (12)(B), (C), .040(8)(B), (C).
July 21, 1989	July 6, 1990	10 CSR 40–6.040(5)(A), (B)1, .050(5)(C), (9)(A) through (E); .060(4)(A), .070(12)(D), .110(11)(B), .120(2)(B)3, (5)(A), (C), (D), (E), (11)(A), (14)(C); 40–8.040(8)(K).
January 12, 1989	October 30, 1990 ...	10 CSR 40–4.080(1), (2); 40–6.040(11)(E)2, 3, .050(5)(C), .060(2)(B), (C), .070(7)(A)3, 8(M), .120(11); 40–8.010(1)(A)5, 18, .045; 40–060(8)(B).
July 8, 1988, January 12, 1988.	January 3, 1991	10 CSR 40–3.040(1)(B), (3)(G), (4)(B)3, (6)(B), (H), (7)(A), (B), (10)(A), (E), (G), (J), (13)(A)1, (B)1.C, .060(1)(B), (F), (H), (K), .080(1)(C), (2)(A), (4)(A), (D)3, (10)(B), (11)(D), .100(2), .110(6), .120(6)(A), (B)2.A through F, (8)(D), .200(1)(B), (3)(H), (4)(B)3, (6)(B), (H), (7)(A), (B), (10)(A), (E), (G), (J), (12)(A)1, (B)1.C, .220(1)(B), (F), (H), (K), .230(1)(C), (2)(A), (4)(A), (D)3, (10)(B), (11)(D), .270(6)(A), (B)2.A through F, .280(1)(C); 40–5.010(2)(C), (E), (3)(B)2, .020(4)(B)1, 2, 4, 5, 6, (C)1, 3, 4, 5; 40–6.060(4)(A)3; 40–8.010(1)(A)59, 79.
November 8, 1991	May 8, 1991	RSMo 444.805(8), (16), .950.1, .2, .3, .4, .960.1, .965.2, .4; 10 CSR 40–7.011(1)(E), (F), (G), (2)(C), (4)(E), (F), (5)(A)4, (B)2, 4, (D), .021(2)(B)4, (D)(3), (3), .031, .041(1)(B), 1, (D), (4)(A)2.
October 10, 1990	September 24, 1992	RSMo 444.870.1 through .5, .873.1, .3, .4.
September 24, 1993	September 29, 1992	10 CSR 40–3.010(5), .030(1)(C), .040(2)(A)1, (4)(B)3, (6)(B), (C), (D), (H), (Q), (T), (10)(G), (I), .050(6)(C), .060(1)(A), (H), .080(3)(A), (8)(B), (D), .090, .110(3)(A), .120(1)(D), (E), (5), (6)(B)1, 2, A, D, G, I, (7)(C)2, (C)3.A, C, (8)(A)4 through 8, 10, .130(2)(A), (3)(C), (I), .140(1)(A), (D)1, (3)(D)9, (6)(D), (8)(A), (D)1, (10)(D)9, (13)(C), (D), (15)(A), (20)(C), (D), .170(5), .190(1)(C), .200(2)(A)1, (4)(B)3, (6)(B), (C), (D), (H), (Q), (T), (10)(G), (I), .210(6)(C), .220(1)(A), (H), .230(3)(A), (8)(D), .240, .250(1)(B), .260(3)(A)1, .270(1)(D), (E), (5), (6)(B)1, 2, A, B, D, G, I, (7)(C)2, 3.A, C, (8)(A)4 through 8, 10, .290(1)(A), (D)1, (3)(D)9, (6)(D), (8)(A), (D)1, (10)(D)9, (13)(C), (D), (15)(A), (20)(C), (D), .300(2)(A), (3)(C), (I); 40–4.030(4)(A), (7)(B)6; 40–5.010(1)(A), (J), (2)(C), (3)(F)1; 40–6.010(2)(E), .020(2)(B)3, (3)(B)3, (5), .030(1)(A), (C), (D), (H), (2)(D), .040(5)(A), (11)(A), (E), (F), .050(7)(A), (B)1, (B)2, (C)1, (C)3, (9)(C)5, (11)(C), (17)(A)1 through 9, (B), (18), .060(4)(A), (E)5, .070(1)(B), (7)(C), (C)2, (F), (G), (8)(I), (L), (10)(B)1.A, (E)2, (11)(A), (B), (13)(E), .100(1)(A), (C), (D), (H), (2)(D), .110(5)(A), (B), (11)(A), (E), (F), .120(5)(C)4, (7)(C), (12)(A), (B)1, (C)1, (C)3, (16), (17)(A)1 through 9, (B); 40–7.011(3)(C), (4)(E), (5)(D)2.C.(II), (III), (D)2.(I), 5, A, B, C, 8, .021(2)(A), (B)1, 5, 6, .031(3)(B); 40–8.010(1)(A)4, 53, 51.B, C, D, I, J, 54, .030(6)(G), (7)(A), .040(5)(B)3, (8)(A), (K), .070(2)(C).
October 19, 1992	December 6, 1993 ..	10 CSR 40–3.010, .040, .080, .100, .110, .120, .130, .140, .200, .230, .250, .260, .270; 40–4.010; 40–5.010; 40–6.030, .040, .050, .070, .100, .120; 40–7.011, .021, .031, .041; 40–8.010, .030, .040.
September 24, 1993	April 22, 1994	RSMo 444.870.3, .5 through .8.
February 10, 1995	July 13, 1995	10 CSR 40–3.030(4)(B)2, .040(10)(B)5, .060(1)(L)1, (O), .080(8)(B), .100(5)2, (6), (7), .110(3)1, (3)3, (6)(B), .140(1)(A); 40–6.010(2)(H), .020(2)(A), (3)(A), .030(1)(C), (5)(B), .050(7)(C), (D), .060(4)(D)4, .070(8)(M), (9)(A)1, 2.A, .B, .120(7)(C), (12)(D); 40–8.010(1)(A)72, 84, .030(7)(A), .040(9), .050(2)(B).
March 7 and 28, 1995, December 14, 1995.	May 28, 1996	RSMo 444.805, 830.1, .3, 950.1, .3, 4, 960.1, .5, 965.1, .3, 4, .5; 10 CSR 40–3.120, .270(6)(B); 7.011(1) through (5), .021(2), (5), .041(1), (4).
March 20, 1996	July 24, 1996	RSMo 444.800, .810, .950.
April 16, 1997	August 4, 1997	Section I of Phase III Revegetation Success Standards for Pasture, Wildlife Habitat, Woodland, Industrial/Commercial, Residential, and Recreation.

Surface Mining Reclamation and Enforcement, Interior

§ 925.20

Original amendment submission date	Date of final publication	Citation/description
June 4, 1999 October 5, 2000	October 28, 1999 ... May 9, 2001	10 CSR 40-7.021(1)(B)2 10 CSR 40-3.010(6); 3.020(1); 3.020(3); 3.040(2)(A)1, 2, 3.B, 4, 5, 6; 3.040(4)(A)1 and (B)3; 3.040(6)(A), (B), (C), (E), (F), (G), (H), (O), (T), (U); 3.040(8); 3.040(10)(A), (B)5, (L), (M), (N), (O), (O)1, (O)2.A and B, (O)2.C, (O)3, (O)3.A and B; 3.040(10)(O)3.C [not approved]; 3.040(13)(A)1.A and (B)1; 3.040(14)(B)3; 3.040(17); 3.050 Purpose; 3.050(1)(D)1.A; 3.050(2)(A); 3.050(3)(C)1; 3.080(1)(A); 3.080(3)(D); 3.080(8)(A); 3.090; 3.110(4)(A); 3.110(5)(A); 3.110(6)(B); 3.120(5); 3.120(8)(A)4, (B), (D)2 and 8; 3.140(1)(A); 3.200(2)(A)1, 2, 3.A, 4, 5, 6; 3.200(4)(B)3; 3.200(6)(A), (B), (C), (E), (F), (G), (Q), (T), (U); 3.200(8), 3.200(10)(A), (B)5, (K), (L), (M), (N), (O), (O)1, (O)2.A, B, and C, (O)3, (O)3.A and B; 3.200(10)(O)3.C [not approved]; 3.200(12)(A)1.A and (B)1; 3.200(13)(B)3; 3.200(16); 3.240 [partial approval]; 3.270(5); 3.270(8)(A)4 and (B); 4.010 Purpose; 4.010 (3)(J); 4.020(2)(B); 4.030 Purpose; 4.030 (3)(A); 4.030(4)(A), (B), (C); 4.030(6)(A), 4.030(7)(B)2 and 7; 4.050(11), (12); 5.010(1)(B); 5.010(2)(E); 6.010(4)(B)2; 6.010(6)(A); 6.020 Purpose; 6.020(5); 6.020(7)(A); 6.030(1)(C), (D), (I); 6.030(2)(C); 6.040(5)(B)1.E; 6.040(16)(C)1 and 3; 6.050(1); 6.050(5)(B)11, (C), and (C)1; 6.050(7)(D)1; 6.050(9)(C)3 and 4, (D)3, (E); 6.050(11)(A), (A)1.A, 2 and 3, (B), (C), (F); 6.050(17)(B); 6.060(4)(C)1 and 5, (D)1, (E)5; 6.070(3) and (3)(B); 6.070(4)(A); 6.070(5)(B)4; 6.070(8)(C), (D)3; 6.070(10) (D); 6.090(4)(B)2; 6.090(6)(A); 6.090(7); 6.100(1)(I); 6.100(2)(C); 6.120(5)(E); 6.120(7)(A), (A)2 and 3, (B)1, (C), (F); 6.120(12)(D)1; 6.120(14)(B)10, (C)1; 6.120(15)(B); 7.011(6)(A)8, (D)2.C(I), 5.A and C, 8; 7.021(1)(C) and (D); 7.021(2)(A), (B)5 and 6; 7.021(3)(C) and (D); 8.010(1) (A)9, 12, 52.C, 59, 73, 82, 87, 89, and 97B; 8.030(1)(F)4.A and (G); 8.030(6)(A)3 and (B)1; 8.030(10)(A); 8.030(12)(C); 8.050 Purpose; 8.050(1); 8.050(2)(B); 8.050(5)(A) and (B); 8.050(9)(A); 8.070(2)(C)1.A(II)(a) [partial approval] and 10.F, (F), (G).
October 31, 2005	June 8, 2006	10 CSR 40-7.011(1)(C) and (D), (2)(A) and (B), (3)(C), (4) and (5), (6)(A)6., 8., & 9., (6)(B)1., 2., & 4. through 7., (6)(C)1. through 4., 8. & 9., (6)(D)1.F., 2., 2.B., 2.D.(I) through (III), 3., 5.C., 6., 8., and (7)(A); 10 CSR 40-7.021(1)(A), (2), (2)(A), (2)(B)3. through 6., (2)(C)2., (2)(D) and (E); 10 CSR 40-7.031(2)(E)1. and 2., (2)(E)2.C. & D., (3)(C), and (4) through (4)(B)2.; and 10 CSR 40-7.041.
October 11, 2006	March 12, 2007	10 CSR 40-7.011(1)(C) and (D), (2)(A) and (B), (3)(C), (4) and (5), (6)(A)6., 8. and 9., (6)(B)1., 2., and 4. through 7., (6)(C)1. through 4., 8. and 9., (6)(D)1.F., 2., 2.B., 2.D.(I) through (III), 3., 5.C., 6., 8., and (7)(A); 10 CSR 40-7.021(1)(A), (2), (2)(A), (2)(B)3. through 6., (2)(C)2., (2)(D) and (E); 10 CSR 40-7.031(2)(E)1. and 2., (2)(E)2.C. & D., (3)(C), and (4) through (4)(B)2.; and 10 CSR 40-7.041.
August 12, 2013	December 17, 2015	10 CSR 40-3.040(6)(A)1., (6)(R), (6)(U), (10)(B)5., and (10)(O)3.C.; 10 CSR 40-3.060(1)(K)2.; 10 CSR 40-3.180(3); 10 CSR 40-3.200(6)(A)1., (6)(R), (6)(U), (6)(T), (10)(B)5., (10)(O)3.C., (12)(A)1.A, and (17)(B); 10 CSR 40-3.220(1)(K) and (L); 10 CSR 40-3.230(1)(A) and (3)(D); 10 CSR 40-3.240(1); 10 CSR 40-3.260(4); 10 CSR 40-3.300; 10 CSR 40-5.010(1)(A), (2), (3), (4), (5), (6), (7), and (8); 10 CSR 40-5.020(3) and (4); 10 CSR 40-6.020(3)(B)14., and (3)(D); 10 CSR 40-6.030(4)(C); 10 CSR 40-6.050(14)(B) and (15); 10 CSR 40-6.060; 10 CSR 40-6.070(2)(A)5.; 10 CSR 40-6.100(1)(C) and (D); 10 CSR 40-6.120(5)(C), (7)(A)1.A., and (9)(A); 10 CSR 40-8.010; 10 CSR 40 8.020(2)(C); 10 CSR 40-8.070(2)(C)1.A.(II) and (2)(C)8.B.

[62 FR 9945, Mar. 5, 1997, as amended at 62 FR 41844, Aug. 4, 1997; 64 FR 57981, Oct. 28, 1999; 66 FR 23605, May 9, 2001; 71 FR 33249, June 8, 2006; 72 FR 10933, Mar. 12, 2007; 80 FR 78664, Dec. 17, 2015]

§ 925.16 Required program amendments.

Pursuant to 30 CFR 732.17, Missouri is required to make the following program amendments:

(a)-(o) [Reserved]

(p) By May 10, 2002, Missouri shall amend its program as follows:

(1)-(21) [Reserved]

(q)-(u) [Reserved]

[49 FR 19476, May 8, 1984]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 925.16, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 925.20 Approval of the Missouri abandoned mine land reclamation plan.

The Secretary approved the Missouri abandoned mine land reclamation plan, as submitted on September 11, 1981, effective January 29, 1982. Copies of the approved plan are available at:

§ 925.25

30 CFR Ch. VII (7–1–17 Edition)

(a) Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, Jefferson City, MO 65102.

(b) Office of Surface Mining Reclamation and Enforcement, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, IL 62002.

[64 FR 20167, Apr. 26, 1999]

§ 925.25 Approval of Missouri abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
June 22, 1987	June 16, 1988	10 CSR 40–9.060(2), (3), (4).
August 22, 1988	March 15, 1989	Organization; project selection; rights of entry; coordination of reclamation activities; land acquisition, management and disposal; database.
November 29, 1994 ..	August 24, 1995	RSMo 444.810.2 through .8; 444.915.3; 10 CSR 40–9.020(1)(D), (E), (3)(A); AML Plan § 884.13(C)(2), (D)(3), (4).
March 31, 1998	June 24, 1998	AMLR plan sections 884.13(c)(6) and (d)(3); Emergency response reclamation program.
October 5, 2000	May 9, 2001	10 CSR 40–9.020(1)(D)4 and (F).

[62 FR 9946, Mar. 5, 1997, as amended at 63 FR 34280, June 24, 1998; 64 FR 20167, Apr. 26, 1999; 66 FR 23605, May 9, 2001]

PART 926—MONTANA

Sec.

926.10 State regulatory program approval.

926.12 State program provisions and amendments not approved.

926.15 Approval of Montana regulatory program amendments.

926.16 Required program amendments.

926.20 Approval of Montana abandoned mine land reclamation plan.

926.21 Required abandoned mine land plan amendments.

926.25 Approval of Montana abandoned mine land reclamation plan amendments.

926.30 State-Federal cooperative agreement.

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

§ 926.10 State regulatory program approval.

The Montana permanent program submitted on August 3, 1979, as amended November 13, 1979; January 4, January 9, January 10, January 12, January 13, January 30, February 1, and February 20, 1980; November 3, 1980; and August 26, 1981, is approved effective February 10, 1982. Copies of the approved program, as amended, are available at:

(a) Montana Department of Environmental Quality, Industrial and Energy Minerals Bureau, P.O. Box 200901, Helena, Montana 59620–0901, (406) 444–1923.

(b) Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601–1918, Telephone: (307) 261–5776.

[59 FR 17932, Apr. 15, 1994, as amended at 64 FR 3610, Jan. 22, 1999]

§ 926.12 State program provisions and amendments not approved.

(a) The amendment submitted by letter dated June 7, 2011, Docket ID No. OSM–2011–0011, which proposed changes to the Montana approved program as a result of the Montana Legislature's 2011 passage of a Senate Bill (SB 297) relating to coal beneficiation is not approved.

(b) [Reserved]

[78 FR 10512, Feb. 14, 2013]

§ 926.15 Approval of Montana regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision

Surface Mining Reclamation and Enforcement, Interior

§ 926.15

approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
September 13, 1983	January 3, 1984	MCA 82-4-237, -251(4), -254.
April 2, 1984	January 3, 1985	ARM 26.4.1206 through .1209, .1211, .1212.
January 3, 1984	November 18, 1985	ARM 26.4.310, .621 through .626, .1260 through .1263.
July 3, 1985	February 14, 1986 ..	MCA 82-4-231, 232, 254.
April 23, 1987	December 31, 1987	MCA 82-4-203, 222, 223.
December 21, 1988 ..	May 11, 1990	ARM 26.4 subchapters 3, definitions and strip mine permit application requirements; 4, mine permit and test pit prospecting permit procedures; 5, backfilling and grading requirements; 6, transportation facilities, explosives and hydrology; 7, topsoiling, revegetation, and protection of wildlife and air resources; 8, alluvial valley floors, prime farmlands, alternate reclamation, and auger mining; 9, underground coal and uranium mining; 10, prospecting; 11, bonding, insurance reporting, and special areas; 12, special departmental procedures; 13, miscellaneous provisions.
June 19, 1990	March 20, 1991, August 19, 1992.	ARM 26.4.724 through 726, .728, .730 through .733, .1301A, .724; ARM 26.4.920, .924 through .927, .930, .932; ARM 26.4 subchapters 3, 5, 8, 11, 12.
October 19, 1992	February 25, 1994 ..	MCA 82-4-203(26).
June 16, 1993, July 28, 1993.	February 1, 1995	MCA 82-4-203, subsections (14), (16), (21), (23), (29), (34), (35), (36), definitions; 82-4-224, surface owner consent; 82-4-226, subsections (1), (2), (3), (5), (6), (8), prospecting permits and notices of intent; 82-4-227, subsections (1), (2), (3), (7) through (13), permit approval/denial criteria.
May 16, 1995	January 22, 1999 ...	MCA 2-15-3501, 2-15-3502, 82-4-203(1) through (35), except (24); MCA 82-4-204; MCA 82-4-205; MCA 82-4-221; MCA 82-4-223; MCA 82-4-226(8); MCA 82-4-227; MCA 82-4-231; MCA 82-4-232(6) and (7); MCA 82-4-235; MCA 82-4-240; MCA 82-4-242; MCA 82-4-251; and MCA 82-4-254(1) through (3). Decision deferred on MCA 82-4-239; MCA 82-4-203(24) disapproved.
March 5, 1996	January 22, 1999 ...	ARM 26.4.301(114); 26.4.410; 26.4.1001; and 26.4.1001A.
July 20 and August 17, 2000.	6/12/01	MCA 82-4-203(1) and (21)(d), 82-4-232(1), (7) and (8), 82-4-233(1) and 4, 82-4-243, 82-4-253(1), (2) and (3) and 82-4-254(1), (2), (3), (4) and (9).
April 27, 2001	November 21, 2001	MCA 82-4 part 2 Operating permit revocation—permit transfer
February 1 and 28, 1995.	February 12, 2002 ..	ARM 26.4.301(79) through (137); 26.4.304(5) and (6); 26.4.308(2); 26.4.314(3) and (5); 26.4.321(1) and (3); 26.4.404(5); 26.4.405(6) and (8); 26.4.407(1), (2) and (4); 26.4.501A(3); 26.4.505(4) through (8); 26.4.524(2); 26.4.601(5) and (7); 26.4.602(2); 26.4.603(9) and Introduction; 26.4.605(3); 26.4.623(2); 26.4.633(2); 26.4.634(1) and (2); 26.4.638(2); 26.4.639(1), (10), (18) and (19); 26.4.642(5) and (8); 26.4.702(4); 26.4.711(2) through(6); 26.4.721(1) through (3); 26.4.724(6); 26.4.726(2) and (3); 26.4.821(1); 26.4.825(4) and (6); 26.4.924(3) through (5), (8) through (21); 26.4.927(2) and (3); 26.4.930(3); 26.4.932(8); 26.4.1002(1) and (2); 26.4.1005(2) and (3); 26.4.1006(1) through (4); 26.4.1007(1) and (2); 26.4.1009(1) and (2); 26.4.1011(1); 26.4.1014; 26.4.1116(7); 26.4.1116A(1) and (2); 26.4.1141(3); and 26.4.1212(1) are approved. ARM 26.4.301(78); 26.3.303, Introduction, (1), (6) through (8), (13) through (15), and (20) through (24); 26.4.404(7) through (10); 26.4.405(5); 26.4.405A; 26.4.405B, 26.4.519A; 26.4.645(6); 26.4.646(6); 26.4.932(5)(b) and 26.4.1206(1) are deferred.

Original amendment submission date	Date of final publication	Citation/description
May 7, 2002	August 6, 2003	ARM 17.24.301 (recodified); 17.24.301(13), (34), (39), (46), (47), (64), (71), (73), (76), (79), (95), (103), (110), (111), (133); 17.24.302(6); 17.24.303(15)(a)(ii); 17.24.304(5); 17.24.305(2)(b); 17.24.306(1), (3); 17.24.313(6); 17.24.315(1)(b); 17.24.321(1)(intro), (a), (2)–(4); 17.24.324(2), (3); 17.24.327(2); 17.24.401(1), (5)(b)(i); 17.24.403(2)(a); 17.24.405(1), (8); 17.24.413(4); 17.24.415(1); 17.24.416(1)(d), (2); 17.24.501(1), (3), (4)–(6); 17.24.501A deleted; 17.24.503(1); 17.24.505(2); 17.24.507(4); 17.24.510(1), (2); 17.24.514 deleted; 17.24.518(1); 17.24.519A deleted; 17.24.520(1), (2), (3 recodified); 17.24.522(1); 17.24.601(1)–(11); 17.24.603(1)–(5); 17.24.604 deleted; 17.24.605(1)–(3); 17.24.606 [moved to 17.24.601(7)]; 17.24.607(1)–(3); 17.24.623(2)(b)(iii); 17.24.625(1), (2); 17.24.632(1); 17.24.633(3)–(5); 17.24.634(1)(intro), (a), (2), (3); 17.24.639(1)(c)–(27); 17.24.640(1); 17.24.642(1)(f), (2), (3), (6); 17.24.645(5 intro), (6); 17.24.646(6); 17.24.647(1); 17.24.652(1); 17.24.702(1), (2), (6); 17.24.711(1), (6)(b); 17.24.716(1), (2), (5); 17.24.718(2); 17.24.724(3)(a); 17.24.725(1); 17.24.726(2); 17.24.728 (intro); 17.24.733(3), recodified (3)–(5); 17.24.762(1); 17.24.815(2)(c)–(e), (f)(i), (h); 17.24.821(1)(intro), (1)(g); 17.24.823(2); 17.24.825(1), (3); 17.24.826(1), (2) [replaces 17.24.1103]; 17.24.901(1)(c)(i)–(iii); 17.24.903(1)(a), (c), (d); 17.24.911(1)–(3), (4)–(6) recodified, (7)(intro), (8)–(10); 17.24.924(15)–(20); 17.24.925(2); 17.24.927(3); 17.24.1001(1)(a), (2)(b)–(o), (4); 17.24.1002(1), (2)(j)–(m), (3); 17.24.1003(1 recodified), (2)–(4); 17.24.1005(3)(c intro); 17.24.1006(1), (3)(intro); 17.24.1010 intro; 17.24.1014(1)(b), (2)(d), (4); 17.24.1017(2)(c), (3)(d); 17.24.1018(3)–(9); 17.24.1103 deleted; 17.24.1104(2), recodify (3)–(5); 17.24.1108(1); 17.24.1111(4), recodify (5)–(6); 17.24.1112(1)(h); 17.24.1116(8); 17.24.1116A deleted; 17.24.1132(1)(a)(iv); 17.24.1143(1); 17.24.1221(1); 17.24.1222(2); 17.24.1223(5) (intro), (6)(b); 17.24.1224(1)(b); 17.24.1225(1)–(3); 17.24.1226(1), (2); 17.24.1228(1); 17.24.1261(1), (2), (4)(b), (c), (5); 17.24.1262(1 as recodified). MCA 82–4–205 recodification, (1), (2); 82–4–206 title, (1), (2); 82–4–231(8)(c), (d), (f); 82–4–241(1)–(3); 82–4–254(3), (4).
July 29, 2003	February 16, 2005 ..	MCA 82–4–202(3)(c); (3)(e) except for the phrase “and attainable”; 82–4–203(2); 82–4–203(4) except at (4)(c) the phrase “as necessary to support postmining land uses within the area affected and the adjacent area”; 82–4–203(13), (16), (17), (20) through (23); (24) except the phrase “as they relate to uses of land and water within the area affected by mining and the adjacent area”; (26), (27), (28), (30), (37), (38), (42) through (44), (46), (47), (50), (55); 82–4–221(3); 82–4–222(1)(m)–(p); 82–4–231(10)(k) except the phrase “as necessary to support postmining land uses and to prevent material damage to the hydrologic balance in the adjacent area”; 82–4–231(10)(k)(vii); (viii) except the phrase “to protect the hydrologic balance as necessary to support postmining land uses within the area affected and to prevent material damage to the hydrologic balance in adjacent areas”; 82–4–232(1) through (10); 82–4–233; 82–4–234; 82–4–235(1)–(1)(c); 82–4–235(1)(e)–(f); 82–4–235(1)(g) except the phrase “are introduced species that have become naturalized”; 82–4–236; HB 373 Section 11; 82–4–252(2); HB 684 repeal of Sec. 5, Chapter 522, Laws of 2001; also all editorial and codification changes. We are taking no action on: MCA 82–4–202(1); 82–4–239.
August 31, 2005	October 10, 2007 ...	ARM 17.24.301(6); 17.24.301(11); 17.24.301(13) (intro) and (a), (b), and (d); 17.24.301(26); 17.24.301(33); 17.24.301(36); 17.24.301(38); 17.24.301(46); 17.24.301(50); 17.24.301(54); 17.24.301(59); 17.24.301(64); 17.24.301(64)(b), (c), (d), (g), and (h); 17.24.301(67); 17.24.301(90); 17.24.301(103); 17.24.301(107)(b); 17.24.301(143); 17.24.302; 17.24.303(1)(w), (x), and (y); 17.24.305(2)(b)(i); 17.24.308(1)(b)(vii); 17.24.312(1)(b); 17.24.313; 17.24.321(1) and (3); 17.24.322(2)(a)(x) and (4); 17.24.323; 17.24.324(1)(e); 17.24.401(3)(f) and (5)(a)(iv); 17.24.404(9) and (10); 17.24.405(1) and (2), (6)(j), and (7); 17.24.416(1)(b); 17.24.413(1)(f); 17.24.427(1)(a), (c) and (2); 17.24.501(4)(a), (d) and (6)(d); 17.24.515; 17.24.522(3); 17.24.603(4); 17.24.605(8); 17.24.609(1); 17.24.623(2) and (5)(b); 17.24.624(4), (6)(a), (7)(a), (11) and (14); 17.24.626(1)(j); 17.24.633(2); 17.24.634; 17.24.636(2) and (3); 17.24.639(2), (3) and (7); 17.24.642(1)–(7); 17.24.646(4); 17.24.701(4); 17.24.702(4)(b) and (6); 17.24.711; 17.24.714(1); 17.24.716(1), (3), (4), and (5); 17.24.717(1); 17.24.718(3); 17.24.719; 17.24.720; 17.24.724(1)–(3); 17.24.726 except at (1) the proposed deletion of the phrase “the application and must:” 17.24.728; 17.24.751(1) and (2)(a), (c), (e), and (f); 17.24.762(1)(a)–(d), (2), and (3); 17.24.764; 17.24.815(1)(a)(i), (ii) and (b); 17.24.821; 17.24.823; 17.24.824; 17.24.825; 17.24.826; 17.24.832(4) and (5)(b) and (c); 17.24.1001; 17.24.1104(1) and (3); 17.24.1108(1), (2) and (4); 17.24.1109(1)(d)–(g); 17.24.1116; 17.24.1125(2); 17.24.1132(1)(a); 17.24.1133(2)(a), (b), and (3); 17.24.1201(1)–(4); 17.24.1202; 17.24.1301; also all minor, editorial, and codification changes.

Surface Mining Reclamation and Enforcement, Interior

§ 926.25

Original amendment submission date	Date of final publication	Citation/description
January 18, 2006	May 14, 2008	Montana Code Annotated (MCA) 82-4-206; 82-4-223; 82-4-225; 82-4-226; 82-4-227; 82-4-231; 82-4-232; 82-4-233; 82-4-235; 82-4-251; 82-4-254; 82-4-1001; 82-4-1002.
November 6, 2006	May 14, 2008	Administrative Record of Montana (ARM) 17.4.301; 17.4.302; 17.4.303; 17.4.304; 17.4.305; 17.4.306; 17.4.307; 17.4.308; 17.24.1206; 17.24.1211; 17.24.1212; 17.24.1218; 17.24.1219; 17.24.1220.
July 7, 2008	January 5, 2009	Montana Strip and Underground Mine Reclamation Act 82-4-232(3) and (4), 82-4-232 (5)(k), 82-4-232(5)(l).
July 3, 2008	December 27, 2010	Normal husbandry practices.
July 14, 2010	March 9, 2011	ARM 17.24.1109.
May 12, 2009	May 24, 2011	MCA 82-4-235(2), -235(3)(a), -235(3)(b), -235(4)(a), and -235(4)(b).
August 19, 2011	September 19, 2012	MCA 82-4-203(4)(c) (definition of AOC); addition of -203(27) "in situ coal gasification;" -203(44) "recovery fluid;" recodification of former -203(27) through (56).

[62 FR 9946, Mar. 5, 1997, as amended at 64 FR 3610, 3615, Jan. 22, 1999; 66 FR 31533, June 12, 2001; 66 FR 58381, Nov. 21, 2001; 67 FR 6408, Feb. 12, 2002; 68 FR 46477, Aug. 6, 2003; 70 FR 8018, Feb. 16, 2005; 72 FR 57838, Oct. 10, 2007; 73 FR 27743, May 14, 2008; 74 FR 219, Jan. 5, 2009; 75 FR 81119, Dec. 27, 2010; 76 FR 12859, Mar. 9, 2011; 76 FR 30013, May 24, 2011; 77 FR 58025, Sept. 19, 2012]

§ 926.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), Montana is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Montana's established administrative or legislative procedures.

(a)-(d) [Reserved]

(e) By October 19, 1992, Montana shall:

(1) through (9) [Reserved]

(f)-(m) [Reserved]

[49 FR 20287, May 14, 1989, as amended at 55 FR 19736, May 11, 1990; 57 FR 37446, Aug. 19, 1992; 59 FR 9087, Feb. 25, 1994; 60 FR 6013, Feb. 1, 1995; 64 FR 3610, 3615, Jan. 22, 1999; 67 FR 6408, Feb. 12, 2002; 68 FR 46477, Aug. 6, 2003; 72 FR 57838, Oct. 10, 2007]

§ 926.20 Approval of Montana abandoned mine land reclamation plan.

The Montana Abandoned Mine Land Reclamation Plan, as submitted on June 16, 1980, and as revised on July 28, 1980, is approved effective November 24, 1980. Copies of the approved plan are available at:

(a) Montana Department of Environmental Quality, 1625 Eleventh Avenue, Helena, MT 59620-1601.

(b) Office of Surface Mining Reclamation and Enforcement, Casper Field Office, 100 East B Street, Room 2128, Casper, WY 82601-1918.

[60 FR 37002, July 19, 1995]

§ 926.21 Required abandoned mine land plan amendments.

Pursuant to 30 CFR 884.15, Montana is required to submit for OSM's approval the following proposed plan amendment by the date specified.

(a)-(b) [Reserved]

[64 FR 3610, Jan. 22, 1999, as amended at 67 FR 41829, June 20, 2002]

§ 926.25 Approval of Montana abandoned mine land reclamation plan amendments.

(a) Montana certification of completing all known coal-related impacts is accepted, effective July 9, 1990.

(b) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
April 20, 1983	August 18, 1983	Liens on noncoal projects; noncoal additions to Montana Abandoned Mine Land Inventory; emergency response reclamation program; organizational restructuring.
March 22, 1995	July 19, 1995	Reclamation of interim program and bankrupt surety coal sites; future set-aside program; water supply facilities and water replacement; other policies and procedures.
August 15, 2000	June 20, 2002	Deletion of ARM 26.4.301(1), (37), and (41), 26.4.1231, 26.4.1232, 26.4.1233, 26.4.1234, 26.4.1235, 26.4.1236, 26.4.1237, 26.4.1238, 26.4.1239, 26.4.1240, 26.4.1241, and 26.4.1242; and revision of ARM 26.4.301(1), ARM 26.4.1303, MCA 82–4–239, and the Montana Reclamation Plan 2001 Plan Amendment are approved.

[62 FR 9947, Mar. 5, 1997, as amended at 67 FR 41828, June 20, 2002]

§ 926.30 State-Federal cooperative agreement.

COOPERATIVE AGREEMENT

The Governor of the State of Montana (Governor) and the Secretary of the Department of the Interior (Secretary) enter into a State-Federal Cooperative Agreement (Agreement) to read as follows:

ARTICLE I: AUTHORITY, PURPOSES, AND RESPONSIBLE AGENCIES

A. Authority

This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary, under 30 U.S.C. 1253, to elect to enter into an agreement for State control and regulation of surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation of coal exploration operations¹ not subject to 43 CFR Group 3400, and surface coal mining and reclamation operations and activities in Montana on Federal lands consistent with SMCRA, the Federal lands program (30 CFR) Chapter VII, Subchapter D), and the Montana State Program (State Program), including among other things, the Montana Strip and Underground Mine Reclamation Act, part 2, Chapter 4, Title 82, Montana Code Annotated (State Act or MCA).

B. Purposes

The purposes of the Agreement are to (1) foster State-Federal cooperation in the regulation of surface coal mining and reclamation operations on Federal lands and coal exploration operations not subject to 43 CFR

Group 3400; (2) minimize intergovernmental overlap and duplication; and (3) provide effective and uniform application of the State Program on all non-Indian lands in Montana.

C. Responsible Agencies

The Montana Department of Environmental Quality (DEQ) shall administer this Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSM) shall administer this Agreement on behalf of the Secretary.

ARTICLE II: EFFECTIVE DATE

Upon signing by the Secretary and the Governor, this Agreement will take effect 30 days after final publication as a rule making in the FEDERAL REGISTER.² This Agreement shall remain in effect until terminated as provided in Article XI.

ARTICLE III: DEFINITIONS

The term and phrases used in this Agreement, except the term “permit application package (PAP),” will be given the meanings set forth in SMCRA, 30 CFR Parts 700, 701, 740, and 761, and the State Program, including the State Act and the regulations promulgated pursuant to the State Act. Where there is a conflict between the above-referenced State and Federal definitions, the definitions used in the State Program will apply, unless otherwise required by Federal regulation.

The term “permit application package (PAP)” for the purposes of this Agreement, means a proposal to conduct surface coal mining and reclamation operations on Federal lands, including an application for a permit, permit revision, permit amendment, or permit renewal, and all information required by SMCRA, the Federal regulations, the State Program, this Agreement, and all other applicable laws and regulations, including, with respect to leased Federal coal,

¹The term “Exploration Operations” is referred to as “Prospecting” in the Montana State Program.

²See explanation in Article II at 46 FR 20983, April 8, 1981.

Surface Mining Reclamation and Enforcement, Interior

§ 926.30

the Mineral Leasing Act of 1920 (MLA) and its implementing regulations.

ARTICLE IV: APPLICABILITY

In accordance with the Federal lands program, the laws, regulations, terms and conditions of the State Program are applicable to Federal lands in Montana except as otherwise stated in this Agreement, SMCRA, 30 CFR 740.4, 740.11(a), and 745.13 or other applicable Federal laws, Executive Orders, or regulations.

ARTICLE V: REQUIREMENTS FOR THE AGREEMENT

The Governor and the Secretary affirm that they will comply with all provisions of this Agreement.

A. Funds

1. The State shall devote adequate funds to the administration and enforcement on Federal lands in Montana of the requirements contained in the State Program. If the State complies with the terms of this Agreement, and if necessary funds have been appropriated, OSM shall reimburse the State as provided in section 705(c) of SMCRA and 30 CFR 735.16 for the costs associated with carrying out responsibilities under this Agreement. The amount of such funds shall be determined in accordance with the provisions of Chapter 3-10 and appendix 111 of the Federal Assistance Manual.

2. If DEQ applies for a grant but sufficient funds have not been appropriated to OSM, OSM and DEQ shall promptly meet to decide on appropriate measures that will insure that surface coal mining and reclamation operations on Federal lands in Montana are regulated in accordance with the State Program.

3. Funds provided to DEQ under this Agreement will be adjusted in accordance with the program income provisions of 43 CFR part 12.

B. Reports and Records

1. DEQ shall submit annual reports to OSM containing information with respect to its compliance with the terms of this Agreement pursuant to 30 CFR 745.12(d). Upon request, DEQ and OSM shall exchange, except where prohibited by Federal or State law, information developed under this Agreement. OSM shall provide DEQ with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. DEQ comments on the report will be attached before being sent to the Congress or other interested parties.

C. Personnel

DEQ shall maintain the necessary personnel to fully implement this Agreement in accordance with the provisions of SMCRA,

the Federal lands program, and the State Program.

D. Equipment and Facilities

DEQ shall assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed and which are necessary to carry out the requirements of this Agreement.

E. Permit Application Fees and Civil Penalties

The amount of the fee accompanying the PAP shall be determined in accordance with section 82-4-223(1), of MCA, and the applicable provisions of Federal law. All permit fees and civil penalty fines shall be accounted for in accordance with the provisions of 43 CFR part 12. Permit fees will be considered program income. Civil penalties will not be considered program income. The Financial Status Report submitted pursuant to 30 CFR 735.26 shall include the amount of the permit application fees collected and attributable to Federal lands during the State fiscal year.

ARTICLE VI: REVIEW AND APPROVAL OF THE PAP OR APPLICATION FOR TRANSFER, ASSIGNMENT OR SALE OF PERMIT RIGHTS (TRANSFER APPLICATION)

A. Receipt and Distribution of the PAP or Transfer Application

1. DEQ shall require an applicant proposing to conduct surface coal mining and reclamation operations on Federal lands to submit to DEQ the appropriate number of copies of a PAP or transfer application. The PAP or transfer application shall meet the requirements of 30 CFR part 740, shall be in the form required by DEQ, and shall contain, at a minimum, the information required by 30 CFR 740.13(b), including:

a. Information necessary for DEQ to make a determination of compliance with the State Program;

b. Any supplement information required by OSM, the Bureau of Land Management (BLM), and the Federal Land Management Agency. This information shall be appropriate and adequate for OSM and the appropriate Federal agencies to make determinations of compliance with applicable requirements of SMCRA, the MLA, as amended, the Federal lands program, and other Federal laws, Executive Orders, and regulations which these agencies administer.

2. Except as otherwise agreed in writing by Federal agencies, upon receipt of a PAP or transfer application, DEQ shall ensure that an appropriate number of copies of the PAP or transfer application are provided to OSM, Federal land management agency, and any other appropriate Federal agency.

B. Review of the PAP or Transfer Application

1. DEQ is responsible for:

a. As authorized by 30 CFR 740.4(c),

(1) Being the primary point of contact with the applicant regarding the review of the PAP or transfer application and communications regarding all decisions and determinations with respect to the PAP or transfer application;

(2) Analysis, review, and approval, conditional approval, or disapproval of the permit application component of the PAP or the transfer application for surface coal mining and reclamation operations on Federal lands in Montana;

(3) Obtaining the comments and findings of Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP or transfer application, unless otherwise agreed in writing by Federal agencies. DEQ shall request such Federal agencies to provide to DEQ their requests for additional information or their findings within 45 days of the receipt of the request;

(4) Obtaining OSM's determination whether the PAP involving leased Federal coal constitutes a mining plan modification under 30 CFR 746.18, and informing the applicant of such determination;

(5) Consulting with and obtaining the consent, as necessary, of the Federal land management agency pursuant to 30 CFR 740.4(c)(2), with respect to post-mining land use and to any special requirements necessary to protect non-coal resources of the areas that will be affected by surface coal mining and reclamation operations;

(6) Consulting with and obtaining the consent, as necessary, of BLM pursuant to 30 CFR 740.4(c)(3), with respect to requirements relating to the development, production and recovery of mineral resources on lands affected by surface coal mining and reclamation operations involving leased Federal coal pursuant to 43 CFR Group 3400;

(7) Approval and release of performance bonds pursuant to Article IX.B, and approval and maintenance of liability insurance;

(8) Review and approval of exploration operations not subject to the requirements of 43 CFR Group 3400, as provided in 30 CFR 740.4(c)(6).

b. In addition, where a mining plan action is required under 30 CFR part 746, as determined by OSM:

(1) Preparation of documentation to comply with the requirements of National Environmental Policy Act (NEPA). However, OSM will retain the responsibility for the exceptions in 30 CFR 740.4(c)(7)(i) through (vii). DEQ and OSM shall coordinate and cooperate with each other so that, if possible, one Environmental Assessment or Environmental Impact Statement is produced to

comply with NEPA and the Montana Environmental Policy Act (MEPA);

(2) Preparation of a State decision package, which includes written findings indicating that the permit application component of the PAP is in compliance with the terms of the State Program, a technical analysis of the PAP, and supporting documentation.

2. OSM is responsible for:

a. When the PAP includes Federal lands,

(1) Making determinations and evaluations for NEPA compliance documents as required by 30 CFR 740.4(c)(7)(i) through (vii);

(2) Reviewing the appropriate portions of the PAP for compliance with the non-delegable responsibilities of the Secretary pursuant to SMCRA and 30 CFR 745.13, and for compliance with the requirements of other Federal laws, Executive Orders, and regulations;

(3) Consulting with the Federal land management agency, and determining whether the PAP constitutes a mining plan modification under 30 CFR 746.18, and informing DEQ, whenever practical within 30 days of receiving a copy of the PAP for operations on Federal lands, of such determination;

(4) Exercising its responsibilities in a timely manner governed, to the extent possible, by the deadlines established in the State Program;

(5) Assisting DEQ, upon request, in carrying out its responsibilities by:

(a) Coordinating resolution of conflicts between DEQ and other Federal agencies in a timely manner;

(b) Obtaining comments and findings of other Federal agencies with jurisdiction or responsibility over Federal lands;

(c) Scheduling joint meetings between DEQ and Federal agencies;

(d) Reviewing and analyzing the PAP, to the extent possible, and providing to DEQ the work product within 50 days of receipt of the State's request for such assistance, unless a different time is agreed upon by OSM and DEQ; and

(e) Providing technical assistance, if available OSM resources allow.

b. In addition, where a mining plan action is required pursuant to 30 CFR part 746:

(1) Consulting with and obtaining the concurrences of BLM, the Federal land management agency, and any other Federal agency, as necessary, prior to making recommendation to the Secretary concerning approval of the mining plan;

(2) Upon notification from the DEQ that certain permit conditions required by the Federal land management agency are not incorporated in the State permit, OSM will determine whether such conditions are necessary. When OSM believes the conditions are necessary, OSM will work with the Federal land management agency to find another means to resolve the issue and, where

appropriate, OSM will facilitate the attachment of conditions to the appropriate Federal authorizations; and

(3) Providing a decision document to the Secretary recommending approval, disapproval, or conditional approval of mining plans or modifications thereof.

3. The Secretary:

a. Shall concurrently carry out his responsibilities that cannot be delegated to DEQ pursuant to SMCRA and 30 CFR 745.13, the Federal lands program, the MLA, NEPA, this Agreement, and other applicable Federal laws including, but not limited to, those listed in appendix A. The Secretary shall carry out these responsibilities in a timely manner and will avoid, to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the State Program;

b. Reserves the right to act independently of DEQ to carry out his responsibilities under laws other than SMCRA, and where Federal law permits, to delegate some of the responsibilities to OSM; and

c. Shall be responsible for approval, disapproval, or conditional approval of mining plans and modifications thereof with respect to lands containing leased Federal coal in accordance with 30 CFR 740.4(a)(1).

4. Coordination:

a. As a matter of practice, OSM will not independently initiate contacts with applicants regarding completeness or deficiencies of a PAP or transfer application with respect to matters covered by the State Program.

b. OSM and DEQ shall coordinate with each other during the review process of a PAP or transfer application as needed.

c. OSM and DEQ may request and schedule meetings with the applicant with adequate advance notice to each other.

d. DEQ shall keep OSM informed of findings made during the review process which bear on the responsibilities of OSM or other Federal agencies. DEQ shall send to OSM copies of any correspondence with the applicant and any information received from the applicant regarding the PAP or transfer application. OSM shall send to DEQ copies of all OSM correspondence with the applicant and any other information received from the applicant which may have a bearing on the PAP or transfer application. Any conflicts or differences of opinions that may develop during the review process should be resolved at the lowest possible staff level.

e. OSM shall have access to DEQ files concerning operations on Federal lands.

f. Where a mining plan action is required pursuant to 30 CFR part 746, OSM and DEQ shall develop a work plan and schedule for the PAP review and each will designate a project leader. The project leaders will serve as the primary points of contact between OSM and DEQ throughout the review process. Not later than 50 days after receipt of

the PAP, unless a different time is agreed upon, OSM shall furnish DEQ with its review comments on the PAP and specify any requirements for additional data. DEQ shall provide OSM all available information that may assist OSM in preparing any findings for the mining plan action.

g. On matters concerned exclusively with regulations under 43 CFR Group 3400, BLM will be the primary contact with the applicant and shall inform DEQ of its actions and provide DEQ with a copy of documentation on all decisions.

h. Responsibilities and decisions which can be delegated to DEQ under applicable Federal laws other than SMCRA may be specified in working agreements between OSM and DEQ, with the concurrence of any Federal agency involved, and without amendment to this Agreement.

i. In the case that valid existing rights (VER) are determined to exist on Federal lands under section 522(e)(3) of SMCRA where the proposed operation will adversely affect either a publicly-owned park, or a historic place listed in the National Register of Historic Sites, DEQ shall work, respectively, with the agency with jurisdiction over the publicly-owned park or the agency with jurisdiction over the historic place, to develop mutually acceptable terms and conditions for incorporation into the permit to mitigate adverse impacts.

C. Approval of the PAP or Transfer Application

1. DEQ shall make a decision on approval, conditional approval, or disapproval of the permit application component of the PAP or the transfer application on Federal lands.

2. DEQ must consider the comments of Federal agencies in the context of permit issuance and will document these comments in the record of permit decisions. To the extent allowed by Montana law, permits issued by DEQ will include terms and conditions imposed by the Federal land management agency pursuant to applicable Federal laws and regulations other than SMCRA, in accordance with 30 CFR 740.13(c)(1). When Federal agencies recommend permit conditions and these conditions are not adopted by DEQ, DEQ will provide OSM with documentation as to why they were not incorporated as permit conditions.

3. When a mining plan action is required pursuant to 30 CFR part 746, DEQ may make a decision on approval, conditional approval, or disapproval of the permit application component of the PAP on Federal lands in accordance with the State Program prior to the necessary Secretarial decision on the mining plan, provided that DEQ advises the applicant that Secretarial approval of the mining plan action must be obtained before the applicant may conduct surface coal mining and reclamation operations on the Federal lands. To the extent allowed by the

§ 926.30

State law, DEQ shall reserve the right to amend or rescind any requirements of the permit to conform with any terms or conditions imposed by the Secretary in the approval of the mining plan.

4. After making its decision on the permit application component of the PAP or transfer application, DEQ shall send a copy of the signed permit form and State decision document to the applicant, OSM, the Federal land management agency, and any agency with jurisdiction over a publicly-owned park, or historic property included in the NRHS which would be adversely affected by the surface coal mining and reclamation operations.

ARTICLE VII: INSPECTIONS

A. DEQ shall conduct inspections on Federal lands in accordance with 30 CFR 740.4(c)(5) and prepare and file inspection reports in accordance with the approved State Program.

B. DEQ shall, subsequent to conducting any inspection on Federal lands, file with OSM's appropriate Field Office an inspection report describing: (1) the general conditions of the lands under the lease, permit, or license; (2) the manner in which the operations are being conducted; and (3) whether the operator is complying with applicable performance standards and reclamation requirements.

C. DEQ will be the point of contact and inspection authority in dealing with the operator concerning operations and compliance with requirements covered by this Agreement, except as described in this Agreement and in the Secretary's regulations. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

D. Authorized representatives of the Secretary may conduct any inspections necessary to comply with 30 CFR Parts 842 and 843, and with the Secretary's obligations under laws other than SMCRA.

E. OSM shall give DEQ reasonable notice of its intent to conduct an inspection in order to provide State inspectors with an opportunity to join in the inspection. When OSM is responding to a citizen complaint supplying adequate proof of an imminent danger to the public health and safety, or a significant imminent environmental harm to land, air, or water resources, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it shall contact DEQ no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger to the public health and safety, or a significant imminent environmental harm to land, air, or water resources, must be referred initially to DEQ for action. The Secretary reserves the right to conduct inspec-

30 CFR Ch. VII (7-1-17 Edition)

tions without prior notice to DEQ, if necessary, to carry out his responsibilities under SMCRA.

ARTICLE VIII: ENFORCEMENT

A. DEQ shall have primary enforcement authority under SMCRA concerning compliance with the requirements of this Agreement and the State Program in accordance with 30 CFR 740.4(c)(5) and 740.17(a)(2). Enforcement authority given to the Secretary under SMCRA, and its implementing regulations, or other Federal laws and Executive Orders, including, but not limited to, those listed in appendix A, is reserved to the Secretary.

B. During any joint inspection by OSM and DEQ, DEQ will have primary responsibility for enforcement procedures, including issuance of cessation orders and notices of violation. DEQ shall consult with OSM prior to issuance of any decision to suspend, rescind or revoke a permit on Federal lands. DEQ shall notify BLM of any suspension, rescission or revocation of a permit containing leased Federal coal pursuant to 30 CFR 740.13(f)(2).

C. During any inspection made solely by OSM or any joint inspection where DEQ and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR Parts 842, 843, 845 and 846.

D. DEQ and OSM shall promptly notify each other of all violations and of all actions taken with respect to such violations.

E. Personnel of DEQ and OSM shall be mutually available to serve as witnesses in enforcement actions taken by either party.

F. This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than SMCRA.

ARTICLE IX: BONDS

A. DEQ and the Secretary shall require all operators on Federal lands to submit a single performance bond jointly payable to both the United States and DEQ. The bond shall be of sufficient amount to cover the operator's responsibilities under SMCRA and the State Program. The bond shall be conditioned upon continued compliance with all requirements of SMCRA, 30 CFR Chapter VII, the State Program, and the permit. Such bond shall provide that if this Agreement is terminated under the provisions of 30 CFR 745.15, the portion of the bond covering the Federal lands shall be payable only to the United States.

B. DEQ will have primary responsibility for the approval and release of performance bonds required for surface coal mining and reclamation operations on Federal lands. However, release of a performance bond on

lands subject to an approved mining plan requires the concurrence of OSM as provided in 30 CFR 740.15(d)(3). Prior to such concurrence, OSM shall coordinate with other Federal agencies having the authority over the lands involved. DEQ shall annually advise OSM of adjustments to the performance bond.

C. Performance bonds will be subject to forfeiture with the concurrence of OSM, in accordance with the procedures and requirements of the State Program. OSM may not withhold its concurrence unless DEQ's forfeiture decision is not in accordance with the requirements and procedures of the State program.

D. Submission of a performance bond does not satisfy the requirements for either a Federal lease bond required by 43 CFR part 3474 or a lessee protection bond which is required in certain circumstances by section 715 of SMCRA.

ARTICLE X: DESIGNATING LAND AREAS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING AND RECLAMATION OPERATIONS AND ACTIVITIES, AND VALID EXISTING RIGHTS AND COMPATIBILITY DETERMINATIONS

A. Unsuitability Petitions

1. Authority to designate or terminate the designation of areas of Federal lands as unsuitable for mining is reserved to the Secretary. Unsuitability petitions shall be filed with OSM and would be processed in accordance with 30 CFR 769.

2. When either DEQ or OSM receives a petition that could impact adjacent Federal or non-Federal lands pursuant to section 522(c) of SMCRA, the agency receiving the petition will notify the other of receipt of the petition and the anticipated schedule for reaching a decision. OSM shall coordinate with and solicit comments from the applicable Federal land management agency. OSM and DEQ shall fully consider data, information, and recommendations of all agencies.

B. Valid Existing Rights (VER) and Compatibility Determinations

The following actions will be taken when requests for determinations of VER pursuant to section 522(e) of SMCRA, or for determinations of compatibility pursuant to section 522(e)(2) of SMCRA are received:

1. For Federal lands within the boundaries of any areas specified under section 522(e)(1) of SMCRA, the Secretary will make the VER determination. If surface coal mining and reclamation operations would be conducted on both Federal and non-Federal lands within such areas, the Secretary will make the VER determination for the Federal lands and DEQ will make the VER determination for State and private lands.

2. For Federal lands within the boundaries of any national forest where proposed surface coal mining and reclamation operations are prohibited or limited by section 522(e)(2) of SMCRA and 30 CFR 761.11(b), the Secretary will make VER determinations. OSM will process requests for determinations of compatibility under section 522(e)(2) of SMCRA and part 30 CFR 761.12(c).

3. Where a VER determination is requested for Federal lands protected under section 522(e)(3), DEQ will make the VER determination. DEQ will determine, in consultation with the State Historic Preservation Officer, whether any proposed operation will adversely affect any publicly-owned park or historic place listed on the National Register of Historic Sites (NRHS).

Surface coal mining and reclamation operations of Federal lands protected under section 522(e)(3) of SMCRA may be permitted if approved jointly by DEQ, and the Federal, State, or local agency with jurisdiction over the park or historic place. DEQ will coordinate with any agency with jurisdiction over the publicly-owned park or historic place to develop mutually acceptable terms and conditions for incorporation into the permit in order to mitigate environmental impacts.

4. DEQ will process determinations of VER on Federal lands for all areas limited or prohibited by section 522(e)(4) and (5) of SMCRA as unsuitable for mining.

5. For operations on Federal lands, whenever DEQ is responsible for making the VER determinations, DEQ will consult with OSM and any affected agency.

ARTICLE XI: TERMINATION OF THE AGREEMENT

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XII: REINSTATEMENT OF THE AGREEMENT

If this Agreement has been terminated in whole or part, it may be reinstated under the provisions of 30 CFR 745.16.

ARTICLE XIII: AMENDMENTS OF THE AGREEMENT

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

ARTICLE XIV: CHANGES IN STATE OR FEDERAL STANDARDS

A. The Secretary or the State may, from time to time, revise and promulgate new or revised performance or reclamation requirements or enforcement and administrative procedures. Each party shall, if it is determined to be necessary to keep this Agreement in force, change or revise its respective laws or regulations or request necessary legislative action. Such changes will be made

under the procedures of 30 CFR part 732 for changes to the State Program and under the procedures of section 501 of SMCRA for changes to the Federal lands program.

B. DEQ and OSM shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XV: CHANGES IN PERSONNEL AND ORGANIZATION

A. DEQ and OSM shall, consistent with 30 CFR part 745, advise each other of changes in the organization, structure, functions, duties and funds of the offices, departments, divisions, and persons within their organizations which could affect administration and enforcement of this Agreement. Each shall promptly advise the other in writing of changes in key personnel, including the head of a department or division, or changes in the functions or duties of the principal offices of the program. DEQ and OSM shall advise each other in writing of changes in the location of their respective offices, addresses, telephone numbers, as well as changes in the names, addresses, and telephone numbers of their respective personnel.

B. Should the State Act be amended to transfer administration of the State Act to another agency, all references to DEQ in this Agreement shall be deemed to apply to the successor regulatory agency as of the date of the transfer. The provisions in this Agreement shall thereafter apply to that agency.

ARTICLE XVI: RESERVATION OF RIGHTS

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under laws other than the Act and the State Program, including, but not limited to those listed in appendix A.

Approved:

Dated: May 8, 1998.

Marc Racicot,
Governor of Montana.

Dated: July 7, 1998.

Bruce Babbitt,
Secretary of the Interior.

APPENDIX A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations, including 43 CFR part 3480.

3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR part 1500.

4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR part 402.

5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR part 800.

6. Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 *et seq.*

7. The American Indian Religious Freedom Act, 42 U.S.C. 1986 *et seq.*

8. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa *et seq.*

9. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

10. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

11. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

12. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

13. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

14. Executive Order 11988 (May 24, 1977), for flood plain protection.

15. Executive Order 11990 (May 24, 1977), for wetlands protection.

16. Executive Order 12898 (February 11, 1994) for Federal Actions to Address Environmental Justice on Minority Populations and Low Income Populations.

17. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

18. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

19. The Constitution of the United States.

20. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

21. 30 CFR Chapter VII.

22. The Constitution of the State of Montana.

23. Montana Strip and Underground Mine Reclamation Act (MSUMRA), part 2, Chapter 4, Title 82, Montana Code Annotated.

24. Title 26, Chapter 4, Subchapter 3, Administrative Rules of Montana.

25. Montana Environmental Policy Act (MEPA).

[63 FR 40794, July 30, 1998]

PART 931—NEW MEXICO

Sec.

931.1 Scope.

931.10 State regulatory program approval.

931.11 Conditions of the State program approval.

931.13 Preemption of New Mexico laws and regulations.

Surface Mining Reclamation and Enforcement, Interior

§ 931.15

931.15 Approval of New Mexico regulatory program amendments.

931.16 Required program amendments.

931.20 Approval of the New Mexico abandoned mine reclamation plan.

931.25 Approval of New Mexico abandoned mine land reclamation plan amendments.

931.26 Required plan amendments.

931.30 State-Federal cooperative agreement.

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

SOURCE: 45 FR 86489, Dec. 31, 1980, unless otherwise noted.

§ 931.1 Scope.

This part contains all rules applicable only within New Mexico that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 931.10 State regulatory program approval.

The New Mexico State Program as submitted on February 28, 1980, and amended and clarified on June 11, 1980, August 7, 1980, and September 10, 1980, was conditionally approved, effective December 31, 1980. Copies of the approved program together with copies of the letter of the New Mexico Energy and Minerals Department, Division of Mining and Minerals, agreeing to the conditions in 30 CFR 931.11 are available at:

(a) Mining and Minerals Division, Energy, Minerals and Natural Resources Department, 2040 South Pacheco Street, Santa Fe, NM 87505.

(b) Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette NW., suite 1200, Albuquerque, NM 87102.

[47 FR 47380, Oct. 26, 1982, as amended at 55 FR 17607, Apr. 26, 1990; 59 FR 17933, Apr. 15, 1994]

§ 931.11 Conditions of the State program approval.

The approval of the State program is subject to the following conditions:

(a)-(j) [Reserved]

[45 FR 86489, Dec. 31, 1980, as amended at 47 FR 23153, 23155, May 27, 1982; 47 FR 47380, Oct. 26, 1982; 48 FR 28088, June 20, 1983; 49 FR 30691, Aug. 1, 1984; 71 FR 69195, Nov. 30, 2006]

§ 931.13 Preemption of New Mexico laws and regulations.

Under the authority of sections 505(b) of SMCRA, 30 U.S.C. 1255(b), and in accordance with the position taken by the State of New Mexico, the following provisions of New Mexico law and regulation are hereby preempted and superseded as they may apply to coal exploration and surface coal mining and reclamation operations:

The State Wildlife Conservation Act (17-2-37 to 17-2-46 NMSA 1978) to the extent it is inconsistent with provisions of SMCRA related to the Endangered Species Act of 1973 (16 USC 1531 *et seq.*).

§ 931.15 Approval of New Mexico regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
February 28, 1982	May 27, 1982	Procedures for Posting and Publishing Notices of Show Cause Orders.
July 9, 1982	October 26, 1982 ...	CSMC 80-1-19-15(d), 80-1-20-71(i), 20-102(a); 80-1-29-12(b), definition of "Unconsolidated Stream-laid Deposits Holding Streams".
February 8, 1984	August 1, 1984	CSMC 80-1-14-23(a), (b).
June 6, 1984	January 4, 1985	CSMC 80-1-1-5 definition of roads; 80-1-20-150, 151.
June 20, 1984, July 18, 1984.	January 31, 1985 ...	CSMC 80-1-1-11; 80-1-11-30; 80-1-20-103.
August 12, 1987	February 11, 1988 ..	CSMC 80-1-30-12(c) through (l).
September 1, 1988 ...	January 30, 1989 ...	CSMC 80-2-22-29(p).
June 17, 1987	March 9, 1989	CSMC 80-1-5-25, -26; 80-1-8-11; 80-1-9-18; 80-1-11-27, 80-1-20-89, -102, -103, -106, -181; 80-1-29-11; 80-1-33 Training, Examination, and Certification of Blasters.
April 18, 1988, October 20, 1988.	March 17, 1989	CSMC 80-1-20-71(b), -81, -83(b), -85, -92(b).

Original amendment submission date	Date of final publication	Citation/description
February 21, 1989, August 17, 1989.	December 26, 1989	CSMC 80–1–20–41(d)(1), –42(a)(1).
March 29, 1989, April 26, 1989.	April 26, 1990	CSMC 80–1–20–83(b), –89(d)(2), –103(a)(1); 80–1–29–11(a); 80–1–33–11, –14, –15(e)(1).
May 25, 1989	November 23, 1990	CSMC 80–1–1–5, definitions of “affected area,” “self-bond”; 80–1–8–20; 80–1–9–16; 80–1–14–23(d)(2), –40(a)(2); 80–1–20–97(b), (c); 80–1–31–21 through –24; July 12, 1990 Policy Statement.
July 22, 1989	February 26, 1991 ..	CSMC 80–1–1–5, definition of “other treatment facilities;” 80–1–20–41(f), –46, (a), –49.
April 24, 1990	June 21, 1991	CSMC 80–1–20–42(a)(8), –133(c).
March 15, 1990	December 31, 1991	CSMC 80–1–1–5, definitions of “cumulative impact area,” “previously mined area,” “excess spoil,” “impoundment,” “coal processing waste,” “coal processing waste bank;” 80–1–2–11(f), –12(b)(2); 80–1–4–15(b); 80–1–6–10, –11(b)(5), –12(b)(7), –13(d); 80–1–8–14(b)(1)(vi), –15(c), –16(b)(3), –24, –27(a); 80–1–9–13(f), –14(c), –21(b) through (d); 80–1–10–13, (a), (c), (e), –17(a)(1)(i), (6); 80–1–11–11(a)(3), –15(a), (b), –19(c), –27(e); 80–1–13–11(a), –12(c), (d), –18(c)(3), (d), (e); 80–1–20–11(f), –41(a), –43(a), –44(a), (c), –52(a), (b), –57(a)(1), (2), –61 through –68, –71(f), (j), (k), –82(a), –91(c), –97(d)(10), –102(a), (f), (g), –111(c), –112(c), (d); 80–1–24–11(c), –12(a)(1), –15(c)(2) through (6); 80–1–26–12(c); 80–1–29–16(a); 80–1–30–13(d); 80–1–31–17(b)(1), 18(b)(1); Policy Statement for Records and Retention.
July 9, 1991	April 13, 1992	CSMC 80–1–20–42(a)(4)(ii), (a)(8).
November 22, 1991 ..	June 23, 1992	CSMC 80–1–20–72(d), –83(b).
January 16, 1991	December 17, 1993	CSMC 80–1–1–5, definition of “owned or controlled and owns and controls;” 80–1–4–15(b)(2); 80–1–7–13(a) through (j); –14(a) through (d); 80–1–9–21(c), –25(b), (c), (e), –37(a) through (e), –39(b), –40; 80–1–11–17(c), (2), (3), (d), (e), –19(i), –20(a), (b)(1), (i), (iii), (2), (i), (ii), (3), (c), (1) through (4), –24(a), (b), (c), –29(d); 80–1–19–15(c)(2), (3), (4), –17(a), (b); 80–1–20–91(c), –93(a), (c), (d), (e), –116(a), (b)(1), (3), (6), (7), (d) through (d)(3), –117(a) through (d), (1), (2), (3)(i), –121(a), –124, –150(a)(2)(i), (iii), (b)(9), (c), (e)(1), (g)(5), (6), (7), –151(a), (b)(2), (c)(1), (6); 80–1–30–11(b), (i); NMSA 69–25A–31.
October 26, 1994	February 15, 1995 ..	CSMC 80–1–34–1 through 10.
January 22, 1996	May 29, 1996	CSMC 80–1–1–5 definitions of “Applicant/violator system” or “AVS,” “Federal violation notice,” “Ownership or control link,” “State violation notice,” and “Violation notice;” “Drinking, domestic, or residential water supply,” “Material damage,” “Noncommercial building,” “Occupied residential dwelling and associated structures,” “Replacement of water supply;” “OSM,” “Qualified Laboratory,” “Road,” “SMCRA;” 80–1–4–15(b)(1); 80–1–7–14(c) (1) through (5); 80–1–9–25(a)(2), (3), (c), –39(a) (1) through (6), (b), (c)(1) through (9); 80–1–11–17(c), (d), –19(i), –20(b)(1), (ii), (3), (c)(1), (2), (d), (e), –24(a), –29(d), –31(a) through (d), –32(a) through (c), –33 (a) through (d), –34(a) through (d); 80–1–19–15(c)(2), (3), (iii), (4); 80–1–20–41(e)(3)(i), –49(d), (e)(1) through (11), (f)(2), (g)(4), (5), –82(a)(4), –89(d)(2), –93(a)(1), –97(b), (c), –116(b)(1), (5), (6), –117, (c)(1), (3), (4), (d)(2), (3)(i), –124(a) through (d), –125(a) through (e), –127, –150(c).
January 6, 1998	June 8, 1998	19 NMAC 8.2, Subparts 1 through 34 (recodification).
March 11, 1996	April 10, 2000	19 NMAC 8.2 813.K (1) through (3); 813.L; 1106.C; 1412.A(2) (i) through (vii); 2054.A (1), (2), (3), and (5); 2055.C(1); 2076.B; and 2077.A.
November 13, 1998 ..	September 11, 2000	19 NMAC 8.2 107.M(1); 107.O(2); 1107; 909.E(5); 918.D; 2017.D, F(2), G(4), and G(5); 2065.B(5)(iv); and 2071.A through D.
December 1, 1999	November 2, 2000 ..	19 NMAC 8.2 107.I(8); 107.A(20); 507.A(1); 2064; 2065.A; 2065.B(1), (2), (3), and (5)(iii); and the Coal Mine Reclamation Program Vegetation Standards guidance document.
September 22, 2000	January 18, 2001 ...	19 NMAC Parts 1 through 34 (recodification)
November 28, 2001 ..	July 15, 2002	19.8.1.7.F(5); 19.8.1.7N(2); 19.8.1.7.O(5); 19.8.1.7.P(12); 19.8.1.7.Q(1); 19.8.2.201; 19.8.2.202.A through H; 19.8.2.203; 19.8.3.300.C; 19.8.6.602.A and 603; 19.8.7.704.C; 19.8.8.801.B; 19.8.8.802.A; 19.8.9.912.A and B; 19.8.11.1106.D; 19.8.13.1307; 19.8.14.1412.A; 19.8.14.1415.A; 19.8.19.1900.A, C and C(2); 19.8.20.2009.E and E(5); 19.8.20.2057.A; 19.8.20.2058.A; 19.8.24.2400.C; 19.8.29.2900.G and H; 19.8.31.3107.A; 19.8.32.3200.B; 19.8.32.3203.A and B; 19.8.32.3206.A; and 19.8.35.7 through 14 NMAC.
October 27, 2003	April 13, 2004	19.8.1.7.P(8) and (9); 19.8.1.7.T(2); 19.8.5.506.A, B, D, E, F, and G; 19.8.12.1200.A; 19.8.13.1300.B; 19.8.13.1301.A(1), B, C, and E(1) and E(2); 19.8.20.2073 (C), (D), (E), and (F) NMAC

Surface Mining Reclamation and Enforcement, Interior

§ 931.15

Original amendment submission date	Date of final publication	Citation/description
November 18, 2005, as revised on March 27, 2006.	October 19, 2006 ...	NMSA, sections 69–25A–18.A, B, C, D and F, concerning the decisions of the Director and appeals; NMSA, sections 69–25A–29.A, B, C, D, and F, concerning the administrative review of a notice or order by the Director; NMSA, sections 69–25A–29.G, concerning deletion of statutes allowing for review by the Commission of decisions of the Director; NMSA, section 69–25A–30.A, concerning judicial review of final decisions by the Director; NMSA, sections 69–25A–36, concerning termination of agency life; NMAC, sections 19.8.11.1100.A(3), D, and D(2), concerning public notices of filing of permit applications; NMAC, section 19.8.11.1101.C, concerning opportunity for submission of written comments on permit applications; NMAC, sections 19.8.11.1102.A and B(2), concerning the right to file written objections; NMAC, sections 19.8.11.1103.A(3), B, B(1), D, E(1), and F, concerning hearings and conferences; NMAC, section 19.8.11.1104.B, concerning public availability of information in permit applications on file with the Director; NMAC, sections 19.8.11.1105.C(2), D, E, and F, concerning review of permit applications; NMAC, sections 19.8.11.1106.C, D(3), F, G(1) and (2), and N, concerning criteria for permit approval or denial; NMAC, sections 19.8.11.1107.A, B, B(1), B(1)(b), B(3), C, D, E, and F, concerning general procedures for improvidently issued permits; NMAC, section 19.8.11.1108.B, concerning existing structures and criteria for permit approval or denial; NMAC, sections 19.8.11.1109.A(4), B, B(1) and (2), B(2)(b), B(3), and D, concerning permit approval or denial actions; NMAC, section 19.8.11.1110.A(1), concerning the rescission process for improvidently issued permits; NMAC, section 19.8.11.1111.B, concerning permit terms; NMAC, section 19.8.11.1113.C(2), concerning conditions of permit for environment, public health and safety; NMAC, section 19.8.11.1114, concerning conformance of permit; NMAC, sections 19.8.11.1115.A, B, and C, concerning verification of ownership or control application information; NMAC, sections 19.8.11.1116.B and B(2)(b), concerning review of ownership or control and violation information; NMAC, sections 19.8.11.1117.A, A(1), (2) and (3), B, C, D, D(1) and (2), and D(2)(a) and (b), concerning procedures for challenging ownership or control links shown in the applicant violator system; NMAC, sections 19.8.11.1118.B, B(1), (2) and (3), B(3)(1), C, C(1)(a) through (c), and C(2), concerning standards for challenging ownership or control links and the status of violations; NMAC, section 19.8.12.1201, deletion of rules allowing for review by the Commission of decisions of the Director; NMAC, sections 19.8.12.1202.A, concerning judicial review of final decisions by the Director; NMAC, sections 19.8.12.1202.B, concerning judicial review of decisions by the Commission; and NMAC, sections 19.8.12.1203.A through L, concerning formal review of notices of violations, cessation orders, and show cause orders.
November 18, 2005 ..	November 30, 2006	NMSA, sections 69–25A–29.F, concerning award of legal costs and expenses; and NMAC, sections 19.8.12.1204.A through G, concerning award of legal costs and expenses, including attorney fees.
November 28, 2007 ..	November 18, 2008	19 NMAC Parts 1 through 35 (recodification), 19.8.1.7.G(1); 19.8.11.1100.D(1); 19.8.11.1102.A; 19.8.11.1103.A; 19.8.11.1109.B and C; 19.8.13.1301.E(1) and E(2)(b); 19.8.13.1307.B(2); 19.8.14.1412.A(2)(f); 19.8.14.1412.F; 19.8.20.2065.A and B(1); 19.8.20.2068; 19.8.30.3000; 19.8.31.3108.B; 19.8.31.3110.B; 19.8.5.504.D; 19.8.7.701.F; 19.8.8.812.D; 19.8.11.1100.B(1), (2), (3), and (4), D(5), E(3), and F; 19.8.11.1103.B, E, and F; 19.8.13.1301.E(2)(a); 19.8.31.3106.B(3)(a).
September 1, 2010 ...	January 30, 2012. ..	19 NMAC 8.1.7.K; 8.1.7.O(8)(a) and (b); 8.1.7.W(2)(a) and (b); 8.7.701.C(3); 8.11.1105.E; 8.11.1105.F; 8.11.1114; 8.11.1119.A through H; 8.11.1120.A through C; 8.11.1121.A through D; 8.20.2010.A(2)(a) and (b) (deletion); 8.30.3000.L; 8.30.3003.D; 8.30.3004.D; 8.31.3103.A; 8.31.3109.A; 8.31.3109.A(1) through (3) (deletion); 8.31.3113.A, B, and C; 8.34.3402.F(1) and (2); 8.34.3408.C(2) and (3); and 8.35.13.

[62 FR 9947, Mar. 5, 1997, as amended at 63 FR 31113, June 8, 1998; 65 FR 18894, Apr. 10, 2000; 65 FR 54794, Sept. 11, 2000; 65 FR 65778, Nov. 2, 2000; 66 FR 4673, Jan. 18, 2001; 67 FR 46384, July 15, 2002; 69 FR 19325, Apr. 13, 2004; 71 FR 61685, Oct. 19, 2006; 71 FR 69195, Nov. 30, 2006; 73 FR 68345, Nov. 18, 2008; 77 FR 4466, Jan. 30, 2012]

§ 931.16

§ 931.16 Required program amendments.

Pursuant to 30 CFR 732.17, New Mexico is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a)–(aa) [Reserved]

[55 FR 48841, Nov. 23, 1990, as amended at 56 FR 28486, June 21, 1991; 56 FR 67527, Dec. 31, 1991; 57 FR 12723, Apr. 13, 1992; 58 FR 65929, Dec. 17, 1993; 61 FR 26836, May 29, 1996; 65 FR 18894, Apr. 10, 2000; 65 FR 54795, Sept. 11, 2000; 65 FR 65779, Nov. 2, 2000; 67 FR 46385, July 15, 2002]

§ 931.20 Approval of the New Mexico abandoned mine reclamation plan.

The New Mexico Abandoned Mine Reclamation Plan as submitted on September 29, 1980, and amended February 4, 1981, is approved. Copies of the approved program are available at the following locations:

Original amendment submission date	Date of final publication	Citation/description
July 24, 1995	July 24, 1996	Plan §§ 874.16, 875.16, .20, 886.23(c); NMSA 69–25B–3.A, C, D, –4, –6.B, –7, –8.

[62 FR 9948, Mar. 5, 1997]

§ 931.26 Required plan amendments.

Pursuant to 30 CFR 884.15, New Mexico is required to submit for OSM's approval the following proposed plan amendments by the date specified.

(a) By January 21, 1997, New Mexico shall revise NMSA 69–25B–2 and 3.B to provide references to August 3, 1977, the effective date of SMCRA, or otherwise modify its plan, to ensure that the reclamation of post-August 3, 1977, sites is specifically provided for with counterpart provisions to sections 402(g)(4) and 403(b)(2).

(b) By January 21, 1997, New Mexico shall further revise NMSA 69–25B–3.B to provide a definition for “eligible lands and water” that is consistent with the term as defined at section 404 of SMCRA.

(c) By January 21, 1997, New Mexico shall revise NMSA 69–25B–6.A, or otherwise modify its plan, to reflect the same expenditure priorities as counterpart section 403(a) of SMCRA.

30 CFR Ch. VII (7–1–17 Edition)

(a) Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette NW., suite 1200, Albuquerque, NM 87102.

(b) Mining and Minerals Division, Energy, Minerals and Natural Resources Department, 2040 South Pacheco Street, Santa Fe, NM 87505.

[59 FR 17933, Apr. 15, 1994]

§ 931.25 Approval of New Mexico abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

(d) By January 21, 1997, New Mexico shall revise NMSA 69–25B–6.A by deleting NMSA 69–25B–6.A(4) and item No. I (d) of the “Ranking and Selection” section of its plan.

(e) By January 21, 1997, New Mexico shall revise NMSA 69–25B–6.C by reinserting the word “coal.”

[61 FR 38381, July 24, 1996]

§ 931.30 State-Federal cooperative agreement.

The State of New Mexico (State) acting through the Governor and the Department of the Interior (Department) acting through the Secretary enter into a Cooperative Agreement (Agreement) to read as follows:

ARTICLE I: INTRODUCTION AND PURPOSE

1. This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Federal Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved under 30 U.S.C. 1253 to elect to enter into an agreement with the

Surface Mining Reclamation and Enforcement, Interior

§ 931.30

Secretary for the regulation and control of surface coal mining and reclamation operations on Federal lands and by section 69-25A-27 NMSA 1978 of the Surface Mining Act (State Act).

The Agreement provides for State regulation of surface coal mining and reclamation operations on Federal lands within the State consistent with the State and Federal Acts, the State program (Program) (30 CFR part 931) and the Federal Lands Program (30 CFR parts 740-745). The term "Federal lands" is defined in the Federal Act and State and Federal regulations.

2. The purpose of this Agreement is to (a) foster State-Federal cooperation in the regulation of surface coal mining and reclamation operations; (b) eliminate intergovernmental overlap and duplication; and (c) provide uniformity by effective application of the State program to Federal lands in New Mexico.

ARTICLE II: EFFECTIVE DATE

3. This Cooperative Agreement is effective following signing by the Secretary and the Governor, and upon publication as a final rule in the FEDERAL REGISTER. This Agreement shall remain in effect until terminated as provided in Article XII.

ARTICLE III: SCOPE

4. This Agreement makes the laws, regulations, terms and conditions of the Program conditionally approved effective December 31, 1980 (30 CFR part 931), or as hereinafter amended in accordance with 30 CFR 732.17, applicable to Federal lands within the State except as otherwise stated in this Agreement, the Federal Act, 30 CFR part 745 or other applicable Federal laws. Orders and decisions issued in accordance with the Program by the Mining and Minerals Division (Mining and Minerals) of the New Mexico Energy and Minerals Department that are appealable shall be appealed to the State reviewing authority. Orders and decisions issued by the Department that are appealable shall be appealed to the Department of the Interior's Office of Hearings and Appeals.

ARTICLE IV: RESPONSIBILITIES

5. Mining and Minerals is and shall continue to be the sole agency responsible for administering this cooperative agreement on behalf of the Governor on Federal lands throughout the State. Mining and Minerals has and shall continue to have authority under State law to carry out this Agreement. The Office of Surface Mining (OSM) of the Department of the Interior shall administer this Agreement of behalf of the Secretary in accordance with the regulations in 30 CFR Chapter VII.

6. To eliminate duplication and overlap, the State will assume the primary responsibility

for the review and analysis of permit applications and applications for permit revisions or renewals, subject to legal restrictions, including those limitations in 30 U.S.C. 1272(b) and 1273 and in 42 U.S.C. 4321-4335. The State shall have the necessary personnel to fully implement this Agreement in accordance with the provisions of the Federal Act and the Program.

ARTICLE V: FUNDING

7. The State will devote adequate funds to the administration and enforcement of this Agreement of Federal lands within the State. If this Agreement has been carried out, and subject to appropriations, the Department shall provide the State with funds to defray the costs associated with carrying out responsibilities under this Agreement, as provided in 30 U.S.C. 1295(c) and 30 CFR 735.16. Reimbursement shall be in the form of annual grants, and applications for said grants shall be processed and awarded in a timely and prompt manner.

If sufficient funds have not been appropriated to OSM, OSM and Mining and Minerals shall promptly meet to decide on appropriate measures that will insure that mining operations are regulated in accordance with the Program.

Funds provided to the State shall be adjusted in accordance with Office of Management and Budget (OMB) Circular A-102, Attachment E.

ARTICLE VI: REPORTS, FEES AND EQUIPMENT

8. Mining and Minerals shall make annual reports to OSM containing information respecting its compliance with the terms of this Agreement pursuant to 30 CFR 745.12(c). The State and OSM shall exchange, upon request, except where prohibited by Federal law, information developed under this Agreement. OSM shall provide Mining and Minerals with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement.

9. The amount of the fee accompanying an application for a permit shall be determined in accordance with New Mexico Coal Surface Mining Commission Rule 80-1, part 5-25. All permit fees shall be retained by the State and deposited with the State Treasurer in the Oil and Gas Conservation Fund. The Financial Status Report submitted pursuant to 30 CFR 735.26 shall include a report of the amount of fees collected during the prior State fiscal year.

10. Mining and Minerals will assure itself access to equipment, laboratories and facilities with which all inspections, investigations, studies, tests and analyses can be performed, and which are necessary to carry out the requirements of this Agreement.

ARTICLE VII: PERMIT APPLICATION PACKAGE

11. Mining and Minerals and OSM shall require an operator on Federal lands to submit a permit application package or an application for a permit revision or renewal in an appropriate number of copies to Mining and Minerals. Any documentation or information submitted by the operator for the sole purpose of complying with the 3-year requirement of section 7(c) of the Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, will be forwarded to the Minerals Management Service (MMS). If such documentation is submitted as part of a permit application package, a copy of the entire package will be forwarded to MMS.

The permit application package or application for a permit revision or renewal shall be in the form required by Mining and Minerals, shall satisfy the requirements of 30 CFR 741.12(b) and 30 CFR 741.13, and shall include the information required by, or necessary for, Mining and Minerals and the Secretary to make a determination of compliance with:

- (a) Section 69-25A-1, *et seq.*, NMSA 1978;
- (b) New Mexico Coal Surface Mining Commission Rule 80-1;
- (c) Applicable terms and conditions of the Federal coal lease;
- (d) Applicable requirements of the 30 CFR part 211 regulations pertaining to the Mineral Leasing Act requirements; and
- (e) Applicable requirements of the approved Program and other Federal laws including, but not limited to, those identified in 30 CFR Chapter VII, Subchapter D and appendix A of this Agreement.

12. Mining and Minerals shall assume the primary authority pursuant to sections 510(a) and 523(c) of the Federal Act for the analysis, review, and approval of the permit application or application for a permit revision or renewal according to the standards of the Program. OSM shall assist Mining and Minerals in the analysis of the permit application or application for a permit revision or renewal according to the procedures set forth in appendix B. The Department shall concurrently carry out its responsibilities under the Mineral Leasing Act, as amended (MLA), the National Environmental Policy Act (NEPA), and other public laws (including but not limited to those in appendix A) that cannot, under the Federal Act, be delegated to the State. The Department shall carry out these responsibilities according to the procedures set forth in appendix B so as to avoid, to the maximum extent possible, duplication of the responsibilities of the State set forth in this Agreement and the State Program. The Secretary will consider the information in the permit application package and, where appropriate, make the decisions required by the Federal Act, MLA, NEPA and other public laws listed above.

13. Mining and Minerals shall be the primary point of contact with the operator. The Department will independently initiate contacts with the applicant regarding permit application packages or applications for a permit revision or renewal only where necessary to carry out its statutory responsibilities. When such action may generate correspondence with the applicant, a copy of all correspondence with the applicant that may have a bearing on decisions regarding the mining operation shall be sent to Mining and Minerals.

14. Mining and Minerals shall maintain a file of all original correspondence with the applicant and any information received from the applicant which may have a bearing on decisions regarding the permit application package or application for a permit revision or renewal. At the request of the Secretary or his designated agents, Mining and Minerals shall make available the Mining and Minerals files and send copies of such correspondence and information when requested to do so.

15. To the fullest extent allowed by State and Federal law, OSM and Mining and Minerals shall cooperate so that duplication will be eliminated in conducting the review and analysis of the permit application package or application for a permit revision or renewal.

16. Mining and Minerals will review the permit application or application for a permit revision or renewal under sections 11-11 through 11-29 of the New Mexico Coal Surface Mining Commission Rule 80-1.

ARTICLE VIII: INSPECTIONS

17. Mining and Minerals shall conduct inspections on Federal lands and prepare and file inspection reports in accordance with its Program.

18. Mining and Minerals shall, subsequent to conducting any inspection on Federal lands, file with OSM on a timely basis, an inspection report adequately describing (1) the general conditions of the lands; (2) the manner in which the operations are being conducted; and (3) whether the operator is complying with applicable performance and reclamation requirements.

19. Mining and Minerals will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described hereinafter. Nothing in this Agreement shall prevent inspections by authorized Federal agencies for purposes other than those covered by this Agreement.

20. The Department may conduct any inspections necessary to comply with 30 CFR parts 842 and 743.

21. Except as provided below, the Secretary shall give Mining and Minerals reasonable notice of his intent to conduct an inspection

Surface Mining Reclamation and Enforcement, Interior

§ 931.30

in order to provide State inspectors an opportunity to join in the inspection. The Secretary reserves the right to conduct inspections without prior notice to Mining and Minerals to carry out his responsibilities under the Federal Act.

ARTICLE IX: ENFORCEMENT

22. Mining and Minerals shall be the primary enforcement authority under the Federal Act concerning compliance with the requirements of this Agreement and the Program. Enforcement authority of the Secretary under other laws and orders including, but not limited to, those listed in appendix A is reserved to the Secretary.

23. During any joint inspection by OSM and Mining and Minerals, Mining and Minerals shall have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation and assessment of penalties. OSM and Mining and Minerals shall consult prior to issuance of any decision to suspend or revoke a permit.

24. Mining and Minerals and OSM shall promptly notify each other of all violations of applicable laws, regulations, orders, approved mining plans and permits subject to this Agreement and of all actions taken with respect to such violations.

25. During any inspection made solely by OSM or any joint inspection where Mining and Minerals and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR parts 843 and 845.

Such enforcement action shall be based on the performance standards included in the regulations of the Program, and the procedures and penalty system contained in 30 CFR parts 843 and 845. This Agreement does not limit the Department's authority to enforce violations of standards and requirements of Federal laws other than the Federal Act.

26. Personnel of the State and the Department shall be mutually available to serve as witnesses in enforcement actions taken by either party.

ARTICLE X: BONDS

27. For all surface coal mines on Federal lands, Mining and Minerals and the Secretary shall require all operators to submit a single performance bond to cover the operator's responsibilities under the Federal Act and the Program, payable to the State, and if required by Federal regulations in Subchapter D, the United States. The performance bond shall be of sufficient amount to comply with the requirements of both State and Federal law and release of the bond shall be conditioned upon compliance with all applicable State and Federal requirements. If

the cooperative agreement is terminated, the bonds will revert to being payable only to the United States to the extent that Federal lands are involved. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR 3474 or a lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of the Federal Act.

28. Prior to releasing the operator from an obligation under the performance bond required by the Program for any Federal lands, Mining and Minerals shall obtain the consent of OSM. Mining and Minerals shall also advise OSM of adjustments to the performance bond.

29. The operator's performance bond shall be subject to forfeiture with the consent of the Department, in accordance with the procedures and requirements of the Program.

ARTICLE XI: DESIGNATING LAND AREAS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING

30. Mining and Minerals and the Director shall cooperate with each other in the review and processing of petitions to designate lands as unsuitable for surface coal mining operations. When either agency receives a petition that could impact adjacent Federal or non-Federal lands, the agency receiving the petition shall (1) notify the other of receipt and of the anticipated scheduled for reaching a decision; and (2) request and fully consider data, information and the views of the other.

The authority to designate State and private lands as unsuitable for mining is reserved to the State. The authority to designate Federal lands as unsuitable for mining is reserved to the Secretary or his designated representative.

ARTICLE XII: TERMINATION OF COOPERATIVE AGREEMENT

31. This Agreement may be terminated by the State or the Department under the provisions of 30 CFR 745.15.

ARTICLE XIII: REINSTATEMENT OF COOPERATIVE AGREEMENT

32. If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

ARTICLE XIV: AMENDMENTS OF COOPERATIVE AGREEMENT

33. This Agreement may be amended by mutual agreement of the State and the Department. An amendment proposed by one party shall be submitted to the other with a statement of the reasons for such proposed amendment. The amendment shall be adopted after Federal rulemaking in accordance with 30 CFR 745.11. The party to whom the

§ 931.30

proposed amendment is submitted shall signify its acceptance or rejection of the proposed amendment, and if rejected shall state the reasons for rejection.

ARTICLE XV: CHANGES IN STATE OR FEDERAL STANDARDS

34. The Department or the State may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party shall, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations and request necessary legislative action. Such changes shall be made under the procedures of 30 CFR part 732 for changes to the State Program, and under the procedures of section 501 of the Federal Act for changes to the Federal Lands Program.

35. The State and the Department shall provide each other with copies of any changes to their respective laws, rules, regulations and standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XVI: CHANGES IN PERSONNEL AND ORGANIZATION

36. The State and the Department shall, consistent with 30 CFR 745.12, advise each other of changes in the organization, structure, functions, duties and funds of the offices, departments, divisions and persons within their organizations. Each shall promptly advise the other in writing of changes in key personnel, including the head of a department or division, or changes in the functions or duties of persons occupying the principal offices within the structure of the Program. The State and the Department shall advise each other in writing of changes in the location of offices, addresses, telephone numbers and changes in the names, locations and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible.

ARTICLE XVII: DEFINITIONS

37. Terms and phrases used in this Agreement which are defined in the Federal Act, 30 CFR 700, 701, and 740, and defined in the New Mexico Surface Mining Act (69-25A-1, *et seq.*, NMSA 1978) and the rules and regulations promulgated pursuant to that Act, shall be given the meanings set forth in said definitions. Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the approved Program will apply, except in the case of a term which defines the Secretary's remaining responsibilities under the Federal Act and other laws.

30 CFR Ch. VII (7-1-17 Edition)

ARTICLE XVIII. RESERVATION OF RIGHTS

38. In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws or regulations, including but not limited to those listed in appendix A.

Dated: December 7, 1982.

Bruce King,
Governor of New Mexico.

Dated: November 24, 1982.

James G. Watt,
Secretary of the Interior.

APPENDIX A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701, *et seq.*, and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181, *et seq.*, and implementing regulations including 30 CFR part 211.
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*, and implementing regulations including 40 CFR part 1500 *et seq.*
4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations including 50 CFR part 402.
5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations including 36 CFR part 800.
6. The Clean Air Act, 42 U.S.C. 7401, *et seq.*, and implementing regulations.
7. The Federal Water Pollution Control Act, 33 U.S.C. 1251, *et seq.*, and implementing regulations.
8. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.
9. The Reservoir Salvage Act of 1960, as amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*
10. Executive Order 11593, Cultural Resource Inventories on Federal Lands.
11. Executive Order 11988 for Flood Plain Protection. Executive Order 11990 for Wetlands Protection.
12. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351, *et seq.*, and the implementing regulations.
13. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291, *et seq.*
14. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa *et seq.*
15. The Constitution of the United States.
16. The Constitution of the State and State law.

Surface Mining Reclamation and Enforcement, Interior

§ 931.30

APPENDIX B—PROCEDURE FOR COOPERATIVE REVIEW OF PERMIT APPLICATION PACKAGES AND APPLICATIONS FOR PERMIT REVISIONS OR RENEWALS FOR FEDERAL COAL MINES IN NEW MEXICO

I: Point of Contact and Coordination During the Review of Permit Application Packages and Applications for Permit Revisions and Renewals

A. The New Mexico Mining and Minerals Division (Mining and Minerals) will:

1. Be the point of contact and coordinate communications with the applicant on issues concerned with the development, review and approval of permit application packages or applications for permit revisions or renewals, except on issues concerned with the requirements of the Mineral Leasing Act of 1920 (MLA), 30 U.S.C. 181, *et seq.*, or National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and the requirements of other Federal laws not addressed in the applications.

2. Communicate with the applicant on issues of concern to the appropriate Federal land management agency (FLMA) and immediately advise FLMA and OSM of such issues and communication.

3. Communicate with the applicant on issues of concern to the Office of Surface Mining (OSM), and immediately advise OSM of such issues and communications.

4. Communicate with the applicant on issues of concern to the Minerals Management Service (MMS) and immediately advise MMS and OSM of such issues and communications as they pertain to the application.

5. Communicate with the applicant on issues of concern to other agencies within the Department of the Interior, as appropriate, and immediately advise such agencies of such issues and communications.

6. Provide OSM with a copy of each apparent completeness review upon completion.

B. MMS will:

1. Receive any documentation required by the 30 CFR part 211 regulations.

2. Be the point of contact with the applicant on issues concerned exclusively with the 30 CFR part 211 regulations.

3. Provide Mining and Minerals and OSM with copies of pertinent correspondence.

C. OSM will: Be responsible for ensuring that any information OSM receives which has a bearing on decisions regarding the permit application package or application for a permit revision or renewal is sent promptly to Mining and Minerals.

II: Receipt and Distribution of Permit Application Packages and Applications for Permit Revisions and Renewals

A. Mining and Minerals will:

1. Receive the permit application package, the application for a permit revision or re-

newal or the correspondence from the applicant and transmit an appropriate number of copies to FLMA, MMS, OSM and other agencies specified by the Secretary after the application has been filed. Such transmittal will include a request for a conference on the submissions, as needed.

2. Identify an application manager responsible for coordinating the review and notify OSM, MMS and FLMA as necessary.

3. Upon receipt of an application, meet with OSM to discuss the application and agree upon a schedule, and, when Mining and Minerals requests assistance, agree upon a work plan with OSM.

B. OSM, MMS and FLMA will: Identify an application manager upon receipt of the application and notify Mining and Minerals of the identity of the application manager.

III: DETERMINATION OF COMPLETENESS

Mining and Minerals will:

1. Determine the completeness of a permit application package or application for a permit revision or renewal.

2. Issue public notice of the availability of complete applications for the public to review in accordance with the public review procedure set forth in New Mexico Coal Surface Mining Commission Rule 80-1, part 11.

IV: DETERMINATION OF PRELIMINARY FINDINGS OF SUBSTANTIVE ADEQUACY

A. Mining and Minerals will:

1. Consult with MMS, FLMA, OSM, and other Federal agencies specified by the Secretary to review the filed application for preliminary findings of substantive adequacy (henceforth "preliminary findings") and to assess the need for additional data requirements in their respective areas of responsibility.

2. Arrange meetings and field examinations with the interested parties as necessary to determine the preliminary findings.

3. Advise the applicant of the preliminary findings upon the advice and consent of FLMA, MMS, OSM and other Federal agencies specified by the Secretary.

4. Transmit the letter(s) informing the applicant of the preliminary findings, with copies to FLMA, OSM, MMS and other agencies specified by the Secretary.

5. When requested, furnish the Director with copies of correspondence with the applicant and all information received from the applicant.

B. OSM will:

1. Review the permit application package or application for a permit revision or renewal for preliminary findings and, at the request of Mining and Minerals, provide technical assistance as possible.

2. Furnish Mining and Minerals with preliminary findings within 45 calendar days of receipt of the permit application package or

application for a permit revision or renewal and specify any requirements for additional data.

3. No later than 30 days from notification of completeness, initiate NEPA compliance procedures and determine the need for an Environmental Assessment or an Environmental Impact Statement.

4. Publish notices of NEPA documents as required by Federal law and regulations.

5. Participate, as arranged, in meetings and field examinations.

C. FLMA will:

1. Review the permit application package or application for permit revision or renewal for preliminary findings as to whether the applicant's proposed postmining land use is consistent with FLMA's land use plan, and the adequacy of measures to protect Federal resources not covered by the rights granted by the Federal coal lease.

2. Furnish Mining and Minerals with preliminary findings within 45 calendar days of receipt of the permit application package or application for a permit revision or renewal and specify any requirements for additional data.

3. Participate, as arranged, in meetings and field examinations.

D. MMS will:

1. Review the permit application package or application for a permit revision or renewal in regard to MLA requirements.

2. Furnish Mining and Minerals with the preliminary findings within 45 calendar days of receipt of the permit application package or application for a permit revision or renewal and specify any requirements for additional data.

3. Participate, as arranged, in meetings and field examinations.

E. Other agencies specified by the Secretary will:

1. Review the permit application package or application for a permit revision or renewal for preliminary findings in regard to their responsibilities under law.

2. Furnish Mining and Minerals with preliminary findings within 45 calendar days of receipt of the application and specify any requirements for additional data.

3. Participate, as arranged, in meetings and field examinations.

V: FINDINGS OF TECHNICAL ADEQUACY AND NEPA COMPLIANCE

A. Mining and Minerals will:

1. Develop and coordinate the technical review of permit application packages or applications for a permit revision or renewal. The review will include representatives of Mining and Minerals, MMS, FLMA, OSM and other Federal agencies specified by the Secretary as appropriate.

2. Coordinate with OSM, for the purpose of eliminating duplication, and provide to OSM a complete technical analysis of the permit

application or application for permit revision or renewal pursuant to the Federal Act and the Program that will serve as the technical base for an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) as may be required by NEPA for each permit application package or application for a permit revision or renewal.

3. Coordinate with MMS, for the purpose of eliminating duplication, to conduct a technical analysis that will assist MMS in making findings as may be necessary to determine compliance with the MLA.

4. Coordinate with FLMA, for the purpose of eliminating duplication, to conduct a technical analysis of issues regarding postmining land use and the adequacy of measures to protect Federal resources not covered by the rights granted by the Federal coal lease.

5. Coordinate with other agencies specified by the Secretary, for the purpose of eliminating duplication, to conduct technical analyses of issues within their jurisdiction.

B. OSM will:

1. At the request of Mining and Minerals, assist as possible in the review of the permit application package or application for a permit revision or renewal for technical adequacy in a timely manner as set forth by a schedule developed by Mining and Minerals in cooperation with OSM.

2. Take the leadership role for the development of the EA and/or EIS.

C. MMS will:

1. Review the permit application package or application for a permit revision or renewal for compliance with 30 CFR part 211.

2. Furnish Mining and Minerals, through OSM, findings on compliance with 30 CFR part 211 in a timely manner as set forth by a schedule developed by Mining and Minerals in cooperation with MMS.

3. Participate, as arranged, in meetings and field examinations.

D. FLMA will:

1. Determine whether the permit application package or application for a permit revision or renewal provides for postmining land use consistent with FLMA's land use plan and determine the adequacy of measures to protect Federal resources not covered by the rights granted by the Federal coal lease.

2. Furnish Mining and Minerals, through OSM, its determination on the technical adequacy in a timely manner as set forth by a schedule developed by Mining and Minerals in cooperation with FLMA.

3. Participate, as arranged, in meetings and field examinations.

E. Other agencies specified by the Secretary will:

1. Review the permit application package or application for a permit revision or renewal in regard to their responsibilities under law.

2. Furnish Mining and Minerals, through OSM, findings on compliance with other applicable Federal laws and regulations in a timely manner as set forth by a schedule developed in cooperation with Mining and Minerals.

3. Participate, as arranged, in meetings and field examinations.

VI: PREPARATION AND TRANSMITTAL OF THE DECISION DOCUMENT

A. Mining and Minerals will:

1. Assist OSM in the preparation of the decision document for the permit application package or application for a permit revision or renewal, unless the work plan and schedule agreed upon provide otherwise. Mining and Minerals will provide OSM with:

a. A recommendation on the proposal;

b. A finding of compliance with the Program as approved by the Secretary and the regulations promulgated thereunder, which will consist of an analysis of critical issues raised during the course of the review and the resolution of those issues; and

c. All other specific written findings required under section 69-25A-14, NMSA 1978.

2. Consider the comments of OSM, MMS and FLMA and other appropriate Federal agencies when assisting in the preparation of the decision document.

B. OSM will:

1. Prepare the approved NEPA compliance document.

2. Prepare the decision document with the assistance of Mining and Minerals unless the work plan and schedule agreed upon provide otherwise. The decision document shall contain the following:

a. An analysis of the environmental impacts of the proposal and alternatives to the proposal, prepared in compliance with NEPA, the Council on Environmental Quality regulations and OSM's NEPA compliance handbook;

b. The determinations and recommendations of FLMA;

c. The memorandum of recommendation from the MMS to the Assistant Secretary of the Interior for Energy and Minerals, with regard to MLA requirements;

d. The incorporation of the comments of other agencies specified by the Secretary, as appropriate; and

e. The relevant information submitted by Mining and Minerals as specified by A.1 of this Article.

3. Transmit the decision document to the Secretary.

C. FLMA will: Provide written concurrence on the final decision document to OSM with regard to postmining land use and the adequacy of measures to protect Federal resources not covered by rights granted by any Federal coal lease.

D. MMS will: Provide written concurrence on the final decision document to OSM with regard to its responsibilities.

E. Other agencies will: Provide written concurrence on the final decision document to OSM with regard to their responsibilities.

VII: DECISION AND PERMIT ISSUANCE

A. The Secretary will:

1. Evaluate the analysis, conclusions, and recommendations in the decision document as necessary to determine whether he approves or disapproves.

2. Inform Mining and Minerals immediately of his decision. Where the Secretary decides not to approve, the reasons for not approving, and recommendations for remedy shall be specified.

B. Mining and Minerals will:

1. Issue the permit, revised permit, or permit renewal for surface coal mining and reclamation operations after making a finding of compliance with the approved Program in the manner set forth in this Agreement.

2. Advise the operator, in the permit, of the necessity of obtaining Secretarial approval for those statutory requirements which have not been delegated to the State prior to directly affecting Federal lands and, if necessary, prohibit the operator from directly affecting Federal lands under the permit, revised permit, or permit renewal until after the Secretary's approval of the mining plan has been received.

3. Reserve the right to modify the permit, revised permit or permit renewal to conform with the Secretary's decision if a permit, revised permit, or permit renewal has been issued prior to receipt of the Secretary's decision.

VIII: RESOLUTION OF CONFLICT

A. Every effort will be made to resolve errors, omissions and conflicts on data and data analysis at the State and field level.

B. Areas of disagreement between the State and the Department shall be referred to the Governor and the Secretary for resolution.

(Sec. 523(c) of the Surface Mining Control and Reclamation Act of 1977; Pub. L. 95-87; (30 U.S.C. 1273(c)))

[47 FR 56806, Dec. 20, 1982, as amended at 54 FR 20568, May 12, 1989]

PART 933—NORTH CAROLINA

Sec.

933.700 North Carolina Federal program.

933.701 General.

933.702 Exemption for coal extraction incidental to the extraction of other minerals.

§ 933.700

30 CFR Ch. VII (7–1–17 Edition)

- 933.707 Exemption for coal extraction incident to government-financed highway or other construction.
- 933.761 Areas designated unsuitable for surface coal mining by Act of Congress.
- 933.762 Criteria for designating areas as unsuitable for surface coal mining operations.
- 933.764 Process for designating areas unsuitable for surface coal mining operations.
- 933.772 Requirements for coal exploration.
- 933.773 Requirements for permits and permit processing.
- 933.774 Revision; renewal; and transfer, assignment, or sale of permit rights.
- 933.775 Administrative and judicial review of decisions.
- 933.777 General content requirements for permit applications.
- 933.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.
- 933.779 Surface mining permit applications—minimum requirements for information on environmental resources.
- 933.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.
- 933.783 Underground mining permit applications—minimum requirements for information on environmental resources.
- 933.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
- 933.785 Requirements for permits for special categories of mining.
- 933.795 Small operator assistance.
- 933.800 General requirements for bonding of surface coal mining and reclamation operations.
- 933.815 Performance standards—coal exploration.
- 933.816 Performance standards—surface mining activities.
- 933.817 Performance standards—underground mining activities.
- 933.819 Special performance standards—auger mining.
- 933.823 Special performance standards—operations on prime farmland.
- 933.824 Special performance standards—mountaintop removal.
- 933.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
- 933.828 Special performance standards—in situ processing.
- 933.842 Federal inspections.
- 933.843 Federal enforcement.
- 933.845 Civil penalties.
- 933.846 Individual civil penalties.
- 933.955 Certification of blasters.

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

SOURCE: 48 FR 30302, June 30, 1983, unless otherwise noted.

§ 933.700 North Carolina Federal program.

(a) This part contains all rules that are applicable to surface coal mining operations in North Carolina which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the North Carolina Federal program.

(c) The rules in this part apply to all surface coal mining operations in North Carolina conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in North Carolina.

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of North Carolina laws and regulations provide, where applicable, for more stringent environmental control and regulation of some aspects of surface coal mining operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to section 505(b) of the Act, they shall not be construed to be inconsistent with the Act unless in a particular instance the rules in this chapter are found by OSM to establish more stringent environmental controls.

(1) North Carolina General Statute (NCGS) 74-51, concerning conditions under which a mining permit may be granted, authorized the North Carolina Department of Natural Resources and Community Development to deny a permit for a mining operation which will have a significantly adverse effect on the purposes of a publicly owned park, forest, or recreation area and may condition permit approval on a requirement of visual screening, vegetative or otherwise, so as to screen the view of the operation from public highways, public parks, or residential areas where the Department finds such screening to be feasible and desirable,

or determines that such screening measures are either not feasible or not desirable.

(2) North Carolina mining laws and regulations apply to mining operations affecting an area greater than one acre. To the extent that North Carolina mining law and regulations cited in paragraph (f) of this section apply to coal mining operations not regulated by the Surface Mining Control and Reclamation Act, they are not preempted by this Federal program for North Carolina.

(3) North Carolina Dam Safety Law of 1967, North Carolina General Statutes (NCGS) 143-215.23 through 143-215.37.

(4) Geophysical Exploration regulations, Title 15, North Carolina Administrative Code, Subchapter 5C, applies to any coal exploration involving the use of explosives.

(f) The following are North Carolina laws and regulations that generally interfere with the achievement of the purposes and requirements of the Act and are, in accordance with section 504(g) of the Act, preempted and superseded to the extent that they regulate coal exploration or surface coal mining and reclamation operations regulated by the Surface Mining Control and Reclamation Act. Other North Carolina laws may interfere with the achievement of the purposes of goals of the Act in an individual situation, and may be preempted and superseded as they affect a particular coal exploration or surface mining operation by publication of the notice to that effect in the FEDERAL REGISTER.

(1) North Carolina Mining Act of 1971, as amended, NCGS 74-46 through 74-68, except to the extent that the Mining Act is preserved as provided in paragraph (e) of this section.

(2) Title 15, North Carolina Administrative Code, Subchapters 5A, 5B, and 5F Mining and Mineral Resources, except to the extent that those regulations are preserved as provided in paragraph (e) of this section.

(g) The Secretary may grant a limited variance from the performance standards of §§ 933.815 through 933.828 of this part if the applicant for coal exploration approval or a surface mining permit submitted pursuant to §§ 933.772

through 933.785 demonstrates in the application that: (1) Such variance is necessary because of the unique nature of North Carolina's terrain, climate, biological, chemical, or other relevant physical conditions; and (2) the proposed alternative will achieve equal or greater environmental protection than does the performance requirement from which the variance is requested.

[48 FR 30302, June 30, 1983, as amended at 52 FR 13811, Apr. 24, 1987]

§ 933.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and part 701 of this chapter shall apply to surface coal mining and reclamation operations in North Carolina.

§ 933.702 Exemption for coal extraction incidental to the extraction of other minerals.

Part 702 of this chapter, *Exemption for Coal Extraction Incidental to the Extraction of Other Minerals*, shall apply to any person who conducts coal extraction incidental to the extraction of other minerals for purposes of commercial use or sale.

[54 FR 52123, Dec. 20, 1989]

§ 933.707 Exemption for coal extraction incident to government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§ 933.761 Areas designated unsuitable for surface coal mining by Act of Congress.

Part 761 of this chapter, *Areas Designated Unsuitable for Coal Mining by Act of Congress*, with the exception of §§ 761.11(c) and 761.12(f)(1), shall apply to surface coal mining and reclamation operations, beginning one year after the effective date of this program. For the purposes of part 933, the following §§ 761.11(c) and 761.12(f)(1) shall replace the existing §§ 761.11(c) and 761.12(f)(1).

(c) On any lands which will adversely affect any publicly owned park, forest, recreation area, or any places included on, or eligible for listing on, the National Register of

§ 933.762

Historic Places, unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park, forest, recreation area, or places;

(f)(1) Where the proposed surface coal mining operation may adversely affect any public park, forest, recreation area, or any places included on, or eligible for listing on, the National Register of Historic Places, the regulatory authority shall transmit to the Federal, State, or local agencies with jurisdiction over, or a statutory or regulatory responsibility for, the park, forest, recreation area, or historic place a copy of the completed permit application containing the following:

(i) A request for that agency's approval or disapproval of the operators;

(ii) A notice to the appropriate agency that it must respond within 30 days from receipt of the request.

§ 933.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designation Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mining and reclamation operations.

§ 933.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mining and reclamation operations beginning one year after the effective date of this program.

§ 933.772 Requirements for coal exploration.

(a) Part 772 of this chapter, *Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the

30 CFR Ch. VII (7-1-17 Edition)

reasons and the additional time that is needed.

[52 FR 13811, Apr. 24, 1987]

§ 933.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, *Requirements for Permits and Permit Processing*, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and negotiate the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 912.773(b)(2)(ii) by the specified date, the office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.6 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant

Surface Mining Reclamation and Enforcement, Interior

§ 933.775

features contained in the application marked by flags.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) The issuance of permits shall be coordinated, to the extent practicable, with the issuance of the following permits, leases and/or certificates required by the State of North Carolina; Water discharge permit (NCGS 143-215.1); water use permits in capacity use area (NCGS 143-215.5); an approval of dam construction (NCGS 143-215.108), an air pollution control permit (NCGS 143-215.26, Title 15, North Carolina Administrative Code, Subchapter 2K); air and water quality reporting systems (NCGS 143-215.63—143-215.69); a geophysical exploration permit (Title 15, North Carolina Administrative Code, Subchapter 5C); a development permit for operations in an area of environmental concern designated pursuant to the Coastal Area Management Act (NCGS 113A-100—113A-128); a dredging or filing permit issued by the Department of Natural Resources and Community Development (NCGS 113-229); a permit for dumping of toxic substances (NCGS 14-284.2); compliance with any applicable land use regulations adopted in a soil conservation district (NCGS 139-9); and compliance with any county ordinance regarding explosives (NCGS 153A-128).

(e) No person shall be granted a permit to conduct exploration which results in the removal of more than 250 tons of coal or shall conduct surface coal mining unless that person has acquired all required permits, leases, and/or certificates listed in paragraph (d) of this section.

(f) The Secretary shall provide to the North Carolina Department of Natural Resources and Community Development a copy of each decision to grant or deny a permit application.

[52 FR 13811, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

§ 933.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, *Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights*, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSMRE.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.6, 773.19(b) (1) and (2), and 778.21 and of part 775.

(2) OSMRE shall make every effort to approve or disapprove an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

[52 FR 13811, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

§ 933.775 Administrative and judicial review of decisions.

Part 775 of this chapter, *Administrative and Judicial Review of Decisions*, shall apply to all decisions on permits.

[52 FR 13812, Apr. 24, 1987]

§ 933.777

§ 933.777 General content requirements for permit applications.

Part 777 of this chapter, *General Content Requirements for Permit Applications*, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

[52 FR 13812, Apr. 24, 1987]

§ 933.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Permit Applications—Minimum Requirements for Legal, Financial, Compliance and Related Information*, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

[52 FR 13812, Apr. 24, 1987]

§ 933.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 933.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations, except that for the purposes of part 933, the paragraph in § 780.31 shall be replaced by the following two paragraphs:

(a) For any public parks, forest, or recreation areas, or historic places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the regulatory authority and other agencies as required in 30 CFR 761.12(f).

(b) Each application for an operation which will be visible from any public park, public highway, or residential area shall include

30 CFR Ch. VII (7–1–17 Edition)

measures to be taken to screen the operation from the view of public parks, public highways and residential areas, or shall set forth the reasons why such screening measures are either not feasible or not desirable.

§ 933.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who submits an application to conduct underground coal mining operations.

§ 933.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct underground coal mining except that for the purposes of part 933, the paragraph in § 784.17 shall be replaced by the following two paragraphs:

(a) For any public parks, forest, or recreation areas, or historic places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the regulatory authority and other agencies as required in 30 CFR 761.12(f).

(b) Each application for an operation which will be visible from any public park, public highway, or residential area shall include measures to be taken to screen the operation from the view of public parks, public highways and residential areas, or shall set forth the reasons why such screening measures are either not feasible or not desirable.

§ 933.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining*, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 933.795 Small operator assistance.

Part 795 of this chapter, *Small Operator Assistance*, shall apply to any person making application for assistance under the small operator assistance program.

§ 933.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, *General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs*, shall apply to all surface coal mining and reclamation operations.

§ 933.815 Performance standards—coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration*, shall apply to any person conducting coal exploration operations.

§ 933.816 Performance standards—surface mining activities.

Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, shall apply to any person who conducts surface coal mining and reclamation operations.

§ 933.817 Performance standards—underground mining activities.

Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities*, shall apply to any person who conducts underground coal mining operations.

§ 933.819 Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining*, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 933.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland*, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§ 933.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal*, shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 933.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine*, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

§ 933.828 Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, shall apply to any person who conducts in situ processing activities.

§ 933.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections*, shall apply to all exploration and surface coal mining and reclamation operations.

(b) OSM will furnish a copy of any inspection report written pursuant to this part to the North Carolina Department of Natural Resources and Community Development upon request.

§ 933.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement*, shall when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) OSM will furnish a copy of each enforcement action and order to show cause issued pursuant to this part to the North Carolina Department of Natural Resources and Community Development upon request.

§ 933.845

§ 933.845 Civil penalties.

Part 845 of this chapter, Civil Penalties, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

§ 933.846 Individual civil penalties.

Part 846 of this chapter, *Individual Civil Penalties*, shall apply to the assessment of individual civil penalties under section 518(f) of the Act.

[53 FR 3676, Feb. 8, 1988]

§ 933.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

PART 934—NORTH DAKOTA

Sec.

934.1 Scope.

934.10 State program approval.

934.12 State program amendments disapproved.

934.13 State program provisions set aside.

934.15 Approval of North Dakota regulatory program amendments.

934.16 Required program amendments.

934.20 Approval of North Dakota abandoned mine plan.

934.25 Approval of North Dakota abandoned mine land reclamation plan amendments.

934.30 State-Federal Cooperative Agreement.

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

SOURCE: 45 FR 82246, Dec. 15, 1980, unless otherwise noted.

§ 934.1 Scope.

This part contains all rules applicable only within North Dakota that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 934.10 State program approval.

The North Dakota State Program, as submitted on February 29, 1980, and amended and clarified on June 12, 1980 and September 9, 1980, is conditionally approved, effective December 15, 1980.

30 CFR Ch. VII (7-1-17 Edition)

Beginning on that date, PSC shall be deemed the regulatory authority in North Dakota for all surface coal mining and reclamation operations and for all exploration operations where more than 250 tons of coal are removed on non-Federal and non-Indian lands and the North Dakota Geological Survey shall be deemed the regulatory authority in North Dakota for all exploration operations where less than 250 tons of coal are removed on non-Federal and non-Indian lands. Only surface mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the North Dakota permanent regulatory program. Copies of the approved program, together with copies of the letter of the Public Service Commission agreeing to the conditions in § 934.11, are available at:

(a) North Dakota Public Service Commission, Reclamation Division; State Capitol Building; Bismarck, ND 58505-0165; Telephone: (701) 224-4096.

(b) Office of Surface Mining, 100 East "B" Street, Casper, Wyoming 82601-1918, telephone: (307) 261-5824.

[45 FR 82246, Dec. 15, 1980, as amended at 57 FR 826, Jan. 9, 1992; 57 FR 37706, Aug. 20, 1992]

§ 934.12 State program amendments disapproved.

The following provision of an amendment to the North Dakota permanent regulatory program, as submitted to OSMRE on February 10, 1987, and modified on August 18, 1987, and December 14, 1987, is hereby disapproved: Paragraph (c)(4) of the North Dakota Administrative Code, Article 69-05.2-12-05.1, which would have established separate financial criteria for self-bonding by rural electric cooperatives.

[53 FR 2840, Feb. 2, 1988. Redesignated at 55 FR 1819, Jan. 19, 1990]

§ 934.13 State program provisions set aside.

North Dakota regulation NDAC 69-05.2-27-01 is inconsistent with Federal provisions for permitting and bonding of research projects and is set aside under the provisions of section 505(b) of the Surface Mining Control and Reclamation Act of 1977.

Surface Mining Reclamation and Enforcement, Interior

§ 934.15

§ 934.15 Approval of North Dakota regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these

amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
July 30, 1982	February 9, 1983, November 9, 1983.	NDCC Chapter 38-14.1; subsection 5 of § 38-14.1-02, definitions of "extended mining plan," "performance bond;" 38-14.1-03; subsection 3 of § 38-14.1-07, 13; subdivision "u" of subsection 1 of § 38-14.1-14; subdivision "n" of subsection 2 of § 38-14.1-14; § 38-14.15; subsection 3 of § 38-14.1-20; subsections 17, 18 of § 38-14.1-24; subsection 4 of § 38-14.1-30; § 38-14.1-38; Chapter 38-12.1; subdivision b of § 1 of § 38-12.1-04; Chapter 38-18; subsection 3 of § 38-18-05, definition of "mineral developer;" subsection 6 of § 38-18-05, definition of "mineral owner;" subsection 10 of § 38-18-05, definition of "surface owner;" subsection 3 of § 38-18-06; § 38-18-07; NDAC 69-05.2, Chapter 69-05.2-01, 05 through 19, 21, 22, 23, 26; NDCC § 38.12.1-03.
February 2, 1984	July 19, 1984	NDAC §§ 38-14-1.02(33)(a), 04.1, .2, .3, 13(1)(b), 24(1)(1); §§ 69-05.2-05-03, 69-05.2-09-18, 69-05.2-13-12.1 through .6, 69-05.2-16-04.
February 27, 1984	January 3, 1985	NDAC §§ 69-05.2-01-02, definition of "blaster" and renumbering of § 69-05.2-17-01; 69-05.2-31.
June 18, 1985	February 18, 1986 ..	NDCC 38-14.1-04.2, .3, -7, -10, -14, -21, -30, -33; NDAC 69-05.2-04-01, -06-02, -08-03, -09-02, -08, -09, -10-03, -16-09.
May 30, 1986	October 21, 1986 ...	NDAC 69-05.2-01-02 (11), (12), definitions "coal preparation plant," "coal processing plant," 08-05(2)(c)(5), -09-19, -13-13, -15-01, -02, -03(2), -04, -16-04(1)(b), -09(22), -15-01, -21-03.
September 8, 1986 ...	December 9, 1986 ..	NDAC 69-05.2-12-20.
April 3, 1987	November 16, 1987	NDCC 38-14.1-16(2), (7), -17(7).
February 10, 1987	February 2, 1988	NDAC 69-05.2-12, -13-04, -23.
June 1, 1988	March 10, 1989	Amendment X, "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre-and Post- mining Vegetation Assessments".
April 11, 1989	August 4, 1989	NDCC 38-14.1-37, -39.
November 1, 1988	January 19, 1990 ...	NDAC 69-05.2, 2-01 through -31.
November 20, 1990 ..	January 9, 1992	NDCC 28-32-02(3), (4); NDAC 69-05.2-01-02, -03(4), (5), (7), -04-01(5)(b), -05-06(1), (1d), -06-01, -02(3) through (6), -08-05(2), (2C), (2e), -09(3b), -15-09-01(4), -06(1), (2), -09(1)(c)(7-8), (1)(e), (2)(c through e), (h), -17(1), (2), -19(1), -10-03, -05(3a, e), -11-03, -12-01(4), (10), -12(3), -18, -20, -13-08(2) through (6), -12(4), -13, -15-04(4)(a)(2)(c), -16-03, -07(2a), -09(9), (17), (18), (20), -12(1), -14(3), -20, -17-01(2), -05(1), -18-01, -12(f), -20-03(1b, d), (3), -22-07(4)(e) through (i), -23-01, -24-01-09, -25-03(2), (4), -26-05, (3), -28-03, (7), 16 through 18.
June 12, 1991, November 19, 1991.	August 20, 1992	NDCC 38-12.1-03-2.b, -05-2.d; 38-14.1-02-33.a, -24.13.a, -30.3.c through g(1), (2); NDAC 43-02-01-18.1, -20; 69-05.2-01-01-3, -05-08, -08-01, -02; 69-05.2-08, -10.1a, -12; -09-04, -09, -10, -11, -14, -17, -10-02, -11-01.5, 02, -12-01, -05 through -08, -12-11, -12, -14, -16, -13-06, -08, -14-01, -15-02, -16-04, -06, -12, -22-07, -25-03, -04; 69-05.2-32, -32-01.1.b.
April 21, 1993	March 15, 1994, July 22, 1994.	NDAC 69-05.2-06-02(3), -09-01(4), -10-03(1), (1)(a), (4), -13-02(4)(e), -08(3) through (6), -15-04(3), -16-09 (13), (14), (16), -20-03(3), (4); NDCC 38-14.1-21(5), -24(13)(e), -37(2), (a) through (f), (3) through (6); 38-12.1-04(1)(a); 43-02-01-05, -20.3(c)(2); 43-02-01-05.
October 22, 1993	July 22, 1994	NDAC 69-05.2-17-02, -29-01(2), -02(1)(a), (b), -03(2), (5), -04, -05, -06(1)(a), -07(1), -08(1)(a) through (e), (2).
November 10, 1994 ..	April 13, 1995	NDAC 69-05.2-04-07(3)(a), -05-09, -06-01(2), -02(6), -10-03(5), -11-01(1)(d), -03(5)(c), -06(1)(c), -12-09(2), -15-02(2a), -16-09(7), (20), -21-01(2), -28-03(6).
February 17, 1994	July 14, 1995	Policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments".
March 20, 1996	April 28, 1997	NDAC 69-05.2-09-02.8 -13-02, -15-04.4a(2)c, -19-04.2, 3, -22-07.3.c, 4.d, 4.i, -26-05.3.c; 69-05, 22-07.4.j, .k; changes to new names of U.S. Natural Resource Conservation Service and the North Dakota Department of Health.
May 2, 1997	August 25, 1997	NDCC 38-14.1-04.1, .2, .3.
April 12, 1995	September 16, 1998	Statute: NDCC 38-14.1-37(4); NDCC 38-12.1-08; Rule: NDAC 43-02-01.
April 9, 1998	January 8, 1999	Revegetation Success Policy Doc. II-C, Prime Farmlands standards. II-F, Woodlands cover standards. II-H, Wetlands standards. II-I, Recreational land use standards for tree and shrub stocking. III-D, Methods for sampling woodland cover.
August 29, 1997	March 16, 1999	Rules: NDAC 69-05.2-13-01; NDAC 69-05.2-22-07.4.1; NDAC 69-05.2-28-19.
March 31, 1999	July 20, 1999	NDCC 38-14.1-30.3.f.

§ 934.16

30 CFR Ch. VII (7–1–17 Edition)

Original amendment submission date	Date of final publication	Citation/description
September 2, 1998 ...	November 8, 1999 ..	NDAC 69–05.2–90 NDAC 69–05.2–01–03 NDAC 69–05.2–05–09 NDAC 69–05.2–09–09 NDAC 69–05.2–13–02 NDAC 69–05.2–13–08 NDAC 69–05.2–15–02 NDAC 69–05.2–15–04 NDAC 69–05.2–16–09 NDAC 69–05.2–19–04
June 20, 2000	March 2, 2001	NDAC 69–05.2–01–03; NDCC 28–32 NDAC 69–05.2–09.15.8 NDAC 69–05.2–10–03.6.c NDAC 69–05.2–12–09 NDAC 69–05.2–12–12.2 NDAC 69–05.2–16–05 NDAC 69–05.2–22–07.4.1 NDAC 69–05.2–26–05.3 NDAC 69–05.2–29–03
March 16, 2000	May 17, 2001	Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments.
May 9, 2001	November 16, 2001	NDCC 38–14.1
November 21, 2002 ..	July 7, 2003	<i>Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments: Section II-C, D, E, F, G, and H; Section III-C, D, and E</i>
Feb. 10, 2003	Dec. 4, 2003	NDAC 69–05.2–01–02(120) NDAC 69–05.2–04–01.1 through 01.7 NDAC 69–05.2–05–01 NDAC 69–05.2–09–01 NDAC 69–05.2–12–12 NDAC 69–05.2–16–04 NDAC 69–05.2–16–05(1)(b)(3) NDAC 69–05.2–16–09
April 23, 2003	January 20, 2004 ...	NDAC 69–05.2–01–02.13 NDAC 69–05.2–12–01.11 NDAC 69–05.2–12–04.2 NDAC 69–05.2–17–07 NDAC 69–05.2–22–07
April 20, 2005	November 28, 2005	NDCC 38–14.1–17.1.a and 2005b.
May 24, 2006	December 20, 2006	NDAC 69–05.2–06–03 NDAC 69–05.2–10–01 NDAC 69–05.2–12–12 NDAC 69–05.2–16–09 NDAC 69–05.2–22–07 NDAC 69–05.2–24–01
March 12, 2008	September 12, 2008	NDAC 69–05.2–08–08 NDAC 69–05.2–10–03 NDAC 69–05.2–12–05.1
November 12, 2009 ..	December 27, 2010	NDCC 38–14.1–24(18) NDAC 69–05.2–09–2 2NDAC 69–05.2–22–07
February 1, 2012	June 6, 2014	NDAC 69–5.2–12–04
November 14, 2012 ..	December 16, 2014	NDAC 69–05.2–05–02 NDAC 69–05.2–05–08 NDAC 69–05.2–06–01 NDAC 69–05.2–06–02 NDAC 69–05.2–10–01 NDAC 69–05.2–10–03 NDAC 69–05.2–10–07 NDAC 69–05.2–10–08 NDAC 69–05.2–10–09

[62 FR 9948, Mar. 5, 1997, as amended at 62 FR 22894, Apr. 28, 1997; 62 FR 44900, Aug. 25, 1997; 63 FR 49434, Sept. 16, 1998; 64 FR 1130, Jan. 8, 1999; 64 FR 12900, Mar. 16, 1999; 64 FR 38827, July 20, 1999; 64 FR 60659, Nov. 8, 1999; 66 FR 13020, Mar. 2, 2001; 66 FR 27459, May 17, 2001; 66 FR 57662, Nov. 16, 2001; 68 FR 40147, July 7, 2003; 68 FR 67804, Dec. 4, 2003; 69 FR 2666, Jan. 20, 2004; 70 FR 71242, Nov. 28, 2005; 71 FR 76148, Dec. 20, 2006; 73 FR 52923, Sept. 12, 2008; 75 FR 81122, Dec. 27, 2010; 79 FR 32647, June 6, 2014; 79 FR 74618, Dec. 16, 2014]

§ 934.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), North Dakota is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with North Dakota's established administrative or legislative procedures.

(a)–(cc) [Reserved]

[53 FR 2840, Feb. 2, 1988, as amended at 54 FR 10145, Mar. 10, 1989; 55 FR 1819, Jan. 19, 1990; 57 FR 827, Jan. 9, 1992; 59 FR 11933, Mar. 15, 1994; 59 FR 37431, July 22, 1994; 60 FR 18745, Apr. 13, 1995; 60 FR 36223, July 14, 1995; 62 FR 22895, Apr. 28, 1997; 63 FR 49434, Sept. 16, 1998; 64 FR 1130, Jan. 8, 1999; 64 FR 60660, Nov. 8, 1999]

§ 934.20 Approval of North Dakota abandoned mine plan.

The North Dakota Abandoned Mine Plan as submitted on July 28, 1981, is

approved. Copies of the approved program are available at:

Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601-1918; Telephone: (307) 261-5776.

North Dakota Public Service Commission, Abandoned Mine Land Division, State Capitol, Bismarck, ND 58505; Telephone: (701) 224-4096.

[57 FR 33116, July 27, 1992]

§ 934.25 Approval of North Dakota abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Surface Mining Reclamation and Enforcement, Interior

§ 934.30

Original amendment submission date	Date of final publication	Citation/description
March 4, 1983	June 24, 1983	Definition of reclamation terms; right of entry; land acquisition, management, and disposition; other policies and procedures.
September 15, 1987	June 16, 1988	Revision of administrative and management structure of the approved North Dakota Plan.
October 31, 1991	July 27, 1992	NDCC 38-14.2-04, -06.
May 25, 1993	September 27, 1993	Emergency response reclamation program; set-aside trust funds, eligible lands.
September 20, 1995	October 8, 1996	NDCC 38-14.2-03(14); Public Service Commission Procurement and Contract Procedures; PSC policies Nos. 2-01-81(5), 2-02-81(5); PSC organizational structure.

[62 FR 9949, Mar. 5, 1997]

§ 934.30 State-Federal Cooperative Agreement.

COOPERATIVE AGREEMENT

This is a Cooperative Agreement (Agreement) between North Dakota (State) acting by and through the North Dakota Public Service Commission (Commission) and the Governor, and the United States Department of the Interior (Interior), acting by and through the Secretary of the Interior (Secretary) and the Office of Surface Mining (OSM).

ARTICLE I: INTRODUCTION AND PURPOSE

A. *Authority*: This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Federal Act), Pub. L. 95-87, 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved under 30 U.S.C. 1253 to elect to enter into an Agreement for the regulation and control of surface coal mining on Federal lands, and by Chapter 38-14.1 of the North Dakota Century Code, Reclamation of Surface Mined Lands (State Act). This Agreement provides for State regulation of surface coal mining and reclamation operations on Federal lands within North Dakota consistent with the State and Federal Acts and the Federal lands program (section 523(a) of the Federal Act and 30 CFR Chapter VII, Subchapter D).

B. *Purpose*: The purpose of the Agreement is to: (1) Foster State-Federal cooperation in the regulation of surface coal mining and reclamation operations; (2) eliminate unnecessary intergovernmental overlap and duplication; and (3) provide uniform and effective application of the State Program on all non-Indian lands in North Dakota.

ARTICLE II: EFFECTIVE DATE

Following signing by the Secretary, the Governor, and the Commission, the Agreement shall take effect upon publication in the FEDERAL REGISTER as a final rule. This

Agreement shall remain in effect until terminated as provided in Article X.

ARTICLE III: SCOPE

In accordance with the Federal lands program in 30 CFR parts 740-746, the laws, rules, terms, and conditions of North Dakota's Permanent State Program (Program) (conditionally approved effective December 15, 1980, 30 CFR 934.11 or as hereinafter amended in accordance with 30 CFR 732.17) are applicable to Federal lands within North Dakota except as otherwise stated in this Agreement, the Federal Act, 30 CFR 745.13, or other applicable laws or rules and regulations. Orders and decisions issued by the Commission in accordance with the State Program that are reviewable shall be reviewed pursuant to section 38-14.1-30 of the North Dakota Century Code. Orders and decisions issued by the Department that are appealable shall be appealed to the Department of the Interior's Office of Hearings and Appeals.

ARTICLE IV: REQUIREMENTS FOR COOPERATIVE AGREEMENT

The Commission and the Secretary affirm that they will comply with all of the provisions of this Agreement and will continue to meet all the conditions and requirements specified in this Article.

A. *Responsible Administrative Agency*: The Commission is, and shall continue to be, the sole agency responsible for administering this Agreement on behalf of North Dakota on Federal lands throughout the State. OSM shall administer this Agreement on behalf of the Secretary, in accordance with the regulations in 30 CFR Chapter VII.

B. *Authority of State Agency*: The Commission has and shall continue to have authority under State law to carry out this Agreement.

C. *Funds*: The State will devote adequate funds to the administration and enforcement on Federal lands in North Dakota of the requirements contained in the Program. If the State complies with the terms of this Agreement, and if necessary funds have been appropriated, OSM shall reimburse the State as

provided in section 705(c) of the Federal Act and 30 CFR 735.16, for costs associated with carrying out responsibilities under this Agreement. The grants procedures established in 30 CFR part 735 are applicable to funding under this Agreement. Reimbursement shall be in the form of annual grants, and applications for grants shall be processed and grants awarded in a prompt manner.

If sufficient funds have not been appropriated, OSM and the Commission shall promptly meet to decide on appropriate measures that will insure that surface coal mining and reclamation operations are regulated in accordance with the Program.

D. Reports and Records: The Commission shall make annual reports to OSM pursuant to 30 CFR 745.12(d), containing information respecting its implementation and administration of the terms of this Agreement. The Commission and OSM shall exchange, upon request, information developed under this Agreement except where prohibited by Federal law. OSM shall provide the Commission with a copy of any final evaluation report concerning State administration and enforcement of this Agreement.

E. Personnel: The Commission shall provide the necessary personnel to fully implement this Agreement in accordance with the provisions of the Federal and State Acts and the State Program.

F. Equipment and Laboratories: The Commission shall assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed and which are necessary to carry out the requirements of this Agreement.

G. Permit Application Fees and Civil Penalty Assessments: The amount of the fee accompanying an application for a permit shall be determined in accordance with section 38-14.1-13 of the State Act. All permit fees and civil penalty assessments collected by the State from operators on Federal lands shall be retained by the State and deposited with the State Treasurer. These funds shall be disposed of in accordance with Federal requirements in OMB Circular No. A-102, Attachment E. The financial status report submitted pursuant to 30 CFR 735.26 shall include a report of the amount of permit application fees collected and attributable to Federal lands during the prior Federal fiscal year.

ARTICLE V: POLICIES AND PROCEDURES: REVIEW OF A PERMIT APPLICATION PACKAGE OR AN APPLICATION FOR A PERMIT RENEWAL OR REVISION

A. Contents of Permit Application Package: The Commission and the Secretary will require that an operator proposing to mine on Federal land shall submit an identical permit application package in an appropriate

number of copies to the Commission and OSM. Any documentation or information submitted by the operator for the sole purpose of complying with the 3-year requirement of section 7(c) of the Mineral Leasing Act (30 U.S.C. 181 *et seq.*) will be submitted directly to the Bureau of Land Management, Department of the Interior. The permit application package shall be in the form required by the Commission and include any supplemental information required by the Secretary. The permit application package shall satisfy the requirements of 30 CFR Chapter VII, Subchapter D and shall include the information required by, or necessary for, the Commission and the Secretary, acting within their statutory authority, to make a determination of compliance with:

(1) Chapter 38-14.1 and Chapter 38-18 of the North Dakota Century Code;

(2) Article 69-05.2 of the North Dakota Administrative Code (NDAC);

(3) Applicable terms and conditions of the Federal coal lease;

(4) Applicable requirements of the Bureau of Land Management's 30 CFR part 211¹ regulations pertaining to the Mineral Leasing Act; and

(5) Applicable requirements of other Federal laws and the Program, including but not limited to those in appendix A of this Agreement.

B. Review Procedures: 1. The Commission shall assume primary responsibility for the analysis, review, and approval of permit applications required by 30 CFR Chapter VII, Subchapter D for surface coal mining on Federal lands in North Dakota. OSM shall, as requested, assist the Commission in this analysis and review.

2. The Commission shall be the primary point of contact for operators regarding the approval of the permit application package, except on matters concerned exclusively with the 30 CFR part 211¹ regulations administered by the Bureau of Land Management. The Commission will be responsible for informing the applicant of all joint State-Federal or Federal determinations, except matters concerned exclusively with the 30 CFR part 211¹ regulations. The Commission shall send to the Bureau of Land Management all correspondence with the applicant which may have a bearing on decisions regarding Mineral Leasing Act requirements. Except in exigent circumstances, OSM shall generally not independently initiate contacts with applicants regarding completeness or deficiencies of permit application packages with respect to matters which are properly within the jurisdiction of the Commission. The Commission may arrange for an operator to

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

send written communications and documents regarding a permit application package directly to OSM. The Secretary reserves the right to act independently of the Commission to carry out his responsibilities under laws other than the Federal Act. A copy of any independent correspondence with the applicant required to carry out these responsibilities which may have a bearing on decisions regarding the permit application package shall be sent to the State.

3. OSM is responsible for ensuring that any information OSM receives from an applicant regarding the permit application package is sent to the Commission and the Commission will send any information received from the applicant to OSM. OSM shall have access to Commission files for mines on Federal lands. OSM and the Commission shall regularly coordinate with each other during the permit application package review process.

4. OSM shall be responsible for obtaining, in a timely manner, the views of all Federal agencies with jurisdiction or responsibility over a permit application package on Federal lands in North Dakota and for making these views known to the Commission within 90 days of the receipt of the application by OSM. The Commission shall keep OSM informed of findings during the review which bear on the responsibilities of other Federal agencies. OSM shall take appropriate steps to facilitate discussions between the Commission and the concerned agencies wherever desirable to resolve issues or problems identified in the review.

5. Upon receipt of a permit application package, both OSM and the Commission shall each designate its application manager. The application managers shall serve as the primary point of contact between OSM and the Commission throughout the review process and shall be responsible for identifying areas of avoidable duplication of review and analysis, which shall be eliminated where possible. Not later than 15 days after an application has been received, OSM and the Commission shall discuss the application and agree upon a work plan and schedule for the review of the application. OSM shall thereafter inform the Commission of any specific or general areas of concern, including the scope of required environmental analyses under the National Environmental Policy Act, which require special handling or analysis. The Commission shall likewise inform OSM where OSM assistance will be needed to perform any specific or general analysis or prepare any studies or similar work.

6. The Commission shall prepare a technical-environmental analysis on the permit application package. Copies of drafts of this document shall be sent to OSM for review and comment. OSM shall independently evaluate the documents and inform the Commission within 30 days of any changes that

should be made. The Commission shall consider the comments of OSM and send a final technical-environmental analysis to OSM which will form the basis for and be included in the decision document which OSM will prepare for the Secretary's consideration. The Commission shall approve or disapprove the permit application by written decision in accordance with the Program. The Secretary's decision on the mining plan and those other Federal responsibilities which cannot be delegated (including but not limited to those listed in appendix A) shall be made concurrently with or as soon as possible after the final decision of the Commission on the permit. The permit issued by the Commission shall condition the initiation of surface coal mining operations on Federal lands within the permit area on obtaining mining plan approval from the Secretary. The Commission shall, in the approved permit, reserve the right to amend or rescind its action to conform with action taken, or with terms or conditions imposed, by the Secretary when approving the mining plan. After the Commission makes its decision on the permit, it shall send a notice to the applicant and OSM with a statement of findings and conclusions in support of the action.

7. The Commission may approve and issue permits, permit renewals, and permit revisions for surface disturbances associated with surface coal mining and reclamation operations, and disturbance of the surface may commence without need for an approved mining plan on lands where:

(a) The surface estate is non-Federal and non-Indian;

(b) The mineral estate is Federal and is unleased;

(c) The Commission consults with the Bureau of Land Management through OSM in order to insure that actions are not taken which would substantially and adversely affect the Federal mineral estate; and

(d) The proposed surface disturbances are planned to support surface coal mining and reclamation operations on adjacent non-Federal lands and this is specified in the permit, permit renewal, or permit revision.

8. Any permit renewal requested pursuant to applicable State laws and rules for a surface coal mining and reclamation operation on Federal lands, and for which a mining plan has been approved by the Secretary, shall be reviewed and approved or disapproved by the Commission in consultation with OSM for Federal responsibility under other laws. The Commission shall inform OSM and BLM of the approval or disapproval of the renewal and provide OSM and BLM with copies of the application documents.

9. The Commission shall inform OSM of each permit revision request with respect to surface coal mining and reclamation operations on Federal lands containing leased

§ 934.30

Federal coal. For other Federal lands, the Commission shall inform the Federal land management agency of each permit revision request. Surface coal mining and reclamation operations shall not occur pursuant to the revision unless the permit revision request has been approved by the Commission and:

(a) With respect to Federal lands containing leased Federal coal—

(i) The Secretary has determined that the permit revision does not constitute a mining plan modification, or

(ii) If the revision does constitute a mining plan modification, the modification has been approved by the Secretary.

(b) With respect to other Federal lands, the Commission has consulted with the Federal land management agency to ensure that the permit revision is consistent with Federal laws and regulations other than the Act.

10. When the Commission and OSM cannot resolve differences that develop during permit application package review or cannot agree on the final actions to be taken by the Commission and the Department, the matter shall be referred to the Governor and the Secretary for resolution.

ARTICLE VI: INSPECTIONS

The Commission shall conduct inspections on Federal lands and prepare and file inspection reports in accordance with the approved Program.

A. *Inspection Reports:* The Commission shall, within 15 days of conducting any inspection on Federal lands, file with OSM an inspection report describing (1) the general conditions of the lands under the permit; (2) whether the operator is complying with applicable performance and reclamation requirements; and (3) the manner in which specific operations are being conducted.

B. *Commission Authority:* The Commission shall be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described in this Agreement and the Secretary's regulations. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

C. *OSM Authority:* For the purpose of evaluating the manner in which this Agreement is being carried out and to insure that performance and reclamation standards are being met, OSM may conduct inspections of surface coal mining and reclamation operations on Federal lands without prior notice to the Commission. In order to facilitate a joint Federal-State inspection, when OSM is responding to a citizen complaint of an imminent danger to the health or safety of the public or of a significant, imminent environmental harm pursuant to 30 CFR

30 CFR Ch. VII (7–1–17 Edition)

842.11(b)(1)(i), it will contact the Commission if circumstances and time permit, prior to the Federal inspection. The Department may conduct any inspections necessary to comply with 30 CFR part 842 and 30 CFR 740.17 (as 30 CFR 740.17 relates to obligations under laws other than the Federal Act). If an inspection is made without Commission inspectors, OSM shall provide the Commission with a copy of the inspection report within 15 days after the inspections.

D. *Witness Availability:* Personnel of the State and the Department shall be mutually available to serve as witnesses in enforcement actions taken by either party.

ARTICLE VII: ENFORCEMENT

A. *Commission Enforcement:* The Commission shall have primary enforcement authority on Federal lands in accordance with the Program and this Agreement. During any joint inspection by OSM and the Commission, the Commission shall take appropriate enforcement action, including issuance of orders of cessation and notices of violation. OSM and the Commission shall consult prior to issuance of any decision to suspend or revoke a permit.

B. *Notification:* The Commission and OSM shall promptly notify each other of all violations of applicable laws, regulations, orders, approved mining and reclamation plans and permits subject to this Agreement and of all actions taken with respect to such violations.

C. *Secretary's Authority:* (1) This Agreement does not affect or limit the Secretary's authority to enforce violations of laws other than the Federal Act. (2) During any inspection made solely by OSM or any joint inspection where the Commission and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR parts 843 and 845. Such enforcement action shall be based on the substantive standards included in the approved Program and shall be taken using the procedures and penalty system contained in 30 CFR parts 843 and 845.

ARTICLE VIII: BONDS

A. *Bond Coverage and Terms:* The Commission and OSM shall require all operators on Federal lands to submit a single performance bond to cover the operator's responsibilities under the Federal Act and the Program, payable to both the United States and North Dakota. The performance bond shall be of sufficient amount to comply with the requirements of both State and Federal law and release of the performance bond shall be conditioned upon compliance with all applicable requirements. If this Agreement is terminated, the bond will continue in effect and to

the extent that Federal lands are involved will be payable to the United States.

Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR subpart 3474 or a lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of the Federal Act.

B. Bond Release: The Commission shall obtain OSM's concurrence prior to releasing the operator from any performance bonding obligation required under the Program for any Federal lands containing leased Federal coal. For surface coal mining and reclamation operations on other Federal lands, the Commission shall obtain the concurrence of the Federal land management agency prior to releasing the performance bond. The Commission shall advise OSM of any release of and adjustments made to the performance bond.

C. Forfeiture: The operator's performance bond shall be subject to forfeiture with the consent of OSM, in accordance with the procedures and requirements of the Program.

ARTICLE IX: DESIGNATION OF LANDS AS UNSUITABLE

The Commission and OSM shall cooperate in the review and processing of petitions to designate lands as unsuitable for surface coal mining operations. When either agency receives a petition which could have an impact on lands the designation of which as unsuitable for mining would be the responsibility of the other agency, the agency shall: (1) Notify the other of its receipt of the petition and of the anticipated schedule for reaching a decision; and (2) request and fully consider data, information and views of the other. The authority to designate Federal lands as unsuitable for mining is reserved to the Secretary or his designated representative.

ARTICLE X: TERMINATION OF COOPERATIVE AGREEMENT

This Agreement may be terminated as follows:

A. Termination by the State: The Agreement may be terminated by the Commission upon written notice to the Secretary, specifying the date upon which the Agreement shall be terminated. The date of termination shall not be less than 90 days from the date of the notice.

B. Termination by the Secretary: This Agreement may be terminated by the Secretary according to the following procedures:

1. A written notice from the Secretary to the Commission shall specify the grounds upon which he proposes to terminate the Agreement. In addition, a written notice containing the grounds for termination shall be published in the FEDERAL REGISTER affording the Commission and the public a minimum of 30 days for comment.

2. A written notice in the FEDERAL REGISTER and a local newspaper of general circulation shall also specify the date and place within the State of North Dakota where the Commission and the public shall be afforded the opportunity for a hearing. The date of such hearing shall not be less than 30 days from the date of publication in the FEDERAL REGISTER. Prior to the time fixed for public hearing, representatives of the Commission may be permitted to appear and confer in person with representatives of the Secretary and present oral or written statements, and any other documents relative to the proposed termination.

3. The proposed termination hearing shall be conducted by OSM and a record shall be made of the hearing. The Commission shall be entitled to have legal, and technical and other representatives present at the hearing, and may present, either orally or in writing, evidence, information, testimony, documents, records or materials as may be relevant to the issues involved.

4. The Secretary's decision shall be made after the hearing and close of the comment period.

5. A decision to terminate the Agreement may be made if the Secretary finds in writing that:

(a) The Commission has substantially failed to comply with the requirements of the Federal Act, 30 CFR parts 740-746, the Program, or provisions of this Agreement; or

(b) The Commission has failed to comply with any undertaking by the Commission in this Agreement upon which the approval of the Program, this Agreement, or grants by OSM for administration or enforcement of the Program or this Agreement were based.

6. The Secretary shall send written notice of the decision and findings to the Commission and publish notice of it in the FEDERAL REGISTER.

7. This Agreement shall terminate not less than 60 days after publication of the notice of the decision to terminate in the FEDERAL REGISTER. The Commission may remedy any failure during the 60-day period. If the Secretary determines that the State has taken effective remedial action, the Agreement will not terminate.

C. Termination by Operation of Law: This Agreement shall terminate by operation of law under either of the following circumstances:

1. When no longer authorized by Federal law or North Dakota laws and regulations; or

2. Upon termination or withdrawal of the Secretary's approval of the Program pursuant to 30 CFR part 733.

D. Mutual Termination: This Agreement may be terminated at any time upon mutual agreement by the Secretary and the Commission.

§ 934.30

ARTICLE XI: REINSTATEMENT OF COOPERATIVE AGREEMENT

If this Agreement has been terminated as provided in Article X, it may be reinstated upon application by the Commission and upon its giving evidence satisfactory to the Secretary that the Commission can and will comply with all the provisions of the Agreement and that the Commission has remedied all defects in administration for which this Agreement was terminated.

ARTICLE XII: AMENDMENTS TO COOPERATIVE AGREEMENT

This Agreement may be amended by mutual agreement of the Commission and the Secretary. An amendment proposed by one party shall be submitted to the other with a statement of the reasons for such proposed amendment. The amendment shall be adopted or rejected in accordance with the requirements of 30 CFR 745.11. The party to whom the proposed amendment is submitted shall signify its acceptance or rejection of the proposed amendment and if rejected shall state the reason for rejection.

ARTICLE XIII: CHANGES IN STATE OR FEDERAL STANDARDS

A. *Time for Change:* The Secretary or the State may from time to time promulgate new Federal or State regulations, including new or revised performance or reclamation requirements or enforcement or administration procedures. OSM and the Commission shall immediately inform each other of any final changes in their respective laws or regulations as provided in 30 CFR part 732. Each party shall, if it is determined to be necessary to keep this Agreement in force, change or revise its regulations and request necessary legislative action. Such changes shall be made under the procedures of 30 CFR part 732 for changes to the Program and section 501 of the Federal Act for changes to the Federal lands program.

B. *Copies of Changes:* The State and OSM shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XIV: CHANGES IN PERSONNEL AND ORGANIZATION

The Commission and the Secretary shall, consistent with 30 CFR part 745, advise each other of changes in the organization, structure, functions, duties, and funds of the offices, departments, divisions, and persons within their organizations which could affect administration and enforcement of this Agreement. Each shall promptly advise the other in writing of changes in key personnel, including the head of a department or division, or changes in the functions or duties of

30 CFR Ch. VII (7-1-17 Edition)

persons occupying the principal offices within the structure of the program. The Commission and OSM shall advise each other in writing of changes in the location of offices, addresses, telephone numbers, and changes in the names, location and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible.

ARTICLE XV: RESERVATION OF RIGHTS

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws or regulations, including but not limited to those listed in appendix A.

ARTICLE XVI: DEFINITIONS

Terms and phrases used in this Agreement which are defined in 30 CFR part 700, 701 and 740 shall be given the meanings set forth in those definitions.

Approved:

James G. Watt,
Secretary of the Interior.

Dated: August 11, 1983.

Allen I. Olson,
Governor of North Dakota.

Dated: August 30, 1983.

Bruce Hagen,
President, North Dakota Public Service Commission.

Dated: August 30, 1983.

Leo M. Reinbold,
Commissioner, North Dakota Public Service Commission.

Dated: August 30, 1983.

Dale Sandstrom,
Commissioner, North Dakota Public Service Commission.

Dated: August 30, 1983.

APPENDIX A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701, *et seq.*, and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181, *et seq.*, and implementing regulations including 30 CFR part 211 *et seq.*
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*, and implementing regulations including 40 CFR 1500 *et seq.*
4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations including 50 CFR part 402.
5. The National Historic Preservation Act of 1966, 16 U.S.C. 470, *et seq.*, and implementing regulations, including 36 CFR part 800.

Surface Mining Reclamation and Enforcement, Interior

§ 935.11

6. The Clean Air Act, 42 U.S.C. 7401, *et seq.*, and implementing regulations.

7. The Federal Water Pollution Control Act, 33 U.S.C. 1251, *et seq.*, and implementing regulations.

8. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

9. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469, *et seq.*

10. Executive Order 11593, Cultural Resource Inventories on Federal Lands.

11. Executive Order 11988 (May 24, 1977), for flood plain protection. Executive Order 11990 (May 24, 1977), for wetlands protections.

12. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351, *et seq.*, and implementing regulations.

13. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291, *et seq.*

14. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa., *et seq.*

15. The Constitution of the United States.

16. The Constitution of the State of North Dakota, State law, and rules.

[48 FR 41395, Sept. 15, 1983, as amended at 53 FR 11501, Apr. 7, 1988]

PART 935—OHIO

Sec.

935.1 Scope.

935.10 State regulatory program approval.

935.11 Conditions of State regulatory program approval.

935.12 [Reserved]

935.15 Approval of Ohio regulatory program amendments.

935.16 Required regulatory program amendments.

935.20 Approval of Ohio abandoned mine land reclamation plan.

935.25 Approval of Ohio abandoned mine land reclamation plan amendments.

935.30 State-Federal Cooperative Agreement.

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

§ 935.1 Scope.

This part contains all rules applicable only within Ohio that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[47 FR 34717, Aug. 10, 1982]

§ 935.10 State regulatory program approval.

The Ohio State regulatory program as submitted on February 29, 1980, and resubmitted on January 22, 1982, is conditionally approved, effective August

16, 1982. Beginning on that date, the Department of Natural Resources shall be deemed the regulatory authority in Ohio for all surface coal mining and reclamation operations on non-Indian and non-Federal lands. Only surface coal mining and reclamation operations on non-Indian and non-Federal lands shall be subject to the provisions of the Ohio permanent regulatory program. Copies of the approved program, as amended, are available at:

(a) Ohio Department of Natural Resources, Division of Reclamation, Building H-2, 1855 Fountain Square Court, Columbus, Ohio 43224.

(b) [Reserved]

[48 FR 23193, May 24, 1983, as amended at 59 FR 17930, Apr. 15, 1994]

§ 935.11 Conditions of State regulatory program approval.

The approval of the Ohio State program is subject to the State revising its program to correct the deficiencies listed in this section. The program revisions may be made, as appropriate, to the statute, the regulations, the program narrative, or the Attorney General's opinion. This section indicates, for the general guidance of the State, the component of the program to which the Secretary requires the change be made.

(a)–(e) [Reserved]

(f) Steps will be taken to terminate the approval found in § 935.10.

(g) [Reserved]

(h) Steps will be taken to terminate the approval found in § 935.10:

(1) Unless Ohio submits to the Secretary by September 30, 1985, a revised program amendment that demonstrates how the alternative bonding system will assure timely reclamation at the site of all operations for which bond has been forfeited.

(i)–(j) [Reserved]

(k) Steps will be initiated to terminate the approval found in § 935.10.

(l)–(m) [Reserved]

[47 FR 34717, Aug. 10, 1982, as amended at 48 FR 1958, Jan. 17, 1983; 48 FR 23193, May 24, 1983; 48 FR 46027, Oct. 11, 1983; 48 FR 46531, Oct. 13, 1983; 49 FR 18482, May 1, 1984; 49 FR 37590, Sept. 25, 1984; 49 FR 43953, Nov. 1, 1984; 50 FR 25710, June 21, 1985]

§ 935.12 [Reserved]

§ 935.15 Approval of Ohio regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these

amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
September 16, 1982 October 13, 1982	January 17, 1983 ... January 31, 1983, July 22, 1983.	OAC 13-1-01. OAC 1501:13-1-02(E), -07; 13-4-03 through -05.
January 6, 1983	May 24, 1983	ORC as amended by SB 240 and 323.
June 10, 1983, August 11, 1983, August 22, 1983.	October 6, 1983	OAC 1501:13-1-02; 13-4-04, -05, -13, -14; 13-9-04; 13-12-03, -04.
July 18, 1983	October 13, 1983 ...	ORC 1513:01(G)(2), (U); -13(A)(1), (C)(1), (3).
January 30, 1984	April 23, 1984	OAC 1501:13-4-13(K)(1).
February 8, 1984	May 1, 1984	OAC 1501:13-9-15(E)(5); ORC 1513-101(J), (K), (L).
December 28, 1983 ..	June 5, 1984	OAC 1501:13-14-01.
March 5, 1984	August 8, 1984	OAC 1501:13-14-05.
June 15, 1984	September 25, 1984	OAC 1501:13-4-04(I), (L), -13(I), (J), (L); 13-9-04(B)(5), (G)(15); and Division Advisory Memo No. 31.
July 23, 1984	November 1, 1984 ..	ORC contained in Substitute House Bill No. 164.
March 9, 1984	November 7, 1984 ..	OAC 1501:13-4-13(E)(2).
September 17, 1984	December 31, 1984	OAC 1501:13-2-15.
July 10 and 23, 1984	March 18, 1985	OAC 1501:13-9-06.
July 11, 1984, July 23, 1984.	May 23, 1985	OAC 1501:13-14-01; ORC 1513-3-01 through -22.
July 3, 1985	September 18, 1985	OAC 1513-3-01 through -22.
November 15, 1985 ..	April 9, 1986, June 9, 1986.	ORC 1513.02, .07, .08, .10, .16, .18, .20, .25, .27 through .33, .37, .181; 5749.02, .021.
January 15, 1986	May 6, 1986	OAC 1513-3-01 through 04, 16, 17.
October 26, 1985	July 17, 1986	OAC 1501:13-3-05; 13-4-04, -13; 13-9-04.
November 6, 1984	July 28, 1986	OAC 1501:13-14-03.
March 3, 1986	September 18, 1986	OAC 1501:13-4-05, 14; 13-9-07.
July 10, 1986	October 29, 1986 ...	OAC 1501:13-9-06.
October 8, 1986	March 5, 1987	OAC 1501:13-9-07.
December 1, 1986, January 13, 1987.	June 19, 1987	OAC 1501:13-7-03(B)(5)(g), (7)(h).
May 16, 1986	July 17, 1987	OAC 1501:13-1-01, -02, -07, -10, -13; 13-3-02 through -07; 13-4-01 through -04, -06, -08, -12, -13, -14; 13-5-01; 13-6-03; 13-7-01 through -08; 13-8-0; 13-9-01, -04, -06, -08, -09, -10 (formerly 13-14-05), -11, -13, -14, -15; 13-10-01; 13-13-02 through -06, -08; 13-14-01 through -05; 1513-3-03, -08; ORC 1513.16(H)(2), (3), .18(F).
January 28, 1987	August 10, 1987 ..	OAC 1513-3-02, -03, -04, -08, -19, -21.
June 26, 1987	December 9, 1987 ..	OAC 1501:13-1-02.
January 16, 1987	March 10, 1988	OAC 1501:13-7-03(B)(5)(g).
October 16, 1987	May 27, 1988	OAC 1501:13-1-02(M), (PP), (YY); 13-3-03 (C), (G), -04(E); 13-4-01(B), -04(A), (K)(7), -05(K), -13(A), (K)(7), -14(J); 13-5-01(E)(16).
March 24, 1988	July 14, 1988	OAC 1513:1513-3-21(E) (3), (4), (5).
May 24, 1988, August 23, 1988.	December 22, 1988	OAC 1501:13-1-02; 13-4-03, -04, -05; 13-4-13, -14; 13-7-03, -04, -05, -07(B); 13-9-04, -07, -09, -14, -15; 13-10-01; 13-14-02, -05.
March 8, 1988, July 1, 1988.	January 30, 1989 ...	OAC 1501:13-4-02(B)(1)(b), (B)(1)(c), (C)(1), (C)(1)(a).
April 17, 1987	February 21, 1989 ..	OAC 1501:13-9-15(A)(1)(a), (F)(8), (e)(i), (f)(i), (F)(9) through (12).
November 3, 1987	December 15, 1989	OAC 1501:13-9-15(F)(4)(c).
January 26, 1989	January 31, 1990 ...	OAC 1501:13-9-15(A)(1)(a), (F), (G), (H), (I)(2)(c), (4)(c), (8), (b), (f)(i), (I)(9).
October 2, 1989	April 20, 1990	ORC 1513.02(J), .08(A), .18(B), (C), (F), (H), .24, .37(J).
August 11, 1989	June 5, 1990	ORC 1513.05, .13(E), (F); OAC 1513-3-21.
December 5, 1989	July 20, 1990	OAC 1501:13-7-01(A)(4), (5), (6)(a)(i), (ii), -05(A)(1), (2)(b), (iv), (c)(ii), (B)(2)(c), (4) through (4)(e).
October 20, 1988	July 25, 1990	OAC 1501:13-3-07(B)(8); 13-4-01(B); 13-7-01(A)(6)(c)(iii), -05(A)(3), (5)(b)(i), (B)(2)(e); 13-9-07(K)(1)(b).
May 11, 1990	August 21, 1990	OAC 1501:13-7-06(F).
March 1, 1989	September 18, 1990	OAC 13-1-02, 03; 13-4-14; 13-5-01; 13-7-04, -05; 13-9-11; 13-14-06.
January 20, 1989	September 24, 1990	ORC 1513.07, .16; OAC 1501:13-4-15(A) through (I).
May 11, 1990	February 21, 1991 ..	OAC 1501:13-9-15(I)(2)(c)(ii).
December 7, 1990	February 26, 1991 ..	OAC 1501:13-10-01(G)(1).

Surface Mining Reclamation and Enforcement, Interior

§ 935.15

Original amendment submission date	Date of final publication	Citation/description
June 15, 1990	April 19, 1991	OAC 1501:13-4-03(A), (B), (C); 13-5-01(A)(4)(a), (D), and letter of interpretation dated April 1, 1991 (Administrative Record Number OH-1498), (E)(8), (F), (G)(5), (H)(5), -02; 13-14-02(A)(8), (C)(7), (D)(1)(c), (I); ORC 1513.07(E)(6). OAC 1501:03-9-13.
January 31, 1991	May 21, 1991, June 6, 1991.	OAC 1501:13-9-11(D)(3).
March 1, 1991	May 30, 1991	ORC 1513.07(B)(4); OAC 1501:13-6-03(C)(1)(b), (I)(1)(d), (I)(1)(e).
January 31, 1989	October 21, 1991 ...	OAC 1501:13-14-02(A)(2).
August 23, 1991	December 9, 1991 ..	ORC 1513.01(G)(1)(a); 1513.07(E)(5), (6); OAC 1501:13-1-02(S)(1)(a); 13-4-16; 13-5-03; 13-14-01; OAC 1513.16(F)(3)(b).
November 16, 1987, October 12, 1990.	April 13, 1992	OAC 1501:13-1-02(E)(1)(d), (YYY); 13-4-05(H)(2)(c), (M)(1)(d), (e), (2), -14(H)(2)(c), (L)(1)(d), (e), (2); 13-9-04(G)(3)(b)(i), (ii), (iii), (H)(1)(c), (h)(i), (ii), (iii), (2)(h), (3)(b); 13-9-09(C)(2)(b), (5), 15(F) through (I)(2)(c)(i), (ii), (3)(c); 13-10-01(B)(1), (D)(1), (F) (5), (6), (G)(1), (G)(3), (G)(4); 13-11-02(A); ORC 1513.01(G)(2).
January 16, 1990	July 27, 1992	OAC 1501:13-9-04(H)(1)(i), (2)(d), (e), (g), (h), -07(H).
July 22, 1991, September 10, 1991.	August 18, 1992	OAC 1501:13-1-01(D)(1), (2).
May 12, 1992	September 11, 1992	OAC 1501:13-7-06(A), (1), (4), (B), (1), (2)(b), (C), (1), (2), (a), (b), (c), (C)(3), (4), (E)(1), (E)(4).
December 11, 1991 ..	October 28, 1992 ...	OAC 1501:13-13-06(A).
June 30, 1992	January 12, 1993 ...	OAC 1501:13-5-01(A)(4)(a), 13-9-15(J)(1).
May 12, 1992, June 22, 1992.	January 14, 1993 ...	OAC 1501:13-1-01(B).
December 9, 1992	April 23, 1993	ORC 1513.02(F)(3).
February 7, 1992, March 2, 1992.	June 11, 1993	OAC 1501:13-1-02 (HHHH), 13-4-15(B)(5), (I)(2)(a), (3)(d).
April 5, 1993	June 22, 1993	OAC 1501:13-9-15.
February 11, 1993	August 16, 1993	OAC 1501:13-4-02(C)(2) through (K).
January 15, 1993	September 3, 1993	OAC 1501:13-4-06(E)(2)(g), 13-9-15, 17(B); Ohio Department of Natural Resources Guidelines for Evaluating Revegetation Success; Division of Reclamation Policy/Procedure Directive, Regulatory 94-2.
May 1, 1992, June 11, 1993.	May 2, 1994	OAC 1501:13-9-17.
May 17, 1994	July 27, 1994	Program Amendment Number 63.
March 15, 1993	September 1, 1994	OAC 1501:13-1-05, -10(B)(2).
February 23, 1994	October 12, 1994 ...	OAC 1501:13-4-05(E)(1)(g), (H)(1)(b)(iv), (c)(iv), -14(E)(1)(f), (H)(1)(b)(iv), (c)(iv); 13-9-04(B)(1)(a), (b), (G)(2)(e); Ohio's Policy/Procedure Directive, Inspection and Enforcement 93-4.
March 4, 1993	November 15, 1994	Combined Program Amendments 25R and 56R: Ohio Guidelines for Evaluating Revegetation Success.
July 19, 1994	May 11, 1995	Program Amendment 68R: Contemporaneous Reclamation.
May 17, 1994	May 12, 1995	OAC 1501:13-1-03(D)(2), (I)(1), (J)(1), (L)(1), (2), (3) (Financial interest statements); 13-7-05(A)(2)(b)(ii), (c)(ii), (B)(2)(c).
September 22, 1994	July 17, 1995	OAC 1501:13-14-01.
March 28, 1995	July 25, 1995	Program Amendment 63R: Ohio regulatory and Abandoned Mine Land reclamation programs.
February 2, 1995	November 9, 1995 ..	OAC 1501:13-4-15(d)(2); Policy Directives 92-3, 93-4.
July 3, 1995	February 28, 1996 ..	OAC 1501:13-4-12(G)(3)(d), (4)(f), (i); 13-09-08(A)(1), (B); 13-13-01.
May 23, 1996	September 4, 1996	OAC 1501:13-14-01(A)(2)(b), (c).
May 17, 1996	October 29, 1996 ...	OAC 1501:13-1-02(OOO), (JJJJJJJ); 13-4-08(A)(15), -10(A)(6), -12(L), -15(B); 13-5-01(D)(7), (D), (E)(19), (A), (B), (C); 13-9-15(F)(2), (A), (3), (a), (4)(d), (G)(3)(a), (H)(2), (I)(6), (J)(1)(b), (L), (2), (M)(4), (O), (1) through (6).
August 26, 1996	February 28, 1997 ..	OAC 1501:13-6-03, (A)(1) (a) through (f), (B), (1), (2), (F)(2), (a) through (f), (C)(2), (a), (b), (D)(9), (10), (11).
October 3, 1996	October 14, 1997 ...	ORC 1513.13(E).
June 24, 1997	February 24, 1998 ..	OAC 1501:13-9-15(F)(4)(c), (F)(5), and (F)(6).
February 11, 1993	September 29, 1998	OAC 1501:13-4-05, 1501:13-4-12, 1501:13-4-14, 1501: 13-7-05, 1501:13-9-04.
December 30, 1997 ..	December 4, 1998 ..	OAC 1513-3-21.
January 21, 1999	April 13, 1999	OAC 1501:13-1-04.
March 16, 1999	November 22, 1999	OAC 1501:13-9-10 (A)(1), (3), (B), (B)(7), (9), (14), (14)(e), (C)(1), (2), (3), (4), (5), (D)(1), (2)(b), (E)(1), (2), (5), (F)(1), (1)(b), (1)(f), (3), (4), (4)(a), (4)(b), and (4)(c).
June 11, 2003	October 3, 2003	OAC 1501:13-1-02(A), (D), (N), (O), (R), (MMMM), (OOOO); 1501:13-4-15(C)(2)(a),(b),(c); (C)(3)(b); (E)(3); (F)(1), (H)(3)(c).
November 7, 2003	September 27, 2004	OAC 1501:13-1-03(D)(2), (I)(1), (J)(1), (L)(1), (L)(2), and the deletion of (L)(3).
August 30, 2006	May 9, 2007	OAC 1513-3-01; 3-02(B); 3-02(D)(4); 3-02(H)-(I)(1); 3-03(C); 3-04(B)(7); 3-04(H); 3-08(F); 3-09(B)-(C); 3-10(C); 3-11(A)(4); 3-11(C); 3-11(E)-(G); 3-12(A)-(C); 3-13(C)(2)-(3); 3-14(A)(2)-(4); 3-16(E)(2); 3-16(F)(2); 3-16(G); 3-16(I); 3-18(F); 3-19(A); 3-19(F); 3-19(I).
January 22, 2009	November 29, 2010	

§ 935.16

30 CFR Ch. VII (7–1–17 Edition)

Original amendment submission date	Date of final publication	Citation/description
March 30, 2012	October 19, 2015 ...	OAC §§ 1501:13–1–02; –14–02; –14–06; –4–03; –4–06; –5–02; –1–14. Changes to Definitions, Ownership and Control, Permit and Application Information and Transfer, assignment or Sale of Permit Rights, and Improvidently Issued Permit procedures.

[62 FR 9950, Mar. 5, 1997, as amended at 62 FR 53234, Oct. 14, 1997; 63 FR 9139, Feb. 24, 1998; 63 FR 51833, Sept. 29, 1998; 63 FR 66989, Dec. 4, 1998; 64 FR 17981, Apr. 13, 1999; 64 FR 63690, Nov. 22, 1999; 68 FR 57356, Oct. 3, 2003; 69 FR 57647, Sept. 27, 2004; 72 FR 26295, May 9, 2007; 75 FR 72951, Nov. 29, 2010; 80 FR 63125, Oct. 19, 2015]

§ 935.16 Required regulatory program amendments.

(a) By December 18, 2015, Ohio shall amend its program, or provide a written description of an amendment together with a timetable for enactment which is consistent with established administrative or legislative procedures in the State, to require permit applications to list all unabated “violation notices”, as that term is defined in the Ohio approved program.

(b) [Reserved]

[80 FR 63125, Oct. 19, 2015]

§ 935.20 Approval of Ohio abandoned mine land reclamation plan.

The Ohio Abandoned Mine Land Reclamation Plan, as submitted on October 20, 1980, and as revised on November 21, 1980, November 2, 1981, and January 22, 1982, is approved effective August 10, 1982. Copies of the approved plan are available at the following locations:

(a) Ohio Department of Natural Resources, Division of Reclamation, Building H-2, 1855 Fountain Square Court, Columbus, Ohio 43224.

(b) Office of Surface Mining Reclamation and Enforcement, Eastland Professional Plaza, 4480 Refugee Road, suite 201, Columbus, Ohio 43232.

[59 FR 17930, Apr. 15, 1994]

§ 935.25 Approval of Ohio abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
January 6, 1983	May 24, 1983	ORC 1513.37(D)(2), (4), (5), (J).
August 20, 1986	August 17, 1987	Ohio AMLR Plan 3.7.4, 3.9.1; RAMP Committee role; AMLR program staff organization.
October 2, 1989	April 20, 1990	ORC 1513.02(J), .08(A), .18(B), (C), (F), (H), .24, .37(J).
February 19, 1992	September 24, 1992	AML emergency program; ORC 1513.37(C)(1), (L)(1), (2); OAC 1501:13–6–03(C)(1)(b), (I)(1)(d), (e).
March 19, 1996	March 26, 1997	Revisions to the Ohio Abandoned Mine Land Reclamation Plan to provide for the reclamation of areas causing acid mine drainage AMD and to revise the project selection process.

[62 FR 9951, Mar. 5, 1997, as amended at 62 FR 14310, Mar. 26, 1997; 62 FR 32687, June 17, 1997]

§ 935.30 State-Federal Cooperative Agreement.

The Governor of the State of Ohio, acting through the Department of Natural Resources, Division of Reclamation (Division), and the Secretary of

the Department of the Interior, acting through the Office of Surface Mining Reclamation and Enforcement (OSMRE), enter into a Cooperative Agreement (Agreement) to read as follows:

Surface Mining Reclamation and Enforcement, Interior

§ 935.30

ARTICLE I: INTRODUCTION, PURPOSE, AND RESPONSIBLE ADMINISTRATIVE AGENCY

A. *Authority:* This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an Agreement with the Secretary of the Department of the Interior for State regulation of surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation of surface coal mining and reclamation operations and of coal exploration operations not subject to 43 CFR part 3480, subparts 3480 through 3487, on Federal lands in Ohio which are under the jurisdiction of the United States Department of Agriculture, Forest Service, except those lands containing leased Federal coal, consistent with State and Federal laws governing such activities in Ohio, the Federal lands program (30 CFR parts 740-745) and the Ohio State program (approved State program).

B. *Purpose:* The purpose of this Agreement is to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations; (b) eliminate inter-governmental overlap and duplication; and (c) provide uniform and effective application of the approved State program on all lands in Ohio, except those containing leased Federal coal, in accordance with the Act, the approved State program, and this Agreement.

C. *Responsible Administrative Agencies:* The Division shall be responsible for administering this Agreement on behalf of the Governor. The Assistant Secretary, Land and Minerals Management, acting through OSM, shall administer this Agreement on behalf of the Secretary in accordance with the regulations in 30 CFR Chapter VII. The Federal lands in Ohio covered by this Agreement are only those under the jurisdiction of the United States Department of Agriculture, Forest Service (Forest Service) and include all or parts of the Wayne National Forest. It is understood by both parties that the Forest Service will continue to be involved in mining operations on its respective lands pursuant to its laws, regulations, agreements and restrictions. These requirements are in addition to the requirements discussed in this Agreement.

ARTICLE II: EFFECTIVE DATE

After it has been signed by the Secretary and the Governor, this Agreement shall be effective upon publication in the FEDERAL REGISTER as a final rule. This Agreement shall remain in effect until terminated as provided in Article V.B. or X.

ARTICLE III: DEFINITIONS

Any terms and phrases used in this Agreement which are defined in the Act, 30 CFR parts 700, 701, and 740, or the approved State program shall be given the meanings set forth in said definitions. Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the approved State program will apply, except in the case of a term or phrase which defines the Secretary's non-delegable responsibilities under the Act and other laws.

ARTICLE IV: APPLICABILITY

In accordance with the Federal lands program in 30 CFR parts 740-745, the laws, regulations, terms and conditions of the approved State program (conditionally approved on August 10, 1982, 30 CFR part 935, or as hereinafter amended in accordance with 30 CFR 732.17) are applicable to surface coal mining and reclamation operations on Federal lands in Ohio except as otherwise stated in this Agreement, the Act, 30 CFR 745.13, or other applicable laws or regulations.

This Agreement does not apply to surface coal mining and reclamation operations on lands containing leased Federal coal. This Agreement applies only to lands under the jurisdiction of the Forest Service.

ARTICLE V: GENERAL REQUIREMENTS

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement and will continue to meet all the conditions and requirements specified in this Article.

A. *Authority of State Agency:* The Division has and shall continue to have the authority under State law to carry out this Agreement.

B. *Funds:* Upon application by the Division and subject to the availability of appropriations, the Department shall provide the State with the funds to defray the costs associated with carrying out responsibilities under this Agreement as provided in section 705(c) of the Act and 30 CFR part 735. If the State requests funds and sufficient funds have not been appropriated to OSM, OSM and the Division shall meet promptly to decide on appropriate measures that will ensure that surface coal mining and reclamation operations are regulated in accordance with the approved State program. If agreement cannot be reached, then either party may terminate the Agreement. Funds provided to the State under this Agreement shall be reduced; in proportion to the amount of fees collected by the State that are attributable to the Federal lands covered by this Agreement.

C. *Reports and Records:* The Division shall make annual reports to OSMRE on the results of the Division's implementation and administration of this Agreement, pursuant

to 30 CFR 745.12(d). Upon request, the Division and OSMRE shall exchange information developed under this Agreement, except where prohibited by Federal law. OSMRE shall provide the Division with a copy of any final evaluation report prepared concerning the Division's administration and enforcement of this Agreement.

D. Personnel: The Division shall have the necessary personnel to implement this Agreement fully in accordance with the provisions of the Act and the approved State program.

E. Equipment and Laboratories: The Division will assure itself access to facilities which are necessary to carry out the requirements of the Agreement.

ARTICLE VI: REVIEW OF PERMIT APPLICATION PACKAGE

The Division shall assume the primary responsibility for the review of permit application packages for surface coal mining and reclamation and coal exploration operations on Forest Service lands covered by this Agreement. The Division shall coordinate the review of permit application packages with the Forest Service and other Federal agencies which may be affected by the proposed surface coal mining and reclamation operation to ensure compliance with Federal laws other than the Act and regulations other than the approved State program. When requested by the State, OSMRE shall assist the State in identifying Federal agencies other than the Forest Service which may be affected by the mining proposal.

A. Submission of Permit Application Package: The Division shall require an operator proposing to mine on Forest Service lands to submit a permit application package in an appropriate number of copies to the Division. The permit application package shall be in the format required by the Division and include any supplemental information (as specified by OSMRE or the Forest Service) needed to satisfy the requirements of non-delegable requirements of the Act, Federal laws other than the Act, and regulations other than the approved State program.

B. Coordination With Affected Agencies: Upon receipt, the Division shall transmit a copy of the complete permit application package to the Forest Service and to other Federal agencies affected by the proposed surface coal mining and reclamation operation with a request for review pursuant to 30 CFR 740.13(c)(4). OSM shall determine whether or not a proposed surface coal mining and reclamation operation is prohibited or limited by the requirements of section 522(e) of the Act (30 U.S.C. 1272(e)) and 30 CFR parts 760–762 with respect to Federal areas designated by Congress as unsuitable for mining and shall make any necessary determinations under section 522(b) of the Act. The Division shall obtain, in a timely man-

ner, the comments of the Forest Service and other Federal agencies affected by the mining proposal.

C. Contact With the Applicant: As a matter of practice, OSMRE will not independently initiate contacts with the applicant regarding permit application packages. However, OSMRE reserves the right to act independently of the Division to carry out any non-delegable responsibilities under the Act, or under other Federal laws and regulations, provided, however, that OSMRE shall inform the Division of the necessity of such action taken and send copies of all relevant correspondence to the Division.

D. File and Records: The Division shall maintain a title of all original correspondence with the applicant and any information received which may have a bearing on decisions regarding surface coal mining and reclamation operations on Forest Service lands. Upon request, the Division shall provide, for OSMRE or Forest Service review, copies of any titles and records for surface coal mining and reclamation operations on Forest Service lands.

E. Permit Application Decision and Permit Issuance: After consultation with the Forest Service and after making a finding of compliance with the approved State program and other applicable requirements, the Division may approve a permit application or application for permit revision or renewal and issue a permit. The permit issued by the Division shall condition the initiation of surface coal mining and reclamation operations on compliance with the requirements of the approved State program and, as applicable, requirements of OSM or the Forest Service pursuant to Federal laws other than the Act and regulations other than the approved State program. After the Division issues its decision on the permit application, it shall promptly send a notice of the action to OSM and to the Forest Service.

ARTICLE VII: INSPECTIONS

The Division shall conduct inspections on Forest Service lands covered by this Agreement and prepare and file inspection reports in accordance with the approved State program.

A. Inspection Reports: The Division shall, within 15 days of conducting any inspection on Federal lands, file with OSM an inspection report describing (1) the general conditions of the lands under the permit; (2) whether the operator is complying with the applicable performance and reclamation requirements; and (3) the manner in which specific operations are being conducted.

B. Division Authority: The Division shall be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described in this Agreement and the

Surface Mining Reclamation and Enforcement, Interior

§ 935.30

Secretary's regulations. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

C. *OSM Authority:* For the purpose of evaluating the manner in which this Agreement is being carried out and to insure that performance and reclamation standards are being met, OSM may conduct inspections of surface coal mining and reclamation operations on Federal lands, without prior notice to the Division. In order to facilitate a joint Federal-State inspection, when OSM is responding to a citizen complaint of an imminent danger to the health or safety of the public or of a significant, imminent environmental harm pursuant to 30 CFR 842.11(b)(1)(i), it will contact the Division, if circumstances and time permit, prior to the Federal inspection. OSM may conduct any inspections necessary to comply with 30 CFR part 842. If an inspection is made without Division inspectors, OSM shall provide the Division with a copy of the inspection report within 10 days after inspection.

D. *Witness Availability:* Personnel of the State and OSM shall be mutually available to serve as witnesses in enforcement actions taken by either party.

ARTICLE VIII: ENFORCEMENT

A. *Division Enforcement:* The Division shall have primary enforcement authority on Federal lands covered by this Agreement in accordance with the approved State program and this Agreement. During any joint inspection by OSM and the Division, the Division shall take appropriate enforcement action, including issuance of orders of cessation and notices of violation.

B. *Notification:* The Division shall promptly notify the Forest Service of all violations of applicable laws, regulations, orders, and approved permits for surface coal mining and reclamation operations on lands administered by the Forest Service.

C. *Secretary's Authority:* (1) This Agreement does not affect or limit the Secretary's authority to enforce violations of laws other than the Act. (2) During an inspection made solely by OSM or any joint inspection where the Division and OSMRE fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR parts 843 and 845. Such enforcement action shall be based on the Act or the applicable substantive provisions included in the regulations of the approved State program and shall be taken using the procedures and penalty system contained in 30 CFR parts 843 and 845.

ARTICLE IX: BONDS

A. *Performance Bond:* The Division shall require all operators on Federal lands covered by this Agreement to submit a performance bond to cover the operator's responsibilities under the Federal Act and the approved State program, payable to both the United States and Ohio. The performance bond shall be of sufficient amount to comply with the requirements of the approved State program and any other conditions of the permit. Release of the performance bond shall be conditioned upon compliance with all applicable requirements. The Division shall obtain the concurrence of the Forest Service prior to releasing the operator from any obligation under the performance bond. If this Agreement is terminated, (1) the bond will revert to being payable only to the United States to the extent that Federal lands are involved, and (2) the bond will be delivered by the Division to OSM if only Federal lands are covered by the bond.

B. *Forfeiture:* In the event of forfeiture by an operator of the performance bond for surface coal mining and reclamation operations on Federal lands covered by this Agreement, the State shall use funds received from bond forfeiture and, where necessary, funds from the Ohio Reclamation Forfeiture Special Account (pursuant to section 1513.18 of the Ohio Revised Code) to ensure that reclamation is accomplished in accordance with the approved State program and the approved permit.

ARTICLE X: TERMINATION OF COOPERATIVE AGREEMENT

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XI: REINSTATEMENT OF COOPERATIVE AGREEMENT

If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

ARTICLE XII: AMENDMENT OF COOPERATIVE AGREEMENT

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

ARTICLE XIII: CHANGES IN STATE OR FEDERAL STANDARDS

A. *Effect of Changes:* The Secretary or the State may promulgate new Federal or State regulations, including new or revised performance or reclamation requirements or enforcement or administration procedures. OSM and the Division shall immediately inform each other of any final changes and of any effect such changes may have on the cooperative agreement. If it is determined to

be necessary to keep this Agreement in force, the Division shall request necessary State legislative action and each party shall revise its regulations or promulgate new regulations, as applicable. Such changes shall be made under the procedures of 30 CFR part 732 for changes to the approved State program and sections 501 and 523 of the Federal Act for changes to the Federal lands program.

B. *Copies of Changes:* The State and OSM shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XIV: CHANGES IN PERSONNEL AND ORGANIZATION

The Division and the Secretary shall, consistent with 30 CFR part 745, advise each other of substantial changes in statutes, regulations, funding, staff, or other changes which could affect the administration and enforcement of this Agreement.

ARTICLE XV: RESERVATION OF RIGHTS

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws or regulations, including but not limited to those listed in appendix A.

Approved:

Richard F. Celeste,
Governor of Ohio.

Date: April 19, 1989.

Manuel Lujan,
Secretary of the Interior.

Date: December 11, 1989.

APPENDIX A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations, including 43 CFR part 3480.
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR part 1500.
4. The Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR part 402.
5. The Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 *et seq.*, 48 Stat. 401.
6. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR part 800.
7. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

8. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

9. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

10. The Reservoir Salvage Act of 1960, as amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

11. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

12. Executive Order 11988 (May 24, 1977), for flood plain protection.

13. Executive Order 11990 (May 24, 1977), for wetlands protection.

14. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

15. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

16. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa, *et seq.*

17. The Constitution of the United States.

18. The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, as amended.

19. 30 CFR chapter VII.

20. The Constitution of the State of Ohio.

21. Ohio Revised Code, Chapter 1531.

22. Ohio Administrative Code, Chapter 1501.

[49 FR 14739, Apr. 13, 1984, as amended at 54 FR 51743, Dec. 18, 1989]

PART 936—OKLAHOMA

Sec.

936.1 Scope.

936.10 State regulatory program approval.

936.15 Approval of Oklahoma regulatory program amendments.

936.16 Required regulatory program amendments.

936.20 Approval of Oklahoma abandoned mine land reclamation plan.

936.25 Approval of Oklahoma abandoned mine land reclamation plan amendments.

936.30 State-Federal Cooperative Agreement.

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

§ 936.1 Scope.

This part contains all rules applicable only within Oklahoma that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[46 FR 4910, Jan. 19, 1981]

Surface Mining Reclamation and Enforcement, Interior

§ 936.15

§ 936.10 State regulatory program approval.

The Secretary conditionally approved the Oklahoma regulatory program, as submitted on February 28, 1980, amended on June 11, 1980, and re-submitted on December 8, 1980, effective January 19, 1981. He fully approved the Oklahoma program, as amended on August 15, 1985, effective January 14, 1986. Copies of the approved program are available at:

(a) Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, OK 73105.

(b) Office of Surface Mining Reclamation and Enforcement, Tulsa Field Of-

fice, 5100 East Skelly Drive, Suite 470, Tulsa, OK 74135-6548.

[64 FR 20167, Apr. 26, 1999]

§ 936.15 Approval of Oklahoma regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
January 22, 1982	April 2, 1982	Permanent program regulations to replace those approved by the Secretary on January 19, 1981, and subsequently rescinded by the Oklahoma Legislature on February 12, 1981.
February 22, 1983	May 4, 1983	§§ 816.42(b) and 817.42(b).
May 13, 1983	August 28, 1984	45 O.S. 1981, §§ 745.2, 746.16, 774(c), 786(E), 788.17 through 788.19, 816.64; Parts 842, 843, 845; §§ 4.1000 through 4.1400; Sections governing the transfer, sale or assignment of rights under permits, inspection and enforcement provisions.
July 8, 1983	March 18, 1985	DOM/RR 776.12 through .15, .17, .18; 815.5, .11; 816.1,.2.
July 16, 1985	December 10, 1985	45 O.S. 1981.
August 15, 1985	January 14, 1986 ...	Administration and funding of the Small Operator Assistance Program.
September 11, 1985	January 16, 1986 ...	DOM/RR 700.5: definition of "surface coal mining operations", 701.5: definitions of "coal preparation" and "coal preparation plant".
August 8, 1985	April 28, 1986	DOM/RR part 850 establishing blaster training, examination and certification program.
May 18, 1988	March 27, 1990, May 15, 1990.	DOM/RR 700.1 through .5, .11 through .15; 701.1 through .5, .11; 705.1 through .6, .11, .13, .15, .17, .18, .19, .21, .22; 707.1, .4, .5, .10, .11, .12; 761.1, .3, .5, .11, .12; 762.1, .4, .5, .11 through .14; 764.1, .11, .13, .15, .17, .19, .21, .23, .25; 772.1, .2, .3, .11 through .16; 773.1, .5, .11, .12, .13, .15, .17, .19, .20, .21; 774.1, .11, .13, .15, .17; 775.1, .11, .13; 777.1, .11, .13, .14, .15, .17; 778.1, .13 through .18, .20, .21; 779.1, .2, .4, .11, .12, .18, .19, .21, .22, .24, .25; 780.1, .2, .4, .11 through .16, .18, .21, .22, .23, .25, .27, .29, .31, .33, .35, .37, .38; 783.1, .2, .4, .11, .12, .18, .19, .21, .22, .24, .25; 784.1, .2, .4, .11 through .26, .29, .30, .200; 785.1, .2, .13, .14, .15, .17, .18, .20, .21, .22; 795.3, .5 through .9, .12; 800.1, .4, .5, .11 through .17, .20, .21, .23, .30, .40, .50, .60; 810.1, .2, .4, .11; 815.1, .13, .15; 816.1, .2, .11, .13, .14, .15, .22, .41, .42, .43, .45, .46, .47, .49, .56, .57, .59, .61, .62, .64, .66, .67, .68, .71 through .74, .79, .81, .83, .84, .87, .89, .95, .97, .99, .100, .102, .104 through .107, .111, .113, .114, .116, .121, .122, .131, .132, .133, .150, .151, .180, .181, .200; 817.1, .2, .11, .13, .14, .15, .22, .41, .42, .43, .45, .46, .47, .49, .56, .57, .59, .61, .62, .64, .66, .67, .68, .71 through .74, .81, .83, .84, .87, .89, .95, .97, .99, .100, .102, .106, .107, .111, .113, .114, .116, .121, .122, .131, .132, .133, .150, .151, .180, .181, .200; 819.1, .11, .13, .15, .17, .19, .21; 823.1, .2, .11 through .15; 824.1, .2, .11; 827.1, .11, .12; 828.1, .2, .11, .21; 842.1, .11 through .16; 843.1, .5, .11 through .18, .20, .22; 845.1, .2, .11 through .21; 846.1, .5, .12, .14, .17, .18; 850.1, .5, .12 through .15.
March 30, 1990	December 18, 1990, February 15, 1991.	DOR/RR 700.5, 700.11(b)(4), and part 702, concerning an exemption for operations when the extraction of coal is incidental to the extraction of other minerals.
June 21, 1990	January 9, 1991	DOM/RR 772.12(b)(12); 773.5(a)(2): the definition of "owned or controlled and owns or controls".
February 6, 1992	December 7, 1993 ..	Bond Release Guidelines, including revegetation success standards, statistically valid sampling techniques, guidelines for phase I, II, and III bond release.
February 17, 1994	January 10, 1995 ...	Bond Release Guidelines, including revegetation success standards, statistically valid sampling techniques, guidelines for phase I, II, and III bond release; Subsections I.E.3.b; I.F.3.d, .5.b; II.B.2.d; III.B.2.d; IV.A.1.a, b; V.B.2.c through f; VI.B.2.e; VII.A, B; Appendices A, F, J, O, R, V.

§ 936.16

30 CFR Ch. VII (7–1–17 Edition)

Original amendment submission date	Date of final publication	Citation/description
September 14, 1994	March 10 and 29, 1995.	OAC 460:20–35–1, –3(a)(2), (A), (B), (D), (b), –6(a), (b)(1) through (6), (d), –7(a), (2), (3); 460:20–43–12(b)(3), –45–12(b)(3); OAC, certification of construction of siltation structures by qualified, registered professional engineers and land surveyors; OAC 460:20–43–12(f)(8), –47, –48, –53(1); 460:20–45–28, –53(1); 460:20–49–5(a)(1), –6, –7(5).
July 5, 1995	November 9, 1995 ..	OAC 460:20–61–10(b)(1).
April 26, 1996	July 24, 1996	OAC 460:20–6–1 through –5.
July 3, 1997	August 10, 1998	OAC 460:20–43–46(c)(4) (A) through (G); 460:20–45–46(c)(4) (A) through (G); Oklahoma Bond Release Guidelines—Appendices A and R.
December 18, 1997 ..	January 22, 1999 ..	460:20–3–5; 20–27–14(a), (a)(2), (a)(3), (b), (c)(3), (f); 20–31–9(a), (a)(2), (a)(3), (b), (c)(2), (f); 20–33–6(a); 20–35–6(a), (b)(1), and (b)(3) through (b)(6); 20–35–7(a); 20–35–8; 20–37–15(a)(3); 20–43–12(a) through (a)(3); 20–43–14(a)(1) through (a)(3), (a)(4)(A) and (B), (a)(5), (a)(6), and (a)(9) through (a)(12), (c)(2)(A) and (B); 20–43–27(c); 20–43–29(a); 20–45–12(a) through (a)(3); 20–45–14(a)(1) through (a)(3), (a)(4)(A) and (B), (a)(5), (a)(6), and (a)(9) through (a)(12), (c)(2)(A) and (B); 20–45–27(c); 20–45–29(a); 20–57–2(g)(4)(A) and (h); and 20–61–11(a).
September 28, 1998	September 28, 1999	OAC 460:2–7–6; 2–8; 20–15–11 through 14.
September 30, 1999	December 17, 1999	Oklahoma Bond Release Guidelines—Subsections II.A.1.f and g, II.B.1.a, II.B.2.a; III.A.1.f and g, III.B.1.a, III.B.2.a; V.B.2.d and V.B.2.e; appendix A; Policy Statements dated May 21, 1996, and September 30, 1999.
January 13, 2000	May 26, 2000	OAC 460:20–5–3(4); 20–5–9(a)–(c); 20–5–10(c)(3); 20–5–12(b)(1).
January 25, 2001	May 9, 2001	OAC 460:20–17–3.
November 20, 2001 ..	May 24, 2002	OAC 460:20–7–2; 20–7–3; 20–7–4 Introductory paragraph, (2), (3), and (4)(B); 20–7–4.1; 20–7–5(a), (b)(1) and (2), (c), (d), (e), (f)(1) and (3), (g), (h); 20–13–5(b)(14), (d)(2)(D).
November 1, 2001	January 17, 2003 ...	Sections 460:20–3–5; 20–5–1; 20–5–2; 20–5–3; 20–5–4(a)(7) through (d); 20–5–6; 20–5–7(a) and (b); 20–5–8; 20–5–9(b); 20–5–10(a), (a)(2), (b)(1) through (c)(4); 20–5–13; 20–15–4; 20–15–6(b)(4), (b)(5), and (c)(13); 20–33–12; 20–43–46(b)(6) and (c)(2) through (c)(3)(B); 20–45–46(b)(6) and (c)(2) through (c)(3)(B).
July 15, 2005	March 27, 2006	Oklahoma Administrative Code (OAC) 460:20–25–11(a)(11); 460:20–29–11(a)(11); 460:20–31–13(a)(3); 460:20–43–14(a)(1), (a)(3), (a)(9)(A), (a)(9)(B)(iii), (a)(11)(A), and (a)(14); 460:20–43–46(b)(3)(A), (b)(3)(A)(i)–(iii), (b)(3)(B)–(E); 460:20–43–52(d)(3) and (e)(1); OAC 460:20–45–46(b)(3)(A), (b)(3)(A)(i)–(iii), (b)(3)(B)–(E) and (c)(2); and OAC 460:20–45–47(c)(2), (c)(4) and (c)(4)(A)–(E).
November 26, 2008 ..	April 9, 2010	Notice of violations: Section 460:20–59–4.
February 25, 2011	May 2, 2012	OAC 460:20–17–4(b)(2)(C), 460:20–43–47(c)(3), and 460:20–45–47(c)(6).

[62 FR 9951, Mar. 5, 1997, as amended at 63 FR 42579, Aug. 10, 1998; 64 FR 3423, Jan. 22, 1999; 64 FR 52232, Sept. 28, 1999; 64 FR 70586, Dec. 17, 1999; 65 FR 34096, May 26, 2000; 66 FR 23608, May 9, 2001; 67 FR 36516, May 24, 2002; 68 FR 2451, Jan. 17, 2003; 71 FR 15033, Mar. 27, 2006; 75 FR 18051, Apr. 9, 2010; 77 FR 25874, May 2, 2012]

§ 936.16 Required regulatory program amendments.

Pursuant to 30 CFR 732.17(f)(1), Oklahoma is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Oklahoma's established administrative or legislative procedures.

(a)–(g) [Reserved]

[60 FR 2520, Jan. 10, 1995; 64 FR 70587, Dec. 17, 1999]

§ 936.20 Approval of Oklahoma abandoned mine land reclamation plan.

The Secretary approved the Oklahoma abandoned mine land reclamation plan, as submitted on July 30, 1981, effective January 21, 1982. Copies of the approved plan are available at:

(a) Oklahoma Conservation Commission, 2800 N. Lincoln Blvd., Suite 160, Oklahoma City, OK 73105.

(b) Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 East Skelly Drive, Suite 470, Tulsa, OK 74135–6548.

[64 FR 20168, Apr. 26, 1999]

Surface Mining Reclamation and Enforcement, Interior

§ 936.30

§ 936.25 Approval of Oklahoma abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these

amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
August 24, 1989, November 13, 1995.	May 28, 1996	OAC 155:15, 884.13.(c)(1), (2), (3), (5), (7), (d)(1).
November 3, 1997	February 18, 1998 ..	Emergency response reclamation program.
November 1, 2004	April 4, 2005	Oklahoma Plan §§ 884.13(c)2—Project Ranking and Selection; (c)3—Coordination with Other Entities; and (c)7—Public Participation.

[62 FR 9952, Mar. 5, 1997, as amended at 63 FR 8126, Feb. 18, 1998; 70 FR 16945, Apr. 4, 2005]

§ 936.30 State-Federal Cooperative Agreement.

The Governor of the State of Oklahoma and the Secretary of the Department of the Interior (Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

ARTICLE I: INTRODUCTION, PURPOSE, AND RESPONSIBLE AGENCIES

A. This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an Agreement for the regulation and control of surface coal mining, operations on Federal lands. This Agreement provides for State regulation consistent with the Act, the Federal lands program (30 CFR, chapter VII, subchapter D) and the Oklahoma State program (Program) for surface coal mining and reclamation operations on Federal lands.

B. The purposes of this Agreement are to (a) foster Federal-State cooperation on the regulation of surface coal mining (b) minimize intergovernmental overlap and duplication and (c) provide uniform and effective application of the Program on all non-Indian lands in Oklahoma in accordance with the Act and the Program.

C. The Oklahoma Department of Mines (ODM), under the direction of the Oklahoma Mining Commission, shall be responsible for administering this Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSMRE) shall administer this Agreement on behalf of the Secretary.

ARTICLE II: EFFECTIVE DATE

After being signed by the Secretary and the Governor, this Agreement shall be effective

30 days after publication in the FEDERAL REGISTER as a final rule. This Agreement shall remain in effect until terminated as provided in Article XI.

ARTICLE III: DEFINITIONS

The terms and phrases used in this Agreement which are defined in the Act, 30 CFR parts 700, 701, and 740, the Program, the Oklahoma Coal Reclamation Act of 1979, and in the rules and regulations promulgated pursuant to those Acts, shall be given the meanings set forth in said definitions. Where there is conflict between the above-referenced State and Federal definitions, the definitions used in the approved State program will apply except in the case of a term which defines the Secretary's continuing responsibilities under the Act and other laws.

ARTICLE IV: APPLICABILITY

A. In accordance with the Federal lands program, the laws, regulations, terms and conditions of the Oklahoma Program are applicable to Federal lands in Oklahoma except as otherwise stated in this Agreement, the Act, 30 CFR 740.4 and 745.13, or other applicable Federal laws, Executive Orders, or regulations.

B. The following permits will not be transferred to the State by this Agreement and will remain under the jurisdiction of OSMRE: 1. CFI-Bokoshe (Federal Permit OK-0002), 2. Stigler No. 9 (Federal Permit OK-0009), 3. Bokoshe No. 10 (Federal Permit OK-0001), and 4. McCurtain No. 2 (Federal Permit OK-0002).

C. Orders and decisions issued by ODM in accordance with the Program that are appealable shall be appealed to the reviewing authority in accordance with the Program. Orders and decisions issued by the Department that are appealable shall be appealed to the Department of the Interior's Office of Hearings and Appeals.

ARTICLE V: GENERAL REQUIREMENTS

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement.

A. Authority of State Agency

ODM has and shall continue to have the authority under State law to carry out this Agreement.

B. Funds

Upon Application by ODM and subject to appropriations, OSMRE will provide the State with the funds to defray the cost associated with carrying out its responsibilities under this Agreement as provided in section 705(c) of the Federal Act, the grant agreement, and 30 CFR 735.16. Such funds will cover the full cost incurred by ODM in carrying out those responsibilities, provided that such cost does not exceed the estimated cost the Federal government would have expended to carry out such responsibilities in the absence of this Agreement; and provided that such State incurred cost per permitted acre of Federal land does not exceed the per permitted acre cost for similar administration and enforcement activities of the Program on non-Federal and non-Indian lands during the same time period.

The ratio or cost split of Federal to non-Federal dollars allocated under this Agreement will be determined by OSMRE and ODM based on the projected cost for regulation of mines within Federal lands that are under the jurisdiction of the State, in consideration of the relative amounts of Federal and non-Federal lands involved. The designation of mines based on Federal land will be prepared by ODM and submitted to OSMRE's Tulsa Field Office. OSMRE will work with ODM to estimate the amount the Federal government would have expended for regulation of surface coal mining operations on Federal lands in Oklahoma in the absence of this Agreement.

OSMRE and the State will discuss the OSMRE Federal land cost estimate, the ODM prepared list of acres by mine, and the State's overall cost estimate. After resolution of any issues, ODM will submit its grant application to OSMRE's Tulsa Field Office. The Federal lands/non-Federal lands ratio will be applied to the final eligible total State expenditures to arrive at the total Federal reimbursement due the State. This ratio or cost split will be agreed upon by July of the year preceding the applicable fiscal year in order to enable the State to budget funds for the Program.

The State may use the existing year's budget totals, adjusted for inflation and workload considerations, in estimating the regulatory cost for the following grant year. OSMRE will notify ODM as soon as possible if such projections are unrealistic.

If ODM applies for a grant but sufficient funds have not been appropriated to OSMRE, OSMRE and ODM will promptly meet to decide on appropriate measures that will insure that mining operations on Federal lands in Oklahoma are regulated in accordance with the Program.

Funds provided to ODM under this Agreement will be adjusted in accordance with Office of Management and Budget Circular A-102 Attachment E.

C. Reports and Records

ODM will make annual reports to OSMRE containing information with respect to compliance with terms of this Agreement pursuant to 30 CFR 745.12(d). ODM and OSMRE will exchange, upon request, except where prohibited by Federal or State law, information developed under this Agreement.

OSMRE will provide ODM with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. ODM comments on the report will be appended before transmission to the Congress or other interested parties.

D. Personnel

ODM shall have the necessary personnel to fully implement this Agreement in accordance with the provisions of the Act, Federal lands program and the Program.

E. Equipment and Laboratories

ODM will assure itself access to equipment, laboratories, and facilities to perform all inspections, investigations, studies, tests, and analyses that are necessary to carry out the requirements of the Agreement.

F. Permit Application Fees and Civil Penalties

The amount of the fee accompanying an application for a permit for operations on Federal lands in Oklahoma shall be determined in accordance with section 745.1 of the Oklahoma Coal Reclamation Act of 1979, section 771.25 of the State regulations and the applicable provisions of the Program and Federal law. All permit fees and civil penalties collected from operations on Federal lands will be retained by the State and shall be deposited with the State Treasurer in the Oklahoma Department of Mines Revolving Fund. Permit fees will be considered Program income. The financial status report submitted pursuant to 30 CFR 735.26 shall include the amount of fees collected and attributable to Federal lands during the prior State fiscal year.

Surface Mining Reclamation and Enforcement, Interior

§ 936.30

ARTICLE VI: REVIEW OF PERMIT APPLICATION PACKAGE

A. Submission of Permit Application Package

ODM and the Secretary will require an applicant proposing to conduct surface coal mining and reclamation operations and activities on Federal lands to submit a permit application package (PAP) with an appropriate number of copies to ODM. ODM will furnish OSMRE and other Federal agencies with an appropriate number of copies of the PAP. The PAP will be in the form required by ODM and will include any supplemental information required by OSMRE and the Federal land management agency. Where section 522(e)(3) of the Act applies, ODM will work with the agency with jurisdiction over the publicly owned park, including units of the National Park System, or place included in the National Register of Historic Places (NRHP) to determine what supplemental information will be required.

At a minimum, the PAP will satisfy the requirements of 30 CFR part 740 and include the information necessary for ODM to make a determination of compliance with the Program and for OSMRE and the appropriate Federal agencies to make determinations of compliance with applicable requirements of the Act, the Federal lands program, and other Federal laws, Executive Orders, and the regulations for which they are responsible.

B. Review Procedures Where Leased Federal Coal is Involved

1. ODM will assume the responsibilities listed in 30 CFR 740.4(c) (1), (2), (3), (4), (6), and (7) to the extent authorized.

In accordance with 30 CFR 740.4(c)(1), ODM will assume primary responsibility for the analysis, review, and approval or disapproval of the permit application component of the PAP for surface coal mining and reclamation operations and activities in Oklahoma where a mining plan is required. OSMRE will, at the request of the State, assist to the extent possible in this analysis and review.

The Secretary will concurrently carry out his responsibilities that cannot be delegated to ODM under the Federal lands program, the Mineral Leasing Act (MLA), the National Environmental Policy Act (NEPA), this Agreement, and other applicable Federal laws. The Secretary will carry out these responsibilities in a timely manner and will avoid, to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the Program. The Secretary will consider the information in the PAP and where appropriate, make decisions required by the Act, MLA, NEPA, and other Federal laws.

Responsibilities and decisions which can be delegated to the State under other applica-

ble Federal laws may be specified in working Agreements between OSMRE and ODM with concurrence of any Federal agency involved, and without amendment to this Agreement.

2. ODM will be the primary point of contact for applicants regarding the review of the PAP for compliance with the Program and State laws and regulations. On matters concerned exclusively with regulations under 43 CFR part 3480, subparts 3480 through 3487, the Bureau of Land Management (BLM) will be the primary point of contact with the applicant. ODM will send to OSMRE copies of any correspondence with the applicant and any information received from the applicant regarding the PAP. OSMRE will send to ODM copies of all OSMRE correspondence which may have a bearing on the PAP. OSMRE will request additional information from the applicant through ODM. Copies of OSMRE's request will be sent directly to the operator by OSMRE to help expedite the permit review process. The requested information will be submitted to OSMRE through ODM.

BLM will inform ODM of its actions and provide ODM with a copy of documentation on all decisions. ODM will be responsible for informing the applicant of all joint State-Federal determinations. Where necessary to make the determination to recommend that the Secretary approve the mining plan, OSMRE will consult with and obtain the concurrences of BLM, the Federal land management agency, and other Federal agencies as required.

The Secretary reserves the right to act independently of ODM to carry out his responsibilities under laws other than the Act or provisions of the Act not covered by the Program, and in instances of disagreement over the Act and the Federal lands program.

3. ODM will, to the extent authorized, consult with the Federal land management agency and BLM pursuant to 30 CFR 740.4(c) (2) and (3), respectively. ODM will also be responsible for obtaining the comments and determinations of other Federal agencies with jurisdiction or responsibility over the Federal lands affected by the operations proposed in the PAP. ODM will request all Federal agencies to furnish their findings on any request for additional information to ODM within 45 days of the date of receipt of the PAP. OSMRE will assist ODM in obtaining this information upon request of ODM.

ODM will be responsible for approval and release of performance bonds and liability insurance under 30 CFR 740.4(c)(4).

ODM will prepare documentation to comply with the requirements of NEPA under 30 CFR 740.4(c)(7); however, OSMRE will retain the responsibility for the exceptions in 30 CFR 740.4(c)(7)(i)-(vii).

4. OSMRE will assist ODM in carrying out ODM's responsibilities by:

(a) Coordinating resolution of conflicts and difficulties between ODM and other Federal agencies in a timely manner;

(b) Assisting in scheduling joint meetings, upon request, between State and Federal agencies;

(c) Where OSMRE is assisting ODM in reviewing the PAP, furnishing to ODM the work product within 50 calendar days of receipt of the State's request for such assistance, unless a different time is agreed upon by OSMRE and ODM;

(d) Exercising its responsibilities in a timely manner, governed to the extent possible by the deadlines established in the Program; and

(e) Assuming all responsibility for ensuring compliance with any Federal lessee protection bond requirement.

5. Review of the PAP:

(a) OSMRE and ODM will coordinate with each other during the review process as needed. ODM will keep OSMRE informed of findings made during the review process which bear on the responsibilities of OSMRE or other Federal agencies. OSMRE will ensure that any information OSMRE receives which has a bearing on decisions regarding the PAP is promptly sent to ODM.

(b) ODM will review the PAP for compliance with the Program and State law and regulations.

(c) OSMRE will review the applicable portions of the PAP for compliance with the non-delegated responsibilities of the Act and for compliance with the requirements of other Federal laws, Executive orders, and regulations.

(d) OSMRE and ODM will develop a work plan and schedule for PAP review and each will identify a person as the project leader. The project leaders will serve as the primary points of contact between OSMRE and ODM throughout the review process. Not later than 50 days after receipt of the PAP, unless a different time is agreed upon, OSMRE will furnish ODM with its review comments on the PAP and specify any requirements for additional data. To the extent practicable, ODM will provide OSMRE all available information that may aid OSMRE in preparing any findings.

(e) ODM will prepare a State decision package, including written findings and supporting documentation, indicating whether the PAP is in compliance with the Program. The review and finalization of the State decision package will be conducted in accordance with procedures for processing PAP's agreed upon by ODM and OSMRE.

(f) ODM may make a decision on approval or disapproval of the permit on Federal lands in accordance with the Program prior to the necessary Secretarial decision on the mining plan, provided that ODM advises the operator in the permit that Secretarial approval of the mining plan must be obtained before

the operator may conduct coal development or mining operations on the Federal lease. ODM will reserve the right to amend or rescind any requirements of the permit to conform with any terms or conditions imposed by the Secretary in the approval of the mining plan.

(g) The permit will include, as applicable, terms and conditions required by the lease issued pursuant to the MLA and by any other applicable Federal laws and regulations, including conditions imposed by the Federal land management agency relating to post-mining land use, and those of other affected agencies, and will be conditioned on compliance with the requirements of the Federal land management agency with jurisdiction.

(h) In the case that valid existing rights (VER) are determined to exist on Federal lands under section 522(e)(3) of the Act where the proposed operation will adversely affect a unit of the National Park Service (NPS), ODM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit to mitigate environmental impacts as set forth under Article X of this Agreement.

(i) After making its decision on the PAP, ODM will send a notice to the applicant, OSMRE, the Federal land management agency, and any agency with jurisdiction over the publicly owned park or historic place included in the NRHP affected by a decision under section 522(e)(3) of the Act. A copy of the written findings and the permit will also be submitted to OSMRE.

(j) OSMRE will provide technical assistance to ODM when requested, if available resources allow. OSMRE will have access to ODM files concerning operations on Federal lands.

C. Review Procedures for Permit Revisions or Renewals

1. Any permit revision or renewal for an operation on Federal lands will be reviewed and approved or disapproved by ODM after consultation with OSMRE on whether such revision or renewal constitutes a mining plan modification. OSMRE will inform ODM within 30 days of receiving a copy of a proposed revision or renewal, whether the permit revision or renewal constitutes a mining plan modification. Where approval of a mining plan modification is required, OSMRE and ODM will follow the review procedures where leased Federal coal is involved as outlined in this Agreement.

2. OSMRE may establish criteria to determine which permit revisions and renewals clearly do not constitute mining plan modifications.

3. Permit revisions or renewals on Federal lands which are determined by OSMRE not to constitute mining plan modifications or that meet the criteria for not being mining

Surface Mining Reclamation and Enforcement, Interior

§ 936.30

plan modifications will be reviewed and approved by ODM.

4. Transfer, sale, or assignment of permit rights on Federal lands shall be processed in accordance with the Oklahoma Program and 30 CFR 740.13(e).

ARTICLE VII: INSPECTIONS

A. ODM will conduct inspections of all surface coal mining and reclamation operations on Federal lands, except for those operations listed in Article IV, in accordance with 30 CFR 740.4(c)(5) and the Program and prepare and file inspection reports in accordance with the Program.

B. ODM will, subsequent to conducting any inspection pursuant to 30 CFR 740.4(c)(5), and on a timely basis, file with OSMRE's Tulsa Field Office a legible copy of the completed State inspection report.

C. ODM will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by the Agreement, except as described hereinafter. Nothing in this Agreement will prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR parts 842 and 843 and its obligations under laws other than the Act.

D. OSMRE will ordinarily give ODM reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity to join in the inspection. When OSMRE is responding to a citizen complaint of an imminent danger to the public health and safety, or of significant, imminent environmental harm to land, air or water resources pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact ODM no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger or significant, imminent environmental harm will be referred to ODM for action. The Secretary reserves the right to conduct inspections without prior notice to ODM to carry out his responsibilities under the Act.

ARTICLE VIII: ENFORCEMENT

A. ODM will have primary enforcement authority under the Act concerning compliance with the requirements of this Agreement and the Program in accordance with 30 CFR 740.4(c)(5). Enforcement authority given to the Secretary under other Federal laws and Executive orders including, but not limited to, those listed in appendix A (attached) is reserved to the Secretary.

B. During any joint inspection by OSMRE and ODM, ODM will have primary responsibility for enforcement procedures including

issuance of orders of cessation, notices of violation, and assessment of penalties. ODM will inform OSMRE prior to issuance of any decision to suspend or revoke a permit on Federal lands.

C. During any inspection made solely by OSMRE or any joint inspection where ODM and OSMRE fail to agree regarding the propriety of any particular enforcement action, OSMRE may take any enforcement action necessary to comply with 30 CFR parts 843, 845, and 846. Such enforcement action will be based on the standards in the Program, the Act, or both, and will be taken using the procedures and penalty system contained in 30 CFR parts 843, 845, and 846.

D. ODM and OSMRE will promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining permits subject to this Agreement, and of all actions taken with respect to such violations.

E. Personnel of ODM and OSMRE will be mutually available to serve as witness in enforcement actions taken by either party.

F. This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than the Act.

ARTICLE IX: BONDS

A. ODM and the Secretary will require each operator who conducts operations on Federal lands to submit a single performance bond payable to Oklahoma and the United States to cover the operator's responsibilities under the Act and the Program. Such performance bond will be conditioned upon compliance with all requirements of the Act, the Program, State rules and regulations, and any other requirements imposed by the Department. Such bond will provide that if this Agreement is terminated, the portion of the bond covering the Federal lands will be payable only to the United States. ODM will advise OSMRE of any adjustments to the performance bond made pursuant to the Program.

B. Prior to releasing the operator from any obligation under such bond, ODM will obtain the concurrence of OSMRE. OSMRE concurrence will include coordination with other Federal agencies having authority over the lands involved.

C. Performance bonds will be subject to forfeiture with the concurrence of OSMRE, in accordance with the procedures and requirements of the Program.

D. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of the Act.

ARTICLE X: DESIGNATING LAND AREAS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING AND RECLAMATION OPERATIONS AND ACTIVITIES AND VALID EXISTING RIGHTS AND COMPATIBILITY DETERMINATIONS

A. Unsuitability Petitions.

1. Authority to designate Federal lands as unsuitable for mining pursuant to a petition is reserved to the Secretary.

2. When either ODM or OSMRE receives a petition that could impact adjacent Federal or non-Federal lands pursuant to section 522(c) of the Act, the agency receiving the petition will notify the other of receipt and the anticipated schedule for reaching a decision, and request and fully consider data, information and recommendations of the other. OSMRE will coordinate with the Federal land management agency with jurisdiction over the petition area, and will solicit comments from the agency.

B. Valid Existing Rights and Compatibility Determinations

The following actions will be taken when requests for determination of valid existing rights (VER) pursuant to section 522(e) of the Act or for determinations of compatibility pursuant to section 522(e)(2) of the Act are received prior to or at the time of submission of a PAP that involves surface coal mining and reclamation operations and activities:

1. For Federal lands within the boundaries of any areas specified under section 522(e)(1) of the Act, OSMRE will determine whether VER exist for such areas.

For non-Federal lands within section 522(e)(1) areas ODM, with the consultation and concurrence of OSMRE, will determine whether operations on such lands will or will not affect Federal lands. For such non-Federal lands affecting Federal lands, OSMRE will make the VER determination.

Under section 522(e)(1), for non-Federal lands within the boundaries of the National Park System, ODM, with the consultation and concurrence of OSMRE, will determine whether operations on such lands will or will not affect the Federal interest. For such non-Federal lands within the boundaries of the National Park System which affect the Federal interest, OSMRE will make the VER determinations.

2. For Federal lands within the boundaries of any national forest where proposed operations are prohibited or limited by section 522(e)(2) of the Act and 30 CFR 761.11(b), OSMRE will make the VER determination.

OSMRE will process requests for determinations of compatibility under section 522(e)(2) of the Act and 30 CFR 761.12(c).

3. For Federal lands, ODM, with the consultation and concurrence of OSMRE, will

determine whether any proposed operations will adversely affect units of the National Park System with respect to the prohibitions or limitations of section 522(e)(3) of the Act. For such operations adversely affecting units of the National Park System, ODM, with the consultation and concurrence of OSMRE, will make the VER determination.

For Federal lands, ODM will determine whether any proposed operation will adversely affect any publicly owned parks other than those covered in the preceding paragraph and, in consultation with the State Historic Preservation Officer, places listed in the National Register of Historic Places (NRHP), with respect to the prohibitions or limitations of section 522(e)(3) of the Act.

For Federal lands other than those on which the proposed operation will adversely affect units of the National Park System, ODM will make the VER determination for operations which are prohibited or limited by section 522(e)(3) of the Act. In the case that VER is determined to exist on Federal lands under section 522(e)(3) of the Act where a proposed operation will adversely affect a unit of the National Park System, ODM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit in order to mitigate environmental impacts.

In the case that VER is determined not to exist under section 522(e)(3) of the Act or 30 CFR 761.11(c), no surface coal mining operations and activities will be permitted unless jointly approved by ODM and the Federal, State or local agency with jurisdiction over the publicly owned park or place included in the NRHP.

4. ODM will process determinations of VER on Federal lands for all areas limited or prohibited by section 522(e)(4) and (5) of the Act as unsuitable for mining. For operations on Federal lands, ODM will coordinate with any affected agency or agency with jurisdiction over the proposed surface coal mining and reclamation operation.

ARTICLE XI: TERMINATION OF COOPERATIVE AGREEMENT

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XII: REINSTATEMENT OF COOPERATIVE AGREEMENT

If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

ARTICLE XIII: AMENDMENT OF COOPERATIVE AGREEMENT

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Surface Mining Reclamation and Enforcement, Interior

§ 937.700

ARTICLE XIV: CHANGES IN STATE OR FEDERAL STANDARDS

A. The Department or the State may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party will, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations or request necessary legislative action. Such changes will be made under the procedures of 30 CFR part 732 for changes to the Program and under the procedures of section 501 of the Act for changes to the Federal lands program.

B. ODM and the Department will provide each other with copies of any changes to their respective laws, rules, regulations or standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XV: CHANGES IN PERSONNEL AND ORGANIZATION

Each party to this Agreement will notify the other, when necessary, of any changes in personnel, organization, and funding, or other changes that may affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate co-operation.

ARTICLE XVI: RESERVATION OF RIGHTS

This Agreement will not be construed as waiving or preventing the assertion of any rights in this Agreement that the State or the Secretary may have under laws other than the Act or their regulations, including but not limited to those listed in appendix A.

Approved:

Henry Bellmon,
Governor of Oklahoma.

Date: August 2, 1989.

Manuel Lujan, Jr.,
Secretary of the Interior.

Date: August 30, 1989.

[54 FR 37459, Sept. 11, 1989]

PART 937—OREGON

Sec.

937.700 Oregon Federal program.

937.701 General.

937.702 Exemption for coal extraction incidental to the extraction of other minerals.

937.707 Exemption for coal extraction incident to government-financed highway or other construction.

937.761 Areas designated unsuitable for surface coal mining by Act of Congress.

937.762 Criteria for designating areas as unsuitable for surface coal mining operations.

937.764 Process for designating areas unsuitable for surface coal mining operations.

937.772 Requirements for coal exploration.

937.773 Requirements for permits and permit processing.

937.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

937.775 Administrative and judicial review of decisions.

937.777 General content requirements for permit applications.

937.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

937.779 Surface mining permit applications—minimum requirements for information on environmental resources.

937.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

937.783 Underground mining permit applications—minimum requirements for information on environmental resources.

937.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

937.785 Requirements for permits for special categories of mining.

937.795 Small operator assistance.

937.800 General requirements for bonding of surface coal mining and reclamation operations.

937.815 Performance standards—coal exploration.

937.816 Performance standards—surface mining activities.

937.817 Performance standards—underground mining activities.

937.819 Special performance standards—auger mining.

937.823 Special performance standards—operations on prime farmland.

937.824 Special performance standards—mountaintop removal.

937.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

937.828 Special performance standards—in situ processing.

937.842 Federal inspections.

937.843 Federal enforcement.

937.845 Civil penalties.

937.846 Individual civil penalties.

937.955 Certification of blasters.

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

SOURCE: 47 FR 49822, Nov. 2, 1982, unless otherwise noted.

§ 937.700 Oregon Federal program.

(a) This part contains all rules that are applicable to surface coal mining operations in Oregon which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§937.701

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the Oregon Federal program.

(c) The rules in this part apply to all surface coal mining operations in Oregon conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in Oregon.

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of Oregon laws provide, where applicable, for more stringent environmental control and regulation of surface coal mining operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to Section 505(b) of the Act, they shall not be construed to be inconsistent with the Act:

(1) Oregon Revised Statutes (ORS) 468.700–468.997, pertaining to the control of water pollution.

(2) ORS 498.002 and ORS 498.705, protecting fish and wildlife and their habitats.

(3) ORS 509.125, prohibiting deleterious substances from being introduced into State waters.

(4) ORS 509.140, requiring the approval of the Fish and Wildlife Commission before explosives may be used to construct a dam or similar structure.

(5) ORS 509.600, prohibiting the injury or destruction of fish within 600 feet of any fishway. Prior approval of the Director, the Department of Fish and Wildlife, is required before constructing a dam or obstruction in State waters.

(6) ORS 509.615, requiring that artificial watercourses must be screened.

(f) The following are Oregon laws that interfere with the achievement of the purposes and requirements of the Act and are, in accordance with section 504(g) of the Act, pre-empted and superseded with respect to coal mining, except to the extent they provide for regulation of surface coal mining and rec-

30 CFR Ch. VII (7–1–17 Edition)

lamation operations which are exempt from the Surface Mining Control and Reclamation Act of 1977:

(1) Oregon Surface Mining and Mine Land Reclamation Act, as amended, ORS 517.750–ORS 517.990.

(2) Oregon Administrative Rules (OAR), Department of Geology and Mineral Industries, Division 30, Rules and Regulations, Oregon Mined Land Reclamation Act, OAR 632–30–005 through OAR 632–30–060.

(3) ORS 273.551 and ORS 273.775 to ORS 273.790. The contractual and leasing responsibility of the Division of Lands over State lands and minerals is not affected by this Federal program.

(4) ORS 275.340. Pre-empted to the extent that the State of Oregon construes this statute as delegating to cities and counties the authority to issue surface coal mining permits and related exploration permits.

[47 FR 49822, Nov. 2, 1982, as amended at 52 FR 13812, Apr. 24, 1987]

§937.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and part 701 of this chapter shall apply to surface coal mining operations in Oregon.

§937.702 Exemption for coal extraction incidental to the extraction of other minerals.

Part 702 of this chapter, *Exemption for Coal Extraction Incidental to the Extraction of Other Minerals*, shall apply to any person who conducts coal extraction incidental to the extraction of other minerals for purposes of commercial use or sale.

[54 FR 52123, Dec. 20, 1989]

§937.707 Exemption for coal extraction incident to government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incident to Government-financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§937.761 Areas designated unsuitable for surface coal mining by Act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply

to surface coal mining and reclamation operations.

§ 937.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mine operations beginning one year after May 28, 1982.

§ 937.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and with the February 26, 1980, May 16, 1980, and August 15, 1980, opinions and orders of the U.S. District Court for the District of Columbia (*In re: Permanent Surface Mining Regulation Litigation* (Civ. Action No. 79-1144)).

(a) NDAC 69-05.2-25-0 shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) Where coal exploration is to occur on State lands or the minerals to be explored are owned by the State, a mineral lease issued by the Oregon Division of Lands authorizing the coal exploration is required to be filed with the permit application.

[52 FR 13812, Apr. 24, 1987]

§ 937.772 Requirements for coal exploration.

(a) Part 772 of this chapter, *Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application

within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) Where coal exploration is to occur on State lands or the minerals to be explored are owned by the State, a mineral lease issued by the Oregon Division of Lands authorizing the coal exploration is required to be filed with the permit application.

[52 FR 13812, Apr. 24, 1987]

§ 937.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, *Requirements for Permits and Permit Processing*, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the application of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and negotiate the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 937.773(b)(2)(ii) by the specified date, the office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant

§937.774

shall be advised by the Office to file the public notice required by §773.6 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) Where applicable, no person shall conduct surface coal exploration operations which result in the removal of more than 250 tons in one location, or surface coal mining operations without permits issued and/or certificates required by the State of Oregon, including compliance with Oregon's Statewide Planning Goals (ORS 197.180) and any relevant Country Comprehensive Land Use Plans (ORS 197.005-ORS 197.775); license from the Division of State Lands where mines or exploration are on State lands (ORS 273.005-273.815); Solid Waste Disposal Permits, Hazardous Waste Transportation and Disposal Permits, Industrial Waste Disposal Permits issued by the Department of Environmental Quality (ORS 459.005-ORS 459-850); leases issued by the county where county designated forest lands are involved (ORS 275.340); noise restrictions enforced by the Department of Environmental Quality (ORS 467.010-467.990); Air Contaminant Discharge Permits (ORS 468.005-ORS 468.997), Water Pollution Control Facilities Permits, Waste Discharge Permits (ORS 468.900-ORS 468.997), Energy Facility Site Certificates (ORS 469.300-ORS 469.570, ORS 469.990, ORS 469.992) issued by the Energy Facilities Siting Council; Department of Fish and Wildlife issues permits for dam use (ORS 509.600), for use of explosives used to construct dams or similar structures

30 CFR Ch. VII (7-1-17 Edition)

(ORS 509.140); the State Fire Marshall issues Certificates of Possession for persons having or using explosives (ORS 480.210); the Division of State Lands issues license for use of dredging machines (ORS 517.611-ORS 517.700); the Department of water Resources issues permits with respect to the use, appropriation or diversion of State waters (ORS 537.130, ORS 537.135) and surface waters (ORS 537.135, ORS 537.140 and ORS 537.800), and permits relative to the design, construction and maintenance of dams, dikes or other hydraulic structures or works (ORS 540.350, ORS 540.400); matter may be removed from the beds and banks of State waters and fill may be deposited in State waters once a permit is obtained from the Division of State Lands (ORS 541.605-ORS 541.990).

[52 FR 13812, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

§937.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, *Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights*, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSMRE.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§773.6, 773.19(b) (1) and (2), and 778.21 and of part 775.

(2) OSMRE shall make every effort to approve or disapprove an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstance. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit

Surface Mining Reclamation and Enforcement, Interior

§ 937.785

rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

[52 FR 13813, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

§ 937.775 Administrative and judicial review of decisions.

Part 775 of this chapter, *Administrative and Judicial Review of Decisions*, shall apply to all decisions on permits.

[52 FR 13813, Apr. 24, 1987]

§ 937.777 General content requirements for permit applications.

Part 777 of this chapter, *General Content Requirements for Permit Applications*, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

[52 FR 13813, Apr. 24, 1987]

§ 937.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Permit Applications—Minimum Requirements for Legal, Financial, Compliance and Related Information*, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

[52 FR 13813, Apr. 24, 1987]

§ 937.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to conduct surface mining and reclamation operations.

§ 937.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

(a) Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirement for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations on non-Federal and non-Indian lands.

(b) Any application for a permit shall demonstrate compliance with the air quality control laws (ORS 468.275 through ORS 468.350 and ORS 468.500 through ORS 468.580) administered by the Oregon Department of Environmental Quality and shall have obtained, where required, an Air Contaminant Discharge Permit from the Department of Environmental Quality (ORS 468.275 through ORS 468.350).

§ 937.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who submits an application to conduct underground mining operations.

§ 937.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct underground mining.

§ 937.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining*, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 937.795

§ 937.795 Small operator assistance.

Part 795 of this chapter, *Small Operator Assistance*, shall apply to any person making application for assistance under the small operator assistance program.

§ 937.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, *General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs*, shall apply to all surface coal mining and reclamation operations.

§ 937.815 Performance standards—coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration*, shall apply to any person conducting coal exploration operations.

§ 937.816 Performance standards—surface mining activities.

Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, shall apply to any person who conducts surface coal mining and reclamation operations.

§ 937.817 Performance standards—underground mining activities.

Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities*, shall apply to any person who conducts underground mining operations.

§ 937.819 Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining*, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 937.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland*, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

30 CFR Ch. VII (7–1–17 Edition)

§ 937.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal*, shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 937.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine*, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

§ 937.828 Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, shall apply to any person who conducts in situ processing activities.

§ 937.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections*, shall apply to all exploration and surface coal mining and reclamation operations.

(b) OSM will furnish a copy of each inspection report regarding inspections conducted pursuant to this subpart to the Oregon Department of Geology and Mineral Industries.

§ 937.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement*, shall apply when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) OSM will furnish a copy of each enforcement action document and order to show cause issued pursuant to this subpart to the Oregon Department of Geology and Mineral Industries.

Surface Mining Reclamation and Enforcement, Interior

§ 938.11

§ 937.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties*, shall apply when civil penalties are assessed for violations on surface mining and reclamation operations.

§ 937.846 Individual civil penalties.

Part 846 of this chapter, *Individual Civil Penalties*, shall apply to the assessment of individual civil penalties under section 518(f) of the Act.

[53 FR 3676, Feb. 8, 1988]

§ 937.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

PART 938—PENNSYLVANIA

Sec.

938.1 Scope.

938.10 State regulatory program approval.

938.11 Conditions of State regulatory program approval.

938.12 State statutory, regulatory, and proposed program amendment provisions not approved.

938.13 State statutory and regulatory provisions set aside.

938.15 Approval of Pennsylvania regulatory program amendments.

938.16 Required regulatory program amendments.

938.20 Approval of Pennsylvania abandoned mine land reclamation plan.

938.25 Approval of Pennsylvania abandoned mine land reclamation plan amendments.

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

§ 938.1 Scope.

This part contains all rules applicable only within Pennsylvania that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[47 FR 33079, July 30, 1982]

§ 938.10 State regulatory program approval.

The Pennsylvania state program was submitted on February 29, 1980, as amended on June 9, 1980, as resubmitted on January 25, 1982, and amended on April 9, 1982, and May 5, 1982, is

conditionally approved, effective on July 31, 1982. Beginning on that date, the Department of Environmental Resources shall be deemed the regulatory authority in Pennsylvania for all surface coal mining and reclamation operations and for all exploration operations on non-Federal and non-Indian lands. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the Pennsylvania permanent regulatory program. Copies of the approved program, together with copies of the letter of the Department of Environmental Resources agreeing to the conditions in 30 CFR 938.11 are available at the following locations:

(a) Pennsylvania Department of Environmental Resources, Market Street State Office Building, 400 Market Street, P.O. Box 2063, Harrisburg, Pennsylvania 17101-2063; Telephone: (717) 787-4686.

(b) Office of Surface Mining Reclamation and Enforcement, Third Floor, suite 3C, Harrisburg Transportation Center, 4th and Market Streets, Harrisburg, Pennsylvania 17101; Telephone: (717) 782-4036.

[59 FR 17930, Apr. 15, 1994]

§ 938.11 Conditions of State regulatory program approval.

The approval of the Pennsylvania state program is subject to the Commonwealth revising its program to correct the deficiencies listed in this section. The program revisions may be made, as appropriate, to the statutes, the regulations, the program narrative, or the Attorney General's opinion. This section indicates, for the general guidance of the Commonwealth, the component of the program to which the Secretary recommends the change be made.

(a)-(i) [Reserved]

[47 FR 33079, July 30, 1982, as amended at 48 FR 13417, Mar. 31, 1983; 48 FR 45391, Oct. 5, 1983; 49 FR 20492, May 15, 1984; 49 FR 27319, July 3, 1984; 51 FR 18321, May 19, 1986; 66 FR 57665, Nov. 16, 2001]

§ 938.12 State statutory, regulatory, and proposed program amendment provisions not approved.

(a) We are not approving the following provisions or portions of provisions of the proposed program amendment that Pennsylvania submitted on July 29, 1998:

(1) Section 5.1(b) (52 P.S. 1406.5a(b)) of BMSLCA is not approved to the extent noted in 30 CFR 938.13(a)(1).

(2)–(4) [Reserved]

(5) Section 5.2(g) (52 P.S. 1406.5b(g)) of BMSLCA is not approved to the extent noted in 30 CFR 938.13(a)(2).

(6) Section 5.2(h) (52 P.S. 1406.5b(h)) of BMSLCA is not approved to the extent noted in 30 CFR 938.13(a)(3).

(7)–(10) [Reserved]

(11) Section 5.4(a)(3) (52 P.S. 1406.5d(a)(3)) of BMSLCA is not approved to the extent noted in 30 CFR 938.13(a)(4).

(12) Section 5.4(c) (52 P.S. 1406.5d(c)) of BMSLCA is not approved to the extent noted in 30 CFR 938.13(a)(5).

(13) Section 5.5(b) (52 P.S. 1406.5e(b)) of BMSLCA is not approved to the extent noted in 30 CFR 938.13(a)(6).

(b) We are not approving the following portions of provisions of the proposed program amendment that Pennsylvania submitted on November 22, 1999:

(1) Sections 25 Pa. Code 86.124(f) and 25 Pa. Code 86.125(j) are not approved to the extent that these sections would allow Pennsylvania more time to complete a final written decision on a lands unsuitable for surface mining activities petition than is allowed by the provisions of the Federal regulations at 30 CFR 764.19(b).

(c) We are not approving the following portions of provisions of the proposed program amendment that Pennsylvania submitted on December 18, 1998:

(1) 4.2(f)(4) of PASMCR. We are not approving Subsection (4) to the extent that it would allow Phase 3 bond release.

(2) 4.12(b) of PASMCR. We are not approving Subsection (b) to the extent that it creates an alternative bonding system.

(3) 25 Pa. Code 86.281(e). The last sentence which states, “If the actual cost of reclamation by the Department ex-

ceeds the amount reserved, additional funds from the Remining Financial Assurance Fund will be used to complete reclamation” is not approved.

(4) 25 Pa. Code 87.1 and 88.1, Definition of “de minimis cost increase.” The definition is not approved as it applies to coal mining activities.

(5) 25 Pa. Code 87.119 and 88.107. With regard to coal mining activities, we are not approving Subsection (a) to the extent that it would allow the replaced water supply to be of a lesser quantity and quality than the premining water supply or does not provide for temporary replacement of water supplies. We are not approving Subsection (a)(1)(v) to the extent it would pass on operating and maintenance costs of a replacement water supply in excess of the operating and maintenance costs of the premining water supply to the landowner or water supply user. We are not approving Section (a)(2) to the extent that an operator is not required to provide for all increased operating and maintenance costs of a restored or replaced water supply. Finally, we are not approving Subsection (a)(3) to the extent it would allow a waiver from the requirements for replacing a water supply outside the requirements of 30 CFR 701.5 regarding the definition of the term, “replacement of water supply.”

(6) 25 Pa. Code 87.119(g) and 88.107(g). These sections are not approved.

(7) 25 Pa. Code 87.119(i) and 88.107(i). We are not approving Subsection (i) to the extent that it would allow Phase 3 bond release.

(d) We are not approving the word “augmented” in the last sentence of subsection 86.151(d) that we found to be less effective on April 8, 1993 (58 FR 18154).

(e) We are not approving the following amendments that Pennsylvania submitted on May 23, 2006:

(1) At 25 Pa. Code 86.17(e), the sentence “This fee shall not be required after (effective date of this rule-making).”

(2) At 25 Pa. Code 86.283(c), the proposed deletion of the entire subsection.

[66 FR 67063, Dec. 27, 2001, as amended at 68 FR 40154, July 7, 2003; 69 FR 71551, 71559, Dec. 9, 2004; 70 FR 25491, May 13, 2005; 71 FR 54595, Sept. 18, 2006; 73 FR 38920, July 8, 2008]

Surface Mining Reclamation and Enforcement, Interior

§ 938.15

§ 938.13 State statutory and regulatory provisions set aside.

(a) The following provisions of Pennsylvania's Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) are inconsistent with the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and are superseded to the extent noted effective December 9, 2004.

(1) Section 5.1(b) (52 P.S. 1406.5a(b)) of BMSLCA is superseded to the extent that it would limit an operator's liability to restore or replace a water supply covered under section 720 of SMCRA.

(2) Section 5.2(g) (52 P.S. 1406.5b(g)) of BMSLCA is superseded to the extent that it would limit an operator's liability to restore or replace a water supply covered under section 720 of SMCRA.

(3) Section 5.2(h) (52 P.S. 1406.5b(h)) of BMSLCA is superseded to the extent it would preclude Pennsylvania from requiring the restoration or replacement of a water supply covered under section 720 of SMCRA.

(4) The portion of section 5.4(a)(3) (52 P.S. 1406.5d(a)(3)) of BMSLCA that states, "in place on the effective date of this section or on the date of first publication of the application for a Mine Activity Permit or a five-year renewal thereof for the operations in question and within the boundary of the entire mine as depicted in said application," is superseded to the extent it would limit an operator's liability

for restoration of, or compensation for, subsidence damages to structures protected under section 720 of SMCRA that were in existence at the time of mining.

(5) Section 5.4(c) (52 P.S. 1406.5d(c)) of BMSLCA is superseded to the extent it limits an operator's liability for repair of, or compensation for, subsidence damage to a structure covered under section 720 of SMCRA.

(6) The portion of Section 5.5(b) (52 P.S. 1406.5e(b)) of BMSLCA that states, "All claims under this subsection shall be filed within two years of the date damage to the building occurred" is superseded to the extent that it would limit an operator's liability for restoration of, or compensation for, subsidence damages to a structure covered under section 720 of SMCRA.

(b) [Reserved]

[69 FR 71559, Dec. 9, 2004]

§ 938.15 Approval of Pennsylvania regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
April 26, 1983, May 12, 1983.	October 5, 1983	Bureau of Water Quality Management Underground Mine/Coal preparation Plant Permit Application Instructions; Bituminous Underground Mining Operation Permit/Manual; Coal Refuse Disposal Permit Application; Anthracite Coal Refuse Disposal Permit Application; Anthracite Bank Removal and Reclamation Permit Application; Anthracite Surface Mine Permit Application; Anthracite Underground Mining Operation Permit Application/Manual; Memorandum of Understanding between the Pennsylvania Department of Environmental Resources and the Pennsylvania Museum and Historical Commission.
August 1, 1983	January 4, 1984	25 PA Code 89.143(2)(iii)(A) through (D), (4), .144(b)(3), .145(a)(4), (b), (d), .146(e), .147(a).
January 17, 1984	March 20, 1984	Pennsylvania policy statement: Citizen Complaint Procedures, Department of Environmental Resources Inspection and Enforcement Policy for Mining Operations, Civil Penalty Program.
October 31, 1983	May 15, 1984, July 3, 1984.	25 PA Code 86.5, .38(b), .112(b), .134(c), .211; 87.1, .112(c)(1), (2), (d), (e), .144, .138, .175; 89.86(a)(1), .161, .162, .163; 90.1, .112(c), (d), (e); addendum to the DER Inspection and Enforcement Policy for Mining Operations.
March 30, 1984	November 27, 1984	25 PA Code chapter 88, subchapters A through D, F.
March 2, 1984	April 4, 1985	Blaster training, examination and certification program, as contained in 25 PA Code chapter 210, subchapter A.
April 19, 1985	August 15, 1985	Blaster certification program.
April 18, 1985	November 4, 1985 ..	25 PA Code chapter 89, subchapter F on subsidence control regulations.

Original amendment submission date	Date of final publication	Citation/description
September 5, 1985 ...	February 19, 1986 ..	Act 158 of 1984; 25 PA Code chapter 87, subchapter F; chapter 88, subchapter G; letters from the Pennsylvania Deputy General Counsel and the First Deputy Attorney General to Rebecca W. Hammer, Director, Office of Water Enforcement Permits, U.S. EPA, dated July 8, 1985, and August 19, 1985, respectively.
November 2, 1984	May 19, 1986	25 PA Code 86.37(a)(13), .171(e)(12), .172(d)(2)(iii); 88.1—definitions for “crop-land,” “historically used for cropland,” “prime farmland,” and “soil survey”, .24(b)(4), .30(a), (1), .31(a)(7), .32, .61, .129, .134(a), (e), .135(c)(1), (f)(2), (h), .136(a), (c), .137(18), (19), .217, .330, .381(b)(2), (c)(6), (8), (9), .491(i)(1), (13), (22), (23), (j), (k), .492(m), .493(8).
September 30, 1985	September 8, 1986	Civil Penalty Program: §§1, II.2, II.4, II.8; Inspection and Enforcement Policy: §§ II.B.2.a.(4), (5), E, J.
April 18, 1985	June 18, 1987	25 PA Code 89.143(b).
January 22, 1987	July 14, 1987	§ 4.2(F)(II): right-of-entry requirements.
April 14, 1987	October 27, 1988 ...	§§ II.J of the Inspection and Enforcement Policy, II.2 of the Civil Penalty Program, both concern alternative enforcement actions for failure to abate violations.
December 5, 1988	July 14, 1989	25 PA Code 86.1, .12; 88.1, .381; 89.5.
August 17, 1988	August 18, 1989	Civil Penalty Program, §II (Assessment), paragraph 4; Program Guidance Manual, § 1:3.6 (Civil Penalty Assessments) part 1—Coal, paragraph 4.
August 21, 1986	November 3, 1989 ..	PA Policy Statement entitled Reclamation in Lieu of Cash Payment for Civil Penalties found in Department of Environmental Resources Program Guidance Manual at § 1:3.9.
December 22, 1989 ..	May 31, 1991	25 PA Code 86.17(e), .83(a)(2), .112(b)(1), .158(b)(1), (2), (3), .174(d)(1), .175(1), (2), (3), .182(d); 87.73, .112(b)(1), (f), .125(a), .127(e)(2), (h), .131(n), .135(a), .138; 88.24(b)(4), .492(c)(4); 89.34(a)(1), (2)(ii), .59(a)(1), (2), (3), .71(d), .82, .101(a), (d), .172(b); 90.112(b)(1), (d), (f), .150.
September 24, 1986	October 24, 1991 ...	25 PA Code 86.182, .186 through .190; PA SMCRA §§ 3.1, 4(a), (b), 18(c)(i), 18.8.
May 27, 1992	October 28, 1992 ...	25 PA Code 86.83, .94.
June 2, 1992	November 16, 1992	25 PA Code 86.1; 88.1, .381; 89.5.
December 18, 1991 ..	December 30, 1992, January 14, 1993, April 8, 1993.	25 PA Code 86.1, .36(c), .37(a), (c), .41, .43, .44, .52(c)(4), .53, .55(d), .62, .63, .101, .102, .129, .132, .133, .134(3)(ii)(C), (12), .136, .151(a), (d), (h), .163, .165, .193(3), (f), .194, .195, .202, .212; 87.1, .11, .14, .21, .42(2), .54(a)(9), (22), .77, .112(c), .151(d), .155, .160, .166; 88.1, .22(2), .31(a)(9), (22), .56, .115, .116, .381(c)(9), .491(a)(1)(ii), (i)(7), .492(f); 89.5, .26, .38(a), (b), (c), .86, .90, .111(c); 90.1, .11(a)(3), .21(a)(9), (24), .40, .112(c), .134, .140, .155(d), .159.
February 18, 1993	July 6, 1993	25 PA Code 86.17.
March 9, 1993	December 6, 1993 ..	PA SMCRA § 4(d) concerning financial instruments for performance bonds.
May 11, 1993	July 20, 1994	25 PA Code 86.142, .159, .166.
October 24, 1994	April 3, 1995	25 PA Code 86.81 through .89, .91 through .95.
December 19, 1996 ..	May 30, 1997	25 PA Code, Chapter 86, Subchapter D: 86.101; 86.102; 86.103; 86.121; 86.122; 86.123; 86.124; 86.125; 86.126; 86.127; 86.128; 86.129; 86.130.
January 23, 1995	November 7, 1997 ..	Chapters 86 through 90.
September 13, 1995	April 22, 1998	Pennsylvania law Act 1994–114 concerning the special authorization for refuse disposal in areas previously affected by mining which contain pollutional discharges: Title and 1; 3; 3.2(b); 4.1; 6.1(h)(5), (i); 6.2; 6.3; 15.1.
October 8, 1998	March 26, 1999 and June 8, 1999.	52 P.S. 1396.3, 1396.4h.
August 17, 1998	February 2, 2000	Letter from Pennsylvania to OSM dated August 17, 1998 (PA–837.80), except a decision on the required amendment at 30 CFR 938.16(www) is deferred.
November 2, 1999	November 3, 2000 ..	25 Pa. Code 86.1, 86.124, 86.152, 86.156, 86.160, 86.171, 86.182, 86.193, 86.194, 86.195, 86.201, and 86.202.

Surface Mining Reclamation and Enforcement, Interior

§ 938.15

Original amendment submission date	Date of final publication	Citation/description
November 8, 1999	March 23, 2000	25 PA Code §§ 86.80, 86.81, 86.82, 86.83, 86.84, 86.85, 86.86 (deleted), 86.87, 86.91 (deleted), 86.92, 86.94, 86.95 (deleted). Note: The incorporation of the reference to § 89.34 at 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) is approved to the extent that Pennsylvania implements this provision consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(A) and the implementing regulations at 30 CFR 795.9(b)(1). The incorporation of this reference into subsections 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) is not approved to the extent that the proposed subsections would authorized the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(A) of SMCRA or 30 CFR 795.9(b)(1). 25 PA Code 86.81(a)(2)(iii) is approved to the extent that the SOAP funds are not used to fund the activities required under 25 PA Code §§ 87.41 and 87.42(1) or §§ 88.21 and 88.22(1). The reference of §§ 87.77, 88.56 and 89.38 (regarding archaeological and historic information) into subsections 86.81(a)(2)(iv)(A), (B) and (C) is approved to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(D) and the implementing regulations at 30 CFR 795.9(b)(4). The incorporation of these references (regarding public parks) into subsections 86.81(a)(2)(iv)(A), (B) and (C) is not approved to the extent that the proposed subsections would authorized the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(D) of SMCRA or 30 CFR 795.9(b)(4).
November 30, 1999 ..	June 26, 2000	25 Pa. Code 86.2, 86.37, 86.40, 86.64, 86.70, 86.132–86.134, 86.174, 87.1, 87.77, 87.93, 87.97, 87.101, 87.106, 87.126, 87.127, 87.138, 87.144, 87.146, 87.159, 87.160, 87.166, 87.173, 87.174, 87.176, 87.209, 88.1, 88.56, 88.83, 88.91, 88.96, 88.118, 88.133, 88.138, 88.144, 88.191, 88.221, 88.231, 88.237, 88.283, 88.291, 88.296, 88.334, 88.335, 88.341, 88.492, 88.509, 89.38, 89.65, 89.67, 89.82, 89.87, 89.88, 89.90, 90.1, 90.40, 90.93, 90.97, 90.101, 90.106, 90.134, 90.140, 90.147, 90.150, 90.166.
January 3, 2001	August 15, 2001	25 Pa. Code 86.174.
January 3, 2001	November 16, 2001	Addition of Chapter 77, Section 7708 to 2001 Title 27 of the Pennsylvania Consolidated Statutes; repeal of the fifth sentence of section 4(b) and section 4.2(f)(5) of the Surface Mining Conservation and Reclamation Act of May 31, 1945 (P.L. 1198, No. 418); repeal of the last sentence of section 5(g) of the Bituminous Mine Subsidence and Land Conservation Act of April 27, 1966 (1st Sp. Sess., P.L. 31, No. 1); repeal of the last sentence of section 5(i) of the Coal Refuse Disposal Control Act of September 24, 1968 (P.L. 1040, No. 318).
July 29, 1998	December 27, 2001	Bituminous Mine Subsidence and Land 2001 Conservation Act: Repeal of Section 4 (52 P.S. 1406.4); 5(b)(partial approval); 5.1(a)(1) (52 P.S. 1406.5a(a)(1) (conditional approval); 5.1(a)(2) and (3) (52 P.S. 1406.5a(a)(2) and (3)); 5.2(a)(1), (2), and (3) (52 P.S. 1406.5b(a)(1), (2), and (3)); 5.2(b)(1) (52 P.S. 1406.5b(b)(1)); 5.2(c) (52 P.S. 1406.5b(c)); 5.2(e)(1) and (3) (52 P.S. 1406.5b(e)(1) and (3)); 5.2(f) (52 P.S. 1406.5b (f); 5.2(j) (52 P.S. 1406.5b(j)); 5.2(k) (52 P.S. 1406.5b(k)); 5.4(a) (52 P.S. 1406.5d(a))(partial approval); 5.4(a)(1), (2) and (4) (52 P.S. 1406.5d(a)(1), (2) and (4)); 5.4(b) (52 P.S. 1406.5d(b)); 5.5(a) (52 P.S. 1406.5e(a))(partial approval); 5.5 (d), (e), and (g) (52 P.S. 1406.5e(d), (e) and (g)); 5.6(a) and (b) (52 P.S. 1406.5f(a) and (b)); 6 (52 P.S. 1406.6))(partial approval); 9.1(a), (b), (c), and (d) (52 P.S. 1406.9a(a), (b), (c), and (d); Repeal of Section 15 (52 P.S. 1406.15); 17.1 (52 P.S. 1406.17a); 18.1 (52 P.S. 1406.18a) 25 Pa. Code Section: 89.5, the definitions of the following terms: “dwelling,” “irreparable damage,” “material damage,” “noncommercial building,” “public buildings and facilities,” “public water supply system,” “rebuttable presumption area,” “underground mining,” “underground mining operations,” and “water supply;” 89.33; 89.34; 89.35; 89.36; 89.141(a); 89.141(d)(2), (4), (5), (7), (8), (10) and (11); 89.141(d), (d)(3), (6), and (9)(partial approval); deletion of 89.142; 89.142a(a) (partial approval) 89.142a(a)(1), (2), (3) and (4); 89.142a(b); 89.142a(c)(1) and (2)(i) “ (v); 89.142a(c)(3) (partial approval); 89.142a(d) (partial approval); 89.142a(e); 89.142a(f)(1) (partial approval); 89.142a(f)(1)(i), (ii), (iv), and (v); 89.142a(f)(2)(i) (partial approval); 89.142a(g)(1) (partial approval); 89.142a(g)(2), and (3); 89.142a(h) (1) and (2) (partial approval); 89.142a(i)(1) (partial approval); 89.142a(i)(2), (j), (k), and (l); deletion of 89.143; 89.143a(a) (partial approval); 89.143a(b); 89.143a(d)(1) and (2) (partial approval); deletion of 89.144; 89.144a(a)(2), and (3); deletion of 89.145; 89.145a(a)(1)(i)–(vi); 89.145a(a)(2) and (3); 89.145a(b)(partial approval); 89.145a(c); 89.145a(d); 89.145a(e)(1) and (2) (partial approval); 89.145a(f)(1)(i)–(iv); 89.145a(f)(2); 89.145a(f)(3)(i) and (ii)(partial approval); 89.145a(f)(3)(iii); 89.145a(f)(4); 89.146a(a) and (b); 89.146a(c) (partial approval); 89.152(a)(1) and (3); 89.152(b); 89.153 (a), (b), and (c); 89.154(a) through (d); 89.155(a), 89.155(b)(1) and (2) (partial approval); 89.155(b)(3) and (4); 89.155(c) (partial approval).

§ 938.16

30 CFR Ch. VII (7–1–17 Edition)

Original amendment submission date	Date of final publication	Citation/description
February 25, 2002 November 22, 1999 ..	November 6, 2002 .. July 7, 2003	25 Pa. Code 86.37, 87.160, 88.138, 88.231, 88.335, 90.134, 87.160. 25 Pa. Code 86.1 definition of “valid existing rights;” 86.101 definitions of “fragile lands,” “historic lands,” “public building,” “public park,” “renewable resource lands,” “significant recreational value, timber, economic or other values incompatible with surface mining operations,” and “surface mining operations;” 86.102(1), (3) through (5), and (7) through (12); 86.103(c), (d), and (e); 86.121, 86.123(c) and (c)(5); 86.124(a), (c), (d) and (f); 86.125; 86.126; 86.127; 86.128; 86.129; and 86.130(b).
February 25, 2002	August 15, 2003	25 Pa. Code 210.11; 210.13–210.19; 211.101–211.103; 211.111–211.115; 211.121–211.125; 211.131–211.133; 211.141; 211.151–211.162; 211.171–211.173; 211.181–211.182
December 20, 2001 ..	October 2, 2003	25 Pa. Code 88.281, 88.310, 88.332, 89.59, 90.1, 90.5, 90.12, 90.13, 90.34, 90.45, 90.49, 90.50, 90.101, 90.116a, 90.122, 90.167, 90.201–207, 90.301–309, and 90.401.
August 27, 2003	December 9, 2004 ..	25 Pa. Code 86.1 modification of definition of underground mining activities, 86.151(b)(2), 86.152(a), 89.5, Addition of definitions of EPAct structures and EPAct water supplies; removal of definition of permanently affixed appurtenant structures; modification of definitions of underground mining activities and underground mining operations, 89.141(d), 89.142a(a), (c) through (i), 89.143a(a), (c) and (d), 89.144a(a) and (b), 89.145a(a), (b), (e) and (f), 89.146a(c)(2), and 89.152(a) and (b). In BMSLCA, Sections 5.2(b)(2), 5.2(d), 5.2(e)(2), 5.2(i), 5.3(a), 5.3(b), 5.3(c), 5.5(c), 5.5(f), 5.6(c), and 5.6(d). In PASMCRRA, Section 3 Definition of “Total Project Costs;” Sections 3.1; 4(a), (d), (d.2), (g), and (h); 4.2(f) (partial approval); 4.2(i); 4.6(i) and (j); 4.7; 4.10; 4.11; 4.12 (partial approval); 4.13; 18(a), (a.1), (a.2), and (a.3); 18(f), (g)(4) and (5); 18.7; 18.9; 18.10.
December 18, 1998 ..	May 13, 2005	25 Pa. Code 86.142 Definitions of “Annuity,” “Trustee,” and “Trust Fund;” 25 Pa. Code 86.151(b), (c), and (j); 86.152(a) and (b); 86.156(b); 86.157(3), (4), (5), (6), (7), and (8); 86.158(c)(6), (e), (f), and (g); 86.161(3); 86.168; 86.171(a), (b)(6) and (7), (f)(4), (g), and (h); 86.174(a) and (d); 86.175(a) and (b)(3); 86.182(a)(3) and (4), (d), (e), (f), (g); 86.195(b), 86.251–253; 86.261–86.270; 86.281(a)–(d); 86.281(e) (partial approval); 86.282–284; 86.291–295; 86.351–359. 25 Pa. Code 87.1 Definitions of “Water Supply,” “Water Supply Survey;” deletion of 87.11–21; 87.119 (partial approval); 87.147(b). 25 Pa. Code 88.1 Definitions of “Water Supply,” “Water Supply Survey;” 88.107 (partial approval); 88.121(b); 88.209(b).
May 23, 2006	April 17, 2007	25 Pa. Code: 86.187(a)(1), (b), (c); 86.188(b)(5) [deleted]; 86.188(c)(3) [deleted]; 86.189(c)(2) through (c)(4) [deleted reference to (c)(5)]; 86.189 (c)(5) [deleted]; 86.190 (a) [the words “but are not limited to” are deleted]; 86.190(a)(3) [deleted].
December 18, 2006 .. June 8, 2006	October 4, 2007	25 Pa. Code 86.6 [add].
	December 1, 2008 ..	25 Pa. Code 210.11, 87.1, 88.1, and 89.5 added definition for mine opening blasting; 87.124(b) correction of reference error; 87.126(b)(2)(ii) phrase deletion; 87.127(b), 87.127(e), 87.127(e)(1), 87.127(f)(1); 87.129(4); 88.135(a), 88.135(b), 88.135(f)(1), 88.135(h), 88.135(i); 88.493(7)(i); 89.62 (adding new language); 87.127(l) and 88.135(l) (deleted in their entirety).
August 1, 2008	August 10, 2010	52 P.S. 1396.4(d.2); 25 Pa. Code 86.1, 86.17(e), 86.187(a); The Conversion Assistance Program; Trust Funds as an Alternative Bonding System (ABS); Demonstration of Sufficient Funding for Outstanding Land Reclamation at Primacy ABS Forfeiture Sites; and, Demonstration of Sufficient Funding for Construction of All Necessary Discharge Treatment Facilities at the ABS Forfeiture Sites.
December 19, 2012 ..	September 10, 2013	Addition of definitions to 25 Pa. Code 86.1, clarification of 86.3, and increase of fees at 86.17.
February 24, 2010	October 19, 2015 ...	52 P.S. 30.54a(a)(6).

[62 FR 9953, Mar. 5, 1997]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 938.15, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 938.16 Required regulatory program amendments.

Pursuant to 30 CFR 732.17, Pennsylvania is required to submit the fol-

lowing proposed program amendments by the dates specified.

(a)–(e) [Reserved]

(f) By August 24, 1987, Pennsylvania shall amend its regulations at

Surface Mining Reclamation and Enforcement, Interior

§ 938.16

88.129(f)(1) and (2) and the corresponding provisions under Chapter 88, Subchapters C, D, and F (88.217, 88.330 and 88.491) or otherwise amend its program to be consistent with section 510(d) of SMCRA by requiring that the restoration of prime farmland soil productivity shall be determined on the basis of measurement of crop yields.

(g)-(l) [Reserved]

(m) By November 1, 1991, Pennsylvania shall amend its rules at §86.158(b)(1) or otherwise amend its program to be no less effective than 30 CFR 800.21(a)(2) by requiring that the value of all government securities pledged as collateral bond shall be determined using the current market value.

(n) By November 1, 1991, Pennsylvania shall amend §86.158(b)(2) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(1) by requiring that the provisions related to valuation of collateral bonds be amended to be subject to a margin, which is the ratio of the bond value to the market value, and which accounts for legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the regulatory authority in case of forfeiture.

(o) By November 1, 1991, Pennsylvania shall amend §86.158(b)(3) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(2) to ensure that the bond value of all collateral bonds be evaluated during the permit renewal process to ensure that the collateral bond is sufficient to satisfy the bond amount requirements.

(p)-(v) [Reserved]

(w) By November 1, 1991, Pennsylvania shall amend §§87.125(a), or otherwise amend its program to be no less stringent than section 515(b)(15)(E) of SMCRA to provide the opportunity to request a preblasting survey to every resident or owner of a man-made structure or dwelling within one-half mile of any part of the permit area.

(x)-(qq) [Reserved]

(rr) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.36(c) to require permit denial for unabated violations of any Federal

or State program under SMCRA, without the three-year limitation.

(ss) [Reserved]

(tt) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.37(a)(10) to require that all violations of the Federal SMCRA and all programs approved under SMCRA be considered in determining whether there is a demonstrated pattern of willful violations.

(uu) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.37(a) to require that the criteria upon which the regulatory authority bases its decision to approve or deny a permit application are based on all information available to the regulatory authority.

(vv) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.37(a) to include language that would prohibit permit approval if the applicant or anyone linked to the applicant through the definition of "owned or controlled" or "owns or controls" has forfeited a bond and the violation upon which the forfeiture was based remains unabated.

(ww) By May 1, 1993, Pennsylvania shall submit a proposed amendment to sections 86.37(a)(9) and (a)(16) to require denial of a permit if it finds that those linked to the applicant through the definition of "owned or controlled" or "owns or controls" are delinquent in payment of abandoned mine reclamation fees or delinquent in the payment of State and Federal final civil penalty assessments.

(xx) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.37(c), to require that the regulatory authority's reconsideration of its decision to approve the permit include a review of information, updated for the period from permit approval to permit issuance, pertaining to the payment of abandoned mine reclamation fees and civil penalty fees and the status of unabated violations upon which a bond forfeiture was based.

(yy) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.43, to require the regulatory authority to review the circumstances under which a permit was issued whenever it has reason to believe that the

permit may have been improvidently issued.

(zz) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.62(b)(2)(ii) to correct the cross-reference to 86.63 with a reference to section 86.212(c).

(aaa) By May 1, 1993, Pennsylvania shall submit a proposed amendment to sections 86.62(c) and 87.14(3) to include the requirement that the application include the address for each permit held by a related entity or company, and identification of the regulatory authority for each such permit.

(bbb) [Reserved]

(ccc) By October 5, 1993, Pennsylvania shall submit a proposed amendment to § 86.133(f) to require that exploration on areas designated as unsuitable for mining shall be subject to permitting requirements no less effective than the Federal regulations at 30 CFR 772.12.

(ddd)-(ggg) [Reserved]

(hhh) By October 5, 1993, Pennsylvania shall submit a proposed amendment to §§ 87.155(b)(5), 89.86(e)(2)(iii)(B) and 90.159(b)(3) to require that at least 80 percent of the trees and shrubs to be used in determining the success of stocking and adequacy of planting, at the time of bond release, have been in place for 60 percent of the applicable minimum period of responsibility.

(iii) By October 5, 1993, Pennsylvania shall submit a proposed amendment to §§ 87.112(c) and 89.111(c) to require a seismic safety factor of at least 1.2 for all impoundments that meet the criteria of 30 CFR 77.216(a) or are located where failure could cause loss of life or serious property damage.

(jjj) By October 5, 1993, Pennsylvania shall submit a proposed amendment to § 90.112(c)(2) to require that all impounding structures that meet the criteria of 30 CFR 77.216(a) and are either constructed of coal mine waste or intended to impound coal mine waste have sufficient spillway capacity and/or storage capacity to safely pass or control the runoff from the 6-hour PMP or greater precipitation event.

(kkk) and (lll) [Reserved]

(mmm) By October 5, 1993, Pennsylvania shall submit a proposed amendment to § 88.1 to require that the definition of haul road include all roads (in-

cluding public roads) that are used as an integral part of the coal mining activity and to clarify that the area of the road includes the entire area within the right-of-way, including roadbeds, shoulders, parking and side areas, approaches, structures, and ditches.

(nnn) By September 19, 1994, Pennsylvania shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise section 86.159(l)(2) to require two officer signatures for each corporate indemnitor, an affidavit from the corporation(s) certifying that entering into the indemnity agreement is valid under all applicable Federal and State laws, and documents that evidence the authority of the signatories to bind the corporation and an authorization by the parent corporation to enter into the indemnity agreement.

(ooo) [Reserved]

(ppp) By January 6, 1998, Pennsylvania shall submit a proposed amendment to section 86.5(m), or otherwise amend its program, to provide for notification of the operator and any intervenors of a decision not to revoke an exemption.

(qqq) [Reserved]

(rrr) By January 6, 1998, Pennsylvania shall submit a proposed amendment to subsections 87.108(c), 89.24(c), and 90.108(c), or otherwise amend its program, to require, without exception, that sedimentation ponds cannot be removed sooner than two years after the last augmented seeding.

(sss) By January 6, 1998, Pennsylvania shall submit proposed amendments to subsections 88.105(c), 88.201(c) and 88.305(c), or otherwise amend its program, to require additional hydrologic testing whenever the PHC determination indicates that adverse impacts may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of surface or ground water supplies.

(ttt) By January 6, 1998, Pennsylvania shall submit a proposed amendment to sections 88.321 and 90.133, or otherwise amend its program, to require that no noncoal waste be deposited in a coal refuse pile or impounding structure.

(uuu) By January 6, 1998, Pennsylvania shall submit a proposed amendment to provide counterparts to the Federal regulations at 30 CFR 702.15 (d), (e), (f) and 702.17 (c)(2) and (c)(3) to require that authorized representatives have the right to enter operations conducting incidental coal extraction and that administrative reviews of the State's determinations be conducted.

[50 FR 32849, Aug. 15, 1985 and 50 FR 45823, Nov. 4, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 938.16, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 938.20 Approval of Pennsylvania abandoned mine land reclamation plan.

The Pennsylvania Abandoned Mine Land Reclamation Plan as submitted on November 3, 1980, is approved. Copies of the approved Plan are available at the following locations:

(a) Pennsylvania Department of Environmental Resources, Bureau of

Abandoned Mine Reclamation, Market Street State Office Building, 400 Market Street, P.O. Box 2063, Harrisburg, Pennsylvania 17105-2063.

(b) Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, suite 3C, Fourth and Market Streets, Harrisburg, Pennsylvania 17101.

[59 FR 17930, Apr. 15, 1994]

§ 938.25 Approval of Pennsylvania abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
April 17, 1992	October 30, 1992 ...	Part D of Plan—Initiative, part E of Plan—Modifications.
November 21, 1997 ..	March 26, 1999	Part F—Government Financed Construction Contracts.

[62 FR 9953, Mar. 5, 1997, as amended at 64 FR 14619, Mar. 26, 1999]

PART 939—RHODE ISLAND

Sec.

939.700 Rhode Island Federal program.

939.701 General.

939.702 Exemption for coal extraction incidental to the extraction of other minerals.

939.707 Exemption for coal extraction incidental to Government-financed highway or other construction.

939.761 Areas designated unsuitable for surface coal mining by Act of Congress.

939.762 Criteria for designating areas as unsuitable for surface coal mining operations.

939.764 Process for designating areas unsuitable for surface coal mining operations.

939.772 Requirements for coal exploration.

939.773 Requirements for permits and permit processing.

939.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

939.775 Administrative and judicial review of decisions.

939.777 General content requirements for permit applications.

939.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

939.779 Surface mining permit applications—minimum requirements for information on environmental resources.

939.780 Surface mining permit applications—minimum requirements for reclamation and operations plan.

939.783 Underground mining permit applications—minimum requirements for information on environmental resources.

939.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

939.785 Requirements for permits for special categories of mining.

939.795 Small operator assistance.

939.800 General requirements for bonding of surface coal mining and reclamation operations.

939.815 Performance standards—coal exploration.

§ 939.700

- 939.816 Performance standards—surface mining activities.
- 939.817 Performance standards—underground mining activities.
- 939.819 Special performance standards—auger mining.
- 939.823 Special performance standards—operations on prime farmland.
- 939.824 Special performance standards—mountaintop removal.
- 939.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
- 939.828 Special performance standards—in situ processing.
- 939.842 Federal inspections.
- 939.843 Federal enforcement.
- 939.845 Civil penalties.
- 939.846 Individual civil penalties.
- 939.955 Certification of blasters.

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

SOURCE: 48 FR 40995, Sept. 12, 1983, unless otherwise noted.

§ 939.700 Rhode Island Federal program.

(a) This part contains all rules that are applicable to surface coal mining and reclamation operations in Rhode Island which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the Rhode Island Federal program.

(c) The rules in this part apply to all surface coal mining and reclamation operations in Rhode Island conducted on non-Federal and non-Indian lands. The rules in subchapter D of this chapter apply to operations on Federal lands in Rhode Island.

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of Rhode Island laws provide, where applicable, for more stringent environmental control and regulation of surface coal mining and reclamation operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to Section 505(b) of the Act, they

30 CFR Ch. VII (7–1–17 Edition)

shall not be construed to be inconsistent with the Act:

(1) R.I. General Laws Sections 23–19.1–1 to 23–19.1–22, regulating treatment, disposal, and transportation of hazardous wastes within the State of Rhode Island.

(2) R.I. General Laws Sections 46–12–1 to 46–12–37, controlling the pollution of any of the State's waterways.

(f) There are no Rhode Island laws that generally interfere with the achievement of the purposes and requirements of the Act and which must be superseded and preempted pursuant to Section 504(g). Some Rhode Island laws may in an individual situation interfere with the achievement of the purposes and requirements of the Act and may be preempted and superseded with respect to the performance standards of §§ 939.815 through 939.828 as they affect a particular coal exploration or surface mining operation by publication of a notice to that effect in the FEDERAL REGISTER.

§ 939.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and part 701 of this chapter shall apply to surface coal mining and reclamation operations in Rhode Island.

§ 939.702 Exemption for coal extraction incidental to the extraction of other minerals.

Part 702 of this chapter, *Exemption for Coal Extraction Incidental to the Extraction of Other Minerals*, shall apply to any person who conducts coal extraction incidental to the extraction of other minerals for purposes of commercial use or sale.

[54 FR 52123, Dec. 20, 1989]

§ 939.707 Exemption for coal extraction incidental to Government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incidental to Government-Financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§ 939.761 Areas designated unsuitable for surface coal mining by Act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply to surface coal mining and reclamation operations.

§ 939.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mining and reclamation operations.

§ 939.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall become applicable in Rhode Island on May 28, 1983.

§ 939.772 Requirements for coal exploration.

(a) Part 772 of this chapter, *Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, any person who intends to conduct coal exploration shall, prior to conducting the exploration, file with the regulatory authority a written notice of intention to explore including:

- (1) The name, address, and telephone number of the person seeking to explore;
- (2) The name, address, and telephone number of the representative who will

be present at and responsible for conducting the exploration activities;

(3) A precise description and map, at a scale of 1:24,000 or larger, of the exploration area;

(4) A statement of the period of intended exploration;

(5) If the surface is owned by a person other than the person who intends to explore, a description of the basis upon which the person who will explore claims the right to enter such area for the purpose of conducting exploration and reclamation; and

(6) A description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration activities.

(d) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

[52 FR 13813, Apr. 24, 1987]

§ 939.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, *Requirements for Permits and Permit Processing*, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the application of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and negotiate the date by which the information must be submitted; or

§ 939.774

30 CFR Ch. VII (7–1–17 Edition)

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 939.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.6 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) Where applicable, no person shall conduct surface coal exploration operations which result in the removal of more than 250 tons of coal nor shall any person conduct surface coal mining operations without a permit issued by the Secretary pursuant to 30 CFR part 773 and permits issued pursuant to State law, including: the Wetlands Protection Act (R.I. General Laws Section 2-1-22); Chapter 20 of the Waters and Navigation Act (petitions for ditches and drains) (R.I. General Laws Section 46-20-1 *et seq.*); the Coastal Resources Management Council Act of 1971 (R.I. General Laws Section 46-23-6); the Rhode Island Hazardous Waste Management Act of 1978 (R.I. General Laws Section 23-19.1-11 *et seq.*); the Rhode Island Act for Inspection of Dams and Reservoirs (R.I. General Laws Section 46-19-1 *et seq.*) and Chapter 23-28.28 of

Rhode Island's Health and Safety Code (R.I. General Laws Section 23-28.28-1 *et seq.*, permits for blasting), and an order of approval authorizing discharge of sewage into waterways within the State and modification or operation of sewage disposal systems if applicable (R.I. General Laws Sections 46-12-1 to 46-12-37). The permit issued by the Secretary shall incorporate the requirements of the Rhode Island Historical Zoning Act of 1954, as amended (R.I. General Laws Section 45-24.1-1 *et seq.*) and the Rhode Island Antiquities Act of 1974 (R.I. General Laws Section 42-45.1-1 *et seq.*).

(e) The Secretary shall coordinate review and issuance of a coal exploration or surface coal mining permit with the review and issuance of other Federal and State permits listed in this section and 30 CFR part 773.

[52 FR 13813, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

§ 939.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, *Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights*, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSMRE.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.6, 773.19(b) (1) and (2), and 778.21 and of part 775.

(2) OSMRE shall make every effort to approve or disapprove an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit

rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

[52 FR 13814, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

§ 939.775 Administrative and judicial review of decisions.

Part 775 of this chapter, *Administrative and Judicial Review of Decisions*, shall apply to all decisions on permits.

[52 FR 13814, Apr. 24, 1987]

§ 939.777 General content requirements for permit applications.

Part 777 of this chapter, *General Content Requirements for Permit Applications*, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

[52 FR 13814, Apr. 24, 1987]

§ 939.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Permit Applications—Minimum Requirements for Legal, Financial, Compliance and Related Information*, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

[52 FR 13814, Apr. 24, 1987]

§ 939.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 939.780 Surface mining permit applications—minimum requirements for reclamation and operations plan.

(a) Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

(b) The applicant for a permit shall demonstrate compliance with Rhode Island air quality control laws (R.I. General Laws Section 23-23-1 *et seq.*) by obtaining an order of approval from the Director of the Department of Environmental Management for any facility with the potential to emit one ton per year or more of any air contaminant pursuant to R.I. General Laws Section 23-23-15.

§ 939.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who submits an application to conduct underground coal mining operations.

§ 939.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct underground coal mining.

§ 939.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining*, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 939.795 Small operator assistance.

Part 795 of this chapter, *Small Operator Assistance*, shall apply to any person making application for assistance

§ 939.800

under the small operator assistance program.

§ 939.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, *General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs*, shall apply to all surface coal mining and reclamation operations.

§ 939.815 Performance standards—coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration*, shall apply to any person conducting coal exploration operations.

§ 939.816 Performance standards—surface mining activities.

Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, shall apply to any person who conducts surface coal mining and reclamation operations.

§ 939.817 Performance standards—underground mining activities.

Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities*, shall apply to any person who conducts underground coal mining operations.

§ 939.819 Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining*, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 939.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland*, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

30 CFR Ch. VII (7–1–17 Edition)

§ 939.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal*, shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 939.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine*, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

§ 939.828 Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, shall apply to any person who conducts in situ processing activities.

§ 939.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections*, shall apply to all coal exploration and surface coal mining and reclamation operations.

(b) The Secretary will furnish copies of inspection reports and reports of any enforcement action taken to the Rhode Island Department of Environmental Management upon request.

§ 939.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement*, shall apply when enforcement action is required for violations on coal exploration or surface coal mining and reclamation operations.

(b) The Office will furnish a copy of any order to show cause to the Rhode Island Department of Environmental Management upon request.

Surface Mining Reclamation and Enforcement, Interior

§ 941.700

§ 939.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties*, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

§ 939.846 Individual civil penalties.

Part 846 of this chapter, *Individual Civil Penalties*, shall apply to the assessment of individual civil penalties under section 518(f) of the Act.

[53 FR 3676, Feb. 8, 1988]

§ 939.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

PART 941—SOUTH DAKOTA

Sec.

941.700 South Dakota Federal program.

941.701 General.

941.702 Exemption for coal extraction incidental to the extraction of other minerals.

941.707 Exemption for coal extraction incidental to Government-financed highway or other construction.

941.761 Areas designated unsuitable for surface coal mining by act of Congress.

941.762 Criteria for designating areas as unsuitable for surface coal mining operations.

941.764 Process for designating areas unsuitable for surface coal mining operations.

941.772 Requirements for coal exploration.

941.773 Requirements for permits and permit processing.

941.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

941.775 Administrative and judicial review of decisions.

941.777 General content requirements for permit applications.

941.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

941.779 Surface mining permit applications—minimum requirements for information on environmental resources.

941.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

941.783 Underground mining permit applications—minimum requirements for information on environmental resources.

941.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

941.785 Requirements for permits for special categories of mining.

941.795 Small operator assistance.

941.800 General requirements for bonding of surface coal mining and reclamation operations.

941.815 Performance standards—coal exploration.

941.816 Performance standards—surface mining activities.

941.817 Performance standards—underground mining activities.

941.819 Special performance standards—auger mining.

941.822 Special performance standards—operations in alluvial valley floors.

941.823 Special performance standards—operations on prime farmland.

941.824 Special performance standards—mountaintop removal.

941.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

941.828 Special performance standards—in situ processing.

941.842 Federal inspections.

941.843 Federal enforcement.

941.845 Civil penalties.

941.846 Individual civil penalties.

941.955 Certification of blasters.

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

SOURCE: 48 FR 16823, Apr. 19, 1983, unless otherwise noted.

§ 941.700 South Dakota Federal program.

(a) This part contains all rules that are applicable to surface coal mining operations in South Dakota which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the South Dakota Federal program.

(c) The rules in this part apply to all surface coal mining operations in South Dakota conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in South Dakota.

(d) The recordkeeping and reporting requirements of this part are the same as those of the permanent program regulations which have been approved by

§941.701

the Office of Management and Budget under 44 U.S.C. 3507.

(e) The following provisions of South Dakota laws provide, where applicable, for more stringent environmental control and regulation of surface coal mining operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to section 505(b) of the Act, they shall not be construed to be inconsistent with the Act:

(1) South Dakota Compiled Laws Annotated (S. D. Comp. Laws Ann.) Chap. 45-6B, section 33(1)-(5) on lands unsuitable for mining.

(2) S. D. Comp. Laws Ann. Chap. 45-6C, sections 16, 19, 27, and 28.

(3) Weed Control, S. D. Comp. Laws Ann. Chap. 38-22.

(4) Protection of fishing waters, S. D. Comp. Laws Ann. Chap. 41-13.

(5) Remedies for protection of the environment, S. D. Comp. Laws Ann. Chap. 34A-10.

(6) Air pollution control, S. D. Comp. Laws Ann. Chap. 34A-1.

(7) Water pollution control, S. D. Comp. Laws Ann. Chap. 34A-2.

(8) Solid waste disposal, S. D. Comp. Laws Ann. Chap. 34A-6.

(9) Groundwater, S. D. Comp. Laws Ann. Chap. 46-6.

(f) The following are South Dakota laws that interfere with the achievement of the purposes and requirements of the Act and are, in accordance with section 504(g) of the Act, preempted and superseded with respect to surface coal mining, except to the extent that they regulate surface coal mining operations which affect two acres or less, or which otherwise are not regulated by the Surface Mining Control and Reclamation Act.

(1) S. D. Comp. Laws Ann. Chap. 45-6B, except with respect to the criteria for designating lands unsuitable for mining, section 33(1)-(5).

(2) S. D. Comp. Laws Ann. Chap. 45-6C, except with respect to the requirements to consult with the owner of surface lands to be explored and the right of the owner to establish reasonable restrictions on exploration travel (section 16), the requirement to post an exploration reclamation bond (section 19), the prohibition of explosives use in exploration within one-half mile of a flowing water well or a domestic water

30 CFR Ch. VII (7-1-17 Edition)

well without the owner's permission (section 27), and the requirement to cap, plug, and seal all exploration test holes (section 28).

(g) The Secretary may grant a limited variance from the performance standards of §§941.815 through 941.828 of this part if the applicant for coal exploration approval or a surface mining permit submitted pursuant to §§941.772 through 941.785 demonstrates in the application that:

(1) Such variance is necessary because of the unique nature of South Dakota's terrain, climate, biological, chemical, or other relevant physical conditions; and

(2) The proposed alternative will achieve equal or greater environmental protection than does the performance requirement from which the variance is requested.

[48 FR 16823, Apr. 19, 1983, as amended at 52 FR 13814, Apr. 24, 1987]

§941.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and part 701 of this chapter shall apply to surface coal mining operations in South Dakota.

§941.702 Exemption for coal extraction incidental to the extraction of other minerals.

Part 702 of this chapter, *Exemption for Coal Extraction Incidental to the Extraction of Other Minerals*, shall apply to any person who conducts coal extraction incidental to the extraction of other minerals for purposes of commercial use or sale.

[54 FR 52123, Dec. 20, 1989]

§941.707 Exemption for coal extraction incidental to Government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incidental to Government-Financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§941.761 Areas designated unsuitable for surface coal mining by act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply

Surface Mining Reclamation and Enforcement, Interior

§ 941.773

to surface coal mining and reclamation operations.

§ 941.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mine operations.

§ 941.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mine operations beginning one year after the effective date of this program.

§ 941.772 Requirements for coal exploration.

(a) Part 772 of this chapter, *Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

[52 FR 13814, Apr. 24, 1987]

§ 941.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, *Requirements for Permits and Permit Processing*, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the application of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and negotiate the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 941.773(b)(2)(ii) by the specified date, the office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.6 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(c) In addition to the information required by Subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) Where applicable, no person shall conduct surface coal exploration operations which result in the removal of more than 250 tons of coal, nor shall any person conduct surface coal mining operations without a permit issued by the Secretary pursuant to 30 CFR part 773, and permits, leases and certificates

§ 941.774

required by the State of South Dakota including compliance with: (1) Air pollution control, S.D. Comp. Laws Ann. Chap. 34A-1; (2) water pollution control, S.D. Comp. Laws Ann. Chap. 34A-2; and (3) solid waste disposal, S.D. Comp. Laws Ann. Chap. 34A-6.

(e) No person shall be granted a permit to conduct exploration which results in the removal of more than 250 tons of coal or shall conduct surface coal mining unless that person has acquired all required permits, leases, and certificates listed in paragraph (d) of this section.

[52 FR 13815, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

§ 941.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, *Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights*, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSMRE.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.6, 773.19(b)(1) and (2), and 778.21 and of part 775.

(2) OSMRE shall make every effort to approve or disapprove an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or re-

30 CFR Ch. VII (7-1-17 Edition)

ceipt of an administratively complete application, whichever is later.

[52 FR 13815, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

§ 941.775 Administrative and judicial review of decisions.

Part 775 of this chapter, *Administrative and Judicial Review of Decisions*, shall apply to all decisions on permits.

[52 FR 13815, Apr. 24, 1987]

§ 941.777 General content requirements for permit applications.

Part 777 of this chapter, *General Content Requirements for Permit Applications*, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

[52 FR 13815, Apr. 24, 1987]

§ 941.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Permit Applications—Minimum Requirements for Legal, Financial, Compliance and Related Information*, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

[52 FR 13815, Apr. 24, 1987]

§ 941.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 941.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

(a) Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

Surface Mining Reclamation and Enforcement, Interior

§ 941.824

(b) Each applicant for a permit shall demonstrate compliance with the South Dakota laws on air pollution, S. D. Comp. Laws Ann. Chap. 34A-1, water pollution control, S. D. Comp. Laws Ann. Chap. 34A-2, and solid waste disposal, S. D. Comp. Laws Ann. Chap. 34A-6.

§ 941.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who submits an application to conduct underground mining operations.

§ 941.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct underground mining.

§ 941.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining*, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations.

§ 941.795 Small operator assistance.

Part 795 of this chapter, *Small Operator Assistance*, shall apply to any person making application for assistance under the small operator assistance program.

§ 941.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, *General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs*, shall apply to all surface coal mining and reclamation operations.

§ 941.815 Performance standards—coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration*, shall apply to any person conducting coal exploration operations.

§ 941.816 Performance standards—surface mining activities.

Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, shall apply to any person who conducts surface coal mining and reclamation operations.

§ 941.817 Performance standards—underground mining activities.

Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities*, shall apply to any person who conducts underground mining operations.

§ 941.819 Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining*, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 941.822 Special performance standards—operations in alluvial valley floors.

Part 822 of this chapter, *Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors*, shall apply to any person who conducts surface coal mining and reclamation operations on alluvial valley floors.

§ 941.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland*, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§ 941.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal*, shall apply

§ 941.827

to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 941.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine*, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

§ 941.828 Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, shall apply to any person who conducts in situ processing activities.

§ 941.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections*, shall apply to all exploration and surface coal mining and reclamation operations.

(b) The Office will furnish a copy of any inspection report or enforcement action taken to the South Dakota Department of Water and Natural Resources upon request.

§ 941.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement*, shall apply when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) The Office will furnish a copy of each enforcement action and order to show cause issued pursuant to this section to the South Dakota Department of Water and Natural Resources upon request.

§ 941.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties*, shall apply when civil penalties are assessed for violations on surface

30 CFR Ch. VII (7–1–17 Edition)

coal mining and reclamation operations.

§ 941.846 Individual civil penalties.

Part 846 of this chapter, *Individual Civil Penalties*, shall apply to the assessment of individual civil penalties under section 518(f) of the Act.

[53 FR 3676, Feb. 8, 1988]

§ 941.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

PART 942—TENNESSEE

Sec.

942.20 Approval of Tennessee reclamation plan for lands and waters affected by past coal mining.

942.25 Approval of Tennessee abandoned mine land reclamation plan amendments.

942.700 Tennessee Federal program.

942.701 General.

942.702 Exemption for coal extraction incidental to the extraction of other minerals.

942.707 Exemption for coal extraction incidental to government-financed highway or other construction.

942.761 Areas designated unsuitable for surface coal mining by act of Congress.

942.762 Criteria for designating areas as unsuitable for surface coal mining operations.

942.764 Process for designating areas unsuitable for surface coal mining operations.

942.772 Requirements for coal exploration.

942.773 Requirements for permits and permit processing.

942.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

942.775 Administrative and judicial review of decisions.

942.777 General content requirements for permit applications.

942.778 Permit applications—Minimum requirements for legal, financial, compliance, and related information.

942.779 Surface mining permit applications—Minimum requirements for information on environmental resources.

942.780 Surface mining permit applications—Minimum requirements for reclamation and operation plan.

Surface Mining Reclamation and Enforcement, Interior

§ 942.701

- 942.783 Underground mining permit applications—Minimum requirements for information on environmental resources.
- 942.784 Underground mining permit applications—Minimum requirements for reclamation and operation plan.
- 942.785 Requirements for permits for special categories of mining.
- 942.795 Small operator assistance program.
- 942.800 Bond and insurance requirements for surface coal mining and reclamation operations.
- 942.815 Performance standards—Coal exploration.
- 942.816 Performance standards—Surface mining activities.
- 942.817 Performance standards—Underground mining activities.
- 942.819 Special performance standards—Auger mining.
- 942.823 Special performance standards—Operations on prime farmland.
- 942.824 Special performance standards—Mountaintop removal.
- 942.827 Special performance standards—Coal preparation plants not located within the permit area of a mine.
- 942.828 Special performance standards—In situ processing.
- 942.842 Federal inspections.
- 942.843 Federal enforcement.
- 942.845 Civil penalties.
- 942.846 Individual civil penalties.
- 942.955 Certification of blasters.

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

SOURCE: 49 FR 38892, Oct. 1, 1984, unless otherwise noted.

§ 942.20 Approval of Tennessee reclamation plan for lands and waters affected by past coal mining.

The Tennessee Reclamation Plan, as submitted on March 24, 1982, is approved. Copies of the approved program are available at:

Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, Suite 500, Knoxville, Tennessee 37902

State of Tennessee Department of Conservation, Division of Surface Mining and Reclamation, 305 West Springvale, Knoxville, Tennessee 37917

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 'L' Street, NW, Washington, DC 20240.

§ 942.25 Approval of Tennessee abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of publication of final rule	Citation/Description of approved provisions
April 6, 2011	February 12, 2013	Revised AML Plan. TCA Section 59-8-324(m).

[78 FR 9807, Feb. 12, 2013]

§ 942.700 Tennessee Federal program.

(a) This part contains all rules that are applicable to surface coal mining operations in Tennessee which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) Certain of the rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a cross-referenced rule is in the permanent program rule cited under the relevant section of this part.

(c) This part applies to all surface coal mining operations in Tennessee conducted on non-Federal and non-In-

dian lands. To the extent required by part 740 of this chapter, this part also applies to operations on Federal lands in Tennessee.

(d) The information collection requirements contained in this part have been approved by the office of Management and Budget under 44 U.S.C. 3507 and assigned the following clearance numbers: 1029-0007, 1029-0009, 1029-0032, 1029-0033, 1029-0034, 1029-0035, 1029-0036, 1029-0038, 1029-0039, 1029-0040, 1029-0041, 1029-0043, 1029-0047, 1029-0048, 1029-0049, 1029-0080.

§ 942.701 General.

(a)(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section,

§ 942.702

§§ 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and part 701 of this chapter shall apply to coal exploration and surface coal mining and reclamation operations.

(2) The definition of *support facilities* in § 701.5 of this chapter shall not apply to surface coal mining and reclamation operations.

(3) The definitions of *surface coal mining operations* in § 700.5, and *coal preparation or coal processing* and *coal preparation plant* in § 701.5 of this chapter shall include facilities which leach, chemically process, or physically process coal.

(b) Surface coal mining and reclamation operations in Tennessee which do not have a permanent program permit issued by the State of Tennessee prior to the effective date of this program, but which filed a permit application on a timely basis and were allowed to operate under the Tennessee State program, may continue to operate until the Office issues or denies a permit if they: (1) Comply with Subchapter B of this chapter until issuance or denial of a permit under this program; (2) authorize transfer to OSM of any permit application pending with the State regulatory authority; and (3) provide to the Office on a timely basis any requested additional information necessary to make a complete permit application.

(c) Persons engaged in underground mining activities which do not have and did not apply for a permanent program permit from the State of Tennessee prior to the effective date of this program, but which were allowed to operate under the Tennessee State program, may continue to operate beyond eight months after the effective date of this program if they: (1) Within two months of the effective date of this program apply to OSM for a permit; (2) comply with Subchapter B of this chapter until issuance or denial of a permit under this program; and (3) provide to the Office on a timely basis any requested additional information necessary to make a complete permit application.

(d) Persons operating facilities which leach, chemically process, or physically process coal which do not have a permanent program permit from the State of Tennessee prior to the effective

30 CFR Ch. VII (7–1–17 Edition)

date of this program, may continue to operate beyond eight months after the effective date of this program if they: (1) Within two months of the effective date of this program apply to OSM for a permit; (2) comply with Subchapter B of this chapter until issuance or denial of a permit under this program; and (3) provide to the Office on a timely basis any requested additional information necessary to make a complete permit application.

(e) Records required by § 700.14 of this chapter to be made available locally to the public shall be retained at OSM's Knoxville Field Office.

§ 942.702 Exemption for coal extraction incidental to the extraction of other minerals.

Part 702 of this chapter, *Exemption for Coal Extraction Incidental to the Extraction of Other Minerals*, shall apply to any person who conducts coal extraction incidental to the extraction of other minerals for purposes of commercial use or sale.

[54 FR 52123, Dec. 20, 1989]

§ 942.707 Exemption for coal extraction incident to government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§ 942.761 Areas designated unsuitable for surface coal mining by act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply to surface coal mining and reclamation operations.

§ 942.762 Criteria for designating areas as unsuitable for surface coal mining operations.

(a) Part 762 of this chapter, *Criteria for Designating Areas as Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mining and reclamation operations.

(b) In addition to the lands defined as fragile lands in § 762.5 of this chapter, the Office in evaluating any petition to

designate lands as unsuitable or to terminate such designation will consider lands included on the Tennessee Natural Areas Registry under Tennessee Code Annotated (TCA) section 11-14-112, Natural Areas designated by the Tennessee General Assembly under TCA 11-14-108, areas adjoining Tennessee Scenic Rivers designated under TCA 11-13-101, and Scenic Trails designated under TCA 11-11-101.

§ 942.764 Process for designating areas unsuitable for surface coal mining operations.

(a) Part 764 of this chapter, *State Process for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mining and reclamation operations.

(b) The Secretary shall notify the Tennessee Department of Health and Environment of any area designated unsuitable or for which such designation has been requested or terminated.

(c) Unsuitability designations made under the Tennessee State program shall remain valid unless and until terminated.

§ 942.772 Requirements for coal exploration.

(a) Part 772 of this chapter, *Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, the Office shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such reviews, setting forth the reasons and the additional time that is needed.

[53 FR 52950, Dec. 29, 1988]

§ 942.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, *Requirements for Permits and Permit Processing*, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 942.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.6 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(6) Adequacy of information to allow the Office to comply with the National Environmental Policy Act, 42 U.S.C. 4322, shall be considered in the determination of a complete application. The Office may require specific additional information from the applicant as any environmental review progresses when such specific information is needed. Failure to submit the additional information by the date(s) requested could result in disapproval of the application.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) *Review of Tennessee State program permits.* In lieu of the provisions of § 773.5(d)(2) of this chapter, the following shall apply:

(1) Beginning on the effective date of this program, the Office will review all permanent program permits issued by the State of Tennessee.

(2) If the Office determines that any State permit was granted contrary to the provisions of the Act, the Office will: (i) Notify the permittee in writing and state the reasons for its determination; (ii) provide the permittee a reasonable time within which to resubmit the permit application in whole or in part, as appropriate; (iii) provide the permittee a reasonable time within which to conform ongoing surface coal mining and reclamation operations to the requirements of this part; and (iv) provide the permittee with the opportunity for a non-adjudicatory hearing to contest the determination by the Office.

(3) If the permittee fails to resubmit the permit application or conform the ongoing surface coal mining and reclamation operations to the requirements of this part within the time specified, the Office may suspend or revoke the permit.

(4) The Office's suspension or revocation of a permit under paragraph (d)(3) of this section shall be subject to administrative and judicial review in accordance with the provisions of part 775 of this chapter.

[49 FR 38892, Oct. 1, 1984, as amended at 65 FR 79672, Dec. 19, 2000]

§ 942.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, *Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights*, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved mining or reclamation plan will be subject to review and approval by the Office.

(c) A significant revision to the mining or reclamation plan will be subject to the permit application information requirements and procedures of Subchapter G, including notice, public participation, and notice of decision requirements of § 773.6, 773.19(b)(1) and (3), and 778.21, prior to approval and implementation. The Office will consider any proposed revision to be significant if it:

(1) Will result in adverse impacts beyond those previously considered, affecting cultural resources listed on, or eligible to be listed on, the National Register of Historic Places;

(2) Involves changes to the blasting plan that will be likely to cause adverse impacts beyond those previously considered, to persons or property outside of the permit area;

(3) Will result in adverse impacts beyond those previously considered, affecting a water supply to which the requirements of 30 CFR 816.41(h) apply;

(4) Will cause a new or updated probable hydrologic consequences determination or cumulative hydrologic impact analysis to be required under 30 CFR 780.21(f)(4) or 780.21(g)(2) as a result of an increase in impacts;

(5) Requires a change in the identification, disturbance, or handling of toxic- or acid-forming materials different from those previously considered, where the changes have the potential for causing additional impacts not previously considered;

(6) Will result in adverse impacts on fish, wildlife and related environmental values beyond those previously considered;

(7) Includes the proposed addition of a coal processing facility, or any permanent support facility, where the addition of the facility will cause impacts not previously considered, except that the addition of a temporary coal processing facility used exclusively for crushing and screening need not be considered a significant revision; or

(8) Involves a change in the postmining land use to a residential, industrial/commercial, recreation or developed water resources land use, as defined in 30 CFR 701.5; except that a

change to a developed water resource not meeting the size criteria of § 77.216(a) of this title need not be considered a significant revision.

(d) In addition to the requirements of part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

[49 FR 38892, Oct. 1, 1984, as amended at 53 FR 49106, Dec. 5, 1988; 65 FR 79672, Dec. 19, 2000]

§ 942.775 Administrative and judicial review of decisions.

Part 775 of this chapter, *Administrative and Judicial Review of Decisions*, shall apply to all decisions on permits.

§ 942.777 General content requirements for permit applications.

Part 777 of this chapter, *General Content Requirements for Permit Applications*, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 942.778 Permit applications—Minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 942.779 Surface mining permit applications—Minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 942.780 Surface mining permit applications—Minimum requirements for reclamation and operation plan.

Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 942.783 Underground mining permit applications—Minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to conduct underground coal mining operations.

§ 942.784 Underground mining permit applications—Minimum requirements for reclamation and operation plan.

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application for a permit to conduct underground coal mining operations.

§ 942.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining*, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 942.795 Small operator assistance program.

Part 795 of this chapter, *Small Operator Assistance Program*, shall apply to any person making application for assistance under the small operator assistance program.

§ 942.800 Bond and insurance requirements for surface coal mining and reclamation operations.

(a) Except as provided in paragraphs (b) and (c) of this section, part 800 of this chapter, *Bond and Insurance Requirements for Surface Coal Mining*

and Reclamation Operations Under Regulatory Programs, shall apply to any person conducting surface mining and reclamation operations.

(b)(1) The Office shall review the adequacy of the bonds for those operators who posted reclamation bonds with the State of Tennessee under its permanent regulatory program prior to the effective date of this program, who gave the State collateral to guarantee reclamation, or who was required to take either of these actions.

(2) Where the Office determines that a bond amount is inadequate it shall notify the operator that additional bond is required. The operator shall post the required bond or collateral in the amount and within the time required by the Office. All bonds shall be made payable to "The United States or the State of Tennessee."

(3) Not later than 30 days after the effective date of this program each permanent program permittee shall either:

(i) Post an acceptable new bond in the required amount made payable to "The United States or The State of Tennessee" or

(ii) Provide an executed assignment of the required acceptable bond made payable to "The United States or The State of Tennessee."

(c) *Special consideration for sites with long-term postmining pollutional discharges.* With the approval of the Office, the permittee may establish a trust fund, annuity or both to guarantee treatment of long-term postmining pollutional discharges in lieu of posting one of the bond forms listed in § 800.12 of this chapter for that purpose. The trust fund or annuity will be subject to the following conditions:

(1) The Office will determine the amount of the trust fund or annuity, which must be adequate to meet all anticipated treatment needs, including both capital and operational expenses.

(2) The trust fund or annuity must be in a form approved by the Office and contain all terms and conditions required by the Office.

(3) The trust fund or annuity must provide that the United States or the State of Tennessee is irrevocably established as the beneficiary of the

trust fund or of the proceeds from the annuity.

(4) The Office will specify the investment objectives of the trust fund or annuity.

(5) Termination of the trust fund or annuity may occur only as specified by the Office upon a determination that no further treatment or other reclamation measures are necessary, that a replacement bond or another financial instrument has been posted, or that the administration of the trust fund or annuity in accordance with its purpose requires termination.

(6) Release of money from the trust fund or annuity may be made only upon written authorization of the Office or according to a schedule established in the agreement accompanying the trust fund or annuity.

(7) A financial institution or company serving as a trustee or issuing an annuity must be one of the following:

(i) A bank or trust company chartered by the Tennessee Department of Financial Institutions;

(ii) A national bank chartered by the Office of the Comptroller of the Currency;

(iii) An operating subsidiary of a national bank chartered by the Office of the Comptroller of the Currency;

(iv) An insurance company licensed or authorized to do business in Tennessee by the Tennessee Department of Commerce and Insurance or designated by the Commissioner of that Department as an eligible surplus lines insurer; or

(v) Any other financial institution or company with trust powers and with offices located in Tennessee, provided that the institution's or company's activities are examined or regulated by a State or Federal agency.

(8) Trust funds and annuities, as described in this paragraph, must be established in a manner that guarantees that sufficient moneys will be available to pay for treatment of postmining pollutional discharges (including maintenance, renovation, and replacement of treatment and support facilities as needed), the reclamation of the sites upon which treatment facilities are located and areas used in support of those facilities.

(9) When a trust fund or annuity is in place and fully funded, the Office may approve release under §800.40(c)(3) of this chapter of conventional bonds posted for a permit or permit increment, provided that, apart from the pollutional discharge and associated treatment facilities, the area fully meets all applicable reclamation requirements and the trust fund or annuity is sufficient for treatment of pollutional discharges and reclamation of all areas involved in such treatment. The portion of the permit required for postmining water treatment must remain bonded. However, the trust fund or annuity may serve as that bond.

[49 FR 38892, Oct. 1, 1984, as amended at 72 FR 9636, Mar. 2, 2007]

§942.815 Performance standards—Coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration*, shall apply to any person who conducts coal exploration.

§942.816 Performance standards—Surface mining activities.

(a) Except as modified by paragraphs (b) through (h) of this section, part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, shall apply to any person who conducts surface mining activities in the State of Tennessee.

(b) The permittee shall comply with the site-specific terms of the permit except that references to provisions of the Tennessee State program shall be read to require compliance with the relevant provisions of this part. Where the permit does not specify site-specific standards with which compliance is required, the permittee shall comply with the standards of this part.

(c) *Diversions.* In lieu of the requirements of §816.43(a)(4) of this chapter, diversion design shall incorporate the following requirements:

(1) Channel lining shall be designed using standard engineering practices to pass safely the design velocities. Riprap shall comply with the requirement of §816.71(f)(3) of this chapter, except for sand and gravel.

(2) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical

areas such as swales and curves. Where the area protected is a critical area as determined by the Office, the design freeboard may be increased.

(3) Energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(4) Excess excavated material not utilized in diversion channel geometry or regrading of the channel shall be disposed of in accordance with §§816.71 through 816.74 of this chapter.

(d) *Hydrologic Balance: Siltation Structures.* In lieu of the requirements of §816.46(c)(1)(iii)(A) of this chapter, sedimentation ponds shall provide a storage volume of no less than 0.2 acre feet per disturbed acre draining into the basin. The Office may approve lesser sediment storage volumes equal to the sediment calculated to enter the pond between planned cleanout intervals upon submission and approval of a plan for removing sedimentation from the pond which includes a description of the equipment to be used. The minimum sediment storage volume shall be equal to 0.1 acre feet per disturbed acre.

(e) *Backfilling and grading: General requirements.* In addition to the requirements of §816.102 of this chapter, backfilling and grading shall proceed in accordance with the following timing requirements:

(1) *Contour mining.* Rough backfilling and grading shall follow coal removal by not more than 60 days or 1,500 linear feet.

(2) *Area mining.* Rough backfilling and grading shall be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge.

(3) The Office may grant additional time for rough backfilling and grading if the permittee can demonstrate, through the detailed written analysis under §780.18(b)(3) of this chapter, that additional time is necessary.

(f) In lieu of the requirements of §816.116 (b)(1) through (b)(3) of this chapter, the following revegetation

success standards and sampling techniques shall be used by this Office.

(1) For areas developed for use as pasture or hay production, the ground cover shall be at least ninety percent (90%) and crop production shall be equal to or greater than the average county yield as stated by the Tennessee Crop Reporting Service for the county in which the permit area is located.

(2) For areas developed for use as cropland, crop production shall be equal to or greater than the average county yield as stated by the Tennessee Crop Reporting Service for the county in which the permit area is located. Adjustment for local yield variation within the county may be made for disease, pests, weather-induced variations, and differences in crop management practices.

(3) For areas developed for wildlife habitat, undeveloped land, recreation, or forestry, the stocking of woody plants must be at least equal to the rates specified in the approved reclamation plan. To minimize competition with woody plants, herbaceous ground cover should be limited to that necessary to control erosion and support the postmining land use. Seed mixes and seeding rates will be specified in the permit.

(i) Minimum stocking levels and planting arrangements shall be specified by the Office on the basis of local and regional conditions and after consultation with the State agencies responsible for the administration of forestry and wildlife programs.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of plant arrangement shall have utility for the approved postmining land use. At the time of bond release, such trees and shrubs shall be healthy, and at least eighty percent (80%) shall have been in place for at least three growing seasons. No trees and shrubs in place for less than two growing seasons shall be counted in determining stocking adequacy.

(iii) Vegetative ground cover shall not be less than that required to achieve the approved postmining land use.

(4) Bare areas shall not exceed one-sixteenth (1/16) acre in size and total

not more than ten percent (10%) of the area seeded, except for areas developed for wildlife habitat, undeveloped land, recreation, or forestry.

(5) Distribution of woody plants within the permit area shall be consistent with the post-mining land use.

(6) Sampling techniques for measuring woody plant stocking and ground cover shall be in accordance with techniques approved by the Office. Actual crop yields shall be used to determine production.

(g) *Roads.* In lieu of the requirements of section 816.150(c) of this chapter, roads shall be designed and constructed or reconstructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance.

(1) *Primary Roads.* (i) Except for existing roads and where lesser grades are necessary to control site-specific conditions, the overall grades shall not exceed 1v:10h (10 percent); the maximum pitch grade shall not exceed 1v:6.5h (15 percent); and there shall be not more than three hundred (300) feet of pitch grade exceeding ten (10) percent within any consecutive one thousand (1,000) feet of primary roads. In no case shall there be any pitch grade over fifteen (15) percent.

(ii) Culvert spacing shall not exceed one thousand (1,000) feet on grades of zero (0) to three (3) percent, eight hundred (800) feet on grades of three (3) to six (6) percent, five hundred (500) feet on grades of six (6) to ten (10) percent, and three hundred (300) feet on grades of ten (10) percent or greater. Culverts shall be installed at closer intervals than the maximum in this part if required by the Office as appropriate for the erosive properties of the soil or to accommodate flow from small intersecting drainages. Culverts may be constructed at greater intervals than the maximum indicated in this part if approved by the Office upon a finding that greater spacing will not increase erosion.

(iii) Culverts shall be covered by compacted fill to a minimum depth of one foot.

(2) *Ancillary Roads.* (i) Field design methods may be utilized for ancillary roads.

(ii) Where lesser grades are necessary to control site-specific conditions overall grade shall not exceed 1v:10h (10 percent). Pitch grade shall not exceed 1v:5h (20 percent). There shall not be more than one thousand (1,000) consecutive feet of maximum pitch grade.

(iii) Ancillary roads may meander so as to avoid large growths of vegetation and other natural obstructions.

(iv) Compaction on road embankments shall be only to the extent necessary to control erosion and maintain the road.

(v) Temporary culverts and bridges shall be sized to safely pass the one (1) year, six (6) hour precipitation event.

(h) *Use of Explosives.* In lieu of the requirements of §816.64(a)(2) of this chapter, all blasting shall be conducted between sunrise and sunset. Blasting may not be conducted at times different from those announced in the blasting schedule except in emergency situations where rain, lightning, or other atmospheric conditions, or operator or public safety requires unscheduled blasts. The Office may specify more restrictive time periods for blasting.

[49 FR 38892, Oct. 1, 1984, as amended at 52 FR 47717, Dec. 16, 1987; 55 FR 20600, May 18, 1990; 72 FR 9637, Mar. 2, 2007]

§942.817 Performance standards—Underground mining activities.

(a) Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities*, as modified by paragraphs (b)–(f) of this section, shall apply to any person who conducts underground mining activities in the State of Tennessee.

(b) The permittee shall comply with the site-specific terms of the permit except that references to provisions of the Tennessee State program shall be read to require compliance with the relevant provisions of this part. Where the permit does not specify site-specific standards with which compliance is required, the permittee shall comply with the standards of this part.

(c) *Diversions.* In lieu of the requirements of §817.43(a)(4) of this chapter diversion design shall incorporate the following requirements:

(1) Channel lining shall be designed using standards engineering practices to pass safely the design velocities.

Riprap shall comply with the requirements of §817.71(f)(3) of this chapter, except for sand and gravel.

(2) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the Office, the design freeboard may be increased.

(3) Energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(4) Excess excavated material not utilized in diversion channel geometry or regrading of the channel shall be disposed of in accordance with §§817.71 through 817.74 of this chapter.

(d) *Hydrologic balance: Siltation structures.* In lieu of the requirements of §817.46(c)(1)(ii)(A) of this chapter, sedimentation ponds shall provide a storage volume of no less than 0.2 acre feet per distributed acre draining into the basin. The Office may approve less sediment storage volumes equal to the sediment calculated to enter the pond between planned cleanout intervals upon submission and approval of a plan for removing sediment from the pond which includes a description of the equipment to be used. The minimum sediment storage volume shall be equal to 0.1 acre feet per disturbed acre.

(e) In lieu of the requirements of §817.116 (b)(1) through (b)(3) of this chapter, the following revegetation success standards and sampling techniques shall be used by this Office.

(1) For areas developed for use as pasture or hay production, the ground cover shall be at least ninety percent (90%) and crop production shall be equal to or greater than the average county yield as stated by the Tennessee Crop Reporting Service for the county in which the permit area is located.

(2) For areas developed for use as cropland, crop production shall be equal to or greater than the average county yield as stated by the Tennessee Crop Reporting Service for the county in which the permit area is located. Adjustment for local yield variation within the county may be made

for disease, pests, weather-induced variations, and differences in crop management practices.

(3) For areas developed for wildlife habitat, undeveloped land, recreation, or forestry, the stocking of woody plants must be at least equal to the rates specified in the approved reclamation plan. To minimize competition with woody plants, herbaceous ground cover should be limited to that necessary to control erosion and support the postmining land use. Seed mixes and seeding rates will be specified in the permit.

(i) Minimum stocking levels and planting arrangements shall be specified by the Office on the basis of local and regional conditions and after consultation with the State agencies responsible for the administration of forestry and wildlife programs.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of plant arrangement shall have utility for the approved postmining land use. At the time of bond release, such trees and shrubs shall be healthy, and at least eighty percent (80%) shall have been in place for at least three growing seasons. No trees and shrubs in place for less than two growing seasons shall be counted in determining stocking adequacy.

(iii) Vegetative ground cover shall not be less than that required to achieve the approved postmining land use.

(4) Bare areas shall not exceed one-sixteenth (1/16) acre in size and total not more than ten percent (10%) of the area seeded, except for areas developed for wildlife habitat, undeveloped land, recreation, or forestry.

(5) Distribution of woody plants within the permit area shall be consistent with the post-mining land use.

(6) Sampling techniques for measuring woody plant stocking and ground cover shall be in accordance with techniques approved by the Office. Actual crop yields shall be used to determine production.

(f) *Roads.* In lieu of the requirements of § 817.150(c) of this chapter, roads shall be designed and constructed or reconstructed in compliance with the following standards in order to control

subsequent erosion and disturbance of the hydrologic balance.

(1) *Primary roads.* (i) Except for existing roads and where lesser grades are necessary to control site-specific conditions, the overall grade shall not exceed 1v:10h (10 percent), the maximum pitch grade shall not exceed 1v:6.5h (15 percent), and there shall be not more than three hundred (300) feet of pitch grade exceeding ten (10) percent within any consecutive one thousand (1,000) feet of primary roads. In no case shall there be any pitch grade over fifteen (15) percent.

(ii) Culvert spacing shall not exceed one thousand (1,000) feet on grades of zero (0) to three (3) percent, eight hundred (800) feet on grades of three (3) to six (6) percent, and five hundred (500) feet on grades of six (6) to ten (10) percent, and three hundred (300) feet on grades of ten (10) percent or greater. Culverts shall be installed at closer intervals than the maximum in this part if required by the Office as appropriate for the erosive properties of the soil or to accommodate flow from small intersecting drainages. Culverts may be constructed at greater intervals than the maximum indicated in this part if approved by the Office upon a finding that greater spacing will not increase erosion.

(iii) Culverts shall be covered by compacted fill to a minimum depth of one foot.

(2) *Ancillary roads.* (i) Field design methods may be utilized for ancillary roads.

(ii) Where lesser grades are necessary to control site-specific condition, overall grade shall not exceed 1v:10h (10 percent). Pitch grade shall not exceed 1v:5h (20 percent). There shall not be more than one thousand (1,000) consecutive feet of maximum pitch grade.

(iii) Ancillary roads may meander so as to avoid large growths of vegetation and other natural obstructions.

(iv) Compaction on road embankments shall be only to the extent necessary to control erosion and maintain the road.

(v) Temporary culverts and bridges shall be sized to safely pass the one (1) year, six (6) hour precipitation event.

[49 FR 38892, Oct. 1, 1984, as amended at 52 FR 47717, Dec. 16, 1987; 72 FR 9637, Mar. 2, 2007]

Surface Mining Reclamation and Enforcement, Interior

§ 943.10

§ 942.819 Special performance standards—Auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining*, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 942.823 Special performance standards—Operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland*, shall apply to any person who conducts surface coal mining operations on prime farmland.

§ 942.824 Special performance standards—Mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal*, shall apply to any person who conducts surface coal mining and reclamation operations constituting mountaintop removal.

§ 942.827 Special performance standards—Coal preparation plants not located within the permit area of a mine.

Part 827 of this chapter, *Permanent Program Performance Standards—Coal Preparation Plants Not Located Within the Permit Area of a Mine*, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of a coal preparation plant not located within the permit area of a mine.

§ 942.828 Special performance standards—In situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, shall apply to any person who conducts surface coal mining and reclamation operations which include the in situ processing of coal.

§ 942.842 Federal inspections.

Part 842 of this chapter, *Federal Inspections*, shall apply to all exploration and surface coal mining and reclamation operations.

§ 942.843 Federal enforcement.

Part 843 of this chapter, *Federal Enforcement*, shall apply regarding enforcement action on coal exploration and surface coal mining and reclamation operations.

§ 942.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties*, shall apply to the assessment of civil penalties for violations on coal exploration and surface coal mining and reclamation operations.

§ 942.846 Individual civil penalties.

Part 846 of this chapter, *Individual Civil Penalties*, shall apply to the assessment of individual civil penalties under section 518(f) of the Act.

[53 FR 3676, Feb. 8, 1988]

§ 942.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

PART 943—TEXAS

Sec.

943.1 Scope.

943.10 State regulatory program approval.

943.15 Approval of Texas regulatory program amendments.

943.16 Required program amendments.

943.20 Approval of Texas abandoned mine land reclamation plan.

943.25 Approval of Texas abandoned mine land reclamation plan amendments.

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

§ 943.1 Scope.

This part contains all rules applicable only within Texas which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[45 FR 13008, Feb. 27, 1980]

§ 943.10 State regulatory program approval.

The Secretary approved the Texas regulatory program, as submitted on

§ 943.15

30 CFR Ch. VII (7–1–17 Edition)

July 20, 1979, and amended on November 13, 1979, and December 20, 1979, effective February 16, 1980. Copies of the approved program are available at:

(a) Surface Mining and Reclamation Division, Railroad Commission of Texas, Capitol Station, P.O. Box 12967, Austin, TX 78711.

(b) Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 East Skelly Drive, Suite 470, Tulsa, OK 74135–6548.

[64 FR 20168, Apr. 26, 1999]

§ 943.15 Approval of Texas regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
March 27, 1980	June 18, 1980, November 26, 1980.	TCMR 051.07.04.023, .070.
September 18, 1981	June 3, 1982	TCMR 05.07.01.313(a).
August 31, 1984	July 9, 1985	TCMR 051.07.04.008, .138, .184, .201, .340, .510, .620 through .625.
August 24, 1988	December 11, 1989	TCMR 806.309(j)(1)(A) through (H), (2)(A) through (D), (4)(A), (B), (C), (5)(A), (B), (6)(A) through (E), (7), (8).
June 24, 1991	February 19, 1992 ..	TCMR 806.309(j)(1)(H), (I), 806.309(j)(2), (3), (7), (8), (9).
December 23, 1991 ..	April 17, 1992	TCMR 816.394.
September 12, 1989	May 21, 1992	TCMR 701.008(53), 778.116(a) through (I), (n); 786.215(e)(2), .221(d), .225(h).
September 22, 1989	August 19, 1992	TCMR 700.002(b)(2), .003(22), .008(18), (56), (81), (85); 762.074(1), (2); 770.100(c), .101, .102(c); 771.107(d), .108; 776.111(a)(3)(A), (7), (b), (1); 779.125(b), .126(a), .133; 780.144(a), .145(b)(4), .151; 783.171(b), .172, .179; 784.187(b)(4), .191, .194(a), (e), (f), .195(a); 785.200(a), (b), (c), (f) through (i); 786.216(p); 788.230(a)(4), (5), (6); 788.232(c)(1), (d), (e); 795.237(b)(5), (c), (d), .238(d)(4), .243(a); 800.301(b); 808.317; 815.327(a), (f); 816.339(a), .344(a), .353(d), .359 through .362, .363(j), (i), (o), (p), .368(c), .369(a), .371(c)(3), .375(d), .377(b), .380(b), (c), .384(b)(2), .390(a); 817.509(a), .514(a), .531(j), (i), (o), (p), .547(b), (c), .551(b)(2), .562(c), .565(e); 819.600(c)(1); 840.672(b); 843.680(a), .682(f); 845.695(b)(2); 850.700, .701, .702(a) through (d), .703 through .710; recodification of the TCMR 700.001 through 845.698.
February 8, 1993	March 21, 1994	TCMR 778.116(l), (m); 786.215(e)(1), (2), (g); 788.225(e), (1)(A), (2), (3), (f), (1), (2), (g); 843.680(c).
May 24, 1994	March 27, 1995	TCMR 778.116(m); 786.215(e)(1), (f), .216(i) through (o), .225(f)(3), (4), (g), (1), (i) through (iv), (2), (h).
August 11, 1995	December 13, 1995	TCMR 806.309(j)(2)(C)(iv)(I)(A) through (C), (II)(A) through (C).
December 20, 1995 ..	April 8, 1996	TCMR 701.008(71); 780.154(a) through (c); 784.198(a) through (c); 816.400 through 403; 815.327(c); 817.569 through 572; 827.651(b).
August 30, 1995, September 18, 1995.	June 18, 1996	TSMCRA Article 5920–11, 6(b), 21(a), (c); TCMR 701.008(104); 778.116(m), .225(g)(1).
August 24, 1995	January 30, 1997 ...	Recodification of TSMCRA Article 5920–11, 1 through 38; 4 Ch. 134.001 through .188.

Surface Mining Reclamation and Enforcement, Interior

§ 943.15

Original amendment submission date	Date of final publication	Citation/description
May 13, 1993	March 26, 1997	TCMR 700.002(b)(4), (5), (f); .003(1), (3); 701.008(4), (5), (9), (10), (18), (19), (21), (24), (25), (26), (34), (41), (55), (67), (68), (69), (70), (76), (82), (84), (95), (102), (107); 705.010(a)(3), (c); .011(2), (3), (5), (9); .013(a); .014; .015(a); .016(a); 707.022; 709.025; .026; .027; .028; .029; .030; .031; .032; .033; .034; 760.069; .070(5), (6), (7), (9), (11); 761.071 (a) through (e); .072 (a) through (h); .073; 762.074(3), (4), (5); .075(a), (b); .076(a); .077; 764.078; .079(a), (b), (c); .080(a)(1), (2), (4) through (7), (b), (c), (d); .081(a), (b); .082(a)(3), (b), (c), (d); .083(a), (b); .084(a), (b); .085(b); 770.101; 776.111(a)(e)(E); 779.126(d); .127(a), (b), (c); .128(a), (3), (4), (b); .129, (a), (b), (1), (3); 780.141(g), (h); .142(b)(11), (c), (d); .146 (a) through (e); .148(a)(3)(i), (c)(1), (2), (3); 783.172(d); .173 (a) through (e); .174(a), (3), (4), (b); .175, (a), (b), (1), (3); 784.188 (a) through (f); .190 (a)(3)(i), (c)(1), (2), (3); .197(c), (d); 785.201(b), (c), (d)(2); .202(b)(1)(i), (2), (3); 786.210 (a) through (e); .216(c), (e); .220(d); 800.301(b)(2); .311(d); 807.312(a), (b), (c); .313(a)(2); 815.327(a); .328(a), (b); 816.330(f); .340; .341; .342; .344; .347; .348; .349; .350; .355; .357(a), (c), (d); .358 (a) through (d); .360(a)(2), (A), (B), (f)(1)(A), (g)(2), (h)(1), (2), (3), (i); .362(d); .376 (a) through (d); .377, .378(a), (c); .380(e)(10); .385(b)(3); .390; .395; .396; 817.500(f); .509(a); .510; .511; .512; .514; .517; .519; .522(f); .524; .526(b), (c), (d); .527 (a) through (d); .528 (a) through (i); .529; .530, (c), (d), (e), (g), (j), (s), (t); .535(c); .538(c)(3); .543 (a) through (d); .544; .545(a), (c); .547(e)(10); .552(b)(3); .555; .560; .561; 823.620(a), (b), (c); .621(a)(1), (2), (3), (b); .622(a), (b), (c); .623; .624 (a) through (g); .625(a), (b); 843.681(c), (f) through (j); .682(a)(1); .695(b)(1); 846.001; .002; .003; .004; .005; 850.703(b)(1)(A); .704(b); .706(a).
October 21, 1996	April 29, 1997	TCMR 701.008(77); 779.130; 816.352.
December 1, 1997	March 3, 1998	TSCMRA 134.004(3); 134.005(a)(2); 134.008; 134.014(b); 134.022(c); 134.056(2); 134.068; 134.069(a)(2) and (b); 134.084(a) through (d); 134.092(a)(2); 134.163(1). Vernon's Texas Civil Statutes Article 5920–11, Sections 6(b), 21(c), 33(e) and 21a.
January 23, 1998	April 22, 1998	Recodification; 16 TAC 12.1 through 12.710.
December 1, 1997	June 8, 1998	16 TAC 12.3; 12.201(d)(5); 12.237(2), (2)(B) and (C); 12.243(a), (a)(4) and (5); 12.309(1); 12.312(a) and (b); 12.313(a), (b), (d), and (f); 12.387; 12.388.
January 28, 1999	May 3, 1999	Sections 12.143(a)(2), (b)(1) and (b)(2); .145(b)(3); .187(b)(3); .199(2); .379; .389; .546; .554; and .651(9) and (13).
May 13, 1999	August 12, 1999	Procedures and Standards for Determining Revegetation Success on Surface-Mined Lands in Texas; Normal Husbandry Practices for Surface-Mined Lands in Texas.
August 24, 2000	November 24, 2000	TAC § 12.80(a)(1), (3)–(7); (b)(2)–(3); § 12.385(a); (e)–(e)(2)(D); § 12.552(a); (e)–(e)(2)(D); and § 12.651(13).
July 25, 2001	November 6, 2002 ..	Sections 12.3(169) definition of “surface coal mining operations which exist on the date of enactment [removed] and 12.3(187) definition of “valid existing rights;” 12.71–.74; 12.77; 12.111(1)(H); 12.112(b)(4); 12.113(a); 12.118(a) and (c); 12.151(a)(2); 12.158(a) and (c); 12.191(a)(2); 12.207(a)(5); and 12.216(4)(A).
February 12, 2003	July 7, 2003	16 TAC § 1.130.
July 10, 2003	November 5, 2003 ..	TAC 12.108(b).
June 4, 2004	September 14, 2004	16 TAC 12.108(b).
October 6, 2005	February 17, 2006 ..	TSCMRA Section 134.055; and 16 TAC 12.108(a) and (b).
July 26, 2005	June 14, 2006	Procedures and Standards for Determining Revegetation Success on Surface-Mined Lands in Texas—Table of Contents; Section V.D.1., D.2.; appendix B; Attachment 2; Normal Husbandry Practices for Surface-Mined Lands in Texas—Table of Contents; Section IV.E.
February 14, 2007	November 19, 2007	TSCMRA 134.174(b); TAC 12.147(a) through (a)(3); 12.309(g)(2); 12.337(a) and (b) through (b)(3); 12.395(a)(1), (b)(1), (b)(3), (b)(3)(A) and (B), and (c)(3) and (4); 12.681(a), (b) through (b)(3), (c), (e), (f), (g), and (h); 12.682(a) and (b); 12.688; 12.689(b) through (b)(3); and 12.693.
October 2, 2007	March 17, 2008	16 TAC 12.108(b)(1) through (b)(3).
January 5, 2010	December 27, 2010	16 TAC 12.108(b)(1) through (b)(3).
May 18, 2011, May 26, 2011, and June 3, 2011.	February 14, 2012 ..	16 TAC 12.100(a); 12.225(a)(3); 12.311(b); TSCMRA 134.004 (7-a) and (15-a); 134.069(c); 134.080(a) and (b); 134.085; 134.092(20); 134.104(1) and (2); and 134.105(a).
February 9, 2012	September 19, 2012	16 TAC 12.108(b)(1)–(3).
August 9, 2012	February 19, 2013 ..	16 TAC Administrative Code Sections: 12.3; 12.100(c); 12.116; 12.155; 12.156; 12.206; 12.215; 12.216; 12.221; 12.225; 12.226; 12.228; 12.232; 12.233; 12.234; 12.235; 12.239; 12.395; 12.560; 12.676; and 12.677.
December 19, 2013 ..	August 6, 2014	16 TAC 12.108(b)(1)–(3).

[62 FR 9954, Mar. 5, 1997]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 943.15, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 943.16

30 CFR Ch. VII (7–1–17 Edition)

§ 943.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), Texas is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Texas' established administrative or legislative procedures.

(a)–(j) [Reserved]

[51 FR 28555, Aug. 8, 1986, as amended at 57 FR 21607, May 21, 1992; 57 FR 37458, Aug. 19, 1992; 59 FR 13209, Mar. 21, 1994; 60 FR 15680, Mar. 27, 1995; 61 FR 30808, June 18, 1996; 62 FR 14326, Mar. 26, 1997]

§ 943.20 Approval of Texas abandoned mine land reclamation plan.

The Secretary approved the Texas abandoned mine land reclamation plan, as submitted on April 24, 1980, and amended on May 30, 1980, June 2, 1980, and June 4, 1980, effective June 23, 1980.

Original amendment submission date	Date of final publication	Citation/description
May 11 and 26, 1989	August 19, 1992	Certification of the completion of reclamation on all lands adversely impacted by past coal mining.
August 24, 1997	January 30, 1997 ...	Recodification of TSMCRA Article 5920–11, § 3(7); 4 Ch. 134.142.
December 1, 1997	March 3, 1998	TSCMRA 134.142.
January 23, 1998	April 22, 1998	Recodification; 16 TAC 12.800 through 12.817.
December 1, 1997	November 25, 1998	12.800 through .814; .815(d); .816; .818 through .823.
October 11, 2006	February 6, 2007 ...	Emergency response reclamation program; AML Plan sections 884.13(c)(6), (d)(2) and (d)(3).
February 14, 2007	November 19, 2007	TSCMRA 134.150(c) and TAC 12.816(c)

[62 FR 9954, Mar. 5, 1997, as amended at 63 FR 10320, Mar. 3, 1998; 63 FR 19823, Apr. 22, 1998; 63 FR 65070, Nov. 25, 1998; 72 FR 5333, Feb. 6, 2007; 72 FR 64946, Nov. 19, 2007]

PART 944—UTAH

Sec.

944.1 Scope.

944.10 State regulatory program approval.

944.15 Approval of Utah regulatory program amendments.

944.16 [Reserved]

944.20 Approval of Utah abandoned mine plan.

944.25 Approval of Utah abandoned mine land reclamation plan amendments.

944.30 State-Federal Cooperative Agreement.

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

Copies of the approved plan are available at:

(a) Surface Mining and Reclamation Division, Railroad Commission of Texas, Capitol Station, P.O. Box 12967, Austin, TX 78711.

(b) Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 East Skelly Drive, Suite 470, Tulsa, OK 74135–6548.

[64 FR 20168, Apr. 26, 1999]

§ 943.25 Approval of Texas abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

§ 944.1 Scope.

This part contains all rules applicable only within Utah that have been adopted under the Surface Mining and Reclamation Act of 1977.

[46 FR 5913, Jan. 21, 1981]

§ 944.10 State regulatory program approval.

The Utah State program as submitted on March 3, 1980, and as amended and clarified on June 16 and July 24, 1980, and resubmitted on December 23, 1980, was conditionally approved effective January 21, 1981. Copies of the approved program, together with copies

Surface Mining Reclamation and Enforcement, Interior

§ 944.15

of the letter of the Division of Oil, Gas and Mining agreeing to the conditions in section 944.11, are available at:

(a) Division of Oil, Gas and Mining, Department of Natural Resources, 3 Triad Center, suite 350, 355 West North Temple, Salt Lake City, UT 84180-1203.

(b) Office of Surface Mining Reclamation and Enforcement, Western Regional Coordinating Center, Technical Library, 1999 Broadway, Suite 3320, Denver, Colorado 80202-5733.

[59 FR 17933, Apr. 15, 1994, as amended at 60 FR 54593, Oct. 25, 1995]

§ 944.15 Approval of Utah regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
June 29, 1981	June 22, 1982	UCA 40-10-10, -11, -16, -17, -18, -21, -22, -24; UMC 784.20(b)(3)(v); 817.124(b).
May 21, 1981	September 27, 1982	SMC/UMC 845; Vegetation Information Guidelines.
August 26, 1982	December 13, 1982	SMC 816.53(c); UMC 817.42(a)(3)(i), (ii), .53(c), .101(b)(8), (c).
December 3, 1982	March 7, 1983	SMC/UMC 785.19(c)(3)(ii); SMC 816.72(b), (c); UMC 817.72(b), (c).
February 6, 1984	August 29, 1984	SMC/UMC 816/817.42; 840.11; 843.12.
August 13, 1984	December 3, 1985 ..	SMC/UMC 700.1, .5—definition for "affected area;" 800, .5, .11 through .17, .20 through .23, .30, .40, .50, .60; 805 through 808; 843.11, .15, .16; 845.12, .13, .17 through .20.
September 25, 1985	December 18, 1985	SMC/UMC 843.13.
October 9, 1985	January 16, 1986 ...	SMC/UMC 700.5—definition for "incidental boundary change;" 771.21(b)(3); 778.12.
January 21, 1985	June 10, 1986	Definitions for "adjacent area," "disturbed area," "permit area," "mine plan area;" SMC 843.11, .15, .16, .20; 845.12, .13, .17, .18, .19.
March 3, 1986	July 28, 1986	SMC/UMC 816/817.61; 850; Memorandum of Agreement between the Board and Division of Oil, Gas, and Mining and the Utah Industrial Commission; UCA 40-2-14 through -16; Utah Industrial Commission's General Safety Orders, Coal Mining, §§ 51 through 53.
September 3, 1986 ...	January 28, 1987 ...	SMC/UMC 700.5—definitions for "coal processing," "coal processing plant".
February 17, 1987	March 28, 1988	SMC/UMC 845.15(b)(1)(ii), (2).
September 24, 1987	August 18, 1988	SMC/UMC 785.19(e)(2).
August 11, 1989	April 12, 1990	Utah Admin. R. 614-100 through -105, -200 through -203, -300; -301, -100 through -800; -302, -100 through -300; -303, -100 through -300; -400, -100 through -300; -401, -100 through -900; -402, -100 through -500.
November 13, 1989 ..	August 13, 1990	UCA 40-10-10, -14, -20, -21, -25, -30, -31.
October 10, 1990	January 29, 1991 ...	UCA 40-10-6.5(1), (2), (3); 6.6(1), (2).
July 3, 1990	August 23, 1991	Utah Admin. R. 614-100-200, definitions of "fragile lands," "owned or controlled," "owns or controls," "unwarranted failure to comply," "valid existing rights;" -415; 614-103-220 through -222; 614-105-443; 614-201-400 through -432, .100, .300, -433, -434; 614-300-112.500, -132.100, .120, .200, .300, -148, .100, .200, -160, -161, -162.100 through .300, -163, .100 through .400, -164, .100 through .300, -170; 614-301-112.200 through .420, .900, -113.300 through .310, .400, -352, -356.110 and Vegetation Information.
March 1, 1991	November 22, 1991	Utah Admin. R. 614-100-200, definition for "public road".
December 30, 1991 ..	May 11, 1992	Utah Admin. R. 645-100-200 definitions for "cumulative impact area," "cumulative measurement period," "cumulative production," "cumulative revenue," "mining area," "other minerals;" -414; 645-106-100, -200 through -262, -300 through -326, -400 through -430, -500 through -522, -600 through -616, -700 through -724, -800 through -843, -900 through -926; 645-300-211.
July 26, 1991	August 19, 1992	UCA 40-10-5(1), (b), (2), -6.6(1), (2), (3).
November 20, 1991 ..	September 11, 1992	Utah Admin. R. 645-100-200, -400 through -452; 645-103-220; 645-301-111.400, -356.231, -425, -512.140, -528.320, -553.800, -731.750, -742.224; 645-300-110, Guideline for Examining and Evaluating Violations, Penalties, and Fees; Vegetation Information Guidelines.
November 5, 1992	March 30, 1993	Utah Admin. R. 614-100-452.
April 30, 1992	September 17, 1993	Utah Admin. R. 645-100-200, definition for "highwall;" 645-301-553, .100, .130, .510, .520, .521, .523, .620, .630 through .633, .652 through .655.
September 17, 1992	April 7, 1994	Utah Admin. R. 645-100-200, definitions for "affected area," "public road," "road".
March 7, 1994	May 24, 1994	Utah Admin. R. 645-303-224.400 through .600.
August 2, 1993	July 11, 1994	Utah Admin. R. 641-112; R645-100-500; 645-103-441; 645-203-200; 645-301-524.661, -731.760; 645-302-314.110, -323.310.

Original amendment submission date	Date of final publication	Citation/description
January 27, 1994	September 27, 1994	Utah Admin. R. 645–200–121, –122, –123, –220, –230; 645–201–100 through –130, –200 through –220, –223, –310, –323.100, –342.200; 645–202–100, –232, –235.
March 7, 1994	September 27, 1994	UCA 40–10–14(3), 20(1), (2), (3), (5), (6), (8).
September 9, 1994 ...	March 27, 1995	Utah Admin. R. 645–203–200.
February 10, 1995	May 2, 1995	Utah Admin. R. 645–401–120, –410, –430, –721, –723.100, –742, –810, –830, –910; 645–402–120, –420, –422.
November 12, 1993 ..	May 30, 1995	Utah Admin. R. 645–100–200, definition for “continuously mined areas;” 645–301–553.100 through .130, .150, .200 through .230, .252, .300, .500 through .540, .600 through .612, .650, .650.100 through .500.
April 14, 1994	July 19, 1995	UCA 40–10–2(1) through (6), –3(1) through (22), –4, –6.5(1), (2), (3), .7, –7(1), –8(1), (3), –10(2), –11(1), (2)(a) through (d), (e)(ii), (f)(i), (iii), (3), (4), (a), (b), (5)(a) through (c), –12(3), –13(2)(b), –14(2), (3), (6), –15(1), –16(1), (3), (6)(a) through (d), –17(2)(g), (j)(i)(B), (ii)(A), (B), (2)(m), (o), (o)(i), (iv), (v), (p)(f)(F), (ii), (iii), (t)(i), (ii), (2)(v), (viii), (3)(b), (ii), (c), (4)(a), (d), (5), –18(1), (2)(i)(B), (j), (4)(a) through (c), (5), –19(1), (2)(a), –20(2)(e)(ii), –21(1)(a)(i), (ii), (2)(a)(ii), (5), –22(1)(c), (d), (2)(a)(i), (b), (3)(a), (b), (d), (e), (f), –24(1)(c)(i)(A), (B), (C), (D), (ii), (e)(i), (ii), (iii), (2)(a), (b), –30; Utah Admin. R. 641–100–100.
February 6, 1995	September 14, 1995	Utah Admin. R. 645–301–357.300 through .365, Vegetation Information Guidelines.
November 30, 1995, December 4, 1995, March 11, 1996.	September 4, 1996	Utah Admin. R. 645–100–500; 645–301–553.110, .120.
May 27, 1997	August 4, 1997	Definition of “adjudicative proceeding” at UCA 40–10–3(1), (a), (b); 40–10–11 (3), (5)(a); 40–10–13(2)(b); 40–10–17 (2) (j) (ii) (B), (p) (ii), (iii), (3) (a), (c), (4), (a), (d); 40–10–18 (1), (2), (3)(a), (i) through (iii), (b), (4), (5), (6) (a), (b), (i) through (iii), (7), (8), (a), (b), (9), (10), (11), (a), (i) through (iii), (b), (c), (12)(a), (i) through (iii), (b), (13), (14), (15)(a), (b) (i) through (iv), (c), (d), (e); 40–10–18.1, .2, 40–10–20(2)(e)(ii).
June 8, 1998	November 16, 1998	UCA 40–10–11(1)(a)(i), (a)(ii), (1)(b), (1)(c), (c)(i), and (c)(ii); (2), (2)(a), (2)(b), (2)(c), (2)(d), (2)(d)(i), (d)(ii), (2)(e), (2)(e)(i), (e)(i)(A), (e)(i)(B), (e)(ii), (2)(f), (2)(f)(i), (f)(i)(A), (f)(i)(B), and (f)(iii); (3)(a)(i), (a)(ii), (3)(b), and (3)(c); (4)(a)(i), (a)(ii), and (4)(b); and (5)(a).
December 23, 1999 ..	April 24, 2001	Definitions of “abandoned site,” “other treatment facilities,” “previously mined area,” “qualified laboratory,” and “significant recreational, timber, economic, or other values incompatible with coal mining and reclamation operations” at Utah Admin. R. 645–100–200; Utah Admin. R. 645–301–514.320 and –514.330; –301–531; –301–533.100 and –533.110; –301–533.200 and 210; –301–533–610 through 614; –301–533.620; –301–533.700 through 714; –301–553.700; –301–553.800; –301–733.100; –301–733.210; –301–742.200; –301–742.224; –301–742.225, –742.225.1 and –742.225.2; –301–743.100; –301–743.120; –301–743.131.3 through 131.6; –301–880.130; –302–316.500; R. 645–400.132; and R. 645–401–810.
March 20, 1998	December 4, 2001 ..	Definitions of “material damage,” “non-commercial building,” “occupied residential dwelling and structures related thereto,” “replacement of water supply,” and “State-appropriated water supply” at Utah Admin. R. 645–100–200; 645–301–525 through 525.170; 645–301–525.200 through 525.240; 645–301–525.300 through 525.313; 645–301–525.400 through 525.490; 645–301–525.500 through 525.550; 545–301–525.600; 645–301–525.700; 645–301–724.600; 645–301–728.340; 645–301–728.350; and 645–301–731.530.
March 28, 2002	November 6, 2002 ..	Definition of “Water Supply,” “State-appropriated Water,” and “State-appropriated Water Supply” at Utah Admin. R. 645–100–200; Utah Admin. R. 645–105–310 through –314; R. 645–301–525.130 and –525.700; Utah Admin. R. 645–301–728.350; R. 645–301–860.110 through –860.112; R. 645–400–162; and R. 645–400–319, –322, and –381.
October 22, 2002	August 27, 2008	Utah Code Annotated 40–10–10(1), (2)(a)(i) through (vi), (2)(b)(i), (i)(A) and (i)(B), and (ii), (2)(c)(i), (c)(i)(A) through (C), and (2)(c)(iii), (3)(a), (b), and (c), and (4)(a) and (b). Decision deferred on UCA 40–10–10(2)(d) through (2)(d)(ii) and 40–10–10(5).
November 28, 2005 and February 16, 2006.	June 8, 2006	Utah Admin. R. 645–301–160, 645–301–512.100, 645–401–330, and 645–401–400.
August 31, 2007	August 12, 2008	Utah Code Annotated 40–10–10(2)(d), (5), 40–10–12(1)(e).
May 28, 2008	September 1, 2009	Utah Admin. R. 645–100–200 definition of intermittent stream; 645–301–131.300; 645–301–535.210; 645–301–535.223; 645–301–551; 645–301–631; 645–301–631.200; 645–301–731.610, 645–301–742.320; 645–301–742.321; 645–301–742.323, 645–301–742.324, 645–301–742.331, 645–301–742.412; 645–301–765.
May 19, 2009	December 7, 2009 ..	UCA § 40–10–11, 40–10–17/Deletion of repeal dates for remaining provisions.
August 9, 2010	February 12, 2013 ..	R645–100–200 Definition of Valid Existing Rights; R645–103–221; R645–103–223; R645–103–224; R645–103–225; R645–103–230 through –240; 645–201–328; 645–201–342; 645–300–133; 645–301–115; 645–301–411

Surface Mining Reclamation and Enforcement, Interior

§ 944.30

Original amendment submission date	Date of final publication	Citation/description
June 25, 2012	June 6, 2014	R643-874-160; -875-200; R645-100-200 (Definitions); R645-300-132 (et seq); -133.1000; -148.100; -161; -162 (et seq); 164 (et seq); -171 through -185.700; R645-301-111.400 through -112.420; -113.100 through -113.120; -113.300; -113.340 through -113.360; R645-302-240 through -242; -245.210; -245.300; -245.410 through -245.420; R645-303-310; R645-400-319; R645-403 (et seq).

[62 FR 9955, Mar. 5, 1997, as amended at 62 FR 41849, Aug. 4, 1997; 63 FR 63611, Nov. 16, 1998; 66 FR 20606, Apr. 24, 2001; 66 FR 62935, Dec. 4, 2001; 67 FR 67540, Nov. 6, 2002; 71 FR 33254, June 8, 2006; 73 FR 46807, Aug. 12, 2008; 73 FR 50545, Aug. 27, 2008; 74 FR 45120, Sept. 1, 2009; 74 FR 63990, Dec. 7, 2009; 78 FR 9811, Feb. 12, 2013; 79 FR 32650, June 6, 2014]

§ 944.16 [Reserved]

§ 944.20 Approval of Utah abandoned mine plan.

The Utah Abandoned Mine Plan, as submitted on February 9, 1983, and as subsequently revised, is approved effective June 3, 1983. Copies of the approved program are available at:

(a) Division of Oil, Gas and Mining, Department of Natural Resources, 3 Triad Center, Suite 350, 355 West North Temple, Salt Lake City, UT 84180-1203, Telephone: (801)538-5340.

(b) Office of Surface Mining Reclamation and Enforcement, Western Regional Coordinating Center, Technical

Library, 1999 Broadway, Suite 3320, Denver, Colorado 80202-5733.

[60 FR 33725, June 29, 1995, as amended at 60 FR 54593, Oct. 25, 1995]

§ 944.25 Approval of Utah abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
July 26, 1991	August 19, 1992	UCA 40-10-25(1), (2)(c), (e), (f), (3)(a), (b), (c), .1(1)(a), (b), (2)(a), (b), (c), (3)(a) through (d), .2(1), (2), -27(10)(b), -28.1(1) through (7).
March 7, 1994	September 27, 1994	UCA 40-10-28(1), (a)(i), (b), (2)(b), .1(6).
April 14, 1994	July 19, 1995	UCA 40-10-25(2)(d), (e), (3), (a), (b), (4), (5), (6), -27(5)(a), (12)(b), -28(1)(a)(ii), (2)(a).
May 27, 1997	August 4, 1997	UCA 40-10-25(6)(b).
August 2, 1995	February 22, 1999 ..	Utah Admin. R. 643-870-500; 643-874-100 and -110; 643-874-124 through -128; 643-874-130 through -132; 643-874-140 through -144; 643-874-150; 643-874-160; 643-875-120 through -200; 643-877-141; 643-879-141; 643-879-152.200, -153, and -154; 643-882-132; 643-884-150; and 643-886-232.240.

[62 FR 9956, Mar. 5, 1997, as amended at 62 FR 41850, Aug. 4, 1997; 64 FR 8517, Feb. 22, 1999]

§ 944.30 State-Federal Cooperative Agreement.

The Governor of the State of Utah (Governor) and the Secretary of the Department of the Interior (Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

ARTICLE I: INTRODUCTION, PURPOSES AND RESPONSIBLE AGENCIES

A. Authority: This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary of the Interior under 30 U.S.C. 1253, to elect to enter into an agreement for State regulation of surface coal mining and reclamation operations on Federal lands.

This Agreement provides for State regulation of coal exploration operations not subject to 43 CFR part 3480 through 3487, and surface coal mining and reclamation operations and activities in Utah on Federal lands (30 CFR Chapter VII Subchapter D), consistent with SMCRA and the Utah Code Annotated (State Act) governing such activities and the Utah State Program (Program).

B. Purposes: The purposes of this Agreement are to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations and activities and coal exploration operations not subject to 43 CFR part 3480, Subparts 3480 through 3487; (b) minimize intergovernmental overlap and duplication; and (c) provide uniform and effective application of the Program on all lands in Utah in accordance with SMCRA, the Program, and this Agreement.

C. Responsible Administrative Agencies: The Utah Division of Oil, Gas, and Mining (DOGM) will be responsible for administering this Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSMRE) will administer this Agreement on behalf of the Secretary.

ARTICLE II: EFFECTIVE DATE

After being signed by the Secretary and the Governor, this Agreement will take effect 30 days after publication in the FEDERAL REGISTER as a final rule. This agreement will remain in effect until terminated as provided in Article XI.

ARTICLE III: DEFINITIONS

The terms and phrases used in this Agreement which are defined in SMCRA 30 CFR parts 700, 701 and 740, the Program, including the State Act, and the rules and regulations promulgated pursuant to that Act, will be given the meanings set forth in said definitions.

Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the Program will apply.

ARTICLE IV: APPLICABILITY

In accordance with the Federal lands program, the laws, regulations, terms and conditions of the Program are applicable to Federal lands in Utah except as otherwise stated in this Agreement, SMCRA 30 CFR 740.4, 740.11(a) and 745.13, and other applicable Federal laws, Executive Orders, or regulations.

ARTICLE V: GENERAL REQUIREMENTS

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement.

A. Authority of State Agency: DOGM has and will continue to have the authority under State law to carry out this Agreement

B. Funds: 1. Upon application by DOGM and subject to appropriations, OSMRE will provide the State with the funds to defray the costs associated with carrying out its responsibilities under this Agreement as provided in section 705(c) of the Federal Act, the grant agreement, and 30 CFR 735.16. Such funds will cover the full cost incurred by DOGM in carrying out these responsibilities, provided that such cost does not exceed the estimated cost the Federal government would have expended on such responsibilities in the absence of this Agreement; and provided that such State-incurred cost per permitted acre of Federal lands does not exceed the per permitted area costs for similar administration and enforcement activities of the Program on non-Federal and non-Indian lands during the same time period.

2. The ratio or cost split of Federal to non-Federal dollars allocated under the cooperative agreement will be determined by OSMRE and DOGM based on the projected costs for regulation of mines within Federal lands, in consideration of the relative amounts of Federal and non-Federal land involved. The designation of mines, based on Federal and non-federal land, will be prepared by DOGM and submitted to OSMRE's Albuquerque Field Office. OSMRE's Albuquerque Field Office and OSMRE's Western Field Operations office will work with DOGM to estimate the amount the Federal government would have expended for regulation of Federal lands in Utah in the absence of this Agreement.

3. OSMRE and the State will discuss the OSMRE Federal lands cost estimate, the DOGM-prepared list of acres by mine, and the State's overall cost estimate. After resolution of any issues, DOGM will submit its grant application to OSMRE's Albuquerque Field Office. The Federal lands/non-Federal lands ratio will be applied to the final eligible total State expenditures to arrive at the total Federal reimbursement due the State. Assuming timely submission, this ratio or cost split will be agreed upon by July of the year preceding the applicable fiscal year in order to enable the State to budget funds for the Program.

The State may use the existing year's budget totals, adjusted for inflation and workload considerations in estimating the regulatory costs for the following grant year. OSMRE will notify DOGM as soon as possible if such projections are unrealistic.

4. If DOGM applies for a grant but sufficient funds have not been appropriated to OSMRE, OSMRE and DOGM will promptly meet to decide on appropriate measures that will insure that mining operations on Federal lands in Utah are regulated in accordance with the Program.

5. Funds provided to the DOGM under this Agreement will be adjusted in accordance

with Office of Management and Budget Circular A-102, Attachment E.

C. Reports and Records: DOGM will make annual reports to OSMRE containing information with respect to compliance with the terms of this Agreement pursuant to 30 CFR 745.12(d). DOGM and OSMRE will exchange, upon request, except where prohibited by Federal or State law, information developed under this Agreement.

OSMRE will provide DOGM with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. DOGM comments on the report will be appended before transmission to the Congress or other interested parties.

D. Personnel: DOGM will maintain the necessary personnel to fully implement this Agreement in accordance with the provisions of SMCRA the Federal lands program, and the Program.

E. Equipment and Laboratories: DOGM will assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed which are necessary to carry out the requirements of the Agreement.

F. Permit Application Fees and Civil Penalties: The amount of the fee accompanying an application for a permit for operations on Federal lands in Utah will be determined in accordance with 40-10-6(5), Utah Code Annotated 1953 as amended and UMC/SMC 771.25 of the State regulations, and the applicable provisions of the Program and Federal law. All permit fees and civil penalty fines collected from operations on Federal lands will be retained by the State and will be deposited with the State Treasurer. Permit fees will be considered program income. Civil penalty fines will not be considered program income and will be deposited in an account for use in reclaiming abandoned mine sites. The financial status report submitted pursuant to 30 CFR 735.26 will include a report of the amount of fees collected during the State's prior fiscal year.

ARTICLE VI: REVIEW OF PERMIT APPLICATION PACKAGE

A. Submission of Permit Application Package: DOGM and the Secretary require an applicant proposing to conduct surface coal mining and reclamation operations and activities on Federal lands to submit a permit application package (PAP) in an appropriate number of copies to DOGM. DOGM will furnish OSMRE and other Federal agencies with an appropriate number of copies of the PAP. The PAP will be in the form required by DOGM and will include any supplemental information required by OSMRE and the Federal land management agency. Where section 522(e)(3) of SMCRA applies, DOGM will work with the agency with jurisdiction over the

publicly owned park, including units of the National Park System, or historic property included in the National Register of Historic Places (NRHP) to determine what supplemental information will be required.

At a minimum, the PAP will satisfy the requirements of 30 CFR part 740 and include the information necessary for DOGM to make a determination of compliance with the Program and for OSMRE and the appropriate Federal agencies to make determinations of compliance with applicable requirements of SMCRA, the Federal lands program, and other Federal laws, Executive Orders, and regulations for which they are responsible.

B. Review Procedures Where There is No Leased Federal Coal Involved: 1. DOGM will assume the responsibilities for review of permit applications where there is no leased Federal coal to the extent authorized in 30 CFR 740.4(c) (1), (2), (4), (6) and (7). In addition to consultation with the Federal land management agency pursuant to 30 CFR 740.4 (c)(2), DOGM will be responsible for obtaining, except for non-significant revisions or amendments, the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. DOGM will request such Federal agencies to furnish their findings or any requests for additional information to DOGM within 45 calendar days of the date of receipt of the PAP. OSMRE will assist DOGM in obtaining this information, upon request.

Responsibilities and decisions which can be delegated to DOGM under other applicable Federal laws may be specified in working agreements between OSMRE and the State, with the concurrence of any Federal agency involved, and without amendment to this agreement.

2. DOGM will assume primary responsibility for the analysis, review and approval or disapproval of the permit application component of the PAP required by 30 CFR 740.13 for surface coal mining and reclamation operations and activities in Utah on Federal lands not requiring a mining plan pursuant to the Mineral Leasing Act (MLA). DOGM will review the PAP for compliance with the Program and State Act and regulations. DOGM will be the primary point of contact for applicants regarding decisions on the PAP and will be responsible for informing the applicant of determinations.

3. The Secretary will make his non-delegable determinations under SMCRA, some of which have been delegated to OSMRE.

4. OSMRE and DOGM will coordinate with each other during the review process as needed. OSMRE will provide technical assistance to DOGM when requested, if available resources allow. DOGM will keep OSMRE informed of findings made during the review process which bear on the responsibilities of

OSMRE or other Federal agencies. OSMRE may provide assistance to DOGM in resolving conflicts with Federal land management agencies. OSMRE will be responsible for ensuring that any information OSMRE receives from an applicant is promptly sent to DOGM. OSMRE will have access to DOGM files concerning operations on Federal lands. OSMRE will send to DOGM copies of all resulting correspondence between OSMRE and the applicant that may have a bearing on decisions regarding the PAP. The Secretary reserves the right to act independently of DOGM to carry out his responsibilities under laws other than SMCRA.

5. DOGM will make a decision on approval or disapproval of the permit on Federal lands.

(a) Any permit issued by DOGM will incorporate any terms or conditions imposed by the Federal land management agency, including conditions relating to post-mining land use, and will be conditioned on compliance with the requirements of the Federal land management agency. In the case that VER is determined to exist on Federal lands under section 522(e)(3) of SMCRA where the proposed operation will adversely affect a unit of the National Park System (NPS), DOGM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit to mitigate environmental impact as set forth under Article X of this agreement.

(b) The permit will include terms and conditions required by other applicable Federal laws and regulations.

(c) After making its decision on the PAP, DOGM will send a notice to the applicant, OSMRE, the Federal land management agency, and any agency with jurisdiction over a publicly owned park or historic property included in the NRHP which would be affected by a design under section 522(e)(3) of SMCRA. A copy of the permit and written findings will be submitted to OSMRE if requested.

C. Review Procedures Where Leased Federal Coal is Involved: 1. DOGM will assume the responsibilities listed in 30 CFR 740.4(c) (1), (2), (3), (4), (6) and (7), to the extent authorized.

In accordance with 30 CFR 740.4(c)(1), DOGM will assume primary responsibility for the analysis, review and approval or disapproval of the permit application component of the PAP for surface coal mining and reclamation operations and activities in Utah where a mining plan is required. OSMRE will, at the request of the State, assist to the extent possible in this analysis and review.

The Secretary will concurrently carry out his responsibilities that cannot be delegated to DOGM under the Federal lands program, MLA, the National Environmental Policy Act (NEPA), this Agreement, and other applicable Federal laws. The Secretary will

carry out these responsibilities in a timely manner and will avoid, to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the Program. The Secretary will consider the information in the PAP and, where appropriate, make decisions required by SMCRA, MLA, NEPA, and other Federal laws.

Responsibilities and decisions which can be delegated to the State under other applicable Federal laws may be specified in working agreements between OSMRE, and DOGM, with concurrence of any Federal agency involved, and without amendment to this Agreement.

2. DOGM will be the primary point of contact for applicants regarding the review of the PAP for compliance with the Program and State law and regulations. On matters concerned exclusively with regulations under 43 CFR part 3480, Subparts 3480 through 3847, the Bureau of Land Management (BLM) will be the primary contact with the applicant. DOGM will send to OSMRE copies of any correspondence with the applicant and any information received from the applicant regarding the PAP. OSMRE will send to DOGM copies of all OSMRE correspondence with the applicant which may have a bearing on the PAP. As a matter of practice, OSMRE will not independently initiate contacts with applicants regarding completeness or deficiencies of the PAP with respect to matters covered by the Program.

BLM will inform DOGM of its actions and provide DOGM with a copy of documentation on all decisions. DOGM will be responsible for informing the applicant of all joint State-Federal determinations. Where necessary to make the determination to recommend that the Secretary approve the mining plan, OSMRE will consult with and obtain the concurrences of the BLM, the Federal land management agency and other Federal agencies as required.

The Secretary reserves the right to act independently of DOGM to carry out his responsibilities under laws other than SMCRA or provisions of SMCRA not covered by the Program, and in instances of disagreement over SMCRA and the Federal lands program.

DOGM will to the extent authorized, consult with the Federal land management agency and BLM pursuant to 30 CFR 740.4(c) (2) and (3), respectively. DOGM will also be responsible for obtaining the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. DOGM will request all Federal agencies to furnish their findings or any requests for additional information to DOGM within 45 days of the date of receipt

of the PAP. OSMRE will assist DOGM in obtaining this information, upon request of DOGM.

3. DOGM will be responsible for approval and release of performance bonds under 30 CFR 740.4(c)(4), and for review and approval of exploration operations not subject to 43 CFR part 3480, under 30 CFR 740.4(c)(6).

DOGM will prepare documentation to comply with the requirements of NEPA under 30 CFR 740.4(c)(7); however, OSMRE will retain the responsibility for the exceptions in 30 CFR 740.4(c)(7)(i)–(vii).

OSMRE will assist DOGM in carrying out DOGM's responsibilities by:

(a) Coordinating resolution of conflicts and difficulties between DOGM and other Federal agencies in a timely manner.

(b) Assisting in scheduling joint meetings, upon request, between State and Federal agencies.

(c) Where OSMRE is assisting DOGM in reviewing the PAP, furnishing to DOGM the work product within 50 calendar days of receipt of the State's request for such assistance, unless a different time is agreed upon by OSMRE and DOGM.

(d) Exercising its responsibilities in a timely manner, governed to the extent possible by the deadlines established in the Program.

(e) Assuming all responsibility for ensuring compliance with any Federal lessee protection board requirement.

4. Review of the PAP: (a) OSMRE and DOGM will coordinate with each other during the review process as needed. DOGM will keep OSMRE informed of findings made during the review process which bear on the responsibilities of OSMRE or other Federal agencies. OSMRE will ensure that any information OSMRE receives which has a bearing on decisions regarding the PAP is promptly sent to DOGM.

(b) DOGM will review the PAP for compliance with the Program and State law and regulations.

(c) OSMRE will review the operation and reclamation plan portion of the permit application, and any other appropriate portions of the PAP, for compliance with the non-delegable responsibilities of SMCRA and for compliance with the requirements of other Federal laws and regulations.

(d) OSMRE and DOGM will develop a work plan and schedule for PAP review and each will identify a person as the project leader. The project leaders will serve as the primary points of contact between OSMRE and DOGM throughout the review process. Not later than 50 days after receipt of the PAP, unless a different time is agreed upon, OSMRE will furnish DOGM with its review comments on the PAP and specify any requirements for additional data. To the extent practicable, DOGM will provide OSMRE

all available information that may aid OSMRE in preparing any findings.

(e) DOGM will prepare a State decision package, including written findings and supporting documentation, indicating whether the PAP is in compliance with the Program. The review and finalization of the State decision package will be conducted in accordance with procedures for processing PAPs agreed upon by DOGM and OSMRE.

(f) DOGM may make a decision on approval or disapproval of the permit on Federal lands in accordance with the Program prior to the necessary Secretarial decision on the mining plan, provided that DOGM advises the operator in the permit that Secretarial approval of the mining plan must be obtained before the operator may conduct coal development or mining operations on the Federal lease. DOGM will reserve the right to amend or rescind any requirements of the permit to conform with any terms or conditions imposed by the Secretary in the approval of the mining plan.

(g) The permit will include, as applicable, terms and conditions required by the lease issued pursuant to the MLA and by any other applicable Federal laws and regulations, including conditions imposed by the Federal land management agency relating to post-mining land use, and those of other affected agencies, and will be conditioned on compliance with the requirements of the Federal land management agency with jurisdiction.

(h) In the case that VER is determined to exist on Federal lands under section 522(e)(3) of SMCRA where the proposed operation will adversely affect a unit of the NPS, DOGM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit to mitigate environmental impacts as set forth under Article X of this agreement.

(i) After making its decision on the PAP, DOGM will send a notice to the applicant, OSMRE, the Federal land management agency, and any agency with jurisdiction over the publicly owned park or historic property included in the NRHP affected by a decision under section 522(e)(3) of SMCRA. A copy of the written findings and the permit will also be submitted to OSMRE.

5. OSMRE will provide technical assistance to DOGM when requested, if available resources allow. OSMRE will have access to DOGM files concerning operations on Federal lands.

D. Review Procedures for Permit Revisions, Amendments, or Renewals: 1. Any permit revision, amendment, or renewal for an operation on Federal lands will be reviewed and approved or disapproved by DOGM after consultation with OSMRE on whether such revision, amendment, or renewal constitutes a mining plan modification. OSMRE will inform DOGM within 30 days of receiving a

copy of a proposed revision, amendment, or renewal, whether the permit revision, amendment, or renewal constitutes a mining plan modification. Where approval of a mining plan modification is required, OSMRE and DOGM will follow the procedures outlined in paragraphs C.1. through C.5. of this Article.

2. OSMRE may establish criteria to determine which permit revisions, amendments, and renewals clearly do not constitute mining plan modifications.

3. Permit revisions, amendments, or renewals on Federal lands which are determined by OSMRE not to constitute mining plan modifications under paragraph D.1. of this Article or that meet the criteria for not being mining plan modifications as established under paragraph D.2. of this Article will be reviewed and approved following the procedures outlined in paragraphs B.1. through B.5. of this Article.

ARTICLE VII: INSPECTIONS

A. DOGM will conduct inspections on Federal lands in accordance with 30 CFR 740.4(c)(5) and prepare and file inspection reports in accordance with the Program.

B. DOGM will, subsequent to conducting any inspection pursuant to 30 CFR 740.4(c)(5), and on a timely basis, file with OSMRE a legible copy of the completed State inspection report.

C. DOGM will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by the Agreement, except as described hereinafter. Nothing in this Agreement will prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR parts 842 and 843 and its obligations under laws other than SMCRA.

D. OSMRE will ordinarily give DOGM reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity to join in the inspection. When OSMRE is responding to a citizen complaint of an imminent danger to the public health and safety, or of significant, imminent environmental harm to land, air or water resources, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact DOGM no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger of significant, imminent environmental harm will be referred to DOGM for action. The Secretary reserves the right to conduct inspections without prior notice to DOGM to carry out his responsibilities under SMCRA.

ARTICLE VIII: ENFORCEMENT

A. DOGM will have primary enforcement authority under SMCRA concerning compliance with the requirements of this Agreement and the Program in accordance with 30 CFR 740.4(c)(5). Enforcement authority given to the Secretary under other Federal laws and Executive orders including, but not limited to, those listed in appendix A (attached) is reserved to the Secretary.

B. During any joint inspection by OSMRE and DOGM, DOGM will have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation, and assessment of penalties. DOGM will inform OSMRE prior to issuance of any decision to suspend or revoke a permit on Federal lands.

C. During any inspection made solely by OSMRE or any joint inspection where DOGM and OSMRE fail to agree regarding the propriety of any particular enforcement action, OSMRE may take any enforcement action necessary to comply with 30 CFR parts 843 and 845. Such enforcement action will be based on the standards in the Program, SMCRA, or both, and will be taken using the procedures and penalty system contained in 30 CFR parts 843 and 845.

D. DOGM and OSMRE will promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining permits subject to this Agreement, and of all actions taken with respect to such violations.

E. Personnel of DOGM and OSMRE will be mutually available to serve as witness in enforcement actions taken by either party.

F. This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than SMCRA.

ARTICLE IX: BONDS

A. DOGM and the Secretary will require each operator who conducts operations on Federal lands to submit a single performance bond payable to Utah and the United States to cover the operator's responsibilities under SMCRA and the Program. Such performance bond will be conditioned upon compliance with all requirements of the SMCRA, the Program, State rules and regulations, and any other requirements imposed by the Department. Such bond will provide that if this Agreement is terminated, the portion of the bond covering the Federal lands will be payable only to the United States. DOGM will advise OSMRE of annual adjustments to the performance bond, pursuant to the Program.

B. Prior to releasing the operator from any obligation under such bond, DOGM will obtain the concurrence of OSMRE. OSMRE concurrence will include coordination with other Federal agencies having authority over the lands involved.

C. Performance bonds will be subject to forfeiture with the concurrence of OSMRE, in accordance with the procedures and requirements of the Program.

D. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of SMCRA.

ARTICLE X: DESIGNATING LAND AREAS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING AND RECLAMATION OPERATIONS AND ACTIVITIES AND VALID EXISTING RIGHTS AND COMPATIBILITY DETERMINATIONS

A. Unsuitability Petitions.

1. Authority to designate Federal lands as unsuitable for mining pursuant to a petition is reserved to the Secretary.

2. When either DOGM or OSMRE receives a petition that could impact adjacent Federal or non-Federal lands pursuant to section 522(c) of SMCRA, the agency receiving the petition will notify the other of receipt and the anticipated schedule for reaching a decision, and request and fully consider data, information and recommendations of the other. OSMRE will coordinate with the Federal land management agency with jurisdiction over the petition area, and will solicit comments from the agency.

B. Valid Existing Rights and Compatibility Determinations

The following actions will be taken when requests for determinations of VER pursuant to section 522(e) of SMCRA, or for determinations of compatibility pursuant to section 522(e)(2) of SMCRA are received prior to or at the time of submission of a PAP that involves surface coal mining and reclamation operations and activities:

1. For Federal lands within the boundaries of any areas specified under section 522(e)(1) of SMCRA, OSMRE will determine whether VER exists for such areas.

For non-Federal lands within section 522(e)(1) areas DOGM, with the consultation and concurrence of OSMRE, will determine whether operations on such lands will or will not affect Federal lands. For such non-Federal lands affecting Federal lands, OSMRE will make the VER determination.

Under section 522(e)(1), for non-Federal lands within the boundaries of the National Park System, DOGM, with the consultation and concurrence of OSMRE, will determine whether operations on such lands will or will not affect the Federal interest. For such non-Federal lands within the boundaries of the National Park System which affect the Federal interest, OSMRE will make the VER determination.

2. For Federal lands within the boundaries of any national forest where proposed operations are prohibited or limited by section 522(e)(2) of SMCRA and 30 CFR 761.11(b), OSMRE will make the VER determination.

OSMRE will process requests for determinations of compatibility under section 522(e)(2) of SMCRA.

3. For Federal lands, DOGM, with the consultation and concurrence of OSMRE, will determine whether any proposed operation will adversely affect units of the National Park System with respect to the prohibitions or limitations of section 522(e)(3) of SMCRA. For such operations adversely affecting units of the National Park System, DOGM, with the consultation and concurrence of OSMRE, will make the VER determination.

For Federal lands, DOGM will determine whether any proposed operation will adversely affect all publicly owned parks other than those covered in the preceding paragraph and, in consultation with the State Historic Preservation Officer, places listed in the National Register of Historic Places, with respect to the prohibitions or limitations of section 522(e)(3) of SMCRA.

For Federal lands other than those on which the proposed operation will adversely affect units of the National Park System, DOGM will make the VER determination for operations which are prohibited or limited by section 522(e)(3) of SMCRA. In the case that VER is determined to exist on Federal lands under section 522(e)(3) of SMCRA where a proposed operation will adversely affect a unit of the NPS, DOGM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit in order to mitigate environmental impacts.

In the case that VER is determined not to exist under section 522(e)(3) of SMCRA or 30 CFR 761.11(c), no surface coal mining operations and activities will be permitted unless jointly approved by DOGM and the Federal, State or local agency with jurisdiction over the publicly owned park or historic place.

4. DOGM will process determinations of VER on Federal lands for all areas limited or prohibited by section 522(e) (4) and (5) of SMCRA as unsuitable for mining. For operations on Federal lands, DOGM will coordinate with any affected agency or agency with jurisdiction over the proposed surface coal mining and reclamation operation.

ARTICLE XI: TERMINATION OF COOPERATIVE AGREEMENT

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XII: REINSTATEMENT OF
COOPERATIVE AGREEMENT

If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

ARTICLE XIII: AMENDMENT OF COOPERATIVE
AGREEMENT

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

ARTICLE XIV: CHANGES IN STATE OR FEDERAL
STANDARDS

A. The Department or the State may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party will, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations or request necessary legislative action. Such changes will be made under the procedures of 30 CFR part 732 for changes to the Program and under the procedures of section 501 of SMCRA for changes to the Federal lands program.

B. DOGM and the Department will provide each other with copies of any changes to their respective laws, rules, regulations or standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XV: CHANGES IN PERSONNEL AND
ORGANIZATION

Each party to this Agreement will notify the other, when necessary, of any changes in personnel, organization and funding, or other changes that may affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

ARTICLE XVI: RESERVATION OF RIGHTS

This Agreement will not be construed as waiving or preventing the assertion of any rights in this Agreement that the State or the Secretary may have under laws other than SMCRA or their regulations, including but not limited to those listed in appendix A.

Dated: _____
Signed: _____

Governor of Utah

Dated: _____
Signed: _____

Secretary of the Interior

APPENDIX A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations, including 43 CFR part 3480.

3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR part 1500.

4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR part 402.

5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR part 800.

6. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

7. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

8. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

9. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

10. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

11. Executive Order 11988 (May 24, 1977), for flood plain protection.

12. Executive Order 11990 (May 24, 1977), for wetlands protection.

13. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

14. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

15. The Constitution of the United States.

16. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

17. 30 CFR Chapter VII.

18. The Constitution of the State of Utah.

19. Utah Code Annotated 40-10-1 *et seq.*

20. Utah Code Annotated 40-8-1 *et seq.*

21. Utah Coal Mining and Reclamation Permanent Program, Chapters I and II, Final Rules of the Board of Oil, Gas and Mining, UMC/SMC 700 *et seq.*

[52 FR 7850, Mar. 13, 1987]

PART 946—VIRGINIA

Sec.

946.1 Scope.

946.10 State regulatory program approval.

946.11 Conditions of State regulatory program approval.

946.12 State program provisions and amendments not approved.

946.13 State program provisions set aside.

946.15 Approval of Virginia regulatory program amendments.

946.20 Abandoned mine land reclamation plan approval.

946.25 Approval of Virginia abandoned mine land reclamation plan amendments.

946.30 State-Federal Cooperative Agreement.

Surface Mining Reclamation and Enforcement, Interior

§ 946.13

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

§ 946.1 Scope.

This part contains all rules applicable only within Virginia that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[46 FR 61114, Dec. 15, 1981]

§ 946.10 State regulatory program approval.

The Virginia regulatory program, as submitted on March 3, 1980, as amended and clarified on June 16, 1980, as resubmitted on August 13, 1981, and as clarified in a meeting with OSMRE on September 21 and 22, 1981, and in a letter to the director of the Office of Surface Mining on October 15, 1981, is conditionally approved, effective December 15, 1981. Effective January 1, 1985, the Department of Mines, Minerals and Energy replaces the Department of Conservation and Economic Development as the regulatory authority in Virginia for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Copies of the approved program as amended are available for review at the following locations:

(a) Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219.

(b) Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Drawer 1216, Powell Valley Square Shopping Center, room 220, Route 23, Big Stone Gap, Virginia 24219.

[51 FR 42554, Nov. 25, 1986, as amended at 59 FR 17930, Apr. 15, 1994]

§ 946.11 Conditions of State regulatory program approval.

The approval of the Virginia State program is subject to the State revising its program to correct the deficiencies listed in this section. The program revisions may be made, as appropriate, to the statute, the regulations, the program narrative, or the Attorney General's opinion. This section indicates, for the general guidance of the State, the component of the program

to which the Secretary recommends the change be made.

[46 FR 61114, Dec. 15, 1981, as amended at 47 FR 31550, July 21, 1982; 47 FR 55678, Dec. 13, 1982; 48 FR 25186, June 6, 1983; 48 FR 46031, Nov. 11, 1983; 49 FR 19478, May 8, 1984]

§ 946.12 State program provisions and amendments not approved.

(a) The following provisions are disapproved effective April 22, 1983: Paragraphs 3.01(a)(1), 3.01(a)(4) and 3.01(a)(5) of the Virginia Coal Surface Mining and Reclamation Regulations for Operations Disturbing Two Surface Acres or Less.

(b) The following provisions of the coal surface mining reclamation regulations promulgated pursuant to Chapter 19, Title 45.1 of the Code of Virginia (1950), as submitted on November 8, 1985, as hereby disapproved:

(1) The definition of "affected area" in section 480-03-19.700.5 to the extent that it could be interpreted as excluding all public roads with more than incidental public use;

(2) Section 480-03-19.761.11(h), which prohibits mining on certain Federal lands, in its entirety; and

(c)(1) We are not approving the words, "or the UCP revision current at the time of issuance of the letter of credit," in the definition of "Collateral bond," paragraph (d), at 4 VAC 25-130-700.5; and

(2) We are not approving the words, "or revision current at the time of issuance of the letter of credit" at 4 VAC 25-130-800.21(c)(1).

[50 FR 32851, Aug. 15, 1985, as amended at 51 FR 42554, Nov. 25, 1986; 52 FR 26973, July 17, 1987; 66 FR 43483, Aug. 20, 2001]

§ 946.13 State program provisions set aside.

(a) Paragraphs 3.01(a)(1), 3.01(a)(4) and 3.01(a)(5) of the Virginia Coal Surface Mining and Reclamation Regulations for Operations Disturbing Two Surface Acres or Less are inconsistent with and less effective than the Federal provisions for the two-acre exemption and are set aside in their entirety under the provisions of section 505(b) of the Surface Mining Control and Reclamation Act of 1977.

§ 946.15

30 CFR Ch. VII (7–1–17 Edition)

(b) [Reserved]

[50 FR 32851, Aug. 15, 1985]

§ 946.15 Approval of Virginia regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision

approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
January 28, 1982	July 21, 1982	Virginia's revised policy statement granting authority to field inspectors to issue cessation orders for imminent danger or harm.
July 9, 1982	August 19, 1982	VA Code § 33.1–246.1; V816.150, V817.150.
July 8, 1982	September 21, 1982	VA Code §§ 45.1–270.1 through .7; V808.15, V809, reference changes to remainder of Subchapter VJ.
August 13, 1982	December 13, 1982	VA Code § 45.1–235(C); conditions (a) through (j), (l) through (p), (s).
September 30, 1982	January 18, 1983	§ V809.
December 20, 1982	February 28, 1983	§ V809.11.
March 22, 1983	April 21, 1983, June 6 and 20, 1983.	VA Code §§ 45.1–234, 240, 249, 251.
July 9, 1982	April 22, 1983	Chapter 23 of Title 45.
May 20, 1983	December 27, 1983	VA Code §§ 45.1–270.2 through .4; Part V809.
July 27, 1983	March 16, 1984	Coal haul road policy.
February 10, 1984	May 8, 1984	§ V786.19(o).
April 11, 1984	August 2, 1984	Subchapter VM Part V850—Blaster certification program; §§ V816/817.61(c); Chapter 230 of the 1984 Acts of Assembly; and all other items.
June 13, 1984	August 31, 1984	Chapter 590 of the 1984 Acts of Assembly to revise various Sections of Title 45.
February 20, 1985	May 8, 1985	VA Code §§ 45.1–244, 369.1.
May 1985	August 15, 1985	VA Code §§ 45.1–364, 364.1.
September 4, 1985	November 18, 1985	V700.5—definitions of “coal preparation or coal processing,” “coal preparation plant”.
November 8, 1985	November 25, 1986	VR 480–03–19: 700 through 850; techniques for measuring revegetation success; applications for a permit revision.
March 20, 1987	July 17, 1987	VR 480–03–19: 784.20(f)(2); 817.121(c)(2).
January 16, 1987	August 17, 1987	VR 480–03–19.801.13(a)(2), .17(a).
June 15, 1987, July 2, 1987.	December 31, 1987	VA Code §§ 45.1–270.3:1, .4, .5:1, .6B; VR 480–03–19.801.12(a).
September 1, 1987	March 7, 1988	VR 480–13–19.789.1(e); measurement techniques for determining ground cover on small areas; sampling techniques for measuring productivity of grazing land, pasture land, and crop land; VR 480–03–19: .843.15, .845.17(b), .18(b)(1).
September 10, 1987	June 16, 1988	VR 480–03–19: 700.5 defining “abatement plan,” “actual improvement,” “baseline pollution load,” “best professional judgment,” “best technology,” “pollution abatement area;” 785.19; 825.
June 30, 1989	December 1, 1989	VR 480–03–19: 700.11; 764.15, 773.15; 779.19, .20; 780.14, .16; 783.19, .20; 784.20, .21; 785.14; 801.17; 816.97; 817.97; 840.11; 846, .2, .12; 846.14, .17, .18.
July 5, 1989	February 2, 1990	VA Code §§ 45.1–270.2, .3.
April 6, 1988	February 5, 1990	VR 480–03–19: 700.5; 772.12(b)(8)(iv); 773.12, .15(c)(11), (12); 779.12(b), .24(j); .780.31; 783.12(b), .24(j); 784.17; 785.13(b)(2), .14(c)(1), .16(a)(1); 800.52; 816/817.116(b)(3)(v)(C); 842.15(d); 843.12(j), .13(f); revegetation success standard.
August 31, 1990	December 7, 1990	VA Code § 45.1–270.4:1.
September 12, 1990	December 26, 1990	VR 480–03–19: 784.20; 817.121.
June 29, 1990	January 4, 1991	VR 480–03–19: 700.5; 773.15, .17, .20, .21; 778.13, .14; 843.11, .13.
April 5, 1991, May 1, 1991.	August 5, 1991	VR 480–03–19: 801.11(a), .12(a), (b), (g), .14(a) through (d), .15(a); VA Code §§ 45.1–261.1, 270.3, .3:1, .4, .4:1.
October 1, 1990	July 7, 1992	VR 480–03–19: 700.5 definitions—“Road,” “Support Facilities,” .11(a), (4), (d); 701.11(a) through (c); 702.5 defining Exemption for Coal Extraction Incidental to the Extraction of Other Minerals, .11 through .18; 772.11(a), (b)(3), .12(a), (b)(3), (d), .14(a), (b); 773.11(a); 780.25(c), .37(a) through (e), .38; 784.16(c), .24(a) through (e), .30; 785.17(e)(5), .21(a); 800.60(b); 815.2, .15(b); 816.46(c)(2), .49(a)(1), (3)(i), (5), (8), (9), (b)(7), (c)(2), .84(b)(2), (f), .116(b)(3)(i), (ii), (iv)(C), (c)(2), .150(a) through .150(e), (f)(1), .151(a)(1), (2), (c), (d)(1), (2), (4), (5), (6); 817.46(c)(2), .49(a)(1), (3)(i), (5), (8), (9), (b)(7), (c)(2), .84(b)(2), (f), .116(b)(3)(i), (ii), (iv)(C), (v)(C), (c)(2), .150(a) through (e), (f)(1), .151(a), (c), (d)(1), (2), (4), (5), (6); 823.11(b), .12(c)(2), .14(d); 827.1; 843.11(a)(2).
May 6, 1993	September 24, 1993	VA Code §§ 45.1–243, –258.
October 22, 1993	September 27, 1994	VR 480–03–19.816/817: .49(a)(3)(ii), .116(b)(3)(v)(A), (c)(3), .151(b), .152.
October 31, 1994	August 8, 1995	VR 480–03–19.816/817.102(e)(1), (2).
October 13, 1995	May 29, 1996	VR 480–03–19.816.102(e), .817.102(e).
April 17, 1996	August 19, 1996	VA Code § 45.1–243B; VR 480–03–19.784.14(g); 817.41(i)(3), (i)(3)(i), (ii).

Surface Mining Reclamation and Enforcement, Interior

§ 946.25

Original amendment submission date	Date of final publication	Citation/description
May 28, 1996	September 4, 1996	VA 480-03-19.700.5 concerning definitions of "Lands eligible for remining," "Un-anticipated event or condition;" 773.15(b)(4), (c)(14); 785.25; 816/817.116(c)(2)(i), (ii).
May 21, 1996	September 17, 1997, and November 12, 1997.	VA Code §§ 480-03-19.700.5; 784.14, 20; 817.41, 121.
December 1, 1997	June 24, 1998	VA Code Sections 701.5; 779.22 [deletion], .25(k) [deletion]; 780.23, .25(a), (a)(2)(a)(3), (b), (c)(3), (f), 35(b); 783.25(k) [deletion]; 784.15, .16(a), (a)(2), (a)(3), (b), (c)(3), (f), .23(c); 800.40(a)(3); 816.46(a)(2), (b)(3), (b)(5), (c)(2), .49(a)(1), (a)(4)(i) & (ii), (5), (6), (9), (11), (c)(2), .74(a) through (g), .81(a), (c)(3) [deletion], .89(d) [deletion], .104, .105; 817.46(a)(2), (b)(3), (b)(5), (c)(2) .49(a)(1), (a)(4)(i) & (ii), (5), (6), (9), (11), (c)(2), .74(a) through (g), .81(a), (c)(3) [deletion], .89(d) [deletion]; 840.11(f)(2) & (g)(4), (h); 843.14(a)(2); 845.17(b) through (b)(2)(ii), .18(a), (b) through (b)(3)(ii), (d)(1) & (2), .19(a) and 846.17(b)(3) [deletion] and (c).
July 31, 1997	May 3, 1999	Code of Virginia at § 45.1-241(C) concerning letter of credit.
November 17, 1998 ..	December 13, 1999	Policy clarification for implementing 4 VAC 25-130-774.13(d).
August 2, 1999	December 27, 1999	Statute: 45.1-235 C of the Code of Virginia. Regulations: 4 VAC 25-130-700.5; 795.1; 795.6(a)(2); 795.7(e)(2) [deleted], and (e)(5) [deleted]; 795.8(a) and (b); 795.9(a), (b)(1) through (b)(6); 795.10(a)(5), (b), (c) [deleted] and (d) [deleted]; 795.11(b); 795.12(a), (a)(2), (a)(3), (b) [deleted], and (c) [deleted].
November 24, 1998 ..	February 7, 2000	Policy clarification for implementing 4 VAC 25-130-816/817.76.
June 27, 2000	November 2, 2000 ..	4 VAC 25-130-784.20(a)(3) amended and suspended in part; 817.121(c)(4)(i) through (iv) suspended and deleted.
September 22, 2000	August 20, 2001	4 VAC 25-130-700.5 (partial approval); 800.21(a), (c)(1) (partial approval), (2) and (3), and (d).
May 16, 2003	September 10, 2003	4 VAC 25-130-777.17.
July 20, 2004	April 14, 2005	4 VAC 25-130-801.17 and 801.18.
May 9, 2005, and as amended on November 14, 2005, and December 1, 2005.	January 10, 2006 ...	4 VAC 25-130-700.12(e); 773.21(c); 775.11(b)(1) and (d); 775.13(c); 784.20(a)(3); 800.51(c)(1); 800.51(e); 816.11(a)(4) and (a)(5); 816.64(a)(4); 816.105(a) and (b); 817.11(a)(4); 817.64(d); 817.121(c)(4); 842.15(d); 843.12(j); 843.13(b); 843.13(e); 843.15(c); 843.16(e); 845.13(c)(1), (d), (e)(1), and (f); 845.15(a); 845.18(b)(1); 845.19(c); 845.19(d); and 846.14(b).
February 13, 2007	July 5, 2007	4 VAC 25-130-785.25(c)[deleted]; 4 VAC 25-130-816.116 and 817.116(c)(2)(ii).
February 13, 2007	April 23, 2008	4 VAC 25-130-816.22(d)(1) and 817.22(d)(1), 4 VAC 25-130-816.43(a) and 817.43(a), 4 VAC 25-130-816.116(b) and 817.116(b).
March 12, 2007	October 18, 2007 ...	4 VAC 25-130-842.15(d), Review of decision not to inspect or enforce.
July 17, 2008	May 29, 2012	4VAC 25-130-700.5, 4VAC25-130-761.11, 4VAC25-130-761.13, 4VAC25-130-761.16, 4VAC25-130-772.12, 4VAC 25-130-773.13, 4VAC 25-130-773.15, 4VAC 25-130-773.20(c)(3), 4VAC 25-130-773.21, 4VAC 25-130-774.12, 4VAC 25-130-774.17(a), 4VAC 25-130-778.13, 4VAC 25-130-778.14(c), 4VAC 25-130-800.52(a) and (a)(5), 4VAC 25-130-801.12(c) and (d), 4VAC 25-130-801.13, 4VAC 25-130-840.14(c)(2), 4VAC 25-130-846.2.

[62 FR 9956, Mar. 5, 1997, as amended at 62 FR 60660, Nov. 12, 1997; 63 FR 34286, June 24, 1998; 64 FR 23544, May 3, 1999; 64 FR 69402, Dec. 13, 1999; 64 FR 72280, Dec. 27, 1999; 65 FR 5784, Feb. 7, 2000; 65 FR 65782, Nov. 2, 2000; 66 FR 43483, Aug. 20, 2001; 68 FR 53294, Sept. 10, 2003; 70 FR 19702, Apr. 14, 2005; 71 FR 1494, Jan. 10, 2006; 72 FR 36598, July 5, 2007; 72 FR 59012, Oct. 18, 2007; 73 FR 21823, Apr. 23, 2008; 77 FR 31492, May 29, 2012]

§ 946.20 Abandoned mine land reclamation plan approval.

Virginia Abandoned Mine Land Reclamation Plan as submitted on September 22, 1980, is approved effective December 15, 1981. Copies of the approved plan are available for review at the following locations:

(a) Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219.

(b) Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Drawer 1216, Powell Valley Square Shopping Center, room

220, Route 23, Big Stone Gap, Virginia 24219.

[51 FR 42555, Nov. 25, 1986, as amended at 59 FR 17930, Apr. 15, 1994]

§ 946.25 Approval of Virginia abandoned mine land reclamation plan amendments.

(a) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each

amendment. The amendments in this final publication in the FEDERAL REGISTER are listed in order of the date of

Original amendment submission date	Date of final publication	Citation/description
November 8, 1985 February 3, 1987	November 25, 1986 November 13, 1987	VR 480-03-19.874 through 882. VR 480-03-19.884.13(c) (2), (5), (6), (7), (d)(1), (2); Establish emergency program.
Feb. 29, 1996	July 3, 1997	Revisions to the Virginia State Reclamation Plan corresponding to 30 CFR 884.13(a), (b), (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), (c)(6), (c)(7), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (f)(1), (f)(2), and (f)(3).
September 19, 1997	February 5, 1998	Revisions to the Virginia State Reclamation Plan corresponding to 30 CFR 884.13(c)(2)—Ranking and Selection: Set Aside Funds; and the AML Water Project Evaluation form.
September 10, 1999	January 7, 2000	Revisions to the Virginia State Reclamation Plan corresponding to 30 CFR 884.13(c)(2)—Ranking and Selection: Reclamation Projects Receiving Less Than 50% Government Funding.

(b) You may receive a copy from:

(1) Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, or

(2) Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, Powell Valley Square Shopping Center, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219.

[62 FR 9957, Mar. 5, 1997, as amended at 62 FR 35968, July 3, 1997; 63 FR 5891, Feb. 5, 1998; 65 FR 1065, Jan. 7, 2000]

§ 946.30 State-Federal Cooperative Agreement.

This is a Cooperative Agreement (Agreement) between the Commonwealth of Virginia (State) acting by and through the Governor, and the United States Department of the Interior (Department), acting by and through the Secretary of the Interior (Secretary).

ARTICLE I: INTRODUCTION, PURPOSE, AND RESPONSIBLE ADMINISTRATIVE AGENCY

A. *Authority:* This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (SMCRA or the Act), 30 U.S.C. 1273(c), which provides that any State with a permanent regulatory program approved under 30 U.S.C. 1253 may enter into an agreement with the Secretary to assume the responsibilities of regulating surface coal mining and reclamation operations on Federal lands within that State. This Agreement provides for such regulation within the Commonwealth of Virginia (State) consistent with SMCRA, the Virginia State Program, and the Federal Lands Program (30 CFR Chapter VII, Subchapter D).

B. *Purpose:* The purpose of this Agreement is to (1) foster State-Federal cooperation in

the regulation of coal mining including coal exploration on Federal lands containing non-Federal coal; (2) minimize intergovernmental overlap and duplication; and (3) provide uniform and effective application of the Virginia State Program (State Program) on all Federal lands except those containing leased Federal coal. This agreement does not apply on Indian lands.

C. *Responsible Administrative Agencies:* The Division of Mined Land Reclamation (DMLR) of the Department of Mines, Minerals and Energy is responsible for administering the Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSMRE) is responsible for administering this Agreement on behalf of the Secretary. The Federal lands in Virginia covered by this Agreement are predominantly administered by the U.S. Department of Agriculture, Forest Service, and include in part the Jefferson National Forest and the George Washington National Forest. It is understood by all parties that the Forest Service or the applicable Federal agency will continue to regulate mining operations on lands under its jurisdiction pursuant to the laws, regulations, agreements, and restrictions governing those lands. These requirements are in addition to the requirements discussed in this Agreement.

ARTICLE II: EFFECTIVE DATE

The Agreement shall take effect May 7, 1987. This Agreement shall remain in effect until terminated as provided in Article XI.

ARTICLE III: DEFINITIONS

The terms and phrases used in this Agreement which are defined in the Act, 30 CFR Chapter VII, and the approved State Program shall be given the meanings set forth in said definitions. Where there is a conflict among the above referenced State and Federal definitions, the definitions used in the approved State Program will apply unless prohibited by Federal law.

Surface Mining Reclamation and Enforcement, Interior

§ 946.30

The term "Federal lands covered by the agreement" means all Federal lands in Virginia except those lands containing leased Federal coal or those consisting of Federal surface over unleased Federal coal.

ARTICLE IV: APPLICABILITY

The laws, rules, terms, and conditions of the State Program are applicable to all Federal lands in Virginia. The State is authorized to conduct regulatory activities on all Federal lands with cooperative agreement.

ARTICLE V: REQUIREMENTS FOR COOPERATIVE AGREEMENT

The Governor and the Secretary affirm that they will comply with all of the provisions of this Agreement and will continue to meet all the conditions and requirements specified in the Agreement.

A. *Authority of State Agency:* DMLR has and shall continue to have authority under State law to carry out this Agreement.

B. *Funds:* Upon application by the DMLR and subject to the availability of appropriations, the Department shall provide the State with the funds to defray the costs associated with carrying out responsibilities under this Agreement as provided by section 705(c) of the SMORA and 30 CFR part 735. If sufficient funds have not been appropriated to OSMRE, OSMRE and DMLR shall meet promptly to decide on measures that will insure that mining operations are regulated in accordance with the State Program. If agreement cannot be reached, then either party may terminate the Agreement in accordance with Article XI.

Funds provided to the State shall be adjusted in accordance with the Office of Management and Budget Circular A-102, Attachment E.

C. *Reports and Records:* DMLR shall make annual reports to OSMRE pursuant to 30 CFR 745.12(d) on the results of the State's implementation and administration of this cooperative agreement. DMLR and OSMRE shall exchange, upon request, information developed under this Agreement except where prohibited by Federal law. OSMRE shall provide DMLR with a copy of any final evaluation report concerning State administration and enforcement of this Agreement.

D. *Personnel:* DMLR shall provide the necessary personnel to fully implement this Agreement in accordance with the provisions of the Federal and State Acts and the State Program.

E. *Equipment and Laboratories:* DMLR shall have access to equipment, laboratories, and facilities necessary to carry out inspections, investigations, studies, tests, and analyses necessary to implement this Agreement.

F. *Permit Application Fees:* The amount of the fee accompanying an application for a permit shall be determined in accordance

with the Virginia Coal Surface Mining Control and Reclamation Act of 1979 and 19 CV 45.1-235.(E). All permit fees, including fees for permits, permit revisions, renewals, transfers, sales or assignments, application fees, and civil penalties collected from operations on Federal lands covered by this agreement shall be retained by the State and deposited with the State Treasurer. The financial status report submitted pursuant to 30 CFR 735.26 shall include a report of the amount of the permit application and other fees collected and attributable to Federal lands during the prior Federal fiscal year. This amount shall be disposed of in accordance with Federal regulations and OMB Circular No. A-102 Attachment E.

ARTICLE VI: REVIEW OF PERMIT APPLICATION PACKAGE(S)

A. *Permit Application Package:* DMLR shall require an operator proposing to conduct surface coal mining and reclamation operations on Federal lands covered by this Agreement to submit the appropriate permit application package (PAP) for a permit, permit revision, or permit renewal in an appropriate number of copies to DMLR. DMLR will furnish OSMRE a copy if OSMRE so requests. The permit application package shall be in the form required by DMLR and include any supplemental information required by the Federal land management agency. The PAP shall include the information required by, or necessary for, DMLR to make a determination of compliance with the State program and, under 30 CFR 740.4(c)(2), with any conditions or special requirements imposed by the Federal land management agency.

As requested, OSMRE will assist DMLR in identifying Federal agencies which may be affected by the proposed mining operation.

B. *Review Procedures:* 1. DMLR shall assume primary responsibility for the analysis, review, and approval or disapproval of PAPs for a permit, permit revision, or permit renewal for operations on Federal lands covered by this agreement. DMLR shall also assume primary responsibility for the review and analysis of applications for transfer, assignment or sale of permit rights required by 30 CFR 740.13 for surface coal mining operations on Federal lands covered by this agreement. DMLR shall be the primary point of contact for operators regarding PAPs and applications for the transfer, sale, or assignment of permit rights and will be responsible for informing the applicant of all joint State-Federal or Federal determinations.

2. Upon receipt of PAP that involves surface coal mining and reclamation operations on lands covered by this Agreement, DMLR shall (a) transmit a copy of the complete PAP to the Federal land management agency with a request for review pursuant to 30

CFR 740.13(c)(4); (b) provide OSMRE with information necessary to allow OSMRE to determine whether or not a proposed surface coal mining and reclamation operation is prohibited or limited by the requirements of Section 522(e) of SMORA (30 U.S.C. 1272(e)) and 30 CFR part 761 and part 762; (c) determine whether leased Federal coal or Federal surface over unleased Federal coal is involved and immediately inform OSMRE in these situations; and (d) obtain, in a timely manner, the views and determinations of any other Federal agencies with jurisdiction or responsibility over Federal lands affected by a PAP in Virginia. These consultation comments shall be forwarded to OSMRE to be considered in any compatibility or valid existing rights determination;

3. OSMRE will provide technical assistance when requested, if available resources allow, and will process requests for determinations of compatibility and valid existing rights under 30 CFR part 761 and part 762. OSMRE will be responsible for ensuring that any information OSMRE receives from an applicant is promptly sent to DMLR. OSMRE shall have access to DMLR files concerning mines on Federal lands. The Secretary reserves the right to act independently of DMLR to carry out his responsibilities under laws other than SMORA. A copy of all correspondence with the applicant that may have a bearing on decisions regarding the PAP shall be sent to the State.

4. DMLR shall prepare the required technical analysis and written findings on the PAP. If requested by the Federal land management agency, a draft of these documents shall be sent to it for review and comment.

5. Any permit including permit revisions, renewals, transfers, sales, or assignments approved or issued by DMLR shall incorporate any terms or conditions imposed by OSMRE or the Federal land management agency, including conditions relating to post mining land use. After DMLR reaches a decision on a PAP, it shall send a notice to the applicant, the Federal land management agency, and OSMRE with a statement of all findings and conclusions on which the decision is based.

ARTICLE VII: INSPECTIONS

A. *DMLR Authority:* DMLR shall be the point of contact and primary inspection authority in dealing with the operator concerning operations on lands covered by this Agreement, except as described in this Agreement and the Secretary's regulations. DMLR must conduct inspections on Federal lands covered by this agreement and shall, within 30 days of conducting an inspection on Federal lands, prepare and file with OSMRE a legible copy of the State's completed inspection report. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies.

B. *DOI Authority:* The Secretary reserves the right to conduct inspections without prior notice of DMLR to carry out his responsibilities under SMORA. For the purposes of evaluating the manner in which this Agreement is being carried out and to insure that performance and reclamation standards are being met, OSMRE may periodically conduct inspections of surface coal mining and reclamation operations on Federal lands. OSMRE will attempt to give DMLR notice of its intent to conduct inspections and encourage joint inspections. However, pursuant to 30 CFR part 842 or 30 CFR part 877, OSMRE may conduct an inspection without the State when responding to information that there exists any condition, practice, or violation which creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause a significant, imminent environmental harm to land, air, or water resources. If an inspection is made without DMLR inspectors, OSMRE shall provide DMLR with a copy of the inspection report within 15 days after inspection.

ARTICLE VIII: ENFORCEMENT

A. *DMLR Enforcement:* DMLR shall have primary enforcement authority on Federal lands covered by this Agreement in accordance with the State Program and this Agreement, and DMLR shall take appropriate enforcement action whenever necessary, including issuance of orders of cessation and notices of violation.

DMLR shall promptly notify the Federal land management agency of all violations of applicable laws, regulations, orders, and approved permits subject to this Agreement and of all actions taken with respect to such violations.

B. *Secretary's Authority:* (1) This Agreement does not affect or limit the Secretary's authority to enforce provisions of laws other than the SMORA. (2) During an inspection made solely by OSMRE or any joint inspection where DMLR and OSMRE fail to agree regarding the propriety of any particular enforcement action, OSMRE may take any enforcement action necessary to comply with 30 CFR parts 843 and 845 or with SMORA. Such enforcement action shall be based on the substantive standards included in the approved State Program and shall be taken using the procedures and penalty system contained in 30 CFR parts 843 and 845. (3) Nothing in this agreement shall preclude the Secretary from performing his responsibilities in *Save Our Cumberland Mountains v. Hodel*, No. 81-2238 (D.D.C.).

C. *Witness Availability:* Personnel of the State and Interior shall be mutually available to serve as witnesses in enforcement actions taken by either party.

Surface Mining Reclamation and Enforcement, Interior

§ 946.30

ARTICLE IX: BONDS

A. DMLR shall require all operators on Federal lands covered by this Agreement to submit a performance bond, payable to both the United States and Virginia. The performance bond shall be of sufficient amount to comply with the bonding requirements of both SMORA and the State Program. Such bond shall provide that if this Cooperative Agreement is terminated, (1) the bond will revert to being payable only to the United States to the extent that Federal lands are involved, and (2) the bond will be delivered by DMLR to OSMRE if only Federal lands are covered by the bond. The DMLR shall also advise OSMRE of adjustment to the performance bond, pursuant to the Program.

B. Release of the performance bond shall be conditioned upon compliance with all applicable requirements. Prior to releasing the operator from any obligation under such bond, the DMLR shall obtain the concurrence of the Federal land management agency. Such bond shall be subject to forfeiture, with the concurrence of OSMRE, in accordance with the procedures and requirements of the State Program

ARTICLE X: FILING OF APPEALS

Orders and decisions issued by DMLR in accordance with the State Program that are appealable shall be appealed to the Commonwealth of Virginia in accordance with the State Program. Orders and decisions issued by the Department that are appealable shall be appealed to the Department of the Interior's Office of Hearings and Appeals.

ARTICLE XI: TERMINATION OF COOPERATIVE AGREEMENT

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XII: REINSTATEMENT OF COOPERATIVE AGREEMENT

If this Agreement has been terminated in whole or part, it may be reinstated under the provisions of 30 CFR 745.16.

ARTICLE XIII: AMENDMENT OF COOPERATIVE AGREEMENT

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

ARTICLE XIV: CHANGES IN STATE OR FEDERAL STANDARDS

A. *Notification of Changes:* The Secretary or the State may from time to time promulgate new Federal or State regulations, including new or revised permitting or performance standards, or administrative and enforcement procedures. OSMRE and DMLR shall immediately inform each other of any final

changes in their respective laws or regulations as provided in 30 CFR part 732. Each party shall, if it is determined to be necessary to keep this Agreement in force, change or revise its regulations and request necessary legislative action. Such changes shall be made under the procedures of 30 CFR part 732 for changes to the State Program and section 501 of the SMORA for changes to the Federal lands program.

B. *Copies of Changes:* The State and OSMRE shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the administration and enforcement of this Agreement.

ARTICLE XV: CHANGES IN PERSONNEL AND ORGANIZATION

DMLR and the Secretary shall, consistent with 30 CFR part 745, advise each other of changes in the organization, structure, functions, duties, and funds of the offices, departments, divisions, and persons within their organizations which could affect administration and enforcement of this Agreement. Each shall promptly advise the other in writing of changes in key personnel, including the head of department or division, or changes in the functions or duties of persons occupying the principal offices within the structure of the program. DMLR and OSMRE shall advise each other in writing of changes in the location of offices, addresses, telephone numbers, and changes in the names, location, and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible. This provision does not apply to Department of the Interior personnel performing activities under *Save Our Cumberland Mountains v. Hodel* referenced in Article VIII of this Agreement.

ARTICLE XVI: RESERVATION OF RIGHTS

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws or regulations, including but not limited to those listed in appendix A.

Approved:

Dated: March 18, 1987.

Signed:

Jerold L. Baliles,
Governor of Virginia.

Dated: January 29, 1987.

Pt. 947

30 CFR Ch. VII (7–1–17 Edition)

Signed:

Donald Paul Hodel,
Secretary of the Interior.

(Reporting and recordkeeping requirements approved by the Office of Management and Budget under control numbers 1029–0013, 1029–0026, and 1029–0051)

APPENDIX A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations including 43 CFR parts 3480–3487.
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR part 1500.
4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR part 402.
5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR part 800.
6. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.
7. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.
8. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.
9. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*
10. Executive Order 1593 (May 13, 1971), Cultural Resources Inventories on Federal Lands.
11. Executive Order 11988 (May 24, 1977), for flood plain protection. Executive Order 11990 (May 24, 1977), for wetlands protection.
12. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.
13. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa *et seq.*
14. The Constitution of the United States.
15. The Constitution of the State and State Law.

[52 FR 11049, Apr. 7, 1987]

PART 947—WASHINGTON

Sec.

- 947.700 Washington Federal program.
- 947.701 General.
- 947.702 Exemption for coal extraction incidental to the extraction of other minerals.
- 947.707 Exemption for coal extraction incidental to government-financed highway or other construction.

- 947.761 Areas designated unsuitable for surface coal mining by act of Congress.
- 947.762 Criteria for designating areas as unsuitable for surface coal mining operations.
- 947.764 Process for designating areas unsuitable for surface coal mining operations.
- 947.772 Requirements for coal exploration.
- 947.773 Requirements for permits and permit processing.
- 947.774 Revision; renewal; and transfer, assignment, or sale of permit rights.
- 947.775 Administrative and judicial review of decisions.
- 947.777 General content requirements for permit applications.
- 947.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.
- 947.779 Surface mining permit applications—minimum requirements for information on environmental resources.
- 947.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.
- 947.783 Underground mining permit applications—minimum requirements for information on environmental resources.
- 947.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
- 947.785 Requirements for permits for special categories of mining.
- 947.795 Small operator assistance.
- 947.800 Requirements for bonding of surface coal mining and reclamation operations.
- 947.815 Performance standards—coal exploration.
- 947.816 Performance standards—surface mining activities.
- 947.817 Performance standards—underground mining activities.
- 947.819 Special performance standards—auger mining.
- 947.822 Special performance standards—operations on alluvial valley floors.
- 947.823 Special performance standards—operations on prime farmland.
- 947.824 Special performance standards—mountaintop removal.
- 947.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
- 947.828 Special performance standards—in situ processing.
- 947.842 Federal inspections.
- 947.843 Federal enforcement.
- 947.845 Civil penalties.
- 947.846 Individual civil penalties.
- 947.955 Certification of blasters.

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

SOURCE: 48 FR 7883, Feb. 24, 1983, unless otherwise noted.

Surface Mining Reclamation and Enforcement, Interior

§ 947.700

§ 947.700 Washington Federal program.

(a) This part contains all rules that are applicable to surface coal mining operations in Washington which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) Most of the rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the Washington Federal program.

(c) The rules in this part apply to all surface coal mining operations in Washington conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in Washington.

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of Washington laws generally provide for more stringent environmental control and regulation of some aspects of surface coal mining operations than do the provisions of the Surface Mining Control and Reclamation Act and the regulations in this chapter. Therefore, pursuant to section 505(b) of the Act, they shall not generally be construed to be inconsistent with the Act, unless in a particular instance the rules in this Chapter are found by OSM to establish more stringent environmental controls:

(1) Washington Clean Air Act, RCW 70.94.

(2) Washington Food Fish and Shell Fish Laws pertaining to the Department of Fisheries on operation in streams, RCW 75.

(3) Washington Hydraulic Projects Approval Law, RCW 75.20.100.

(4) Washington Forest Practices Act, RCW 76.09.

(5) Washington Water Code, RCW 90.03.

(6) Washington Water Pollution Control Act, RCW 90.48.

(7) Washington Minimum Water Flows and Levels Act, RCW 90.22.

(8) Washington Shoreline Management Act, RCW 90.58.

(9) Washington Pesticide Control Act, RCW 15.58.

(f) The following are the Washington law and regulations that generally interfere with the achievement of the purposes and requirements of the Act and are, in accordance with section 504(g) of the Act, preempted and superseded. Other Washington laws may in an individual situation interfere with the purposes and achievements of the Act and may be preempted and superseded with respect to the performance standards of §§947.815 through 947.828 as they affect a particular coal exploration or surface mining operation by publication of a notice to that effect in the FEDERAL REGISTER.

(1) The Washington Surface Mining Act of 1971, Revised Code of Washington (RCW) 78.44, as related to surface coal mining, except to the extent that it regulates surface coal mining operations which affect two acres or less or which otherwise are not regulated by the Surface Mining Control and Reclamation Act.

(2) Surface Mined Land Reclamation regulations, Washington Administrative Code (WAC) 332-18, as they apply to surface coal mining, except to the extent that such regulations apply to surface coal mining operations which affect two acres or less or which otherwise are not regulated by the Surface Mining Control and Reclamation Act.

(g) The Secretary may grant a limited variance from the performance standards of §§947.815 through 947.828 of this part if the applicant for coal exploration approval or a surface coal mining reclamation permit submitted pursuant to §§947.772 through 947.785 of this part demonstrates in the application:

(1) That such a variance is necessary because of the nature of the terrain, climate, biological, chemical, or other relevant physical conditions in the area of the mine; and

(2) If applicable, that the proposed variance is no less effective than the environmental protection requirements of the regulations in this program and is consistent with the Act.

[48 FR 7883, Feb. 24, 1983, as amended at 52 FR 13815, Apr. 24, 1987]

§ 947.701

§ 947.701 General.

(a) Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15, and part 701 of this chapter shall apply to surface coal mining operations in Washington.

(b) The following modified definitions shall be applicable under § 701.5 of this chapter:

(1) *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, except that all coalfields located in the State of Washington west of the crest of the Cascade Mountain Range are not in arid or semiarid areas.

(2) *Forestry (Forest Land)*. Includes land used or managed for the long-term production of wood, wood fiber, or wood derived products. All land which is capable of supporting a merchantable stand of timber and is not being actively used in a manner or for a use which is incompatible with timber growing is also included. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(c) Records required by § 701.14 of this chapter to be made available locally to the public shall be retained at the county recorder's office of the county in which an operation is located, and at the nearest OSM Field Office.

[48 FR 7883, Feb. 24, 1983, as amended at 48 FR 22292, May 18, 1983]

§ 947.702 Exemption for coal extraction incidental to the extraction of other minerals.

Part 702 of this chapter, *Exemption for Coal Extraction Incidental to the Extraction of Other Minerals*, shall apply to any person who conducts coal extraction incidental to the extraction of

30 CFR Ch. VII (7-1-17 Edition)

other minerals for purposes of commercial use or sale.

[54 FR 52123, Dec. 20, 1989]

§ 947.707 Exemption for coal extraction incidental to government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incidental to Government-Financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§ 947.761 Areas designated unsuitable for surface coal mining by act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply to surface coal mining and reclamation operations.

§ 947.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mining and reclamation operations.

§ 947.764 Process for designating areas unsuitable for surface coal mining operations.

(a) Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mining and reclamation operations.

(b) The Secretary shall notify the Washington Department of Natural Resources and the Department of Ecology of any area designated unsuitable or for which such designation has been requested or terminated.

§ 947.772 Requirements for coal exploration.

(a) Part 772 of this chapter, *Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application

Surface Mining Reclamation and Enforcement, Interior

§ 947.773

within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

[52 FR 13816, Apr. 24, 1987]

§ 947.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, *Requirements for Permits and Permit Processing*, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the application of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and negotiate the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 947.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the applicant is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.6 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) The Secretary shall coordinate, to the extent practicable, his responsibilities under the following Federal laws with the relevant Washington State laws to avoid duplication:

Federal law	Washington law
(1) Clean Water Act, as amended 33 U.S.C. 1251 <i>et seq.</i>	Water Pollution Control Act, Chapter 90.48 RCW
(2) Clean Air Act, as amended 42 U.S.C. 7401 <i>et seq.</i>	Washington Clean Air Act, Chapter 70.94 RCW.
(3) Resource Conservation and Recovery Act, 42 U.S.C. 3251	Solid Waste Management, Chapter 70.95 RCW: Hazardous Waste Disposal Act, Chapter 70.105 RCW.
(4) National Historic Preservation Act, RCW, 16 U.S.C. 470 <i>et seq.</i>	Indian Graves and Records, Chapter 27.44.
(5) Archeological and Historic Preservation Act, 16 U.S.C. 469 <i>et seq.</i>	Archeological Sites and Resources, Chapter 27.53 RCW, Office of Archeology and Historic Preservation, Chapter 43.51A, RCW.
(6) National Environmental Policy Act 42 U.S.C. 4321 <i>et seq.</i>	State Environmental Policy Act, Chapter 43.21C RCW.
(7) Coastal Zone Management Act 16 U.S.C. 1451, 1453-1464	Shoreline Management Act, Chapter 90.58, RCW.
(8) Section 208 of the Clean Water Act, as amended, 33 U.S.C. 1251 <i>et seq.</i>	Water Pollution Control Act, Chapter 90.48 RCW: Washington Forest Practices Act, Chapter 76.09 RCW.
(9) Endangered Species Act, 16 U.S.C. 1531 <i>et seq.</i>	Natural Area Preserves Act (Plants), Chapter 79.70, RCW: Department of Game, Chapter 43.17 RCW: Game Commission, Chapter 77.08, RCW.
(10) Fish and Wildlife Coordination Act 16 U.S.C. 661-667	Water Resources Act of 1971, Chapter 90.54 RCW: Minimum Water Flows and Levels, Chapter 90.22 RCW.

Federal law	Washington law
(11) Noise Control Act, 42 U.S.C. 4903	Noise Control Act of 1974, Chapter 70.107 RCW.
(12) Bald Eagle Protection Act 16 U.S.C. 668–668(d).	

(e) The Secretary shall coordinate the SMCRA permit with appropriate State and regional or local agencies to the extent possible, to avoid duplication with the following state and regional or local regulations:

(1) Department of Ecology:

Surface Water Rights Permit, RCW 90.03.250
 Dam Safety Approval, RCW 90.03.350
 Reservoir Permit, RCW 90.03.370
 Approval of Change of Place or Purpose of Use (water) RCW 90.03.380
 Ground Water Permit, RCW 90.44.050
 New Source Construction Approval, RCW 79.94.152
 Burning Permit, RCW 70.94.650
 Flood Control Zone Permit, RCW 86.16.080
 Waste Discharge Permit, RCW 90.48.180
 National Pollution Discharge Elimination System (NPDES) Permit, RCW 90.48
 Approval of Change of Point of Diversion, RCW 90.03.380
 Sewage Facilities Approval, RCW 90.48.110
 Water Quality Certification, RCW 90.48.160

(2) Department of Natural Resources:

Burning Permit, RCW 77.04.150 & .170
 Dumping Permit, RCW 76.04.242
 Operating Permit for Machinery, RCW 76.04.275
 Cutting Permit, RCW 76.08.030
 Forest Practices, RCW 76.09.060
 Right of Way Clearing, RCW 76.04.310
 Drilling Permit, RCW 78.52.120

(3) Regional Air Pollution Control Agencies:

New Source Construction Approval (RCW 70.94.152)
 Burning Permit, RCW 70.94.650

(4) Department of Fisheries:

Hydraulic Permit, RCW 75.20

(5) Department of Game:

Hydraulic Permit, RCW 75.20.100

(6) Department of Social Health Services:

Public Sewage, WAC 248.92
 Public Water Supply, WAC 248.54

(7) Department of Labor and Industries:

Explosive license, RCW 70.74.135
 Blaster's license, WAC 296.52.040
 Purchaser's license, WAC 296.52.220

Storage Magazine license, WAC 296.52.170

(8) Cities and Counties:

New Source Construction Approval, RCW 70.94.152
 Burning Permit, RCW 79.94.650
 Shoreline Substantial Development Permit, RCW 90.58.140
 Zoning and Building Permits, Local Ordinances

(f) Where applicable, no person shall conduct coal exploration operations which result in the removal of more than 250 tons in one location or surface coal mining and reclamation operations without first obtaining permits required by the State of Washington.

(g) The Secretary shall provide a copy of the decision to grant or deny a permit application to the Washington Department of Natural Resources, the Department of Ecology and to the County Department of Planning, if any, in which the operation is located.

[52 FR 13816, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

§ 947.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, *Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights*, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSMRE.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.6, 773.19(b) (1) and (2), and 778.21 and of part 775.

(2) OSMRE shall make every effort to approve or disapprove an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete

such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

[52 FR 13817, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

§ 947.775 Administrative and judicial review of decisions.

Part 775 of this chapter, *Administrative and Judicial Review of Decisions*, shall apply to all decisions on permits.

[52 FR 13817, Apr. 24, 1987]

§ 947.777 General content requirements for permit applications.

Part 777 of this chapter, *General Content Requirements for Permit Applications*, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

[52 FR 13817, Apr. 24, 1987]

§ 947.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

[52 FR 13817, Apr. 24, 1987]

§ 947.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to con-

duct surface coal mining and reclamation operations.

§ 947.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

(a) Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations, except for § 780.15(a) of that part.

(b) Any applicant for a surface coal mining permit which is to produce more than 1,000,000 tons per year shall demonstrate compliance with local Air Pollution Control Authorities and the Washington Clean Air Act, RCW 70.94.

(c) Any applicant for a surface mining permit shall describe the steps taken to comply with the Washington Water Pollution Control Act, RCW 90.48.

[48 FR 7883, Feb. 24, 1983, as amended at 48 FR 22292, May 18, 1983]

§ 947.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who submits an application to conduct underground coal mining operations.

§ 947.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

(a) Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct underground coal mining operations.

(b) Any application for an underground mining permit which will produce more than 1,000,000 tons per year shall demonstrate specific compliance with local Air Pollution Control Authorities and the Washington Clean Air Act, RCW 70.94.

(c) Any applicant for an underground mining permit shall also indicate how

§ 947.785

compliance will be achieved with the Washington Water Pollution Control Act, RCW 90.48.

§ 947.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining*, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 947.795 Small operator assistance.

Part 795 of this chapter, *Small Operator Assistance*, shall apply to any person making application for assistance under the small operator assistance program.

§ 947.800 Requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, *Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs*, shall apply to all surface coal mining and reclamation operations.

§ 947.815 Performance standards—coal exploration.

(a) Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration*, shall apply to any person conducting coal exploration operations.

(b) Any person who conducts coal exploration operations shall comply with the Washington Forest Practices Act, RCW 76.09, and regulations promulgated pursuant to it.

§ 947.816 Performance standards—surface mining activities.

(a) Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, shall apply to any person who conducts surface coal mining and reclamation operations.

(b) All operators shall have a plan of reclamation approved by the Washington Department of Fisheries for operation in affected streams, RCW 75, and shall comply with the Hydraulic Project Approval Law, RCW 75.20.100, the Shoreline Management Act, RCW 90.58, the Forest Practices Act, RCW

30 CFR Ch. VII (7–1–17 Edition)

76.09, the Water Pollution Control Act, RCW 90.48, the Minimum Water Flows and Levels Act, RCW 90.22, and the Pesticide Control Act, RCW 15.58, and regulations promulgated pursuant to these laws.

§ 947.817 Performance standards—underground mining activities.

(a) Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities*, shall apply to any person who conducts underground coal mining operations.

(b) All operators shall have a plan of reclamation approved by the Washington Department of Fisheries for operation in affected streams, RCW 75, and shall comply with the Hydraulic Project Approval Law, RCW 75.20.100, the Shoreline Management Act, RCW 90.58, the Forest Practices Act, RCW 76.09, the Water Pollution Control Act, RCW 90.48, the Minimum Water Flows and Levels Act, RCW 90.22, the Pesticide Control Act, RCW 15.58, and the Washington Water Code, RCW 90.03, and regulations promulgated pursuant to these laws.

§ 947.819 Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining*, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 947.822 Special performance standards—operations on alluvial valley floors.

Part 822 of this chapter, *Special Performance Standards—Operations on Alluvial Valley Floors*, shall apply to any person who conducts surface coal mining and reclamation operations on alluvial valley floors, except in those coalfields in Washington west of the crest of the Cascade Mountain Range.

[48 FR 22292, May 18, 1983]

§ 947.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland*, shall apply to any person who conducts

surface coal mining and reclamation operations on prime farmland.

§ 947.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal*, shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 947.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine*, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of coal processing plants and support facilities not located at or near the minesite and not within the permit area for a mine.

§ 947.828 Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, shall apply to any person who conducts in situ processing activities.

§ 947.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections*, shall apply to all exploration and surface coal mining and reclamation operations.

(b) Upon request OSM shall furnish a copy of any inspection report to the Washington Department of Natural Resources and the Department of Ecology. If there is a planning department in the county government where the operation is located, a copy of the enforcement action shall be furnished to that agency.

§ 947.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement*, shall apply when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) Upon request OSM shall furnish a copy of each enforcement action document and order to show cause issued pursuant to this section to the Washington Department of Natural Resources and the Department of Ecology. If there is a planning department in the county government where the operation is located, a copy of the enforcement action shall be furnished to that agency.

§ 947.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties*, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

§ 947.846 Individual civil penalties.

Part 846 of this chapter, *Individual Civil Penalties*, shall apply to the assessment of individual civil penalties under section 518(f) of the Act.

[53 FR 3676, Feb. 8, 1988]

§ 947.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

PART 948—WEST VIRGINIA

Sec.

948.1 Scope.

948.10 State regulatory program approval.

948.12 State statutory, regulatory, and proposed program amendment provisions not approved.

948.13 State statutory and regulatory provisions set aside.

948.15 Approval of West Virginia regulatory program amendments.

948.16 Required regulatory program amendments.

948.20 Approval of State abandoned mine lands reclamation plan.

948.25 Approval of West Virginia abandoned mine lands reclamation plan amendments.

948.26 Required abandoned mine land reclamation program/plan amendments.

[Reserved]

948.30 State-Federal Cooperative Agreement.

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

§ 948.1

§ 948.1 Scope.

This part contains all rules applicable only within West Virginia that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[46 FR 5954, Jan. 21, 1981]

§ 948.10 State regulatory program approval.

The West Virginia program, as submitted on March 3, 1980, as clarified on July 16, 1980, and as resubmitted on December 19, 1980, is conditionally approved, effective January 21, 1981. Beginning on that date and continuing until July 11, 1985, the Department of Natural Resources was deemed the regulatory authority in West Virginia for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Beginning on July 11, 1985, the Department of Energy was deemed the regulatory authority pursuant to the program transfer provisions of Enrolled Committee Substitute for House Bill 1850, as signed by the Governor of West Virginia on May 3, 1985. Beginning on October 16, 1991, the Division of Environmental Protection was deemed the regulatory authority pursuant to Enrolled Committee Substitute for House Bill 217 that was signed by the Governor on October 25, 1991. On December 3, 1991, OSM found that it was not necessary to amend the State program to effect the redesignation of the regulatory authority from the Division of Energy to the Division of Environmental Protection (58 FR 42904, August 12, 1993). Beginning on April 14, 2001, the Department of Environmental Protection was deemed the regulatory authority pursuant to Enrolled Committee Substitute for House Bill 2218. The bill, which was signed by the Governor on April 30, 2001, transferred programs and redesignated the Division of Environmental Protection as the Department of Environmental Protection within the executive branch. Copies of the conditionally approved program, as amended, are available at:

(a) Office of Surface Mining, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301-2816. Telephone: (304) 347-7158.

30 CFR Ch. VII (7-1-17 Edition)

(b) West Virginia Department of Environmental Protection, Division of Mining and Reclamation, 10 McJunkin Road, Nitro, West Virginia 25143-2506. Telephone: (304) 759-0510.

[66 FR 67453, Dec. 28, 2001]

§ 948.12 State statutory, regulatory, and proposed program amendment provisions not approved.

(a) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on May 11, 1998:

(1) CSR 38-2-3.14, to the extent that it could be interpreted as applying to the on-site reprocessing of abandoned coal mine waste piles or to the extent that it would apply to the removal of abandoned coal refuse piles where, on average, the material to be removed meets the definition of coal in 30 CFR 700.5.

(2) CSR 38-2-3.32.g., which concerns unanticipated events or conditions.

(3) CSR 38-2-14.14.a.1., which concerns placement of excess spoil outside the permit area.

(4) CSR 38-2-23, which concerns coal extraction as part of land development activities.

(5) CSR 38-2-24.4, which concerns water quality standards for bond release.

(b) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on March 14, 2000, March 28, 2000, and April 6, 2000:

(1) The proviso at W.Va. Code 22-3-23(c)(2)(C) which concerns Phase III bond release where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.

(2) At CSR 38-2-7.4.b.1.C.5., the phrase, "except for ponds and impoundments located below the valley fills."

(3) At CSR 38-2-7.4.b.1.D.2, the phrase, "except for those areas with a slope of at least 50%."

(4) At CSR 38-2-7.4.b.1.G.1., the word "excessive."

(5) At CSR 38-2-7.4.b.1.I., the new stocking standards for commercial forestry and forestry.

(6) At CSR 38-2-7.4.b.1.I.2., the phrase, "where there is potential for excessive erosion on slopes greater than 20%."

Surface Mining Reclamation and Enforcement, Interior

§ 948.15

(7) At CSR 38-2-7.4.b.1.I.2., the words “rock cover.”

(8) At CSR 38-2-7.4.b.1.I.3., the phrase “or, if a commercial forestry mitigation plan is submitted to the Director, and approved and completed.”

(9) The portion of CSR 38-2-7.4.b.1.I.4. concerning in-kind mitigation plans.

(10) At CSR 38-2-14.12.a.1., the term “commercial forestry.”

(c) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on March 14, 2000, March 28, 2000, and April 6, 2000:

(1) At CSR 38-2-7.5.j.3.B., the phrase, “except for those areas with a slope of at least 50%” is not approved, and the phrase, “and other areas from which the applicant affirmatively demonstrates and the Director of the WVDEP finds that soil cannot reasonably be recovered” is not approved.

(2) At CSR 38-2-7.5.j.6.A., the word “excessive” in the phrase “excessive erosion” is not approved.

(3) At CSR 38-2-7.5.o.2., the new planting arrangements and stocking standards are not approved.

(4) At CSR 38-2-7.5.o.2., the words “rock cover” are not approved.

(d) We are not approving the following provision of the proposed blasting-related program amendment that West Virginia submitted on October 30, 2000, and November 28, 2001: At CSR 199-1-4.8.c, the phrase “substantial or significant” is not approved.

(e) Section 22A-3-23(c)(3) of the Code of West Virginia is found inconsistent with Section 519(c)(3) of SMCRA to the extent that it states: “*Provided, however,* That such a release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.”

(f) Section 22A-3-12(e) of the Code of West Virginia is found inconsistent with Section 515(e) of SMCRA.

(g) [Reserved]

(h) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on March 25, 2004:

(1) At CSR 38-2-7.6.e.1, the word “excessive.”

(2) At CSR 38-2-7.7.e.1, the word “excessive.”

(i) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on June 13, 2005, and modified on August 23, 2005:

(1) At CSR 38-2-5.4.e.1, the words “Impoundments meeting.”

(2) At CSR 38-2-7.4.b.1.J.1(c), the deletion of the words “surface material shall be composed of soil and the materials described in subparagraph 7.4.b.1.D.”

[48 FR 52053, Nov. 16, 1983, as amended at 50 FR 28323, 28342, July 11, 1985; 55 FR 21337, May 23, 1990; 61 FR 6535, Feb. 21, 1996; 65 FR 26135, May 5, 2000; 65 FR 50430, Aug. 18, 2000; 65 FR 80328, Dec. 21, 2000; 68 FR 40167, July 7, 2003; 68 FR 68738, Dec. 10, 2003; 70 FR 6590, Feb. 8, 2005; 71 FR 10790, Mar. 2, 2006]

§ 948.13 State statutory and regulatory provisions set aside.

(a)-(b) [Reserved]

(c) The following wording in section 22A-3-23(c)(3) of the Code of West Virginia is inconsistent with section 519(c)(3) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside:

Provided, however, That such a release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.

(d) Section 22A-3-12(e) of the Code of West Virginia is inconsistent with section 515(e) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside in its entirety.

(e)-(f) [Reserved]

[50 FR 35084, Aug. 29, 1985, as amended at 61 FR 6535, Feb. 21, 1996]

§ 948.15 Approval of West Virginia regulatory program amendments.

The following table lists the dates that West Virginia submitted proposed amendments to OSM, the dates when OSM published final rules approving all or portions of those amendments in the FEDERAL REGISTER, and the State statutory or regulatory citations for those amendments (or a brief description of the amendment). The amendments appear in order of the date of publication

of the final rules announcing OSM's decisions on the amendments. The preambles to those final rules identify and discuss any assumptions underlying ap-

proval, any conditions placed on the approval, and any exceptions to the approval.

Original amendment submission date	Date of publication of final rule	Citation/description of approved provisions
October 29, 1981	May 11, 1982	§ 10.
June 17, 1982	September 10, 1982	§ E.03 of the State's coal refuse disposal regulations.
September 14, 1982, ...	March 1, 1983	§§ 4D.04h; 6A.02a.6; 6B.02, .07c.2, f; 7A.02a.6; 12B.07; 15A.01; Part H concerning alternative bonding system.
October 29, 1982, ...	November 16, 1983	Technical Handbook of Standards and Specifications for Mining Operations; applicability; bond release procedures for interim program permits; incidental mining.
February 16, 1983, ...	September 20, 1984	Chapter 22–4 Series—blaster certification program.
April 29, 1983, ...	April 23, 1985	Chapter 22–4 Series, § 6.01(B), 9—blaster certification program.
June 15, 1983, ...	July 11, 1985	Reclamation and coal refuse disposal; Transfer of program authority; permit addendum and Chapter 20, Revegetation, of the Technical Handbook for Surface Mining; permit or significant revision to a permit; the coal exploration approval document; civil penalty procedures; assessable and non-assessable violations.
September 13, 1983, ...	March 20, 1986	Financial analysis and supporting documentation demonstrating sufficient money in the special reclamation fund; withdrawals from the fund; noncoal administrative expenses.
January 12, 1984	May 23, 1990	Code of Violations; Replacement of all regulations in chapter 20, Article 6, Series VII and VII-A (1985) with new set of Legislative Rules at title 38, Series 2.
November 20, 1984 ..	October 4, 1991	CSR 38–2 §§ 2, 3, 5, 6, 9, 11 through 14, 17, 20, 22.
March 30, 1984, Oc- ..	November 19, 1991	CSR 38–2–20.5, .6, .7.
tober 30, 1984, ..	August 16, 1995	CSR 38–2–14.14(b)(4), (g)(1)(B), (g)(8), (11), (12).
June 14, 1985, ..	October 4, 1995, ..	WV Code 22–1–4 through –8; 22–2; 22–3–3, –5, –7, –8, –9, a, –11(a), (g), –12, –13, –15, –17, –18, –19, –22, –26, –28, –40; 22B–1–4 through –12; 22B–3–4; 22B–4; CSR 38–2–1.2, –2, –3.1(o), .4, .6, .7, .8, .12, .14, .15, .16, .25, .26, .27(a), .28, .29, .30, .31(a), .32, .33, .34, –4, .1(a), .2 through .12, –5.2, .4, .5, –6, .3(b), .6, .8, –8.1, –9, –11.1 through .7, –12.2, .3, .4(a), (2)(B), (c) through (e) except the words “other responsible party” at (e) are not approved, .5, –13, –14.5, .8, .11, .12, .14, .15, .17, .18, .19, –15.2, –16.2, –17, –18.3, –20.1, .2, .4 through .7, –22; 38–2C–4, –5, –8.2, –10.1, –11.1; 38–2D–4.4(b), –6.3(a), –8.7(a).
November 11, 1985 ..	February 21, 1996	CSR 38–2–4.12, –5.4(c), –12.2(e), –14.3(c), .14(e)(4), .15(m).
June 30, 1986, April ..	July 24, 1996	WV Code Sections 22B–1–7(d), 7(h); 22B–3–4. WV Regulations CSR 38–2–1.2(c)(1). Vacating of retroactive approval published on February 21, 1996.
26, 1986, ...	July 14, 1998	W.Va. Code 22–3 Sections 3(u)(2)(1) (decision deferred), (2)(not approved), (3); 3(x), (y) (partial approval), (z) (partial approval); 13(b)(20), (22), (c)(3) (decision deferred); 15(h); 17(b); 18(c), (f); 28 (a–c) (not approved), (d), (e) (decision deferred), (f), WV Regulations CSR 38–2 Sections 2.4, 2.43 (not approved), 2.95 (not approved), 2.108, 2.120; 3.2.e; 3.12.a.1 (partial approval), .2 (partial approval); 3.14.b.7 & .8 deleted, .12.E, .15.B deleted, .13.B; 3.29.a (partial approval); 3.35; 5.5.c; 6.5.a; 6.2.e; 9.2.i.2; 9.3.h.1, .2; 14.11.e, .f, .g, .h; 14.15.b.6.A, .c, .d; 16.2.c (partial approval), .2, .3, .4 (partial approval for .4); 20.1.e
June 29, 1990	April 2, 1996	W.Va. Code 22–3 Section 13(c)(3) [not approved].
July 12, 1991	February 23, 1998	West Virginia regulations at CSR 38–2–2.25; 2.102; 3.32.d.12; 14.16 through 14.19; 22.5.1; 24 (except 24.4).
July 30, 1993	April 28, 1997	CSR 38–2–2.11; 2.78; 3.12.a.2, and .2.B; 3.32.b; 3.35; 14.12.a.1; 16.2.c, and .c.3; and 22.4.g.
June 28, 1993	February 9, 1999	W.Va. Code 22–1–7(a)(7); 22–3–13(a), (b)(3) and (15), (e), and (f); 22–3–13a, in 13a(g) the words “upon request” are not approved, in 13a(j)(2) the phrase “or the surface impacts of the underground mining methods” is not approved; 22–3–22a; 22–3–23(c)(3) decision is deferred; 22–3–24(c), (d), (e), and (f); 22–3–30a, in 30a(a) the phrase “of overburden and coal” is not approved, 30a(c) and (f) are not approved; and 22–3A.
April 2, 1996	May 14, 1999	W.Va. Code 22–3– at 3(e), (u)(2); (y); 13(c)(3) (qualified approval), (c)(3)(B)(iii); 23(c)(1), (2) (partial approval). CSR 38–2– at 2.31, 2.45, 2.98, 2.123, 2.136; 3.8c; 3.25; 7.2.i; 7.3; 7.4.a (qualified approval); 7.4.b.1; 7.4.b.1.A. (qualified approval), 7.4.b.1.B., C. (partial approval), D. (partial approval), E. (qualified approval), F., G. (partial approval), H., I. (partial approval), J. (qualified approval), K.; 14.15.f.
February 23, 1998	May 5, 2000	CSR 38–2–7.5.(qualified approval), 7.5.a., b., c., d., e. (qualified approval), f. (qualified approval), g. (qualified approval), h. (h.2.B. is a qualified approval), i. (i.1.B., i.3.H., i.3.Q. and i.7.A., and i.10. are qualified approvals), j. (j.2.C. and j.2.E. are qualified approvals; j.3.B. partial approval; j.4. qualified approval, j.6.A. partial approval, j.6.B. qualified approval, j.7. qualified approval), k. (qualified approval), l., m., n., o. (qualified approval; o.2. is a partial approval).
April 28, 1997	October 1, 1999	
May 11, 1998	November 12, 1999	
May 5, 1999	August 18, 2000	
March 25, 1999	12/21/00	
March 14, 2000, ...		
March 28, 2000, ...		
and April 6, 2000.		
March 14, 2000, ...		
March 28, 2000, ...		
and April 6, 2000.		

Surface Mining Reclamation and Enforcement, Interior

§ 948.15

Original amendment submission date	Date of publication of final rule	Citation/description of approved provisions
September 24, 2001	December 28, 2001	W. Va. Code 22–1–17; 22–3–11(a), (c), (d), (g) through (n); 22–3–12(a) through (f).
November 30, 2000; May 2, 2001; November 28, 2001; February 26, 2002; March 8, 2002.	May 1, 2002	Emergency rule provisions: CSR 38–2–3.12.a.1, a.2, a.2.B; 5.4.b.8, d.3; 16.2.c.4. Policy/guidance documents submitted February 26, 2002: Attachments 1A; 2P; 3P and the updated listing (Administrative Record Number WV–1278); 4 except examples 1 and 3 through 8; 6; and 9. Policy/guidance documents submitted March 8, 2002: Attachments 1; 3A; and 8. In House Bill 2663: CSR 38–2–3.12.a.1; 3.14.a; 12.2.e; 12.4.e; 14.8.a.6; 16.2.c.4; and 24.4. In Senate Bill 689: W. Va. Code 22–3–13a(g), (j); 30a(a). CSR 38–2–12.5.d.
September 24, 2001	May 29, 2002	CSR 38–2–14.15.a.1, a.2; b.5; b.6.A, b.6.B.1; c, c.1, c.4; d, d.1, d.2, d.3; e, e.1, e.2, e.3; g (partial approval), g.2; i (qualified approval).
April 9, 2002	December 3, 2002 ..	W. Va. Code 22–3–10(b).
April 9, 2002	May 7, 2003	CSR 38–2: 2.31.b.1; 2.43; 2.108; 3.1.i.2; 3.25.a.4; 3.30.d.8; 3.32.e; 5.4.e.2; 7.4.a.1; 7.4.b.1.C.5; 7.4.b.1.D.1; 7.4.b.1.G.1; 7.4.b.1.H.2; 7.4.b.1.I.2; 7.4.b.1.I.3; 7.5.i.1.B; 7.5.i.3.Q; 7.5.i.10; 7.5.j.3.A; 7.5.j.6.A; 7.5.j.6.B; 7.5.o.2; 8.2.b.3; 10.4.a.1.D; 10.6.b.3; 11.2.b; 11.4.a.1; 11.4.a.4; 11.5. (deletion of former); 11.5.a; 12.5.e; 14.12.a.1; 17.3.b.2; 17.4; 17.6; and 22.7.a.
June 19, 2002	June 27, 2003	CSR 38–2–3.2.c, 3.7.d, 3.20 3.22.f.5.A, A.1, and A.2, 5.4.b.4, 5.4.b.11, 5.6, 8.2.e, 9.1.a, 9.3.d, 9.3.f, 10.2.a.4, 10.3.a.1, 10.4.c.1, 10.6.b.2, b.7.A, b.7.B, b.8, 14.5.h, 14.14.g.1, g.2 (partial approval; also, approved only to the extent that after removal of erosion protection zones, the stream channel will be restored), and g.3, 14.15.a.2, c, and g, 17.1, 20.6.a, c, and d, e, f, and j, 22.4.g.3.A and i.6, 24.2.a, 24.3, and 24.4. CSR 38–4–25.14.
May 21, 2001, August 12, 2002.	July 7, 2003	CSR 38–2–2.39 (a deletion), 3.22.e, 3.31.a (deferral), 3.32.g, 5.2.a, and 11.3.a.3.
April 9, 2002, June 19, 2002.	December 1, 2003 ..	W.Va. Code 22–3–13a(a)(3), (b), (c), (f)(14), (g); 22a(a), (b), (e), (f), (g); 30a(b), (b)(3), (b)(3)(C), (b)(5), (c), (d), (e), (f), (h). Code of State Regulations CSR 199–1, except as identified at 30 CFR 948.12(d), and subdivision 3.10.d is a qualified approval.
March 18, 2003	December 10, 2003	CSR 38–2–7.4.b.1.i.
May 2, 2001, July 1, 2003.	June 17, 2004	CSR 38–2–3.12.a.1; 7.6 (except the word “excessive” at 7.6.e.1); 7.7 (except the word “excessive” at 7.7.e.1); 9.3.g; 14.15.a.1; 14.15.g; 20.1.a.6; 22.5.a; 23 (deleted); and 24. Reduced Inspection Frequency Policy dated November 3, 2004.
October 30, 2000, November 28, 2001.	February 8, 2005	CSR 38–2–11.3.a.3.
March 14, 2000, March 28, 2000, and April 5, 2000.	December 30, 2005	W.Va. Code 22–3–11(h)(2)(B); 11a; 32a; 22–27–1 through 12. CSR 38–2–2.92; 3.29.a; 5.4.a, b.9, b.10, b.12, c.7, d.3, d.4, e.1, f; 7.4.b.1.A.1, A.3, A.3(b), A.4, B.1, C.1, C.2, C.3, C.4, C.5, D.6, D.8, D.9, D.11, H.1, H.2, H.6, I.1, I.2, I.3, I.4, J.1; 7.5.a, b.3, i.10, j.3.A, j.3.B, j.3.E, I.4.A, o.2; 9.3.d, 9.3.e; 14.5.h, 14.14.g.2.A.6; 14.15.c.3; 20.6.d, 20.6.j. CSR 199–1–2.36a, 2.36b, 2.37; 3.3.b, 3.7; 4.8, 4.8.c, 4.8.f, 4.8.g, 4.9; Water Rights and Replacement Policy (August 1995); September 2003 MOA between WVDEP, DMR and WVDNR, Wild Resources Section; Permittee’s Request for Release form, Item 11, dated March 2005.
March 25, 2004	March 2, 2006	W. Va. Code 22–3–24(c), (d), (e), and (h). CSR 38–2–7.2.e.1; 7.3.d; and 7.8 (qualified approval).
October 17, 2005, and amended November 4, 2005.	August 28, 2006	W. Va. Code 22–3–11(g) (interim approval), 11(h)(1) (interim approval).
June 13, 2005, and modified on August 23, 2005.	June 16, 2008	CSR 38–2–2.39 (deletion of cumulative impact definition).
April 17, 2006	December 24, 2008	CSR 38–2–3.22.e (approval of material damage to the hydrologic balance definition).
April 17, 2008	July 22, 2009	W. Va. Code 22–3–11(h)(1) (interim approval).
March 22, 2007	June 29, 2011	W. Va. Code 22–3–7(b); 8(a)(4); 19(a)(4); 19(b)(2); 19(b)(3); 19(d); and 19(e) (interim approvals).
May 28, 2009	July 11, 2012	CSR 38–2–11.4.a.2 (interim approval).
May 2, 2011		W. Va. Code 22–3–11(h)(1) (interim approval).
April 27, 2012		

[62 FR 9957, Mar. 5, 1997]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 948.15, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 948.16

30 CFR Ch. VII (7–1–17 Edition)

§ 948.16 Required regulatory program amendments.

Pursuant to 30 CFR 732.17, West Virginia is required to submit the following proposed program amendments by the dates specified:

(a)–(rrrrr) [Reserved]

[50 FR 28324, July 11, 1985 and 50 FR 38652, Sept. 24, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 948.16, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 948.20 Approval of State abandoned mine lands reclamation plan.

The West Virginia Abandoned Mine Reclamation Plan as submitted on October 29, 1980, and as amended on December 12, 1980, is approved effective February 23, 1981. Copies of the approved plan are available at the following locations:

(a) Office of Surface Mining, Charleston Field Office, 1027 Virginia Street

East, Charleston, West Virginia 25301–2816. Telephone: (304) 347–7158.

(b) West Virginia Department of Environmental Protection, Office of Abandoned Mine Lands and Reclamation, 601 57th Street SE., Charleston, West Virginia 25304–2345, Telephone (304) 926–0485.

[66 FR 67454, Dec. 28, 2001, as amended at 72 FR 1937, Jan. 17, 2007]

§ 948.25 Approval of West Virginia abandoned mine lands reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
May 20, 1985	July 11, 1985	Transfer of program authority to the Department of Energy (HB 1850).
December 30, 1987 ..	August 26, 1988	Agency structure, public participation procedures, assumption of emergency reclamation program.
September 17, 1991, October 25, 1991.	March 26, 1993	Amendments contained in House Bill 2492; Expanded eligibility criteria; Acid mine drainage treatment and abatement program.
June 27, 2006	January 17, 2007 ...	Amendment includes AML enhancement requirements and other revisions to West Virginia's AMLR Plan dated June 16, 2006.

[62 FR 9958, Mar. 5, 1997, as amended at 72 FR 1937, Jan. 17, 2007]

§ 948.26 Required abandoned mine land reclamation program/plan amendments. [Reserved]

§ 948.30 State-Federal Cooperative Agreement.

COOPERATIVE AGREEMENT

This is a Cooperative Agreement (Agreement) between the State of West Virginia (State) acting by and through the Governor, and the United States Department of the Interior (Department), acting by and through the Secretary of the Interior (Secretary).

ARTICLE I: INTRODUCTION, PURPOSE AND RESPONSIBLE ADMINISTRATIVE AGENCY

A. *Authority:* This Agreement is authorized by section 523(c) of the Surface Mining Con-

trol and Reclamation Act (the Federal Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved under 30 U.S.C. 1253 to elect to enter into an Agreement for the regulation and control of surface coal mining and reclamation operations on Federal lands within that State. This Agreement provides for such regulation within West Virginia except on lands containing leased Federal coal consistent with the State and Federal Acts, the West Virginia State Program (State program), and the Federal Lands Program (section 523(a) of the Federal Act and 30 CFR parts 740–745).

B. *Purpose:* The purpose of the Agreement is to: (1) Foster State-Federal cooperation in the regulation of surface coal mining and reclamation operations on Federal lands; (2) eliminate unnecessary intergovernmental overlap and duplication; and (3) provide uniform and effective application of the State

Surface Mining Reclamation and Enforcement, Interior

§ 948.30

program on all lands except those containing leased Federal coal in West Virginia.

C. *Responsible Administrative Agencies:* The Department of Natural Resources, Reclamation Division (DNR) is responsible for administering this Agreement on behalf of the Governor on Federal lands throughout the State. The Office of Surface Mining Reclamation and Enforcement (OSM) is responsible for administering this Agreement on behalf of the Secretary, in accordance with the regulations in 30 CFR Chapter VII. The Federal lands in West Virginia covered by this Agreement are predominantly those under the jurisdiction of the United States Department of Agriculture, Forest Service. It is understood by all parties that the Forest Service or the Federal land management agency, if other than the Forest Service, will continue to govern mining operations on Federal lands covered by this agreement pursuant to laws, regulations, agreements, and restrictions for which the respective agency is responsible. These requirements are in addition to the requirements discussed in this Agreement.

ARTICLE II: EFFECTIVE DATE

After it has been signed by the Governor and the Secretary, the Agreement shall take effect upon publication in the FEDERAL REGISTER as a final rule. This Agreement shall remain in effect until terminated as provided in Article X.

ARTICLE III: DEFINITIONS

Terms and phrases used in this Agreement which are defined in 30 CFR parts 700, 701 and 740, and the State program shall be given the meanings set forth in said definitions.

ARTICLE IV: APPLICABILITY

A. *Applicability to Federal Lands:* In accordance with the Federal Lands Program in 30 CFR part 740, the laws, rules, terms, and conditions of the State program (as conditionally approved effective January 21, 1981, 30 CFR part 948, or as hereinafter amended in accordance with 30 CFR 732.17) are applicable to Federal lands within West Virginia. This Agreement does not apply to operations on Federal lands containing leased Federal coal.

B. *Filing of Appeals:* Orders and decisions issued by DNR in accordance with the State program that are appealable shall be appealed to the State of West Virginia's Reclamation Board of Review. Orders and decisions issued by the Department that are appealable shall be appealed to the Department of the Interior's Office of Hearings and Appeals.

ARTICLE V: REQUIREMENTS FOR COOPERATIVE AGREEMENT

The Governor and the Secretary affirm that they will comply with all of the provi-

sions of this Agreement and will continue to meet all the conditions and requirements specified in this Article.

A. *Authority of State Agency:* DNR has and shall continue to have authority under State law to carry out this Agreement.

B. *Funds:* Upon application by the DNR and subject to the availability of appropriations, the Department shall provide the State with the funds to defray the costs associated with carrying out responsibilities under this Agreement as provided in section 705(c) of the Act and 30 CFR 735.16. If sufficient funds have not been appropriated to OSM, OSM and DNR shall promptly meet to decide on measures that will insure that mining operations are regulated in accordance with the State program. If agreement cannot be reached, then either party may terminate the Agreement in accordance with Article X. Funds provided to the State shall be adjusted in accordance with Office of Management and Budget Circular A-102, Attachment E, and shall be reduced by the amount of fees collected by the State that are attributable to the Federal lands covered by this Agreement.

C. *Reports and Records:* DNR shall make annual reports to OSM pursuant to 30 CFR 745.12(d), containing information respecting its compliance with the terms of this Agreement. Upon request, DNR and OSM shall exchange information developed under this Agreement except where prohibited by Federal law. OSM shall provide DNR with a copy of any final evaluation report concerning State administration and enforcement of this Agreement.

D. *Personnel:* DNR shall provide the necessary personnel to fully implement this Agreement in accordance with the provisions of the Federal and State Acts and the State program.

E. *Equipment and Laboratories:* DNR shall assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed and which are necessary to carry out the requirements of this Agreement.

F. *Permit Application Fees:* The amount of the fee accompanying an application for a permit shall be determined in accordance with Section 20-6-9(f) of the Code of West Virginia (1931), as amended. All permit and civil penalty fees collected from operations on Federal lands shall be retained by the State and deposited with the State Treasurer. The financial status report submitted pursuant to 30 CFR 735.26 shall include a report of the amount of permit application fees collected and attributable to Federal lands during the prior Federal fiscal year. This amount shall be disposed of in accordance with Federal regulations, and OMB Circular No. A-102, Attachment E.

ARTICLE VI: REVIEW OF A PERMIT
APPLICATION PACKAGE

A. *Contents of Permit Application Package:* DNR and the Secretary shall require an operator proposing to conduct surface coal mining and reclamation operations on Federal lands covered by this Agreement to submit a permit application package in an appropriate number of copies to DNR. DNR will furnish OSM a copy if OSM so requests. The permit application package shall be in the form required by DNR and include any supplemental information required by OSM or the Federal land management agency. The permit application package shall include the information required by, or necessary for, DNR to make a determination of compliance under 30 CFR 740.4(c)(2) with any conditions or special requirements imposed by the Federal land management agency and with the requirements of the State program, including:

1. *W. Va. Code*, Section 20-6-1 *et seq.*, as amended;

2. Applicable regulations of the West Virginia Surface Mining Reclamation Regulations, 20-6-Series VIII (1981);

3. Requirements of the West Virginia DNR Reclamation Division "Technical Handbook of Standards and Specifications for Mining Operations (1981)."

B. *Review Procedures:* 1. DNR shall assume primary responsibility for the analysis, review, and approval or disapproval of permit application packages required by 30 CFR 740.13 for surface coal mining and reclamation operations on Federal lands in West Virginia except those containing leased Federal coal. DNR shall be the primary point of contact for operators regarding decisions on the permit application package and will be responsible for informing the applicant of all joint State-Federal or Federal determinations.

2. Upon receipt of a permit application package that involves surface coal mining and reclamation operations on Federal lands covered by this agreement, DNR shall (1) transmit a copy of the complete permit application package to the Federal land management agency with a request for review pursuant to 30 CFR 740.13(b)(4), and (2) provide OSM with relevant information to allow OSM to determine whether or not the proposed surface coal mining and reclamation operation is prohibited or limited by the requirements of section 522(e) of the Federal Act (30 U.S.C. 1272(e)) and 30 CFR parts 760-762 with respect to Federal areas designated by Congress as unsuitable for mining. DNR shall be responsible for obtaining, in a timely manner, the views and determinations of any other Federal agencies with jurisdiction or responsibility over Federal lands affected by a permit application package in West Virginia.

3. OSM will provide technical assistance to DNR when requested if available resources allow and will process requests for determinations of compatibility and valid existing rights under 30 CFR part 761 relating to Federal areas designated by Congress as unsuitable for mining. OSM will be responsible for ensuring that any information OSM receives from an applicant is promptly sent to DNR. OSM shall have access to DNR files concerning mines on Federal lands. The Secretary reserves the right to act independently of DNR to carry out his responsibilities under laws other than the Federal Act. A copy of all resulting correspondence with the applicant that may have a bearing on decisions regarding the permit application package shall be sent to the State.

4. DNR shall prepare the required technical analysis and written findings on the permit application package. If requested by the Federal land management agency, a draft of these documents shall be sent to it for review and comment.

5. The permit issued by DNR shall incorporate any terms or conditions imposed by the Federal land management agency, including conditions relating to post-mining land use, and shall condition the initiation of surface coal mining operations on compliance with the requirements of the Federal land management agency. After DNR issues the decision on the permit application package, it shall send a notice to the applicant, the Federal land management agency, and OSM with a statement of findings and conclusions in support of the action.

ARTICLE VII: INSPECTIONS

DNR shall conduct inspections on Federal lands covered by this agreement and prepare and file inspection reports in accordance with the approved Program

A. *Inspection Reports:* DNR shall, within 15 days of conducting any inspection on Federal lands, file with OSM an inspection report describing (1) the general conditions of the lands under the permit; (2) whether the operator is complying with applicable performance and reclamation requirements; and (3) the manner in which specific operations are being conducted.

B. *DNR Authority:* DNR shall be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described in this Agreement and the Secretary's regulations. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

C. *OSM Authority:* OSM may conduct inspections of surface coal mining and reclamation operations on Federal lands for the purpose of evaluating the manner in which this Agreement is being carried out and to

Surface Mining Reclamation and Enforcement, Interior

§ 948.30

insure that performance and reclamation standards are being met. In order to facilitate a joint Federal-State inspection, OSM will ordinarily give DNR notice of its intent to conduct an inspection. When OSM is responding to a citizen complaint of an imminent danger to the health or safety of the public or a significant, imminent environmental harm pursuant to 30 CFR 842.11(b)(1)(i), it will contact DNR if circumstances and time allow, prior to the Federal inspection. OSM may conduct any inspections necessary to comply with 30 CFR part 842. If an inspection is made without DNR inspectors, OSM shall provide DNR with a copy of the inspection report within 15 days after inspection. The Secretary reserves the right to conduct inspections without prior notice to DNR to carry out his responsibilities under the Act.

D. *Witness Availability*: Personnel of the State and of the Department of the Interior shall be mutually available to serve as witnesses in enforcement actions taken by either party.

Article VIII: Enforcement

A. *DNR Enforcement*: DNR shall have primary enforcement authority on Federal lands covered by this agreement in accordance with the State program and this Agreement. During any joint inspection by OSM and DNR, DNR shall take appropriate enforcement action, including issuance of orders of cessation and notices of violation.

B. *Notification*: DNR shall promptly notify the Federal land management agency of all violations of applicable laws, regulations, orders, and approved permits subject to this Agreement and of all actions taken with respect to such violations.

C. *Secretary's Authority*: (1) This Agreement does not affect or limit the Secretary's authority to enforce provisions of laws other than the Act. (2) During an inspection made solely by OSM or any joint inspection where DNR and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR parts 843 and 845. Such enforcement action shall be based on the Act or the substantive requirements of the State program and shall be taken using the procedures and penalty system contained in 30 CFR parts 843 and 845.

ARTICLE IX: BONDS

A. *Performance Bond*: DNR shall require all operators on Federal lands to submit a performance bond to cover the operator's responsibilities under the Federal Act and the State program, payable to both the United States and West Virginia. The performance bond shall be of sufficient amount to comply with the requirements of both State and Federal law, and release of the performance

bond shall be conditioned upon compliance with all applicable requirements. DNR may release the operator from any obligation under the performance bond with the concurrence of the Federal land management agency. If this Agreement is terminated: (1) The bond will revert to being payable only to the United States to the extent that Federal lands are involved, and (2) the bond will be delivered by DNR to OSM if only Federal lands are covered by the bond.

B. *Forfeiture*: In the event of forfeiture by an operator of the performance bond for surface coal mining and reclamation operations on Federal lands covered by this agreement, the State shall use funds received from bond forfeiture and, where necessary, funds from the West Virginia Special Reclamation Fund (pursuant to Section 20-6-12(h) of the West Virginia Surface Coal Mining and Reclamation Act) to ensure that reclamation is accomplished in accordance with the State program and the approved permit.

ARTICLE X: TERMINATION OF COOPERATIVE AGREEMENT

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XI: REINSTATEMENT OF COOPERATIVE AGREEMENT

If this Agreement has been terminated in whole or in part, it may be reinstated under the provisions of 30 CFR 745.16.

ARTICLE XII: AMENDMENT OF COOPERATIVE AGREEMENT

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

ARTICLE XIII: CHANGES IN STATE OR FEDERAL STANDARDS

A. *Time for Changes*: The Secretary or the State may from time to time promulgate new Federal or State regulations, including new or revised performance or reclamation requirements or enforcement or administration procedures. OSM and DNR shall immediately inform each other of any final changes and of any effect such changes may have on the cooperative agreement. If it is determined to be necessary to keep this Agreement in force, DNR shall request necessary State legislative action and each party shall change or revise its regulations or promulgate new regulations, as applicable. Such changes shall be made under the procedures of 30 CFR part 732 for changes to the approved State program and sections 501 and 523 of the Federal Act for changes to the Federal lands program.

B. *Copies of Changes*: The State and OSM shall provide each other with copies of any

Pt. 950

changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XIV: CHANGES IN PERSONNEL AND ORGANIZATION

DNR and the Secretary shall, consistent with 30 CFR part 745, advise each other of changes in the organization, structure, functions, duties, and funds of the offices, departments, divisions, and persons within their organizations which could affect administration and enforcement of this Agreement. Each shall promptly advise the other in writing of changes in key personnel, including the head of a department or division, or changes in the functions or duties of persons occupying the principal offices within the structure of the program. DNR and OSM shall advise each other in writing of changes in the location of offices, addresses, telephone numbers, and changes in the names, location and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible.

ARTICLE XV: RESERVATION OF RIGHTS

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws or regulations.

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

Dated: February 16, 1984.

William Clark,
Secretary of the Interior.

Dated: February 24, 1984.

John D. Rockefeller IV,
Governor of West Virginia.

[49 FR 8917, Mar. 9, 1984]

PART 950—WYOMING

Sec.

950.1 Scope.

950.10 State regulatory program approval.

950.12 State program provisions and amendments not approved.

950.15 Approval of Wyoming regulatory program amendments.

950.16 Required program amendments.

950.20 State-Federal Cooperative Agreement.

950.30 Approval of Wyoming abandoned mine land reclamation plan.

950.35 Approval of Wyoming abandoned mine land reclamation plan amendments.

30 CFR Ch. VII (7-1-17 Edition)

950.36 Required abandoned mine land plan amendments. [Reserved]

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

§ 950.1 Scope.

This part contains all rules applicable only within the State of Wyoming which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(Sec. 503, Pub. L. 95-87 (30 U.S.C. 1253))

[45 FR 78684, Nov. 26, 1980]

§ 950.10 State regulatory program approval.

The Wyoming permanent program as submitted on August 15, 1979 and as revised on October 23, 1979 and May 30, 1980, is approved effective November 26, 1980. Copies of the approved program are available at:

(a) Office of Surface Mining Reclamation and Enforcement, Casper Field Office, 100 East B Street, room 2128, Casper, Wyoming 82601-1918, Telephone: (307) 261-5776.

(b) Wyoming Department of Environmental Quality, Land Quality Division, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, Telephone: (307) 777-7756.

[56 FR 3219, Jan. 29, 1991]

§ 950.12 State program provisions and amendments not approved.

The following provisions of the Rules and Regulations of the Land Quality Division of the Wyoming Department of Environmental Quality are not approved:

(a)-(b) [Reserved]

[78 FR 43063, July 19, 2013]

§ 950.15 Approval of Wyoming regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Surface Mining Reclamation and Enforcement, Interior

§ 950.15

Original amendment submission date	Date of final publication	Citation/description
March 26, 1981, April 8, 1981.	February 18, 1982 ..	LQD Rules, Ch I, §2(14) defining "complete application;" Ch II, §§ 1.c., 2.a.(1)(f)(ii), 3.a(6)(b)(iii), (d)(ii); Ch IV, §§ 2.c.(2)(a), 2.d.(6), 3.p.(1)(a); sworn applicant statement regarding reclamation fees payment.
May 26, 1982	September 27, 1982	LQD Rules, Ch I, §2(99).
March 3, 8 and 21, 1983.	November 9, 1983 ..	W.S. 35-11-103(e) (xxii), (xxiii) defining "complete application," "deficiency" in permit applications, "interim mine stabilization;" W.S. 35-11-401(n), 406(h); LQD Rules, Ch I, §2; Ch XIII, §2; Ch XVI, §§ 1 through 6.
June 25, 1984	February 28, 1985 ..	LQD Rules, Ch IV, §§ 1, 2; Ch XII, §§ 1 through 7; Ch XVII, §§ 1 through 3.
September 21, 1984	December 3, 1985 ..	LQD Rules, Ch I, §2; Ch XIII.
October 12, 1984	December 13, 1985	LQD Rules, Ch VI, § 6.
June 19, 1985	January 2, 1986	LQD Rules, Ch X, and accompanying Appendix A.
June 10, 1985	March 31, 1986	LQD Rules, Ch II, §3; Ch III, §2; Ch V, §§ 1, 6, 7; Ch VI, §§ 2 through 5; Ch VII, §§ 1 through 4; Ch XI, §§ 1 through 4, 6; Ch XVI, §§ 1 through 5; Ch XVIII, §§ 1 through 5.
May 1, 1986	November 24, 1986	LQD Rules, Chs I, II, III, IV, IX, XII, XIV, XXIII; Appendix A, "Vegetation Sampling Methods and Reclamation Success Standards for Surface Coal Mining Operations".
December 13, 1985 ..	May 6, 1987	LQD Rules, Ch XII, "Self-Bonding Program".
March 31, 1989	July 25, 1990	LQD Rules, Ch I, §2; Ch II, §§ 2, 3; Ch IV, §§ 2, 3; Ch V, §§ 2, 6, 7; Ch VI, §§ 3, 4; Ch VII, §§ 1, 4; Ch IX, §§ 1, 2, 3; Ch XI, §§ 1, 3; Ch XII, §§ 1 through 4, 6; Ch XIII, § 1; Ch XIV, §§ 1, 2; Ch XVI, §§ 1, 3, 4; Ch XVII, §§ 1, 2; Ch XVIII, §§ 1, 3.
May 1, 1986	January 29, 1991 ..	LQD Rules, Ch IV, §§ 3(h)(iii)(A), (B); Ch VI, §3(c)(ii)(C)(I).
March 21, 1991	July 8, 1992	W.S. Article 1, subsection 35-11-103(e) (xxvi), (xxvii); Article 4, subsection 35-11-402(b).
June 24, 1991	October 29, 1992 ...	W.S. 35-11-103(d)(ii)(D); LQD Rules, Ch I, §§2(br), (ba), 3(b)(i); Ch II, §§3(a)(vi)(E), (M), (b)(xvi)(D), (xx), (v)(C); Ch IV, §§3(d)(vii), (e)(i)(H); Ch XI, §2(b)(iv); Ch XII, §1(a); Ch XIII, §1(a)(v)(A); Ch XXI, §3(b)(vii), (x).
March 19, 1993	August 23, 1993	W.S. 35-11-406(h), (j).
July 8, 1992	October 7, 1993	LQD Rules, Ch II, §3(b)(iv)(B); Ch IV, §3(o)(iv); Appendix B, "Wildlife Monitoring Requirements for Surface Coal Mining Operations".
July 24, 1992	November 2, 1993 ..	LQD Rules, Ch I, §2(e); Ch II, §3(a)(i)(D); Ch XIV, §§2(b)(i), 6(a).
August 18, 1982, March 9, 1993.	January 24, 1994 ...	W.S. 35-11-437(f); LQD Rules, Ch I, §2(cv) defining "toxic materials;" Ch II, §7; Ch V pertaining to the award of costs and expenses in administrative proceedings; Ch VI pertaining to informal review by the Director.
December 15, 1992, August 6, 1993.	March 30, 1994	LQD Rules, Chs I through XX, Appendices A, B.
May 1, 1986	June 30, 1994	LQD Rules, Ch IV, §2(b)(i).
April 13, 1994	October 21, 1994 ...	W.S. 35-11-437(f), (g).
November 8, 1994	March 17, 1995	Appendix B, §§C, E.
June 2, 1995	September 14, 1995	W.S. 35-11-406(j).
April 21, 1995	February 21, 1996 ..	W.S. 35-11-1206(a), (b), -1209(a), (b).
November 29, 1995 ..	August 6, 1996	W.S. 35-11-103(e)(xxviii), (xxix), (xxx); 35-11-402(b), (c); Ch I, §2(ac), (ax), (bc)(iii), (viii), (xi), (v), (w); Ch. II, §2(a)(vi)(G)(II), (b)(iv)(C); Ch IV, §2(d)(x)(E)(I), (II), (III), appendix A; Ch X, §4(e); Ch XI, §5(a); Ch. XIII, §1(a).
April 18, 1996	August 27, 1996	W.S. 35-11-426(a), (b); 35-11-431(a)(vi).
July 13, 1998	October 1, 1999	Chapter 1, Section 2(ac); Chapter 1, Section 2(v); Chapter 2, Section 1(e); Chapter 2, Section 2(a)(vi)(G)(II); Chapter 2, Section 2(a)(vi)(H); Chapter 2, Section 2(a)(vi)(J); Chapter 2, Section 2(a)(vi)(J)(II); Chapter 2, Section 2(b)(iv)(C); Chapter 2, Section 2(b)(vi)(C); Chapter 4, Section 2(c)(ix); Chapter 4, Section 2(d)(x)(E)(I); Chapter 4, Section e(d)(x)(E)(III); Chapter 8, Sections 3-4-5; Chapter 12, Section 1(a)(iv)(B); Chapter 12, Section 1(a)(v)(C); Chapter 12, Section 1(b)(ii); Chapter 16, Sections 3 (c) and (f); Appendix A, Appendix IV; Appendix A, Options I-IV; Appendix A, Section II.C.2.c; Appendix A, Section II.C.3; Appendix A, Section VIII.E.
July 20, 2001	November 6, 2002 ..	Ch. 2, Sec. 2(a)(vi)(L)(III); Ch. 2, Sec. 2(a)(vi)(L)(iv); Ch. 2, Sec. 2(a)(vi)(M)(III); Ch. 2, Sec. 2(a)(vi)(M)(III)(4); Ch. 2, Sec. 2(a)(vi)(O); Ch. 2, Sec. 2(b)(xi)(D)(I)(1); Ch. 2, Sec. 2(b)(xi)(D)(I)(2); Ch. 2, Sec. 2(b)(xi)(D)(I)(3); Ch. 2, Sec. 2(b)(xi)(D)(II)(1 and 2); Ch. 2, Sec. 2(b)(xii); Ch. 3, Sec. 2(c)(viii)(D)-(G); Ch. 4, Sec. 2(c)(xii)(D)(iv); Ch. 4, Sec. 2(i)(i); Ch. 4, Sec. 2(w); Appendix A, Appendix IV; 30 CFR 950.12(a)(4); 30 CFR 950.16(ii)(2); 30 CFR 950.16(j).
April 30, 2002	May 8, 2003	Chapter 1, Section 2(by). Chapter 4, Section 2(b)(iv). Chapter 11, Sections 1(a), 2(a), 3(b), 3(c), 4(a). Chapter 12, Section 1(b), Section 2(d)(iii). Chapter 13, Section 1(a), (b), (c), (d)(iv)(D). Chapter 15, Section 7.

§ 950.15

30 CFR Ch. VII (7–1–17 Edition)

Original amendment submission date	Date of final publication	Citation/description
November 28, 2002 ..	November 5, 2003 ..	Chap. 1, Section 2, 2(a), 2(b) Chap. 1, Section 2(ah) Chap. 1, Section 2(bu) Chap. 1, Section 2(bz) Chap. 2, Section 2(a) and (b) Chap. 2, Section 2(a)(v), 2(a)(v)(I)(1), 2(b)(iii) and 2(b)(xxi) Chap. 2, Section 2(b)(i)(D)(V) Chap. 2, Section 2(b)(iv)(G) Chap. 2, Section 2(b)(xix) Chap. 4, Section 2(c)(i)(A) Chap. 4, Section 2(c)(xi)(F) Chap. 4, Section 2(c)(xi)(G) Chap. 4, Section 2(j) Chap. 4, Section 2(j)(i)(A) Chap. 4, Section 2(j)(ii) Chap. 4, Section 2(j)(iii) Chap. 4, Section 2(j)(iii)(B) Chap. 4, Section 2(j)(iii)(C)(I) Chap. 4, Section 2(j)(iii)(C)(II) Chap. 4, Section 2(j)(iii)(C)(III) Chap. 4, Section 2(j)(iii)(C)(v) Chap. 4, Section 2(j)(iii)(D) Chap. 4, Section 2(j)(iv) Chap. 4, Section 2(j)(v) Chap. 4, Section 2(j)(vi) Chap. 4, Section 2(j)(vii) Chap. 4, Section 2(j)(viii) Chap. 4, Section 2(m) Chap. 4, Section 2(n)(ii)(B)(2) Chap. 4, Section 2(x) Chap. 5, Section 7(a)(ii) Chap. 12, Section 1(a)(v) Chap. 18, Section 3(c)(xvii), Section 3(d)(vi)(A), Section 3(d)(x) Appendix A, Appendix IV
May 21, 2004	April 4, 2005	Coal Rules: Chapter 1, sections 2(l) and (ce); chapter 4, sections 2(b)(iv)(A), (b)(ix), (b)(ix)(A), (B), and (C); Chapter 10, sections 1, 1(b)(iii), 2(b), (b)(i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), and (xii), 3(b), 4(e), 8, 8(a), 8(b), (b)(i), (ii), (ii)(A), (ii)(B), (ii)(C), (iii), and (iv).
October 24, 2005	August 28, 2006	Chapter 4, Section 2(b)(iv) Chapter 4, Section 2(d)(ix) Chapter 4, Section 2(d)(x) Chapter 4, Section 2(d)(x), Appendix A, Subsection III.A; VII.E; VIII.A & VIII.F Chapter 4, Section 2(d)(x)(E)(I)&(II) Chapter 4, Section 2(d)(x)(E)(III) & (F) Chapter 4, Section 2(d)(x)(J) Chapter 4, Section 2(d)(xiv) Chapter 15, Section 1(a) Chapter 15, Section 1(b) Chapter 11, Section 2(a)(vii)(A).
March 7, 2006	October 14, 2009 ...	Chap. 1, Section 2(f); Chap. 1, Section 2(j); Chap. 1, Section 2(k); Chap. 1, Section 2(l); Chap. 1, Section 2(m); Chap. 1, Section 2(n); Chap. 1, Section 2(p); Chap. 1, Section 2(r); Chap. 1, Section 2(s); Chap. 1, Section 2(z); Chap. 1, Section 2(aa); Chap. 1, Section 2(ab); Chap. 1, Section 2(ae); Chap. 1, Section 2(ak); Chap. 1, Section 2(am); Chap. 1, Section 2(ao); Chap. 1, Section 2(ap); Chap. 1, Section 2(as); Chap. 1, Section 2(az); Chap. 1, Section 2(bd); Chap. 1, Section 2(be); Chap. 1, Section 2(bf); Chap. 1, Section 2(bg); Chap. 1, Section 2(bm); Chap. 1, Section 2(bs); Chap. 1, Section 2(bu); Chap. 1, Section 2(bv); Chap. 1, Section 2(by)(ii); Chap. 1, Section 2(bz); Chap. 1, Section 2(ca); Chap. 1, Section 2(cb); Chap. 1, Section 2(cc); Chap. 1, Section 2(cg); Chap. 1, Section 2(cj); Chap. 1, Section 2(cl); Chap. 1, Section 2(cm); Chap. 1, Section 2(co); Chap. 1, Section 2(cs); Chap. 1, Section 2(cu); Chap. 1, Section 2(cx); Chap. 1, Section 2(da); Chap. 1, Section 2(df); Chap. 1, Section 2(dg); Chap. 1, Section 2(dh); Chap. 1, Section 2(di); Chap. 1, Section 2(dj); Chap. 1, Section 2(dm); Chap. 1, Section 2(dp); Chap. 1, Section 2(ds); Chap. 1, Section 2(dt); Chap. 1, Section 2(dv); Chap. 1, Section 2(dw); Chap. 1, Section 2(dx); Chap. 1, Section 2(dy); Chap. 1, Section 2(dz); Chap. 1, Section 2(ef); Chap. 1, Section 2(eg); Chap. 1, Section 2(el); Chap. 1, Section 2(eo); Chap. 1, Section 2(es); Chap. 1, Section 2(eu); Chap. 1, Section 2(ex); Chap. 1, Section 2(ey); Chap. 1, Section 2(ez); Chap. 1, Section 2(fe); Chap. 1, Section 2(ff); Chap. 1, Section 2(fm); Chap. 1, Section 2(fn); Chap. 2, Section 2(b)(iv)(C); Chap. 2, Section 2(c)(xii)(D)(II); Chap. 2, Section 3(a)-(m); Chap. 2, Section 6(b)(iii)(D); Chap. 2, Section 6(b)(iii)(E)(VIII); Chap. 2, Section 6(b)(iii)(G); Chap. 4, Section 2(c)(xii)(D)(II) Chap. 4, Section 2(d)(i)(G); Chap. 4, Section 2(d)(i)(I); Chap. 4, Section 2(d)(i)(M)(I) and (III)-(XI); Chap. 4, Section 2(d)(i)(N); Chap. 4, Section 2(g)(iv)(L) Chap. 4, Section 2(g)(iv)(M); Chap. 4, Section 2(g)(v)(A); Chap. 4, Section 2(g)(v)(B); Chap. 5, Section 2(b) (iii); also all minor, editorial, and codification changes and all reorganized or relocated rules.
October 15, 2009	June 14, 2011	Chap. 1, Section 2(f); Chap. 1, Section 2(j); Chap. 1, Section 2(k); Chap. 1, Section 2(l); Chap. 1, Section 2(m); Chap. 1, Section 2(n); Chap. 1, Section 2(p); Chap. 1, Section 2(r); Chap. 1, Section 2(s); Chap. 1, Section 2(z); Chap. 1, Section 2(aa); Chap. 1, Section 2(ab); Chap. 1, Section 2(ae); Chap. 1, Section 2(ak); Chap. 1, Section 2(am); Chap. 1, Section 2(ao); Chap. 1, Section 2(ap); Chap. 1, Section 2(as); Chap. 1, Section 2(az); Chap. 1, Section 2(bd); Chap. 1, Section 2(be); Chap. 1, Section 2(bf); Chap. 1, Section 2(bg); Chap. 1, Section 2(bm); Chap. 1, Section 2(bs); Chap. 1, Section 2(bu); Chap. 1, Section 2(bv); Chap. 1, Section 2(by)(ii); Chap. 1, Section 2(bz); Chap. 1, Section 2(ca); Chap. 1, Section 2(cb); Chap. 1, Section 2(cc); Chap. 1, Section 2(cg); Chap. 1, Section 2(cj); Chap. 1, Section 2(cl); Chap. 1, Section 2(cm); Chap. 1, Section 2(co); Chap. 1, Section 2(cs); Chap. 1, Section 2(cu); Chap. 1, Section 2(cx); Chap. 1, Section 2(da); Chap. 1, Section 2(df); Chap. 1, Section 2(dg); Chap. 1, Section 2(dh); Chap. 1, Section 2(di); Chap. 1, Section 2(dj); Chap. 1, Section 2(dm); Chap. 1, Section 2(dp); Chap. 1, Section 2(ds); Chap. 1, Section 2(dt); Chap. 1, Section 2(dv); Chap. 1, Section 2(dw); Chap. 1, Section 2(dx); Chap. 1, Section 2(dy); Chap. 1, Section 2(dz); Chap. 1, Section 2(ef); Chap. 1, Section 2(eg); Chap. 1, Section 2(el); Chap. 1, Section 2(eo); Chap. 1, Section 2(es); Chap. 1, Section 2(eu); Chap. 1, Section 2(ex); Chap. 1, Section 2(ey); Chap. 1, Section 2(ez); Chap. 1, Section 2(fe); Chap. 1, Section 2(ff); Chap. 1, Section 2(fm); Chap. 1, Section 2(fn); Chap. 2, Section 2(b)(iv)(C); Chap. 2, Section 2(c)(xii)(D)(II); Chap. 2, Section 3(a)-(m); Chap. 2, Section 6(b)(iii)(D); Chap. 2, Section 6(b)(iii)(E)(VIII); Chap. 2, Section 6(b)(iii)(G); Chap. 4, Section 2(c)(xii)(D)(II) Chap. 4, Section 2(d)(i)(G); Chap. 4, Section 2(d)(i)(I); Chap. 4, Section 2(d)(i)(M)(I) and (III)-(XI); Chap. 4, Section 2(d)(i)(N); Chap. 4, Section 2(g)(iv)(L) Chap. 4, Section 2(g)(iv)(M); Chap. 4, Section 2(g)(v)(A); Chap. 4, Section 2(g)(v)(B); Chap. 5, Section 2(b) (iii); also all minor, editorial, and codification changes and all reorganized or relocated rules.
April 28, 2011	February 14, 2013 ...	Chap. 1, Sec. 2(fl)(i); Chap. 1, Sec. 2(fl)(ii)(A) and (B)(I)-(III); Subsections (A)-(D) of Chap. 1, Sec. 2(fl)(iii); Chap. 1, Sec. 2(fl)(iv)(A) and (B); Chap. 2, Sec. 2(a)(v)(A)(II); Chap. 2, Sec. 5(a)(xx) and (xxi); Chap. 4, Sec. 2(c)(xiii)(C) and (D); Chap. 7, Sec. 1(a)(i)(A) and (B); Chap. 7, Sec. 2(b)(ix); Chap. 10, Sec. 2(a); Chap. 10, Section 2(b)(xiii); Chap. 10, Sec. 3(c)(iv); Subsections (1)-(9) of Chap. 12, Sec. 1(a)(vii)(A)(I); Chap. 12, Sec. 1(a)(v)(B); Chap. 12, Sec. 1(a)(vi); Chap. 12, Sec. 1(a)(vii)(A)(II) (1)-(3.) and (III); Subsections (1)-(3.) of Chap. 12, Sec. 1(a)(vii)(A)(IV); Chap. 12, Sec. 1(a)(vii)(B)(II) and (III); Chap. 12, Sec. 1(a)(vii)(C)(I)(1.) and (2.); Subsections e.-h. of Chap. 12, Sec. 1(a)(vii)(C)(I)(3.); Chap. 12, Sec. 1(a)(vii)(C)(II)(1.); Chap. 12, Sec. 1(a)(vii)(D)(I); Chap. 12, Sec. 1(a)(vii)(D)(IV) and (V)(1.) and (2.); Chap. 12, Sec. 1(a)(vii)(G)(I)(1.), (2.), and (3.), (II), and (III)(1.); Chap. 16, Sec. 4(a)(i) and (ii)(A) and (B); Chap. 16, Sec. 4(b)(ii); Chap. 16, Sec. 4(c)(i)(B)-(C); Chap. 16, Sec. 4(c)(ii); Chap. 16, Sec. 4(d)(i), (ii)(A) and (B), and (iii); Chap. 16, Sec. 4(e)(i)-(iii); also all minor, editorial, and codification changes.

Surface Mining Reclamation and Enforcement, Interior

§ 950.20

Original amendment submission date	Date of final publication	Citation/description
January 4, 2013	March 31, 2014	Chap. 1, Sec. 2(f) (ii) (B)(IV); Chap. 1, Sec. 2(f)(iii); Chap. 12, Sec. 1(a)(v)(D); Chap. 12, Sec. 1(a)(vii)(A)(I); Chap. 12, Sec. 1(a)(vii)(A)(IV); Chap. 12, Sec. 1(a)(vii)(B)(I); Chap. 12, Sec. 1(a)(vii)(B)(IV); Chap. 12, Sec. 1(a)(vii)(C)(I)(3.) (a)–(d); Chap. 12, Sec. 1(a)(vii)(C)(II)(2.); Chap. 12, Sec. 1(a)(vii)(C)(III); Chap. 12, Sec. 1(a)(vii)(D)(I); Chap. 12, Sec. 1(a)(vii)(D)(III)(1.) and (2.); Chap. 12, Sec. 1(a)(vii)(E); Chap. 12, Sec. 1(a)(vii)(G)(III)(2.); Chap. 16, Sec. 4(a)(iii); Chap. 16, Sec. 4(b)(i).

[62 FR 9958, Mar. 5, 1997, as amended at 64 FR 53208, Oct. 1, 1999; 67 FR 67547, Nov. 6, 2002; 68 FR 24652, May 8, 2003; 68 FR 62523, Nov. 5, 2003; 70 FR 16954, Apr. 4, 2005; 71 FR 50855, Aug. 28, 2006; 74 FR 52685, Oct. 14, 2009; 76 FR 34835, June 14, 2011; 79 FR 17868, Mar. 31, 2014]

§ 950.16 Required program amendments.

Pursuant to 30 CFR 732.17 Wyoming is required to submit for OSMRE's approval the following proposed program amendments by the dates specified.

(a)–(o) [Reserved]

(p) By September 8, 1992, Wyoming shall submit a proposed revision to chapter II, section 3(b)(iv)(A) of the Rules and Regulations of the Land Quality Division of the Department of Environmental Quality, or otherwise propose to amend its program, to specify that, when fish and wildlife enhancement measures are not included in a proposed permit application, the applicant must provide a statement explaining why such measures are not practicable. In addition, this rule must be revised to clarify that fish and wildlife enhancement measures are not limited to revegetation efforts.

(q)–(t) [Reserved]

(u) By December 28, 1992, Wyoming shall submit revisions to the LQD Rules at Chapter II, Section 3(a)(vi)(M), to amend its regulations regarding procedures, including notice and opportunity to be heard for persons seeking disclosure, to ensure confidentiality of qualified information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application, to be no less effective than the Federal regulations 30 CFR 773.13(d)(3).

[51 FR 10832, Mar. 31, 1986]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 950.16, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 950.20 State-Federal Cooperative Agreement.

The Governor of the State of Wyoming (State) acting by and through the Department of Environmental Quality, Land Quality Division (Division), and the Secretary of the Department of the Interior (Department) acting by and through the Office of Surface Mining Reclamation and Enforcement (OSMRE), enter into a Cooperative Agreement (Agreement) to read as follows:

ARTICLE I: INTRODUCTION AND PURPOSE

1. This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved under 30 U.S.C. 1253 to elect to enter an Agreement with the Secretary for the regulation and control of surface coal mining and reclamation operations on Federal lands.

This Agreement provides for State regulation of coal exploration operations not subject to 43 CFR parts 3480 through 3487 and surface coal mining and reclamation operations in Wyoming subject to the Federal lands program (30 CFR parts 740 through 746) consistent with the Act, the Wyoming Environmental Quality Act (W.S. 35–11–401–437), and the Wyoming State Program (Program).

2. The purposes of this Agreement are to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations and coal exploration operations not subject to 43 CFR parts 3480 through 3487; (b) eliminate intergovernmental overlap and duplication; and (c) provide uniform and effective application of the Program in Wyoming, in accordance with the Act.

ARTICLE II: EFFECTIVE DATE

3. This Agreement shall take effect following signing by the Secretary and the Governor, and thirty days after publication as a

§ 950.20

final rule in the FEDERAL REGISTER. This Agreement shall remain in effect until terminated as provided in Article X.

ARTICLE III: SCOPE

4. In accordance with the Federal lands regulations in 30 CFR parts 740 through 746, the laws, regulations, terms and conditions of the Wyoming State Program, as approved or as amended in accordance with 30 CFR part 732, are applicable to lands in Wyoming subject to the Federal lands program except as otherwise stated in this Agreement, the Act, 30 CFR part 745, or other applicable laws or regulations. Orders and decisions issued by the State in accordance with the Program that are appealable shall be appealed as provided for by State law. Orders and decisions issued by the Department that are administratively appealable shall be appealed to the Department's Office of Hearings and Appeals.

ARTICLE IV: REQUIREMENTS FOR THE AGREEMENT.

5. The Governor and the Secretary affirm that they will comply with all of the provisions of this Agreement and will continue to meet all the conditions and requirements specified in this Article.

(a) *Responsible Administrative Agency.* The Division shall be responsible for administering this Agreement on behalf of the Governor. OSMRE shall administer this Agreement on behalf of the Secretary, in accordance with the regulations in 30 CFR Chapter VII.

(b) *Authority of State.* The State has and shall continue to have authority under State law to carry out this Agreement.

(c) *Funds.* The State will devote adequate funds to the administration and enforcement on Federal lands in the State of the requirements contained in the Program. If the State complies with the terms of this Agreement, and if necessary funds have been appropriated, the Department shall reimburse the State as provided in section 705(c) of the Act, the grant agreement, and 30 CFR 735.16 for costs associated with carrying out responsibilities under this Agreement. Reimbursements shall be in the form of annual grants and grant amendments, and applications for said grants shall be processed and awarded in a timely and prompt manner. If sufficient funds have not been appropriated to OSMRE or the State, the parties shall promptly meet to decide on appropriate measures that will ensure that surface coal mining and reclamation operations and exploration operations on Federal lands are regulated in accordance with the Program. If agreement cannot be reached, then either party may terminate the Agreement.

(d) *Reports and Records.* The State shall make annual reports to OSMRE containing information with respect to compliance with

30 CFR Ch. VII (7-1-17 Edition)

the terms of this Agreement pursuant to 30 CFR 745.12(d). Upon request, the State and OSMRE shall exchange (except where prohibited by Federal law) information developed under this Agreement. OSMRE shall provide the State with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement.

(e) *Personnel.* The State shall have the necessary personnel to fully implement this Agreement in accordance with the provisions of the Act and the Program.

(f) *Equipment and Laboratories.* The State shall have access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests and analyses can be performed and which are necessary to carry out the requirements of this Agreement.

(g) *Permit Application Fees.* The amount of the fee accompanying an application for a permit shall be determined in accordance with W.S. 35-11-406(a)(xii). All permit fees shall be retained by the State and deposited with the State Treasurer in the General Fund. The Financial Status Report submitted pursuant to 30 CFR 735.26 shall include a report of the amount of permit application fees collected and attributable to Federal lands during the prior Federal fiscal year. This amount shall be disposed of in accordance with Federal regulations and OMB Circular No. A-102, Attachment E.

ARTICLE V: POLICIES AND PROCEDURES: PERMIT APPLICATION PACKAGE REVIEW

6. The State and OSMRE agree and hereby require that an applicant proposing to conduct surface coal mining operations on lands subject to the Federal lands program shall submit a permit application package (PAP) in an appropriate number of copies to the State and OSMRE. If any material is submitted to the State by an applicant for the sole purpose of complying with the 3-year requirement of section 7(c) of the Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, the State will forward such material through OSMRE to the Bureau of Land Management (BLM). If the material is submitted as part of the PAP, a copy of the entire package will be sent through OSMRE to BLM. The PAP shall be in the form required by the State, and shall include any supplemental information required by OSMRE. The PAP shall include the information required by, or necessary for, the State and the Secretary to make a determination of compliance with:

(a) W.S. 35-11-406(a) and (b) (1980);

(b) Chapter II, Land Quality Division Rules and Regulations, Department of Environmental Quality, or other chapters where these may supersede Chapter II;

(c) Applicable terms and conditions of the Federal coal lease; and

(d) Applicable requirements of the Program, and other Federal laws and regulations, including, but not limited to those listed in Appendix A.

7. a. *State Responsibility.* The State shall assume primary responsibility for the analysis, review, and approval or disapproval of the permit application component of the PAP for surface coal mining and reclamation operations on lands subject to the Federal lands program.

b. *OSMRE Responsibility.* (1) OSMRE will, at the request of the State, assist the State in its analysis and review of the PAP. (2) The Department shall concurrently carry out its responsibilities which cannot be delegated to the State under the Act, the Mineral Leasing Act (MLA), as amended, the National Environmental Policy Act (NEPA), and other applicable Federal laws (including but not limited to these in Appendix A). The Department shall carry out those responsibilities in accordance with the Federal lands program and this Agreement in a timely manner so as to eliminate, to the maximum extent possible, duplication of the responsibilities of the State set forth in this Agreement and the Program. The Secretary will consider the information in the PAP and, where appropriate, make decisions required by the Act, MLA, NEPA, and other Federal laws.

c. *Responsibility for Handling Other Federal Laws.* The State must consider the comments of Federal agencies in the context of permit issuance and will document these comments in the record of permit decisions. Permits issued by the State shall include, to the extent allowed by Wyoming law, terms and conditions required by the lease issued pursuant to the Mineral Leasing Act and by other applicable Federal laws and regulations in accordance with 30 CFR 740.13(c)(1). When Federal agencies recommend permit conditions and these conditions are not adopted, the State will provide OSMRE with documentation as to why they were not incorporated as permit conditions.

Upon notification from the State that certain permit conditions are not incorporated, OSMRE will determine whether such conditions are necessary and may be attached to other Federal authorizations. If not other Federal authorizations are required, then OSMRE may issue a supplemental SMCRA permit attaching only those conditions which are necessary to assure compliance with other Federal laws. The State shall not be required to enforce the conditions of the Federal permit.

d. *Working Agreements.* Responsibilities and decisions which can and cannot be delegated to the State under the Act and other applicable Federal laws may be specified in working agreements between OSMRE and the State with the concurrence of any Federal agency involved, and without amendment to this Agreement.

8. The State will be the primary point of contact for applicants regarding the review of the PAP, except on matters concerned exclusively with the regulations in 43 CFR parts 3480-3487 administered by the BLM and on matters unrelated to the review of the PAP. The State will be responsible for informing the applicant of any joint State-Federal determinations. The State shall send to OSMRE copies of any correspondence with the applicant and any information received from the applicant which may have a bearing on decisions regarding the PAP. OSMRE would not independently initiate contacts with applicants regarding completeness or deficiencies of the PAP with respect to matters covered by the Program; however, the Department reserves the right to act independently of the State to carry out its responsibilities under laws other than the Act or provisions of the Act not covered by the Program, and in instances of disagreement over the Act and the Federal lands program. OSMRE shall send to the State copies of all independent correspondence with the applicant which may have a bearing on decisions regarding the PAP.

9. The State shall assume the responsibilities listed in 30 CFR 740.4(c)(1), (4), (5), (6), and (7). OSMRE will retain the responsibilities listed in 30 CFR 740.4(c)(2), (3) and the exceptions in 30 CFR 740.4(c)(7)(i)-(vii). In addition to the procedures outlined in paragraphs 9, 10, and 11, OSMRE shall assist the State in carrying out its responsibilities by:

(a) Distributing copies of the PAP to, and coordinating the review of the PAP among all Federal agencies which have responsibilities relating to decisions on the package. This shall be done in a manner which ensures timely identification, communication and resolution of issues relating to those Federal agencies' statutory requirements. OSMRE shall request that such other Federal agencies furnish their findings or any requests for additional data to OSMRE within 45 calendar days of the date OSMRE transmits to them a copy of the PAP.

(b) Providing the State with the analyses and conclusions of other Federal agencies regarding those portions of the PAP which affect their statutory responsibilities.

(c) Resolving conflicts and difficulties between or among other Federal agencies in a timely manner.

(d) Assisting in scheduling joint meetings as necessary between State and Federal agencies.

(e) Where OSMRE is assisting the State in reviewing the permit application, furnishing the State with the work product within 45 calendar days of receipt of the State's request for such assistance, or earlier if mutually agreed upon by OSMRE and the State.

(f) Exercising its responsibilities in a timely manner as set forth in a mutually agreed

upon schedule, governed to the extent possible by the deadlines established in the Program.

(g) Assuming all responsibility for ensuring compliance with any Federal lessee protection bond requirement.

10. This paragraph describes the procedures that OSMRE and the State will follow in the review of a PAP for surface coal mining and reclamation operations where a mining plan is required under the Mineral Leasing Act:

(a) OSMRE and the State shall coordinate with each other during the review process as needed. The State shall keep OSMRE informed of findings made during the review process which bear on the responsibilities of OSMRE and other Federal agencies. OSMRE shall ensure that any information OSMRE receives which has a bearing on decisions regarding the PAP is promptly sent to the State.

(b) The State shall review the PAP for compliance with the Program and State laws and regulations.

(c) OSMRE shall review the appropriate portions of the PAP for compliance with the non-delegable responsibilities of the Act and the requirements of other Federal laws and regulations consistent with paragraphs 7 and 8 of this Agreement.

(d) OSMRE and the State shall develop a work plan and schedule for PAP review and each shall identify a person as project leader. The State and OSMRE project leaders shall serve as the primary point of contact between OSMRE and the State throughout the review process. Not later than 50 days after receipt, OSMRE shall furnish the State with its preliminary findings and specify any requirements for additional data. OSMRE shall advise the State on the need for it to perform any work as part of the preparation of an Environmental Impact Statement as soon as possible in the review process.

(e) The State shall prepare a State decision package on the PAP. To the fullest extent allowed by the State and Federal law and regulations, the State and OSMRE will co-operate so that duplication will be eliminated in conducting the technical analyses and meeting NEPA requirements for the proposed mining operation. Copies of the draft State decision package shall be sent to OSMRE for review and comment. OSMRE shall evaluate the package and inform the State within 30 days, whenever possible, of any changes that should be made. The State shall consider these comments and send a final State decision package to OSMRE for action in a timely manner consistent with the Federal lands program. OSMRE shall have 30 days after receipt to request any changes to the State's final decision package.

(f) The State may proceed to issue the permit in accordance with the Program prior to the necessary Secretarial approval, provided

that the State advises the permittee in the permit of the necessity for Secretarial approval of a mining plan prior to beginning operations to mine Federal coal. The State shall reserve the right to amend or rescind any requirements of the approved permit to conform with any terms or conditions imposed by the Secretary in his approval of the mining plan.

11. This paragraph describes the procedures that the State and OSMRE will follow in processing a PAP for surface coal mining and reclamation operations which does not require Secretarial approval of a mining plan under the Mineral Leasing Act:

(a) Upon receipt of a PAP for such operations, OSMRE shall consult with and obtain the determinations or conditions of any other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. To the extent possible, these determinations and conditions and any determinations required by OSMRE pursuant to section 522 of the Act, shall be forwarded to the State within the time frame allowed by State law for processing permit applications.

(b) The State shall review the PAP for compliance with the Program and State laws and regulations.

(c) The State may proceed to issue the permit.

(d) After issuing the permit, the State shall send OSMRE and the Federal land management agency a copy of the signed permit form and State decision package.

12. The following procedures will be used in processing permit revisions or renewals:

(a) Any permit revision or renewal for operations on lands subject to the Federal lands program shall be reviewed and approved or disapproved by the State after consultation with OSMRE on whether the revision or renewal constitutes a mining plan modification under 30 CFR 746.18. OSMRE shall inform the State within 30 days of receiving a copy of a proposed revision or renewal, whether it constitutes a mining plan modification. Where approval of a mining plan modification is required, OSMRE and the State will follow the procedures outlined in paragraph 10 of this Article.

(b) Permit revisions or renewals for operations not constituting a mining plan modification and not meeting the criteria that may be established under (c) of this paragraph shall be reviewed and approved or disapproved following the procedures outlined in paragraph 11 of this Article.

(c) OSMRE may establish criteria to determine which types of permit revisions and renewals do not constitute mining plan modifications and will not affect the non-delegable responsibilities of OSMRE and other Federal agencies. Revisions or renewals meeting such criteria may be approved by the State prior to informing OSMRE of the

Surface Mining Reclamation and Enforcement, Interior

§ 950.20

approval and submission of copies of the revision or renewal to OSMRE.

ARTICLE VI: INSPECTIONS

13. The State shall conduct inspections on lands subject to the Federal lands program and prepare and file inspection reports in accordance with the Program.

14. The State shall, subsequent to conducting any inspection, and on a timely basis, file with the Secretary an inspection report adequately describing (1) the general conditions of the lands under the permit and license; (2) the manner in which the operations are being conducted; and (3) whether the operator is complying with applicable performance and reclamation requirements.

15. The State will be the point of contact and the inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described hereinafter. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR part 842 and 30 CFR 843.12(a)(2) and its obligations under laws other than the Act.

16. OSMRE shall give the State reasonable notice of its intent to conduct an inspection in order to provide State inspectors with an opportunity to join in the inspection. When the Department is responding to a citizen complaint of an imminent environmental danger or a threat to human health pursuant to 30 CFR part 842.11(b)(1)(ii)(C), it will contact the State no less than 24 hours if practicable, prior to the Federal inspection to facilitate a joint Federal/State inspection. The Secretary reserves the right to conduct inspections without prior notice to the State as necessary to carry out his responsibilities under the Act.

17. Personnel of the State and representatives of the Department shall be mutually available to serve as witnesses in enforcement actions taken by either party.

ARTICLE VII: ENFORCEMENT

18. The State shall have primary enforcement authority under the Act concerning compliance with the requirements of this Agreement and the Program.

19. During any joint inspection by the Department and the State, the State shall have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation, and assessment of penalties. The Department and the State shall consult prior to issuance of any decision to suspend or revoke a permit.

20. During any inspection made solely by the Department or any joint inspection where the State and the Department fail to

agree regarding the propriety of any particular enforcement action, the Department may take any enforcement action necessary to comply with 30 CFR parts 843 and 845. Such enforcement action shall be based on the standards in the Program, the Act, the permit, or all three, and shall be taken using the procedures and penalty system contained in 30 CFR parts 843 and 845.

21. The State and the Department shall promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining plans and permits subject to this Agreement, and of all actions taken with respect to such violations.

22. This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than the Act.

ARTICLE VIII: BONDS

23. The State and the Secretary shall require each operator on lands subject to the Federal lands program to submit a single performance bond payable to both the United States and the State of Wyoming that is sufficient to cover the operator's responsibilities under the Act and the program. Such performance bond shall be conditioned upon compliance with requirements of the Program, the Act and the permit. Such bond shall provide that if this Agreement is terminated, the bond shall be payable only to the United States to the extent that lands covered by the Federal lands program are involved.

24. Prior to releasing the operator from any obligation under a bond required by the Program on lands subject to the Federal lands program, the State shall obtain the concurrence of the Department. Departmental concurrence shall be based on field measurements, observations, and coordination with other Federal agencies having authority over the affected lands. The State shall also advise the Department annually of adjustments to the bond pursuant to the Program.

25. Performance bonds shall be subject to forfeiture, with the concurrence of the Department, in accordance with the procedures and requirements of the Program.

ARTICLE IX: DESIGNATION OF LAND AREAS AS UNSUITABLE

26. The State and OSMRE shall cooperate with each other in the review and processing of petitions to designate lands as unsuitable for surface coal mining operations. When either agency receives a petition that could impact adjacent Federal or non-Federal lands, the agency receiving the petition shall (1) notify the other of receipt and of the anticipated schedule for reaching a decision; and (2) request and fully consider data, information and views of the other.

§ 950.20

27. The authority to designate State and private lands as unsuitable for mining is reserved to the State. The authority to designate Federal lands as unsuitable for mining is reserved to the Secretary or his designated representative.

ARTICLE X: TERMINATION OF COOPERATIVE AGREEMENT

28. This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XI: REINSTATEMENT OF COOPERATIVE AGREEMENT

29. If this Agreement has been terminated in whole or in part, it may be reinstated under the provisions of 30 CFR 745.16.

ARTICLE XII: AMENDMENTS OF COOPERATIVE AGREEMENT

30. This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

ARTICLE XIII: CHANGES IN STATE OR FEDERAL STANDARDS

31. The Department or the State may promulgate new or revised performance or reclamation requirements or administration and enforcement procedures. OSMRE and the State shall immediately inform each other of any final changes and of any effect such changes may have on this Agreement. If it is determined to be necessary to keep this Agreement in force, the State shall take legislative action and each party shall change or revise its regulations or promulgate new regulations, as applicable. Such changes shall be made under the procedures of 30 CFR part 732 for changes to the Program and sections 501 and 523 of the Act for changes to the Federal lands program.

32. The State and the Department shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XIV: CHANGES IN PERSONNEL AND ORGANIZATION

33. The State and the Department shall, consistent with 30 CFR part 745, advise each other of changes in organization, structure, functions, duties and funds of the offices, departments, divisions, and persons within their organizations. Each shall promptly advise the other in writing of changes in key personnel, including the heads of a department or division, or changes in the functions or duties of persons occupying the principal offices within the structure of the Program. The State and the Department shall advise each other in writing of changes in the location of offices, addresses, telephone numbers,

30 CFR Ch. VII (7-1-17 Edition)

and changes in the names, locations and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible.

ARTICLE XV: RESERVATION OF RIGHTS

34. In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement, that the State or the Secretary may have under other laws or regulations, including the Surface Mining Control and Reclamation Act of 1977, the Mineral Leasing Act, as amended, the Mineral Leasing Act for Acquired Lands, the Stockraising Homestead Act, the Federal Land Policy and Management Act, other Federal laws including but not limited to those listed in Appendix A, the Constitution of the United States, and the Constitution of the State or State laws.

ARTICLE XVI: DEFINITIONS

35. Terms and phrases used in this Agreement which are defined in 30 CFR Parts 700, 701 and 740, or the Program shall be given the meanings set forth in said definitions. Where there is a conflict between any definitions, the definitions used in the Program will apply except in the case of a term which conflicts with the Secretary's remaining responsibilities under the Act and other laws.

APPENDIX A

(1) Surface Mining Control and Reclamation Act, 30 U.S.C. 1201 *et seq.*, and implementing regulations.

(2) The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

(3) The Mineral Leasing Act of 1920, 30 U.S.C. *et seq.*, and implementing regulations including 43 CFR part 3480 *et seq.*

(4) The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. 351 *et seq.*, and implementing regulations.

(5) The National Environmental Policy Act of 1969, 42 U.S.C. 4312 *et seq.*, and implementing regulations including 40 CFR part 1500 *et seq.*

(6) The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations including 50 CFR part 402.

(7) The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations including 36 CFR part 800 and Executive Order 11593 (May 13, 1971).

(8) The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

(9) The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

(10) The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

Surface Mining Reclamation and Enforcement, Interior

§ 955.1

(11) The Reservoir Salvage Act of 1960, amended by the Preservation and Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

(12) Executive Order 11988 (May 24, 1977) for floodplain protection. Executive Order 11990 (May 24, 1977) for wetland protections.

(13) The Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661–667.

(14) The Bald and Golden Eagle Protection Act of 1940, as amended, 16 U.S.C. 668–668d, and implementing regulations.

(16) The Migratory Bird Treaty Act, as amended, 16 U.S.C. 701–718h.

[51 FR 45089, Dec. 16, 1986]

§ 950.30 Approval of Wyoming abandoned mine land reclamation plan.

The Wyoming Abandoned Mine Land Reclamation Plan, as submitted on August 16, 1982, and as subsequently revised, is approved effective February 14, 1983. Copies of the approved program are available at:

Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601–1918.

State of Wyoming, Department of Environmental Quality, Abandoned Mine Lands Division, Herschler Building, Third Floor West, 122 West 25th Street, Cheyenne, WY 82002.

[57 FR 12733, Apr. 13, 1992]

§ 950.35 Approval of Wyoming abandoned mine land reclamation plan amendments.

(a) Wyoming certification of completing all known coal-related impacts is accepted, effective May 25, 1984.

(b) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
December 16, 1991 ..	April 13, 1992	W.S. 35–11–1201 through 1304; Chs I through VIII of State's AML rules.
April 21, 1995	February 21, 1996 ..	W.S. 35–11–1206(a), (b); –1209(a), (b).
September 1, 2005 ...	March 23, 2006	W.S. 35–11–1206(a).
		W.S. 35–11–1206(b).
		W.S. 35–11–1209.
		W.S. 35–11–1209(vii).
March 21, 2008	October 3, 2008	W.S. 35–11–1210(b)

[62 FR 9959, Mar. 5, 1997, as amended at 71 FR 14645, Mar. 23, 2006; 73 FR 57541, Oct. 3, 2008]

§ 950.36 Required abandoned mine land plan amendments. [Reserved]

AUTHORITY: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), sec. 955.13 also issued under sec. 9701, Pub. L. 97–258 (31 U.S.C. 9701).

SOURCE: 51 FR 19462, May 29, 1986, unless otherwise noted.

PART 955—CERTIFICATION OF BLASTERS IN FEDERAL PROGRAM STATES AND ON INDIAN LANDS

§ 955.1 Scope.

This part establishes rules pursuant to part 850 of this chapter for the training, examination and certification of blasters by OSM for surface coal mining operations in States with Federal programs and on Indian lands. It governs the issuance, renewal, reissuance, suspension and revocation of an OSM blaster certificate, replacement of a lost or destroyed certificate, and reciprocity to a holder of a certificate issued by a State regulatory authority.

Sec.

955.1 Scope.

955.2 Implementation.

955.5 Definitions.

955.10 Information collection.

955.11 General requirements.

955.12 Training.

955.13 Application.

955.14 Examination.

955.15 Certification.

955.16 Reciprocity.

955.17 Suspension and revocation.

§ 955.2

30 CFR Ch. VII (7–1–17 Edition)

§ 955.2 Implementation.

In accordance with §§ 750.19, 816.61(c) and 817.61(c) of this chapter, after June 30, 1987, in Federal program States and on Indian lands any person who is responsible for conducting blasting operations at a blasting site shall have a current OSM blaster certificate.

§ 955.5 Definitions.

As used in this part:

Applicant means a person who submits an application for an OSM blaster certificate.

Application means a request for an OSM blaster certificate submitted on the prescribed form, including the required fee and any applicable supporting evidence or other attachments.

Issue and *issuance* mean to grant to an applicant his or her first OSM blaster certificate that is not granted through reciprocity.

Reciprocity means the recognition by OSM of a blaster certificate issued by a State regulatory authority under an OSM-approved blaster certification program as qualifying an applicant for the grant of an OSM blaster certificate.

Reissue and *reissuance* are synonymous with the term *recertification* in § 850.15(c) of this chapter, and mean to grant to an applicant who holds a renewed OSM blaster certificate, or who holds an OSM blaster certificate that expired more than 1 year prior to the date of his or her application, or who held an OSM blaster certificate that was revoked, a subsequent certificate that is not granted through reciprocity and for which additional training and examination are required.

Renew and *renewal* mean to grant to an applicant who holds an issued or reissued OSM blaster certificate a subsequent certificate that is not granted through reciprocity and for which additional training and examination are not required.

Replace and *replacement* mean to grant to an applicant a duplicate OSM blaster certificate as a substitute for one that was lost or destroyed.

§ 955.10 Information collection.

The information collection requirements in this part were approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clear-

ance number 1029–0083. This information is needed to meet the requirements of sections 504, 515, 516, 710 and 719 of Pub. L. 95–87, and will be used by OSM in the certification of blasters. The obligation to respond is mandatory.

§ 955.11 General requirements.

To qualify for an OSM blaster certificate, a person shall:

(a) Be at least 20 years old prior to submitting an application, and at least 21 years old prior to the grant of a certificate;

(b) In the 3 years prior to submitting an application have been qualified and worked as a blaster or the equivalent, or have worked under the direction of a blaster or the equivalent, for the following cumulative length of time:

(1) Certificate issuance—2 years; or

(2) Certificate renewal or reissuance—1 year;

(c) For certificate issuance or reissuance, have received on-the-job training, completed a training course, and obtained satisfactory evidence of having completed training, as provided in § 955.12;

(d) Be competent, possess practical knowledge of blasting techniques, understand the hazards involved in the use of explosives, and exhibit a pattern of conduct consistent with the acceptance of responsibility for blasting operations;

(e) Submit an application as provided in § 955.13;

(f) For certificate issuance or reissuance, pass a written examination as provided in § 955.14;

(g) For a certificate through reciprocity, meet the requirements of § 955.16; and

(h) Not be subject to suspension, revocation or other action under § 955.17.

§ 955.12 Training.

(a) *On-the-job training.* Except as provided in § 955.14(c) for reexamination, each applicant for the issuance of an OSM blaster certificate who does not qualify as a blaster or the equivalent shall:

(1) Have received on-the-job training, including practical field experience in blasting operations, from a blaster or the equivalent for 2 out of the 3 years

Surface Mining Reclamation and Enforcement, Interior

§ 955.14

preceding the submission of his or her application; and

(2) Have obtained from the blaster or the equivalent, the relevant employer, or other knowledgeable source, satisfactory evidence of having received on-the-job training in accordance with paragraph (a)(1) of this section.

(b) *Training course.* Except as provided in §955.14(c) for reexamination, each applicant for the issuance or reissuance of an OSM blaster certificate shall:

(1) Within 2 years prior to submitting an application, have completed a training course as follows:

(i) For certificate issuance the course shall cover the technical aspects of blasting operations and State and Federal laws governing the storage, transportation and use of explosives, including the topics specified in §850.13(b) of this chapter; or

(ii) For certificate reissuance the course shall cover any significant changes that have occurred in the topics specified in §850.13(b) of this chapter since the applicant last completed a course that was accepted by OSM for the issuance or reissuance of an OSM blaster certificate. If OSM determines that no significant changes have occurred, OSM may waive this requirement; and

(2) Have obtained from the training provider satisfactory evidence that he or she has completed training in accordance with paragraph (b)(1) of this section.

(c) *Availability.* OSM shall ensure that courses are available as provided in §850.13(b) of this chapter to train persons subject to this part who are responsible for the use of explosives in surface coal mining operations.

§955.13 Application.

(a) *Submission procedures.* Any person seeking an OSM blaster certificate shall:

(1) Complete and submit to OSM an application on the form prescribed by paragraph (b) of this section;

(2) Include as part of the application a nonrefundable fee as follows:

(i) Issuance or reissuance.....	\$122
(ii) Reexamination	\$61
(iii) Renewal	\$61
(iv) Replacement	\$28

(v) Reciprocity

(3) For certificate issuance or reissuance, include as part of the application satisfactory evidence of having completed training as provided in §955.12;

(4) For certificate issuance or reissuance, specify in the application the date when the applicant desires to take a previously scheduled examination; and

(5) Submit the application in advance of the date of examination, or of certificate expiration, as follows:

(i) For certificate issuance, not less than 60 days before the date on which the applicant desires to take a previously scheduled examination;

(ii) For certificate renewal, not less than 60 days before the expiration date of the applicant's current certificate;

(iii) For certificate reissuance, not less than 60 days before the date on which the applicant desires to take a previously scheduled examination that will be held at least 60 days before the expiration date of the applicant's current certificate; or

(iv) For a certificate through reciprocity, not less than 45 days before the expiration date of the applicant's current certificate.

(b) *Application form.* OSM shall make available to any person seeking an OSM blaster certificate an application form and instructions for its completion. The form shall include a statement in accordance with law that the information provided is true and accurate to the best knowledge and belief of the applicant, and shall require the signature of the applicant.

§955.14 Examination.

(a) *Certificate issuance or reissuance.* After submitting an application, each applicant for the issuance or reissuance of an OSM blaster certificate shall pass a written examination, as provided in paragraph (b) of this section.

(b) *Administration and content.* (1) On a regular basis OSM shall schedule and hold a written examination on the technical aspects of blasting operations and State and Federal laws governing the storage, transportation and use of explosives, as provided in §850.14 of this chapter.

§ 955.15

30 CFR Ch. VII (7–1–17 Edition)

(2) The examination at a minimum shall cover the topics specified in § 850.13(b) of this chapter, and shall include:

- (i) Objective questions;
- (ii) Blasting log problems; and
- (iii) Initiation system and delay sequence problems.

(c) *Reexamination.* (1) Any person who fails the examination may apply to OSM for reexamination by submitting a new application, including the prescribed fee, but no person may take the examination more than 2 times in any 12-month period.

(2) Any person who fails the examination and submits a new application within 2 years of completing training as provided in § 955.12(a) need not repeat, or resubmit evidence of having completed, training.

(d) *Failure to attend.* Except where the applicant shows and OSM finds good cause, OSM may reject the pending application of any applicant who fails to take the examination after OSM has granted his or her request for admission.

§ 955.15 Certification.

(a) *Processing of application.* (1) Upon receiving an application for an OSM blaster certificate OSM shall:

(i) Notify the applicant of the receipt of, and of any deficiency in, the application.

(ii) Where applicable, notify the applicant that his or her request for admission to a scheduled examination either is granted or denied.

(2) When OSM determines that an applicant has failed to qualify for an OSM blaster certificate, OSM shall reject his or her application and notify him or her accordingly.

(b) *Grant of certificate.* OSM shall:

(1) Issue or reissue an OSM blaster certificate to any qualified applicant who completes the applicable training, passes the examination, and is found by OSM to be competent and to have the necessary knowledge and experience to accept responsibility for blasting operations;

(2) Renew one time the issued or reissued OSM blaster certificate of any qualified applicant;

(3) Replace the OSM blaster certificate of any qualified applicant who

presents satisfactory evidence that his or her certificate was lost or destroyed;

(4) Grant an OSM blaster certificate through reciprocity as provided in § 955.16; or

(5) Reinstate a suspended, or reissue a revoked OSM blaster certificate as provided in § 955.17(e).

(c) *Term of certificate.* OSM shall grant an OSM blaster certificate for a term to expire as follows:

(1) Issuance—3 years after issue date;

(2) Renewal—3 years after expiration date of applicant's current or expired certificate;

(3) Reissuance—3 years after expiration date of applicant's current or expired certificate;

(4) Replacement—same expiration date as replaced certificate; or

(5) Reciprocity—60 days after expiration date of corresponding State certificate.

(d) *Limits on renewal.* (1) OSM shall not renew an OSM blaster certificate more than 1 time. A blaster who seeks to extend a renewed certificate may apply to OSM for certificate reissuance.

(2) OSM shall not renew an OSM blaster certificate that expired more than 1 year prior to the date of an application for renewal. An applicant who desires to extend a certificate that expired more than 1 year prior to the date of his or her application may apply to OSM for certificate reissuance.

(e) *Temporary certificate.* Upon request of an applicant who demonstrates that his or her current OSM blaster certificate is about to expire, or expired within 30 days prior to the date of his or her application, for reasons beyond his or her control, OSM may issue a non-renewable temporary OSM blaster certificate for a maximum term of 90 days.

(f) *Conditions of certification.* Any person who holds an OSM blaster certificate shall comply with the conditions specified in §§ 850.15 (d) and (e) of this chapter.

(g) *Change of address.* Any person who holds an OSM blaster certificate shall notify OSM in writing within 30 days of any change in his or her address.

§ 955.16 Reciprocity.

(a) *Grant of certificate.* OSM shall grant an OSM blaster certificate through reciprocity to any qualified applicant who demonstrates that he or she, and whom OSM finds, holds a current State blaster certificate granted by a State regulatory authority under an OSM-approved State blaster certification program. An applicant for a certificate through reciprocity need not otherwise demonstrate that he or she meets the age, experience, knowledge, competence, training or examination requirements of this part.

(b) *Subsequent certificate.* (1) Any person who holds an OSM blaster certificate granted through reciprocity may qualify for a subsequent certificate either through reciprocity or by meeting directly the applicable requirements of this part for certificate issuance, renewal or reissuance.

(2) OSM shall not recognize a certificate granted through reciprocity as qualifying an applicant for certificate issuance, renewal or reissuance.

§ 955.17 Suspension and revocation.

(a) *Cause, nature and duration.* (1) OSM may, and upon a finding of willful conduct of the blaster OSM shall, suspend for a definite or indefinite period, revoke or take other necessary action on the certificate of an OSM-certified blaster for any of the reasons specified in § 850.15(b) of this chapter.

(2) Where OSM has reliable information which demonstrates that the storage, transportation or use of explosives by an OSM-certified blaster is likely to threaten public safety or the environment, OSM shall suspend his or her certificate as soon as is practicable.

(3) OSM shall make the nature and duration of a suspension, revocation or other action under this section commensurate with the cause of the action and what the person whose certificate is subjected to the action does to correct it.

(b) *Notice and hearing.* When practicable, OSM shall give a certificate holder written notice and an opportunity for an informal hearing prior to suspending, revoking or taking other action on his or her OSM blaster certificate. OSM shall limit any action taken without such notice and oppor-

tunity to a temporary suspension for a maximum term of 90 days pending a decision on a final suspension, revocation or other action after such notice and opportunity have been provided.

(c) *Decision and appeal.* By certified mail within 30 days after giving written notice and an opportunity for an informal hearing, OSM shall notify the certificate holder in writing of its final decision on his or her OSM blaster certificate, including the reasons for any suspension, revocation or other action. If the certificate was granted through reciprocity, OSM shall notify the State regulatory authority of its action. In any decision suspending, revoking or taking other action on an OSM blaster certificate, OSM shall grant to the certificate holder the right of appeal to the Department of the Interior Board of Land Appeals under 43 CFR 4.1280 to 4.1286.

(d) *Surrender of certificate.* Upon receiving written notice that his or her OSM blaster certificate was suspended, revoked or subjected to other action, a certificate holder immediately shall surrender the certificate to OSM in the manner specified in the notice.

(e) *Reinstatement and reissuance.* (1) OSM shall reinstate a suspended OSM blaster certificate by returning the certificate to the former certificate holder with notice of reinstatement when:

(i) The term of a definite suspension expires; or

(ii) The former certificate holder demonstrates, and OSM finds, that the cause of an indefinite suspension has been corrected.

(2) OSM shall reissue an OSM blaster certificate to an applicant whose certificate was revoked if his or her application demonstrates, and OSM finds, that:

(i) The cause of the revocation has been corrected; and

(ii) The applicant meets all other applicable requirements of this part.

(f) *Conformance with State action.* OSM shall suspend, revoke or take other commensurate action on an OSM blaster certificate granted through reciprocity if the State regulatory authority suspends, revokes or takes other

§ 955.17

action on the corresponding State certificate.

[51 FR 19462, May 29, 1986; 51 FR 22282, June 19, 1986]

30 CFR Ch. VII (7–1–17 Edition)

PARTS 956–999 [RESERVED]

CHAPTER XII—OFFICE OF NATURAL RESOURCES REVENUE, DEPARTMENT OF THE INTERIOR

EDITORIAL NOTE: Nomenclature changes to chapter XII appear at 75 FR 61066, Oct. 4, 2010.

SUBCHAPTER A—NATURAL RESOURCES REVENUE

<i>Part</i>		<i>Page</i>
1200	[Reserved]	
1201	General	793
1202	Royalties	793
1203	Relief or reduction in royalty rates	802
1204	Alternatives for marginal properties	803
1206	Product valuation	809
1207	Sales agreements or contracts governing the disposal of lease products	921
1208	Sale of Federal royalty oil	922
1210	Forms and reports	930
1212	Records and files maintenance	943
1217	Audits and inspections	945
1218	Collection of royalties, rentals, bonuses, and other monies due the Federal Government	947
1219	Distribution and disbursement of royalties, rentals, and bonuses	966
1220	Accounting procedures for determining net profit share payment for Outer Continental Shelf oil and gas leases	975
1227	Delegation to States	988
1228	Cooperative activities with States and Indian tribes	1000
1229	Delegation to States	1004
1241	Penalties	1011
1243	Suspensions pending appeal and bonding—Office of Natural Resources Revenue	1017

SUBCHAPTER B—APPEALS

1290	Appeal procedures	1023
1291–1299	[Reserved]	

SUBCHAPTER A—NATURAL RESOURCES REVENUE

PART 1200 [RESERVED]

PART 1201—GENERAL

AUTHORITY: The Act of February 25, 1920 (30 U.S.C. 181, *et seq.*), as amended; the Act of May 21, 1930 (30 U.S.C. 301-306); the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) as amended; the Act of May 11, 1938 (25 U.S.C. 396a-396q), as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a-398e); the Act of June 30, 1919 (25 U.S.C. 399), as amended; R.S. § 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471, *et seq.*), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as amended; the Act of December 12, 1980 (Pub. L. 96-514, 94 Stat. 2964); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78, 95 Stat. 1070); the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*), as amended; section 2 of Reorganization Plan No. 3 of 1950 (64 stat. 1262); Secretarial Order No. 3071 of January 19, 1982, as amended; and Secretarial Order 3087, as amended.

Subpart A—General Provisions [Reserved]

Subpart B—Oil and Gas, General [Reserved]

Subpart C—Oil and Gas, Onshore

§ 1201.100 Responsibilities of the Director for Office of Natural Resources Revenue.

The Director is responsible for the collection of certain rents, royalties, and other payments; for the receipt of sales and production reports; for determining royalty liability; for maintaining accounting records; for any audits of the royalty payments and obligations; and for any and all other functions relating to royalty management

on Federal and Indian oil and gas leases.

[47 FR 47768, Oct. 27, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983, and further redesignated and amended at 75 FR 61066, Oct. 4, 2010]

Subpart D—Oil, Gas and Sulphur, Offshore [Reserved]

Subpart E—Coal [Reserved]

Subpart F—Other Solid Minerals [Reserved]

Subpart G—Geothermal Resources [Reserved]

Subpart H—Indian Lands [Reserved]

PART 1202—ROYALTIES

Subpart A—General Provisions [Reserved]

Subpart B—Oil, Gas, and OCS Sulfur, General

Sec.
1202.51 Scope and definitions.
1202.52 Royalties.
1202.53 Minimum royalty.

Subpart C—Federal and Indian Oil

1202.100 Royalty on oil.
1202.101 Standards for reporting and paying royalties.

Subpart D—Federal Gas

1202.150 Royalty on gas.
1202.151 Royalty on processed gas.
1202.152 Standards for reporting and paying royalties on gas.

Subpart E—Solid Minerals, General [Reserved]

Subpart F—Coal

1202.250 Overriding royalty interest.
1202.251 What coal is subject to royalties?

Subpart G—Other Solid Minerals [Reserved]

§ 1202.51

Subpart H—Geothermal Resources

- 1202.350 Scope and definitions.
1202.351 Royalties on geothermal resources.
1202.352 Minimum royalty.
1202.353 Measurement standards for reporting and paying royalties and direct use fees.

Subpart I—OCS Sulfur [Reserved]

Subpart J—Gas Production from Indian Leases

- 1202.550 How do I determine the royalty due on gas production?
1202.551 How do I determine the volume of production for which I must pay royalty if my lease is not in an approved Federal unit or communitization agreement (AFA)?
1202.552 How do I determine how much royalty I must pay if my lease is in an approved Federal unit or communitization agreement (AFA)?
1202.553 How do I value my production if I take more than my entitled share?
1202.554 How do I value my production that I do not take if I take less than my entitled share?
1202.555 What portion of the gas that I produce is subject to royalty?
1202.556 How do I determine the value of avoidably lost, wasted, or drained gas?
1202.557 Must I pay royalty on insurance compensation for unavoidably lost gas?
1202.558 What standards do I use to report and pay royalties on gas?

AUTHORITY: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*; 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 1331 *et seq.*, 1801 *et seq.*

SOURCE: 48 FR 35641, Aug. 5, 1983, unless otherwise noted. Redesignated at 75 FR 61066, Oct. 4, 2010.

Subpart A—General Provisions [Reserved]

Subpart B—Oil, Gas, and OCS Sulfur, General

SOURCE: 53 FR 1217, Jan. 15, 1988, unless otherwise noted.

§ 1202.51 Scope and definitions.

(a) This subpart is applicable to Federal and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma) and OCS sulfur leases.

30 CFR Ch. XII (7–1–17 Edition)

(b) The definitions in § 1206.20 are applicable to subparts B, C, D, and J of this part.

[53 FR 1217, Jan. 15, 1988, as amended at 64 FR 43513, Aug. 10, 1999; 81 FR 43369, July 1, 2016]

§ 1202.52 Royalties.

(a) Royalties on oil, gas, and OCS sulfur shall be at the royalty rate specified in the lease, unless the Secretary, pursuant to the provisions of the applicable mineral leasing laws, reduces, or in the case of OCS leases, reduces or eliminates, the royalty rate or net profit share set forth in the lease.

(b) For purposes of this subpart, the use of the term *royalty(ies)* includes the term *net profit share(s)*.

§ 1202.53 Minimum royalty.

For leases that provide for minimum royalty payments, the lessee shall pay the minimum royalty as specified in the lease.

Subpart C—Federal and Indian Oil

§ 1202.100 Royalty on oil.

(a) Royalties due on oil production from leases subject to the requirements of this part, including condensate separated from gas without processing, shall be at the royalty rate established by the terms of the lease. Royalty shall be paid in value unless the Office of Natural Resources Revenue (ONRR) requires payment in-kind. When paid in value, the royalty due shall be the value, for royalty purposes, determined pursuant to part 1206 of this title multiplied by the royalty rate in the lease.

(b)(1) All oil (except oil unavoidably lost or used on, or for the benefit of, the lease, including that oil used off-lease for the benefit of the lease when such off-lease use is permitted by the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) or BLM, as appropriate) produced from a Federal or Indian lease to which this part applies is subject to royalty.

(2) When oil is used on, or for the benefit of, the lease at a production facility handling production from more than one lease with the approval of the BSEE or BLM, as appropriate, or at a

production facility handling unitized or communitized production, only that proportionate share of each lease's production (actual or allocated) necessary to operate the production facility may be used royalty-free.

(3) Where the terms of any lease are inconsistent with this section, the lease terms shall govern to the extent of that inconsistency.

(c) If BLM determines that oil was avoidably lost or wasted from an onshore lease, or that oil was drained from an onshore lease for which compensatory royalty is due, or if BSEE determines that oil was avoidably lost or wasted from an offshore lease, then the value of that oil shall be determined in accordance with 30 CFR part 1206.

(d) If a lessee receives insurance compensation for unavoidably lost oil, royalties are due on the amount of that compensation. This paragraph shall not apply to compensation through self-insurance.

(e)(1) In those instances where the lessee of any lease committed to a federally approved unitization or communitization agreement does not actually take the proportionate share of the agreement production attributable to its lease under the terms of the agreement, the full share of production attributable to the lease under the terms of the agreement nonetheless is subject to the royalty payment and reporting requirements of this title. Except as provided in paragraph (e)(2) of this section, the value, for royalty purposes, of production attributable to unitized or communitized leases will be determined in accordance with 30 CFR part 1206. In applying the requirements of 30 CFR part 1206, the circumstances involved in the actual disposition of the portion of the production to which the lessee was entitled but did not take shall be considered as controlling in arriving at the value, for royalty purposes, of that portion as though the person actually selling or disposing of the production were the lessee of the Federal or Indian lease.

(2) If a Federal or Indian lessee takes less than its proportionate share of agreement production, upon request of the lessee ONRR may authorize a royalty valuation method different from

that required by paragraph (e)(1) of this section, but consistent with the purposes of these regulations, for any volumes not taken by the lessee but for which royalties are due.

(3) For purposes of this subchapter, all persons actually taking volumes in excess of their proportionate share of production in any month under a unitization or communitization agreement shall be deemed to have taken ratably from all persons actually taking less than their proportionate share of the agreement production for that month.

(4) If a lessee takes less than its proportionate share of agreement production for any month but royalties are paid on the full volume of its proportionate share in accordance with the provisions of this section, no additional royalty will be owed for that lease for prior periods when the lessee subsequently takes more than its proportionate share to balance its account or when the lessee is paid a sum of money by the other agreement participants to balance its account.

(f) For production from Federal and Indian leases which are committed to federally-approved unitization or communitization agreements, upon request of a lessee ONRR may establish the value of production pursuant to a method other than the method required by the regulations in this title if: (1) The proposed method for establishing value is consistent with the requirements of the applicable statutes, lease terms, and agreement terms; (2) persons with an interest in the agreement, including, to the extent practical, royalty interests, are given notice and an opportunity to comment on the proposed valuation method before it is authorized; and (3) to the extent practical, persons with an interest in a Federal or Indian lease committed to the agreement, including royalty interests, must agree to use the proposed method for valuing production from the agreement for royalty purposes.

[53 FR 1217, Jan. 15, 1988, as amended at 78 FR 30200, May 22, 2013]

§ 1202.101 Standards for reporting and paying royalties.

Oil volumes are to be reported in barrels of clean oil of 42 standard U.S. gallons (231 cubic inches each) at 60 °F.

§ 1202.150

30 CFR Ch. XII (7–1–17 Edition)

When reporting oil volumes for royalty purposes, corrections must have been made for Basic Sediment and Water (BS&W) and other impurities. Reported American Petroleum Institute (API) oil gravities are to be those determined in accordance with standard industry procedures after correction to 60 °F.

[53 FR 1217, Jan. 15, 1988]

Subpart D—Federal Gas

SOURCE: 53 FR 1271, Jan. 15, 1988, unless otherwise noted.

§ 1202.150 Royalty on gas.

(a) Royalties due on gas production from leases subject to the requirements of this subpart, except helium produced from Federal leases, shall be at the rate established by the terms of the lease. Royalty shall be paid in value unless ONRR requires payment in kind. When paid in value, the royalty due shall be the value, for royalty purposes, determined pursuant to 30 CFR part 1206 of this title multiplied by the royalty rate in the lease.

(b)(1) All gas (except gas unavoidably lost or used on, or for the benefit of, the lease, including that gas used off-lease for the benefit of the lease when such off-lease use is permitted by the BSEE or BLM, as appropriate) produced from a Federal lease to which this subpart applies is subject to royalty.

(2) When gas is used on, or for the benefit of, the lease at a production facility handling production from more than one lease with the approval of BSEE or BLM, as appropriate, or at a production facility handling unitized or communitized production, only that proportionate share of each lease's production (actual or allocated) necessary to operate the production facility may be used royalty free.

(3) Where the terms of any lease are inconsistent with this subpart, the lease terms shall govern to the extent of that inconsistency.

(c) If BLM determines that gas was avoidably lost or wasted from an onshore lease, or that gas was drained from an onshore lease for which compensatory royalty is due, or if BSEE determines that gas was avoidably lost

or wasted from an OCS lease, then the value of that gas shall be determined in accordance with 30 CFR part 1206.

(d) If a lessee receives insurance compensation for unavoidably lost gas, royalties are due on the amount of that compensation. This paragraph shall not apply to compensation through self-insurance.

(e)(1) In those instances where the lessee of any lease committed to a Federally approved unitization or communitization agreement does not actually take the proportionate share of the production attributable to its Federal lease under the terms of the agreement, the full share of production attributable to the lease under the terms of the agreement nonetheless is subject to the royalty payment and reporting requirements of this title. Except as provided in paragraph (e)(2) of this section, the value for royalty purposes of production attributable to unitized or communitized leases will be determined in accordance with 30 CFR part 1206. In applying the requirements of 30 CFR part 1206, the circumstances involved in the actual disposition of the portion of the production to which the lessee was entitled but did not take shall be considered as controlling in arriving at the value for royalty purposes of that portion, as if the person actually selling or disposing of the production were the lessee of the Federal lease.

(2) If a Federal lessee takes less than its proportionate share of agreement production, upon request of the lessee ONRR may authorize a royalty valuation method different from that required by paragraph (e)(1) of this section, but consistent with the purpose of these regulations, for any volumes not taken by the lessee but for which royalties are due.

(3) For purposes of this subchapter, all persons actually taking volumes in excess of their proportionate share of production in any month under a unitization or communitization agreement shall be deemed to have taken ratably from all persons actually taking less than their proportionate share of the agreement production for that month.

(4) If a lessee takes less than its proportionate share of agreement production for any month but royalties are

paid on the full volume of its proportionate share in accordance with the provisions of this section, no additional royalty will be owed for that lease for prior periods at the time the lessee subsequently takes more than its proportionate share to balance its account or when the lessee is paid a sum of money by the other agreement participants to balance its account.

(f) For production from Federal leases which are committed to federally-approved unitization or communitization agreements, upon request of a lessee ONRR may establish the value of production pursuant to a method other than the method required by the regulations in this title if: (1) The proposed method for establishing value is consistent with the requirements of the applicable statutes, lease terms and agreement terms; (2) to the extent practical, persons with an interest in the agreement, including royalty interests, are given notice and an opportunity to comment on the proposed valuation method before it is authorized; and (3) to the extent practical, persons with an interest in a Federal lease committed to the agreement, including royalty interests, must agree to use the proposed method for valuing production from the agreement for royalty purposes.

[53 FR 1271, Jan. 15, 1988, as amended at 64 FR 43513, Aug. 10, 1999; 78 FR 30200, May 22, 2013]

§ 1202.151 Royalty on processed gas.

(a)(1) A royalty, as provided in the lease, shall be paid on the value of:

(i) Any condensate recovered downstream of the point of royalty settlement without resorting to processing; and

(ii) Residue gas and all gas plant products resulting from processing the gas produced from a lease subject to this subpart.

(2) ONRR shall authorize a processing allowance for the reasonable, actual costs of processing the gas produced from Federal leases. Processing allowances shall be determined in accordance with 30 CFR part 1206 subpart D for gas production from Federal leases and 30 CFR part 1206 subpart E for gas production from Indian leases.

(b) A reasonable amount of residue gas shall be allowed royalty free for operation of the processing plant, but no allowance shall be made for boosting residue gas or other expenses incidental to marketing, except as provided in 30 CFR part 1206. In those situations where a processing plant processes gas from more than one lease, only that proportionate share of each lease's residue gas necessary for the operation of the processing plant shall be allowed royalty free.

(c) No royalty is due on residue gas, or any gas plant product resulting from processing gas, which is reinjected into a reservoir within the same lease, unit area, or communitized area, when the reinjection is included in a plan of development or operations and the plan has received BLM or Bureau of Ocean Energy Management (BOEM) approval for onshore or offshore operations, respectively, until such time as they are finally produced from the reservoir for sale or other disposition off-lease.

[53 FR 1217, Jan. 15, 1988, as amended at 61 FR 5490, Feb. 12, 1996; 64 FR 43513, Aug. 10, 1999; 78 FR 30200, May 22, 2013]

§ 1202.152 Standards for reporting and paying royalties on gas.

(a)(1) If you are responsible for reporting production or royalties, you must:

(i) Report gas volumes and British thermal unit (Btu) heating values, if applicable, under the same degree of water saturation;

(ii) Report gas volumes in units of 1,000 cubic feet (mcf); and

(iii) Report gas volumes and Btu heating value at a standard pressure base of 14.73 pounds per square inch absolute (psia) and a standard temperature base of 60 °F.

(2) The frequency and method of Btu measurement as set forth in the lessee's contract shall be used to determine Btu heating values for reporting purposes. However, the lessee shall measure the Btu value at least semi-annually by recognized standard industry testing methods even if the lessee's contract provides for less frequent measurement.

(b)(1) Residue gas and gas plant product volumes shall be reported as specified in this paragraph.

§ 1202.250

(2) Carbon dioxide (CO₂), nitrogen (N₂), helium (He), residue gas, and any other gas marketed as a separate product shall be reported by using the same standards specified in paragraph (a) of this section.

(3) Natural gas liquids (NGL) volumes shall be reported in standard U.S. gallons (231 cubic inches) at 60 °F.

(4) Sulfur (S) volumes shall be reported in long tons (2,240 pounds).

[53 FR 1271, Jan. 15, 1988, as amended at 63 FR 26367, May 12, 1998]

Subpart E—Solid Minerals, General [Reserved]

Subpart F—Coal

§ 1202.250 Overriding royalty interest.

The regulations governing overriding royalty interests, production payments, or similar interests created under Federal coal leases are in 43 CFR group 3400.

[54 FR 1522, Jan. 13, 1989]

§ 1202.251 What coal is subject to royalties?

(a) All coal (except coal unavoidably lost as BLM determines under 43 CFR part 3400) from a Federal or Indian lease is subject to royalty. This includes coal used, sold, or otherwise disposed of by you on or off of the lease.

(b) If you receive compensation for unavoidably lost coal through insurance coverage or other arrangements, you must pay royalties at the rate specified in the lease on the amount of compensation that you receive for the coal. No royalty is due on insurance compensation that you received for other losses.

(c) If you rework waste piles or slurry ponds to recover coal, you must pay royalty at the rate specified in the lease at the time when you use, sell, or otherwise finally dispose of the recovered coal.

(1) The applicable royalty rate depends on the production method that you used to initially mine the coal contained in the waste pile or slurry pond (such as an underground mining method or a surface mining method).

(2) You must allocate coal in waste pits or slurry ponds that you initially

30 CFR Ch. XII (7–1–17 Edition)

mined from Federal or Indian leases to those Federal or Indian leases regardless of whether it is stored on Federal or Indian lands.

(3) You must maintain accurate records demonstrating how to allocate the coal in the waste pit or slurry pond to each individual Federal or Indian coal lease.

[81 FR 43369, July 1, 2016]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources

SOURCE: 56 FR 57275, Nov. 8, 1991, unless otherwise noted.

§ 1202.350 Scope and definitions.

(a) This subpart is applicable to all geothermal resources produced from Federal geothermal leases issued pursuant to the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 *et seq.*).

(b) The definitions in § 1206.351 are applicable to this subpart.

[56 FR 57275, Nov. 8, 1991, as amended at 78 FR 30200, May 22, 2013]

§ 1202.351 Royalties on geothermal resources.

(a)(1) Royalties on geothermal resources, including byproducts, or on electricity produced using geothermal resources, will be at the royalty rate(s) specified in the lease, unless the Secretary of the Interior temporarily waives, suspends, or reduces that rate(s). Royalties are determined under 30 CFR part 1206, subpart H.

(2) Fees in lieu of royalties on geothermal resources are prescribed in 30 CFR part 1206, subpart H.

(3) Except for the amount credited against royalties for in-kind deliveries of electricity to a State or county under § 1218.306, you must pay royalties and direct use fees in money.

(b)(1) Except as specified in paragraph (b)(2) of this section, royalties or fees are due on—

(i) All geothermal resources produced from a lease and that are sold or used by the lessee or are reasonably susceptible to sale or use by the lessee, or

(ii) All proceeds derived from the sale of electricity produced using geothermal resources produced from a lease.

(2) For purposes of this subparagraph, the terms “Class I lease,” “Class II lease,” and “Class III lease” have the same meanings prescribed in § 1206.351.

(i) For Class I leases, ONRR will allow free of royalty—

(A) Geothermal resources that are unavoidably lost or reinjected before use on or off the lease, as determined by the Bureau of Land Management (BLM), or that are reasonably necessary to generate plant parasitic electricity or electricity for Federal lease operations; and

(B) A reasonable amount of commercially demineralized water necessary for power plant operations or otherwise used on or for the benefit of the lease.

(ii) For Class II and Class III leases where the lessee uses geothermal resources for commercial production or generation of electricity, or where geothermal resources are sold at arm’s length for the commercial production or generation of electricity, ONRR will allow free of royalty or direct use fees geothermal resources that are:

(A) Unavoidably lost or reinjected before use on or off the lease, as determined by BLM;

(B) Reasonably necessary for the lessee to generate plant parasitic electricity or electricity for Federal lease operations, as approved by BLM; or

(C) Otherwise used for Federal lease operations related to commercial production or generation of electricity, as approved by BLM.

(iii) For Class II and Class III leases where the lessee uses the geothermal resources for a direct use or in a direct use facility, as defined in § 1206.351, resources that are used to generate electricity for Federal lease operations or that are otherwise used for Federal lease operations are subject to direct use fees, except for geothermal resources that are unavoidably lost or reinjected before use on or off the lease, as determined by BLM.

(3) Royalties on byproducts are due at the time the recovered byproduct is used, sold, or otherwise finally disposed of. Byproducts produced and added to stockpiles or inventory do not require

payment of royalty until the byproducts are sold, utilized, or otherwise finally disposed of. The ONRR may ask BLM to increase the lease bond to protect the lessor’s interest when BLM determines that stockpiles or inventories become excessive.

(c) If BLM determines that geothermal resources (including byproducts) were avoidably lost or wasted from the lease, or that geothermal resources (including byproducts) were drained from the lease for which compensatory royalty (or compensatory fees in lieu of compensatory royalty) are due, the value of those geothermal resources, or the royalty or fees owed, will be determined under 30 CFR part 1206, subpart H.

(d) If a lessee receives insurance or other compensation for unavoidably lost geothermal resources (including byproducts), royalties at the rates specified in the lease (or fees in lieu of royalties) are due on the amount of, or as a result of, that compensation. This paragraph will not apply to compensation through self-insurance.

[72 FR 24458, May 2, 2007]

§ 1202.352 Minimum royalty.

In no event shall the lessee’s annual royalty payments for any producing lease be less than the minimum royalty established by the lease.

§ 1202.353 Measurement standards for reporting and paying royalties and direct use fees.

(a) For geothermal resources used to generate electricity, you must report the quantity on which royalty is due on Form ONRR-2014 (Report of Sales and Royalty Remittance) as follows:

(1) For geothermal resources for which royalty is calculated under § 1206.352(a), you must report quantities in:

(i) Thousands of pounds to the nearest whole thousand pounds if the contract for the geothermal resources specifies delivery in terms of weight; or

(ii) Millions of Btu to the nearest whole million Btu if the sales contract for the geothermal resources specifies delivery in terms of heat or thermal energy.

(2) For geothermal resources for which royalty is calculated under

§ 1202.550

30 CFR Ch. XII (7–1–17 Edition)

§ 1206.352(b), you must report the quantities in kilowatt-hours to the nearest whole kilowatt-hour.

(b) For geothermal resources used in direct use processes, you must report the quantity on which a royalty or direct use fee is due on Form ONRR-2014 in:

(1) Millions of Btu to the nearest whole million Btu if valuation is in terms of heat or thermal energy used or displaced;

(2) Millions of gallons to the nearest million gallons of geothermal fluid produced if valuation or fee calculation is in terms of volume;

(3) Millions of pounds to the nearest million pounds of geothermal fluid produced if valuation or fee calculation is in terms of mass; or

(4) Any other measurement unit ONRR approves for valuation and reporting purposes.

(c) For byproducts, you must report the quantity on which royalty is due on Form ONRR-2014 consistent with ONRR-established reporting standards.

(d) For commercially demineralized water, you must report the quantity on which royalty is due on Form ONRR-2014 in hundreds of gallons to the nearest hundred gallons.

(e) You need not report the quality of geothermal resources, including byproducts, to ONRR. However, you must maintain quality measurements for audit purposes. Quality measurements include, but are not limited to:

(1) Temperatures and chemical analyses for fluid geothermal resources; and

(2) Chemical analyses, weight percent, or other purity measurements for byproducts.

[72 FR 24458, May 2, 2007, as amended at 78 FR 30200, May 22, 2013]

Subpart I—OCS Sulfur [Reserved]

Subpart J—Gas Production From Indian Leases

SOURCE: 64 FR 43514, Aug. 10, 1999, unless otherwise noted.

§ 1202.550 How do I determine the royalty due on gas production?

If you produce gas from an Indian lease subject to this subpart, you must determine and pay royalties on gas production as specified in this section.

(a) *Royalty rate.* You must calculate your royalty using the royalty rate in the lease.

(b) *Payment in value or in kind.* You must pay royalty in value unless:

(1) The Tribal lessor requires payment in kind; or

(2) You have a lease on allotted lands and ONRR requires payment in kind.

(c) *Royalty calculation.* You must use the following calculations to determine royalty due on the production from or attributable to your lease.

(1) When paid in value, the royalty due is the unit value of production for royalty purposes, determined under 30 CFR part 1206, multiplied by the volume of production multiplied by the royalty rate in the lease.

(2) When paid in kind, the royalty due is the volume of production multiplied by the royalty rate.

(d) *Reduced royalty rate.* The Indian lessor and the Secretary may approve a request for a royalty rate reduction. In your request you must demonstrate economic hardship.

(e) *Reporting and paying.* You must report and pay royalties as provided in part 1218 of this title.

§ 1202.551 How do I determine the volume of production for which I must pay royalty if my lease is not in an approved Federal unit or communitization agreement (AFA)?

(a) You are liable for royalty on your entitled share of gas production from your Indian lease, except as provided in §§ 1202.555, 1202.556, and 1202.557.

(b) You and all other persons paying royalties on the lease must report and pay royalties based on your takes. If another person takes some of your entitled share but does not pay the royalties owed, you are liable for those royalties.

(c) You and all other persons paying royalties on the lease may ask ONRR for permission to report and pay royalties based on your entitlements. In

that event, ONRR will provide valuation instructions consistent with this part and part 1206 of this title.

§ 1202.552 How do I determine how much royalty I must pay if my lease is in an approved Federal unit or communitization agreement (AFA)?

You must pay royalties each month on production allocated to your lease under the terms of an AFA. To determine the volume and the value of your production, you must follow these three steps:

(a) You must determine the volume of your entitled share of production allocated to your lease under the terms of an AFA. This may include production from more than one AFA.

(b) You must value the production you take using 30 CFR part 1206. If you take more than your entitled share of production, see § 1202.553 for information on how to value this production. If you take less than your entitled share of production, see § 1202.554 for information on how to value production you are entitled to but do not take.

§ 1202.553 How do I value my production if I take more than my entitled share?

If you take more than your entitled share of production from a lease in an AFA for any month, you must determine the weighted-average value of all of the production that you take using the procedures in 30 CFR part 1206, and use that value for your entitled share of production.

§ 1202.554 How do I value my production that I do not take if I take less than my entitled share?

If you take none or only part of your entitled production from a lease in an AFA for any month, use this section to value the production that you are entitled to but do not take.

(a) If you take a significant volume of production from your lease during the month, you must determine the weighted average value of the production that you take using 30 CFR part 1206, and use that value for the production that you do not take.

(b) If you do not take a significant volume of production from your lease during the month, you must use para-

graph (c) or (d) of this section, whichever applies.

(c) In a month where you do not take production or take an insignificant volume, and if you would have used § 1206.172(b) to value the production if you had taken it, you must determine the value of production not taken for that month under § 1206.172(b) as if you had taken it.

(d) If you take none of your entitled share of production from a lease in an AFA, and if that production cannot be valued under § 1206.172(b), then you must determine the value of the production that you do not take using the first of the following methods that applies:

(1) The weighted average of the value of your production (under 30 CFR part 1206) in that month from other leases in the same AFA.

(2) The weighted average of the value of your production (under 30 CFR part 1206) in that month from other leases in the same field or area.

(3) The weighted average of the value of your production (under 30 CFR part 1206) during the previous month for production from leases in the same AFA.

(4) The weighted average of the value of your production (under 30 CFR part 1206) during the previous month for production from other leases in the same field or area.

(5) The latest major portion value that you received from ONRR calculated under § 1206.174 for the same ONRR-designated area.

(e) You may take less than your entitled share of AFA production for any month, but pay royalties on the full volume of your entitled share under this section. If you do, you will owe no additional royalty for that lease for that month when you later take more than your entitled share to balance your account. The provisions of this paragraph (e) also apply when the other AFA participants pay you money to balance your account.

§ 1202.555 What portion of the gas that I produce is subject to royalty?

(a) All gas produced from or allocated to your Indian lease is subject to royalty except the following:

(1) Gas that is unavoidably lost.

§ 1202.556

(2) Gas that is used on, or for the benefit of, the lease.

(3) Gas that is used off-lease for the benefit of the lease when the Bureau of Land Management (BLM) approves such off-lease use.

(4) Gas used as plant fuel as provided in § 1206.179(e).

(b) You may use royalty-free only that proportionate share of each lease's production (actual or allocated) necessary to operate the production facility when you use gas for one of the following purposes:

(1) On, or for the benefit of, the lease at a production facility handling production from more than one lease with BLM's approval.

(2) At a production facility handling unitized or communitized production.

(c) If the terms of your lease are inconsistent with this subpart, your lease terms will govern to the extent of that inconsistency.

§ 1202.556 How do I determine the value of avoidably lost, wasted, or drained gas?

If BLM determines that a volume of gas was avoidably lost or wasted, or a volume of gas was drained from your Indian lease for which compensatory royalty is due, then you must determine the value of that volume of gas under 30 CFR part 1206.

§ 1202.557 Must I pay royalty on insurance compensation for unavoidably lost gas?

If you receive insurance compensation for unavoidably lost gas, you must pay royalties on the amount of that compensation. This paragraph does not apply to compensation through self-insurance.

§ 1202.558 What standards do I use to report and pay royalties on gas?

(a) You must report gas volumes as follows:

(1) Report gas volumes and Btu heating values, if applicable, under the same degree of water saturation. Report gas volumes and Btu heating value at a standard pressure base of 14.73 psia and a standard temperature of 60 degrees Fahrenheit. Report gas volumes in units of 1,000 cubic feet (Mcf).

30 CFR Ch. XII (7–1–17 Edition)

(2) You must use the frequency and method of Btu measurement stated in your contract to determine Btu heating values for reporting purposes. However, you must measure the Btu value at least semi-annually by recognized standard industry testing methods even if your contract provides for less frequent measurement.

(b) You must report residue gas and gas plant product volumes as follows:

(1) Report carbon dioxide (CO₂), nitrogen (N₂), helium (He), residue gas, and any gas marketed as a separate product by using the same standards specified in paragraph (a) of this section.

(2) Report natural gas liquid (NGL) volumes in standard U.S. gallons (231 cubic inches) at 60 degrees F.

(3) Report sulfur (S) volumes in long tons (2,240 pounds).

PART 1203—RELIEF OR REDUCTION IN ROYALTY RATES

Sec.

1203.250 Advance royalty.

1203.251 Reduction in royalty rate or rental.

AUTHORITY: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; and 43 U.S.C. 1331 *et seq.*

SOURCE: 48 FR 35641, Aug. 5, 1983, unless otherwise noted. Redesignated at 75 FR 61067, Oct. 4, 2010.

§ 1203.250 Advance royalty.

Provisions for the payment of advance royalty in lieu of continued operation are contained at 43 CFR 3483.4.

[54 FR 1522, Jan. 13, 1989]

§ 1203.251 Reduction in royalty rate or rental.

An application for reduction in coal royalty rate or rental shall be filed and processed in accordance with 43 CFR group 3400.

[54 FR 1522, Jan. 13, 1989]

PART 1204—ALTERNATIVES FOR MARGINAL PROPERTIES

Subpart A—General Provisions

Sec.

- 1204.1 What is the purpose of this part?
- 1204.2 What definitions apply to this part?
- 1204.3 What alternatives are available for marginal properties?
- 1204.4 What is a marginal property under this part?
- 1204.5 What statutory requirements must I meet to obtain royalty prepayment or accounting and auditing relief?
- 1204.6 May I appeal if ONRR denies my request for prepayment or other relief?

Subpart B—Prepayment of Royalty [Reserved]

Subpart C—Accounting and Auditing Relief

- 1204.200 What is the purpose of this subpart?
- 1204.201 Who may obtain accounting and auditing relief?
- 1204.202 What is the cumulative royalty reports and payments relief option?
- 1204.203 What is the other relief option?
- 1204.204 What accounting and auditing relief will ONRR not allow?
- 1204.205 How do I obtain accounting and auditing relief?
- 1204.206 What will ONRR do when it receives my request for other relief?
- 1204.207 Who will approve, deny, or modify my request for accounting and auditing relief?
- 1204.208 May a State decide that it will or will not allow one or both of the relief options under this subpart?
- 1204.209 What if a property ceases to qualify for relief obtained under this subpart?
- 1204.210 What if a property is approved as part of a nonqualifying agreement?
- 1204.211 When may ONRR rescind relief for a property?
- 1204.212 What if I took relief for which I was ineligible?
- 1204.213 May I obtain relief for a property that benefits from other Federal or State incentive programs?
- 1204.214 Is minimum royalty due on a property for which I took relief?
- 1204.215 Are the information collection requirements in this subpart approved by the Office of Management and Budget (OMB)?

AUTHORITY: 30 U.S.C. 1701 *et seq.*

SOURCE: 69 FR 55088, Sept. 13, 2004, unless otherwise noted. Redesignated at 75 FR 61067, Oct. 4, 2010.

Subpart A—General Provisions

§ 1204.1 What is the purpose of this part?

This part explains how you as a lessee or designee of a Federal onshore or Outer Continental Shelf (OCS) oil and gas lease may obtain prepayment or accounting and auditing relief for production from certain marginal properties. This part does not apply to production from Indian leases, even if the Indian lease is within an agreement that qualifies as a marginal property.

§ 1204.2 What definitions apply to this part?

Agreement means a federally approved communitization agreement or unit participating area.

Barrels of oil equivalent (BOE) means the combined equivalent production of oil and gas stated in barrels of oil. Each barrel of oil production is equal to one BOE. Also, each 6,000 cubic feet of gas production is equal to one BOE.

Base period means the 12-month period from July 1 through June 30 immediately preceding the calendar year for which you take or request marginal property relief. For example, if you request relief for calendar year 2006, your base period is July 1, 2004, through June 30, 2005.

Combined equivalent production means the total of all oil and gas production for the marginal property, stated in BOE.

Designee means the person designated by a lessee under § 1218.52 to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

Producing wells means only those producing oil or gas wells that contribute to the sum of BOE used in the calculation under § 1204.4(c). Producing wells do not include injection or water wells. Wells with multiple zones commingled downhole are considered as a single well.

Property means a lease, a portion of a lease, or an agreement that may be a marginal property if it meets the qualification requirements of § 1204.4.

State concerned (State) means the State that receives a statutorily prescribed portion of the royalties from a Federal onshore or OCS lease.

§ 1204.3

30 CFR Ch. XII (7–1–17 Edition)

§ 1204.3 What alternatives are available for marginal properties?

If you have production from a marginal property, ONRR and the State may allow you the following options:

(a) *Prepay royalty.* ONRR and the State may allow you to make a lump-sum advance payment of royalties instead of monthly royalty payments for the remainder of the lease term. See subpart B for prepayment of royalty requirements.

(b) *Take accounting and auditing relief.* ONRR and the State may allow various

accounting and auditing relief options to encourage you to continue to produce and develop your marginal property. See subpart C for accounting and auditing relief requirements.

§ 1204.4 What is a marginal property under this part?

(a) To qualify as a marginal property eligible for royalty prepayment or accounting and auditing relief under this part, the property must meet the following requirements:

If your lease is . . .	Then . . .	And . . .
(1) Not in an agreement	The lease must qualify as a marginal property under paragraph (b) of this section.	
(2) Entirely or partly committed to one agreement.	The entire agreement must qualify as a marginal property under paragraph (b) of this section.	Agreement production allocable to your lease may be eligible for relief under this part. Any production from your lease that is not committed to the agreement also may be eligible for separate relief under paragraph (a)(4) of this table.
(3) Entirely or partly committed to more than one agreement.	Each agreement must qualify separately as a marginal property under paragraph (b) of this section.	For any agreement that does qualify, that agreement's production allocable to your lease may be eligible for relief under this part. Any production from your lease that is not committed to an agreement also may be eligible for separate relief under paragraph (a)(4) of this table.
(4) Partly committed to an agreement and you have production from the part of the lease that is not committed to the agreement.	The part of the lease that is not committed to the agreement must qualify separately as a marginal property under paragraph (b) of this section.	

(b) To qualify as a marginal property for a calendar year, the combined equivalent production of the property during the base period must equal an average daily well production of less than 15 barrels of oil equivalent (BOE) per well per day calculated under paragraph (c) of this section.

(c) To determine the average daily well production for a property, divide the sum of the BOE for all producing wells on the property during the base period by the sum of the number of days that each of those wells actually produced during the base period. If the property is an agreement, your calculation under this paragraph must include all wells included in the agreement, even if they are not on a Federal on-shore or OCS lease.

§ 1204.5 What statutory requirements must I meet to obtain royalty prepayment or accounting and auditing relief?

(a) ONRR and the State may allow royalty prepayment or accounting and auditing relief for your marginal property production if ONRR and the State jointly determine that the prepayment or accounting and auditing relief is in the best interests of the Federal Government and the State to:

- (1) Promote production;
- (2) Reduce the administrative costs of ONRR and the State; and
- (3) Increase net receipts to the Federal Government and the State.

(b) At any time, if ONRR and the State determine that either prepayment or accounting and auditing relief no longer meets the criteria in paragraph (a) of this section, ONRR, with

the State's concurrence, may discontinue any prepayment or accounting and auditing relief options granted for production from any marginal property.

(1) ONRR will provide you written notice of the decision to discontinue relief.

(i) If you took the cumulative reports and payments relief option under § 1204.202, your relief will terminate at the end of the calendar year in which you received the notice.

(ii) If you were approved for prepayment relief under subpart B of this part or other relief under § 1204.203, ONRR's notice will tell you when your relief terminates.

(2) ONRR's decision to discontinue relief is not subject to administrative appeal.

§ 1204.6 May I appeal if ONRR denies my request for prepayment or other relief?

If ONRR denies your request for prepayment relief under subpart B of this part or other relief under § 1204.203, you may appeal under 30 CFR part 1290.

**Subpart B—Prepayment of Royalty
[Reserved]**

**Subpart C—Accounting and
Auditing Relief**

§ 1204.200 What is the purpose of this subpart?

This subpart explains how you as a lessee or designee may obtain accounting and auditing relief for your Federal onshore or OCS lease production from a marginal property. The two types of accounting and auditing relief that you can receive under this subpart are cumulative reports and payment relief (explained in § 1204.202) and other accounting and auditing relief appropriate for your property (explained in § 1204.203).

§ 1204.201 Who may obtain accounting and auditing relief?

(a) You may obtain accounting and auditing relief under this subpart:

(1) If you are a lessee or a designee for a Federal lease with production from a property that qualifies as a marginal property under § 1204.4;

(2) If you meet any additional requirements for specific types of relief under this subpart; and

(3) Only for the fractional interest in production from the marginal property for which you report and pay royalty. You may obtain relief even if the other lessees or designees for your lease or agreement do not request relief.

(b) You may not obtain one or both of the relief options specified in this subpart on any portion of production from a marginal property if:

(1) The marginal property covers multiple States; and

(2) One of the States determines under § 1204.208 that it will not allow the relief option you seek.

§ 1204.202 What is the cumulative royalty reports and payments relief option?

(a) The cumulative royalty reports and payments relief option allows you to submit one royalty report and payment annually for production during a calendar year. You are eligible for this option only if the total volume produced from the marginal property (not just your share of the production) is 1,000 BOE or less during the base period.

(b) To use the cumulative royalty reports and payments relief option, you must do all of the following:

(1) Notify ONRR in writing by January 31 of the calendar year for which you begin taking your relief. See § 1204.205(a) for what your notification must contain;

(2) Submit your royalty report and payment in accordance with 30 CFR 1218.51(g) by the end of February of the year following the calendar year for which you reported annually, unless you have an estimated payment on file. If you have an estimated payment on file, you must submit your royalty report and payment by the end of March of the year following the calendar year for which you reported annually;

(3) Use the sales month prior to the month that you submit your annual report and payment under paragraph (b)(2) of this section on your Report of Sales and Royalty Remittance, Form ONRR-2014, for the entire previous calendar year's production for which you are paying annually. (For example, for

§ 1204.203

a report in February use January as your sales month, and for a report in March use February as your sales month, to report production for the entire previous calendar year for which you are paying annually);

(4) Report one line of cumulative royalty information on Form ONRR-2014 for the calendar year, the same as if it were a monthly report; and

(5) Report allowances on Form ONRR-2014 on the same annual basis as the royalties for your marginal property production.

(c) If you do not pay your royalty by the date due in paragraph (b) of this section, you will owe late payment interest determined under 30 CFR 1218.54 from the date your payment was due under this section until the date ONRR receives it.

(d) If you take relief you are not qualified for, you may be liable for civil penalties. Also you must:

(1) Pay ONRR late payment interest determined under §1218.54 from the date your payment was due until the date ONRR receives it; and

(2) Amend your Form ONRR-2014 to reflect the required monthly reporting.

(e) If you dispose of your ownership interest in a marginal property for which you have taken relief under this section (or if you are a designee who reports and pays royalty for a lessee who has disposed of its ownership interest), you must:

(1) Report and pay royalties for the portion of the calendar year for which you had an ownership interest; and

(2) Make the report and payment by the end of the month after you dispose of the ownership interest in the marginal property. If you do not report and pay timely, you will owe interest determined under §1218.54 from the date the payment was due under this section.

[69 FR 55088, Sept. 13, 2004, as amended at 78 FR 30200, May 22, 2013]

§ 1204.203 What is the other relief option?

(a) Under this relief option, you may request any type of accounting and auditing relief that is appropriate for production from your marginal property, provided it is not prohibited under §1204.204 and meets the statutory re-

30 CFR Ch. XII (7-1-17 Edition)

quirements of §1204.5. Examples of relief options you could request are:

(1) To report and pay royalties using a valuation method other than that required under 30 CFR part 1206 that approximates royalties payable under that part 1206; and

(2) To reduce your royalty audit burden. However, ONRR will not consider any request that eliminates ONRR's or the States' right to audit.

(b) You must request approval from ONRR under §1204.205(b), and receive approval under §1204.206 before taking relief under this option.

§ 1204.204 What accounting and auditing relief will ONRR not allow?

ONRR will not approve your request for accounting and auditing relief under this subpart if your request:

(a) Prohibits ONRR or the State from conducting any form of audit;

(b) Permanently relieves you from making future royalty reports or payments;

(c) Provides for less frequent royalty reports and payments than annually;

(d) Provides for you to submit royalty reports and payments at separate times;

(e) Impairs ONRR's ability to properly or efficiently account for or distribute royalties;

(f) Requests relief for a lease under which the Federal Government takes its royalties in kind;

(g) Alters production reporting requirements;

(h) Alters lease operation or safety requirements;

(i) Conflicts with rent, minimum royalty, or lease requirements; or

(j) Requests relief for production from a marginal property located in whole or in part in a State that has determined that it will not allow such relief under §1204.208.

§ 1204.205 How do I obtain accounting and auditing relief?

(a) To take cumulative reports and payments relief under §1204.202, you must notify ONRR in writing by January 31 of the calendar year for which you begin taking your relief.

(1) Your notification must contain:

(i) Your company name, ONRR-assigned payor code, address, phone number, and contact name; and

(ii) The specific ONRR lease number and agreement number, if applicable.

(2) You may file a single notification for multiple marginal properties.

(b) To obtain other relief under § 1204.203, you must file a written request for relief with ONRR.

(1) Your request must contain:

(i) Your company name, ONRR-assigned payor code, address, phone number, and contact name;

(ii) The ONRR lease number and agreement number, if applicable; and

(iii) A complete and detailed description of the specific accounting or auditing relief you seek.

(2) You may file a single request for multiple marginal properties if you are requesting the same relief for all properties.

§ 1204.206 What will ONRR do when it receives my request for other relief?

When ONRR receives your request for other relief under § 1204.205(b), it will notify you in writing as follows:

(a) If your request for relief is complete, ONRR may either approve, deny, or modify your request in writing after consultation with any State required under § 1204.207(b).

(1) If ONRR approves your request for relief, ONRR will notify you of the effective date of your accounting or auditing relief and other specifics of the relief approved.

(2) If ONRR denies your relief request, ONRR will notify you of the reasons for denial and your appeal rights under § 1204.6.

(3) If ONRR modifies your relief request, ONRR will notify you of the modifications.

(i) You have 60 days from your receipt of ONRR's notice to either accept or reject any modification(s) in writing.

(ii) If you reject the modification(s) or fail to respond to ONRR's notice, ONRR will deny your relief request. ONRR will notify you in writing of the reasons for denial and your appeal rights under § 1204.6.

(b) If your request for relief is not complete, ONRR will notify you in

writing that your request is incomplete and identify any missing information.

(1) You must submit the missing information within 60 days of your receipt of ONRR's notice that your request is incomplete.

(2) After you submit all required information, ONRR may approve, deny, or modify your request for relief under paragraph (a) of this section.

(3) If you do not submit all required information within 60 days of your receipt of ONRR's notice that your request is incomplete, ONRR will deny your relief request. ONRR will notify you in writing of the reasons for denial and your appeal rights under § 1204.6.

(4) You may submit a new request for relief under this subpart at any time after ONRR returns your incomplete request.

[69 FR 55088, Sept. 13, 2004, as amended at 78 FR 30200, May 22, 2013]

§ 1204.207 Who will approve, deny, or modify my request for accounting and auditing relief?

(a) If there is not a State concerned for your marginal property, only ONRR will decide whether to approve, deny, or modify your relief request.

(b) If there is a State concerned for your marginal property that has determined in advance under § 1204.208 that it will allow either or both of the relief options under this subpart, ONRR will decide whether to approve, deny, or modify your relief request after consulting with the State concerned.

[69 FR 55088, Sept. 13, 2004, as amended at 76 FR 38561, July 1, 2011]

§ 1204.208 May a State decide that it will or will not allow one or both of the relief options under this subpart?

(a) A State may decide in advance that it will or will not allow one or both of the relief options specified in this subpart for a particular calendar year. If a State decides that it will not consent to one or both of the relief options, ONRR will not grant that type of marginal property relief.

(b) To help States decide whether to allow one or both of the relief options specified in this subpart, for each calendar year ONRR will send States a

§ 1204.209

30 CFR Ch. XII (7-1-17 Edition)

Report of Marginal Properties by October 1 preceding the calendar year.

(c) If a State decides under paragraph (a) of this section that it will or will not allow one or both of the relief options in this subpart during the next calendar year, within 30 days of the State's receipt of the Report of Marginal Properties under paragraph (b) of this section, the State must:

(1) Notify the Director for Office of Natural Resources Revenue, in writing, of its intent to allow or not allow one or both of the relief options under this subpart; and

(2) Specify in its notice of intent to ONRR which relief option(s) it will allow or not allow.

(d) If a State decides in advance under paragraph (a) of this section that it will not allow one or both of the relief options specified in this subpart, it may decide for subsequent calendar years that it will allow one or both of the relief options in this subpart. If it so decides, within 30 days of the State's receipt of the Report of Marginal Properties under paragraph (b) of this section, the State must:

(1) Notify the Director for Office of Natural Resources Revenue, in writing, of its intent to allow one or both of the relief options allowed under this subpart during the next calendar year; and

(2) Specify in its notice of intent to ONRR which relief option(s) it will allow.

(e) If a State does not notify ONRR under paragraph (c) or (d) of this section, the State will be deemed to have decided not to allow either of the relief options under this subpart for the next calendar year.

(f) ONRR will publish a notice of the State's intent to allow or not allow certain relief options under this section in the FEDERAL REGISTER no later than 30 days before the beginning of the applicable calendar year.

§ 1204.209 What if a property ceases to qualify for relief obtained under this subpart?

(a) A marginal property must qualify for relief under this subpart for each calendar year based on production during the base period for that calendar year. The notice or request you provided to ONRR under § 1204.205 for the

first calendar year that the property qualified for relief remains effective for successive calendar years if the property continues to qualify.

(b) If a property is no longer eligible for relief for any reason during a calendar year other than the reason under § 1204.210 or paragraph (c) of this section, the relief for the property terminates as of December 31 of that calendar year. You must notify ONRR in writing by December 31 that the relief for the property has terminated.

(c) If you dispose of your interest in a marginal property during the calendar year, your relief terminates as of the end of the sales month in which you disposed of the property. Report and pay royalties for your production using the procedures in § 1204.202(e).

§ 1204.210 What if a property is approved as part of a nonqualifying agreement?

If the Bureau of Land Management (BLM) or BOEM retroactively approves a marginal property that qualified for relief for inclusion as part of an agreement that does not qualify for relief under this subpart, the property no longer qualifies for relief under this subpart then:

(a) ONRR will not retroactively rescind the marginal property relief for production from your property under § 1204.211;

(b) Your marginal property relief terminates as of December 31 of the calendar year that you receive the BLM or BOEM approval of your marginal property as part of a nonqualifying agreement; and

(c) For the calendar year in which you receive the BLM or BOEMRE approval, and for any previous period affected by the approval, the volumes on which you report and pay royalty for your lease must be amended to reflect all volumes produced on or allocated to your lease under the nonqualifying agreement as modified by BLM or BOEM. Report and pay royalties for your production using the procedures in § 1204.202(b).

(d) If you owe additional royalties based on the retroactive agreement approval and do not pay your royalty by the date due in § 1204.202(b), you will owe late payment interest determined

under §1218.54 from the date your payment was due under §1204.202 (b)(2) until the date ONRR receives it.

[69 FR 55088, Sept. 13, 2004, as amended at 78 FR 30200, May 22, 2013]

§ 1204.211 When may ONRR rescind relief for a property?

(a) ONRR may retroactively rescind the relief for your property if ONRR determines that your property was not eligible for the relief obtained under this subpart because:

(1) You did not submit a notice or request for relief under §1204.205;

(2) You submitted erroneous information in the notice or request for relief you provided to ONRR under §1204.205 or in your royalty or production reports; or

(3) Your property is no longer eligible for relief because production increased, but you failed to provide the notice required under §1204.209(b).

(b) ONRR may rescind relief for your property if ONRR decides to take royalty in kind.

§ 1204.212 What if I took relief for which I was ineligible?

If you took relief under this subpart for a period for which you were not eligible, you:

(a) May owe additional royalties and late payment interest determined under §1218.54 from the date your additional payments were due until the date ONRR receives them; and

(b) May be subject to civil penalties.

§ 1204.213 May I obtain relief for a property that benefits from other Federal or State incentive programs?

You may obtain accounting and auditing relief for production from a marginal property under this subpart even if the property benefits from other Federal or State production incentive programs.

§ 1204.214 Is minimum royalty due on a property for which I took relief?

(a) If you took cumulative royalty reports and payment relief on a property under this subpart, minimum royalty is still due for that property by the date prescribed in your lease and in the amount prescribed therein.

(b) If you pay minimum royalty on production from a marginal property during a calendar year for which you are taking cumulative royalty reports and payment relief, and:

(1) The annual payment you owe under this subpart is greater than the minimum royalty you paid, you must pay the difference between the minimum royalty you paid and your annual payment due under this subpart; or

(2) The annual payment you owe under this subpart is less than the minimum royalty you paid, you are not entitled to a credit because you must pay at least the minimum royalty amount on your lease each year.

§ 1204.215 Are the information collection requirements in this subpart approved by the Office of Management and Budget (OMB)?

OMB approved the information collection requirements contained in this subpart under 44 U.S.C. 3501 *et seq.* ONRR identifies the approved OMB control number in 30 CFR 1210.10.

[78 FR 30200, May 22, 2013]

PART 1206—PRODUCT VALUATION

Subpart A—General Provisions and Definitions

Sec.

1206.10 Has the Office of Management and Budget (OMB) approved the information collection requirements in this part?

1206.20 What definitions apply to this part?

Subpart B—Indian Oil

1206.50 What is the purpose of this subpart?

1206.51 What definitions apply to this subpart?

1206.52 How do I calculate royalty value for oil that I or my affiliate sell(s) or exchange(s) under an arm's-length contract?

1206.53 How do I calculate royalty value for oil that I or my affiliate do(es) not sell under an arm's-length contract?

1206.54 How do I fulfill the lease provision regarding valuing production on the basis of the major portion of like-quality oil?

1206.55 What are my responsibilities to place production into marketable condition and to market production?

1206.56 What general transportation allowance requirements apply to me?

Pt. 1206

- 1206.57 How do I determine a transportation allowance if I have an arm's-length transportation contract?
- 1206.58 How do I determine a transportation allowance if I have a non-arm's-length transportation contract or have no contract?
- 1206.59 What interest applies if I improperly report a transportation allowance?
- 1206.60 What reporting adjustments must I make for transportation allowances?
- 1206.61 How will ONRR determine if my royalty payments are correct?
- 1206.62 How do I request a value determination?
- 1206.63 How do I determine royalty quantity and quality?
- 1206.64 What records must I keep to support my calculations of value under this subpart?
- 1206.65 Does ONRR protect information that I provide?

Subpart C—Federal Oil

- 1206.100 What is the purpose of this subpart?
- 1206.101 How do I calculate royalty value for oil I or my affiliate sell(s) under an arm's-length contract?
- 1206.102 How do I value oil not sold under an arm's-length contract?
- 1206.103 What publications does ONRR approve?
- 1206.104 How will ONRR determine if my royalty payments are correct?
- 1206.105 How will ONRR determine the value of my oil for royalty purposes?
- 1206.106 What records must I keep to support my calculations of value under this subpart?
- 1206.107 What are my responsibilities to place production into marketable condition and to market production?
- 1206.108 How do I request a valuation determination?
- 1206.109 Does ONRR protect information that I provide?
- 1206.110 What general transportation allowance requirements apply to me?
- 1206.111 How do I determine a transportation allowance if I have an arm's-length transportation contract?
- 1206.112 How do I determine a transportation allowance if I do not have an arm's-length transportation contract?
- 1206.113 What adjustments and transportation allowances apply when I value oil production from my lease using NYMEX prices or ANS spot prices?
- 1206.114 How will ONRR identify market centers?
- 1206.115 What are my reporting requirements under an arm's-length transportation contract?
- 1206.116 What are my reporting requirements under a non-arm's-length transportation contract?

30 CFR Ch. XII (7–1–17 Edition)

- 1206.117 What interest and penalties apply if I improperly report a transportation allowance?
- 1206.118 What reporting adjustments must I make for transportation allowances?
- 1206.119 How do I determine royalty quantity and quality?

Subpart D—Federal Gas

- 1206.140 What is the purpose and scope of this subpart?
- 1206.141 How do I calculate royalty value for unprocessed gas that I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?
- 1206.142 How do I calculate royalty value for processed gas that I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?
- 1206.143 How will ONRR determine if my royalty payments are correct?
- 1206.144 How will ONRR determine the value of my gas for royalty purposes?
- 1206.145 What records must I keep in order to support my calculations of royalty under this subpart?
- 1206.146 What are my responsibilities to place production into marketable condition and to market production?
- 1206.147 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?
- 1206.148 How do I request a valuation determination?
- 1206.149 Does ONRR protect information that I provide?
- 1206.150 How do I determine royalty quantity and quality?
- 1206.151 [Reserved]
- 1206.152 What general transportation allowance requirements apply to me?
- 1206.153 How do I determine a transportation allowance if I have an arm's-length transportation contract?
- 1206.154 How do I determine a transportation allowance if I have a non-arm's-length transportation contract?
- 1206.155 What are my reporting requirements under an arm's-length transportation contract?
- 1206.156 What are my reporting requirements under a non-arm's-length transportation contract?
- 1206.157 What interest and penalties apply if I improperly report a transportation allowance?
- 1206.158 What reporting adjustments must I make for transportation allowances?
- 1206.159 What general processing allowances requirements apply to me?
- 1206.160 How do I determine a processing allowance if I have an arm's-length processing contract?
- 1206.161 How do I determine a processing allowance if I have a non-arm's-length processing contract?

Natural Resources Revenue Off., Interior

Pt. 1206

- 1206.162 What are my reporting requirements under an arm's-length processing contract?
- 1206.163 What are my reporting requirements under a non-arm's-length processing contract?
- 1206.164 What interest and penalties apply if I improperly report a processing allowance?
- 1206.165 What reporting adjustments must I make for processing allowances?

Subpart E—Indian Gas

- 1206.170 What does this subpart contain?
- 1206.171 What definitions apply to this subpart?
- 1206.172 How do I value gas produced from leases in an index zone?
- 1206.173 How do I calculate the alternative methodology for dual accounting?
- 1206.174 How do I value gas production when an index-based method cannot be used?
- 1206.175 How do I determine quantities and qualities of production for computing royalties?
- 1206.176 How do I perform accounting for comparison?

TRANSPORTATION ALLOWANCES

- 1206.177 What general requirements regarding transportation allowances apply to me?
- 1206.178 How do I determine a transportation allowance?

PROCESSING ALLOWANCES

- 1206.179 What general requirements regarding processing allowances apply to me?
- 1206.180 How do I determine an actual processing allowance?
- 1206.181 How do I establish processing costs for dual accounting purposes when I do not process the gas?

Subpart F—Federal Coal

- 1206.250 What is the purpose and scope of this subpart?
- 1206.251 How do I determine royalty quantity and quality?
- 1206.252 How do I calculate royalty value for coal that I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?
- 1206.253 How will ONRR determine if my royalty payments are correct?
- 1206.254 How will ONRR determine the value of my coal for royalty purposes?
- 1206.255 What records must I keep in order to support my calculations of royalty under this subpart?
- 1206.256 What are my responsibilities to place production into marketable condition and to market production?

- 1206.257 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?
- 1206.258 How do I request a valuation determination?
- 1206.259 Does ONRR protect information that I provide?
- 1206.260 What general transportation allowance requirements apply to me?
- 1206.261 How do I determine a transportation allowance if I have an arm's-length transportation contract or no written arm's-length contract?
- 1206.262 How do I determine a transportation allowance if I do not have an arm's-length transportation contract?
- 1206.263 What are my reporting requirements under an arm's-length transportation contract?
- 1206.264 What are my reporting requirements under a non-arm's-length transportation contract?
- 1206.265 What interest and penalties apply if I improperly report a transportation allowance?
- 1206.266 What reporting adjustments must I make for transportation allowances?
- 1206.267 What general washing allowance requirements apply to me?
- 1206.268 How do I determine washing allowances if I have an arm's-length washing contract or no written arm's-length contract?
- 1206.269 How do I determine washing allowances if I do not have an arm's-length washing contract?
- 1206.270 What are my reporting requirements under an arm's-length washing contract?
- 1206.271 What are my reporting requirements under a non-arm's-length washing contract?
- 1206.272 What interest and penalties apply if I improperly report a washing allowance?
- 1206.273 What reporting adjustments must I make for washing allowances?

Subpart G—Other Solid Minerals

- 1206.301 Value basis for royalty computation.

Subpart H—Geothermal Resources

- 1206.350 What is the purpose of this subpart?
- 1206.351 What definitions apply to this subpart?
- 1206.352 How do I calculate the royalty due on geothermal resources used for commercial production or generation of electricity?
- 1206.353 How do I determine transmission deductions?
- 1206.354 How do I determine generating deductions?

§ 1206.10

30 CFR Ch. XII (7–1–17 Edition)

- 1206.355 How do I calculate royalty due on geothermal resources I sell at arm's length to a purchaser for direct use?
- 1206.356 How do I calculate royalty due on geothermal resources I use for direct use purposes?
- 1206.357 How do I calculate royalty due on byproducts?
- 1206.358 What are byproduct transportation allowances?
- 1206.359 How do I determine byproduct transportation allowances?
- 1206.360 What records must I keep to support my calculations of royalty or fees under this subpart?
- 1206.361 How will ONRR determine whether my royalty or direct use fee payments are correct?
- 1206.362 What are my responsibilities to place production into marketable condition and to market production?
- 1206.363 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?
- 1206.364 How do I request a value or gross proceeds determination?
- 1206.365 Does ONRR protect information I provide?
- 1206.366 What is the nominal fee that a State, tribal, or local government lessee must pay for the use of geothermal resources?

Subpart I—OCS Sulfur [Reserved]

Subpart J—Indian Coal

- 1206.450 What is the purpose and scope of this subpart?
- 1206.451 How do I determine royalty quantity and quality?
- 1206.452 How do I calculate royalty value for coal that I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?
- 1206.453 How will ONRR determine if my royalty payments are correct?
- 1206.454 How will ONRR determine the value of my coal for royalty purposes?
- 1206.455 What records must I keep in order to support my calculations of royalty under this subpart?
- 1206.456 What are my responsibilities to place production into marketable condition and to market production?
- 1206.457 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?
- 1206.458 How do I request a valuation determination?
- 1206.459 Does ONRR protect information that I provide?
- 1206.460 What general transportation allowance requirements apply to me?
- 1206.461 How do I determine a transportation allowance if I have an arm's-

- length transportation contract or no written arm's-length contract?
- 1206.462 How do I determine a transportation allowance if I do not have an arm's-length transportation contract?
- 1206.463 What are my reporting requirements under an arm's-length transportation contract?
- 1206.464 What are my reporting requirements under a non-arm's-length transportation contract or no written arm's-length contract?
- 1206.465 What interest and penalties apply if I improperly report a transportation allowance?
- 1206.466 What reporting adjustments must I make for transportation allowances?
- 1206.467 What general washing allowance requirements apply to me?
- 1206.468 How do I determine washing allowances if I have an arm's-length washing contract or no written arm's-length contract?
- 1206.469 How do I determine washing allowances if I do not have an arm's-length washing contract?
- 1206.470 What are my reporting requirements under an arm's-length washing contract?
- 1206.471 What are my reporting requirements under a non-arm's-length washing contract or no written arm's-length contract?
- 1206.472 What interest and penalties apply if I improperly report a washing allowance?
- 1206.473 What reporting adjustments must I make for washing allowances?

AUTHORITY: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701.; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

SOURCE: 48 FR 35641, Aug. 5, 1983, unless otherwise noted. Redesignated at 75 FR 61069, Oct. 4, 2010.

EDITORIAL NOTE: Nomenclature changes to part 206 appear at 67 FR 19111, Apr. 18, 2002.

Subpart A—General Provisions and Definitions

SOURCE: 81 FR 43369, July 1, 2016, unless otherwise noted.

§ 1206.10 Has the Office of Management and Budget (OMB) approved the information collection requirements in this part?

OMB has approved the information collection requirement contained in this part under 44 U.S.C. 3501 *et seq.* See 30 CFR part 1210 for details concerning the estimated reporting burden and

how to comment on the accuracy of the burden estimate.

§ 1206.20 What definitions apply to this part?

Ad valorem lease means a lease where the royalty due to the lessor is based upon a percentage of the amount or value of the coal.

Affiliate means a person who controls, is controlled by, or is under common control with another person. For the purposes of this subpart:

(1) Ownership or common ownership of more than 50 percent of the voting securities, or instruments of ownership or other forms of ownership, of another person constitutes control. Ownership of less than 10 percent constitutes a presumption of non-control that ONRR may rebut.

(2) If there is ownership or common ownership of 10 through 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another person, ONRR will consider each of the following factors to determine if there is control under the circumstances of a particular case:

(i) The extent to which there are common officers or directors

(ii) With respect to the voting securities, or instruments of ownership or other forms of ownership: the percentage of ownership or common ownership, the relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons, if a person is the greatest single owner, or if there is an opposing voting bloc of greater ownership

(iii) Operation of a lease, plant, pipeline, or other facility

(iv) The extent of others owners' participation in operations and day-to-day management of a lease, plant, or other facility

(v) Other evidence of power to exercise control over or common control with another person

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, are affiliates.

ANS means Alaska North Slope.

Area means a geographic region at least as large as the limits of an oil and/or gas field, in which oil and/or gas lease products have similar quality and

economic characteristics. Area boundaries are not officially designated and the areas are not necessarily named.

Arm's-length-contract means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's-length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

Audit means an examination, conducted under the generally accepted Governmental Auditing Standards, of royalty reporting and payment compliance activities of lessees, designees or other persons who pay royalties, rents, or bonuses on Federal leases or Indian leases.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

BLM means the Bureau of Land Management of the Department of the Interior.

BOEM means the Bureau of Ocean Energy Management of the Department of the Interior.

BSEE means the Bureau of Safety and Environmental Enforcement of the Department of the Interior.

Coal means coal of all ranks from lignite through anthracite.

Coal cooperative means an entity organized to provide coal or coal-related services to the entity's members (who may or may not also be owners of the entity), partners, and others. The entity may operate as a coal lessee, operator, payor, logistics provider, or electricity generator, or any of their affiliates, and may be organized to be non-profit or for-profit.

Coal washing means any treatment to remove impurities from coal. Coal washing may include, but is not limited to, operations, such as flotation, air, water, or heavy media separation; drying; and related handling (or combination thereof).

Compression means the process of raising the pressure of gas.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without processing. Condensate is the mixture of liquid hydrocarbons resulting from condensation of petroleum hydrocarbons existing initially in a

gaseous phase in an underground reservoir.

Constraint means a reduction in, or elimination of, gas flow, deliveries, or sales required by the delivery system.

Contract means any oral or written agreement, including amendments or revisions, between two or more persons, that is enforceable by law and that, with due consideration, creates an obligation.

Designee means the person whom the lessee designates to report and pay the lessee's royalties for a lease.

Exchange agreement means an agreement where one person agrees to deliver oil to another person at a specified location in exchange for oil deliveries at another location. Exchange agreements may or may not specify prices for the oil involved. They frequently specify dollar amounts reflecting location, quality, or other differentials. Exchange agreements include buy/sell agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement. Examples of other types of exchange agreements include, but are not limited to, exchanges of produced oil for specific types of crude oil (such as West Texas Intermediate); exchanges of produced oil for other crude oil at other locations (Location Trades); exchanges of produced oil for other grades of oil (Grade Trades); and multi-party exchanges.

FERC means Federal Energy Regulatory Commission.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs and encompassing at least the outermost boundaries of all oil and gas accumulations known within those reservoirs, vertically projected to the land surface. State oil and gas regulatory agencies usually name onshore fields and designate their official boundaries. BOEM names and designates boundaries of OCS fields.

Gas means any fluid, either combustible or non-combustible, hydrocarbon or non-hydrocarbon, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely. It is a substance that exists in a gaseous or

rarefied state under standard temperature and pressure conditions.

Gas plant products means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas, excluding residue gas.

Gathering means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off of the lease, unit, or communitized area that BLM or BSEE approves for onshore and offshore leases, respectively, including any movement of bulk production from the wellhead to a platform offshore.

Geographic region means, for Federal gas, an area at least as large as the defined limits of an oil and or gas field in which oil and/or gas lease products have similar quality and economic characteristics.

Gross proceeds means the total monies and other consideration accruing for the disposition of any of the following:

(1) *Oil*. Gross proceeds also include, but are not limited to, the following examples:

(i) Payments for services such as dehydration, marketing, measurement, or gathering which the lessee must perform at no cost to the Federal Government

(ii) The value of services, such as salt water disposal, that the producer normally performs but that the buyer performs on the producer's behalf

(iii) Reimbursements for harboring or terminalling fees, royalties, and any other reimbursements

(iv) Tax reimbursements, even though the Federal royalty interest may be exempt from taxation

(v) Payments made to reduce or buy down the purchase price of oil produced in later periods by allocating such payments over the production whose price that the payment reduces and including the allocated amounts as proceeds for the production as it occurs

(vi) Monies and all other consideration to which a seller is contractually or legally entitled but does not seek to collect through reasonable efforts

(2) *Gas, residue gas, and gas plant products*. Gross proceeds also include,

but are not limited to, the following examples:

(i) Payments for services such as dehydration, marketing, measurement, or gathering that the lessee must perform at no cost to the Federal Government

(ii) Reimbursements for royalties, fees, and any other reimbursements

(iii) Tax reimbursements, even though the Federal royalty interest may be exempt from taxation

(iv) Monies and all other consideration to which a seller is contractually or legally entitled, but does not seek to collect through reasonable efforts

(3) *Coal*. Gross proceeds also include, but are not limited to, the following examples:

(i) Payments for services such as crushing, sizing, screening, storing, mixing, loading, treatment with substances including chemicals or oil, and other preparation of the coal that the lessee must perform at no cost to the Federal Government or Indian lessor

(ii) Reimbursements for royalties, fees, and any other reimbursements

(iii) Tax reimbursements even though the Federal or Indian royalty interest may be exempt from taxation

(iv) Monies and all other consideration to which a seller is contractually or legally entitled, but does not seek to collect through reasonable efforts

Index means:

(1) For gas, the calculated composite price (\$/MMBtu) of spot market sales that a publication that meets ONRR-established criteria for acceptability at the index pricing point publishes

(2) For oil, the calculated composite price (\$/barrel) of spot market sales that a publication that meets ONRR-established criteria for acceptability at the index pricing point publishes.

Index pricing point means any point on a pipeline for which there is an index, which ONRR-approved publications may refer to as a trading location.

Index zone means a field or an area with an active spot market and published indices applicable to that field or an area that is acceptable to ONRR under § 1206.141(d)(1).

Indian Tribe means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of In-

dians for which any minerals or interest in minerals is held in trust by the United States or is subject to Federal restriction against alienation.

Individual Indian mineral owner means any Indian for whom minerals or an interest in minerals is held in trust by the United States or who holds title subject to Federal restriction against alienation.

Keepwhole contract means a processing agreement under which the processor delivers to the lessee a quantity of gas after processing equivalent to the quantity of gas that the processor received from the lessee prior to processing, normally based on heat content, less gas used as plant fuel and gas unaccounted for and/or lost. This includes, but is not limited to, agreements under which the processor retains all NGLs that it recovered from the lessee's gas.

Lease means any contract, profit-sharing arrangement, joint venture, or other agreement issued or approved by the United States under any mineral leasing law, including the Indian Mineral Development Act, 25 U.S.C. 2101-2108, that authorizes exploration for, extraction of, or removal of lease products. Depending on the context, lease may also refer to the land area that the authorization covers.

Lease products mean any leased minerals, attributable to, originating from, or allocated to a lease or produced in association with a lease.

Lessee means any person to whom the United States, an Indian Tribe, and/or individual Indian mineral owner issues a lease, and any person who has been assigned all or a part of record title, operating rights, or an obligation to make royalty or other payments required by the lease. Lessee includes:

(1) Any person who has an interest in a lease.

(2) In the case of leases for Indian coal or Federal coal, an operator, payor, or other person with no lease interest who makes royalty payments on the lessee's behalf.

Like quality means similar chemical and physical characteristics.

Location differential means an amount paid or received (whether in money or in barrels of oil) under an exchange

agreement that results from differences in location between oil delivered in exchange and oil received in the exchange. A location differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell exchange agreement.

Market center means a major point that ONRR recognizes for oil sales, refining, or transshipment. Market centers generally are locations where ONRR-approved publications publish oil spot prices.

Marketable condition means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area for Federal oil and gas, and region for Federal and Indian coal.

Mine means an underground or surface excavation or series of excavations and the surface or underground support facilities that contribute directly or indirectly to mining, production, preparation, and handling of lease products.

Misconduct means any failure to perform a duty owed to the United States under a statute, regulation, or lease, or unlawful or improper behavior, regardless of the mental state of the lessee or any individual employed by or associated with the lessee.

Net output means the quantity of:

(1) For gas, residue gas and each gas plant product that a processing plant produces.

(2) For coal, the quantity of washed coal that a coal wash plant produces.

Netting means reducing the reported sales value to account for an allowance instead of reporting the allowance as a separate entry on the Report of Sales and Royalty Remittance (Form ONRR-2014) or the Solid Minerals Production and Royalty Report (Form ONRR-4430).

NGLs means Natural Gas Liquids.

NYMEX price means the average of the New York Mercantile Exchange (NYMEX) settlement prices for light sweet crude oil delivered at Cushing, Oklahoma, calculated as follows:

(1) First, sum the prices published for each day during the calendar month of production (excluding weekends and holidays) for oil to be delivered in the

prompt month corresponding to each such day.

(2) Second, divide the sum by the number of days on which those prices are published (excluding weekends and holidays).

Oil means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs, remains liquid at atmospheric pressure after passing through surface separating facilities, and is marketed or used as a liquid. Condensate recovered in lease separators or field facilities is oil.

ONRR means the Office of Natural Resources Revenue of the Department of the Interior.

ONRR-approved commercial price bulletin means a publication that ONRR approves for determining NGLs prices.

ONRR-approved publication means:

(1) For oil, a publication that ONRR approves for determining ANS spot prices or WTI differentials.

(2) For gas, a publication that ONRR approves for determining index pricing points.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters, as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Payor means any person who reports and pays royalties under a lease, regardless of whether that person also is a lessee.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Processing means any process designed to remove elements or compounds (hydrocarbon and non-hydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing. The use of a Joule-Thomson (JT) unit to remove NGLs from gas is considered processing

regardless of where the JT unit is located, provided that you market the NGLs as NGLs.

Processing allowance means a deduction in determining royalty value for the reasonable, actual costs the lessee incurs for processing gas.

Prompt month means the nearest month of delivery for which NYMEX futures prices are published during the trading month.

Quality differential means an amount paid or received under an exchange agreement (whether in money or in barrels of oil) that results from differences in API gravity, sulfur content, viscosity, metals content, and other quality factors between oil delivered and oil received in the exchange. A quality differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell agreement.

Region for coal means the eight Federal coal production regions, which the Bureau of Land Management designates as follows: Denver-Raton Mesa Region, Fort Union Region, Green River-Hams Fork Region, Powder River Region, San Juan River Region, Southern Appalachian Region, Uinta-Southwestern Utah Region, and Western Interior Region. See 44 FR 65197 (1979).

Residue gas means that hydrocarbon gas consisting principally of methane resulting from processing gas.

Rocky Mountain Region means the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming, except for those portions of the San Juan Basin and other oil-producing fields in the "Four Corners" area that lie within Colorado and Utah.

Roll means an adjustment to the NYMEX price that is calculated as follows: $\text{Roll} = .6667 \times (P_0 - P_1) + .3333 \times (P_0 - P_2)$, where: P_0 = the average of the daily NYMEX settlement prices for deliveries during the prompt month that is the same as the month of production, as published for each day during the trading month for which the month of production is the prompt month; P_1 = the average of the daily NYMEX settlement prices for deliveries during the month following the month of production, published for each day during the

trading month for which the month of production is the prompt month; and P_2 = the average of the daily NYMEX settlement prices for deliveries during the second month following the month of production, as published for each day during the trading month for which the month of production is the prompt month. Calculate the average of the daily NYMEX settlement prices using only the days on which such prices are published (excluding weekends and holidays).

(1) *Example 1. Prices in Out Months are Lower Going Forward:* The month of production for which you must determine royalty value is December. December was the prompt month (for year 2011) from October 21 through November 18. January was the first month following the month of production, and February was the second month following the month of production. P_0 , therefore, is the average of the daily NYMEX settlement prices for deliveries during December published for each business day between October 21 and November 18. P_1 is the average of the daily NYMEX settlement prices for deliveries during January published for each business day between October 21 and November 18. P_2 is the average of the daily NYMEX settlement prices for deliveries during February published for each business day between October 21 and November 18. In this example, assume that P_0 = \$95.08 per bbl, P_1 = \$95.03 per bbl, and P_2 = \$94.93 per bbl. In this example (a declining market), $\text{Roll} = .6667 \times (\$95.08 - \$95.03) + .3333 \times (\$95.08 - \$94.93) = \$0.03 + \$0.05 = \$0.08$. You add this number to the NYMEX price.

(2) *Example 2. Prices in Out Months are Higher Going Forward:* The month of production for which you must determine royalty value is November. November was the prompt month (for year 2012) from September 21 through October 22. December was the first month following the month of production, and January was the second month following the month of production. P_0 , therefore, is the average of the daily NYMEX settlement prices for deliveries during November published for each business day between September 21 and October 22. P_1 is the average of the daily NYMEX settlement prices for

deliveries during December published for each business day between September 21 and October 22. P_2 is the average of the daily NYMEX settlement prices for deliveries during January published for each business day between September 21 and October 22. In this example, assume that $P_0 = \$91.28$ per bbl, $P_1 = \$91.65$ per bbl, and $P_2 = \$92.10$ per bbl. In this example (a rising market), $\text{Roll} = .6667 \times (\$91.28 - \$91.65) + .3333 \times (\$91.28 - \$92.10) = (-\$0.25) + (-\$0.27) = (-\$0.52)$. You add this negative number to the NYMEX price (effectively, a subtraction from the NYMEX price).

Sale means a contract between two persons where:

(1) The seller unconditionally transfers title to the oil, gas, gas plant product, or coal to the buyer and does not retain any related rights, such as the right to buy back similar quantities of oil, gas, gas plant product, or coal from the buyer elsewhere;

(2) The buyer pays money or other consideration for the oil, gas, gas plant product, or coal; and

(3) The parties' intent is for a sale of the oil, gas, gas plant product, or coal to occur.

Section 6 lease means an OCS lease subject to section 6 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1335.

Short ton means 2,000 pounds.

Spot price means the price under a spot sales contract where:

(1) A seller agrees to sell to a buyer a specified amount of oil at a specified price over a specified period of short duration.

(2) No cancellation notice is required to terminate the sales agreement.

(3) There is no obligation or implied intent to continue to sell in subsequent periods.

Tonnage means tons of coal measured in short tons.

Trading month means the period extending from the second business day before the 25th day of the second calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the second business day before the last business day preceding the 25th day of that month) through the third business day before the 25th day of the calendar

month preceding the delivery month (or, if the 25th day of that month is a non-business day, the third business day before the last business day preceding the 25th day of that month), unless the NYMEX publishes a different definition or different dates on its official Web site, www.cmegroup.com, in which case, the NYMEX definition will apply.

Transportation allowance means a deduction in determining royalty value for the reasonable, actual costs that the lessee incurs for moving:

(1) Oil to a point of sale or delivery off of the lease, unit area, or communitized area. The transportation allowance does not include gathering costs.

(2) Unprocessed gas, residue gas, or gas plant products to a point of sale or delivery off of the lease, unit area, or communitized area, or away from a processing plant. The transportation allowance does not include gathering costs.

(3) Coal to a point of sale remote from both the lease and mine or wash plant.

Washing allowance means a deduction in determining royalty value for the reasonable, actual costs the lessee incurs for coal washing.

WTI differential means the average of the daily mean differentials for location and quality between a grade of crude oil at a market center and West Texas Intermediate (WTI) crude oil at Cushing published for each day for which price publications perform surveys for deliveries during the production month, calculated over the number of days on which those differentials are published (excluding weekends and holidays). Calculate the daily mean differentials by averaging the daily high and low differentials for the month in the selected publication. Use only the days and corresponding differentials for which such differentials are published.

Subpart B—Indian Oil

SOURCE: 80 FR 24805, May 1, 2015, unless otherwise noted.

§ 1206.50 What is the purpose of this subpart?

(a) This subpart applies to all oil produced from Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma). This subpart does not apply to Federal leases, including Federal leases for which revenues are shared with Alaska Native Corporations. This subpart:

(1) Explains how you as a lessee must calculate the value of production for royalty purposes consistent with Indian mineral leasing laws, other applicable laws, and lease terms.

(2) Ensures the United States discharges its trust responsibilities for administering Indian oil and gas leases under the governing Indian mineral leasing laws, treaties, and lease terms.

(b) If you dispose of or report production on behalf of a lessee, the terms “you” and “your” in this subpart refer to you and not to the lessee. In this circumstance, you must determine and report royalty value for the lessee’s oil by applying the rules in this subpart to your disposition of the lessee’s oil.

(c) If the regulations in this subpart are inconsistent with:

(1) A Federal statute;

(2) A settlement agreement between the United States, Indian lessor, and a lessee resulting from administrative or judicial litigation;

(3) A written agreement between the Indian lessor, lessee, and the ONRR Director establishing a method to determine the value of production from any lease that ONRR expects at least would approximate the value established under this subpart; or

(4) An express provision of an oil and gas lease subject to this subpart then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(d) ONRR or Indian Tribes, which have a cooperative agreement with ONRR to audit under 30 U.S.C. 1732, may audit, or perform other compliance reviews, and require a lessee to adjust royalty payments and reports.

§ 1206.51 What definitions apply to this subpart?

For purposes of this subpart:

Affiliate means a person who controls, is controlled by, or is under common control with another person.

(1) Ownership or common ownership of more than 50 percent of the voting securities, or instruments of ownership, or other forms of ownership, of another person constitutes control. Ownership of less than 10 percent constitutes a presumption of non-control that ONRR may rebut.

(2) If there is ownership or common ownership of 10 through 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another person, ONRR will consider the following factors in determining whether there is control in a particular case:

(i) The extent to which there are common officers or directors;

(ii) With respect to the voting securities, or instruments of ownership, or other forms of ownership:

(A) The percentage of ownership or common ownership;

(B) The relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons;

(C) Whether a person is the greatest single owner; and

(D) Whether there is an opposing voting bloc of greater ownership;

(iii) Operation of a lease, plant, or other facility;

(iv) The extent of participation by other owners in operations and day-to-day management of a lease, plant, or other facility; and

(v) Other evidence of power to exercise control over or common control with another person.

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, are affiliates.

Area means a geographic region at least as large as the defined limits of an oil and/or gas field in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

Arm’s-length contract means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be

considered arm's-length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

Audit means a review, conducted under the generally accepted *Governmental Auditing Standards*, of royalty reporting and payment activities of lessees, designees, or other persons who pay royalties, rents, or bonuses on Indian leases.

BLM means the Bureau of Land Management of the Department of the Interior.

Condensate means liquid hydrocarbons (generally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

Designated area means an area that ONRR designates for purposes of calculating Location and Crude Type Differentials applied to an IBMP value. ONRR will post designated areas on our Web site at www.onrr.gov. ONRR will monitor the market activity in the designated areas and, if necessary, hold a technical conference to review, modify, or add a particular designated area. ONRR will post any change to the designated areas on our Web site at www.onrr.gov. Criteria to determine any future changes to designated areas include, but are not limited to: Markets served, examples include refineries and/or market centers, such as Cushing, OK; access to markets, examples include access to similar infrastructure, such as pipelines, rail lines, and trucking; and/or similar geography, examples include no challenging geographical divides, large rivers, and/or mountains.

Exchange agreement means an agreement where one person agrees to deliver oil to another person at a specified location in exchange for oil deliveries at another location, as well as

other consideration(s). Exchange agreements:

(1) May or may not specify prices for the oil involved;

(2) Frequently specify dollar amounts reflecting location, quality, or other differentials;

(3) Include buy/sell agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement or in separate agreements; and

(4) May include, but are not limited to, exchanges of produced oil for specific types of oil (*e.g.* WTI); exchanges of produced oil for other oil at other locations (location trades); exchanges of produced oil for other grades of oil (grade trades); and multi-party exchanges.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields usually are given names, and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located.

Gathering means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area or to a central accumulation or treatment point off of the lease, unit, or communitized area, as BLM operations personnel approve.

Gross proceeds means the total monies and other consideration accruing for the disposition of oil produced. Gross proceeds also include, but are not limited to, the following examples:

(1) Payments for services, such as dehydration, marketing, measurement, or gathering that the lessee must perform—at no cost to the lessor—in order to put the production into marketable condition;

(2) The value of services to put the production into marketable condition, such as salt water disposal, that the lessee normally performs but that the buyer performs on the lessee's behalf

(3) Reimbursements for harboring or terminalling fees;

(4) Tax reimbursements, even though the Indian royalty interest may be exempt from taxation;

(5) Payments made to reduce or buy down the purchase price of oil to be produced in later periods by allocating those payments over the production whose price the payment reduces and including the allocated amounts as proceeds for the production as it occurs; and

(6) Monies and all other consideration to which a seller is contractually or legally entitled but does not seek to collect through reasonable efforts.

IBMP means the Index-Based Major Portion value calculated under § 1206.54.

Indian Tribe means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any minerals or interest in minerals is held in trust by the United States or that is subject to Federal restriction against alienation.

Individual Indian mineral owner means any Indian for whom minerals or an interest in minerals is held in trust by the United States or who holds title subject to Federal restriction against alienation.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under an Indian mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products. Depending on the context, lease may also refer to the land area that the authorization covers.

Lease products means any leased minerals attributable to, originating from, or allocated to Indian leases.

Lessee means any person to whom the United States, a Tribe, or individual Indian mineral owner issues a lease and any person who has been assigned an obligation to make royalty or other payments required by the lease. Lessee includes:

(1) Any person who has an interest in a lease (including operating rights owners).

(2) An operator, purchaser, or other person with no lease interest who reports and/or makes royalty payments to ONRR or the lessor on the lessee's behalf.

Lessor means an Indian Tribe or individual Indian mineral owner who has entered into a lease.

Like-quality oil means oil that has similar chemical and physical characteristics.

Location and Crude Type Differential (LCTD) means the difference in value between the NYMEX Calendar Monthly Average (CMA) and the value that approximates the monthly Major Portion Price for any given month, designated area, and crude oil type.

Location differential means an amount paid or received (whether in money or in barrels of oil) under an exchange agreement that results from differences in location between oil delivered in exchange and oil received in the exchange. A location differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell exchange agreement.

Major Portion Price means the highest price paid or offered at the time of production for the major portion of oil produced from the same designated area for the same crude oil type.

Marketable condition means lease products that are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

Net means to reduce the reported sales value to account for transportation instead of reporting a transportation allowance as a separate entry on Form ONRR-2014.

NYMEX Calendar Month Average Price means the average of the New York Mercantile Exchange (NYMEX) daily settlement prices for light sweet oil delivered at Cushing, Oklahoma, calculated as follows:

(1) Sum the prices published for each day during the calendar month of production (excluding weekends and holidays) for oil to be delivered in the nearest month of delivery for which NYMEX futures prices are published corresponding to each such day.

(2) Divide the sum by the number of days on which those prices are published (excluding weekends and holidays).

Oil means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and is marketed or used as such. Condensate recovered in lease separators or field facilities is considered to be oil.

ONRR means the Office of Natural Resources Revenue of the Department of the Interior.

Operating rights owner, also known as a working interest owner, means any person who owns operating rights in a lease subject to this subpart. A record title owner is the owner of operating rights under a lease until the operating rights have been transferred from record title (see Bureau of Land Management regulations at 43 CFR 3100.0-5(d)).

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Processing means any process designed to remove elements or compounds (hydrocarbon and non-hydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes that normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

Prompt month means the nearest month of delivery for which NYMEX futures prices are published during the trading month.

Quality differential means an amount paid or received under an exchange agreement (whether in money or in barrels of oil) that results from differences in API gravity, sulfur content, viscosity, metals content, and other quality factors between oil delivered and oil received in the exchange. A quality differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell agreement.

Roll means an adjustment to the NYMEX price that is calculated as follows: $\text{Roll} = .6667 \times (P_0 - P_1) + .3333 \times$

$(P_0 - P_2)$, where: P_0 = the average of the daily NYMEX settlement prices for deliveries during the prompt month that is the same as the month of production, as published for each day during the trading month for which the month of production is the prompt month; P_1 = the average of the daily NYMEX settlement prices for deliveries during the month following the month of production, published for each day during the trading month for which the month of production is the prompt month; and P_2 = the average of the daily NYMEX settlement prices for deliveries during the second month following the month of production, as published for each day during the trading month for which the month of production is the prompt month. Calculate the average of the daily NYMEX settlement prices using only the days on which such prices are published (excluding weekends and holidays). ONRR reserves the option of terminating the use of the roll when ONRR believes that the roll is no longer a common industry practice. ONRR also retains the option to redefine how to calculate the roll to comport with changes in industry practice. To terminate or otherwise redefine how to calculate the roll, ONRR will explain its rationale for terminating or redefining how to calculate the roll by publishing a notice in the FEDERAL REGISTER, to provide an opportunity for comment.

(1) *Example 1: Prices in out months are lower going forward.* The month of production for which you must determine royalty value is December 2012. December was the prompt month from October 23 through November 20. January was the first month following the month of production, and February was the second month following the month of production. P_0 , therefore, is the average of the daily NYMEX settlement prices for deliveries during December published for each business day between October 23 and November 20. P_1 is the average of the daily NYMEX settlement prices for deliveries during January published for each business day between October 23 and November 20. P_2 is the average of the daily NYMEX settlement prices for deliveries during February published for each business day between October 23

and November 20. In this example, assume that $P_0 = \$95.08$ per bbl; $P_1 = \$95.03$ per bbl; and $P_2 = \$94.93$ per bbl. In this example (a declining market), $\text{Roll} = .6667 \times (\$95.08 - \$95.03) + .3333 \times (\$95.08 - \$94.93) = \$0.03 + \$0.05 = \$0.08$. You add this number to the NYMEX price.

(2) *Example 2: Prices in out months are higher going forward.* The month of production for which you must determine royalty value is November 2012. November was the prompt month from September 21 through October 22. December was the first month following the month of production, and January was the second month following the month of production. P_0 , therefore, is the average of the daily NYMEX settlement prices for deliveries during November published for each business day between September 21 and October 22. P_1 is the average of the daily NYMEX settlement prices for deliveries during December published for each business day between September 21 and October 22. P_2 is the average of the daily NYMEX settlement prices for deliveries during January published for each business day between September 21 and October 22. In this example, assume that $P_0 = \$91.28$ per bbl; $P_1 = \$91.65$ per bbl; and $P_2 = \$92.10$ per bbl. In this example (a rising market), $\text{Roll} = .6667 \times (\$91.28 - \$91.65) + .3333 \times (\$91.28 - \$92.10) = (-\$0.25) + (-\$0.27) = (-\$0.52)$. You add this negative number to the NYMEX price (effectively a subtraction from the NYMEX price).

Sale means a contract between two persons where:

(1) The seller unconditionally transfers title to the oil to the buyer and does not retain any related rights, such as the right to buy back similar quantities of oil from the buyer elsewhere.

(2) The buyer pays money or other consideration for the oil.

(3) The parties' intent is for a sale of the oil to occur.

Sales type code means the contract type or general disposition (*e.g.* arm's-length or non-arm's-length) of production from the lease. The sales type code applies to the sales contract, or other disposition, and not to the arm's-length or non-arm's-length nature of a transportation allowance.

Trading month means the period extending from the second business day before the 25th day of the second calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the second business day before the last business day preceding the 25th day of that month) through the third business day before the 25th day of the calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the third business day before the last business day preceding the 25th day of that month), unless the NYMEX publishes a different definition or different dates on its official Web site, www.nymex.com, in which case, the NYMEX definition will apply.

Transportation allowance means a deduction in determining royalty value for the reasonable, actual costs of moving oil to a point of sale or delivery off of the lease, unit area, or communitized area. The transportation allowance does not include gathering costs.

WTI means West Texas Intermediate.

You means a lessee, operator, or other person who pays royalties under this subpart.

§ 1206.52 How do I calculate royalty value for oil that I or my affiliate sell(s) or exchange(s) under an arm's-length contract?

(a) The value of production for royalty purposes for your lease is the higher of either the value determined under this section or the IBMP value calculated under § 1206.54. The value of oil under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the arm's-length contract, less applicable allowances determined under § 1206.56 or § 1206.57. You must use this paragraph (a) to value oil when:

(1) You sell under an arm's-length sales contract.

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract and that affiliate or person, or another affiliate of either of them, then sells the oil under an arm's-length contract.

(b) If you have multiple arm's-length contracts to sell oil produced from a lease that is valued under paragraph

§ 1206.52

30 CFR Ch. XII (7–1–17 Edition)

(a) of this section, the value of the oil is the higher of the volume-weighted average of the values established under this section for all contracts for the sale of oil produced from that lease or the IBMP value calculated under § 1206.54.

(c) If ONRR determines that the gross proceeds accruing to you or your affiliate does not reflect the reasonable value of the production due to either:

(1) Misconduct by or between the parties to the arm's-length contract; or

(2) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor, ONRR will establish a value based on other relevant matters.

(i) ONRR will not use this provision to simply substitute its judgment of the market value of the oil for the proceeds received by the seller under an arm's-length sales contract.

(ii) The fact that the price received by the seller under an arm's-length contract is less than other measures of market price is insufficient to establish breach of the duty to market unless ONRR finds additional evidence that the seller acted unreasonably or in bad faith in the sale of oil produced from the lease.

(d) You have the burden of demonstrating that your or your affiliate's contract is arm's-length.

(e) ONRR may require you to certify that the provisions in your or your affiliate's contract include all of the consideration that the buyer paid to you or your affiliate, either directly or indirectly, for the oil.

(f) You must base value on the highest price that you or your affiliate can receive through legally enforceable claims under the oil sales contract.

(1) Absent contract revision or amendment, if you or your affiliate fail(s) to take proper or timely action to receive prices or benefits to which you or your affiliate are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) If you or your affiliate make timely application for a price increase or benefit allowed under your or your affiliate's contract—but the purchaser refuses—and you or your affiliate take reasonable documented measures to force purchaser compliance, you will not owe additional royalties unless or

until you or your affiliate receive additional monies or consideration resulting from the price increase. You may not construe this paragraph (f)(2) to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or in a timely manner, for a quantity of oil.

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing, and all parties to the contract must sign the contract, contract revisions, or amendments.

(2) This provision applies notwithstanding any other provisions in this title 30 of the *Code of Federal Regulations* to the contrary.

(h) If you or your affiliate enter(s) into an arm's-length exchange agreement, or multiple sequential arm's-length exchange agreements, then you must value your oil under this paragraph (h).

(1) If you or your affiliate exchange(s) oil at arm's length for WTI or equivalent oil at Cushing, Oklahoma, you must value the oil using the NYMEX price, adjusted for applicable location and quality differentials under paragraph (h)(3) of this section and any transportation costs under paragraph (h)(4) of this section and §§ 1206.56 and 1206.57 or § 1206.58.

(2) If you do not exchange oil for WTI or equivalent oil at Cushing, but exchange it at arm's length for oil at another location and following the arm's-length exchange(s) you or your affiliate sell(s) the oil received in the exchange(s) under an arm's-length contract, then you must use the gross proceeds under your or your affiliate's arm's-length sales contract after the exchange(s) occur(s), adjusted for applicable location and quality differentials under paragraph (h)(3) of this section and any transportation costs under paragraph (h)(4) of this section and §§ 1206.56 and 1206.57 or § 1206.58.

(3) You must adjust your gross proceeds for any location or quality differential, or other adjustments, that you received or paid under the arm's-length exchange agreement(s). If ONRR determines that any exchange agreement does not reflect reasonable location or quality differentials, ONRR

may adjust the differentials that you used based on relevant information. You may not otherwise use the price or differential specified in an arm's-length exchange agreement to value your production.

(4) If you value oil under this paragraph (h), ONRR will allow a deduction, under §§1206.56 and 1206.57 or §1206.58, for the reasonable, actual costs to transport the oil:

(i) From the lease to a point where oil is given in exchange.

(ii) If oil is not exchanged to Cushing, Oklahoma, from the point where oil is received in exchange to the point where the oil received in exchange is sold.

(5) If you or your affiliate exchange(s) your oil at arm's length, and neither paragraph (h)(1) nor (2) of this section applies, ONRR will establish a value for the oil based on relevant matters. After ONRR establishes the value, you must report and pay royalties and any late payment interest owed based on that value.

§ 1206.53 How do I calculate royalty value for oil that I or my affiliate do(es) not sell under an arm's-length contract?

(a) The value of production for royalty purposes for your lease is the higher of either the value determined under this section or the IBMP value calculated under §1206.54. The unit value of your oil not sold under an arm's-length contract under this section for royalty purposes is the volume-weighted average of the gross proceeds paid or received by you or your affiliate, including your refining affiliate, for purchases or sales under arm's-length contracts.

(1) When calculating that unit value, use only purchases or sales of other like-quality oil produced from the field (or the same area if you do not have

sufficient arm's-length purchases or sales of oil produced from the field) during the production month.

(2) You may adjust the gross proceeds determined under paragraph (a) of this section for transportation costs under paragraph (c) of this section and §§1206.56 and 1206.57 or §1206.58 before including those proceeds in the volume-weighted average calculation.

(3) If you have purchases away from the field(s) and cannot calculate a price in the field because you cannot determine the seller's cost of transportation that would be allowed under paragraph (c) of this section and §§1206.56 and 1206.57 or §1206.58, you must not include those purchases in your volume-weighted average calculation.

(b) Before calculating the volume-weighted average, you must normalize the quality of the oil in your or your affiliate's arm's-length purchases or sales to the same gravity as that of the oil produced from the lease. Use applicable gravity adjustment tables for the field (or the same general area for like-quality oil if you do not have gravity adjustment tables for the specific field) to normalize for gravity, as shown in the example below.

(1) *Example 1.* Assume that a lessee, who owns a refinery and refines the oil produced from the lease at that refinery, purchases like-quality oil from other producers in the same field at arm's length for use as feedstock in its refinery. Further assume that the oil produced from the lease that is being valued under this section is Wyoming general sour with an API gravity of 23.5°. Assume that the refinery purchases at arm's-length oil (all of which must be Wyoming general sour) in the following volumes of the API gravities stated at the prices and locations indicated:

10,000 bbl	24.5°	\$34.70/bbl	Purchased in the field.
8,000 bbl	24.0°	\$34.00/bbl	Purchased at the refinery after the third-party producer transported it to the refinery, and the lessee does not know the transportation costs.
9,000 bbl	23.0°	\$33.25/bbl	Purchased in the field.
4,000 bbl	22.0°	\$33.00/bbl	Purchased in the field.

§ 1206.54

30 CFR Ch. XII (7–1–17 Edition)

(2) *Example 2.* Because the lessee does not know the costs that the seller of the 8,000 bbl incurred to transport that volume to the refinery, that volume will not be included in the volume-weighted average price calculation. Further assume that the gravity adjustment scale provides for a deduction

of \$0.02 per $\frac{1}{10}$ degree API gravity below 34°. Normalized to 23.5° (the gravity of the oil being valued under this section), the prices of each of the volumes that the refiner purchased that are included in the volume-weighted average calculation are as follows:

10,000 bbl	24.5°	\$34.50/bbl	(1.0° difference over 23.5° = \$0.20 deducted).
9,000 bbl	23.0°	\$33.35/bbl	(0.5° difference under 23.5° = \$0.10 added).
4,000 bbl	22.0°	\$33.30/bbl	(1.5° difference under 23.5° = \$0.30 added).

(3) *Example 3.* The volume-weighted average price is $((10,000 \text{ bbl} \times \$34.50/\text{bbl}) + (9,000 \text{ bbl} \times \$33.35/\text{bbl}) + (4,000 \text{ bbl} \times \$33.30/\text{bbl})) / 23,000 \text{ bbl} = \$33.84/\text{bbl}$. That price will be the value of the oil produced from the lease and refined prior to an arm's-length sale under this section.

(c) If you value oil under this section, ONRR will allow a deduction, under §§ 1206.56 and 1206.57 or § 1206.58, for the reasonable, actual costs:

(1) That you incur to transport oil that you or your affiliate sell(s), which is included in the volume-weighted average price calculation, from the lease to the point where the oil is sold.

(2) That the seller incurs to transport oil that you or your affiliate purchase(s), which is included in the volume-weighted average cost calculation, from the property where it is produced to the point where you or your affiliate purchase(s) it. You may not deduct any costs of gathering as part of a transportation deduction or allowance.

(d) If paragraphs (a) and (b) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, ONRR's Director may establish an alternative valuation method.

§ 1206.54 How do I fulfill the lease provision regarding valuing production on the basis of the major portion of like-quality oil?

(a) This section applies to any Indian leases that contain a major portion provision for determining value for royalty purposes. This section also applies to any Indian leases that provide that the Secretary may establish value for royalty purposes. The value of production for royalty purposes for your lease is the higher of either the value determined under this section or the gross proceeds you calculated under § 1206.52 or § 1206.53.

(b) You must submit a monthly Form ONRR-2014 using the higher of the IBMP value determined under this section or your gross proceeds under § 1206.52 or § 1206.53. Your Form ONRR-2014 must meet the requirements of 30 CFR 1210.61.

(c) ONRR will determine the monthly IBMP value for each designated area and crude oil type and post those values on our Web site at www.onrr.gov. The monthly IBMP value by designated area and crude oil type is calculated as follows:

(1) For Indian leases located in Oklahoma:

$$\left[\left(\frac{\text{NYMEX CMA}}{\text{Price}} \right) \pm (\text{Roll}) \right] \times (1 - \text{LCTD})$$

(2) For all other Indian leases:

$$\left(\frac{\text{NYMEX CMA}}{\text{Price}} \right) \times (1 - \text{LCTD})$$

(d) ONRR will calculate the initial LCTD for each designated area (the same designated areas posted on its

Web site at www.onrr.gov) and crude oil type using the following formula:

$$\left[\frac{(\text{Average of Monthly NYMEX CMA for Previous 12 Months} - \text{Average of Monthly Major Portion Prices for Previous 12 Months})}{\text{Average of Monthly NYMEX CMA for Previous 12 Months}} \right]$$

(1) For the first full production month after July 1, 2015, ONRR will calculate the monthly Major Portion Prices using data reported on the Form ONRR-2014 for the previous 12 production months prior to July 1, 2015 (Previous Twelve Months). To the extent that ONRR does not have data on the Form ONRR-2014 regarding the crude oil type for the entire previous twelve months, ONRR will assume the crude oil type is the same for those months for which ONRR does not have data as the months for which the crude oil type was reported on the Form ONRR-2014 for the same leases and/or agreements.

(i) ONRR will array the calculated prices net of transportation by month from highest to lowest price for each designated area and crude oil type. For each month, ONRR will calculate the Major Portion Price as that price at which 25 percent plus 1 barrel (by volume) of the oil (starting from the highest) is sold.

(ii) To calculate the average of the monthly Major Portion Prices for the previous 12 months, ONRR will add the monthly Major Portion Prices calculated in paragraph (d)(1)(i) of this section and divide by 12.

(2) For every month following the first full production month after July 1, 2015, ONRR will monitor the LCTD using data reported on the Form ONRR-2014 for the month ending two months before the current production month.

(i) ONRR will use the oil sales volume that lessees report on Form ONRR-2014 to monitor and, if necessary, to modify the LCTD used in the IBMP value.

(ii) ONRR will monitor oil sales volumes not reported under the sales type code OINX, as provided in 30 CFR 1210.61(a) and (b), on the Form ONRR-2014 on a monthly basis by designated area and crude oil type.

(iii) If the monthly oil sales volumes not reported under the sales type code OINX varies more than ± 3 percent from 25 percent of the total reported oil sales volume for the month, then ONRR will revise the LCTD prospectively starting with the following month.

(A) If monthly oil sales volumes not reported under the sales type code OINX on Form ONRR-2014 by the designated area and crude oil type fall below 22 percent, ONRR will increase the LCTD by 10 percent every month until the monthly oil sales volumes reported under the sales type code for gross proceeds on Form ONRR-2014 fall within the ± 3 percent range. In Example 1, assume that the IBMP value is \$81.06 and the LCTD for the designated area is 14.28 percent. In the table below, the Percent of Volume not reported as OINX is less than 22 percent, which triggers a modification to the LCTD. ONRR will adjust the LCTD upward by 10 percent ($14.28 \text{ percent} \times 1.10$). Therefore, for the next month, the LCTD will be 15.71 percent. In the following month, the IBMP value will equal the next month's NYMEX CMA multiplied by $(1 - 0.1571)$. ONRR will continue to make adjustments in subsequent months until monthly sales volumes not reported as OINX fall within 22–28 percent of the total monthly sales volume.

EXAMPLE 1—DIFFERENTIAL ADJUSTMENT WHEN ARMS SALES VOLUME FOR THE CURRENT MONTH FALLS BELOW 22% OF TOTAL MONTHLY SALES VOLUME

Lease	Sales volume	Unit price	Sales type code	Cumulative volume	Percent of volume
1	220	81.95	ARMS	220	9.02
2	275	81.71	ARMS	495	20.29
3	400	81.06	OINX	895	36.68
4	425	81.06	OINX	1,320	54.10
5	370	81.06	OINX	1,690	69.26
6	400	81.06	OINX	2,090	85.66
7	350	81.06	OINX	2,440	100.00
	2,440				

(B) If monthly oil sales volumes not reported under the sales type code OINX on Form ONRR-2014 by designated area and crude oil type exceed 28 percent, then ONRR will decrease the LCTD by 10 percent every month until the monthly oil sales volumes reported under the sales type code for gross proceeds on Form ONRR-2014 fall within the ± 3 percent range. In Example 2, assume that the IBMP value is \$81.06 and the LCTD is 14.28 percent. As noted in the table below, however, the Percent of Volume not reported as

OINX is 32.69 percent, exceeding the 28 percent threshold, which triggers a modification to the LCTD. ONRR will adjust the LCTD downward by 10 percent (14.28 percent $\times$ 0.90). Therefore, for the next month, the LCTD will be 12.85 percent. In the following month, the IBMP will equal the next month's NYMEX CMA multiplied by (1 - 0.1285). ONRR will continue to make adjustments in subsequent months until monthly sales volumes reported as ARMS fall within 22-28 percent of the total monthly sales volume.

EXAMPLE 2—DIFFERENTIAL ADJUSTMENT WHEN ARMS SALES VOLUME NOT REPORTED AS OINX FOR THE CURRENT MONTH EXCEEDS 28% OF TOTAL MONTHLY SALES VOLUME

Lease	Sales volume	Unit price	Sales type code	Cumulative volume	Percent of volume
1	230	81.95	ARMS	230	11.06
2	275	81.71	ARMS	505	24.28
3	175	81.45	ARMS	680	32.69
4	250	81.06	OINX	930	44.71
5	425	81.06	OINX	1,355	65.14
6	325	81.06	OINX	1,680	80.77
7	400	81.06	OINX	2,080	100.00
	2,080				

(e) In designated areas where there is insufficient data reported to ONRR on Form ONRR-2014 to determine a differential for a specific crude oil type, ONRR will use its discretion to determine an appropriate IBMP value.

§ 1206.55 What are my responsibilities to place production into marketable condition and to market production?

(a) You must place oil in marketable condition and market the oil for the mutual benefit of the lessee and the lessor at no cost to the Indian lessor unless the lease agreement provides otherwise.

(b) If you must use gross proceeds under an arm's-length contract or your affiliate's gross proceeds under an arm's-length exchange agreement to determine value under § 1206.52 or § 1206.53, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that the seller normally would be responsible to perform in order to place the oil in marketable condition or to market the oil.

§ 1206.56 What general transportation allowance requirements apply to me?

(a) ONRR will allow a deduction for the reasonable, actual costs to transport oil from the lease to the point off of the lease under § 1206.52 or § 1206.53, as applicable. You may not deduct transportation costs to reduce royalties where you did not incur any costs to move a particular volume of oil. ONRR will not grant a transportation allowance for transporting oil taken as Royalty-In-Kind (RIK).

(b)(1) Except as provided in paragraph (b)(2) of this section, your transportation allowance deduction on the basis of a sales type code may not exceed 50 percent of the value of the oil at the point of sale, as determined under § 1206.52. Transportation costs cannot be transferred between sales type codes or to other products.

(2) Upon your request, ONRR may approve a transportation allowance deduction in excess of the limitation prescribed by paragraph (b)(1) of this section. You must demonstrate that the transportation costs incurred in excess of the limitation prescribed in paragraph (b)(1) of this section were reasonable, actual, and necessary. An application for exception (using Form ONRR-4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for ONRR to make a determination. Under no circumstances may the value, for royalty purposes, under any sales type code, be reduced to zero.

(c) You must express transportation allowances for oil in dollars per barrel. If you or your affiliate's payments for transportation under a contract are not on a dollar-per-barrel basis, you must convert whatever consideration you or your affiliate are paid to a dollar-per-barrel equivalent.

(d) You must allocate transportation costs among all products produced and transported as provided in § 1206.57.

(e) All transportation allowances are subject to monitoring, review, audit, and adjustment.

(f) If, after a review or audit, ONRR determines you have improperly determined a transportation allowance authorized by this subpart, then you must pay any additional royalties due

plus late payment interest calculated under § 1218.54 of this chapter or report a credit for, or request a refund of, any overpaid royalties without interest under § 1218.53 of this chapter.

(g) You may not deduct any costs of gathering as part of a transportation deduction or allowance.

§ 1206.57 How do I determine a transportation allowance if I have an arm's-length transportation contract?

(a) *Arm's-length transportation.* (1) If you incur transportation costs under an arm's-length contract, your transportation allowance is the reasonable, actual costs that you incur to transport oil under that contract. You have the burden of demonstrating that your contract is arm's-length.

(2) You must submit to ONRR a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date that ONRR receives your report, which claims the allowance on Form ONRR-2014.

(3) If ONRR determines that the consideration paid under an arm's-length transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then ONRR shall require that the transportation allowance be determined in accordance with paragraph (b) of this section. When ONRR determines that the value of the transportation may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.

(4)(i) If an arm's-length transportation contract includes more than one liquid product, and the transportation costs attributable to each product cannot be determined from the contract, then you must allocate the total transportation costs in a consistent and equitable manner to each of the liquid products transported in the same proportion as the ratio of the volume of each product (excluding waste products which have no value) to the volume of

all liquid products (excluding waste products which have no value). Except as provided in this paragraph (a)(4)(i), you may not take an allowance for the costs of transporting lease production, which is not royalty-bearing, without ONRR's approval.

(ii) Notwithstanding the requirements of paragraph (a)(4)(i) of this section, you may propose to ONRR a cost allocation method on the basis of the values of the products transported. ONRR shall approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(5) If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, you must propose an allocation procedure to ONRR.

(i) You may use the oil transportation allowance determined in accordance with its proposed allocation procedure until ONRR issues its determination on the acceptability of the cost allocation.

(ii) You must submit to ONRR all available data to support your proposal.

(iii) You must submit your initial proposal within 3 months after the last day of the month for which you request a transportation allowance, whichever is later (unless ONRR approves a longer period).

(iv) ONRR will determine the oil transportation allowance based on your proposal and any additional information that ONRR deems necessary.

(6) Where an arm's-length sales contract price includes a provision whereby the listed price is reduced by a transportation factor, ONRR will not consider the transportation factor to be a transportation allowance. You may use the transportation factor to determine your gross proceeds for the sale of the product. The transportation factor may not exceed 50 percent of the base price of the product without ONRR's approval.

(b) *Reporting requirements.* (1) If ONRR requests, you must submit all data used to determine your transportation allowance. You must provide the data

within a reasonable period of time that ONRR will determine.

(2) You must report transportation allowances as a separate entry on Form ONRR-2014. ONRR may approve a different reporting procedure on allotted leases and with lessor approval on Tribal leases.

(3) ONRR may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

§ 1206.58 How do I determine a transportation allowance if I have a non-arm's-length transportation contract or have no contract?

(a) *Non-arm's-length or no contract.* (1) If you have a non-arm's-length transportation contract or no contract, including those situations where you or your affiliate perform(s) transportation services for you, the transportation allowance is based on your reasonable, actual costs as provided in this paragraph (a)(1).

(2) You must submit the actual cost information to support the allowance to ONRR on Form ONRR-4110, Oil Transportation Allowance Report, within 3 months after the end of the calendar year to which the allowance applies. However, ONRR may approve a longer time period. ONRR will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, ONRR may require you to modify your actual transportation allowance deduction.

(3) You must base a transportation allowance for non-arm's-length or no-contract situations on your actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment under paragraph (a)(3)(iv)(A) of this section, or a cost equal to the initial capital investment in the transportation system multiplied by a rate of return under paragraph (a)(3)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment), which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense that the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses that the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) You may use either depreciation or a return on depreciable capital investment. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without approval from ONRR.

(A) To compute depreciation, you may elect to use either a straight-line depreciation method, based on the life of equipment or on the life of the reserves, which the transportation system services, or on a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. A change in ownership of a transportation system will not alter the depreciation schedule the original transporter/lessee established for the purposes of the allowance calculation. With or without a change in ownership, a transportation system can be depreciated only once. You may not depreciate equipment below a reasonable salvage value.

(B) ONRR will allow as a cost an amount equal to the initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (a)(3)(v) of this section. No allowance will be provided for depreciation.

(v) The rate of return is the industrial rate associated with Standard and Poor's BBB rating. The rate of return you must use is the monthly average rate as published in Standard and

Poor's Bond Guide for the first month of the reporting period for which the allowance is applicable and is effective during the reporting period. You must redetermine the rate at the beginning of each subsequent transportation allowance reporting period (which is determined under paragraph (b) of this section).

(4)(i) You must determine the deduction for transportation costs based on your or your affiliate's cost of transporting each product through each individual transportation system. Where more than one liquid product is transported, you must allocate costs to each of the liquid products transported in the same proportion as the ratio of the volume of each liquid product (excluding waste products which have no value) to the volume of all liquid products (excluding waste products which have no value) and you must make such allocation in a consistent and equitable manner. Except as provided in this paragraph (a)(4)(i), you may not take an allowance for transporting lease production that is not royalty-bearing without ONRR's approval.

(ii) Notwithstanding the requirements of paragraph (a)(4)(i) of this section, you may propose to ONRR a cost allocation method on the basis of the values of the products transported. ONRR will approve the method unless we determine that it is not consistent with the purposes of the regulations in this part.

(5) Where both gaseous and liquid products are transported through the same transportation system, you must propose a cost allocation procedure to ONRR.

(i) You may use the oil transportation allowance determined in accordance with its proposed allocation procedure until ONRR issues our determination on the acceptability of the cost allocation.

(ii) You must submit to ONRR all available data to support your proposal.

(iii) You must submit your initial proposal within 3 months after the last day of the month for which you request a transportation allowance (unless ONRR approves a longer period).

(iv) ONRR will determine the oil transportation allowance based on

§ 1206.59

your proposal and any additional information that ONRR deems necessary.

(6) You may apply to ONRR for an exception from the requirement that you compute actual costs under paragraphs (a)(1) through (5) of this section.

(i) ONRR will grant the exception only if you have a tariff for the transportation system the Federal Energy Regulatory Commission (FERC) has approved for Indian leases.

(ii) ONRR will deny the exception request if it determines that the tariff is excessive as compared to arm's-length transportation charges by pipelines, owned by the lessee or others, providing similar transportation services in that area.

(iii) If there are no arm's-length transportation charges, ONRR will deny the exception request if:

(A) No FERC cost analysis exists and the FERC has declined to investigate under ONRR timely objections upon filing.

(B) The tariff significantly exceeds the lessee's actual costs for transportation as determined under this section.

(b) *Reporting requirements.* (1) If ONRR requests, you must submit all data used to determine your transportation allowance. You must provide the data within a reasonable period of time that ONRR will determine.

(2) You must report transportation allowances as a separate entry on Form ONRR-2014. ONRR may approve a different reporting procedure on allotted leases and with lessor approval on Tribal leases.

(3) ONRR may require you to submit all of the data that you used to prepare your Form ONRR-4110. You must submit the data within a reasonable period of time that ONRR determines.

(4) ONRR may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

(5) If you are authorized to use your FERC-approved tariff as your transportation cost under paragraph (a)(6) of this section, you must follow the reporting requirements of §1206.57(b).

(c) Notwithstanding any other provisions of this subpart, for other than arm's-length contracts, no cost will be allowed for oil transportation that re-

30 CFR Ch. XII (7-1-17 Edition)

sults from payments (either volumetric or for value) for actual or theoretical losses. This section does not apply when the transportation allowance is based upon a FERC or State regulatory agency approved tariff.

(d) The provisions of this section will apply to determine transportation costs when establishing value using a netback valuation procedure or any other procedure that requires deduction of transportation costs.

§ 1206.59 What interest applies if I improperly report a transportation allowance?

(a) If you deduct a transportation allowance on Form ONRR-2014 without complying with the requirements of §§1206.56 and 1206.57 or §1206.58, you must pay additional royalties due plus late payment interest calculated under §1218.54 of this chapter.

(b) If you erroneously report a transportation allowance that results in an underpayment of royalties, you must pay any additional royalties due plus late payment interest calculated under §1218.54 of this chapter.

§ 1206.60 What reporting adjustments must I make for transportation allowances?

(a) If your actual transportation allowance is less than the amount that you claimed on Form ONRR-2014 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under §1218.54 of this chapter from the first day of the first month that you were authorized to deduct a transportation allowance to the date that you repay the difference.

(b) If the actual transportation allowance is greater than the amount that you claimed on Form ONRR-2014 for any month during the period reported on the allowance form, you may report a credit for, or request a refund of, any overpaid royalties without interest under §1218.53 of this chapter.

(c) If you make an adjustment under paragraph (a) or (b) of this section, then you must submit a corrected Form ONRR-2014 to reflect actual costs, together with any payment, using instructions that ONRR provides.

§ 1206.61 How will ONRR determine if my royalty payments are correct?

(a)(1) ONRR may monitor, review, and audit the royalties that you report, and, if ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR may direct you to use a different measure of royalty value.

(2) If ONRR directs you to use a different royalty value, you must pay any additional royalties due plus late payment interest calculated under § 1218.54 of this chapter, or you may report a credit for, or request a refund of, any overpaid royalties without interest under § 1218.53 of this chapter.

(b) When the provisions in this subpart refer to gross proceeds, in conducting reviews and audits, ONRR will examine if your or your affiliate's contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to you or your affiliate for the oil. If ONRR determines that a contract does not reflect the total consideration, you must value the oil sold as the total consideration accruing to you or your affiliate.

§ 1206.62 How do I request a value determination?

(a) You may request a value determination from ONRR regarding any oil produced. Your request must:

- (1) Be in writing.
- (2) Identify specifically all leases involved, all interest owners of those leases, the designee(s), and the operator(s) for those leases.
- (3) Completely explain all relevant facts. You must inform ONRR of any changes to relevant facts that occur before we respond to your request.
- (4) Include copies of all relevant documents.
- (5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents).
- (6) Suggest your proposed valuation method.
- (b) In response to your request, ONRR may:
 - (1) Request that the Assistant Secretary for Indian Affairs issue a valuation determination.
 - (2) Decide that ONRR will issue guidance.

(3) Inform you in writing that ONRR will not provide a determination or guidance. Situations in which ONRR typically will not provide any determination or guidance include, but are not limited to:

(i) Requests for guidance on hypothetical situations.

(ii) Matters that are the subject of pending litigation or administrative appeals.

(c)(1) A value determination that the Assistant Secretary for Indian Affairs signs is binding on both you and ONRR until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a value determination, you must make any adjustments to royalty payments that follow from the determination, and, if you owe additional royalties, you must pay the additional royalties due plus late payment interest calculated under § 1218.54 of this chapter.

(3) A value determination that the Assistant Secretary signs is the final action of the Department and is subject to judicial review under 5 U.S.C. 701-706.

(d) Guidance that ONRR issues is not binding on ONRR, the Indian lessor, or you with respect to the specific situation addressed in the guidance.

(1) Guidance and ONRR's decision whether or not to issue guidance or request an Assistant Secretary determination, or neither, under paragraph (b) of this section, are not appealable decisions or orders under 30 CFR part 1290.

(2) If you receive an order requiring you to pay royalty on the same basis as the guidance, you may appeal that order under 30 CFR part 1290.

(e) ONRR or the Assistant Secretary may use any of the applicable valuation criteria in this subpart to provide guidance or make a determination.

(f) A change in an applicable statute or regulation on which ONRR or the Assistant Secretary based any determination or guidance takes precedence over the determination or guidance, regardless of whether ONRR or the Assistant Secretary modifies or rescinds the determination or guidance.

(g) ONRR or the Assistant Secretary generally will not retroactively modify

§ 1206.63

or rescind a value determination issued under paragraph (d) of this section, unless:

(1) There was a misstatement or omission of material facts.

(2) The facts subsequently developed are materially different from the facts on which the guidance was based.

(h) ONRR may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 1206.65.

§ 1206.63 How do I determine royalty quantity and quality?

(a) You must calculate royalties based on the quantity and quality of oil as measured at the point of royalty settlement that BLM approves.

(b) If you determine the value of oil under § 1206.52, § 1206.53, or § 1206.54 based on a quantity and/or quality that is different from the quantity and/or quality at the point of royalty settlement that BLM approves for the lease, you must adjust that value for the differences in quantity and/or quality.

(c) You may not make any deductions from the royalty volume or royalty value for actual or theoretical losses incurred before the royalty settlement point unless BLM determines that any actual loss was unavoidable.

§ 1206.64 What records must I keep to support my calculations of value under this subpart?

If you determine the value of your oil under this subpart, you must retain all data relevant to the determination of royalty value.

(a) You must show:

(1) How you calculated the value that you reported, including all adjustments for location, quality, and transportation.

(2) How you complied with these rules.

(b) On request, you must make available sales, volume, and transportation data for production that you sold, purchased, or obtained from the field or area. You must make this data available to ONRR, Indian representatives, or other authorized persons.

(c) You can find recordkeeping requirements in §§ 1207.5, 1212.50, and 1212.51 of this chapter.

30 CFR Ch. XII (7–1–17 Edition)

(d) ONRR, Indian representatives, or other authorized persons may review and audit your data, and ONRR will direct you to use a different value if they determine that the reported value is inconsistent with the requirements of this subpart.

§ 1206.65 Does ONRR protect information that I provide?

(a) Certain information that you or your affiliate submit(s) to ONRR regarding the valuation of oil, including transportation allowances, may be exempt from disclosure.

(b) To the extent that applicable laws and regulations permit, ONRR will keep confidential any data that you or your affiliate submit(s) that is privileged, confidential, or otherwise exempt from disclosure.

(c) You and others must submit all requests for information under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

Subpart C—Federal Oil

SOURCE: 81 FR 43372, July 1, 2016, unless otherwise noted.

§ 1206.100 What is the purpose of this subpart?

(a) This subpart applies to all oil produced from Federal oil and gas leases onshore and on the OCS. It explains how you, as a lessee, must calculate the value of production for royalty purposes consistent with mineral leasing laws, other applicable laws, and lease terms.

(b) If you are a designee and if you dispose of production on behalf of a lessee, the terms “you” and “your” in this subpart refer to you and not to the lessee. In this circumstance, you must determine and report royalty value for the lessee’s oil by applying the rules in this subpart to your disposition of the lessee’s oil.

(c) If you are a designee and only report for a lessee and do not dispose of the lessee’s production, references to “you” and “your” in this subpart refer to the lessee and not the designee. In this circumstance, you as a designee must determine and report royalty value for the lessee’s oil by applying

the rules in this subpart to the lessee's disposition of its oil.

(d) If the regulations in this subpart are inconsistent with a(an): Federal statute; settlement agreement between the United States and a lessee resulting from administrative or judicial litigation; written agreement between the lessee and ONRR's Director establishing a method to determine the value of production from any lease that ONRR expects would at least approximate the value established under this subpart; express provision of an oil and gas lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(e) ONRR may audit, monitor, or review and adjust all royalty payments.

§ 1206.101 How do I calculate royalty value for oil I or my affiliate sell(s) under an arm's-length contract?

(a) The value of oil under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the arm's-length contract less applicable allowances determined under § 1206.111 or § 1206.112. This value does not apply if you exercise an option to use a different value provided in paragraph (c)(1) or (c)(2)(i) of this section or if ONRR decides to value your oil under § 1206.105. You must use this paragraph (a) to value oil when:

(1) You sell under an arm's-length sales contract; or

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract and that affiliate or person, or another affiliate of either of them, then sells the oil under an arm's-length contract, unless you exercise the option provided in paragraph (c)(2)(i) of this section.

(b) If you have multiple arm's-length contracts to sell oil produced from a lease that is valued under paragraph (a) of this section, the value of the oil is the volume-weighted average of the values established under this section for each contract for the sale of oil produced from that lease.

(c)(1) If you enter into an arm's-length exchange agreement, or multiple sequential arm's-length exchange agreements, and following the ex-

change(s) that you or your affiliate sell(s) the oil received in the exchange(s) under an arm's-length contract, then you may use either paragraph (a) of this section or § 1206.102 to value your production for royalty purposes. If you fail to make the election required under this paragraph, you may not make a retroactive election, and ONRR may decide your value under § 1206.105.

(i) If you use paragraph (a) of this section, your gross proceeds are the gross proceeds under your or your affiliate's arm's-length sales contract after the exchange(s) occur(s). You must adjust your gross proceeds for any location or quality differential, or other adjustments, that you received or paid under the arm's-length exchange agreement(s). If ONRR determines that any arm's-length exchange agreement does not reflect reasonable location or quality differentials, ONRR may decide your value under § 1206.105. You may not otherwise use the price or differential specified in an arm's-length exchange agreement to value your production.

(ii) When you elect under § 1206.101(c)(1) to use paragraph (a) of this section or § 1206.102, you must make the same election for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) sold under arm's-length contracts following arm's-length exchange agreements. You may not change your election more often than once every two years.

(2)(i) If you sell or transfer your oil production to your affiliate, and that affiliate or another affiliate then sells the oil under an arm's-length contract, you may use either paragraph (a) of this section or § 1206.102 to value your production for royalty purposes.

(ii) When you elect under paragraph (c)(2)(i) of this section to use paragraph (a) of this section or § 1206.102, you must make the same election for all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) that your affiliates resell at arm's-length. You may not change your election more often than once every two years.

§ 1206.102 How do I value oil not sold under an arm's-length contract?

This section explains how to value oil that you may not value under § 1206.101 or that you elect under § 1206.101(c)(1) to value under this section, unless ONRR decides to value your oil under 1206.105. First, determine if paragraph (a), (b), or (c) of this section applies to production from your lease, or if you may apply paragraph (d) or (e) with ONRR's approval.

(a) *Production from leases in California or Alaska.* Value is the average of the daily mean ANS spot prices published in any ONRR-approved publication during the trading month most concurrent with the production month. For example, if the production month is June, calculate the average of the daily mean prices using the daily ANS spot prices published in the ONRR-approved publication for all of the business days in June.

(1) To calculate the daily mean spot price, you must average the daily high and low prices for the month in the selected publication.

(2) You must use only the days and corresponding spot prices for which such prices are published.

(3) You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 1206.111.

(4) After you select an ONRR-approved publication, you may not select a different publication more often than once every two years, unless the publication you use is no longer published or ONRR revokes its approval of the publication. If you must change publications, you must begin a new two-year period.

(b) *Production from leases in the Rocky Mountain Region.* This paragraph provides methods and options for valuing your production under different factual situations. You must consistently apply paragraph (b)(2) or (3) of this section to value all of your production from the same unit, communitization agreement, or lease (if the lease or a portion of the lease is not part of a unit or communitization agreement) that you cannot value under § 1206.101 or that you elect under § 1206.101(c)(1) to value under this section.

(1) You may elect to value your oil under either paragraph (b)(2) or (3) of this section. After you select either paragraph (b)(2) or (3) of this section, you may not change to the other method more often than once every two years, unless the method you have been using is no longer applicable and you must apply the other paragraph. If you change methods, you must begin a new two-year period.

(2) Value is the volume-weighted average of the gross proceeds accruing to the seller under your or your affiliate's arm's-length contracts for the purchase or sale of production from the field or area during the production month.

(i) The total volume purchased or sold under those contracts must exceed 50 percent of your and your affiliate's production from both Federal and non-Federal leases in the same field or area during that month.

(ii) Before calculating the volume-weighted average, you must normalize the quality of the oil in your or your affiliate's arm's-length purchases or sales to the same gravity as that of the oil produced from the lease.

(3) Value is the NYMEX price (without the roll), adjusted for applicable location and quality differentials and transportation costs under § 1206.113.

(4) If you demonstrate to ONRR's satisfaction that paragraphs (b)(2) through (3) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, ONRR's Director may establish an alternative valuation method.

(c) *Production from leases not located in California, Alaska, or the Rocky Mountain Region.* (1) Value is the NYMEX price, plus the roll, adjusted for applicable location and quality differentials and transportation costs under § 1206.113.

(2) If ONRR's Director determines that the use of the roll no longer reflects prevailing industry practice in crude oil sales contracts or that the most common formula that industry uses to calculate the roll changes, ONRR may terminate or modify the use of the roll under paragraph (c)(1) of this section at the end of each two-year period as of January 1, 2017, through a

notice published in the FEDERAL REGISTER not later than 60 days before the end of the two-year period. ONRR will explain the rationale for terminating or modifying the use of the roll in this notice.

(d) *Unreasonable value.* If ONRR determines that the NYMEX price or ANS spot price does not represent a reasonable royalty value in any particular case, ONRR may decide to value your oil under § 1206.105.

(e) *Production delivered to your refinery and the NYMEX price or ANS spot price is an unreasonable value.* If ONRR determines that the NYMEX price or ANS spot price does not represent a reasonable royalty value in any particular case, ONRR may decide to value your oil under § 1206.105.

§ 1206.103 What publications does ONRR approve?

(a) ONRR will periodically publish on www.onrr.gov a list of ONRR-approved publications for the NYMEX price and ANS spot price based on certain criteria including, but not limited to:

(1) Publications buyers and sellers frequently use.

(2) Publications frequently mentioned in purchase or sales contracts.

(3) Publications that use adequate survey techniques, including development of estimates based on daily surveys of buyers and sellers of crude oil, and, for ANS spot prices, buyers and sellers of ANS crude oil.

(4) Publications independent from ONRR, other lessors, and lessees.

(b) Any publication may petition ONRR to be added to the list of acceptable publications.

(c) ONRR will specify the tables that you must use in the acceptable publications.

(d) ONRR may revoke its approval of a particular publication if we determine that the prices or differentials published in the publication do not accurately represent NYMEX prices or differentials or ANS spot market prices or differentials.

§ 1206.104 How will ONRR determine if my royalty payments are correct?

(a)(1) ONRR may monitor, review, and audit the royalties that you report, and, if ONRR determines that your re-

ported value is inconsistent with the requirements of this subpart, ONRR may direct you to use a different measure of royalty value or decide your value under § 1206.105.

(2) If ONRR directs you to use a different royalty value, you must either pay any additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter), or report a credit for—or request a refund of—any overpaid royalties.

(b) When the provisions in this subpart refer to gross proceeds, in conducting reviews and audits, ONRR will examine if your or your affiliate's contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to you or to your affiliate for the oil. If ONRR determines that a contract does not reflect the total consideration, ONRR may decide your value under § 1206.105.

(c) ONRR may decide your value under § 1206.105 if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because:

(1) There is misconduct by or between the contracting parties;

(2) You have breached your duty to market the oil for the mutual benefit of yourself and the lessor by selling your oil at a value that is unreasonably low. ONRR may consider a sales price to be unreasonably low if it is 10 percent less than the lowest reasonable measures of market price including—but not limited to—index prices and prices reported to ONRR for like quality oil; or

(3) ONRR cannot determine if you properly valued your oil under § 1206.101 or § 1206.102 for any reason including—but not limited to—your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart B.

(d) You have the burden of demonstrating that your or your affiliate's contract is arm's-length.

(e) ONRR may require you to certify that the provisions in your or your affiliate's contract include all of the consideration that the buyer paid to you or your affiliate, either directly or indirectly, for the oil.

(f)(1) Absent contract revision or amendment, if you or your affiliate fail(s) to take proper or timely action to receive prices or benefits to which you or your affiliate are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) If you or your affiliate apply in a timely manner for a price increase or benefit allowed under your or your affiliate's contract, but the purchaser refuses and you or your affiliate take reasonable documented measures to force purchaser compliance, you will not owe additional royalties unless or until you or your affiliate receive additional monies or consideration resulting from the price increase. You may not construe this paragraph to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or in a timely manner, for a quantity of oil.

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing, and all parties to the contract must sign the contract, contract revisions, or amendments.

(2) If you or your affiliate fail(s) to comply with paragraph (g)(1) of this section, ONRR may determine your value under § 1206.105.

(3) This provision applies notwithstanding any other provisions in this title 30 to the contrary.

§ 1206.105 How will ONRR determine the value of my oil for royalty purposes?

If ONRR decides that we will value your oil for royalty purposes under § 1206.104, or any other provision in this subpart, then we will determine value, for royalty purposes, by considering any information that we deem relevant, which may include, but is not limited to, the following:

(a) The value of like-quality oil in the same field or nearby fields or areas

(b) The value of like-quality oil from the refinery or area

(c) Public sources of price or market information that ONRR deems reliable

(d) Information available and reported to ONRR, including but not limited to on Form ONRR-2014 and the Oil

and Gas Operations Report (Form ONRR-4054)

(e) Costs of transportation or processing if ONRR determines that they are applicable

(f) Any information that ONRR deems relevant regarding the particular lease operation or the salability of the oil

§ 1206.106 What records must I keep to support my calculations of value under this subpart?

If you determine the value of your oil under this subpart, you must retain all data relevant to the determination of royalty value.

(a) You must show both of the following:

(1) How you calculated the value that you reported, including all adjustments for location, quality, and transportation.

(2) How you complied with these rules.

(b) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(c) ONRR may review and audit your data, and ONRR will direct you to use a different value if we determine that the reported value is inconsistent with the requirements of this subpart.

§ 1206.107 What are my responsibilities to place production into marketable condition and to market production?

(a) You must place oil in marketable condition and market the oil for the mutual benefit of the lessee and the lessor at no cost to the Federal government.

(b) If you use gross proceeds under an arm's-length contract in determining value, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that the seller normally would be responsible to perform to place the oil in marketable condition or to market the oil.

§ 1206.108 How do I request a valuation determination?

(a) You may request a valuation determination from ONRR regarding any oil produced. Your request must:

(1) Be in writing;

(2) Identify, specifically, all leases involved, all interest owners of those leases, the designee(s), and the operator(s) for those leases;

(3) Completely explain all relevant facts; you must inform ONRR of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents);

(6) Suggest your proposed valuation method.

(b) In response to your request, ONRR may:

(1) Request that the Assistant Secretary for Policy, Management and Budget issue a valuation determination;

(2) Decide that ONRR will issue guidance; or

(3) Inform you in writing that ONRR will not provide a determination or guidance. Situations in which ONRR typically will not provide any determination or guidance include, but are not limited to, the following:

(i) Requests for guidance on hypothetical situations

(ii) Matters that are the subject of pending litigation or administrative appeals

(c)(1) A valuation determination that the Assistant Secretary for Policy, Management and Budget signs is binding on both you and ONRR until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a valuation determination, you must make any adjustments to royalty payments that follow from the determination and, if you owe additional royalties, you must pay the additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(3) A valuation determination that the Assistant Secretary signs is the final action of the Department and is subject to judicial review under 5 U.S.C. 701-706.

(d) Guidance that ONRR issues is not binding on ONRR, delegated States, or you with respect to the specific situation addressed in the guidance.

(1) Guidance and ONRR's decision whether or not to issue guidance or request an Assistant Secretary determination, or neither, under paragraph (b) of this section, are not appealable decisions or orders under 30 CFR part 1290.

(2) If you receive an order requiring you to pay royalty on the same basis as the guidance, you may appeal that order under 30 CFR part 1290.

(e) ONRR or the Assistant Secretary may use any of the applicable valuation criteria in this subpart to provide guidance or to make a determination.

(f) A change in an applicable statute or regulation on which ONRR or the Assistant Secretary based any determination or guidance takes precedence over the determination or guidance, regardless of whether ONRR or the Assistant Secretary modifies or rescinds the determination or guidance.

(g) ONRR or the Assistant Secretary generally will not retroactively modify or rescind a valuation determination issued under paragraph (d) of this section, unless:

(1) There was a misstatement or omission of material facts; or

(2) The facts subsequently developed are materially different from the facts on which the guidance was based.

(h) ONRR may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 1206.109.

§ 1206.109 Does ONRR protect information that I provide?

(a) Certain information that you or your affiliate submit(s) to ONRR regarding valuation of oil, including transportation allowances, may be exempt from disclosure.

(b) To the extent that applicable laws and regulations permit, ONRR will keep confidential any data that you or your affiliate submit(s) that is privileged, confidential, or otherwise exempt from disclosure.

(c) You and others must submit all requests for information under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 1206.110 What general transportation allowance requirements apply to me?

(a) ONRR will allow a deduction for the reasonable, actual costs to transport oil from the lease to the point off of the lease under §1206.110, §1206.111, or §1206.112, as applicable. You may not deduct transportation costs that you incur to move a particular volume of production to reduce royalties that you owe on production for which you did not incur those costs. This paragraph applies when:

(1)(i) The movement to the sales point is not gathering.

(ii) For oil produced on the OCS, the movement of oil from the wellhead to the first platform is not transportation; and

(2) You value oil under §1206.101 based on a sale at a point off of the lease, unit, or communitized area where the oil is produced; or

(3) You do not value your oil under §1206.102(a)(3) or (b)(3).

(b) You must calculate the deduction for transportation costs based on your or your affiliate's cost of transporting each product through each individual transportation system. If your or your affiliate's transportation contract includes more than one liquid product, you must allocate costs consistently and equitably to each of the liquid products that are transported. Your allocation must use the same proportion as the ratio of the volume of each liquid product (excluding waste products with no value) to the volume of all liquid products (excluding waste products with no value).

(1) You may not take an allowance for transporting lease production that is not royalty-bearing.

(2) You may propose to ONRR a prospective cost allocation method based on the values of the liquid products transported. ONRR will approve the method if it is consistent with the purposes of the regulations in this subpart.

(3) You may use your proposed procedure to calculate a transportation allowance beginning with the production month following the month when ONRR received your proposed procedure until ONRR accepts or rejects your cost allocation. If ONRR rejects

your cost allocation, you must amend your Form ONRR-2014 for the months that you used the rejected method and pay any additional royalty due, plus late payment interest.

(c)(1) Where you or your affiliate transport(s) both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to ONRR.

(2) You may use your proposed procedure to calculate a transportation allowance until ONRR accepts or rejects your cost allocation. If ONRR rejects your cost allocation, you must amend your Form ONRR-2014 for the months when you used the rejected method and pay any additional royalty and interest due.

(3) You must submit your initial proposal, including all available data, within three months after you first claim the allocated deductions on Form ONRR-2014.

(d)(1) Your transportation allowance may not exceed 50 percent of the value of the oil, as determined under §1206.101.

(2) If ONRR approved your request to take a transportation allowance in excess of the 50-percent limitation under former §1206.109(c), that approval is terminated as January 1, 2017.

(e) You must express transportation allowances for oil as a dollar-value equivalent. If your or your affiliate's payments for transportation under a contract are not on a dollar-per-unit basis, you must convert whatever consideration you or your affiliate are paid to a dollar-value equivalent.

(f) ONRR may determine your transportation allowance under §1206.105 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length transportation contract does not reflect the reasonable cost of the transportation because you breached your duty to market the oil for the mutual benefit of yourself and the lessor by transporting your oil at a cost that is unreasonably high. We may consider a transportation allowance to be unreasonably high if it is 10 percent higher than the highest reasonable measures of transportation costs

including, but not limited to, transportation allowances reported to ONRR and tariffs for gas, residue gas, or gas plant product transported through the same system; or

(3) ONRR cannot determine if you properly calculated a transportation allowance under §1206.111 or §1206.112 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart B.

(g) You do not need ONRR's approval before reporting a transportation allowance.

§ 1206.111 How do I determine a transportation allowance if I have an arm's-length transportation contract?

(a)(1) If you or your affiliate incur transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred, as more fully explained in paragraph (b) of this section, except as provided in §1206.110(f) and subject to the limitation in §1206.110(d).

(2) You must be able to demonstrate that your or your affiliate's contract is at arm's-length.

(3) You do not need ONRR's approval before reporting a transportation allowance for costs incurred under an arm's-length transportation contract.

(b) Subject to the requirements of paragraph (c) of this section, you may include, but are not limited to, the following costs to determine your transportation allowance under paragraph (a) of this section; you may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section including, but not limited to:

(1) The amount that you pay under your arm's-length transportation contract or tariff.

(2) Fees paid (either in volume or in value) for actual or theoretical line losses.

(3) Fees paid for administration of a quality bank.

(4) Fees paid to a terminal operator for loading and unloading of crude oil into or from a vessel, vehicle, pipeline, or other conveyance.

(5) Fees paid for short-term storage (30 days or less) incidental to transportation as a transporter requires.

(6) Fees paid to pump oil to another carrier's system or vehicles as required under a tariff.

(7) Transfer fees paid to a hub operator associated with physical movement of crude oil through the hub when you do not sell the oil at the hub. These fees do not include title transfer fees.

(8) Payments for a volumetric deduction to cover shrinkage when high-gravity petroleum (generally in excess of 51 degrees API) is mixed with lower gravity crude oil for transportation.

(9) Costs of securing a letter of credit, or other surety, that the pipeline requires you, as a shipper, to maintain.

(10) Hurricane surcharges that you or your affiliate actually pay(s).

(11) The cost of carrying on your books as inventory a volume of oil that the pipeline operator requires you, as a shipper, to maintain and that you do maintain in the line as line fill. You must calculate this cost as follows:

(i) First, multiply the volume that the pipeline requires you to maintain—and that you do maintain—in the pipeline by the value of that volume for the current month calculated under §1206.101 or §1206.102, as applicable.

(ii) Second, multiply the value calculated under paragraph (b)(11)(i) of this section by the monthly rate of return, calculated by dividing the rate of return specified in §1206.112(i)(3) by 12.

(c) You may not include the following costs to determine your transportation allowance under paragraph (a) of this section:

(1) Fees paid for long-term storage (more than 30 days)

(2) Administrative, handling, and accounting fees associated with terminalling

(3) Title and terminal transfer fees

(4) Fees paid to track and match receipts and deliveries at a market center or to avoid paying title transfer fees

(5) Fees paid to brokers

(6) Fees paid to a scheduling service provider

(7) Internal costs, including salaries and related costs, rent/space costs, office equipment costs, legal fees, and

other costs to schedule, nominate, and account for sale or movement of production

(8) Gauging fees

(d) If you have no written contract for the arm's-length transportation of oil, then ONRR will determine your transportation allowance under §1206.105. You may not use this paragraph (d) if you or your affiliate perform(s) your own transportation.

(1) You must propose to ONRR a method to determine the allowance using the procedures in §1206.108(a).

(2) You may use that method to determine your allowance until ONRR issues its determination.

§ 1206.112 How do I determine a transportation allowance if I do not have an arm's-length transportation contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length transportation contract, including situations where you or your affiliate provide your own transportation services. You must calculate your transportation allowance based on your or your affiliate's reasonable, actual costs for transportation during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include the following:

(1) Capital costs and operating and maintenance expenses under paragraphs (e), (f), and (g) of this section.

(2) Overhead under paragraph (h) of this section.

(3)(i) Depreciation and a return on undepreciated capital investment under paragraph (i)(1) of this section, or you may elect to use a cost equal to a return on the initial depreciable capital investment in the transportation system under paragraph (i)(2) of this section. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(ii) A return on the reasonable salvage value under paragraph (i)(1)(iii) of

this section after you have depreciated the transportation system to its reasonable salvage value.

(c) To the extent not included in costs identified in paragraphs (e) through (h) of this section.

(1) If you or your affiliate incur(s) the following actual costs under your or your affiliate's non-arm's-length contract, you may include these costs in your calculations under this section:

(i) Fees paid to a non-affiliated terminal operator for loading and unloading of crude oil into or from a vessel, vehicle, pipeline, or other conveyance

(ii) Transfer fees paid to a hub operator associated with physical movement of crude oil through the hub when you do not sell the oil at the hub; these fees do not include title transfer fees

(iii) A volumetric deduction to cover shrinkage when high-gravity petroleum (generally in excess of 51 degrees API) is mixed with lower gravity crude oil for transportation

(iv) Fees paid to a non-affiliated quality bank administrator for administration of a quality bank

(v) The cost of carrying on your books as inventory a volume of oil that the pipeline operator requires you, as a shipper, to maintain—and that you do maintain—in the line as line fill; you must calculate this cost as follows:

(A) First, multiply the volume that the pipeline requires you to maintain—and that you do maintain—in the pipeline by the value of that volume for the current month calculated under §1206.101 or §1206.102, as applicable.

(B) Second, multiply the value calculated under paragraph (c)(1)(v)(A) of this section by the monthly rate of return, calculated by dividing the rate of return specified in §1206.112(i)(3) by 12.

(2) You may not include in your transportation allowance:

(i) Any of the costs identified under §1206.111(c); and/or

(ii) Fees paid (either in volume or in value) for actual or theoretical line losses.

(d) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(e) Allowable capital investment costs are generally those for depreciable fixed assets (including the costs of delivery and installation of capital equipment) that are an integral part of the transportation system.

(f) Allowable operating expenses include the following:

- (1) Operations supervision and engineering.
- (2) Operations labor.
- (3) Fuel.
- (4) Utilities.
- (5) Materials.
- (6) Ad valorem property taxes.
- (7) Rent.
- (8) Supplies.
- (9) Any other directly allocable and attributable operating expense that you can document.

(g) Allowable maintenance expenses include the following

- (1) Maintenance of the transportation system.
- (2) Maintenance of equipment.
- (3) Maintenance labor.
- (4) Other directly allocable and attributable maintenance expenses that you can document.

(h) Overhead, directly attributable and allocable to the operation and maintenance of the transportation system, is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(i)(1) To calculate depreciation and a return on undepreciated capital investment, you may elect to use either a straight-line depreciation method (based on the life of equipment or on the life of the reserves that the transportation system services), or you may elect to use a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(i) A change in ownership of a transportation system will not alter the depreciation schedule that the original transporter/lessee established for purposes of the allowance calculation.

(ii) You may depreciate a transportation system, with or without a change in ownership, only once.

(iii)(A) To calculate the return on undepreciated capital investment, you may use an amount equal to the undepreciated capital investment in the transportation system multiplied by the rate of return that you determine under paragraph (i)(3) of this section.

(B) After you have depreciated a transportation system to the reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the reasonable salvage value multiplied by a rate of return under paragraph (i)(3) of this section.

(2) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (i)(3) of this section. You may not include depreciation in your allowance.

(3) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(i) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(ii) You must re-determine the rate at the beginning of each subsequent calendar year.

§ 1206.113 What adjustments and transportation allowances apply when I value oil production from my lease using NYMEX prices or ANS spot prices?

This section applies when you use NYMEX prices or ANS spot prices to calculate the value of production under § 1206.102. As specified in this section, you must adjust the NYMEX price to reflect the difference in value between your lease and Cushing, Oklahoma, or adjust the ANS spot price to reflect the difference in value between your lease and the appropriate ONRR-recognized market center at which the ANS spot price is published (for example, Long Beach, California, or San Francisco, California). Paragraph (a) of this section explains how you adjust the value

between the lease and the market center, and paragraph (b) of this section explains how you adjust the value between the market center and Cushing when you use NYMEX prices. Paragraph (c) of this section explains how adjustments may be made for quality differentials that are not accounted for through exchange agreements. Paragraph (d) of this section gives some examples. References in this section to “you” include your affiliates, as applicable.

(a) To adjust the value between the lease and the market center:

(1)(i) For oil that you exchange at arm’s-length between your lease and the market center (or between any intermediate points between those locations), you must calculate a lease-to-market center differential by the applicable location and quality differentials derived from your arm’s-length exchange agreement applicable to production during the production month.

(ii) For oil that you exchange between your lease and the market center (or between any intermediate points between those locations) under an exchange agreement that is not at arm’s-length, you must obtain approval from ONRR for a location and quality differential. Until you obtain such approval, you may use the location and quality differential derived from that exchange agreement applicable to production during the production month. If ONRR prescribes a different differential, you must apply ONRR’s differential to all periods for which you used your proposed differential. You must pay any additional royalties due resulting from using ONRR’s differential, plus late payment interest from the original royalty due date, or you may report a credit for any overpaid royalties, plus interest, under 30 U.S.C. 1721(h).

(2) For oil that you transport between your lease and the market center (or between any intermediate points between those locations), you may take an allowance for the cost of transporting that oil between the relevant points, as determined under § 1206.111 or § 1206.112, as applicable.

(3) If you transport or exchange at arm’s-length (or both transport and exchange) at least 20 percent—but not

all—of your oil produced from the lease to a market center, you must determine the adjustment between the lease and the market center for the oil that is not transported or exchanged (or both transported and exchanged) to or through a market center as follows:

(i) Determine the volume-weighted average of the lease-to-market center adjustment calculated under paragraphs (a)(1) and (2) of this section for the oil that you do transport or exchange (or both transport and exchange) from your lease to a market center.

(ii) Use that volume-weighted average lease-to-market center adjustment as the adjustment for the oil that you do not transport or exchange (or both transport and exchange) from your lease to a market center.

(4) If you transport or exchange (or both transport and exchange) less than 20 percent of the crude oil produced from your lease between the lease and a market center, you must propose to ONRR an adjustment between the lease and the market center for the portion of the oil that you do not transport or exchange (or both transport and exchange) to a market center. Until you obtain such approval, you may use your proposed adjustment. If ONRR prescribes a different adjustment, you must apply ONRR’s adjustment to all periods for which you used your proposed adjustment. You must pay any additional royalties due resulting from using ONRR’s adjustment, plus late payment interest from the original royalty due date, or you may report a credit for any overpaid royalties plus interest under 30 U.S.C. 1721(h).

(5) You may not both take a transportation allowance and use a location and quality adjustment or exchange differential for the same oil between the same points.

(b) For oil that you value using NYMEX prices, you must adjust the value between the market center and Cushing, Oklahoma, as follows:

(1) If you have arm’s-length exchange agreements between the market center and Cushing under which you exchange to Cushing at least 20 percent of all of the oil that you own at the market center during the production month,

you must use the volume-weighted average of the location and quality differentials from those agreements as the adjustment between the market center and Cushing for all of the oil that you produce from the leases during that production month for which that market center is used.

(2) If paragraph (b)(1) of this section does not apply, you must use the WTI differential published in an ONRR-approved publication for the market center nearest to your lease, for crude oil most similar in quality to your production, as the adjustment between the market center and Cushing. For example, for light sweet crude oil produced offshore of Louisiana, you must use the WTI differential for Light Louisiana Sweet crude oil at St. James, Louisiana. After you select an ONRR-approved publication, you may not select a different publication more often than once every two years, unless the publication you use is no longer published or ONRR revokes its approval of the publication. If you must change publications, you must begin a new two-year period.

(3) If neither paragraph (b)(1) nor (2) of this section applies, you may propose an alternative differential to ONRR. Until you obtain such approval, you may use your proposed differential. If ONRR prescribes a different differential, you must apply ONRR's differential to all periods for which you used your proposed differential. You must pay any additional royalties due resulting from using ONRR's differential, plus late payment interest from the original royalty due date, or you may report a credit for any overpaid royalties plus interest under 30 U.S.C. 1721(h).

(c)(1) If you adjust for location and quality differentials or for transportation costs under paragraphs (a) and (b) of this section, you also must adjust the NYMEX price or ANS spot price for quality based on premiums or penalties determined by pipeline quality bank specifications at intermediate commingling points or at the market center if those points are downstream of the royalty measurement point that BSEE or BLM, as applicable, approve. You must make this adjustment only if, and to the extent that, such adjust-

ments were not already included in the location and quality differentials determined from your arm's-length exchange agreements.

(2) If the quality of your oil, as adjusted, is still different from the quality of the representative crude oil at the market center after making the quality adjustments described in paragraphs (a), (b), and (c)(1) of this section, you may make further gravity adjustments using posted price gravity tables. If quality bank adjustments do not incorporate or provide for adjustments for sulfur content, you may make sulfur adjustments, based on the quality of the representative crude oil at the market center, of 5.0 cents per one-tenth percent difference in sulfur content.

(i) You may request prior ONRR approval to use a different adjustment.

(ii) If ONRR approves your request to use a different quality adjustment, you may begin using that adjustment for the production month following the month when ONRR received your request.

(d) The examples in this paragraph illustrate how to apply the requirement of this section.

(1) *Example.* Assume that a Federal lessee produces crude oil from a lease near Artesia, New Mexico. Further, assume that the lessee transports the oil to Roswell, New Mexico, and then exchanges the oil to Midland, Texas. Assume that the lessee refines the oil received in exchange at Midland. Assume that the NYMEX price is \$86.21/bbl, adjusted for the roll; that the WTI differential (Cushing to Midland) is -\$2.27/bbl; that the lessee's exchange agreement between Roswell and Midland results in a location and quality differential of -\$0.08/bbl; and that the lessee's actual cost of transporting the oil from Artesia to Roswell is \$0.40/bbl. In this example, the royalty value of the oil is $\$86.21 - \$2.27 - \$0.08 - \$0.40 = \$83.46/\text{bbl}$.

(2) *Example.* Assume the same facts as in the example in paragraph (d)(1) of this section, except that the lessee transports and exchanges to Midland 40 percent of the production from the lease near Artesia and transports the remaining 60 percent directly to its own refinery in Ohio. In this example,

§ 1206.114

the 40 percent of the production would be valued at \$83.46/bbl, as explained in the previous example. In this example, the other 60 percent also would be valued at \$83.46/bbl.

(3) *Example.* Assume that a Federal lessee produces crude oil from a lease near Bakersfield, California. Further, assume that the lessee transports the oil to Hynes Station and then exchanges the oil to Cushing, which it further exchanges with oil that it refines. Assume that the ANS spot price is \$105.65/bbl and that the lessee's actual cost of transporting the oil from Bakersfield to Hynes Station is \$0.28/bbl. The lessee must request approval from ONRR for a location and quality adjustment between Hynes Station and Long Beach. For example, the lessee likely would propose using the tariff on Line 63 from Hynes Station to Long Beach as the adjustment between those points. Assume that adjustment to be \$0.72, including the sulfur and gravity bank adjustments, and that ONRR approves the lessee's request. In this example, the preliminary (because the location and quality adjustment is subject to ONRR's review) royalty value of the oil is $\$105.65 - \$0.72 - \$0.28 = \$104.65$ /bbl. The fact that oil was exchanged to Cushing does not change the use of ANS spot prices for royalty valuation.

§ 1206.114 How will ONRR identify market centers?

ONRR will monitor market activity and, if necessary, add to or modify the list of market centers that we publish to www.onrr.gov. ONRR will consider the following factors and conditions in specifying market centers:

- (a) Points where ONRR-approved publications publish prices useful for index purposes.
- (b) Markets served.
- (c) Input from industry and others knowledgeable in crude oil marketing and transportation.
- (d) Simplification.
- (e) Other relevant matters.

§ 1206.115 What are my reporting requirements under an arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR-2014 to notify ONRR of an allowance based on transportation

30 CFR Ch. XII (7-1-17 Edition)

costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.116 What are my reporting requirements under a non-arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR-2014 to notify ONRR of an allowance based on transportation costs that you or your affiliate incur(s).

(b)(1) For new non-arm's-length transportation facilities or arrangements, you must base your initial deduction on estimates of allowable transportation costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the transportation system as your estimate, if available. If such data is not available, you must use estimates based on data for similar transportation systems.

(3) Section 1206.118 applies when you amend your report based on the actual costs.

(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You may find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(d) If you are authorized under § 1206.112(j) to use an exception to the requirement to calculate your actual transportation costs, you must follow the reporting requirements of § 1206.115.

§ 1206.117 What interest and penalties apply if I improperly report a transportation allowance?

(a) If you deduct a transportation allowance on Form ONRR-2014 that exceeds 50 percent of the value of the oil transported, you must pay additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter, on the excess allowance amount taken from the date when that amount is taken to the date

when you pay the additional royalties due.

(b) If you improperly net a transportation allowance against the oil instead of reporting the allowance as a separate entry on Form ONRR-2014, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.118 What reporting adjustments must I make for transportation allowances?

(a) If your actual transportation allowance is less than the amount that you claimed on Form ONRR-2014 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter from the date when you took the deduction to the date when you repay the difference.

(b) If the actual transportation allowance is greater than the amount that you claimed on Form ONRR-2014 for any month during the period reported on the allowance form, you are entitled to a credit plus interest.

§ 1206.119 How do I determine royalty quantity and quality?

(a) You must calculate royalties based on the quantity and quality of oil as measured at the point of royalty settlement that BLM or BSEE approves for onshore leases and OCS leases, respectively.

(b) If you base the value of oil determined under this subpart on a quantity and/or quality that is different from the quantity and/or quality at the point of royalty settlement that BLM or BSEE approves, you must adjust that value for the differences in quantity and/or quality.

(c) You may not make any deductions from the royalty volume or royalty value for actual or theoretical losses. Any actual loss that you sustain before the royalty settlement metering or measurement point is not subject to royalty if BLM or BSEE, whichever is appropriate, determines that such loss was unavoidable.

(d) You must pay royalties on 100 percent of the volume measured at the approved point of royalty settlement. You may not claim a reduction in that measured volume for actual losses be-

yond the approved point of royalty settlement or for theoretical losses that you claim to have taken place either before or after the approved point of royalty settlement.

Subpart D—Federal Gas

SOURCE: 81 FR 43380, July 1, 2016, unless otherwise noted.

§ 1206.140 What is the purpose and scope of this subpart?

(a) This subpart applies to all gas produced from Federal oil and gas leases onshore and on the Outer Continental Shelf (OCS). It explains how you, as a lessee, must calculate the value of production for royalty purposes consistent with mineral leasing laws, other applicable laws, and lease terms.

(b) The terms “you” and “your” in this subpart refer to the lessee.

(c) If the regulations in this subpart are inconsistent with a(an): Federal statute; settlement agreement between the United States and a lessee resulting from administrative or judicial litigation; written agreement between the lessee and ONRR’s Director establishing a method to determine the value of production from any lease that ONRR expects would at least approximate the value established under this subpart; express provision of an oil and gas lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(d) ONRR may audit and order you to adjust all royalty payments.

§ 1206.141 How do I calculate royalty value for unprocessed gas that I or my affiliate sell(s) under an arm’s-length or non-arm’s-length contract?

(a) This section applies to unprocessed gas. Unprocessed gas is:

(1) Gas that is not processed;

(2) Any gas that you are not required to value under § 1206.142 or that ONRR does not value under § 1206.144; or

(3) Any gas that you sell prior to processing based on a price per MMBtu or Mcf when the price is not based on the residue gas and gas plant products.

(b) The value of gas under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the first arm's-length contract less a transportation allowance determined under § 1206.152. This value does not apply if you exercise the option in paragraph (c) of this section or if ONRR decides to value your gas under § 1206.144. You must use this paragraph (b) to value gas when:

(1) You sell under an arm's-length contract;

(2) You sell or transfer unprocessed gas to your affiliate or another person under a non-arm's-length contract and that affiliate or person, or an affiliate of either of them, then sells the gas under an arm's-length contract, unless you exercise the option provided in paragraph (c) of this section;

(3) You, your affiliate, or another person sell(s) unprocessed gas produced from a lease under multiple arm's-length contracts, and that gas is valued under this paragraph. Unless you exercise the option provided in paragraph (c) of this section, the value of the gas is the volume-weighted average of the values, established under this paragraph, for each contract for the sale of gas produced from that lease; or

(4) You or your affiliate sell(s) under a pipeline cash-out program. In that case, for over-delivered volumes within the tolerance under a pipeline cash-out program, the value is the price that the pipeline must pay you or your affiliate under the transportation contract. You must use the same value for volumes that exceed the over-delivery tolerances, even if those volumes are subject to a lower price under the transportation contract.

(c) If you do not sell under an arm's-length contract, you may elect to value your gas under this paragraph (c). You may not change your election more often than once every two years.

(1)(i) If you can only transport gas to one index pricing point published in an ONRR-approved publication, available at www.onrr.gov, your value, for royalty purposes, is the highest reported monthly bidweek price for that index pricing point for the production month.

(ii) If you can transport gas to more than one index pricing point published in an ONRR-approved publication

available at www.onrr.gov, your value, for royalty purposes, is the highest reported monthly bidweek price for the index pricing points to which your gas could be transported for the production month, whether or not there are constraints for that production month.

(iii) If there are sequential index pricing points on a pipeline, you must use the first index pricing point at or after your gas enters the pipeline.

(iv) You must reduce the number calculated under paragraphs (c)(1)(i) and (ii) of this section by 5 percent for sales from the OCS Gulf of Mexico and by 10 percent for sales from all other areas, but not by less than 10 cents per MMBtu or more than 30 cents per MMBtu.

(v) After you select an ONRR-approved publication available at www.onrr.gov, you may not select a different publication more often than once every two years.

(vi) ONRR may exclude an individual index pricing point found in an ONRR-approved publication if ONRR determines that the index pricing point does not accurately reflect the values of production. ONRR will publish a list of excluded index pricing points available at www.onrr.gov.

(2) You may not take any other deductions from the value calculated under this paragraph (c).

(d) If some of your gas is used, lost, unaccounted for, or retained as a fee under the terms of a sales or service agreement, that gas will be valued for royalty purposes using the same royalty valuation method for valuing the rest of the gas that you do sell.

(e) If you have no written contract for the sale of gas or no sale of gas subject to this section and:

(1) There is an index pricing point for the gas, then you must value your gas under paragraph (c) of this section; or

(2) There is not an index pricing point for the gas, then ONRR will decide the value under § 1206.144.

(i) You must propose to ONRR a method to determine the value using the procedures in § 1206.148(a).

(ii) You may use that method to determine value, for royalty purposes, until ONRR issues our decision.

(iii) After ONRR issues our determination, you must make the adjustments under §1206.143(a)(2).

§ 1206.142 How do I calculate royalty value for processed gas that I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?

(a) This section applies to the valuation of processed gas, including but not limited to:

(1) Gas that you or your affiliate do not sell, or otherwise dispose of, under an arm's-length contract prior to processing.

(2) Gas where your or your affiliate's arm's-length contract for the sale of gas prior to processing provides for payment to be determined on the basis of the value of any products resulting from processing, including residue gas or natural gas liquids.

(3) Gas that you or your affiliate process under an arm's-length keepwhole contract.

(4) Gas where your or your affiliate's arm's-length contract includes a reservation of the right to process the gas, and you or your affiliate exercise(s) that right.

(b) The value of gas subject to this section, for royalty purposes, is the combined value of the residue gas and all gas plant products that you determine under this section plus the value of any condensate recovered downstream of the point of royalty settlement without resorting to processing that you determine under subpart C of this part less applicable transportation and processing allowances that you determine under this subpart, unless you exercise the option provided in paragraph (d) of this section.

(c) The value of residue gas or any gas plant product under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the first arm's-length contract. This value does not apply if you exercise the option provided in paragraph (d) of this section, or if ONRR decides to value your residue gas or any gas plant product under §1206.144. You must use this paragraph (c) to value residue gas or any gas plant product when:

(1) You sell under an arm's-length contract;

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract, and that affiliate or person, or another affiliate of either of them, then sells the residue gas or any gas plant product under an arm's-length contract, unless you exercise the option provided in paragraph (d) of this section;

(3) You, your affiliate, or another person sell(s), under multiple arm's-length contracts, residue gas or any gas plant products recovered from gas produced from a lease that you value under this paragraph. In that case, unless you exercise the option provided in paragraph (d) of this section, because you sold non-arm's-length to your affiliate or another person, the value of the residue gas or any gas plant product is the volume-weighted average of the gross proceeds established under this paragraph for each arm's-length contract for the sale of residue gas or any gas plant products recovered from gas produced from that lease; or

(4) You or your affiliate sell(s) under a pipeline cash-out program. In that case, for over-delivered volumes within the tolerance under a pipeline cash-out program, the value is the price that the pipeline must pay to you or your affiliate under the transportation contract. You must use the same value for volumes that exceed the over-delivery tolerances, even if those volumes are subject to a lower price under the transportation contract.

(d) If you do not sell under an arm's-length contract, you may elect to value your residue gas and NGLs under this paragraph (d). You may not change your election more often than once every two years.

(1)(i) If you can only transport residue gas to one index pricing point published in an ONRR-approved publication available at www.onrr.gov, your value, for royalty purposes, is the highest reported monthly bidweek price for that index pricing point for the production month.

(ii) If you can transport residue gas to more than one index pricing point published in an ONRR-approved publication available at www.onrr.gov, your value, for royalty purposes, is the highest reported monthly bidweek price for the index pricing points to which your

gas could be transported for the production month, whether or not there are constraints, for the production month.

(iii) If there are sequential index pricing points on a pipeline, you must use the first index pricing point at or after your residue gas enters the pipeline.

(iv) You must reduce the number calculated under paragraphs (d)(1)(i) and (ii) of this section by 5 percent for sales from the OCS Gulf of Mexico and by 10 percent for sales from all other areas, but not by less than 10 cents per MMBtu or more than 30 cents per MMBtu.

(v) After you select an ONRR-approved publication available at *www.onrr.gov*, you may not select a different publication more often than once every two years.

(vi) ONRR may exclude an individual index pricing point found in an ONRR-approved publication if ONRR determines that the index pricing point does not accurately reflect the values of production. ONRR will publish a list of excluded index pricing points on *www.onrr.gov*.

(2)(i) If you sell NGLs in an area with one or more ONRR-approved commercial price bulletins available at *www.onrr.gov*, you must choose one bulletin, and your value, for royalty purposes, is the monthly average price for that bulletin for the production month.

(ii) You must reduce the number calculated under paragraph (d)(2)(i) of this section by the amounts that ONRR posts at *www.onrr.gov* for the geographic location of your lease. The methodology that ONRR will use to calculate the amounts is set forth in the preamble to this regulation. This methodology is binding on you and ONRR. ONRR will update the amounts periodically using this methodology.

(iii) After you select an ONRR-approved commercial price bulletin available at *www.onrr.gov*, you may not select a different commercial price bulletin more often than once every two years.

(3) You may not take any other deductions from the value calculated under this paragraph (d).

(4) ONRR will post changes to any of the rates in this paragraph (d) on its Web site.

(e) If some of your gas or gas plant products are used, lost, unaccounted for, or retained as a fee under the terms of a sales or service agreement, that gas will be valued for royalty purposes using the same royalty valuation method for valuing the rest of the gas or gas plant products that you do sell.

(f) If you have no written contract for the sale of gas or no sale of gas subject to this section and:

(1) There is an index pricing point or commercial price bulletin for the gas, then you must value your gas under paragraph (d) of this section.

(2) There is not an index pricing point or commercial price bulletin for the gas, then ONRR will determine the value under § 1206.144.

(i) You must propose to ONRR a method to determine the value using the procedures in § 1206.148(a).

(ii) You may use that method to determine value, for royalty purposes, until ONRR issues our decision.

(iii) After ONRR issues our determination, you must make the adjustments under § 1206.143(a)(2).

§ 1206.143 How will ONRR determine if my royalty payments are correct?

(a)(1) ONRR may monitor, review, and audit the royalties that you report. If ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR will direct you to use a different measure of royalty value or decide your value under § 1206.144.

(2) If ONRR directs you to use a different royalty value, you must either pay any additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter, or report a credit for, or request a refund of, any overpaid royalties.

(b) When the provisions in this subpart refer to gross proceeds, in conducting reviews and audits, ONRR will examine if your or your affiliate's contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to you or your affiliate for the gas, residue gas, or gas plant products. If ONRR determines that a contract does not reflect

the total consideration, ONRR may decide your value under §1206.144.

(c) ONRR may decide your value under §1206.144 if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because:

(1) There is misconduct by or between the contracting parties;

(2) You have breached your duty to market the gas, residue gas, or gas plant products for the mutual benefit of yourself and the lessor by selling your gas, residue gas, or gas plant products at a value that is unreasonably low. ONRR may consider a sales price unreasonably low if it is 10 percent less than the lowest reasonable measures of market price, including, but not limited to, index prices and prices reported to ONRR for like-quality gas, residue gas, or gas plant products; or

(3) ONRR cannot determine if you properly valued your gas, residue gas, or gas plant products under §1206.141 or §1206.142 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart B.

(d) You have the burden of demonstrating that your or your affiliate's contract is arm's-length.

(e) ONRR may require you to certify that the provisions in your or your affiliate's contract include(s) all of the consideration that the buyer paid to you or your affiliate, either directly or indirectly, for the gas, residue gas, or gas plant products.

(f)(1) Absent contract revision or amendment, if you or your affiliate fail(s) to take proper or timely action to receive prices or benefits to which you or your affiliate are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) If you or your affiliate make timely application for a price increase or benefit allowed under your or your affiliate's contract, but the purchaser refuses, and you or your affiliate take reasonable, documented measures to force purchaser compliance, you will not owe additional royalties unless or until you or your affiliate receive additional monies or consideration result-

ing from the price increase. You may not construe this paragraph to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or in a timely manner, for a quantity of gas, residue gas, or gas plant products.

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing, and all parties to the contract must sign the contract, contract revisions, or amendments.

(2) If you or your affiliate fail(s) to comply with paragraph (g)(1) of this section, ONRR may decide your value under §1206.144.

(3) This provision applies notwithstanding any other provisions in this title 30 to the contrary.

§ 1206.144 How will ONRR determine the value of my gas for royalty purposes?

If ONRR decides to value your gas, residue gas, or gas plant products for royalty purposes under §1206.143, or any other provision in this subpart, then ONRR will determine the value, for royalty purposes, by considering any information that we deem relevant, which may include, but is not limited to:

(a) The value of like-quality gas in the same field or nearby fields or areas.

(b) The value of like-quality residue gas or gas plant products from the same plant or area.

(c) Public sources of price or market information that ONRR deems to be reliable.

(d) Information available or reported to ONRR, including, but not limited to, on Form ONRR-2014 and Form ONRR-4054.

(e) Costs of transportation or processing if ONRR determines that they are applicable.

(f) Any information that ONRR deems relevant regarding the particular lease operation or the salability of the gas.

§ 1206.145 What records must I keep in order to support my calculations of royalty under this subpart?

If you value your gas under this subpart, you must retain all data relevant to the determination of the royalty

that you paid. You can find record-keeping requirements in parts 1207 and 1212 of this chapter.

(a) You must show:

(1) How you calculated the royalty value, including all allowable deductions; and

(2) How you complied with this subpart.

(b) Upon request, you must submit all data to ONRR. You must comply with any such requirement within the time that ONRR specifies.

§ 1206.146 What are my responsibilities to place production into marketable condition and to market production?

(a) You must place gas, residue gas, and gas plant products in marketable condition and market the gas, residue gas, and gas plant products for the mutual benefit of the lessee and the lessor at no cost to the Federal government.

(b) If you use gross proceeds under an arm's-length contract to determine royalty, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that you normally are responsible to perform in order to place the gas, residue gas, and gas plant products in marketable condition or to market the gas.

§ 1206.147 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?

Notwithstanding any provision in these regulations to the contrary, ONRR does not consider any audit, review, reconciliation, monitoring, or other like process that results in ONRR re-determining royalty due, under this subpart, final or binding as against the Federal government or its beneficiaries unless ONRR chooses to, in writing, formally close the audit period.

§ 1206.148 How do I request a valuation determination?

(a) You may request a valuation determination from ONRR regarding any gas produced. Your request must:

(1) Be in writing;

(2) Identify specifically all leases involved, all interest owners of those leases, the designee(s), and the operator(s) for those leases;

(3) Completely explain all relevant facts. You must inform ONRR of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and

(6) Suggest your proposed valuation method.

(b) In response to your request, ONRR may:

(1) Request that the Assistant Secretary for Policy, Management and Budget issue a determination;

(2) Decide that ONRR will issue guidance; or

(3) Inform you in writing that ONRR will not provide a determination or guidance. Situations in which ONRR typically will not provide any determination or guidance include, but are not limited to:

(i) Requests for guidance on hypothetical situations; or

(ii) Matters that are the subject of pending litigation or administrative appeals.

(c)(1) A determination that the Assistant Secretary for Policy, Management and Budget signs is binding on both you and ONRR until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a determination, you must make any adjustments to royalty payments that follow from the determination, and, if you owe additional royalties, you must pay the additional royalties due, plus late payment interest calculated under §§1218.54 and 1218.102 of this chapter.

(3) A determination that the Assistant Secretary signs is the final action of the Department and is subject to judicial review under 5 U.S.C. 701-706.

(d) Guidance that ONRR issues is not binding on ONRR, delegated States, or you with respect to the specific situation addressed in the guidance.

(1) Guidance and ONRR's decision whether or not to issue guidance or to request an Assistant Secretary determination, or neither, under paragraph (b) of this section, are not appealable decisions or orders under 30 CFR part 1290.

(2) If you receive an order requiring you to pay royalty on the same basis as the guidance, you may appeal that order under 30 CFR part 1290.

(e) ONRR or the Assistant Secretary may use any of the applicable criteria in this subpart to provide guidance or to make a determination.

(f) A change in an applicable statute or regulation on which ONRR based any guidance, or the Assistant Secretary based any determination, takes precedence over the determination or guidance after the effective date of the statute or regulation, regardless of whether ONRR or the Assistant Secretary modifies or rescinds the guidance or determination.

(g) ONRR may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 1206.149.

§ 1206.149 Does ONRR protect information that I provide?

(a) Certain information that you or your affiliate submit(s) to ONRR regarding royalties on gas, including deductions and allowances, may be exempt from disclosure.

(b) To the extent that applicable laws and regulations permit, ONRR will keep confidential any data that you or your affiliate submit(s) that is privileged, confidential, or otherwise exempt from disclosure.

(c) You and others must submit all requests for information under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 1206.150 How do I determine royalty quantity and quality?

(a)(1) You must calculate royalties based on the quantity and quality of unprocessed gas as measured at the point of royalty settlement that BLM or BSEE approves for onshore leases and OCS leases, respectively.

(2) If you base the value of gas determined under this subpart on a quantity and/or quality that is different from the quantity and/or quality at the point of royalty settlement that BLM or BSEE approves, you must adjust that value for the differences in quantity and/or quality.

(b)(1) For residue gas and gas plant products, the quantity basis for computing royalties due is the monthly net output of the plant, even though residue gas and/or gas plant products may be in temporary storage.

(2) If you value residue gas and/or gas plant products determined under this subpart on a quantity and/or quality of residue gas and/or gas plant products that is different from that which is attributable to a lease determined under paragraph (c) of this section, you must adjust that value for the differences in quantity and/or quality.

(c) You must determine the quantity of the residue gas and gas plant products attributable to a lease based on the following procedure:

(1) When you derive the net output of the processing plant from gas obtained from only one lease, you must base the quantity of the residue gas and gas plant products for royalty computation on the net output of the plant.

(2) When you derive the net output of a processing plant from gas obtained from more than one lease producing gas of uniform content, you must base the quantity of the residue gas and gas plant products allocable to each lease on the same proportions as the ratios obtained by dividing the amount of gas delivered to the plant from each lease by the total amount of gas delivered from all leases.

(3) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of non-uniform content:

(i) You must determine the quantity of the residue gas allocable to each lease by multiplying the amount of gas delivered to the plant from the lease by the residue gas content of the gas, and dividing that arithmetical product by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of the residue gas by the arithmetic quotient obtained.

(ii) You must determine the net output of gas plant products allocable to each lease by multiplying the amount of gas delivered to the plant from the lease by the gas plant product content of the gas, dividing that arithmetical

product by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of each gas plant product by the arithmetic quotient obtained.

(4) You may request prior ONRR approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. If approved, you must apply that method to all gas production from Federal leases that is processed in the same plant. You must do so beginning with the production month following the month when ONRR received your request to use another method.

(d)(1) You may not make any deductions from the royalty volume or royalty value for actual or theoretical losses. Any actual loss of unprocessed gas that you sustain before the royalty settlement meter or measurement point is not subject to royalty if BLM or BSEE, whichever is appropriate, determines that such loss was unavoidable.

(2) Except as provided in paragraph (d)(1) of this section and §1202.151(c) of this chapter, you must pay royalties due on 100 percent of the volume determined under paragraphs (a) through (c) of this section. You may not reduce that determined volume for actual losses after you have determined the quantity basis, or for theoretical losses that you claim to have taken place. Royalties are due on 100 percent of the value of the unprocessed gas, residue gas, and/or gas plant products, as provided in this subpart, less applicable allowances. You may not take any deduction from the value of the unprocessed gas, residue gas, and/or gas plant products to compensate for actual losses after you have determined the quantity basis or for theoretical losses that you claim to have taken place.

§ 1206.151 [Reserved]

§ 1206.152 What general transportation allowance requirements apply to me?

(a) ONRR will allow a deduction for the reasonable, actual costs to transport residue gas, gas plant products, or unprocessed gas from the lease to the point off of the lease under § 1206.153 or

§1206.154, as applicable. You may not deduct transportation costs that you incur when moving a particular volume of production to reduce royalties that you owe on production for which you did not incur those costs. This paragraph applies when:

(1) You value unprocessed gas under §1206.141(b) or residue gas and gas plant products under §1206.142(b) based on a sale at a point off of the lease, unit, or communitized area where the residue gas, gas plant products, or unprocessed gas is produced; and

(2)(i) The movement to the sales point is not gathering.

(ii) For gas produced on the OCS, the movement of gas from the wellhead to the first platform is not transportation.

(b) You must calculate the deduction for transportation costs based on your or your affiliate's cost of transporting each product through each individual transportation system. If your or your affiliate's transportation contract includes more than one product in a gaseous phase, you must allocate costs consistently and equitably to each of the products transported. Your allocation must use the same proportion as the ratio of the volume of each product (excluding waste products with no value) to the volume of all products in the gaseous phase (excluding waste products with no value).

(1) You may not take an allowance for transporting lease production that is not royalty-bearing.

(2) You may propose to ONRR a prospective cost allocation method based on the values of the products transported. ONRR will approve the method if it is consistent with the purposes of the regulations in this subpart.

(3) You may use your proposed procedure to calculate a transportation allowance beginning with the production month following the month when ONRR received your proposed procedure until ONRR accepts or rejects your cost allocation. If ONRR rejects your cost allocation, you must amend your Form ONRR-2014 for the months when you used the rejected method and pay any additional royalty due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(c)(1) Where you or your affiliate transport(s) both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to ONRR.

(2) You may use your proposed procedure to calculate a transportation allowance until ONRR accepts or rejects your cost allocation. If ONRR rejects your cost allocation, you must amend your Form ONRR-2014 for the months when you used the rejected method and pay any additional royalty due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(3) You must submit your initial proposal, including all available data, within three months after you first claim the allocated deductions on Form ONRR-2014.

(d) If you value unprocessed gas under § 1206.141(c) or residue gas and gas plant products under § 1206.142 (d), you may not take a transportation allowance.

(e)(1) Your transportation allowance may not exceed 50 percent of the value of the residue gas, gas plant products, or unprocessed gas as determined under § 1206.141 or § 1206.142.

(2) If ONRR approved your request to take a transportation allowance in excess of the 50-percent limitation under former § 1206.156(c)(3), that approval is terminated as of January 1, 2017.

(f) You must express transportation allowances for residue gas, gas plant products, or unprocessed gas as a dollar-value equivalent. If your or your affiliate's payments for transportation under a contract are not on a dollar-per-unit basis, you must convert whatever consideration that you or your affiliate are/is paid to a dollar-value equivalent.

(g) ONRR may determine your transportation allowance under § 1206.144 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length transportation contract does not reflect the reasonable cost of the transportation because you breached your duty to market the gas, residue gas, or gas plant products for the mutual benefit of yourself and the lessor by transporting your gas,

residue gas, or gas plant products at a cost that is unreasonably high. We may consider a transportation allowance unreasonably high if it is 10 percent higher than the highest reasonable measures of transportation costs, including, but not limited to, transportation allowances reported to ONRR and tariffs for gas, residue gas, or gas plant products transported through the same system; or

(3) ONRR cannot determine if you properly calculated a transportation allowance under § 1206.153 or § 1206.154 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart B.

(h) You do not need ONRR's approval before reporting a transportation allowance.

§ 1206.153 How do I determine a transportation allowance if I have an arm's-length transportation contract?

(a)(1) If you or your affiliate incur transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred, as more fully explained in paragraph (b) of this section, except as provided in § 1206.152(g) and subject to the limitation in § 1206.152(e).

(2) You must be able to demonstrate that your or your affiliate's contract is arm's-length.

(b) Subject to the requirements of paragraph (c) of this section, you may include, but are not limited to, the following costs to determine your transportation allowance under paragraph (a) of this section; you may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section:

(1) *Firm demand charges paid to pipelines.* You may deduct firm demand charges or capacity reservation fees that you or your affiliate paid to a pipeline, including charges or fees for unused firm capacity that you or your affiliate have not sold before you report your allowance. If you or your affiliate receive(s) a payment from any

party for release or sale of firm capacity after reporting a transportation allowance that included the cost of that unused firm capacity, or if you or your affiliate receive(s) a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the firm demand charge claimed on Form ONRR-2014 by the amount of that payment. You must modify Form ONRR-2014 by the amount received or credited for the affected reporting period and pay any resulting royalty due, plus late payment interest calculated under §§1218.54 and 1218.102 of this chapter.

(2) *Gas Supply Realignment (GSR) costs.* The GSR costs result from a pipeline reforming or terminating supply contracts with producers in order to implement the restructuring requirements of FERC Orders in 18 CFR part 284.

(3) *Commodity charges.* The commodity charge allows the pipeline to recover the costs of providing service.

(4) *Wheeling costs.* Hub operators charge a wheeling cost for transporting gas from one pipeline to either the same or another pipeline through a market center or hub. A hub is a connected manifold of pipelines through which a series of incoming pipelines are interconnected to a series of outgoing pipelines.

(5) *Gas Research Institute (GRI) fees.* The GRI conducts research, development, and commercialization programs on natural gas-related topics for the benefit of the U.S. gas industry and gas customers. GRI fees are allowable, provided that such fees are mandatory in FERC-approved tariffs.

(6) *Annual Charge Adjustment (ACA) fees.* FERC charges these fees to pipelines to pay for its operating expenses.

(7) *Payments (either volumetric or in value) for actual or theoretical losses.* Theoretical losses are not deductible in transportation arrangements unless the transportation allowance is based on arm's-length transportation rates charged under a FERC or State regulatory-approved tariff. If you or your affiliate receive(s) volumes or credit for line gain, you must reduce your transportation allowance accordingly and pay any resulting royalties plus

late payment interest calculated under §§1218.54 and 1218.102 of this chapter;

(8) *Temporary storage services.* This includes short-duration storage services that market centers or hubs (commonly referred to as “parking” or “banking”) offer or other temporary storage services that pipeline transporters provide, whether actual or provided as a matter of accounting. Temporary storage is limited to 30 days or fewer.

(9) *Supplemental costs for compression, dehydration, and treatment of gas.* ONRR allows these costs only if such services are required for transportation and exceed the services necessary to place production into marketable condition required under §1206.146.

(10) *Costs of surety.* You may deduct the costs of securing a letter of credit, or other surety, that the pipeline requires you or your affiliate, as a shipper, to maintain under a transportation contract.

(11) *Hurricane surcharges.* You may deduct hurricane surcharges that you or your affiliate actually pay(s).

(c) You may not include the following costs to determine your transportation allowance under paragraph (a) of this section:

(1) *Fees or costs incurred for storage.* This includes storing production in a storage facility, whether on or off of the lease, for more than 30 days.

(2) *Aggregator/marketer fees.* This includes fees that you or your affiliate pay(s) to another person (including your affiliates) to market your gas, including purchasing and reselling the gas or finding or maintaining a market for the gas production.

(3) *Penalties that you or your affiliate incur(s) as a shipper.* These penalties include, but are not limited to:

(i) *Over-delivery cash-out penalties.* This includes the difference between the price that the pipeline pays to you or your affiliate for over-delivered volumes outside of the tolerances and the price that you or your affiliate receive(s) for over-delivered volumes within the tolerances.

(ii) *Scheduling penalties.* This includes penalties that you or your affiliate incur(s) for differences between daily volumes delivered into the pipeline and

volumes scheduled or nominated at a receipt or delivery point.

(iii) *Imbalance penalties.* This includes penalties that you or your affiliate incur(s) (generally on a monthly basis) for differences between volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point.

(iv) *Operational penalties.* This includes fees that you or your affiliate incur(s) for violation of the pipeline's curtailment or operational orders issued to protect the operational integrity of the pipeline.

(4) *Intra-hub transfer fees.* These are fees that you or your affiliate pay(s) to hub operators for administrative services (such as title transfer tracking) necessary to account for the sale of gas within a hub.

(5) *Fees paid to brokers.* This includes fees that you or your affiliate pay(s) to parties who arrange marketing or transportation, if such fees are separately identified from aggregator/marketer fees.

(6) *Fees paid to scheduling service providers.* This includes fees that you or your affiliate pay(s) to parties who provide scheduling services, if such fees are separately identified from aggregator/marketer fees.

(7) *Internal costs.* This includes salaries and related costs, rent/space costs, office equipment costs, legal fees, and other costs to schedule, nominate, and account for the sale or movement of production.

(8) *Other non-allowable costs.* Any cost you or your affiliate incur(s) for services that you are required to provide at no cost to the lessor, including, but not limited to, costs to place your gas, residue gas, or gas plant products into marketable condition disallowed under § 1206.146 and costs of boosting residue gas disallowed under § 1202.151(b).

(d) If you have no written contract for the transportation of gas, then ONRR will determine your transportation allowance under § 1206.144. You may not use this paragraph (d) if you or your affiliate perform(s) your own transportation.

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.148(a).

(2) You may use that method to determine your allowance until ONRR issues its determination.

§ 1206.154 How do I determine a transportation allowance if I have a non-arm's-length transportation contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length transportation contract, including situations where you or your affiliate provide your own transportation services. You must calculate your transportation allowance based on your or your affiliate's reasonable, actual costs for transportation during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (e), (f), and (g) of this section.

(2) Overhead under paragraph (h) of this section.

(3) Depreciation and a return on undepreciated capital investment under paragraph (i)(1) of this section, or you may elect to use a cost equal to a return on the initial depreciable capital investment in the transportation system under paragraph (i)(2) of this section. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(4) A return on the reasonable salvage value under paragraph (i)(1)(iii) of this section, after you have depreciated the transportation system to its reasonable salvage value.

(c)(1) To the extent not included in costs identified in paragraphs (e) through (g) of this section, if you or your affiliate incur(s) the actual transportation costs listed under § 1206.153(b)(2), (5), and (6) under your or your affiliate's non-arm's-length contract, you may include those costs in your calculations under this section. You may not include any of the other costs identified under § 1206.153(b).

(2) You may not include in your calculations under this section any of the non-allowable costs listed under § 1206.153(c).

(d) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(e) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the transportation system.

(f) Allowable operating expenses include the following:

(1) Operations supervision and engineering.

(2) Operations labor.

(3) Fuel.

(4) Utilities.

(5) Materials.

(6) Ad valorem property taxes.

(7) Rent.

(8) Supplies.

(9) Any other directly allocable and attributable operating expense that you can document.

(g) Allowable maintenance expenses include the following:

(1) Maintenance of the transportation system.

(2) Maintenance of equipment.

(3) Maintenance labor.

(4) Other directly allocable and attributable maintenance expenses that you can document.

(h) Overhead, directly attributable and allocable to the operation and maintenance of the transportation system, is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(i)(1) To calculate depreciation and a return on undepreciated capital investment, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves that the transportation system services, or you may elect to use a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month fol-

lowing the month when ONRR received your change request.

(i) A change in ownership of a transportation system will not alter the depreciation schedule that the original transporter/lessee established for the purposes of the allowance calculation.

(ii) You may depreciate a transportation system only once with or without a change in ownership.

(iii)(A) To calculate the return on undepreciated capital investment, you may use an amount equal to the undepreciated capital investment in the transportation system multiplied by the rate of return that you determine under paragraph (i)(3) of this section.

(B) After you have depreciated a transportation system to the reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the reasonable salvage value multiplied by a rate of return under paragraph (i)(3) of this section.

(2) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (i)(3) of this section. You may not include depreciation in your allowance.

(3) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(i) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(ii) You must re-determine the rate at the beginning of each subsequent calendar year.

§ 1206.155 What are my reporting requirements under an arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR-2014 to notify ONRR of an allowance based on transportation costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.156 What are my reporting requirements under a non-arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR-2014 to notify ONRR of an allowance based on non-arm's-length transportation costs that you or your affiliate incur(s).

(b)(1) For new non-arm's-length transportation facilities or arrangements, you must base your initial deduction on estimates of allowable transportation costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the transportation system as your estimate. If such data is not available, you must use estimates based on data for similar transportation systems.

(3) Section 1206.158 applies when you amend your report based on your actual costs.

(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.157 What interest and penalties apply if I improperly report a transportation allowance?

(a)(1) If ONRR determines that you took an unauthorized transportation allowance, then you must pay any additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter.

(2) If you understated your transportation allowance, you may be entitled to a credit, with interest.

(b) If you deduct a transportation allowance on Form ONRR-2014 that exceeds 50 percent of the value of the gas, residue gas, or gas plant products transported, you must pay late payment interest on the excess allowance amount taken from the date when that

amount is taken until the date when you pay the additional royalties due.

(c) If you improperly net a transportation allowance against the sales value of the residue gas, gas plant products, or unprocessed gas instead of reporting the allowance as a separate entry on Form ONRR-2014, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.158 What reporting adjustments must I make for transportation allowances?

(a) If your actual transportation allowance is less than the amount that you claimed on Form ONRR-2014 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under §§ 1218.54 and 1218.102 of this chapter from the date when you took the deduction to the date when you repay the difference.

(b) If the actual transportation allowance is greater than the amount that you claimed on Form ONRR-2014 for any month during the period reported on the allowance form, you are entitled to a credit, plus interest.

§ 1206.159 What general processing allowances requirements apply to me?

(a)(1) When you value any gas plant product under § 1206.142(c), you may deduct from the value the reasonable, actual costs of processing.

(2) You do not need ONRR's approval before reporting a processing allowance.

(b) You must allocate processing costs among the gas plant products. You must determine a separate processing allowance for each gas plant product and processing plant relationship. ONRR considers NGLs to be one product.

(c)(1) You may not apply the processing allowance against the value of the residue gas.

(2) The processing allowance deduction on the basis of an individual product may not exceed 66% percent of the value of each gas plant product determined under § 1206.142(c). Before you calculate the 66%-percent limit, you must first reduce the value for any transportation allowances related to

§ 1206.160

30 CFR Ch. XII (7–1–17 Edition)

post-processing transportation authorized under § 1206.152.

(3) If ONRR approved your request to take a processing allowance in excess of the limitation in paragraph (c)(2) of this section under former § 1206.158(c)(3), that approval is terminated as of January 1, 2017.

(4) If ONRR approved your request to take an extraordinary cost processing allowance under former § 1206.158(d), ONRR terminates that approval as of January 1, 2017.

(d)(1) ONRR will not allow a processing cost deduction for the costs of placing lease products in marketable condition, including dehydration, separation, compression, or storage, even if those functions are performed off the lease or at a processing plant.

(2) Where gas is processed for the removal of acid gases, commonly referred to as “sweetening,” ONRR will not allow processing cost deductions for such costs unless the acid gases removed are further processed into a gas plant product.

(i) In such event, you are eligible for a processing allowance determined under this subpart.

(ii) ONRR will not grant any processing allowance for processing lease production that is not royalty bearing.

(e) ONRR may determine your processing allowance under § 1206.144 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm’s-length processing contract does not reflect the reasonable cost of the processing because you breached your duty to market the gas, residue gas, or gas plant products for the mutual benefit of yourself and the lessor by processing your gas, residue gas, or gas plant products at a cost that is unreasonably high. We may consider a processing allowance unreasonable if it is 10 percent higher than the highest reasonable measures of processing costs, including, but not limited to, processing allowances reported to ONRR; or

(3) ONRR cannot determine if you properly calculated a processing allowance under § 1206.160 or § 1206.161 for any reason, including, but not limited to,

your or your affiliate’s failure to provide documents that ONRR requests under 30 CFR part 1212, subpart B.

§ 1206.160 How do I determine a processing allowance if I have an arm’s-length processing contract?

(a)(1) If you or your affiliate incur processing costs under an arm’s-length processing contract, you may claim a processing allowance for the reasonable, actual costs incurred, as more fully explained in paragraph (b) of this section, except as provided in paragraphs (a)(3)(i) and (a)(3)(ii) of this section and subject to the limitation in § 1206.159(c)(2).

(2) You must be able to demonstrate that your or your affiliate’s contract is arm’s-length.

(b)(1) If your or your affiliate’s arm’s-length processing contract includes more than one gas plant product, and you can determine the processing costs for each product based on the contract, then you must determine the processing costs for each gas plant product under the contract.

(2) If your or your affiliate’s arm’s-length processing contract includes more than one gas plant product, and you cannot determine the processing costs attributable to each product from the contract, you must propose an allocation procedure to ONRR.

(i) You may use your proposed allocation procedure until ONRR issues its determination.

(ii) You must submit all relevant data to support your proposal.

(iii) ONRR will determine the processing allowance based upon your proposal and any additional information that ONRR deems necessary.

(iv) You must submit the allocation proposal within three months of claiming the allocated deduction on Form ONRR-2014.

(3) You may not take an allowance for the costs of processing lease production that is not royalty-bearing.

(4) If your or your affiliate’s payments for processing under an arm’s-length contract are not based on a dollar-per-unit basis, you must convert whatever consideration that you or your affiliate paid to a dollar-value equivalent.

(c) If you have no written contract for the arm's-length processing of gas, then ONRR will determine your processing allowance under §1206.144. You may not use this paragraph (c) if you or your affiliate perform(s) your own processing.

(1) You must propose to ONRR a method to determine the allowance using the procedures in §1206.148(a).

(2) You may use that method to determine your allowance until ONRR issues a determination.

§ 1206.161 How do I determine a processing allowance if I have a non-arm's-length processing contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length processing contract, including situations where you or your affiliate provide your own processing services. You must calculate your processing allowance based on your or your affiliate's reasonable, actual costs for processing during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (d), (e), and (f) of this section.

(2) Overhead under paragraph (g) of this section.

(3) Depreciation and a return on undepreciated capital investment in accordance with paragraph (h)(1) of this section, or you may elect to use a cost equal to the initial depreciable capital investment in the processing plant under paragraph (h)(2) of this section. After you have elected to use either method for a processing plant, you may not later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(4) A return on the reasonable salvage value under paragraph (h)(1)(iii) of this section, after you have depreciated the processing plant to its reasonable salvage value.

(c) You may not use any cost as a deduction that duplicates all or part of

any other cost that you use under this section.

(d) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment), which are an integral part of the processing plant.

(e) Allowable operating expenses include the following:

(1) Operations supervision and engineering.

(2) Operations labor.

(3) Fuel.

(4) Utilities.

(5) Materials.

(6) Ad valorem property taxes.

(7) Rent.

(8) Supplies.

(9) Any other directly allocable and attributable operating expense that you can document.

(f) Allowable maintenance expenses may include the following:

(1) Maintenance of the processing plant.

(2) Maintenance of equipment.

(3) Maintenance labor.

(4) Other directly allocable and attributable maintenance expenses that you can document.

(g) Overhead, directly attributable and allocable to the operation and maintenance of the processing plant, is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(h)(1) To calculate depreciation and a return on undepreciated capital investment, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves that the processing plant services, or you may elect to use a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(i) A change in ownership of a processing plant will not alter the depreciation schedule that the original processor/lessee established for purposes of the allowance calculation.

§ 1206.162

30 CFR Ch. XII (7–1–17 Edition)

(ii) You may depreciate a processing plant only once with or without a change in ownership.

(iii)(A) To calculate a return on undepreciated capital investment, you may use an amount equal to the undepreciated capital investment in the processing plant multiplied by the rate of return that you determine under paragraph (h)(3) of this section.

(B) After you have depreciated a processing plant to its reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the reasonable salvage value multiplied by a rate of return under paragraph (h)(3) of this section.

(2) You may use as a cost an amount equal to the allowable initial capital investment in the processing plant multiplied by the rate of return determined under paragraph (h)(3) of this section. You may not include depreciation in your allowance.

(3) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(i) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(ii) You must re-determine the rate at the beginning of each subsequent calendar year.

(i)(1) You must determine the processing allowance for each gas plant product based on your or your affiliate's reasonable and actual cost of processing the gas. You must base your allocation of costs to each gas plant product upon generally accepted accounting principles.

(2) You may not take an allowance for processing lease production that is not royalty-bearing.

(j) You may apply for an exception from the requirement to calculate actual costs under paragraphs (a) and (b) of this section.

(1) ONRR will grant the exception if:

(i) You have or your affiliate has arm's-length contracts for processing other gas production at the same processing plant; and

(ii) At least 50 percent of the gas processed annually at the plant is processed under arm's-length processing contracts.

(2) If ONRR grants the exception, you must use as your processing allowance the volume-weighted average prices charged to other persons under arm's-length contracts for processing at the same plant.

§ 1206.162 What are my reporting requirements under an arm's-length processing contract?

(a) You must use a separate entry on Form ONRR-2014 to notify ONRR of an allowance based on arm's-length processing costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length processing contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.163 What are my reporting requirements under a non-arm's-length processing contract?

(a) You must use a separate entry on Form ONRR-2014 to notify ONRR of an allowance based on non-arm's-length processing costs that you or your affiliate incur(s).

(b)(1) For new non-arm's-length processing facilities or arrangements, you must base your initial deduction on estimates of allowable gas processing costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the processing plant as your estimate, if available. If such data is not available, you must use estimates based on data for similar processing plants.

(3) Section 1206.165 applies when you amend your report based on your actual costs.

(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(d) If you are authorized under § 1206.161(j) to use an exception to the requirement to calculate your actual processing costs, you must follow the reporting requirements of § 1206.162.

§ 1206.164 What interest and penalties apply if I improperly report a processing allowance?

(a)(1) If ONRR determines that you took an unauthorized processing allowance, then you must pay any additional royalties due, plus late payment interest calculated under §§1218.54 and 1218.102 of this chapter.

(2) If you understated your processing allowance, you may be entitled to a credit, with interest.

(b) If you deduct a processing allowance on Form ONRR-2014 that exceeds 66⅔ percent of the value of a gas plant product, you must pay late payment interest on the excess allowance amount taken from the date when that amount is taken until the date when you pay the additional royalties due.

(c) If you improperly net a processing allowance against the sales value of a gas plant product instead of reporting the allowance as a separate entry on Form ONRR-2014, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.165 What reporting adjustments must I make for processing allowances?

(a) If your actual processing allowance is less than the amount that you claimed on Form ONRR-2014 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under §§1218.54 and 1218.102 of this chapter from the date when you took the deduction to the date when you repay the difference.

(b) If the actual processing allowance is greater than the amount that you claimed on Form ONRR-2014 for any month during the period reported on the allowance form, you are entitled to a credit, plus interest.

Subpart E—Indian Gas

SOURCE: 64 FR 43515, Aug. 10, 1999, unless otherwise noted.

§ 1206.170 What does this subpart contain?

This subpart contains royalty valuation provisions applicable to Indian lessees.

(a) This subpart applies to all gas production from Indian (tribal and al-

lotted) oil and gas leases (except leases on the Osage Indian Reservation). The purpose of this subpart is to establish the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms. This subpart does not apply to Federal leases.

(b) If the specific provisions of any Federal statute, treaty, negotiated agreement, settlement agreement resulting from any administrative or judicial proceeding, or Indian oil and gas lease are inconsistent with any regulation in this subpart, then the Federal statute, treaty, negotiated agreement, settlement agreement, or lease will govern to the extent of that inconsistency.

(c) You may calculate the value of production for royalty purposes under methods other than those the regulations in this title require, but only if you, the tribal lessor, and ONRR jointly agree to the valuation methodology. For leases on Indian allotted lands, you and ONRR must agree to the valuation methodology.

(d) All royalty payments you make to ONRR are subject to monitoring, review, audit, and adjustment.

(e) The regulations in this subpart are intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian oil and gas leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

§ 1206.171 What definitions apply to this subpart?

The following definitions apply to this subpart and to subpart J of part 1202 of this title:

Accounting for comparison means the same as dual accounting.

Active spot market means a market where one or more ONRR-acceptable publications publish bidweek prices (or if bidweek prices are not available, first of the month prices) for at least one index-pricing point in the index zone.

Allowance means a deduction in determining value for royalty purposes. Processing allowance means an allowance for the reasonable, actual costs of processing gas determined under this

subpart. Transportation allowance means an allowance for the reasonable, actual cost of transportation determined under this subpart.

Approved Federal Agreement (AFA) means a unit or communitization agreement approved under departmental regulations.

Area means a geographic region at least as large as the defined limits of an oil or gas field, in which oil or gas lease products have similar quality, economic, or legal characteristics. An area may be all lands within the boundaries of an Indian reservation.

Arm's-length contract means a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. The following percentages (based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership) determine if persons are affiliated:

(1) Ownership in excess of 50 percent constitutes control.

(2) Ownership of 10 through 50 percent creates a presumption of control.

(3) Ownership of less than 10 percent creates a presumption of noncontrol which ONRR may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates. Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. ONRR may require the lessee to certify the percentage of ownership or control of the entity. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month as well as when the contract was executed.

Audit means a review, conducted under generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other persons who pay royalties, rents, or bonuses on Indian leases.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

BLM means the Bureau of Land Management of the Department of the Interior.

Compression means raising the pressure of gas.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

Dedicated means a contractual commitment to deliver gas production (or a specified portion of production) from a lease or well when that production is specified in a sales contract and that production must be sold pursuant to that contract to the extent that production occurs from that lease or well.

Drip condensate means any condensate recovered downstream of the facility measurement point without resorting to processing. Drip condensate includes condensate recovered as a result of its becoming a liquid during the transportation of the gas removed from the lease or recovered at the inlet of a gas processing plant by mechanical means, often referred to as scrubber condensate.

Dual Accounting (or *accounting for comparison*) refers to the requirement to pay royalty based on a value which is the higher of the value of gas prior to processing less any applicable allowances as compared to the combined value of drip condensate, residue gas, and gas plant products after processing, less applicable allowances.

Entitlement (or *entitled share*) means the gas production from a lease, or allocable to lease acreage under the terms of an AFA, multiplied by the operating rights owner's percentage of interest ownership in the lease or the acreage.

Facility measurement point (or *point of royalty settlement*) means the point where the BLM-approved measurement device is located for determining the

volume of gas removed from the lease. The facility measurement point may be on the lease or off-lease with BLM approval.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located.

Gas means any fluid, either combustible or noncombustible, hydrocarbon or nonhydrocarbon, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely. It is a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

Gas plant products means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas. However, it does not include residue gas.

Gathering means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area; or a central accumulation or treatment point off the lease, unit, or communitized area as approved by BLM operations personnel.

Gross proceeds (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of unprocessed gas, residue gas, and gas plant products produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as compression, dehydration, measurement, or field gathering to the extent that the lessee is obligated to perform them at no cost to the Indian lessor, and payments for gas processing rights. Gross proceeds, as applied to gas, also includes but is not limited to reimbursements for severance taxes and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Indian royalty interest is exempt

from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

Index means the calculated composite price (\$/MMBtu) of spot-market sales published by a publication that meets ONRR-established criteria for acceptability at the index-pricing point.

Index-pricing point (IPP) means any point on a pipeline for which there is an index.

Index zone means a field or an area with an active spot market and published indices applicable to that field or area that are acceptable to ONRR under § 1206.172(d)(2).

Indian allottee means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

Indian tribe means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context. For purposes of this subpart, this definition excludes Federal leases.

Lease products means any leased minerals attributable to, originating from, or allocated to a lease.

Lessee means any person to whom the United States, a tribe, and/or individual Indian landowner issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease (including operating rights owners) as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

Like-quality lease products means lease products which have similar chemical, physical, and legal characteristics.

Marketable condition means a condition in which lease products are sufficiently free from impurities and otherwise so conditioned that a purchaser will accept them under a sales contract typical for the field or area.

Minimum royalty means that minimum amount of annual royalty that the lessee must pay as specified in the lease or in applicable leasing regulations.

Natural gas liquids (NGL's) means those gas plant products consisting of ethane, propane, butane, or heavier liquid hydrocarbons.

Net-back method (or *work-back method*) means a method for calculating market value of gas at the lease under which costs of transportation, processing, and manufacturing are deducted from the proceeds received for, or the value of, the gas, residue gas, or gas plant products, and any extracted, processed, or manufactured products, at the first point at which reasonable values for any such products may be determined by a sale under an arm's-length contract or comparison to other sales of such products.

Net output means the quantity of residue gas and each gas plant product that a processing plant produces.

Net profit share means the specified share of the net profit from production of oil and gas as provided in the agreement.

ONRR means the Office of Natural Resources Revenue, Department of the Interior. ONRR includes, where appropriate, tribal auditors acting under agreements under the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* or other applicable agreements.

Operating rights owner (or *working interest owner*) means any person who owns operating rights in a lease subject to this subpart. A record title owner is the owner of operating rights under a lease except to the extent that the operating rights or a portion thereof have been transferred from record title (see BLM regulations at 43 CFR 3100.0-5(d)).

Person means any individual, firm, corporation, association, partnership,

consortium, or joint venture (when established as a separate entity).

Point of royalty measurement means the same as facility measurement point.

Processing means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, desulphurization (or "sweetening"), and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

Residue gas means that hydrocarbon gas consisting principally of methane resulting from processing gas.

Sales type code means the contract type or general disposition (e.g., arm's-length or non-arm's-length) of production from the lease. The sales type code applies to the sales contract, or other disposition, and not to the arm's-length or non-arm's-length nature of a transportation or processing allowance.

Spot sales agreement means a contract wherein a seller agrees to sell to a buyer a specified amount of unprocessed gas, residue gas, or gas plant products at a specified price over a fixed period, usually of short duration. It also does not normally require a cancellation notice to terminate, and does not contain an obligation, or imply an intent, to continue in subsequent periods.

Takes means when the operating rights owner sells or removes production from, or allocated to, the lease, or when such sale or removal occurs for the benefit of an operating rights owner.

Work-back method means the same as net-back method.

[64 FR 43515, Aug. 10, 1999, as amended at 73 FR 15891, Mar. 26, 2008]

§ 1206.172 How do I value gas produced from leases in an index zone?

(a) *What leases this section applies to.* This section explains how lessees must value, for royalty purposes, gas produced from Indian leases located in an

index zone. For other leases, value must be determined under § 1206.174.

(1) You must use the valuation provision of this section if your lease is in an index zone and meets one of the following two requirements:

- (i) Has a major portion provision;
- (ii) Does not have a major portion provision, but provides for the Secretary to determine the value of production.

(2) This section does not apply to carbon dioxide, nitrogen, or other non-hydrocarbon components of the gas stream. However, if they are recovered and sold separately from the gas stream, you must determine the value of these products under § 1206.174.

(b) *Valuing residue gas and gas before processing.* (1) Except as provided in paragraphs (e), (f), and (g) of this section, this paragraph (b) explains how you must value the following four types of gas:

- (i) Gas production before processing;
- (ii) Gas production that you certify on Form ONRR-4410, Certification for Not Performing Accounting for Comparison (Dual Accounting), is not processed before it flows into a pipeline with an index but which may be processed later;
- (iii) Residue gas after processing; and
- (iv) Gas that is never processed.

(2) The value of gas production that is not sold under an arm's-length dedicated contract is the index-based value determined under paragraph (d) of this section unless the gas was subject to a previous contract which was part of a gas contract settlement. If the previous contract was subject to a gas contract settlement and if the royalty-bearing contract settlement proceeds per MMBtu added to the 80 percent of the safety net prices calculated at § 1206.172(e)(4)(i) exceeds the index-based value that applies to the gas under this section (including any adjustments required under § 1206.176), then the value of the gas is the higher of the value determined under this section (including any adjustments required under § 1206.176) or § 1206.174.

(3) The value of gas production that is sold under an arm's-length dedicated contract is the higher of the index-based value under paragraph (d) of this

section or the value of that production determined under § 1206.174(b).

(c) *Valuing gas that is processed before it flows into a pipeline with an index.* Except as provided in paragraphs (e), (f), and (g) of this section, this paragraph (c) explains how you must value gas that is processed before it flows into a pipeline with an index. You must value this gas production based on the higher of the following two values:

(1) The value of the gas before processing determined under paragraph (b) of this section.

(2) The value of the gas after processing, which is either the alternative dual accounting value under § 1206.173 or the sum of the following three values:

- (i) The value of the residue gas determined under paragraph (b)(2) or (3) of this section, as applicable;
- (ii) The value of the gas plant products determined under § 1206.174, less any applicable processing and/or transportation allowances determined under this subpart; and
- (iii) The value of any drip condensate associated with the processed gas determined under subpart B of this part.

(d) *Determining the index-based value for gas production.* (1) To determine the index-based value per MMBtu for production from a lease in an index zone, you must use the following procedures:

(i) For each ONRR-approved publication, calculate the average of the highest reported prices for all index-pricing points in the index zone, except for any prices excluded under paragraph (d)(6) of this section;

(ii) Sum the averages calculated in paragraph (d)(1)(i) of this section and divide by the number of publications; and

(iii) Reduce the number calculated under paragraph (d)(1)(ii) of this section by 10 percent, but not by less than 10 cents per MMBtu or more than 30 cents per MMBtu. The result is the index-based value per MMBtu for production from all leases in that index zone.

(2) ONRR will publish in the FEDERAL REGISTER the index zones that are eligible for the index-based valuation method under this paragraph. ONRR will monitor the market activity in the index zones and, if necessary, hold a

technical conference to add or modify a particular index zone. Any change to the index zones will be published in the FEDERAL REGISTER. ONRR will consider the following five factors and conditions in determining eligible index zones:

- (i) Areas for which ONRR-approved publications establish index prices that accurately reflect the value of production in the field or area where the production occurs;
- (ii) Common markets served;
- (iii) Common pipeline systems;
- (iv) Simplification; and
- (v) Easy identification in ONRR's systems, such as counties or Indian reservations.

(3) If market conditions change so that an index-based method for determining value is no longer appropriate for an index zone, ONRR will hold a technical conference to consider disqualification of an index zone. ONRR will publish notice in the FEDERAL REGISTER if an index zone is disqualified. If an index zone is disqualified, then production from leases in that index zone cannot be valued under this paragraph.

(4) ONRR periodically will publish in the FEDERAL REGISTER a list of acceptable publications based on certain criteria, including, but not limited to the following five criteria:

- (i) Publications buyers and sellers frequently use;
- (ii) Publications frequently referenced in purchase or sales contracts;
- (iii) Publications that use adequate survey techniques, including the gathering of information from a substantial number of sales;
- (iv) Publications that publish the range of reported prices they use to calculate their index; and
- (v) Publications independent from DOI, lessors, and lessees.

(5) Any publication may petition ONRR to be added to the list of acceptable publications.

(6) ONRR may exclude an individual index price for an index zone in an ONRR-approved publication if ONRR determines that the index price does not accurately reflect the value of production in that index zone. ONRR will publish a list of excluded indices in the FEDERAL REGISTER.

(7) ONRR will reference which tables in the publications you must use for determining the associated index prices.

(8) The index-based values determined under this paragraph are not subject to deductions for transportation or processing allowances determined under §§1206.177, 1206.178, 1206.179, and 1206.180.

(e) *Determining the minimum value for royalty purposes of gas sold beyond the first index pricing point.* (1) Notwithstanding any other provision of this section, the value for royalty purposes of gas production from an Indian lease that is sold beyond the first index pricing point through which it flows cannot be less than the value determined under this paragraph (e).

(2) By June 30 following any calendar year, you must calculate for each month of that calendar year your safety net price per MMBtu using the procedures in paragraph (e)(3) of this section. You must calculate a safety net price for each month and for each index zone where you have an Indian lease for which you report and pay royalties.

(3) Your safety net price (S) for an index zone is the volume-weighted average contract price per delivered MMBtu under your or your affiliate's arm's-length contracts for the disposition of residue gas or unprocessed gas produced from your Indian leases in that index zone as computed under this paragraph (e)(3).

(i) Include in your calculation only sales under those contracts that establish a delivery point beyond the first index pricing point through which the gas flows, and that include any gas produced from or allocable to one or more of your Indian leases in that index zone, even if the contract also includes gas produced from Federal, State, or fee properties. Include in your volume-weighted average calculation those volumes that are allocable to your Indian leases in that index zone.

(ii) Do not reduce the contract price for any transportation costs incurred to deliver the gas to the purchaser.

(iii) For purposes of this paragraph (e), the contract price will not include the following amounts:

(A) Any amounts you receive in compromise or settlement of a predecessor contract for that gas;

(B) Deductions for you or any other person to put gas production into marketable condition or to market the gas; and

(C) Any amounts related to marketable securities associated with the sales contract.

(4) Next, you must determine for each month the safety net differential (SND). You must perform this calculation separately for each index zone.

(i) For each index zone, the safety net differential is equal to: $SND = [(0.80 \times S) - (1.25 \times I)]$ where (I) is the index-based value determined under 30 CFR 206.172(d).

(ii) If the safety net differential is positive you owe additional royalties.

(5)(i) To calculate the additional royalties you owe, make the following calculation for each of your Indian leases in that index zone that produced gas that was sold beyond the first index-pricing point through which the gas flowed and that was used in the calculation in paragraph (e)(3) of this section:

Lease royalties owed = $SND \times V \times R$, where R = the lease royalty rate and V = the volume allocable to the lease which produced gas that was sold beyond the first index pricing point.

(ii) If gas produced from any of your Indian leases is commingled or pooled with gas produced from non-Indian properties, and if any of the combined gas is sold at a delivery point beyond the first index pricing point through which the gas flows, then the volume allocable to each Indian lease for which gas was sold beyond the first index pricing point in the calculation under paragraph (e)(5)(i) of this section is the volume produced from the lease multiplied by the proportion that the total volume of gas sold beyond the first index pricing point bears to the total volume of gas commingled or pooled from all properties.

(iii) Add the numbers calculated for each lease under paragraph (e)(5)(i) of this section. The total is the additional royalty you owe.

(6) You have the following responsibilities to comply with the minimum value for royalty purposes:

(i) You must report the safety net price for each index zone to ONRR on Form ONRR-4411, Safety Net Report, no later than June 30 following each calendar year;

(ii) You must pay and report on Form ONRR-2014 additional royalties due no later than June 30 following each calendar year; and

(iii) ONRR may order you to amend your safety net price within one year from the date your Form ONRR-4411 is due or is filed, whichever is later. If ONRR does not order any amendments within that one-year period, your safety net price calculation is final.

(f) *Excluding some or all tribal leases from valuation under this section.* (1) An Indian tribe may ask ONRR to exclude some or all of its leases from valuation under this section. ONRR will consult with BIA regarding the request.

(i) If ONRR approves the request for your lease, you must value your production under §1206.174 beginning with production on the first day of the second month following the date ONRR publishes notice of its decision in the FEDERAL REGISTER.

(ii) If an Indian tribe requests exclusion from an index zone for less than all of its leases, ONRR will approve the request only if the excluded leases may be segregated into one or more groups based on separate fields within the reservation.

(2) An Indian tribe may ask ONRR to terminate exclusion of its leases from valuation under this section. ONRR will consult with BIA regarding the request.

(i) If ONRR approves the request, you must value your production under §1206.172 beginning with production on the first day of the second month following the date ONRR publishes notice of its decision in the FEDERAL REGISTER.

(ii) Termination of an exclusion under paragraph (f)(2)(i) of this section cannot take effect earlier than 1 year after the first day of the production month that the exclusion was effective.

(3) The Indian tribe's request to ONRR under either paragraph (f)(1) or (2) of this section must be in the form of a tribal resolution.

(g) *Excluding Indian allotted leases from valuation under this section.* (1)(i)

ONRR may exclude any Indian allotted leases from valuation under this section. ONRR will consult with BIA regarding the exclusion.

(ii) If ONRR excludes your lease, you must value your production under §1206.174 beginning with production on the first day of the second month following the date ONRR publishes notice of its decision in the FEDERAL REGISTER.

(iii) If ONRR excludes any Indian allotted leases under this paragraph (g)(1), it will exclude all Indian allotted leases in the same field.

(2)(i) ONRR may terminate the exclusion of any Indian allotted leases from valuation under this section. ONRR will consult with BIA regarding the termination.

(ii) If ONRR terminates the exclusion, you must value your production under §1206.172 beginning with production on the first day of the second month following the date ONRR publishes notice of its decision in the FEDERAL REGISTER.

§ 1206.173 How do I calculate the alternative methodology for dual accounting?

(a) *Electing a dual accounting method.*

(1) If you are required to perform the accounting for comparison (dual accounting) under §1206.176, you have two choices. You may elect to perform the dual accounting calculation according to either §1206.176(a) (called actual dual accounting), or paragraph (b) of this section (called the alternative methodology for dual accounting).

(2) You must make a separate election to use the alternative methodology for dual accounting for your Indian leases in each ONRR-designated area. Your election for a designated area must apply to all of your Indian leases in that area.

(i) ONRR will publish in the FEDERAL REGISTER a list of the lease prefixes that will be associated with each designated area for purposes of this section. The ONRR-designated areas are as follows:

- (A) Alabama-Coushatta;
- (B) Blackfeet Reservation;
- (C) Crow Reservation;
- (D) Fort Belknap Reservation;
- (E) Fort Berthold Reservation;

- (F) Fort Peck Reservation;
- (G) Jicarilla Apache Reservation;
- (H) ONRR-designated groups of counties in the State of Oklahoma;
- (I) Navajo Reservation;
- (J) Northern Cheyenne Reservation;
- (K) Rocky Boys Reservation;
- (L) Southern Ute Reservation;
- (M) Turtle Mountain Reservation;
- (N) Ute Mountain Ute Reservation;
- (O) Uintah and Ouray Reservation;
- (P) Wind River Reservation; and

(Q) Any other area that ONRR designates. ONRR will publish a new area designation in the FEDERAL REGISTER.

(ii) You may elect to begin using the alternative methodology for dual accounting at the beginning of any month. The first election to use the alternative methodology will be effective from the time of election through the end of the following calendar year. Thereafter, each election to use the alternative methodology must remain in effect for 2 calendar years. You may return to the actual dual accounting method only at the beginning of the next election period or with the written approval of ONRR and the tribal lessor for tribal leases, and ONRR for Indian allottee leases in the designated area.

(iii) When you elect to use the alternative methodology for a designated area, you must also use the alternative methodology for any new wells commenced and any new leases acquired in the designated area during the term of the election.

(b) *Calculating value using the alternative methodology for dual accounting.*

(1) The alternative methodology adjusts the value of gas before processing determined under either §1206.172 or §1206.174 to provide the value of the gas after processing. You must use the value of the gas after processing for royalty payment purposes. The amount of the increase depends on your relationship with the owner(s) of the plant where the gas is processed. If you have no direct or indirect ownership interest in the processing plant, then the increase is lower, as provided in the table in paragraph (b)(2)(ii) of this section. If you have a direct or indirect ownership interest in the plant where the gas is processed, the increase is higher, as

provided in paragraph (b)(2)(ii) of this section.

(2) To calculate the value of the gas after processing using the alternative methodology for dual accounting, you must apply the increase to the value before processing, determined in either § 1206.172 or § 1206.174, as follows:

(i) Value of gas after processing = (value determined under either § 1206.172 or § 1206.174, as applicable) × (1 + increment for dual accounting); and

(ii) In this equation, the increment for dual accounting is the number you take from the applicable Btu range, determined under paragraph (b)(3) of this section, in the following table:

BTU range	Increment if Lessee has no ownership interest in plant	Increment if lessee has an ownership interest in plant
1001 to 1050	.0275	.0375
1051 to 1100	.0400	.0625
1101 to 1150	.0425	.0750
1151 to 1200	.0700	.1225
1201 to 1250	.0975	.1700
1251 to 1300	.1175	.2050
1301 to 1350	.1400	.2400
1351 to 1400	.1450	.2500
1401 to 1450	.1500	.2600
1451 to 1500	.1550	.2700
1501 to 1550	.1600	.2800
1551 to 1600	.1650	.2900
1601 to 1650	.1850	.3225
1651 to 1700	.1950	.3425
1701 + ...	.2000	.3550

(3) The applicable Btu for purposes of this section is the volume weighted-average Btu for the lease computed from measurements at the facility measurement point(s) for gas production from the lease.

(4) If any of your gas from the lease is processed during a month, use the following two paragraphs to determine which amounts are subject to dual accounting and which dual accounting method you must use.

(i) Weighted-average Btu content determined under paragraph (b)(3) of this section is greater than 1,000 Btu's per cubic foot (Btu/cf). All gas production from the lease is subject to dual accounting and you must use the alternative method for all that gas production if you elected to use the alternative method under this section.

(ii) Weighted-average Btu content determined under paragraph (b)(3) of this section is less than or equal to 1,000 Btu/cf. Only the volumes of lease pro-

duction measured at facility measurement points whose quality exceeds 1,000 Btu/cf are subject to dual accounting, and you may use the alternative methodology for these volumes. For gas measured at facility measurement points for these leases where the quality is equal to or less than 1,000 Btu/cf, you are not required to do dual accounting.

§ 1206.174 How do I value gas production when an index-based method cannot be used?

(a) *Situations in which an index-based method cannot be used.* (1) Gas production must be valued under this section in the following situations.

(i) Your lease is not in an index zone (or ONRR has excluded your lease from an index zone).

(ii) If your lease is in an index zone and you sell your gas under an arm's-length dedicated contract, then the value of your gas is the higher of the value received under the dedicated contract determined under § 1206.174(b) or the value under § 1206.172.

(iii) Also use this section to value any other gas production that cannot be valued under § 1206.172, as well as gas plant products, and to value components of the gas stream that have no Btu value (for example, carbon dioxide, nitrogen, etc.).

(2) The value for royalty purposes of gas production subject to this subpart is the value of gas determined under this section less applicable allowances determined under this subpart.

(3) You must determine the value of gas production that is processed and is subject to accounting for comparison using the procedure in § 1206.176.

(4) This paragraph applies if your lease has a major portion provision. It also applies if your lease does not have a major portion provision but the lease provides for the Secretary to determine value.

(i) The value of production you must initially report and pay is the value determined in accordance with the other paragraphs of this section.

(ii) ONRR will determine the major portion value and notify you in the FEDERAL REGISTER of that value. The

value of production for royalty purposes for your lease is the higher of either the value determined under this section which you initially used to report and pay royalties, or the major portion value calculated under this paragraph (a)(4). If the major portion value is higher, you must submit an amended Form ONRR–2014 to ONRR by the due date specified in the written notice from ONRR of the major portion value. Late-payment interest under §1218.54 of this chapter on any underpayment will not begin to accrue until the date the amended Form ONRR–2014 is due to ONRR.

(iii) Except as provided in paragraph (a)(4)(iv) of this section, ONRR will calculate the major portion value for each designated area (which are the same designated areas as under §1206.173) using values reported for unprocessed gas and residue gas on Form ONRR–2014 for gas produced from leases on that Indian reservation or other designated area. ONRR will array the reported prices from highest to lowest price. The major portion value is that price at which 25 percent (by volume) of the gas (starting from the highest) is sold. ONRR cannot unilaterally change the major portion value after you are notified in writing of what that value is for your leases.

(iv) ONRR may calculate the major portion value using different data than the data described in paragraph (a)(4)(iii) of this section or data to augment the data described in paragraph (a)(4)(iii) of this section. This may include price data reported to the State tax authority or price data from leases ONRR has reviewed in the designated area. ONRR may use this alternate or the augmented data source beginning with production on the first day of the month following the date ONRR publishes notice in the FEDERAL REGISTER that it is calculating the major portion using a method in this paragraph (a)(4)(iv) of this section.

(b) *Arm's-length contracts.* (1) The value of gas, residue gas, or any gas plant product you sell under an arm's-length contract is the gross proceeds accruing to you or your affiliate, except as provided in paragraphs (b)(1)(ii)–(iv) of this section.

(i) You have the burden of demonstrating that your contract is arm's-length.

(ii) In conducting reviews and audits for gas valued based upon gross proceeds under this paragraph, ONRR will examine whether or not your contract reflects the total consideration actually transferred either directly or indirectly from the buyer to you or your affiliate for the gas, residue gas, or gas plant product. If the contract does not reflect the total consideration, then ONRR may require that the gas, residue gas, or gas plant product sold under that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to you or your affiliate, including the additional consideration.

(iii) If ONRR determines for gas valued under this paragraph that the gross proceeds accruing to you or your affiliate under an arm's-length contract do not reflect the value of the gas, residue gas, or gas plant products because of misconduct by or between the contracting parties, or because you otherwise have breached your duty to the lessor to market the production for the mutual benefit of you and the lessor, then ONRR will require that the gas, residue gas, or gas plant product be valued under paragraphs (c)(2) or (3) of this section. In these circumstances, ONRR will notify you and give you an opportunity to provide written information justifying your value.

(iv) This paragraph applies to situations where a pipeline purchases gas from a lessee according to a cash-out program under a transportation contract. For all over-delivered volumes, the royalty value is the price the pipeline is required to pay for volumes within the tolerances for over-delivery specified in the transportation contract. Use the same value for volumes that exceed the over-delivery tolerances even if those volumes are subject to a lower price specified in the transportation contract. However, if ONRR determines that the price specified in the transportation contract for over-delivered volumes is unreasonably low, the lessees must value all over-delivered volumes under paragraph (c)(2) or (3) of this section.

(2) ONRR may require you to certify that your arm's-length contract provisions include all of the consideration the buyer pays, either directly or indirectly, for the gas, residue gas, or gas plant product.

(c) *Non-arm's-length contracts.* If your gas, residue gas, or any gas plant product is not sold under an arm's-length contract, then you must value the production using the first applicable method of the following three methods:

(1) The gross proceeds accruing to you under your non-arm's-length contract sale (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like-quality gas in the same field (or, if necessary to obtain a reasonable sample, from the same area). For residue gas or gas plant products, the comparable arm's-length contracts must be for gas from the same processing plant (or, if necessary to obtain a reasonable sample, from nearby plants). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors will be considered: price, time of execution, duration, market or markets served, terms, quality of gas, residue gas, or gas plant products, volume, and such other factors as may be appropriate to reflect the value of the gas, residue gas, or gas plant products.

(2) A value determined by consideration of other information relevant in valuing like-quality gas, residue gas, or gas plant products, including gross proceeds under arm's-length contracts for like-quality gas in the same field or nearby fields or areas, or for residue gas or gas plant products from the same gas plant or other nearby processing plants. Other factors to consider include prices received in spot sales of gas, residue gas or gas plant products, other reliable public sources of price or market information, and other information as to the particular lease operation or the salability of such gas, residue gas, or gas plant products.

(3) A net-back method or any other reasonable method to determine value.

(d) *Supporting data.* If you determine the value of production under paragraph (c) of this section, you must retain all data relevant to the determination of royalty value.

(1) Such data will be subject to review and audit, and ONRR will direct you to use a different value if we determine upon review or audit that the value you reported is inconsistent with the requirements of these regulations.

(2) You must make all such data available upon request to the authorized ONRR or Indian representatives, to the Office of the Inspector General of the Department, or other authorized persons. This includes your arm's-length sales and volume data for like-quality gas, residue gas, and gas plant products that are sold, purchased, or otherwise obtained from the same processing plant or from nearby processing plants, or from the same or nearby field or area.

(e) *Improper values.* If ONRR determines that you have not properly determined value, you must pay the difference, if any, between royalty payments made based upon the value you used and the royalty payments that are due based upon the value ONRR established. You also must pay interest computed on that difference under §1218.54 of this chapter. If you are entitled to a credit, ONRR will provide instructions on how to take that credit.

(f) *Value guidance.* You may ask ONRR for guidance in determining value. You may propose a valuation method to ONRR. Submit all available data related to your proposal and any additional information ONRR deems necessary. ONRR will promptly review your proposal and provide you with a non-binding determination of the guidance you request.

(g) *Minimum value of production.* (1) For gas, residue gas, and gas plant products valued under this section, under no circumstances may the value of production for royalty purposes be less than the gross proceeds accruing to the lessee (including its affiliates) for gas, residue gas and/or any gas plant products, less applicable transportation allowances and processing allowances determined under this subpart.

(2) For gas plant products valued under this section and not valued under § 1206.173, the alternative methodology for dual accounting, the minimum value of production for each gas plant product is as follows:

(i) Leases in certain States and areas have specific minimum values.

(A) For production from leases in Colorado in the San Juan Basin, New Mexico, and Texas, the monthly average minimum price reported in commercial price bulletins for the gas plant product at Mont Belvieu, Texas, minus 8.0 cents per gallon.

(B) For production in Arizona, in Colorado outside the San Juan Basin, Minnesota, Montana, North Dakota, Oklahoma, South Dakota, Utah, and Wyoming, the monthly average minimum price reported in commercial price bulletins for the gas plant product at Conway, Kansas, minus 7.0 cents per gallon;

(ii) You may use any commercial price bulletin, but you must use the same bulletin for all of the calendar year. If the commercial price bulletin you are using stops publication, you may use a different commercial price bulletin for the remaining part of the calendar year; and (iii) If you use a commercial price bulletin that is published monthly, the monthly average minimum price is the bulletin's minimum price. If you use a commercial price bulletin that is published weekly, the monthly average minimum price is the arithmetic average of the bulletin's weekly minimum prices. If you use a commercial price bulletin that is published daily, the monthly average minimum price is the arithmetic average of the bulletin's minimum prices for each Wednesday in the month.

(h) *Marketable condition/Marketing.* You are required to place gas, residue gas, and gas plant products in marketable condition and market the gas for the mutual benefit of the lessee and the lessor at no cost to the Indian lessor. When your gross proceeds establish the value under this section, that value must be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services to place the gas, residue gas, or gas plant products in marketable condition or to

market the gas, the cost of which ordinarily is your responsibility.

(i) *Highest obtainable price or benefit.* For gas, residue gas, and gas plant products valued under this section, value must be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if you fail to take proper or timely action to receive prices or benefits to which you are entitled, you must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments must be in writing and signed by all parties to an arm's-length contract. If you make timely application for a price increase or benefit allowed under your contract but the purchaser refuses, and you take reasonable measures, which are documented, to force purchaser compliance, you will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph is not intended to permit you to avoid your royalty payment obligation in situations where your purchaser fails to pay, in whole or in part, or timely, for a quantity of gas, residue gas, or gas plant product.

(j) *Non-binding ONRR reviews.* Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in an ONRR redetermination of value under this section will be considered final or binding against the Federal Government or its beneficiaries until the audit period is formally closed.

(k) *Confidential information.* Certain information submitted to ONRR to support valuation proposals, including transportation allowances and processing allowances, may be exempted from disclosure under the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable laws and regulations. All requests for information about determinations made under this subpart must be submitted in accordance with

the Freedom of Information Act regulation of the Department of the Interior, 43 CFR part 2.

[64 FR 43515, Aug. 10, 1999, as amended at 65 FR 62614, Oct. 19, 2000]

§ 1206.175 How do I determine quantities and qualities of production for computing royalties?

(a) For unprocessed gas, you must pay royalties on the quantity and quality at the facility measurement point BLM either allowed or approved.

(b) For residue gas and gas plant products, you must pay royalties on your share of the monthly net output of the plant even though residue gas and/or gas plant products may be in temporary storage.

(c) If you have no ownership interest in the processing plant and you do not operate the plant, you may use the contract volume allocation to determine your share of plant products.

(d) If you have an ownership interest in the plant or if you operate it, use the following procedure to determine the quantity of the residue gas and gas plant products attributable to you for royalty payment purposes:

(1) When the net output of the processing plant is derived from gas obtained from only one lease, the quantity of the residue gas and gas plant products on which you must pay royalty is the net output of the plant.

(2) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of uniform content, the quantity of the residue gas and gas plant products allocable to each lease must be in the same proportions as the ratios obtained by dividing the amount of gas delivered to the plant from each lease by the total amount of gas delivered from all leases.

(3) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of non-uniform content, the volumes of residue gas and gas plant products allocable to each lease are based on theoretical volumes of residue gas and gas plant products measured in the lease gas stream. You must calculate the portion of net plant output of residue gas and gas plant products attributable to each lease as follows:

(i) First, compute the theoretical volumes of residue gas and of gas plant products attributable to the lease by multiplying the lease volume of the gas stream by the tested residue gas content (mole percentage) or gas plant product (GPM) content of the gas stream;

(ii) Second, calculate the theoretical volumes of residue gas and of gas plant products delivered from all leases by summing the theoretical volumes of residue gas and of gas plant products delivered from each lease; and

(iii) Third, calculate the theoretical quantities of net plant output of residue gas and of gas plant products attributable to each lease by multiplying the net plant output of residue gas, or gas plant products, by the ratio in which the theoretical volumes of residue gas, or gas plant products, is the numerator and the theoretical volume of residue gas, or gas plant products, delivered from all leases is the denominator.

(4) You may request ONRR approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. If ONRR approves a different method, it will be applicable to all gas production from your Indian leases that is processed in the same plant.

(e) You may not take any deductions from the royalty volume or royalty value for actual or theoretical losses. Any actual loss of unprocessed gas incurred prior to the facility measurement point will not be subject to royalty if BLM determines that the loss was unavoidable.

§ 1206.176 How do I perform accounting for comparison?

(a) This section applies if the gas produced from your Indian lease is processed and that Indian lease requires accounting for comparison (also referred to as actual dual accounting). Except as provided in paragraphs (b) and (c) of this section, the actual dual accounting value, for royalty purposes, is the greater of the following two values:

(1) The combined value of the following products:

(i) The residue gas and gas plant products resulting from processing the gas determined under either § 1206.172

§ 1206.177

30 CFR Ch. XII (7-1-17 Edition)

or § 1206.174, less any applicable allowances; and

(ii) Any drip condensate associated with the processed gas recovered downstream of the point of royalty settlement without resorting to processing determined under § 1206.52, less applicable allowances.

(2) The value of the gas prior to processing determined under either § 1206.172 or § 1206.174, including any applicable allowances.

(b) If you are required to account for comparison, you may elect to use the alternative dual accounting methodology provided for in § 1206.173 instead of the provisions in paragraph (a) of this section.

(c) Accounting for comparison is not required for gas if no gas from the lease is processed until after the gas flows into a pipeline with an index located in an index zone or into a mainline pipeline not in an index zone. If you do not perform dual accounting, you must certify to ONRR that gas flows into such a pipeline before it is processed.

(d) Except as provided in paragraph (e) of this section, if you value any gas production from a lease for a month using the dual accounting provisions of this section or the alternative dual accounting methodology of § 1206.173, then the value of that gas is the minimum value for any other gas production from that lease for that month flowing through the same facility measurement point.

(e) If the weighted-average Btu quality for your lease is less than 1,000 Btu's per cubic foot, see § 1206.173(b)(4)(ii) to determine if you must perform a dual accounting calculation.

TRANSPORTATION ALLOWANCES

§ 1206.177 What general requirements regarding transportation allowances apply to me?

(a) When you value gas under § 1206.174 at a point off the lease, unit, or communitized area (for example, sales point or point of value determination), you may deduct from value a transportation allowance to reflect the value, for royalty purposes, at the lease, unit, or communitized area. The allowance is based on the reasonable actual costs you incurred to transport

unprocessed gas, residue gas, or gas plant products from a lease to a point off the lease, unit, or communitized area. This would include, if appropriate, transportation from the lease to a gas processing plant off the lease, unit, or communitized area and from the plant to a point away from the plant. You may not deduct any allowance for gathering costs.

(b) You must allocate transportation costs among all products you produce and transport as provided in § 1206.178.

(c)(1) Except as provided in paragraphs (c)(2) and (3) of this section, your transportation allowance deduction for each sales type code may not exceed 50 percent of the value of the unprocessed gas, residue gas, or gas plant product. For purposes of this section, natural gas liquids are considered one product.

(2) If you ask ONRR, ONRR may approve a transportation allowance deduction in excess of the limitations in paragraph (c)(1) of this section. To receive this approval, you must demonstrate that the transportation costs incurred in excess of the limitations in paragraph (c)(1) of this section were reasonable, actual, and necessary. Under no circumstances may an allowance reduce the value for royalty purposes under any sales type code to zero.

(3) Your application for exception (using Form ONRR-4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for ONRR to make a determination.

(d) If ONRR conducts a review or audit and determines that you have improperly determined a transportation allowance authorized by this subpart, then you will be required to pay any additional royalties, plus interest determined in accordance with § 1218.54 of this chapter. Alternatively, you may be entitled to a credit, but you will not receive any interest on your overpayment.

[64 FR 43515, Aug. 10, 1999, as amended at 73 FR 15891, Mar. 26, 2008]

§ 1206.178 How do I determine a transportation allowance?

(a) *Determining a transportation allowance under an arm's-length contract.* (1)

This paragraph explains how to determine your allowance if you have an arm's-length transportation contract.

(i) If you have an arm's-length contract for transportation of your production, the transportation allowance is the reasonable, actual costs you incur for transporting the unprocessed gas, residue gas and/or gas plant products under that contract. Paragraphs (a)(1)(ii) and (iii) of this section provide a limited exception. You have the burden of demonstrating that your contract is arm's-length. Your allowances also are subject to paragraph (e) of this section. You are required to submit to ONRR a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date ONRR receives your report which claims the allowance on the Form ONRR-2014.

(ii) When either ONRR or a tribe conducts reviews and audits, they will examine whether or not the contract reflects more than the consideration actually transferred either directly or indirectly from you to the transporter of the transportation. If the contract reflects more than the total consideration, then ONRR may require that the transportation allowance be determined under paragraph (b) of this section.

(iii) If ONRR determines that the consideration paid under an arm's-length transportation contract does not reflect the value of the transportation because of misconduct by or between the contracting parties, or because you otherwise have breached your duty to the lessor to market the production for the mutual benefit of you and the lessor, then ONRR will require that the transportation allowance be determined under paragraph (b) of this section. In these circumstances, ONRR will notify you and give you an opportunity to provide written information justifying your transportation costs.

(2) This paragraph explains how to allocate the costs to each product if your arm's-length transportation contract includes more than one product in a gaseous phase and the transportation costs attributable to each product cannot be determined from the contract.

(i) If your arm's-length transportation contract includes more than one product in a gaseous phase and the transportation costs attributable to each product cannot be determined from the contract, the total transportation costs must be allocated in a consistent and equitable manner to each of the products transported. To make this allocation, use the same proportion as the ratio that the volume of each product (excluding waste products which have no value) bears to the volume of all products in the gaseous phase (excluding waste products which have no value). Except as provided in this paragraph, you cannot take an allowance for the costs of transporting lease production that is not royalty bearing without ONRR approval, or without lessor approval on tribal leases.

(ii) As an alternative to paragraph (a)(2)(i) of this section, you may propose to ONRR a cost allocation method based on the values of the products transported. ONRR will approve the method if we determine that it meets one of the two following requirements:

(A) The methodology in paragraph (a)(2)(i) of this section cannot be applied; and

(B) Your proposal is more reasonable than the methodology in paragraph (a)(2)(i) of this section.

(3) This paragraph explains how to allocate costs to each product if your arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract.

(i) If your arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, you must propose an allocation procedure to ONRR. You may use the transportation allowance determined in accordance with your proposed allocation procedure until ONRR decides whether to accept your cost allocation.

(ii) You are required to submit all relevant data to support your allocation proposal. ONRR will then determine the gas transportation allowance based upon your proposal and any additional information ONRR deems necessary.

(4) If your payments for transportation under an arm's-length contract are not based on a dollar per unit price, you must convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(5) Where an arm's-length sales contract price includes a reduction for a transportation factor, ONRR will not consider the transportation factor to be a transportation allowance. You may use the transportation factor to determine your gross proceeds for the sale of the product. However, the transportation factor may not exceed 50 percent of the base price of the product without ONRR approval.

(b) *Determining a transportation allowance under a non-arm's-length or no contract.* (1) This paragraph explains how to determine your allowance if you have a non-arm's-length transportation contract or no contract.

(i) When you have a non-arm's-length transportation contract or no contract, including those situations where you perform transportation services for yourself, the transportation allowance is based upon your reasonable, allowable, actual costs for transportation as provided in this paragraph.

(ii) All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and adjustment. You must submit the actual cost information to support the allowance to ONRR on Form ONRR-4295, Gas Transportation Allowance Report, within 3 months after the end of the 12-month period to which the allowance applies. However, ONRR may approve a longer time period. ONRR will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, ONRR may require you to modify your actual transportation allowance deduction.

(2) This paragraph explains what actual transportation costs are allowable under a non-arm's-length contract or no contract situation. The transportation allowance for non-arm's-length or no-contract situations is based upon your actual costs for transportation during the reporting period. Allowable costs include operating and maintenance expenses, overhead, and either depreciation and a return on

undepreciated capital investment (in accordance with paragraph (b)(2)(iv)(A) of this section), or a cost equal to the initial depreciable investment in the transportation system multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the transportation system.

(i) Allowable operating expenses include operations supervision and engineering, operations labor, fuel, utilities, materials, ad valorem property taxes, rent, supplies, and any other directly allocable and attributable operating expense that you can document.

(ii) Allowable maintenance expenses include maintenance of the transportation system, maintenance of equipment, maintenance labor, and other directly allocable and attributable maintenance expenses that you can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) You may use either depreciation with a return on undepreciated capital investment or a return on depreciable capital investment. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without ONRR approval.

(A) To compute depreciation, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves that the transportation system services, or a unit of production method. Once you make an election, you may not change methods without ONRR approval. A change in ownership of a transportation system will not alter the depreciation schedule that the original transporter/lessee established for purposes of the allowance calculation. With or without a change in ownership, a transportation system may be depreciated only once. Equipment may not be depreciated below a

reasonable salvage value. To compute a return on undepreciated capital investment, you will multiply the undepreciated capital investment in the transportation system by the rate of return determined under paragraph (b)(2)(v) of this section.

(B) To compute a return on depreciable capital investment, you will multiply the initial capital investment in the transportation system by the rate of return determined under paragraph (b)(2)(v) of this section. No allowance will be provided for depreciation. This alternative will apply only to transportation facilities first placed in service after March 1, 1988.

(v) The rate of return is the industrial rate associated with Standard and Poor's BBB rating. The rate of return is the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and is effective during the reporting period. The rate must be redetermined at the beginning of each subsequent transportation allowance reporting period that is determined under paragraph (b)(4) of this section.

(3) This paragraph explains how to allocate transportation costs to each product and transportation system.

(i) The deduction for transportation costs must be determined based on your cost of transporting each product through each individual transportation system. If you transport more than one product in a gaseous phase, the allocation of costs to each of the products transported must be made in a consistent and equitable manner. The allocation should be in the same proportion that the volume of each product (excluding waste products that have no value) bears to the volume of all products in the gaseous phase (excluding waste products that have no value). Except as provided in this paragraph, you may not take an allowance for transporting a product that is not royalty bearing without ONRR approval.

(ii) As an alternative to the requirements of paragraph (b)(3)(i) of this section, you may propose to ONRR a cost allocation method based on the values of the products transported. ONRR will approve the method upon determining

that it meets one of the two following requirements:

(A) The methodology in paragraph (b)(3)(i) of this section cannot be applied; and

(B) Your proposal is more reasonable than the method in paragraph (b)(3)(i) of this section.

(4) Your transportation allowance under this paragraph (b) must be determined based upon a calendar year or other period if you and ONRR agree to an alternative.

(5) If you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to ONRR. You may use the transportation allowance determined in accordance with your proposed allocation procedure until ONRR issues its determination on the acceptability of the cost allocation. You are required to submit all relevant data to support your proposal. ONRR will then determine the transportation allowance based upon your proposal and any additional information ONRR deems necessary.

(c) *Using the alternative transportation calculation when you have a non-arm's-length or no contract.* (1) As an alternative to computing your transportation allowance under paragraph (b) of this section, you may use as the transportation allowance 10 percent of your gross proceeds but not to exceed 30 cents per MMBtu.

(2) Your election to use the alternative transportation allowance calculation in paragraph (c)(1) of this section must be made at the beginning of a month and must remain in effect for an entire calendar year. Your first election will remain in effect until the end of the succeeding calendar year, except for elections effective January 1 that will be effective only for that calendar year.

(d) *Reporting your transportation allowance.* (1) If ONRR requests, you must submit all data used to determine your transportation allowance. The data must be provided within a reasonable period of time that ONRR will determine.

(2) You must report transportation allowances as a separate entry on Form ONRR-2014. ONRR may approve a

different reporting procedure on allottee leases, and with lessor approval on tribal leases.

(e) *Adjusting incorrect allowances.* If for any month the transportation allowance you are entitled to is less than the amount you took on Form ONRR-2014, you are required to report and pay additional royalties due, plus interest computed under § 1218.54 of this chapter from the first day of the first month you deducted the improper transportation allowance until the date you pay the royalties due. If the transportation allowance you are entitled to is greater than the amount you took on Form ONRR-2014 for any royalties during the reporting period, you are entitled to a credit. No interest will be paid on the overpayment.

(f) *Determining allowable costs for transportation allowances.* Lessees may include, but are not limited to, the following costs in determining the arm's-length transportation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section:

(1) *Firm demand charges paid to pipelines.* You must limit the allowable costs for the firm demand charges to the applicable rate per MMBtu multiplied by the actual volumes transported. You may not include any losses incurred for previously purchased but unused firm capacity. You also may not include any gains associated with releasing firm capacity. If you receive a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the firm demand charge claimed on the Form ONRR-2014. You must modify the Form ONRR-2014 by the amount received or credited for the affected reporting period.

(2) *Gas supply realignment (GSR) costs.* The GSR costs result from a pipeline reforming or terminating supply contracts with producers to implement the restructuring requirements of FERC orders in 18 CFR part 284.

(3) *Commodity charges.* The commodity charge allows the pipeline to recover the costs of providing service.

(4) *Wheeling costs.* Hub operators charge a wheeling cost for transporting gas from one pipeline to either the

same or another pipeline through a market center or hub. A hub is a connected manifold of pipelines through which a series of incoming pipelines are interconnected to a series of outgoing pipelines.

(5) *Gas Research Institute (GRI) fees.* The GRI conducts research, development, and commercialization programs on natural gas related topics for the benefit of the U.S. gas industry and gas customers. GRI fees are allowable provided such fees are mandatory in FERC-approved tariffs.

(6) *Annual Charge Adjustment (ACA) fees.* FERC charges these fees to pipelines to pay for its operating expenses.

(7) *Payments (either volumetric or in value) for actual or theoretical losses.* This paragraph does not apply to non-arm's-length transportation arrangements.

(8) *Temporary storage services.* This includes short duration storage services offered by market centers or hubs (commonly referred to as "parking" or "banking"), or other temporary storage services provided by pipeline transporters, whether actual or provided as a matter of accounting. Temporary storage is limited to 30 days or less.

(9) *Supplemental costs for compression, dehydration, and treatment of gas.* ONRR allows these costs only if such services are required for transportation and exceed the services necessary to place production into marketable condition required under § 1206.174(h).

(g) *Determining nonallowable costs for transportation allowances.* Lessees may not include the following costs in determining the arm's-length transportation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section:

(1) *Fees or costs incurred for storage.* This includes storing production in a storage facility, whether on or off the lease, for more than 30 days.

(2) *Aggregator/marketer fees.* This includes fees you pay to another person (including your affiliates) to market your gas, including purchasing and reselling the gas, or finding or maintaining a market for the gas production.

(3) *Penalties you incur as shipper.* These penalties include, but are not limited to the following:

(i) *Over-delivery cash-out penalties.* This includes the difference between the price the pipeline pays you for over-delivered volumes outside the tolerances and the price you receive for over-delivered volumes within tolerances.

(ii) *Scheduling penalties.* This includes penalties you incur for differences between daily volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point.

(iii) *Imbalance penalties.* This includes penalties you incur (generally on a monthly basis) for differences between volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point.

(iv) *Operational penalties.* This includes fees you incur for violation of the pipeline's curtailment or operational orders issued to protect the operational integrity of the pipeline.

(4) *Intra-hub transfer fees.* These are fees you pay to hub operators for administrative services (e.g., title transfer tracking) necessary to account for the sale of gas within a hub.

(5) *Other nonallowable costs.* Any cost you incur for services you are required to provide at no cost to the lessor.

(h) *Other transportation cost determinations.* You must follow the provisions of this section to determine transportation costs when establishing value using either a net-back valuation procedure or any other procedure that allows deduction of actual transportation costs.

[64 FR 43515, Aug. 10, 1999, as amended at 73 FR 15891, Mar. 26, 2008]

PROCESSING ALLOWANCES

§ 1206.179 What general requirements regarding processing allowances apply to me?

(a) When you value any gas plant product under § 1206.174, you may deduct from value the reasonable actual costs of processing.

(b) You must allocate processing costs among the gas plant products. You must determine a separate processing allowance for each gas plant product and processing plant relationship. Natural gas liquids are considered as one product.

(c) The processing allowance deduction based on an individual product may not exceed 66⅔ percent of the value of each gas plant product determined under § 1206.174. Before you calculate the 66⅔ percent limit, you must first reduce the value for any transportation allowances related to post-processing transportation authorized under § 1206.177.

(d) Processing cost deductions will not be allowed for placing lease products in marketable condition. These costs include among others, dehydration, separation, compression upstream of the facility measurement point, or storage, even if those functions are performed off the lease or at a processing plant. Costs for the removal of acid gases, commonly referred to as sweetening, are not allowed unless the acid gases removed are further processed into a gas plant product. In such event, you will be eligible for a processing allowance determined under this subpart. However, ONRR will not grant any processing allowance for processing lease production that is not royalty bearing.

(e) You will be allowed a reasonable amount of residue gas royalty free for operation of the processing plant, but no allowance will be made for expenses incidental to marketing, except as provided in 30 CFR part 1206. In those situations where a processing plant processes gas from more than one lease, only that proportionate share of your residue gas necessary for the operation of the processing plant will be allowed royalty free.

(f) You do not owe royalty on residue gas, or any gas plant product resulting from processing gas, that is reinjected into a reservoir within the same lease, unit, or approved Federal agreement, until such time as those products are finally produced from the reservoir for sale or other disposition. This paragraph applies only when the reinjection is included in a BLM-approved plan of development or operations.

(g) If ONRR determines that you have determined an improper processing allowance authorized by this subpart, then you will be required to pay any additional royalties plus late payment interest determined under § 1218.54 of this chapter. Alternatively,

you may be entitled to a credit, but you will not receive any interest on your overpayment.

§ 1206.180 How do I determine an actual processing allowance?

(a) *Determining a processing allowance if you have an arm's-length processing contract.* (1) This paragraph explains how you determine an allowance under an arm's-length processing contract.

(i) The processing allowance is the reasonable actual costs you incur to process the gas under that contract. Paragraphs (a)(1)(ii) and (iii) of this section provide a limited exception. You have the burden of demonstrating that your contract is arm's-length. You are required to submit to ONRR a copy of your arm's-length contract(s) and all subsequent amendments to the contract(s) within 2 months of the date ONRR receives your first report that deducts the allowance on the Form ONRR-2014.

(ii) When ONRR conducts reviews and audits, we will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from you to the processor for the processing. If the contract reflects more than the total consideration, then ONRR may require that the processing allowance be determined under paragraph (b) of this section.

(iii) If ONRR determines that the consideration paid under an arm's-length processing contract does not reflect the value of the processing because of misconduct by or between the contracting parties, or because you otherwise have breached your duty to the lessor to market the production for the mutual benefit of you and the lessor, then ONRR will require that the processing allowance be determined under paragraph (b) of this section. In these circumstances, ONRR will notify you and give you an opportunity to provide written information justifying your processing costs.

(2) If your arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product can be determined from the contract, then the processing costs for each gas plant product must be determined in accord-

ance with the contract. You may not take an allowance for the costs of processing lease production that is not royalty-bearing.

(3) If your arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, you must propose an allocation procedure to ONRR. You may use your proposed allocation procedure until ONRR issues its determination. You are required to submit all relevant data to support your proposal. ONRR will then determine the processing allowance based upon your proposal and any additional information ONRR deems necessary. You may not take a processing allowance for the costs of processing lease production that is not royalty-bearing.

(4) If your payments for processing under an arm's-length contract are not based on a dollar per unit price, you must convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(b) *Determining a processing allowance if you have a non-arm's-length contract or no contract.* (1) This paragraph applies if you have a non-arm's-length processing contract or no contract, including those situations where you perform processing for yourself.

(i) If you have a non-arm's-length contract or no contract, the processing allowance is based upon your reasonable actual costs of processing as provided in paragraph (b)(2) of this section.

(ii) All processing allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and adjustment. You must submit the actual cost information to support the allowance to ONRR on Form ONRR-4109, Gas Processing Allowance Summary Report, within 3 months after the end of the 12-month period for which the allowance applies. ONRR may approve a longer time period. ONRR will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, ONRR may require you to modify your processing allowance.

(2) The processing allowance for non-arm's-length or no-contract situations

is based upon your actual costs for processing during the reporting period. Allowable costs include operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment (in accordance with paragraph (b)(2)(iv)(A) of this section), or a cost equal to the initial depreciable investment in the processing plant multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the processing plant.

(i) Allowable operating expenses include operations supervision and engineering, operations labor, fuel, utilities, materials, ad valorem property taxes, rent, supplies, and any other directly allocable and attributable operating expense that the lessee can document.

(ii) Allowable maintenance expenses include maintenance of the processing plant, maintenance of equipment, maintenance labor, and other directly allocable and attributable maintenance expenses that you can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the processing plant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) You may use either depreciation with a return on undepreciable capital investment or a return on depreciable capital investment. After you elect to use either method for a processing plant, you may not later elect to change to the other alternative without ONRR approval.

(A) To compute depreciation, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves that the processing plant services, or a unit-of-production method. Once you make an election, you may not change methods without ONRR approval. A change in ownership of a processing plant will not alter the depreciation schedule that the original processor/lessee established for purposes of the allowance calculation.

However, for processing plants you or your affiliate purchase that do not have a previously claimed ONRR depreciation schedule, you may treat the processing plant as a newly installed facility for depreciation purposes. A processing plant may be depreciated only once, regardless of whether there is a change in ownership. Equipment may not be depreciated below a reasonable salvage value. To compute a return on undepreciated capital investment, you must multiply the undepreciable capital investment in the processing plant by the rate of return determined under paragraph (b)(2)(v) of this section.

(B) To compute a return on depreciable capital investment, you must multiply the initial capital investment in the processing plant by the rate of return determined under paragraph (b)(2)(v) of this section. No allowance will be provided for depreciation. This alternative will apply only to plants first placed in service after March 1, 1988.

(v) The rate of return is the industrial rate associated with Standard and Poor's BBB rating. The rate of return is the monthly average rate as published in Standard and Poor's Bond Guide for the first month for which the allowance is applicable. The rate must be redetermined at the beginning of each subsequent calendar year.

(3) Your processing allowance under this paragraph (b) must be determined based upon a calendar year or other period if you and ONRR agree to an alternative.

(4) The processing allowance for each gas plant product must be determined based on your reasonable and actual cost of processing the gas. You must base your allocation of costs to each gas plant product upon generally accepted accounting principles. You may not take an allowance for the costs of processing lease production that is not royalty-bearing.

(c) *Reporting your processing allowance.* (1) If ONRR requests, you must submit all data used to determine your processing allowance. The data must be provided within a reasonable period of time, as ONRR determines.

(2) You must report gas processing allowances as a separate entry on the

§ 1206.181

Form ONRR-2014. ONRR may approve a different reporting procedure for allottee leases, and with lessor approval on tribal leases.

(d) *Adjusting incorrect processing allowances.* If for any month the gas processing allowance you are entitled to is less than the amount you took on Form ONRR-2014, you are required to pay additional royalties, plus interest computed under § 1218.54 of this chapter from the first day of the first month you deducted a processing allowance until the date you pay the royalties due. If the processing allowance you are entitled to is greater than the amount you took on Form ONRR-2014, you are entitled to a credit. However, no interest will be paid on the overpayment.

(e) *Other processing cost determinations.* You must follow the provisions of this section to determine processing costs when establishing value using either a net-back valuation procedure or any other procedure that requires deduction of actual processing costs.

[64 FR 43515, Aug. 10, 1999, as amended at 73 FR 15891, Mar. 26, 2008]

§ 1206.181 How do I establish processing costs for dual accounting purposes when I do not process the gas?

Where accounting for comparison (dual accounting) is required for gas production from a lease but neither you nor someone acting on your behalf processes the gas, and you have elected to perform actual dual accounting under § 1206.176, you must use the first applicable of the following methods to establish processing costs for dual accounting purposes:

(a) The average of the costs established in your current arm's-length processing agreements for gas from the lease, provided that some gas has previously been processed under these agreements.

(b) The average of the costs established in your current arm's-length processing agreements for gas from the lease, provided that the agreements are in effect for plants to which the lease is physically connected and under which gas from other leases in the field or area is being or has been processed.

(c) A proposed comparable processing fee submitted to either the tribe and

30 CFR Ch. XII (7-1-17 Edition)

ONRR (for tribal leases) or ONRR (for allotted leases) with your supporting documentation submitted to ONRR. If ONRR does not take action on your proposal within 120 days, the proposal will be deemed to be denied and subject to appeal to the ONRR Director under 30 CFR part 1290.

(d) Processing costs based on the regulations in §§ 1206.179 and 1206.180.

Subpart F—Federal Coal

SOURCE: 81 FR 43389, July 1, 2016, unless otherwise noted.

§ 1206.250 What is the purpose and scope of this subpart?

(a) This subpart applies to all coal produced from Federal coal leases. It explains how you, as the lessee, must calculate the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms.

(b) The terms “you” and “your” in this subpart refer to the lessee.

(c) If the regulations in this subpart are inconsistent with a(an): Federal statute; settlement agreement between the United States and a lessee resulting from administrative or judicial litigation; written agreement between the lessee and ONRR's Director establishing a method to determine the value of production from any lease that ONRR expects, at least, would approximate the value established under this subpart; or express provision of a coal lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(d) ONRR may audit and order you to adjust all royalty payments.

§ 1206.251 How do I determine royalty quantity and quality?

(a) You must calculate royalties based on the quantity and quality of coal at the royalty measurement point that ONRR and BLM jointly determine.

(b) You must measure coal in short tons using the methods that BLM prescribes for Federal coal leases under 43 CFR part 3000. You must report coal quantity on appropriate forms required

in 30 CFR part 1210—Forms and Reports.

(c)(1) You are not required to pay royalties on coal that you produce and add to stockpiles or inventory until you use, sell, or otherwise finally dispose of such coal.

(2) ONRR may request that BLM require you to increase your lease bond if BLM determines that stockpiles or inventory are excessive such that they increase the risk of resource degradation.

(d) You must pay royalty at the rate specified in your lease at the time when you use, sell, or otherwise finally dispose of the coal.

(e) You must allocate washed coal by attributing the washed coal to the leases from which it was extracted.

(1) If the wash plant washes coal from only one lease, the quantity of washed coal allocable to the lease is the total output of washed coal from the plant.

(2) If the wash plant washes coal from more than one lease, you must determine the tonnage of washed coal attributable to each lease by:

(i) First, calculating the input ratio of washed coal allocable to each lease by dividing the tonnage of coal input to the wash plant from each lease by the total tonnage of coal input to the wash plant from all leases.

(ii) Second, multiplying the input ratio derived under paragraph (e)(2)(i) of this section by the tonnage of total output of washed coal from the plant.

§ 1206.252 How do I calculate royalty value for coal that I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?

(a) The value of coal under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the first arm's-length contract, less an applicable transportation allowance determined under §§ 1206.260 through 1206.262 and washing allowance under §§ 1206.267 through 1206.269. You must use this paragraph (a) to value coal when:

(1) You sell under an arm's-length contract; or

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract, and that affiliate or person, or another affiliate of

either of them, then sells the coal under an arm's-length contract.

(b) If you have no contract for the sale of coal subject to this section because you or your affiliate used the coal in a power plant that you or your affiliate own(s) for the generation and sale of electricity, one of the following applies:

(1) You or your affiliate sell(s) the electricity, then the value of the coal subject to this section, for royalty purposes, is the gross proceeds accruing to you for the power plant's arm's-length sales of the electricity less applicable transportation and washing deductions determined under §§ 1206.260 through 1206.262 and §§ 1206.267 through 1206.269 and, if applicable, transmission and generation deductions determined under §§ 1206.353 and 1206.354.

(2) You or your affiliate do(es) not sell the electricity at arm's-length (for example you or your affiliate deliver(s) the electricity directly to the grid), then ONRR will determine the value of the coal under § 1206.254.

(i) You must propose to ONRR a method to determine the value using the procedures in § 1206.258(a).

(ii) You may use that method to determine value, for royalty purposes, until ONRR issues a determination.

(iii) After ONRR issues a determination, you must make the adjustments under § 1206.253(a)(2).

(c) If you are a coal cooperative, or a member of a coal cooperative, one of the following applies:

(1) You sell or transfer coal to another member of the coal cooperative, and that member of the coal cooperative then sells the coal under an arm's-length contract, then you must value the coal under paragraph (a) of this section.

(2) You sell or transfer coal to another member of the coal cooperative, and you, the coal cooperative, or another member of the coal cooperative use the coal in a power plant for the generation and sale of electricity, then you must value the coal under paragraph (b) of this section.

(d) If you are entitled to take a washing allowance and transportation allowance for royalty purposes under this section, under no circumstances may the washing allowance plus the

§ 1206.253

30 CFR Ch. XII (7–1–17 Edition)

transportation allowance reduce the royalty value of the coal to zero.

(e) The values in this section do not apply if ONRR decides to value your coal under § 1206.254.

§ 1206.253 How will ONRR determine if my royalty payments are correct?

(a)(1) ONRR may monitor, review, and audit the royalties that you report. If ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR will direct you to use a different measure of royalty value, or decide your value, under § 1206.254.

(2) If ONRR directs you to use a different royalty value, you must either pay any underpaid royalties due, plus late payment interest calculated under § 1218.202 of this chapter, or report a credit for—or request a refund of—any overpaid royalties.

(b) When the provisions in this subpart refer to gross proceeds, in conducting reviews and audits, ONRR will examine if your or your affiliate's contract reflects the total consideration that is actually transferred, either directly or indirectly, from the buyer to you or your affiliate for the coal. If ONRR determines that a contract does not reflect the total consideration, ONRR may decide your value under § 1206.254.

(c) ONRR may decide to value your coal under § 1206.254 if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because:

(1) There is misconduct by or between the contracting parties;

(2) You breached your duty to market the coal for the mutual benefit of yourself and the lessor by selling your coal at a value that is unreasonably low. ONRR may consider a sales price unreasonably low if it is 10 percent less than the lowest other reasonable measures of market price, including, but not limited to, prices reported to ONRR for like-quality coal; or

(3) ONRR cannot determine if you properly valued your coal under § 1206.252 for any reason, including, but not limited to, your or your affiliate's failure to provide documents to ONRR under 30 CFR part 1212, subpart E.

(d) You have the burden of demonstrating that your or your affiliate's contract is arm's-length.

(e) ONRR may require you to certify that the provisions in your or your affiliate's contract include(s) all of the consideration that the buyer paid to you or your affiliate, either directly or indirectly, for the coal.

(f)(1) Absent any contract revisions or amendments, if you or your affiliate fail(s) to take proper or timely action to receive prices or benefits to which you or your affiliate are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) If you or your affiliate apply in a timely manner for a price increase or benefit allowed under your or your affiliate's contract, but the purchaser refuses, and you or your affiliate take reasonable, documented measures to force purchaser compliance, you will not owe additional royalties unless or until you or your affiliate receive additional monies or consideration resulting from the price increase. You may not construe this paragraph to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay in whole or in part, or in a timely manner, for a quantity of coal.

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing, and all parties to the contract must sign the contract, contract revisions, or amendments.

(2) If you or your affiliate fail(s) to comply with paragraph (g)(1) of this section, ONRR may decide to value your coal under § 1206.254.

(3) This provision applies notwithstanding any other provisions in this title 30 to the contrary.

§ 1206.254 How will ONRR determine the value of my coal for royalty purposes?

If ONRR decides to value your coal for royalty purposes under § 1206.253, or any other provision in this subpart, then ONRR will determine value by considering any information that we deem relevant, which may include, but is not limited to:

(a) The value of like-quality coal from the same mine, nearby mines, the

same region, other regions, or washed in the same or nearby wash plant.

(b) Public sources of price or market information that ONRR deems reliable, including, but not limited to, the price of electricity.

(c) Information available to ONRR and information reported to us, including, but not limited to, on Form ONRR-4430.

(d) Costs of transportation or washing, if ONRR determines that they are applicable.

(e) Any other information that ONRR deems relevant regarding the particular lease operation or the salability of the coal.

§ 1206.255 What records must I keep in order to support my calculations of royalty under this subpart?

If you value your coal under this subpart, you must retain all data relevant to the determination of the royalty that you paid. You can find record-keeping requirements in parts 1207 and 1212 of this chapter.

(a) You must show:

(1) How you calculated the royalty value, including all allowable deductions; and

(2) How you complied with this subpart.

(b) Upon request, you must submit all data to ONRR. You must comply with any such requirement within the time that ONRR specifies.

§ 1206.256 What are my responsibilities to place production into marketable condition and to market production?

(a) You must place coal in marketable condition and market the coal for the mutual benefit of the lessee and the lessor at no cost to the Federal Government.

(b) If you use gross proceeds under an arm's-length contract in order to determine royalty, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that you normally are responsible to perform in order to place the coal in marketable condition or to market the coal.

§ 1206.257 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?

Notwithstanding any provision in these regulations to the contrary, ONRR will not consider any audit, review, reconciliation, monitoring, or other like process that results in ONRR re-determining royalty due, under this subpart, final or binding as against the Federal government or its beneficiaries unless ONRR chooses to, in writing, formally close the audit period.

§ 1206.258 How do I request a valuation determination?

(a) You may request a valuation determination from ONRR regarding any coal produced. Your request must:

(1) Be in writing;

(2) Identify specifically all leases involved, all interest owners of those leases, and the operator(s) for those leases;

(3) Completely explain all relevant facts. You must inform ONRR of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and

(6) Suggest a proposed valuation method.

(b) In response to your request, ONRR may:

(1) Request that the Assistant Secretary for Policy, Management and Budget issue a determination;

(2) Decide that ONRR will issue guidance; or

(3) Inform you in writing that ONRR will not provide a determination or guidance. Situations in which ONRR typically will not provide any determination or guidance include, but are not limited to:

(i) Requests for guidance on hypothetical situations; or

(ii) Matters that are the subject of pending litigation or administrative appeals.

(c)(1) A determination that the Assistant Secretary for Policy, Management and Budget signs is binding on

§ 1206.259

30 CFR Ch. XII (7–1–17 Edition)

both you and ONRR until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a determination, you must make any adjustments in royalty payments that follow from the determination and, if you owe additional royalties, you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(3) A determination that the Assistant Secretary signs is the final action of the Department and is subject to judicial review under 5 U.S.C. 701–706.

(d) Guidance that ONRR issues is not binding on ONRR, delegated States, or you with respect to the specific situation addressed in the guidance.

(1) Guidance and ONRR's decision whether or not to issue guidance or to request an Assistant Secretary determination, or neither, under paragraph (b) of this section, are not appealable decisions or orders under 30 CFR part 1290.

(2) If you receive an order requiring you to pay royalty on the same basis as the guidance, you may appeal that order under 30 CFR part 1290.

(e) ONRR or the Assistant Secretary may use any of the applicable criteria in this subpart to provide guidance or to make a determination.

(f) A change in an applicable statute or regulation on which ONRR based any guidance, or the Assistant Secretary based any determination, takes precedence over the determination or guidance after the effective date of the statute or regulation, regardless of whether ONRR or the Assistant Secretary modifies or rescinds the guidance or determination.

(g) ONRR may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 1206.259.

§ 1206.259 Does ONRR protect information that I provide?

(a) Certain information that you or your affiliate submit(s) to ONRR regarding royalties on coal, including deductions and allowances, may be exempt from disclosure.

(b) To the extent that applicable laws and regulations permit, ONRR will keep confidential any data that you or your affiliate submit(s) that is privi-

leged, confidential, or otherwise exempt from disclosure.

(c) You and others must submit all requests for information under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 1206.260 What general transportation allowance requirements apply to me?

(a)(1) ONRR will allow a deduction for the reasonable, actual costs to transport coal from the lease to the point off of the lease or mine as determined under § 1206.261 or § 1206.262, as applicable.

(2) You do not need ONRR's approval before reporting a transportation allowance for costs incurred.

(b) You may take a transportation allowance when:

(1) You value coal under § 1206.252;

(2) You transport the coal from a Federal lease to a sales point, which is remote from both the lease and mine; or

(3) You transport the coal from a Federal lease to a wash plant when that plant is remote from both the lease and mine and, if applicable, from the wash plant to a remote sales point.

(c) You may not take an allowance for:

(1) Transporting lease production that is not royalty-bearing;

(2) In-mine movement of your coal; or

(3) Costs to move a particular tonnage of production for which you did not incur those costs.

(d) You may only claim a transportation allowance when you sell the coal and pay royalties.

(e) You must allocate transportation allowances to the coal attributed to the lease from which it was extracted.

(1) If you commingle coal produced from Federal and non-Federal leases, you may not disproportionately allocate transportation costs to Federal lease production. Your allocation must use the same proportion as the ratio of the tonnage from the Federal lease production to the tonnage from all production.

(2) If you commingle coal produced from more than one Federal lease, you must allocate transportation costs to

each Federal lease, as appropriate. Your allocation must use the same proportion as the ratio of the tonnage of each Federal lease production to the tonnage of all production.

(3) For washed coal, you must allocate the total transportation allowance only to washed products.

(4) For unwashed coal, you may take a transportation allowance for the total coal transported.

(5)(i) You must report your transportation costs on Form ONRR-4430 as clean coal short tons sold during the reporting period multiplied by the sum of the per-short-ton cost of transporting the raw tonnage to the wash plant and, if applicable, the per-short-ton cost of transporting the clean coal tons from the wash plant to a remote sales point.

(ii) You must determine the cost per short ton of clean coal transported by dividing the total applicable transportation cost by the number of clean coal tons resulting from washing the raw coal transported.

(f) You must express transportation allowances for coal as a dollar-value equivalent per short ton of coal transported. If you do not base your or your affiliate's payments for transportation under a transportation contract on a dollar-per-unit basis, you must convert whatever consideration that you or your affiliate paid to a dollar-value equivalent.

(g) ONRR may determine your transportation allowance under § 1206.254 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length transportation contract does not reflect the reasonable cost of the transportation because you breached your duty to market the coal for the mutual benefit of yourself and the lessor by transporting your coal at a cost that is unreasonably high. We may consider a transportation allowance unreasonably high if it is 10 percent higher than the highest reasonable measures of transportation costs, including, but not limited to, transportation allowances reported to ONRR and the cost to transport coal

through the same transportation system; or

(3) ONRR cannot determine if you properly calculated a transportation allowance under § 1206.261 or § 1206.262 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart E.

§ 1206.261 How do I determine a transportation allowance if I have an arm's-length transportation contract or no written arm's-length contract?

(a) If you or your affiliate incur(s) transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred for transporting the coal under that contract.

(b) You must be able to demonstrate that your or your affiliate's contract is at arm's-length.

(c) If you have no written contract for the arm's-length transportation of coal, then ONRR will determine your transportation allowance under § 1206.254. You may not use this paragraph (c) if you or your affiliate perform(s) your own transportation.

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.258(a).

(2) You may use that method to determine your allowance until ONRR issues a determination.

§ 1206.262 How do I determine a transportation allowance if I do not have an arm's-length transportation contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length transportation contract, including situations where you or your affiliate provide your own transportation services. You must calculate your transportation allowance based on your or your affiliate's reasonable, actual costs for transportation during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (d), (e), and (f) of this section.

(2) Overhead under paragraph (g) of this section.

(3) Depreciation under paragraph (h) of this section and a return on undepreciated capital investment under paragraph (i) of this section, or you may elect to use a cost equal to a return on the initial depreciable capital investment in the transportation system under paragraph (j) of this section. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(4) A return on the reasonable salvage value, under paragraph (i) of this section, after you have depreciated the transportation system to its reasonable salvage value.

(c) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(d) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment), which are an integral part of the transportation system.

(e) Allowable operating expenses include the following:

(1) Operations supervision and engineering.

(2) Operations labor.

(3) Fuel.

(4) Utilities.

(5) Materials.

(6) Ad valorem property taxes.

(7) Rent.

(8) Supplies.

(9) Any other directly allocable and attributable operating expenses that you can document.

(f) Allowable maintenance expenses include the following:

(1) Maintenance of the transportation system.

(2) Maintenance of equipment.

(3) Maintenance labor.

(4) Other directly allocable and attributable maintenance expenses that you can document.

(g) Overhead, directly attributable and allocable to the operation and maintenance of the transportation system, is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(h)(1) To calculate depreciation, you may elect to use either a straight-line depreciation method based on the life of the transportation system or the life of the reserves that the transportation system services, or you may elect to use a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(2) A change in ownership of a transportation system will not alter the depreciation schedule that the original transporter/lessee established for the purposes of the allowance calculation.

(3) You may depreciate a transportation system only once with or without a change in ownership.

(i)(1) To calculate a return on undepreciated capital investment, you must multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the transportation allowance by the rate of return provided in paragraph (k) of this section.

(2) After you have depreciated a transportation system to its reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the reasonable salvage value multiplied by a rate of return determined under paragraph (k) of this section.

(j) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (k) of this section. You may not include depreciation in your allowance.

(k) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(1) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(2) You must re-determine the rate at the beginning of each subsequent calendar year.

§ 1206.263 What are my reporting requirements under an arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR-4430 to notify ONRR of an allowance based on transportation costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.264 What are my reporting requirements under a non-arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR-4430 to notify ONRR of an allowance based on non-arm's-length transportation costs you or your affiliate incur(s).

(b)(1) For new non-arm's-length transportation facilities or arrangements, you must base your initial deduction on estimates of allowable transportation costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the transportation system as your estimate, if available. If such data is not available, you must use estimates based on data for similar transportation systems.

(3) Section 1206.266 applies when you amend your report based on the actual costs.

(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.265 What interest and penalties apply if I improperly report a transportation allowance?

(a)(1) If ONRR determines that you took an unauthorized transportation allowance, then you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(2) If you understated your transportation allowance, you may be entitled to a credit without interest.

(b) If you improperly net a transportation allowance against the sales value of the coal instead of reporting the allowance as a separate entry on Form ONRR-4430, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.266 What reporting adjustments must I make for transportation allowances?

(a) If your actual transportation allowance is less than the amount that you claimed on Form ONRR-4430 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter from the date when you took the deduction to the date when you repay the difference.

(b) If the actual transportation allowance is greater than the amount that you claimed on Form ONRR-4430 for any month during the period reported on the allowance form, you are entitled to a credit without interest.

§ 1206.267 What general washing allowance requirements apply to me?

(a)(1) If you determine the value of your coal under § 1206.252, you may take a washing allowance for the reasonable, actual costs to wash the coal. The allowance is a deduction when determining coal royalty value for the costs that you incur to wash coal.

(2) You do not need ONRR's approval before reporting a washing allowance.

(b) You may not:

(1) Take an allowance for the costs of washing lease production that is not royalty bearing.

(2) Disproportionately allocate washing costs to Federal leases. You must allocate washing costs to washed coal attributable to each Federal lease by multiplying the input ratio determined

§ 1206.268

30 CFR Ch. XII (7–1–17 Edition)

under § 1206.251(e)(2)(i) by the total allowable costs.

(c)(1) You must express washing allowances for coal as a dollar-value equivalent per short ton of coal washed.

(2) If you do not base your or your affiliate's payments for washing under an arm's-length contract on a dollar-per-unit basis, you must convert whatever consideration that you or your affiliate paid to a dollar-value equivalent.

(d) ONRR may determine your washing allowance under § 1206.254 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length washing contract does not reflect the reasonable cost of the washing because you breached your duty to market the coal for the mutual benefit of yourself and the lessor by washing your coal at a cost that is unreasonably high. We may consider a washing allowance unreasonably high if it is 10 percent higher than the highest other reasonable measures of washing, including, but not limited to, washing allowances reported to ONRR and costs for coal washed in the same plant or other plants in the region; or

(3) ONRR cannot determine if you properly calculated a washing allowance under §§ 1206.267 through 1206.269 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart E.

(e) You may only claim a washing allowance when you sell the washed coal and report and pay royalties.

§ 1206.268 How do I determine washing allowances if I have an arm's-length washing contract or no written arm's-length contract?

(a) If you or your affiliate incur(s) washing costs under an arm's-length washing contract, you may claim a washing allowance for the reasonable, actual costs incurred.

(b) You must be able to demonstrate that your or your affiliate's contract is arm's-length.

(c) If you have no written contract for the arm's-length washing of coal,

then ONRR will determine your washing allowance under § 1206.254. You may not use this paragraph (c) if you or your affiliate perform(s) your own washing. If you or your affiliate perform(s) the washing, then

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.258(a).

(2) You may use that method to determine your allowance until ONRR issues a determination.

§ 1206.269 How do I determine washing allowances if I do not have an arm's-length washing contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length washing contract, including situations where you or your affiliate provides your own washing services. You must calculate your washing allowance based on your or your affiliate's reasonable, actual costs for washing during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (d), (e), and (f) of this section.

(2) Overhead under paragraph (g) of this section.

(3) Depreciation under paragraph (h) of this section and a return on undepreciated capital investment under paragraph (i) of this section, or you may elect to use a cost equal to a return on the initial depreciable capital investment in the wash plant under paragraph (j) of this section. After you have elected to use either method for a wash plant, you may not later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(4) A return on the reasonable salvage value, under paragraph (i) of this section, after you have depreciated the wash plant to its reasonable salvage value.

(c) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(d) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment), which are an integral part of the wash plant.

(e) Allowable operating expenses include the following:

(1) Operations supervision and engineering.

(2) Operations labor.

(3) Fuel.

(4) Utilities.

(5) Materials.

(6) Ad valorem property taxes.

(7) Rent.

(8) Supplies.

(9) Any other directly allocable and attributable operating expenses that you can document.

(f) Allowable maintenance expenses include the following:

(1) Maintenance of the wash plant.

(2) Maintenance of equipment.

(3) Maintenance labor.

(4) Other directly allocable and attributable maintenance expenses that you can document.

(g) Overhead, directly attributable and allocable to the operation and maintenance of the wash plant, is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(h)(1) To calculate depreciation, you may elect to use either a straight-line depreciation method based on the life of the wash plant or the life of the reserves that the wash plant services, or you may elect to use a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(2) A change in ownership of a wash plant will not alter the depreciation schedule that the original washer/lessee established for purposes of the allowance calculation.

(3) With or without a change in ownership, you may depreciate a wash plant only once.

(i)(1) To calculate a return on undepreciated capital investment, you

must multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the washing allowance by the rate of return provided in paragraph (k) of this section.

(2) After you have depreciated a wash plant to its reasonable salvage value, you may continue to include in the allowance calculation a cost equal to the salvage value multiplied by a rate of return determined under paragraph (k) of this section.

(j) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the wash plant multiplied by the rate of return as determined under paragraph (k) of this section. You may not include depreciation in your allowance.

(k) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(1) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(2) You must re-determine the rate at the beginning of each subsequent calendar year.

§ 1206.270 What are my reporting requirements under an arm's-length washing contract?

(a) You must use a separate entry on Form ONRR-4430 to notify ONRR of an allowance based on washing costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length washing contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.271 What are my reporting requirements under a non-arm's-length washing contract?

(a) You must use a separate entry on Form ONRR-4430 to notify ONRR of an allowance based on non-arm's-length washing costs that you or your affiliate incur(s).

§ 1206.272

(b)(1) For new non-arm's-length washing facilities or arrangements, you must base your initial deduction on estimates of allowable washing costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the wash plant as your estimate, if available. If such data is not available, you must use estimates based on data for similar wash plants.

(3) Section 1206.273 applies when you amend your report based on the actual costs.

(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

§ 1206.272 What interest and penalties apply if I improperly report a washing allowance?

(a)(1) If ONRR determines that you took an unauthorized washing allowance, then you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(2) If you understated your washing allowance, you may be entitled to a credit without interest.

(b) If you improperly net a washing allowance against the sales value of the coal instead of reporting the allowance as a separate entry on Form ONRR-4430, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.273 What reporting adjustments must I make for washing allowances?

(a) If your actual washing allowance is less than the amount that you claimed on Form ONRR-4430 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter from the date when you took the deduction to the date when you repay the difference.

(b) If the actual washing allowance is greater than the amount that you claimed on Form ONRR-4430 for any month during the period reported on the allowance form, you are entitled to a credit without interest.

30 CFR Ch. XII (7-1-17 Edition)

Subpart G—Other Solid Minerals

§ 1206.301 Value basis for royalty computation.

(a) The gross value for royalty purposes shall be the sale or contract unit price times the number of units sold, *Provided, however*, That where the authorized officer determines:

(1) That a contract of sale or other business arrangement between the lessee and a purchaser of some or all of the commodities produced from the lease is not a bona fide transaction between independent parties because it is based in whole or in part upon considerations other than the value of the commodities, or

(2) That no bona fide sales price is received for some or all of such commodities because the lessee is consuming them, the authorized officer shall determine their gross value, taking into account: (i) All prices received by the lessee in all bona fide transactions, (ii) Prices paid for commodities of like quality produced from the same general area, and (iii) Such other relevant factors as the authorized officer may deem appropriate; and *Provided further*, That in a situation where an estimated value is used, the authorized officer shall require the payment of such additional royalties, or allow such credits or refunds as may be necessary to adjust royalty payment to reflect the actual gross value.

(b) The lessee is required to certify that the values reported for royalty purposes are bona fide sales not involving considerations other than the sale of the mineral, and he may be required by the authorized officer to supply supporting information.

[43 FR 10341, Mar. 13, 1978. Redesignated at 48 FR 36588, Aug. 12, 1983, and amended at 48 FR 44795, Sept. 30, 1983. Further redesignated at 51 FR 15212, Apr. 22, 1986. Redesignated at 53 FR 39461, Oct. 7, 1988]

Subpart H—Geothermal Resources

SOURCE: 72 FR 24459, May 2, 2007, unless otherwise noted.

§ 1206.350 What is the purpose of this subpart?

(a) This subpart applies to all geothermal resources produced from Federal geothermal leases issued pursuant to the Geothermal Steam Act of 1970 (GSA), as amended by the Energy Policy Act of 2005 (EPA) (30 U.S.C. 1001 *et seq.*). The purpose of this subpart is to prescribe how to calculate royalties and direct use fees for geothermal production.

(b) The ONRR may audit and adjust all royalty and fee payments.

(c) In some cases, the regulations in this subpart may be inconsistent with a statute, settlement agreement, written agreement, or lease provision. If this happens, the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency. For purposes of this paragraph, the following definitions apply:

(1) “Settlement agreement” means a settlement agreement between the United States and a lessee resulting from administrative or judicial litigation.

(2) “Written agreement” means a written agreement between the lessee and the ONRR Director or Assistant Secretary, Policy, Management and Budget of the Department of the Interior that:

(i) Establishes a method to determine the royalty from any lease that ONRR expects at least would approximate the value or royalty established under this subpart; and

(ii) Includes a value or gross proceeds determination under § 1206.364 of this subpart.

§ 1206.351 What definitions apply to this subpart?

For purposes of this subpart, the following terms have the meanings indicated.

Affiliate means a person who controls, is controlled by, or is under common control with another person. For purposes of this subpart:

(1) Ownership or common ownership of more than 50 percent of the voting securities, or instruments of ownership, or other forms of ownership, of another person constitutes control. Ownership of less than 10 percent con-

stitutes a presumption of noncontrol that ONRR may rebut.

(2) If there is ownership or common ownership of 10 through 50 percent of the voting securities, or instruments of ownership, or other forms of ownership of another person, ONRR will consider the following factors in determining whether there is control under the circumstances of a particular case:

(i) The extent to which there are common officers or directors;

(ii) With respect to the voting securities, or instruments of ownership, or other forms of ownership: the percentage of ownership or common ownership, the relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons, whether a person is the greatest single owner, or whether there is an opposing voting bloc of greater ownership;

(iii) Operation of a lease, plant, pipeline, or other facility;

(iv) The extent of participation by other owners in operations and day-to-day management of a lease, plant, pipeline, or other facility; and

(v) Other evidence of power to exercise control over or common control with another person.

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, are affiliates.

Allowance means a deduction in determining value for royalty purposes.

Arm’s-length contract means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm’s length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

Audit means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty or fee payment compliance activities of lessees or other interest holders who pay royalties, fees, rents, or bonuses on Federal geothermal leases.

Byproducts means minerals (exclusive of oil, hydrocarbon gas, and helium), found in solution or in association with geothermal steam, that no person

would extract and produce by themselves because they are worth less than 75 percent of the value of the geothermal steam or because extraction and production would be too difficult.

Byproduct recovery facility means a facility where byproducts are placed in marketable condition.

Byproduct transportation allowance means an allowance for the reasonable, actual costs of moving byproducts to a point of sale or delivery off the lease, unit area, or communitized area, or away from a byproduct recovery facility. The byproduct transportation allowance does not include gathering costs. You must report a byproduct transportation allowance as a separate discrete field on the Form ONRR-2014.

Class I lease means:

(1) A lease that BLM issued before August 8, 2005, for which the lessee has not converted the royalty rate terms under 43 CFR 3212.25; or

(2) A lease that BLM issued in response to an application that was pending on August 8, 2005, for which the lessee has not made an election under 43 CFR 3200.8(b).

Class II lease means:

A lease that BLM issued after August 8, 2005, except for a lease issued in response to an application that was pending on August 8, 2005, for which the lessee does not make an election under 43 CFR 3200.8(b).

Class III lease means:

A lease that BLM issued before August 8, 2005, for which the lessee has converted to the royalty rate or direct use fee terms under 43 CFR 3212.25.

Commercial production or generation of electricity means generation of electricity that is sold or is subject to sale, including the electricity or energy that is reasonably required to produce the resource used in production of electricity for sale or to convert geothermal energy into electrical energy for sale.

Contract means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

Deduction means a subtraction the lessee uses to determine the value of geothermal resources produced from a

Class I lease that the lessee uses to generate electricity.

Delivered electricity means the amount of electricity in kilowatt-hours delivered to the purchaser.

Direct use means the utilization of geothermal resources for commercial, residential, agricultural, public facilities, or other energy needs, other than the commercial production or generation of electricity.

Direct use facility means a facility that uses the heat or other energy of the geothermal resource for direct use purposes.

Electrical facility means a power plant or other facility that uses a geothermal resource to generate electricity.

Field means the land surface vertically projected over a subsurface geothermal reservoir encompassing at least the outermost boundaries of all geothermal accumulations known to be within that reservoir. Geothermal fields are usually given names and their official boundaries are often designated by regulatory agencies in the respective States in which the fields are located.

Gathering means the movement of lease production from the wellhead to the point of utilization.

Generating deduction means a deduction for the lessee's reasonable, actual costs of generating plant tailgate electricity.

Geothermal resources means:

(1) All products of geothermal processes, including indigenous steam, hot water, and hot brines;

(2) Steam and other gases, hot water, and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(3) Heat or other associated energy found in geothermal formations; and

(4) Any byproducts.

Gross proceeds (for royalty payment purposes) means the total monies and other consideration accruing to a geothermal lessee for the sale of electricity or geothermal resource. Gross proceeds includes, but is not limited to:

(1) Payments to the lessee for certain services such as effluent injection, field operation and maintenance, drilling or workover of wells, or field gathering to the extent that the lessee is obligated

to perform such functions at no cost to the Federal Government;

(2) Reimbursements for production taxes and other taxes. Tax reimbursements are part of gross proceeds accruing to a lessee even though the Federal royalty interest may be exempt from taxation; and

(3) Any monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts.

Lease means a geothermal lease issued under the authority of the GSA, unless the context indicates otherwise.

Lessee (you) means any person to whom the United States issues a geothermal lease, and any person who has been assigned an obligation to make royalty, fee, or other payments required by the lease. This includes any person who has an interest in a geothermal lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty, fee, or other payment responsibility. This also includes any affiliate of the lessee that uses the geothermal resource to generate electricity, in a direct use process, or to recover byproducts, or any affiliate that sells or transports lease production.

Marketable condition means lease products that are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the disposition from the field or area of such lease products.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Plant parasitic electricity means electricity used to operate a power plant that is used for commercial production or generation of electricity.

Plant tailgate electricity means the amount of electricity in kilowatt-hours generated by a power plant exclusive of plant parasitic electricity, but inclusive of any electricity generated by the power plant and returned to the lease for lease operations. Plant tailgate electricity should be measured at, or calculated for, the high voltage side of

the transformer in the plant switchyard.

Point of utilization means the power plant or direct use facility in which the geothermal resource is utilized.

Public purpose means a program carried out by a State, tribal, or local government for the purpose of providing facilities or services for the benefit of the public in connection with, but not limited to, public health, safety or welfare, other than the commercial generation of electricity. Use of lands or facilities for habitation, cultivation, trade or manufacturing is permissible only when necessary for and integral to (*i.e.*, an essential part of) the public purpose.

Public safety or welfare means a program carried out or promoted by a public agency for public purposes involving, directly or indirectly, protection, safety, and law enforcement activities, and the criminal justice system of a given political area. Public safety or welfare may include, but is not limited to, programs carried out by:

- (1) Public police departments;
- (2) Sheriffs' offices;
- (3) The courts;
- (4) Penal and correctional institutions (including juvenile facilities);
- (5) State and local civil defense organizations; and
- (6) Fire departments and rescue squads (including volunteer fire departments and rescue squads supported in whole or in part with public funds).

Reasonable alternative fuel means a conventional fuel (such as coal, oil, gas, or wood) that would normally be used as a source of heat in direct use operations.

Secretary means the Secretary of the Interior or any person duly authorized to exercise the powers vested in that office.

Transmission deduction means a deduction for the lessee's reasonable actual costs incurred to wheel or transmit the electricity from the lessee's power plant to the purchaser's delivery point.

Wheeling means the transmission of electricity from a power plant to the point of delivery.

§ 1206.352 How do I calculate the royalty due on geothermal resources used for commercial production or generation of electricity?

(a) If you sold geothermal resources produced from a Class I, II, or III lease at arm's length that the purchaser uses to generate electricity, then the royalty on the geothermal resources is the gross proceeds accruing to you from the sale of the geothermal resource to the arm's-length purchaser multiplied by either:

- (1) The royalty rate in your lease; or
- (2) The royalty rate that BLM prescribes or calculates under 43 CFR 3211.17. See § 1206.361 for additional provisions applicable to determining gross proceeds under arm's-length sales.

(b) If you use the geothermal resource in your own power plant for the generation and sale of electricity, the following provisions apply

(1) For Class I leases, you must determine the royalty on produced geothermal resources in accordance with the first applicable of the following paragraphs:

(i) The gross proceeds accruing to you from the arm's-length sale of the electricity less applicable deductions determined under §§ 1206.353 and 1206.354 of this part, multiplied by the royalty rate in your lease. See § 1206.361 for additional provisions applicable to determining gross proceeds under arm's-length sales. Under no circumstances may the deductions reduce the royalty value of the geothermal resource to zero; or

(ii) A royalty determined by any other reasonable method approved by ONRR under § 1206.364 of this subpart.

(2) For Class II and Class III leases, the royalty on geothermal resources produced is your gross proceeds from the sale of electricity multiplied by the royalty rate BLM prescribed for your lease under 43 CFR 3211.17. See § 1206.361 for additional provisions applicable to determining gross proceeds under arm's-length sales. You may not reduce gross proceeds by any deductions.

§ 1206.353 How do I determine transmission deductions?

(a) If you determine the value of your geothermal resources under § 1206.352(b)(1)(i) of this subpart, you

may subtract a transmission deduction from the gross proceeds you received for the sale of electricity to determine the plant tailgate value of the electricity.

(1) The transmission deduction consists of either or both of two components:

(i) Transmission line costs as determined under paragraph (b) of this section; and

(ii) Wheeling costs if the electricity is transmitted across a third party's transmission line under an arm's-length wheeling agreement.

(2) You may deduct the actual costs you (including your affiliate(s)) incur for transmitting electricity under your arm's-length wheeling contract.

(b) To determine your transmission line cost, you must follow the requirements of paragraphs (b)(1) and (b)(2) of this section.

(1) Your transmission line costs are your actual costs associated with the construction and operation of a transmission line for the purpose of transmitting electricity attributable and allocable to your power plant utilizing Federal geothermal resources.

(i) You must determine the monthly transmission line cost component of the transmission deduction by multiplying the annual transmission line cost rate (in dollars per kilowatt-hour) by the amount of electricity delivered for the reporting month.

(ii) You must redetermine the transmission line cost rate annually either at the beginning of the same month of the year in which the power plant was placed into service or at a time concurrent with the beginning of your annual corporate accounting period. The period you select must coincide with the same period you chose for the generating deduction under § 1206.354(b)(1). After you choose a deduction period, you may not later elect to use a different deduction period without ONRR approval.

(2) Your actual transmission line costs during the reporting period include:

(i) Operating and maintenance expenses under paragraphs (d) and (e) of this section;

(ii) Overhead under paragraph (f) of this section; and either

(iii) Depreciation under paragraphs (g) and (h) of this section and a return on undepreciated capital investment under paragraphs (g) and (i) of this section or

(iv) A return on the capital investment in the transmission line under paragraphs (g) and (j) of this section.

(c)(1) Allowable capital costs under paragraph (b) of this section are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the transmission line.

(2)(i) You may include a return on capital you invested in the purchase of real estate for transmission facilities if:

(A) Such purchase is necessary; and

(B) The surface is not part of the Federal lease.

(ii) The rate of return will be the same rate determined under paragraph (k) of this section.

(d) Allowable operating expenses include:

(1) Operations supervision and engineering;

(2) Operations labor;

(3) Fuel;

(4) Utilities;

(5) Materials;

(6) Ad valorem property taxes;

(7) Rent;

(8) Supplies; and

(9) Any other directly allocable and attributable operating or maintenance expense that you can document.

(e) Allowable maintenance expenses include:

(1) Maintenance of the transmission line;

(2) Maintenance of equipment;

(3) Maintenance labor; and

(4) Other directly allocable and attributable maintenance expenses that you can document.

(f) Overhead directly attributable and allocable to the operation and maintenance of the transmission line is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(g) To compute costs associated with capital investment, a lessee may use either depreciation with a return on undepreciated capital investment, or a

return on capital investment in the transmission line. After a lessee has elected to use either method, the lessee may not later elect to change to the other alternative without ONRR approval.

(h)(1) To compute depreciation, you must use a straight-line depreciation method based on the life of the geothermal project, usually the term of the electricity sales contract, or other depreciation period acceptable to ONRR. You may not depreciate equipment below a reasonable salvage value.

(2) A change in ownership of a transmission line does not alter the depreciation schedule established by the original lessee-owner for purposes of computing transmission line costs.

(3) With or without a change in ownership, you may depreciate a transmission line only once.

(i) To calculate a return on undepreciated capital investment, multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the transmission deduction by the rate of return provided in paragraph (k) of this section.

(j) To compute a return on capital investment in the transmission line, multiply the allowable capital investment in the transmission line by the rate of return determined pursuant to paragraph (k) of this section. There is no allowance for depreciation.

(k) The rate of return must be 2.0 multiplied by the industrial rate associated with Standard & Poor's BBB rating. The BBB rate must be the monthly average rate as published in Standard & Poor's Bond Guide for the first month for which the allowance is applicable. Redetermine the rate at the beginning of each subsequent calendar year.

(l) Calculate the deduction for transmission costs based on your cost of transmitting electricity through each individual transmission line.

(m)(1) For new transmission facilities or arrangements, base your initial deduction on estimates of allowable electricity transmission costs for the applicable period. Use the most recently available operations data for the transmission line or, if such data are not

available, use estimates based on data for similar transmission lines.

(2) When actual cost information is available, you must amend your prior Form ONRR-2014 reports to reflect actual transmission costs deductions for each month for which you reported and paid based on estimated transmission costs. You must pay any additional royalties due (together with interest computed under §1218.302 of this chapter). You are entitled to a credit for or refund of any overpaid royalties.

(n) In conducting reviews and audits, ONRR may require you to submit arm's-length transmission contracts, production agreements, operating agreements, and related documents and all other data used to calculate the deduction. You must comply with any such requirements within the time ONRR specifies. Recordkeeping requirements are found at part 1212 of this chapter.

(o) At the completion of transmission line dismantlement and salvage operations, you may report a credit for or request a refund of royalties in an amount equal to the royalty rate times the amount by which actual transmission line dismantlement costs exceed actual income attributable to salvage of the transmission line.

§ 1206.354 How do I determine generating deductions?

(a) If you determine the value of your geothermal resources under §1206.352(b)(1)(i) of this subpart, you may deduct your reasonable actual costs incurred to generate electricity from the plant tailgate value of the electricity (usually the transmission-reduced value of the delivered electricity). You may deduct the actual costs you incur for generating electricity under your arm's-length power plant contract.

(b)(1) You must base your generating costs deduction on your actual annual costs associated with the construction and operation of a geothermal power plant.

(i) You must determine your monthly generating deduction by multiplying the annual generating cost rate (in dollars per kilowatt-hour) by the amount of plant tailgate electricity measured (or computed) for the reporting month.

The generating cost rate is determined from the annual amount of your plant tailgate electricity.

(ii) You must redetermine your generating cost rate annually either at the beginning of the same month of the year in which the power plant was placed into service or at a time concurrent with the beginning of your annual corporate accounting period. The period you select must coincide with the same period chosen for the transmission deduction under §1206.353(b)(1). After you choose a deduction period, you may not later elect to use a different deduction period without ONRR approval.

(2) Your generating costs are your actual power plant costs during the reporting period, including:

(i) Operating and maintenance expenses under paragraphs (d) and (e) of this section;

(ii) Overhead under paragraph (f) of this section; and either

(iii) Depreciation under paragraphs (g) and (h) of this section and a return on undepreciated capital investment under paragraphs (g) and (i) of this section; or

(iv) A return on capital investment in the power plant under paragraphs (g) and (j) of this section.

(c)(1) Allowable capital costs under paragraph (b) of this section are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the power plant or are required by the design specifications of the power conversion cycle.

(2)(i) You may include a return on capital you invested in the purchase of real estate for a power plant site if:

(A) The purchase is necessary; and,
(B) The surface is not part of the Federal lease.

(ii) The rate of return will be the same rate determined under paragraph (k) of this section.

(3) You may not deduct the costs of gathering systems and other production-related facilities.

(d) Allowable operating expenses include:

(1) Operations supervision and engineering;
(2) Operations labor;

(3) Auxiliary fuel and/or utilities used to operate the power plant during down time;

(4) Utilities;

(5) Materials;

(6) Ad valorem property taxes;

(7) Rent;

(8) Supplies; and

(9) Any other directly allocable and attributable operating expense.

(e) Allowable maintenance expenses include:

(1) Maintenance of the power plant;

(2) Maintenance of equipment;

(3) Maintenance labor; and

(4) Other directly allocable and attributable maintenance expenses that you can document.

(f) Overhead directly attributable and allocable to the operation and maintenance of the power plant is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(g) To compute costs associated with capital investment, a lessee may use either depreciation with a return on undepreciated capital investment, or a return on capital investment in the power plant. After a lessee has elected to use either method, the lessee may not later elect to change to the other alternative without ONRR approval.

(h)(1) To compute depreciation, you must use a straight-line depreciation method based on the life of the geothermal project, usually the term of the electricity sales contract, or other depreciation period acceptable to ONRR. You may not depreciate equipment below a reasonable salvage value.

(2) A change in ownership of the power plant does not alter the depreciation schedule established by the original lessee-owner for purposes of computing generating costs.

(3) With or without a change in ownership, you may depreciate a power plant only once.

(i) To calculate a return on undepreciated capital investment, multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the generating deduction allowance by the rate of return provided in paragraph (k) of this section.

(j) To compute a return on capital investment in the power plant, multiply the allowable capital investment in the power plant by the rate of return determined pursuant to paragraph (k) of this section. There is no allowance for depreciation.

(k) The rate of return must be 2.0 multiplied by the industrial rate associated with Standard & Poor's BBB rating. The BBB rate must be the monthly average rate as published in Standard & Poor's Bond Guide for the first month for which the allowance is applicable. You must redetermine the rate at the beginning of each subsequent calendar year.

(l) Calculate the deduction for generating costs based on your cost of generating electricity through each individual power plant.

(m)(1) For new power plants or arrangements, base your initial deduction on estimates of allowable electricity generation costs for the applicable period. Use the most recently available operations data for the power plant or, if such data are not available, use estimates based on data for similar power plants.

(2) When actual cost information is available, you must amend your prior Form ONRR-2014 reports to reflect actual generating cost deductions for each month for which you reported and paid based on estimated generating costs. You must pay any additional royalties due (together with interest computed under §1218.302 of this chapter). You are entitled to a credit for or refund of any overpaid royalties.

(n) In conducting reviews and audits, ONRR may require you to submit arm's-length power plant contracts, production agreements, operating agreements, related documents and all other data used to calculate the deduction. You must comply with any such requirements within the time ONRR specifies. Recordkeeping requirements are found at part 1212 of this chapter.

(o) At the completion of power plant dismantlement and salvage operations, you may report a credit for or request a refund of royalty in an amount equal to the royalty rate times the amount

§ 1206.355

30 CFR Ch. XII (7–1–17 Edition)

by which actual power plant dismantlement costs exceed actual income attributable to salvage of the power plant.

§ 1206.355 How do I calculate royalty due on geothermal resources I sell at arm's length to a purchaser for direct use?

If you sell geothermal resources produced from Class I, II, or III leases at arm's length to a purchaser for direct use, then the royalty on the geothermal resource is the gross proceeds accruing to you from the sale of the geothermal resource to the arm's-length purchaser multiplied by the royalty rate in your lease or that BLM prescribes under 43 CFR 3211.18. See § 1206.361 for additional provisions applicable to determining gross proceeds under arm's-length sales.

§ 1206.356 How do I calculate royalty or fees due on geothermal resources I use for direct use purposes?

If you use the geothermal resource for direct use:

(a) For Class I leases, you must determine the royalty due on geothermal

resources in accordance with the first applicable of the following three paragraphs.

(1) The weighted average of the gross proceeds established in arm's-length contracts for the purchase of significant quantities of geothermal resources to operate the lessee's same direct-use facility multiplied by the royalty rate in your lease. In evaluating the acceptability of arm's-length contracts, the following factors will be considered: time of execution, duration, terms, volume, quality of resource, and such other factors as may be appropriate to reflect the value of the resource.

(2) The equivalent value of the least expensive, reasonable alternative energy source (fuel) multiplied by the royalty rate in your lease. The equivalent value of the least expensive, reasonable alternative energy source will be based on the amount of thermal energy that would otherwise be used by the direct use facility in place of the geothermal resource. That amount of thermal energy (in Btu) displaced by the geothermal resource will be determined by the equation:

$$\text{thermal energy displaced} = \frac{(h_{\text{in}} - h_{\text{out}}) \times \text{density} \times 0.113681 \times \text{volume}}{\text{efficiency factor}}$$

Where h_{in} is the enthalpy in Btu/lb at the direct use facility inlet (based on measured inlet temperature), h_{out} is the enthalpy in Btu/lb at the facility outlet (based on measured outlet temperature), density is in lbs/cu ft based on inlet temperature, the factor 0.133681 (cu ft/gal) converts gallons to cubic feet, and volume is the quantity of geothermal fluid in gallons produced at the wellhead or measured at an approved point. The efficiency factor of the alternative energy source will be 0.7 for coal and 0.8 for oil, natural gas, and other fuels derived from oil and natural gas, or an efficiency factor proposed by the lessee and approved by ONRR. The methods of measuring resource parameters (temperature, volume, etc.) and the frequency of com-

puting and accumulating the amount of thermal energy displaced will be determined and approved by BLM under 43 CFR 3275.13–3275.17.

(3) A royalty determined by any other reasonable method approved by ONRR or the Assistant Secretary, Policy, Management and Budget of the Department of the Interior, under § 1206.364 of this part.

(b) For geothermal resources produced from Class II and Class III leases, you must multiply the appropriate fee from the schedule in subparagraph (b)(1) of this section by the number of gallons or pounds you produce from the direct use lease each month.

(1) You must use the following fee schedule to calculate fees due under this section:

Natural Resources Revenue Off., Interior

§ 1206.356

DIRECT USE FEE SCHEDULE

[Hot water]

If your average monthly inlet temperature (°F) is		Your fees are . . .	
At least . . .	But less than . . .	(\$/million gallons)	(\$/million pounds)
130	140	2.524	0.307
140	150	7.549	0.921
150	160	12.543	1.536
160	170	17.503	2.150
170	180	22.426	2.764
180	190	27.310	3.379
190	200	32.153	3.993
200	210	36.955	4.607
210	220	41.710	5.221
220	230	46.417	5.836
230	240	51.075	6.450
240	250	55.682	7.064
250	260	60.236	7.679
260	270	64.736	8.293
270	280	69.176	8.907
280	290	73.558	9.521
290	300	77.876	10.136
300	310	82.133	10.750
310	320	86.328	11.364
320	330	90.445	11.979
330	340	94.501	12.593
340	350	98.481	13.207
350	360	102.387	13.821

(i) For direct use geothermal resources with an average monthly inlet temperature of 130 °F or less, you must pay only the lease rental.

(ii) The ONRR, in consultation with BLM, will develop and publish a revised

fee schedule in the FEDERAL REGISTER, as needed.

(iii) ONRR, in consultation with BLM, will calculate revised fees schedules using the following formulas:

$$\text{For reporting on a volume basis: } R_v = \rho \times (T_{in} - T_{out}) \times P_{prbc} \times F_{rr} \times \frac{1}{e}$$

$$\text{For reporting on a mass basis: } R_m = (T_{in} - T_{out}) \times P_{prbc} \times F_{rr} \times \frac{1}{e}$$

Where:

R_v = Royalty due as a function of produced volume in the fee schedule, expressed as dollars per million (10⁶) gallons;

R_m = Royalty due as a function of produced mass in the fee schedule, expressed as dollars per million (10⁶) pounds;

ρ [rho] = Water density at inlet temperature expressed as lbs per gallon;

T_{in} = Measured inlet temperature in °F (as required by BLM under 43 CFR part 3275);

T_{out} = Established assumed outlet temperature of 130 °F;

e = Boiler Efficiency Factor for coal of 70 percent;

P_{prbc} = The 3-year historical average of Powder River Basin spot coal prices, as pub-

lished by the Energy Information Administration, or other recognized authoritative reference source of coal prices, in dollars (per MMBtu);

F_{rr} = The assumed Lease Royalty Rate of 10 percent.

(2) The fee that you report is subject to monitoring, review, and audit.

(3) The schedule of fees established under this paragraph will apply to any Class III lease with respect to any royalty payments previously made when the lease was a Class I lease that were due and owing, and were paid, on or after July 16, 2003. To use this provision, you must provide ONRR data

showing the amount of geothermal production in pounds or gallons of geothermal fluid to input into the fee schedule (see 43 CFR part 3276).

(i) If the royalties you previously paid are less than the fees due under this section, you must pay the difference plus interest on that difference computed under § 1218.302 of this chapter.

(ii) If the royalties you previously paid are more than the fees due under this section, then you are entitled to a refund or credit from ONRR of 50 percent of the overpaid royalties. You are also entitled to a refund or credit of any interest that you paid on the overpaid royalties.

(c) For geothermal resources other than hot water, ONRR will determine fees on a case-by-case basis.

[48 FR 35641, Aug. 5, 1983; 76 FR 76615, Dec. 8, 2011]

EDITORIAL NOTE: At 76 FR 76615, Dec. 8, 2011, § 1206.356 was amended in the thermal energy displaced equation in paragraph (a)(2) by removing “0.113681” and adding in its place “0.133681”. The rule document does not include a revised illustration to be used for publication.

§ 1206.357 How do I calculate royalty due on byproducts?

(a) If you sell byproducts, you must determine the royalty due on the byproducts that are royalty-bearing under:

(1) Applicable lease terms of Class I leases and of Class III leases that do not elect to be subject to all of the BLM regulations promulgated for leases issued after August 8, 2005, under 43 CFR 3200.7(a)(2), or

(2) Applicable statutory provisions at 30 U.S.C. 1004(a)(2) for Class II leases and for Class III leases that do elect to be subject to all of the BLM regulations promulgated for leases issued after August 8, 2005, under 43 CFR 3200.7(a)(2).

(b) You must determine the royalty due on the byproducts by multiplying the royalty rate in your lease or that BLM prescribes under 43 CFR 3211.19 by a value of the byproducts determined in accordance with the first applicable of the following subparagraphs:

(1) The gross proceeds accruing to you from the arm’s-length sale of the

byproducts, less any applicable byproduct transportation allowances determined under §§ 1206.358 and 1206.359. See § 1206.361 for additional provisions applicable to determining gross proceeds;

(2) Other relevant matters including, but not limited to, published or publicly available spot-market prices, or information submitted by the lessee concerning circumstances unique to a particular lease operation or the saleability of certain byproducts; or

(3) Any other reasonable valuation method approved by ONRR.

§ 1206.358 What are byproduct transportation allowances?

(a) When you determine the value of byproducts at a point off the geothermal lease, unit, or participating area, you are allowed a deduction in determining value, for royalty purposes, for your reasonable, actual costs incurred to:

(1) Transport the byproducts from a Federal lease, unit, or participating area to a sales point or point of delivery that is off the lease, unit, or participating area; or

(2) Transport the byproducts from a Federal lease, unit, or participating area, or from a geothermal use facility to a byproduct recovery facility when that byproduct recovery facility is off the lease, unit, or participating area and, if applicable, from the recovery facility to a sales point or point of delivery off the lease, unit, or participating area.

(b) Costs for transporting geothermal fluids from the lease to the geothermal use facility, whether on or off the lease, are not includible in the byproduct transportation allowance.

(c)(1) When you transport byproducts from a lease, unit, participating area, or geothermal use facility to a byproduct recovery facility, you are not required to allocate transportation costs between the quantity of marketable byproducts and the rejected waste material. The byproduct transportation allowance is authorized for the total production that is transported. You must express byproduct transportation allowances as a cost per unit of marketable byproducts transported.

(2) For byproducts that are extracted on the lease, unit, participating area,

or at the geothermal use facility, the byproduct transportation allowance is authorized for the total byproduct that is transported to a point of sale off the lease, unit, or participating area. You must express byproduct transportation allowances as a cost per unit of byproduct transported.

(3) You may deduct transportation costs only when you sell, deliver, or otherwise utilize the transported byproduct and report and pay royalties on the byproduct.

(d) *Reporting requirements.* (1) You must use a discrete field on Form ONRR-2014 to notify ONRR of a transportation allowance.

(2) In conducting reviews and audits, ONRR may require you to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. You must comply with any such requirements within the time ONRR specifies. Recordkeeping requirements are found at part 1212 of this chapter.

(e) Byproduct transportation allowances are subject to monitoring, review, and audit. If, after a review or audit, ONRR determines that you have improperly determined a byproduct transportation allowance, you must pay any additional royalties due (plus interest computed under §1218.302 of this chapter). You are entitled to a credit for or refund of any overpaid royalties.

(f) If you commingled byproducts produced from Federal and non-Federal leases for transportation, you may not disproportionately allocate transportation costs to Federal lease production.

§ 1206.359 How do I determine byproduct transportation allowances?

(a) For transportation costs you incur under an arm's-length contract, the transportation allowance will be the reasonable, actual costs you incurred for transporting the byproducts under that contract.

(1) In conducting reviews and audits, ONRR will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from you to the transporter for the transportation. If the contract reflects more than the

total consideration you paid, ONRR may require you to determine the byproduct transportation allowance under paragraph (b) of this section.

(2) If ONRR determines that the consideration you paid under an arm's-length byproduct transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because you otherwise have breached your duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, ONRR will require you to determine the byproduct transportation allowance under paragraph (b) of this section. When ONRR determines that the value of the transportation may be unreasonable, ONRR will notify you and give you an opportunity to provide written information justifying your transportation costs.

(3) Where your payments for transportation under an arm's-length contract are not established on a dollars-per-unit basis, you must convert whatever consideration you paid to a dollar value equivalent for the purposes of this section.

(b) If you transport the byproduct yourself or under a non-arm's-length transportation arrangement, the byproduct transportation allowance is your reasonable actual costs for transportation during the reporting period, including:

(1) Operating and maintenance expenses under paragraphs (d) and (e) of this section;

(2) Overhead under paragraph (f) of this section; and either

(3) Depreciation under paragraphs (g) and (h) of this section and a return on undepreciated capital investment under paragraphs (g) and (i) of this section; or

(4) A return on capital investment in the transportation system under paragraphs (g) and (j) of this section.

(c)(1) Allowable capital costs under paragraph (b) of this section are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the transportation system.

(2)(i) You may include a return on capital you invested in the purchase of

real estate to locate the byproduct transportation facilities if:

- (A) The purchase is necessary; and
- (B) The surface is not part of a Federal lease.

(ii) The rate of return will be the same rate determined in paragraph (k) of this section.

(3) You may not deduct the costs of gathering systems and other production-related facilities.

(d) Allowable operating expenses include:

- (1) Operations supervision and engineering;
- (2) Operations labor;
- (3) Fuel;
- (4) Utilities;
- (5) Materials;
- (6) Ad valorem property taxes;
- (7) Rent;
- (8) Supplies; and
- (9) Any other directly allocable and attributable operating expense that you can document.

(e) Allowable maintenance expenses include:

- (1) Maintenance of the transportation system;
- (2) Maintenance of equipment;
- (3) Maintenance labor; and
- (4) Other directly allocable and attributable maintenance expenses that you can document.

(f) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(g) To compute costs associated with capital investment, a lessee may use either paragraphs (h) and (i) or paragraph (j) of this section. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without ONRR approval.

(h)(1) To compute depreciation, you must use a straight-line depreciation method based on either the life of the equipment or the life of the geothermal project which the transportation system services. After you choose the basis for depreciation, you may not change that basis without ONRR approval. You may not depreciate equipment below a reasonable salvage value.

(2) A change in ownership of a transportation system does not alter the depreciation schedule established by the original lessee-owner for purposes of computing transportation costs.

(3) With or without a change in ownership, you may depreciate a transportation system only once.

(i) To calculate a return on undepreciated capital investment, multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the transportation allowance by the rate of return provided in paragraph (k) of this section.

(j) To compute a return on capital investment in the transportation system, the allowed cost will be the amount equal to the allowable capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (k) of this section. There is no allowance for depreciation.

(k) The rate of return must be the industrial rate associated with Standard & Poor's BBB rating. The BBB rate must be the monthly average rate as published in Standard & Poor's Bond Guide for the first month for which the allowance is applicable. You must redetermine the rate at the beginning of each subsequent calendar year.

(1)(1) For new transportation facilities or arrangements, base your initial deduction on estimates of allowable byproduct transportation costs for the applicable period. Use the most recently available operations data for the transportation system or, if such data are not available, use estimates based on data for similar transportation systems.

(2) When actual cost information is available, you must amend your prior Form ONRR-2014 reports to reflect actual byproduct transportation cost deductions for each month for which you reported and paid based on estimated byproduct transportation costs. You must pay any additional royalties due (together with interest computed under §1218.302 of this chapter). You are entitled to a credit for or a refund of any overpaid royalties.

§ 1206.360 What records must I keep to support my calculations of royalty or fees under this subpart?

If you determine royalties or direct use fees for your geothermal resource under this subpart, you must retain all data relevant to the determination of the royalty value or the fee you paid. Recordkeeping requirements are found at part 1212 of this chapter.

(a) You must be able to show:

(1) How you calculated the royalty value or fee you reported, including all allowable deductions; and

(2) How you complied with this subpart.

(b) Upon request, you must submit all data to ONRR. You must comply with any such requirement within the time ONRR specifies.

§ 1206.361 How will ONRR determine whether my royalty or direct use fee payments are correct?

(a)(1) The royalties or direct use fees that you report are subject to monitoring, review, and audit. The ONRR may review and audit your data, and ONRR will direct you to use a different measure of royalty value, gross proceeds, or fee, whichever is applicable, if it determines that the reported value, gross proceeds, or fee is inconsistent with the requirements of this subpart.

(2) If ONRR directs you to use a different royalty value, measure of gross proceeds, or fee, you must either pay any royalties or fees due (together with interest computed under § 1218.302 of this chapter) or report a credit for or request a refund of any overpaid royalties or fees.

(b) When the provisions in this subpart refer to gross proceeds either for the sale of electricity or the sale of a geothermal resource, in conducting reviews and audits ONRR will examine whether your sales contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to you for the geothermal resource or electricity. If ONRR determines that a contract does not reflect the total consideration, or the gross proceeds accruing to you under a contract do not reflect reasonable consideration because of misconduct by or between the contracting parties, or because you otherwise have

breached your duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, ONRR may require you to increase the gross proceeds to reflect any additional consideration. Alternatively, for Class I leases, ONRR may require you to use another valuation method in the regulations applicable to dispositions other than under an arm's-length contract. ONRR will notify you to give you an opportunity to provide written information justifying your gross proceeds.

(c) For arm's-length sales, you have the burden of demonstrating that your contract is arm's length.

(d) ONRR may require you to certify that the provisions in your sales contract include all of the consideration the buyer paid you, either directly or indirectly, for the electricity or geothermal resource.

(e) Notwithstanding any other provision of this subpart, under no circumstances will the value of production for royalty purposes under a Class I lease where the geothermal resources are sold before use be less than the gross proceeds accruing to you.

(f) Gross proceeds for the sale of electricity or for the sale of the geothermal resource will be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract.

(1) Absent contract revision or amendment, if you fail to take proper or timely action to receive prices or benefits to which you are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) Contract revisions or amendments you make must be in writing and signed by all parties to the contract.

(3) If you make timely application for a price increase or benefit allowed under your contract, but the purchaser refuses and you take reasonable measures, which are documented, to force purchaser compliance, you will owe no additional royalties unless or until you receive additional monies or consideration resulting from the price increase. This paragraph (f)(3) will not be construed to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay, in

whole or in part or timely, for a quantity of geothermal resources or electricity.

§ 1206.362 What are my responsibilities to place production into marketable condition and to market production?

You must place geothermal resources and byproducts in marketable condition and market the geothermal resources or byproducts for the mutual benefit of the lessee and the lessor at no cost to the Federal Government. If you use gross proceeds under an arm's-length contract in determining royalty, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that the seller normally would be responsible to perform to place the geothermal resources or byproducts in marketable condition or to market the geothermal resources or byproducts.

§ 1206.363 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?

Notwithstanding any provision in these regulations to the contrary, no audit, review, reconciliation, monitoring, or other like process that results in a redetermination by ONRR of royalty or fees due under this subpart is considered final or binding as against the Federal Government or its beneficiaries until ONRR formally closes the audit period in writing.

§ 1206.364 How do I request a value or gross proceeds determination?

(a) You may request a value determination from ONRR regarding any geothermal resources produced from a Class I lease or for byproducts produced from a Class I, Class II, or Class III lease. You may also request a gross proceeds determination for a Class II or Class III lease. Your request must:

- (1) Be in writing;
- (2) Identify specifically all leases involved, all owners of interests in those leases, and the operator(s) for those leases;
- (3) Completely explain all relevant facts. You must inform ONRR of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and

(6) Suggest your proposed gross proceeds calculation or valuation method.

(b) In response to your request:

(1) The Assistant Secretary, Policy, Management and Budget, may issue a determination; or

(2) ONRR may issue a determination; or

(3) ONRR may inform you in writing that ONRR will not provide a determination. Situations in which ONRR typically will not provide any determination include, but are not limited to:

(i) Requests for guidance on hypothetical situations; and

(ii) Matters that are the subject of pending litigation or administrative appeals.

(c)(1) A determination signed by the Assistant Secretary, Policy, Management and Budget, is binding on both you and ONRR until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a determination, you must make any adjustments in royalty payments that follow from the determination and, if you owe additional royalties, pay the royalties owed together with late payment interest computed under § 1218.302 of this chapter.

(3) A determination signed by the Assistant Secretary is the final action of the Department and is subject to judicial review under 5 U.S.C. 701-706.

(d) A determination issued by ONRR is binding on ONRR and delegated States, but not on you, with respect to the specific situation addressed in the determination unless ONRR (for ONRR-issued determinations) or the Assistant Secretary modifies or rescinds it.

(1) A determination by ONRR is not an appealable decision or order under 30 CFR part 1290.

(2) If you receive an order requiring you to pay royalty on the same basis as the determination, you may appeal that order under 30 CFR part 1290.

(e) In making a determination, ONRR or the Assistant Secretary may use

any of the applicable criteria in this subpart.

(f) A change in an applicable statute or regulation on which any determination is based takes precedence over the determination after the effective date of the statute or regulation, regardless of whether ONRR or the Assistant Secretary modifies or rescinds the determination.

(g) ONRR or the Assistant Secretary generally will not retroactively modify or rescind a determination issued under paragraph (d) of this section, unless:

(1) There was a misstatement or omission of material facts; or

(2) The facts subsequently developed are materially different from the facts on which the guidance was based.

(h) ONRR may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 1206.365.

[72 FR 24459, May 2, 2007, as amended at 78 FR 30204, May 22, 2013]

§ 1206.365 Does ONRR protect information I provide?

Certain information you submit to ONRR regarding royalties or fees on geothermal resources or byproducts, including deductions and allowances, may be exempt from disclosure. To the extent applicable laws and regulations permit, ONRR will keep confidential any data you submit that is privileged, confidential, or otherwise exempt from disclosure. All requests for information must be submitted under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 1206.366 What is the nominal fee that a State, tribal, or local government lessee must pay for the use of geothermal resources?

If a State, tribal, or local government lessee uses a geothermal resource without sale and for public purposes—other than commercial production or generation of electricity—the State, tribal, or local government lessee must pay a nominal fee. A nominal fee means a slight or *de minimis* fee. ONRR will determine the fee on a case-by-case basis.

Subpart I—OCS Sulfur [Reserved]

Subpart J—Indian Coal

SOURCE: 81 FR 43395, July 1, 2016, unless otherwise noted.

§ 1206.450 What is the purpose and scope of this subpart?

(a) This subpart applies to all coal produced from Indian Tribal coal leases and coal leases on land held by individual Indian mineral owners. It explains how you, as the lessee, must calculate the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

(b) The terms “you” and “your” in this subpart refer to the lessee.

(c) If the regulations in this subpart are inconsistent with a(an): Federal statute; settlement agreement between the United States and a lessee resulting from administrative or judicial litigation; written agreement between the lessee and ONRR’s Director establishing a method to determine the value of production from any lease that ONRR expects, at least, would approximate the value established under this subpart; or express provision of a coal lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency.

(d) ONRR may audit and order you to adjust all royalty payments.

(e) The regulations in this subpart, intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian coal leases, are discharged under the requirements of the governing mineral leasing laws, treaties, and lease terms.

§ 1206.451 How do I determine royalty quantity and quality?

(a) You must calculate royalties based on the quantity and quality of coal at the royalty measurement point that ONRR and BLM jointly determine.

(b) You must measure coal in short tons using the methods that BLM prescribes for Indian coal leases. You must

§ 1206.452

30 CFR Ch. XII (7–1–17 Edition)

report coal quantity on appropriate forms required in 30 CFR part 1210.

(c)(1) You are not required to pay royalties on coal that you produce and add to stockpiles or inventory until you use, sell, or otherwise finally dispose of such coal.

(2) ONRR may request that BLM require you to increase your lease bond if BLM determines that stockpiles or inventory are excessive such that they increase the risk of resource degradation.

(d) You must pay royalty at the rate specified in your lease at the time when you use, sell, or otherwise finally dispose of the coal.

(e) You must allocate washed coal by attributing the washed coal to the leases from which it was extracted.

(1) If the wash plant washes coal from only one lease, the quantity of washed coal allocable to the lease is the total output of washed coal from the plant.

(2) If the wash plant washes coal from more than one lease, you must determine the tonnage of washed coal attributable to each lease by:

(i) First, calculating the input ratio of washed coal allocable to each lease by dividing the tonnage of coal input to the wash plant from each lease by the total tonnage of coal input to the wash plant from all leases.

(ii) Second, multiplying the input ratio derived under paragraph (e)(2)(i) of this section by the tonnage of total output of washed coal from the plant.

§ 1206.452 How do I calculate royalty value for coal that I or my affiliate sell(s) under an arm's-length or non-arm's-length contract?

(a) The value of coal under this section for royalty purposes is the gross proceeds accruing to you or your affiliate under the first arm's-length contract less an applicable transportation allowance determined under §§ 1206.460 through 1206.462 and washing allowance under §§ 1206.467 through 1206.469. You must use this paragraph (a) to value coal when:

(1) You sell under an arm's-length contract; or

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract, and that affiliate or person, or another affiliate of

either of them, then sells the coal under an arm's-length contract.

(b) If you have no contract for the sale of coal subject to this section because you or your affiliate used the coal in a power plant that you or your affiliate own(s) for the generation and sale of electricity, one of the following applies:

(1) You or your affiliate sell(s) the electricity, then the value of the coal subject to this section, for royalty purposes, is the gross proceeds accruing to you for the power plant's arm's-length sales of the electricity less applicable transportation and washing deductions determined under §§ 1206.460 through 1206.462 and §§ 1206.467 through 1206.469 and, if applicable, transmission and generation deductions determined under §§ 1206.353 and 1206.352.

(2) You or your affiliate do(es) not sell the electricity at arm's-length (for example you or your affiliate deliver(s) the electricity directly to the grid), then ONRR will determine the value of the coal under § 1206.454.

(i) You must propose to ONRR a method to determine the value using the procedures in § 1206.458(a).

(ii) You may use that method to determine value, for royalty purposes, until ONRR issues a determination.

(iii) After ONRR issues a determination, you must make the adjustments under § 1206.453(a)(2).

(c) If you are a coal cooperative, or a member of a coal cooperative, one of the following applies:

(1) You sell or transfer coal to another member of the coal cooperative, and that member of the coal cooperative then sells the coal under an arm's-length contract, then you must value the coal under paragraph (a) of this section.

(2) You sell or transfer coal to another member of the coal cooperative, and you, the coal cooperative, or another member of the coal cooperative use the coal in a power plant for the generation and sale of electricity, then you must value the coal under paragraph (b) of this section.

(d) If you are entitled to take a washing allowance and transportation allowance for royalty purposes under this section, under no circumstances may the washing allowance plus the

transportation allowance reduce the royalty value of the coal to zero.

(e) The values in this section do not apply if ONRR decides to value your coal under § 1206.454.

§ 1206.453 How will ONRR determine if my royalty payments are correct?

(a)(1) ONRR may monitor, review, and audit the royalties that you report. If ONRR determines that your reported value is inconsistent with the requirements of this subpart, ONRR will direct you to use a different measure of royalty value, or decide your value, under § 1206.454.

(2) If ONRR directs you to use a different royalty value, you must either pay any underpaid royalties plus late payment interest calculated under § 1218.202 of this chapter or report a credit for, or request a refund of, any overpaid royalties.

(b) When the provisions in this subpart refer to gross proceeds, in conducting reviews and audits, ONRR will examine if your or your affiliate's contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to you or your affiliate for the coal. If ONRR determines that a contract does not reflect the total consideration, ONRR may decide your value under § 1206.454.

(c) ONRR may decide to value your coal under § 1206.454, if ONRR determines that the gross proceeds accruing to you or your affiliate under a contract do not reflect reasonable consideration because:

(1) There is misconduct by or between the contracting parties;

(2) You breached your duty to market the coal for the mutual benefit of yourself and the lessor by selling your coal at a value that is unreasonably low. ONRR may consider a sales price unreasonably low, if it is 10 percent less than the lowest other reasonable measures of market price, including, but not limited to, prices reported to ONRR for like-quality coal; or

(3) ONRR cannot determine if you properly valued your coal under § 1206.452 for any reason, including, but not limited to, your or your affiliate's failure to provide documents to ONRR under 30 CFR part 1212, subpart E.

(d) You have the burden of demonstrating that your or your affiliate's contract is arm's-length.

(e) ONRR may require you to certify that the provisions in your or your affiliate's contract include(s) all of the consideration that the buyer paid to you or your affiliate, either directly or indirectly, for the coal.

(f)(1) Absent contract revision or amendment, if you or your affiliate fail(s) to take proper or timely action to receive prices or benefits to which you or your affiliate are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) If you or your affiliate apply in a timely manner for a price increase or benefit allowed under your or your affiliate's contract, but the purchaser refuses, and you or your affiliate take reasonable, documented measures to force purchaser compliance, you will not owe additional royalties unless or until you or your affiliate receive additional monies or consideration resulting from the price increase. You may not construe this paragraph to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or in a timely manner, for a quantity of coal.

(g)(1) You or your affiliate must make all contracts, contract revisions, or amendments in writing, and all parties to the contract must sign the contract, contract revisions, or amendments.

(2) If you or your affiliate fail(s) to comply with paragraph (g)(1) of this section, ONRR may decide to value your coal under § 1206.454.

(3) This provision applies notwithstanding any other provisions in this title 30 to the contrary.

§ 1206.454 How will ONRR determine the value of my coal for royalty purposes?

If ONRR decides to value your coal for royalty purposes under § 1206.454, or any other provision in this subpart, then ONRR will determine value by considering any information that we deem relevant, which may include, but is not limited to:

(a) The value of like-quality coal from the same mine, nearby mines,

§ 1206.455

same region, other regions, or washed in the same or nearby wash plant.

(b) Public sources of price or market information that ONRR deems reliable, including, but not limited to, the price of electricity.

(c) Information available to ONRR and information reported to us, including but not limited to, on Form ONRR-4430.

(d) Costs of transportation or washing, if ONRR determines they are applicable.

(e) Any other information that ONRR deems to be relevant regarding the particular lease operation or the salability of the coal.

§ 1206.455 What records must I keep in order to support my calculations of royalty under this subpart?

If you value your coal under this subpart, you must retain all data relevant to the determination of the royalty that you paid. You can find record-keeping requirements in parts 1207 and 1212 of this chapter.

(a) You must show:

(1) How you calculated the royalty value, including all allowable deductions; and

(2) How you complied with this subpart.

(b) Upon request, you must submit all data to ONRR, the representative of the Indian lessor, the Inspector General of the Department of the Interior, or other persons authorized to receive such information. Such data may include arm's-length sales and sales quantity data for like-quality coal that you or your affiliate sold, purchased, or otherwise obtained from the same mine, nearby mines, same region, or other regions. You must comply with any such requirement within the time that ONRR specifies.

§ 1206.456 What are my responsibilities to place production into marketable condition and to market production?

(a) You must place coal in marketable condition and market the coal for the mutual benefit of the lessee and the lessor at no cost to the Indian lessor.

(b) If you use gross proceeds under an arm's-length contract to determine royalty, you must increase those gross

30 CFR Ch. XII (7-1-17 Edition)

proceeds to the extent that the purchaser, or any other person, provides certain services that you normally are responsible to perform in order to place the coal in marketable condition or to market the coal.

§ 1206.457 When is an ONRR audit, review, reconciliation, monitoring, or other like process considered final?

Notwithstanding any provision in these regulations to the contrary, ONRR will not consider any audit, review, reconciliation, monitoring, or other like process that results in ONRR re-determining royalty due, under this subpart, final or binding as against the Federal government or its beneficiaries unless ONRR chooses to, in writing, formally close the audit period.

§ 1206.458 How do I request a valuation determination?

(a) You may request a valuation determination from ONRR regarding any coal produced. Your request must:

(1) Be in writing;

(2) Identify specifically all leases involved, all interest owners of those leases, and the operator(s) for those leases;

(3) Completely explain all relevant facts. You must inform ONRR of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and

(6) Suggest a proposed valuation method.

(b) In response to your request, ONRR may:

(1) Request that the Assistant Secretary for Policy, Management and Budget issue a determination;

(2) Decide that ONRR will issue guidance; or

(3) Inform you in writing that ONRR will not provide a determination or guidance. Situations in which ONRR typically will not provide any determination or guidance include, but are not limited to:

(i) Requests for guidance on hypothetical situations; or

(ii) Matters that are the subject of pending litigation or administrative appeals.

(c)(1) A determination that the Assistant Secretary for Policy, Management and Budget signs is binding on both you and ONRR until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a determination, you must make any adjustments in royalty payments that follow from the determination and, if you owe additional royalties, you must pay any additional royalties due, plus late payment interest calculated under §1218.202 of this chapter.

(3) A determination that the Assistant Secretary signs is the final action of the Department and is subject to judicial review under 5 U.S.C. 701-706.

(d) Guidance that ONRR issues is not binding on ONRR, Tribes, individual Indian mineral owners, or you with respect to the specific situation addressed in the guidance.

(1) Guidance and ONRR's decision whether or not to issue guidance or to request an Assistant Secretary determination, or neither, under paragraph (b) of this section, are not appealable decisions or orders under 30 CFR part 1290.

(2) If you receive an order requiring you to pay royalty on the same basis as the guidance, you may appeal that order under 30 CFR part 1290.

(e) ONRR or the Assistant Secretary may use any of the applicable criteria in this subpart to provide guidance or to make a determination.

(f) A change in an applicable statute or regulation on which ONRR based any guidance, or the Assistant Secretary based any determination, takes precedence over the determination or guidance after the effective date of the statute or regulation, regardless of whether ONRR or the Assistant Secretary modifies or rescinds the guidance or determination.

(g) ONRR may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 1206.459.

§ 1206.459 Does ONRR protect information that I provide?

(a) Certain information that you or your affiliate submit(s) to ONRR re-

garding royalties on coal, including deductions and allowances, may be exempt from disclosure.

(b) To the extent that applicable laws and regulations permit, ONRR will keep confidential any data that you or your affiliate submit(s) that is privileged, confidential, or otherwise exempt from disclosure.

(c) You and others must submit all requests for information under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 1206.460 What general transportation allowance requirements apply to me?

(a)(1) ONRR will allow a deduction for the reasonable, actual costs to transport coal from the lease to the point off of the lease or mine as determined under §1206.461 or §1206.462, as applicable.

(2) Before you may take any transportation allowance, you must submit a completed page 1 of the Coal Transportation Allowance Report (Form ONRR-4293), under §§1206.463 and 1206.464. You may claim a transportation allowance retroactively for a period of not more than three months prior to the first day of the month when ONRR receives your Form ONRR-4293.

(3) You may not use a transportation allowance that was in effect before January 1, 2017. You must use the provisions of this subpart to determine your transportation allowance.

(b) You may take a transportation allowance when:

(1) You value coal under §1206.452;

(2) You transport the coal from an Indian lease to a sales point that is remote from both the lease and mine; or

(3) You transport the coal from an Indian lease to a wash plant when that plant is remote from both the lease and mine and, if applicable, from the wash plant to a remote sales point.

(c) You may not take an allowance for:

(1) Transporting lease production that is not royalty-bearing;

(2) In-mine movement of your coal; or

(3) Costs to move a particular tonnage of production for which you did not incur those costs.

(d) You may only claim a transportation allowance when you sell the coal and pay royalties.

(e) You must allocate transportation allowances to the coal attributed to the lease from which it was extracted.

(1) If you commingle coal produced from Indian and non-Indian leases, you may not disproportionately allocate transportation costs to Indian lease production. Your allocation must use the same proportion as the ratio of the tonnage from the Indian lease production to the tonnage from all production.

(2) If you commingle coal produced from more than one Indian lease, you must allocate transportation costs to each Indian lease, as appropriate. Your allocation must use the same proportion as the ratio of the tonnage of each Indian lease's production to the tonnage of all production.

(3) For washed coal, you must allocate the total transportation allowance only to washed products.

(4) For unwashed coal, you may take a transportation allowance for the total coal transported.

(5)(i) You must report your transportation costs on Form ONRR-4430 as clean coal short tons sold during the reporting period multiplied by the sum of the per short-ton cost of transporting the raw tonnage to the wash plant and, if applicable, the per short-ton cost of transporting the clean coal tons from the wash plant to a remote sales point.

(ii) You must determine the cost per short ton of clean coal transported by dividing the total applicable transportation cost by the number of clean coal tons resulting from washing the raw coal transported.

(f) You must express transportation allowances for coal as a dollar-value equivalent per short ton of coal transported. If you do not base your or your affiliate's payments for transportation under a transportation contract on a dollar-per-unit basis, you must convert whatever consideration that you or your affiliate paid into a dollar-value equivalent.

(g) ONRR may determine your transportation allowance under § 1206.454 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length transportation contract does not reflect the reasonable cost of the transportation because you breached your duty to market the coal for the mutual benefit of yourself and the lessor by transporting your coal at a cost that is unreasonably high. We may consider a transportation allowance unreasonably high if it is 10 percent higher than the highest reasonable measures of transportation costs, including, but not limited to, transportation allowances reported to ONRR and the cost to transport coal through the same transportation system; or

(3) ONRR cannot determine if you properly calculated a transportation allowance under § 1206.461 or § 1206.462 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart E.

§ 1206.461 How do I determine a transportation allowance if I have an arm's-length transportation contract or no written arm's-length contract?

(a) If you or your affiliate incur(s) transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred for transporting the coal under that contract.

(b) You must be able to demonstrate that your or your affiliate's contract is at arm's-length.

(c) If you have no written contract for the arm's-length transportation of coal, then ONRR will determine your transportation allowance under § 1206.454. You may not use this paragraph (c) if you or your affiliate perform(s) your own transportation.

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.458(a).

(2) You may use that method to determine your allowance until ONRR issues a determination.

§ 1206.462 How do I determine a transportation allowance if I do not have an arm's-length transportation contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length transportation contract, including situations where you or your affiliate provide your own transportation services. Calculate your transportation allowance based on your or your affiliate's reasonable, actual costs for transportation during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (d), (e), and (f) of this section.

(2) Overhead under paragraph (g) of this section.

(3) Depreciation under paragraph (h) of this section and a return on undepreciated capital investment under paragraph (i) of this section, or you may elect to use a cost equal to a return on the initial depreciable capital investment in the transportation system under paragraph (j) of this section. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(c) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(d) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment), which are an integral part of the transportation system.

(e) Allowable operating expenses include the following:

(1) Operations supervision and engineering.

(2) Operations labor.

(3) Fuel.

(4) Utilities.

(5) Materials.

(6) Ad valorem property taxes.

(7) Rent.

(8) Supplies.

(9) Any other directly allocable and attributable operating expense that you can document.

(f) Allowable maintenance expenses include the following:

(1) Maintenance of the transportation system.

(2) Maintenance of equipment.

(3) Maintenance labor.

(4) Other directly allocable and attributable maintenance expenses that you can document.

(g) Overhead, directly attributable and allocable to the operation and maintenance of the transportation system, is an allowable expense. State and Federal income taxes and Indian Tribal severance taxes and other fees, including royalties, are not allowable expenses.

(h)(1) To calculate depreciation, you may elect to use either a straight-line depreciation method based on the life of the transportation system or the life of the reserves that the transportation system services, or you may elect to use a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(2) A change in ownership of a transportation system will not alter the depreciation schedule that the original transporter/lessee established for the purposes of the allowance calculation.

(3) You may depreciate a transportation system only once with or without a change in ownership.

(i) To calculate a return on undepreciated capital investment, multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the transportation allowance by the rate of return provided in paragraph (k) of this section.

(j) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to

§ 1206.463

the allowable initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (k) of this section. You may not include depreciation in your allowance.

(k) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(1) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(2) You must re-determine the rate at the beginning of each subsequent calendar year.

§ 1206.463 What are my reporting requirements under an arm's-length transportation contract?

(a) You must use a separate entry on Form ONRR-4430 to notify ONRR of an allowance based on transportation costs you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(d)(1) You must submit page 1 of the initial Form ONRR-4293 prior to, or at the same time as, you report the transportation allowance determined under an arm's-length contract on Form ONRR-4430.

(2) The initial Form ONRR-4293 is effective beginning with the production month when you are first authorized to deduct a transportation allowance and continues until the end of the calendar year, or until the termination, modification, or amendment of the applicable contract or rate, whichever is earlier.

(3) After the initial period when ONRR first authorized you to deduct a transportation allowance and for succeeding periods, you must submit the entire Form ONRR-4293 by the earlier of the following:

(i) Within three months after the end of the calendar year

(ii) After the termination, modification, or amendment of the applicable contract or rate

30 CFR Ch. XII (7-1-17 Edition)

(4) You may request to use an allowance for a longer period than that required under paragraph (d)(2) of this section.

(i) You may use that allowance beginning with the production month following the month when ONRR received your request to use the allowance for a longer period until ONRR decides whether to approve the longer period.

(ii) ONRR's decision whether or not to approve a longer period is not appealable under 30 CFR part 1290.

(iii) If ONRR does not approve the longer period, you must adjust your transportation allowance under § 1206.466.

§ 1206.464 What are my reporting requirements under a non-arm's-length transportation contract or no written arm's-length contract?

(a) You must use a separate entry on Form ONRR-4430 to notify ONRR of an allowance based on non-arm's-length transportation costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(c)(1) You must submit an initial Form ONRR-4293 prior to, or at the same time as, the transportation allowance determined under a non-arm's-length contract or no written arm's-length contract situation that you report on Form ONRR-4430. If ONRR receives a Form ONRR-4293 by the end of the month when the Form ONRR-4430 is due, ONRR will consider the form to be received in a timely manner. You may base the initial form on estimated costs.

(2) The initial Form ONRR-4293 is effective beginning with the production month when you are first authorized to deduct a transportation allowance and continues until the end of the calendar year or termination, modification, or amendment of the applicable contract or rate, whichever is earlier.

(3)(i) At the end of the calendar year for which you submitted a Form ONRR-4293 based on estimates, you must submit another, completed Form ONRR-4293 containing the actual costs for that calendar year.

(ii) If the transportation continues, you must include on Form ONRR-4293 your estimated costs for the next calendar year.

(A) You must base the estimated transportation allowance on the actual costs for the previous reporting period plus or minus any adjustments based on your knowledge of decreases or increases that will affect the allowance.

(B) ONRR must receive Form ONRR-4293 within three months after the end of the previous calendar year.

(d)(1) For new non-arm's-length transportation facilities or arrangements, on your initial ONRR-4293 form, you must include estimates of the allowable transportation costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the transportation system as your estimate, if available. If such data is not available, you must use estimates based on data for similar transportation systems.

(e) Upon ONRR's request, you must submit all data used to prepare your ONRR-4293 form. You must provide the data within a reasonable period of time, as ONRR determines.

(f) Section 1206.466 applies when you amend your Form ONRR-4293 based on the actual costs.

§ 1206.465 What interest and penalties apply if I improperly report a transportation allowance?

(a)(1) If ONRR determines that you took an unauthorized transportation allowance, then you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(2) If you understated your transportation allowance, you may be entitled to a credit without interest.

(b) If you improperly net a transportation allowance against the sales value of the coal instead of reporting the allowance as a separate entry on Form ONRR-4430, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.466 What reporting adjustments must I make for transportation allowances?

(a) If your actual transportation allowance is less than the amount that

you claimed on Form ONRR-4430 for each month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter from the date when you took the deduction to the date when you repay the difference.

(b) If the actual transportation allowance is greater than the amount that you claimed on Form ONRR-4430 for any month during the period reported on the allowance form, you are entitled to a credit without interest.

§ 1206.467 What general washing allowance requirements apply to me?

(a)(1) If you determine the value of your coal under § 1206.452, you may take a washing allowance for the reasonable, actual costs to wash coal. The allowance is a deduction when determining coal royalty value for the costs that you incur to wash coal.

(2) Before you may take any deduction, you must submit a completed page 1 of the Coal Washing Allowance Report (Form ONRR-4292), under §§ 1206.470 and 1206.471. You may claim a washing allowance retroactively for a period of not more than three months prior to the first day of the month when you have filed Form ONRR-4292 with ONRR.

(3) You may not use a washing allowance that was in effect before January 1, 2017. You must use the provisions of this subpart to determine your washing allowance.

(b) You may not:

(1) Take an allowance for the costs of washing lease production that is not royalty bearing.

(2) Disproportionately allocate washing costs to Indian leases. You must allocate washing costs to washed coal attributable to each Indian lease by multiplying the input ratio determined under § 1206.451(e)(2)(i) by the total allowable costs.

(c)(1) You must express washing allowances for coal as a dollar-value equivalent per short ton of coal washed.

(2) If you do not base your or your affiliate's payments for washing under an arm's-length contract on a dollar-per-unit basis, you must convert whatever

§ 1206.468

30 CFR Ch. XII (7–1–17 Edition)

consideration that you or your affiliate paid into a dollar-value equivalent.

(d) ONRR may determine your washing allowance under § 1206.454 because:

(1) There is misconduct by or between the contracting parties;

(2) ONRR determines that the consideration that you or your affiliate paid under an arm's-length washing contract does not reflect the reasonable cost of the washing because you breached your duty to market the coal for the mutual benefit of yourself and the lessor by washing your coal at a cost that is unreasonably high. We may consider a washing allowance to be unreasonably high if it is 10 percent higher than the highest other reasonable measures of washing, including, but not limited to, washing allowances reported to ONRR and costs for coal washed in the same plant or other plants in the region

(3) ONRR cannot determine if you properly calculated a washing allowance under §§ 1206.467 through 1206.469 for any reason, including, but not limited to, your or your affiliate's failure to provide documents that ONRR requests under 30 CFR part 1212, subpart E.

(e) You may only claim a washing allowance if you sell the washed coal and report and pay royalties.

§ 1206.468 How do I determine washing allowances if I have an arm's-length washing contract or no written arm's-length contract?

(a) If you or your affiliate incur(s) washing costs under an arm's-length washing contract, you may claim a washing allowance for the reasonable, actual costs incurred.

(b) You must be able to demonstrate that your or your affiliate's contract is arm's-length.

(c) If you have no contract for the washing of coal, then ONRR will determine your transportation allowance under § 1206.454. You may not use this paragraph (c), if you or your affiliate perform(s) your own washing. If you or your affiliate perform(s) the washing, then:

(1) You must propose to ONRR a method to determine the allowance using the procedures in § 1206.458(a).

(2) You may use that method to determine your allowance until ONRR issues a determination.

§ 1206.469 How do I determine washing allowances if I do not have an arm's-length washing contract?

(a) This section applies if you or your affiliate do(es) not have an arm's-length washing contract, including situations where you or your affiliate provides your own washing services. Calculate your washing allowance based on your or your affiliate's reasonable, actual costs for washing during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs may include:

(1) Capital costs and operating and maintenance expenses under paragraphs (d), (e), and (f) of this section.

(2) Overhead under paragraph (g) of this section.

(3) Depreciation under paragraph (h) of this section and a return on undepreciated capital investment under paragraph (i) of this section, or a cost equal to a return on the initial depreciable capital investment in the wash plant under paragraph (j) of this section. After you have elected to use either method for a wash plant, you may not later elect to change to the other alternative without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(c) You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section.

(d) Allowable capital investment costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment), which are an integral part of the wash plant.

(e) Allowable operating expenses include the following:

(1) Operations supervision and engineering.

(2) Operations labor.

(3) Fuel.

(4) Utilities.

(5) Materials.

(6) Ad valorem property taxes.

(7) Rent.

(8) Supplies.

(9) Any other directly allocable and attributable operating expenses that you can document.

(f) Allowable maintenance expenses include the following:

(1) Maintenance of the wash plant.

(2) Maintenance of equipment.

(3) Maintenance labor.

(4) Other directly allocable and attributable maintenance expenses that you can document.

(g) Overhead, directly attributable and allocable to the operation and maintenance of the wash plant is an allowable expense. State and Federal income taxes and Indian Tribal severance taxes and other fees, including royalties, are not allowable expenses.

(h)(1) To calculate depreciation, you may elect to use either a straight-line depreciation method based on the life of the wash plant or the life of the reserves that the wash plant services, or you may elect to use a unit-of-production method. After you make an election, you may not change methods without ONRR's approval. If ONRR accepts your request to change methods, you may use your changed method beginning with the production month following the month when ONRR received your change request.

(2) A change in ownership of a wash plant will not alter the depreciation schedule that the original washer/lessee established for the purposes of the allowance calculation.

(3) With or without a change in ownership, you may depreciate a wash plant only once.

(i) To calculate a return on undepreciated capital investment, multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the washing allowance by the rate of return provided in paragraph (k) of this section.

(j) As an alternative to using depreciation and a return on undepreciated capital investment, as provided under paragraph (b)(3) of this section, you may use as a cost an amount equal to the allowable initial capital investment in the wash plant multiplied by the rate of return as determined under

paragraph (k) of this section. You may not include depreciation in your allowance.

(k) The rate of return is the industrial rate associated with Standard & Poor's BBB rating.

(1) You must use the monthly average BBB rate that Standard & Poor's publishes for the first month for which the allowance is applicable.

(2) You must re-determine the rate at the beginning of each subsequent calendar year.

§ 1206.470 What are my reporting requirements under an arm's-length washing contract?

(a) You must use a separate entry on Form ONRR-4430 to notify ONRR of an allowance based on washing costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit arm's-length washing contracts, production agreements, operating agreements, and related documents.

(c) You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(d)(1) You must file an initial Form ONRR-4292 prior to, or at the same time as, the washing allowance determined under an arm's-length contract or no written arm's-length contract situation that you report on Form ONRR-4430. If ONRR receives a Form ONRR-4292 by the end of the month when the Form ONRR-4430 is due, ONRR will consider the form to be received in a timely manner.

(2) The initial Form ONRR-4292 is effective beginning with the production month when you are first authorized to deduct a washing allowance and continues until the end of the calendar year, or until the termination, modification, or amendment of the applicable contract or rate, whichever is earlier.

(3) After the initial period that ONRR first authorized you to deduct a washing allowance, and for succeeding periods, you must submit the entire Form ONRR-4292 by the earlier of the following:

(i) Within three months after the end of the calendar year.

§ 1206.471

(ii) After the termination, modification, or amendment of the applicable contract or rate.

(4) You may request to use an allowance for a longer period than that required under paragraph (d)(2) of this section.

(i) You may use that allowance beginning with the production month following the month when ONRR received your request to use the allowance for a longer period until ONRR decides whether to approve the longer period.

(ii) ONRR's decision whether or not to approve a longer period is not appealable under 30 CFR part 1290.

(iii) If ONRR does not approve the longer period, you must adjust your transportation allowance under § 1206.466.

§ 1206.471 What are my reporting requirements under a non-arm's-length washing contract or no written arm's-length contract?

(a) You must use a separate entry on Form ONRR-4430 to notify ONRR of an allowance based on non-arm's-length washing costs that you or your affiliate incur(s).

(b) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction. You can find recordkeeping requirements in parts 1207 and 1212 of this chapter.

(c)(1) You must submit an initial Form ONRR-4292 prior to, or at the same time as, the washing allowance determined under a non-arm's-length contract or no written arm's-length contract situation that you report on Form ONRR-4430. If ONRR receives a Form ONRR-4292 by the end of the month when the Form ONRR-4430 is due, ONRR will consider the form to be received in a timely manner. You may base the initial reporting on estimated costs.

(2) The initial Form ONRR-4292 is effective beginning with the production month when you are first authorized to deduct a washing allowance and continues until the end of the calendar year or termination, modification, or amendment of the applicable contract or rate, whichever is earlier.

(3)(i) At the end of the calendar year for which you submitted a Form ONRR-4292, you must submit another,

30 CFR Ch. XII (7-1-17 Edition)

completed Form ONRR-4292 containing the actual costs for that calendar year.

(ii) If coal washing continues, you must include on Form ONRR-4292 your estimated costs for the next calendar year.

(A) You must base the estimated coal washing allowance on the actual costs for the previous period plus or minus any adjustments based on your knowledge of decreases or increases that will affect the allowance.

(B) ONRR must receive Form ONRR-4292 within three months after the end of the previous calendar year.

(d)(1) For new non-arm's-length washing facilities or arrangements on your initial Form ONRR-4292, you must include estimates of allowable washing costs for the applicable period.

(2) You must use your or your affiliate's most recently available operations data for the wash plant as your estimate, if available. If such data is not available, you must use estimates based on data for similar wash plants.

(e) Upon ONRR's request, you must submit all data that you used to prepare your Forms ONRR-4293. You must provide the data within a reasonable period of time, as ONRR determines.

(f) Section 1206.472 applies when you amend your Form ONRR-4292 based on the actual costs.

§ 1206.472 What interest and penalties apply if I improperly report a washing allowance?

(a)(1) If ONRR determines that you took an unauthorized washing allowance, then you must pay any additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter.

(2) If you understated your washing allowance, you may be entitled to a credit without interest.

(b) If you improperly net a washing allowance against the sales value of the coal instead of reporting the allowance as a separate entry on Form ONRR-4430, ONRR may assess a civil penalty under 30 CFR part 1241.

§ 1206.473 What reporting adjustments must I make for washing allowances?

(a) If your actual washing allowance is less than the amount that you claimed on Form ONRR-4430 for each

Natural Resources Revenue Off., Interior

§ 1207.3

month during the allowance reporting period, you must pay additional royalties due, plus late payment interest calculated under § 1218.202 of this chapter from the date when you took the deduction to the date when you repay the difference.

(b) If the actual washing allowance is greater than the amount that you claimed on Form ONRR-4430 for any month during the period reported on the allowance form, you are entitled to a credit without interest.

PART 1207—SALES AGREEMENTS OR CONTRACTS GOVERNING THE DISPOSAL OF LEASE PRODUCTS

Subpart A—General Provisions

Sec.

1207.1 Required recordkeeping.

1207.2 Definitions.

1207.3 Contracts made pursuant to new form leases.

1207.4 Contracts made pursuant to old form leases.

1207.5 Contract and sales agreement retention.

Subpart B—Oil, Gas and OCS Sulfur, General [Reserved]

Subpart C—Federal and Indian Oil [Reserved]

Subpart D—Federal and Indian Gas [Reserved]

Subpart E—Solid Minerals, General [Reserved]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources [Reserved]

Subpart I—OCS Sulfur [Reserved]

AUTHORITY: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 3716 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

SOURCE: 53 FR 1225, Jan. 15, 1988, unless otherwise noted. Redesignated at 75 FR 61080, Oct. 4, 2010.

Subpart A—General Provisions

§ 1207.1 Required recordkeeping.

(a) ONRR uses the information collected to determine a proper transportation allowance for the cost of transporting royalty oil from the lease to a delivery point remote from the lease. The information is required so that the lessee may obtain a benefit under the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* The Office of Management and Budget (OMB) approved the information collection requirements contained in this part under 44 U.S.C. 3501 *et seq.* ONRR identifies the approved OMB control number in 30 CFR 1210.10.

(b) Send comments regarding the burden estimates or any other aspect of this information collection, including suggestions for reducing burden, to the Office of Natural Resources Revenue, Attention: Rules & Regs Team, OMB Control Number 1012-0002, P.O. Box 25165, Denver, CO 80225-0165.

[78 FR 30204, May 22, 2013]

§ 1207.2 Definitions.

The definitions in part 1206 of this title are applicable to this part.

§ 1207.3 Contracts made pursuant to new form leases.

On November 29, 1950 (15 FR 8585), a new lease form was adopted (Form 4-1158, 15 FR 8585) containing provisions whereby the lessee agrees that nothing in any contract or other arrangement made for the sale or disposal of oil, gas, natural gasoline, and other products of the leased land, shall be construed as modifying any of the provisions of the lease, including, but not limited to, provisions relating to gas waste, taking royalty-in-kind, and the method of computing royalties due as based on a minimum valuation and in accordance with the oil and gas valuation regulations. A contract or agreement pursuant to a lease containing such provisions may be made without obtaining prior approval of the United States as lessor, but must be retained as provided in § 1207.5 of this subpart.

§ 1207.4

§ 1207.4 Contracts made pursuant to old form leases.

(a) Old form leases are those containing provisions prohibiting sales or disposal of oil, gas, natural gasoline, and other products of the lease except in accordance with a contract or other arrangement approved by the Secretary of the Interior, or by the Director of the Bureau of Ocean Energy Management (BOEM) or his/her representative. A contract or agreement made pursuant to an old form lease may be made without obtaining approval if the contract or agreement contains either the substance of or is accompanied by the stipulation set forth in paragraph (b) of this section, signed by the seller (lessee or operator).

(b) The stipulation, the substance of which must be included in the contract, or be made the subject matter of a separate instrument properly identifying the leases affected thereby, is as follows:

It is hereby understood and agreed that nothing in the written contract or in any approval thereof shall be construed as affecting any of the relations between the United States and its lessee, particularly in matters of gas waste, taking royalty in kind, and the method of computing royalties due as based on a minimum valuation and in accordance with the terms and provisions of the oil and gas valuation regulations applicable to the lands covered by said contract.

[53 FR 1225, Jan. 15, 1988, as amended at 78 FR 30204, May 22, 2013]

§ 1207.5 Contract and sales agreement retention.

Copies of all sales contracts, posted price bulletins, etc., and copies of all agreements, other contracts, or other documents which are relevant to the valuation of production are to be maintained by the lessee and made available upon request during normal working hours to authorized Office of Natural Resources Revenue (ONRR), State or Indian representatives, BOEM, Bureau of Safety and Environmental Enforcement (BSEE) or BLM officials, auditors of the General Accounting Office, or other persons authorized to receive such documents, or shall be submitted to ONRR within a reasonable period of time, as determined by ONRR. Any

30 CFR Ch. XII (7–1–17 Edition)

oral sales arrangement negotiated by the lessee must be placed in written form and retained by the lessee. Records shall be retained in accordance with 30 CFR part 1212.

[53 FR 1225, Jan. 15, 1988, as amended at 78 FR 30204, May 22, 2013]

Subpart B—Oil, Gas, and OCS Sulfur, General [Reserved]

Subpart C—Federal and Indian Oil [Reserved]

Subpart D—Federal and Indian Gas [Reserved]

Subpart E—Solid Minerals, General [Reserved]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources [Reserved]

Subpart I—OCS Sulfur [Reserved]

PART 1208—SALE OF FEDERAL ROYALTY OIL

Subpart A—General Provisions

Sec.

- 1208.1 General.
- 1208.2 Definitions.
- 1208.3 Information collection.
- 1208.4 Royalty oil sales to eligible refiners.
- 1208.5 Notice of royalty oil sale.
- 1208.6 General application procedures.
- 1208.7 Determination of eligibility.
- 1208.8 Transportation and delivery.
- 1208.9 Agreements.
- 1208.10 Notices.
- 1208.11 Surety requirements.
- 1208.12 Payment requirements.
- 1208.13 Reporting requirements.
- 1208.14 Civil and criminal penalties.
- 1208.15 Audits.
- 1208.16 How to appeal a contracting officer's decision that you receive.
- 1208.17 Suspensions for national emergencies.

Subpart B [Reserved]

AUTHORITY: 5 U.S.C. 301 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 41 U.S.C. 601 *et seq.*; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

SOURCE: 52 FR 41913, Oct. 30, 1987, unless otherwise noted. Redesignated at 75 FR 61080, Oct. 4, 2010.

Subpart A—General Provisions

§ 1208.1 General.

The regulations in this part govern the sale of royalty oil by the United States to eligible refiners. The regulations apply to royalty oil from leases on Federal lands onshore and on the Outer Continental Shelf (OCS).

§ 1208.2 Definitions.

Allotment means the quantity of royalty oil that DOI determines is available to each eligible refiner that has applied for a portion of the total volume of royalty oil offered in a given royalty oil sale.

Application means the formal written request to DOI on Form MMS-4070 by an eligible refiner interested in purchasing a quantity of royalty oil from the approximate volume announced by DOI in a given “Notice of Availability of Royalty Oil.”

Area or *Region* means the geographic territory having Federal oil and gas leases over which ONRR has jurisdiction, unless the context in which those words are used indicates that a different meaning is intended.

Contracting officer means the Director, his or her delegate, or the person designated under a royalty oil purchase contract.

Contracting officer’s decision means an ONRR order or decision that a contracting officer issues under this part to a purchaser of oil under a royalty oil purchase contract.

Delivery point means the point where the lessor, in accordance with lease terms, directs the lessee to deliver royalty oil to a purchaser. Title to the royalty oil, or to the quantity thereof in a commingled stream, passes from the Federal Government to the purchaser at this designated point, which is specified in the royalty oil contract. For onshore leases, the delivery point will be on or adjacent to the lease, except as provided in §1208.8(a) of this

part. In instances where an onshore delivery point is designated for offshore royalty oil, such point generally will be the first onshore point where the price of the oil, including transportation costs, can be determined and where the purchaser can either exchange or take delivery of the oil. The Government does not guarantee physical access to the oil at such point.

Director means the Director of ONRR, who is responsible for its overall direction, or his or her delegate(s).

DOI means the Department of the Interior, including the Secretary or his or her delegate(s).

Eligible refiner means a refiner of crude oil that meets the following criteria for eligibility to purchase royalty oil:

(1) For the purchase of royalty oil from onshore leases, it means a refiner that qualifies as a small and independent refiner as those terms are defined in sections 3(3) and 3(4) of the Emergency Petroleum Allocation Act, 15 U.S.C. 751 *et seq.*, except that the time period for determination contained in section 3(3)(A) would be the calendar quarter immediately preceding the date of the applicable “Notice of Availability of Royalty Oil.” A refiner that, together with all persons controlled by, in control of, under common control with, or otherwise affiliated with the refiner, inputs a volume of domestic crude oil from its own production exceeding 30 percent of its total refinery input of crude oil is ineligible to participate in royalty oil sales under this part. Crude oil received in exchange for such refiner’s own production is considered to be that refiner’s own production for purposes of this section.

(2) For the purchase of royalty oil from leases on the OCS, it means a refiner that qualifies as a small business enterprise under the rules of the Small Business Administration (13 CFR part 121).

Entitlement means the volume of royalty oil from the Federal Government’s share of production from a Federal lease which a purchaser is entitled to receive under a royalty oil contract.

Exchange agreement means a written agreement between the purchaser and

another person for the exchange of royalty oil purchased under this part for other oil on a volume or equivalent value basis.

Fair market value means the value of oil—(1) Computed at a unit price equivalent to the average unit price at which oil was sold pursuant to a lease during the period for which any royalty or net profit share is accrued or reserved to the United States pursuant to such lease, or

(2) If there were no such sales, or if the Secretary finds that there were an insufficient number of such sales to equitably determine such value, computed at the average unit price at which oil was sold pursuant to other leases in the same region of the OCS during such period, or

(3) If there were no sales of oil from such region during such period, or if the Secretary finds that there are an insufficient number of such sales to equitably determine such value, at an appropriate price determined by the Secretary.

Federal lease means a contractual agreement with the Federal Government which authorizes the exploration, development, and production of oil and gas on Federal lands onshore or on the OCS.

Interim sale means a sale conducted as a result of substantial additional royalty oil becoming available in a specific area prior to the scheduled expiration date of royalty oil contracts in effect for that area.

Lessee means any person to whom the United States issues a lease, or any person who has been assigned an obligation to make royalty or other payments required by the lease.

Notice of Availability of Royalty Oil means a notice published by DOI in the FEDERAL REGISTER (and in other printed media when appropriate, such as a newspaper or magazine of general or specialized circulation) to advise interested parties of the availability of royalty oil for purchase by eligible refiners and the approximate volume of royalty oil available to the applicants.

OCS means the Outer Continental Shelf, as defined in 43 U.S.C. 1331(a).

OCSLA means the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*, as amended by 43 U.S.C. 1801 *et seq.*).

Oil means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and is marketed or used as such. Condensate recovered in lease separators or field facilities is considered to be oil.

ONRR means the Office of Natural Resources Revenue of the Department of the Interior.

Operator means any person, including a lessee, who has control of or who manages operations on an oil and gas lease site on Federal onshore lands or on the OCS.

Payor means any person responsible for reporting royalties from a Federal lease or leases on Form MMS-2014.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture.

Preference eligible refiner means an eligible refiner with at least one operating refinery which is located within the area designated as the preference eligible area in the "Notice of Availability of Royalty Oil." A refiner may be deemed to be a preference eligible refiner if it owns a refinery located in the preference eligible area which is not operational if the refiner meets the requirements of §1208.7(g) of this part.

Purchaser means anyone who acquires royalty oil sold by DOI under the Federal Government's Royalty-in-Kind (RIK) Program and who has a contractual obligation under an agreement to purchase royalty oil.

Reallocation means an offering of royalty oil previously allocated in a specific sale but subsequently turned back to ONRR. A reallocation would only be made if substantial amounts of royalty oil are turned back.

Refined petroleum product means gasoline, kerosene, distillates (including Number 2 fuel oil), refined lubricating oils, or diesel fuel.

Royalty oil means that amount of oil that DOI takes in kind in partial or full satisfaction of a lessee's royalty or net profit share obligations as determined by whatever lease interest the lessee holds under an applicable mineral leasing law.

Natural Resources Revenue Off., Interior

§ 1208.5

Secretary means the Secretary of the Department of the Interior or his/her delegate(s).

Section 6 lease means an oil and gas lease originally issued by any State and currently maintained in effect pursuant to section 6 of the OCSLA.

Section 8 lease means an oil and gas lease originally issued by the United States pursuant to section 8 of the OCSLA.

[52 FR 41913, Oct. 30, 1987; 52 FR 45528, Nov. 30, 1987, as amended at 58 FR 64901, Dec. 10, 1993; 64 FR 26251, May 13, 1999]

§ 1208.3 Information collection.

The information collection requirements contained in this part have been approved by OMB under 44 U.S.C. 3501 *et seq.* The form, filing date, and approved OMB clearance number are identified in 30 CFR 210.10.

[58 FR 64901, Dec. 10, 1993]

§ 1208.4 Royalty oil sales to eligible refiners.

(a) *Determination to take royalty oil in kind.* The Secretary may evaluate crude oil market conditions from time to time. The evaluation will include, among other things, the availability of crude oil and the crude oil requirements of the Federal Government, primarily those requirements concerning matters of national interest and defense. The Secretary will review these items and will determine whether eligible refiners have access to adequate supplies of crude oil and whether such oil is available to eligible refiners at equitable prices. Such determinations may be made on a regional basis. The determination by the Secretary shall be published in the FEDERAL REGISTER concurrent with or included in the "Notice of Availability of Royalty Oil" required by § 1208.5.

(b) *Sale to eligible refiners.* (1) Upon a determination by the Secretary under paragraph (a) of this section that eligible refiners do not have access to adequate supplies of crude oil at equitable prices, the Secretary, at his or her discretion, may elect to take in kind some or all of the royalty oil accruing to the United States from oil and gas leases on Federal lands onshore and on the OCS. The Secretary may authorize

ONRR to offer royalty oil for sale to eligible refiners only for use in their refineries and not for resale (other than under an exchange agreement).

(2) All sales of royalty oil from onshore leases will be priced at the royalty value that would have been determined for that oil pursuant to 30 CFR part 1206 had the royalties been paid in value rather than taken in kind. All sales of royalty oil from OCS leases will be priced at the fair market value of the oil including associated transportation costs to the designated delivery point, if applicable.

(3) An eligible refiner must have a representative at a sale in order to participate. The Secretary may, at his or her discretion, establish purchase limitations and withhold any royalty oil from any offering.

(c) Upon a determination by the Secretary under paragraph (a) of this section that eligible refiners do have access to adequate supplies of crude oil at equitable prices, ONRR will not take royalties in kind from oil and gas leases for exclusive sale to such refiners. Such determinations may be made on a regional basis.

(d) *Interim sales.* The ONRR generally will not conduct interim sales. However, interim sales may be held at the discretion of the Secretary if substantial addition royalty oil becomes available. The potentially eligible refiners, individually or collectively, must submit documentation demonstrating that adequate supplies of crude oil at equitable prices are not available for purchase. Although sufficient documentation must be submitted, it is not mandatory for each potentially eligible refiner to participate in a submission of such documentation to be determined eligible. The documentation must be submitted to ONRR for a determination as to whether an interim sale is needed.

[52 FR 41913, Oct. 30, 1987, as amended at 66 FR 28657, May 24, 2001]

§ 1208.5 Notice of royalty oil sale.

If the Secretary decides to take royalty oil in kind for sale to eligible refiners, ONRR will issue a "Notice of Availability of Royalty Oil" specifying the manner in which the sale is to be effected, the approximate quantity of

§ 1208.6

30 CFR Ch. XII (7-1-17 Edition)

royalty oil to be offered, information required in applications, the closing date for the receipt of applications for royalty oil, and other general administrative details concerning the application, allocation, and contract award process for the royalty oil. The Notice will describe generally the terms under which the royalty oil contracts will be awarded and will specify which applicants will be deemed preference eligible refiners in the sale proceedings. The Notice will also contain guidelines for reallocation procedures in the event substantial quantities of royalty oil sold in that specific sale are subsequently turned back to ONRR. Only those purchasers that hold ongoing contracts from that specific sale will be allowed to participate in any reallocation, which would be voluntary, and then only if they continue to meet eligibility requirements as set forth in §§1208.2 and 1208.7. If a reallocation is held prior to the effective date of the contracts as specified in the "Notice of Availability of Royalty Oil", all eligible refiners that selected a lease or leases in that specific sale would be allowed to participate, pursuant to the procedures in the Notice.

§ 1208.6 General application procedures.

(a) To apply for the purchase of royalty oil, an applicant must file a Form MMS-4070 with ONRR in accordance with instructions provided in the "Notice of Availability of Royalty Oil" and in accordance with any instructions issued by ONRR for completion of Form MMS-4070. The applicant will be required to submit a letter of intent from a qualified financial institution stating that it would be granted surety coverage for the royalty oil for which it is applying, or other such proof of surety coverage, as deemed acceptable by ONRR. The letter of intent must be submitted with a completed Form MMS-4070.

(b) In addition to any other application requirements specified in the Notice, the following information is required on Form MMS-4070 at the time of application:

(1) Name and address of the applicant, the location of the applicant's refinery or refineries, and disclosure of

the applicant's affiliation with any other persons.

(2) The capacity of the applicant's refineries in barrels of crude oil throughput per calendar day and a tabulation for the past 12 months of oil processed for each refinery, identified as to source (from own production or from other sources).

(3) Identification of any Government royalty oil contracts under which the applicant is currently receiving royalty oil.

(4) Identification of the locations (area/region and State) where the applicant proposes to purchase royalty oil, the volume of oil requested, and the specific refineries in which the oil will be refined.

(5) A certification from the applicant that it is an eligible refiner for the purchase of Government royalty oil, as defined in §1208.2 of this part.

[52 FR 41913, Oct. 30, 1987, as amended at 58 FR 64901, Dec. 10, 1993]

§ 1208.7 Determination of eligibility.

(a) The ONRR will examine each application and may request additional information if the information in the application is inadequate. An application received after the close of the application period will be rejected. If additional information is requested by ONRR, it must be received by the time specified or the application will be rejected.

(b) After the close of the application period and the receipt of any additional requested information, ONRR will determine which applicants may participate in the royalty oil sale and the quantity of royalty oil which each applicant is authorized to purchase.

(c) When applications are filed by two or more eligible refiners for the same royalty oil, the oil will be allocated among such applicants on an equitable basis as determined by ONRR. Preference eligible refiners will be given priority in the allocation procedures in sales and subsequent reallocations of royalty oil.

(d) No eligible refiner shall be awarded contracts for volumes of royalty oil that, when added to volumes of other Federal royalty oil being received, are in excess of 60 percent of the combined refinery capacity of that refiner.

(e) The ONRR may exclude any section 6 lease from a royalty oil sale.

(f) If two or more eligible refiners are related through common ownership or control or otherwise affiliated, only one of them shall be entitled to an allotment of royalty oil from a specific sale.

(g) Any applicant whose refinery is not in operation during the 60-day period prior to the date of the royalty oil sale shall not be entitled to participate in the sale unless such applicant self-certifies and demonstrates to the satisfaction of ONRR that it will begin operations by the first month in which oil becomes available under a royalty oil contract. If operations do not begin by that month, ONRR will terminate the contract.

(h) Applicants or purchasers that have delinquent balances with ONRR as of the date of a royalty oil sale or subsequent reallocation will not be allowed to participate in that sale or reallocation. If a person which is controlled by, in control of, under common control with, or otherwise affiliated with an applicant or purchaser has such delinquent balances, the applicant or purchaser will not be allowed to participate in a royalty oil sale or reallocation. To the extent a purchaser or affiliated person has appealed a billing and posted a surety instrument in accordance with the contract terms and applicable ONRR regulations or other law, the balance shall not be considered delinquent.

(i) A purchaser must meet the eligibility criteria on the date of contract issuance. However, a change in a purchaser's eligibility status during the term of the contract will not affect the purchaser's right to continue that contract until its term expires, including any extensions thereof.

[52 FR 41913, Oct. 30, 1987, as amended at 58 FR 64901, Dec. 10, 1993]

§ 1208.8 Transportation and delivery.

(a) The lessee shall deliver royalty oil from onshore leases to the purchaser at a point on or adjacent to the lease pursuant to the terms of the lease. If the purchaser does not have access to its onshore royalty oil entitlement at facilities on or adjacent to the lease, the operator of the lease

must designate an alternate delivery point at no additional cost to the purchaser or the Government. The purchaser must have physical access to the oil at the alternate delivery point and such point must be approved by ONRR.

(b) The lessee shall deliver royalty oil from section 8 offshore leases issued after September 1969 at a delivery point to be designated by ONRR. The lessee shall deliver royalty oil from section 8 offshore leases issued before October 1969 or from section 6 leases at a delivery point to be designated by the lessee. If the delivery point is on or immediately adjacent to the lease, the royalty oil will be delivered without cost to the Federal Government as an undivided portion of production in marketable condition at pipeline connections or other facilities provided by the lessee, unless other arrangements are approved by ONRR. If the delivery point is not on or immediately adjacent to the lease, ONRR will reimburse the lessee for the reasonable cost of transportation to such point in an amount not to exceed the transportation allowance determined pursuant to 30 CFR part 1206. The ONRR will include such transportation costs in the price charged for the oil taken in kind to reflect the value of the oil at the delivery point. Arrangements for delivery of the royalty oil from, or exchange of the oil at, the delivery point, and related transportation costs, are the responsibility of the purchaser of the royalty oil. In addition, quality differentials between the royalty oil to which a purchaser is entitled and the oil which is made available at the delivery point are matters to be resolved between the purchaser and the operator.

(c) When the purchaser has physical access to the royalty oil at the delivery point, the lessee shall deliver such oil in marketable condition at pipeline connections or other facilities designated by ONRR. If the lessee is unable to provide the royalty portion of actual production from the lease, the lessee must provide crude oil to the purchaser which is equivalent in volume or value to the royalty oil to which the purchaser is entitled. The lessee will deliver the royalty oil to

§ 1208.9

30 CFR Ch. XII (7-1-17 Edition)

the purchaser during normal operating hours and in reasonable quantities and intervals. The lessee will make available and the purchaser will accept delivery of the royalty oil entitlement no later than the last day of the calendar month immediately following the calendar month in which the oil was produced. Failure to accept deliveries shall constitute grounds for the termination of the contract.

(d) Upon termination of deliveries under a royalty oil contract, the transportation allowance and delivery point designation authorized by this section no longer will remain in effect.

§ 1208.9 Agreements.

(a) A purchaser must submit to ONRR two copies of any written third-party agreements, or two copies of a full written explanation of any oral third-party agreements, relating to the method and costs of delivery of royalty oil, or crude oil exchanged for the royalty oil, from the point of delivery under the contract to the purchaser's refinery. In addition, the purchaser must submit copies of agreements pertaining to quality differentials which may occur between leases and delivery points.

(b) A purchaser may not sell royalty oil which it purchases pursuant to this part except for purposes of an exchange for other crude oil on a volume or equivalent value basis.

(c) Royalty oil purchased under this part, or crude oil received in exchange for such royalty oil, must be processed into refined petroleum products in the purchaser's refinery.

§ 1208.10 Notices.

(a) The ONRR shall notify each operator, by certified mail, of the Secretary's decision to take royalty oil in kind. This notice shall be mailed at least 45 days in advance of the effective date of delivery and will specify delivery points for offshore oil for OCS leases issued after September 1969.

(b) Deliveries of royalty oil may be partially terminated only with the written approval of the Director, ONRR.

(c) Before terminating the delivery of royalty oil taken in kind, ONRR, if possible, will notify each operator by

certified mail of the change in requirements at least 30 days in advance of the effective date.

(d) After ONRR notification that royalty oil will be taken in kind, the operator shall be responsible for notifying each working interest on the Federal lease. As soon as practicable after the date of each royalty oil sale, ONRR will publish in the FEDERAL REGISTER a notice of the leases from which royalty oil will be taken, the purchasers of the royalty oil, and the leases from which royalty oil deliveries will be discontinued on terminated contracts.

(e) A purchaser cannot transfer, assign, or sell its rights or interest in a royalty oil contract without written approval of the Director, ONRR. If the purchaser changes ownership or its assets are sold or liquidated for any reason, it cannot transfer, assign, or sell its rights or interest in the royalty oil contract without written approval of the Director, ONRR. Without express written consent from ONRR for a change in ownership, the royalty oil contract shall be terminated. The successor company must meet the definition of an eligible refiner in § 1208.2 of this part for ONRR to consider assignment of the royalty oil contract.

§ 1208.11 Surety requirements.

(a) The eligible purchaser, prior to execution of the contract, shall furnish an "ONRR-specified surety instrument," in an amount equal to the estimated value of royalty oil that could be taken by the purchaser in a 99-day period, plus related administrative charges. The ONRR may require the purchaser to increase the amount of the surety instrument when necessary to protect the Government's interest or may allow the purchaser to decrease the amount of the surety instrument where necessary to further the purposes of the Royalty-in-Kind Program.

(b) If a letter of credit is furnished as the surety instrument, it must be effective for a 9-month period beginning the first day the royalty oil contract is effective, with a clause providing for automatic renewal monthly for a new 9-month period. The purchaser or its surety company may elect not to renew the letter of credit at any monthly anniversary date, but must

notify ONRR of its intent not to renew at least 30 days prior to the anniversary date. The ONRR may grant the purchaser 45 days to obtain a new surety instrument. If no replacement surety instrument is provided, ONRR will terminate the contract effective at least 6 months prior to the expiration date of the letter of credit. Notwithstanding the above provisions, the letter of credit also may contain a clause providing for automatic termination 6 months after the royalty oil contract terminates. If a certificate of deposit is furnished as the surety instrument, it must be effective for the life of the contract plus 6 months after the royalty oil contract terminates.

(c) For the purposes of this section, an “ONRR-specified surety instrument” means either: an ONRR-specified surety bond, an ONRR-specified irrevocable letter of credit, or a financial institution book-entry certificate of deposit.

(d) The “ONRR-specified surety instrument” shall be in a form specified by ONRR instructions or approved by ONRR. A bond must be issued by a qualified surety company that has been approved by the Department of the Treasury. An irrevocable letter of credit or a certificate of deposit must be from a financial institution acceptable to ONRR. The ONRR will use a bank rating service to determine whether a financial institution has an acceptable rating to provide a surety instrument deemed adequate to indemnify the Government from loss or damage.

(e) All surety instruments must be in a form acceptable to ONRR and must include such other specific requirements as ONRR may require adequately to protect the Government's interests.

[58 FR 64901, Dec. 10, 1993]

§ 1208.12 Payment requirements.

(a) All payments to ONRR by a purchaser of royalty oil will be due on the date and at the location specified in the contract, or, if there is no contractual provision, as specified by ONRR. The purchaser shall tender all payments to ONRR in accordance with § 1218.51 of this chapter. Payments made by a payor pursuant to the requirements of paragraph (b) of this sec-

tion and § 1208.13 also shall be tendered in accordance with § 1218.51 of this chapter.

(b)(1) Payments from a purchaser of royalty oil not received by ONRR when due, or that portion of the payment less than the full amount due, will be subject to a late payment charge equivalent to an interest assessment on the amount past due for the number of days that the payment is late at the underpayment rate applicable under section 6621 of the Internal Revenue Code of 1954.

(2) The ONRR may assess interest to a payor for any underpayments which are the result of the payor's late or underreporting, or for adjustments reported by the payor, or made as a result of audit, reconciliation, or other procedures. The interest for late payment and underpayment will be assessed pursuant to § 1218.54 of this chapter.

(c) If payment for royalty oil is not received by the due date specified in the contract, a notice of nonreceipt will be sent to the purchaser by certified mail. If payment is not received by ONRR within 15 days from the date of such notice, ONRR may cancel the contract and collect under the ONRR-specified surety instrument. See § 1208.11.

(d) If the purchaser disagrees with the amount of payment due, it must pay the amount due as computed by ONRR, unless the purchaser appeals the amount and posts an ONRR-specified surety instrument pursuant to the provisions of 30 CFR part 1243. The ONRR may, at its discretion, waive the appeal surety requirements if it determines that the contract surety instrument is sufficient protection for an amount under appeal.

[52 FR 41913, Oct. 30, 1987, as amended at 64901, Dec. 10, 1993]

§ 1208.13 Reporting requirements.

If ONRR underbills a purchaser under a royalty oil contract because of a payor's underreporting or failure to report on Form MMS-2014 pursuant to § 1210.52 of this chapter, the payor will be liable for payment of such underbilled amounts plus interest if they are unrecoverable from the purchaser or

§ 1208.14

the surety instrument related to the contract.

[58 FR 64902, Dec. 10, 1993]

§ 1208.14 Civil and criminal penalties.

Failure to abide by the regulations in this part may result in civil and criminal penalties being levied on that person as specified in sections 109 and 110 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1719–20, and regulations at 30 CFR part 241. Civil penalties applicable under the OCSLA and the Mineral Leasing Act of 1920 may also be imposed.

§ 1208.15 Audits.

Audits of the accounts and books of lessees, operators, payors, and/or purchasers of royalty oil taken in kind may be made annually or at such other times as may be directed by ONRR. Such audits will be for the purpose of determining compliance with applicable statutes, regulations, and royalty oil contracts.

§ 1208.16 How to appeal a contracting officer's decision that you receive.

If you receive a contracting officer's decision, you may:

(a) Appeal that decision to the Board of Contract Appeals in the Office of Hearings and Appeals, Office of the Secretary, in accordance with the procedures provided in 43 CFR part 4, subpart C; or

(b) File an action in the United States Court of Federal Claims.

[64 FR 26251, May 13, 1999]

§ 1208.17 Suspensions for national emergencies.

The Secretary of the Department of the Interior, upon a recommendation by the Secretary of Defense or the Secretary of Energy and with the approval of the President, may suspend operations under these regulations and suspend royalty oil contracts during a national emergency declared by the Congress or the President.

Subpart B [Reserved]

30 CFR Ch. XII (7–1–17 Edition)

PART 1210—FORMS AND REPORTS

Subpart A—General Provisions

Sec.

- 1210.01 What is the purpose of this subpart?
- 1210.02 To whom do these regulations apply?
- 1210.10 What are the OMB-approved information collections?
- 1210.20 What if I disagree with the burden hour estimates?
- 1210.21 How do I report my taxpayer identification number?
- 1210.30 What are my responsibilities as a reporter/payor?
- 1210.40 Will ONRR keep the information I provide confidential?

Subpart B—Royalty Reports—Oil, Gas, and Geothermal Resources

- 1210.50 What is the purpose of this subpart?
- 1210.51 Who must submit royalty reports?
- 1210.52 What royalty reports must I submit?
- 1210.53 When are my royalty reports and payments due?
- 1210.54 Must I submit this royalty report electronically?
- 1210.55 May I submit this royalty report manually?
- 1210.56 Where can I find more information on how to complete the royalty report?
- 1210.60 What definitions apply to this subpart?
- 1210.61 What additional reporting requirements must I meet for Indian oil valuation purposes?

Subpart C—Production Reports—Oil and Gas

- 1210.100 What is the purpose of this subpart?
- 1210.101 Who must submit production reports?
- 1210.102 What production reports must I submit?
- 1210.103 When are my production reports due?
- 1210.104 Must I submit these production reports electronically?
- 1210.105 May I submit these production reports manually?
- 1210.106 Where can I find more information on how to complete these production reports?

Subpart D—Special-Purpose Forms and Reports—Oil, Gas, and Geothermal Resources

- 1210.150 What is the purpose of this subpart?
- 1210.151 What reports must I submit to claim an excess allowance?
- 1210.152 What reports must I submit to claim allowances on an Indian lease?
- 1210.153 What reports must I submit for Indian gas valuation purposes?

Natural Resources Revenue Off., Interior

§ 1210.10

- 1210.154 What documents or other information must I submit for Federal oil valuation purposes?
- 1210.155 What reports must I submit for Federal onshore stripper oil properties?
- 1210.156 What reports must I submit for net profit share leases?
- 1210.157 What reports must I submit to suspend an ONRR order under appeal?
- 1210.158 What reports must I submit to designate someone to make my royalty payments?

Subpart E—Production and Royalty Reports—Solid Minerals

- 1210.200 What is the purpose of this subpart?
- 1210.201 How do I submit Form MMS-4430, Solid Minerals Production and Royalty Report?
- 1210.202 How do I submit sales summaries?
- 1210.203 How do I submit sales contracts?
- 1210.204 How do I submit facility data?
- 1210.205 What reports must I submit to claim allowances on Indian coal leases?
- 1210.206 Will I need to submit additional documents or evidence to ONRR?
- 1210.207 How will information submissions be kept confidential?

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources

- 1210.350 Definitions.
- 1210.351 Required recordkeeping.
- 1210.352 Special forms and reports.
- 1210.353 Monthly report of sales and royalty.
- 1210.354 Reporting instructions.

Subpart I—OCS Sulfur [Reserved]

AUTHORITY: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396, 2107; 30 U.S.C. 189, 190, 359, 1023, 1751(a); 31 U.S.C. 3716, 9701; 43 U.S.C. 1334, 1801 *et seq.*; and 44 U.S.C. 3506(a).

SOURCE: 48 FR 35641, Aug. 5, 1983, unless otherwise noted. Redesignated at 75 FR 61081, Oct. 4, 2010.

Subpart A—General Provisions

SOURCE: 73 FR 15892, Mar. 26, 2008, unless otherwise noted.

§ 1210.01 What is the purpose of this subpart?

This subpart identifies information collections required by the Office of

Natural Resources Revenue (ONRR), in the normal course of operations. This information is submitted by various parties associated with Federal and Indian leases such as lessees, designees, and operators. The information collected meets the ONRR congressionally mandated accounting and auditing responsibilities relating to Federal and Indian minerals revenue management. Information collected regarding production, royalties, and other payments due the Government from activities on leased Federal or Indian land is authorized by the Federal Oil and Gas Royalty Management Act of 1982, as amended (30 U.S.C. 1701 *et seq.*), as well as 43 U.S.C. 1334 and 30 U.S.C. 189, 359, 396, and 396d for oil and gas production; and by 30 U.S.C. 189, 359, 396, and 396d for solid minerals production.

§ 1210.02 To whom do these regulations apply?

The regulations apply to any person, referred to in this subpart as “you,” “your,” or “reporter/payor,” who is a lessee under any Federal or Indian lease for any mineral or who is assigned or assumes an obligation to report data or make payment to ONRR. The term reporter/payor may include lessees, designees, operators, purchasers, reporters, other payors, and working interest owners, but is not restricted to these parties. This section does not affect the liability to pay and report royalties as established by other regulations, laws, and the lease terms.

§ 1210.10 What are the OMB-approved information collections?

The information collection requirements identified in this subpart have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* Detailed information about each information collection request (ICR), including CFR citations, is included on the ONRR Web site at http://www.onrr.gov/Laws_R_D/FRNotices/FRInfColl.htm. The ICRs and associated ONRR form numbers, if applicable, are listed below:

§ 1210.20

30 CFR Ch. XII (7–1–17 Edition)

OMB Control number and short title	Form or information collected
1012–0001, CFO Act of 1992, Accounts Receivable Confirmations.	No form for the following collection: • Accounts receivable confirmations
1012–0002, 30 CFR Parts 1202, 1206, and 1207, Indian Oil and Gas Valuation.	Form ONRR–4109, Gas Processing Allowance Summary Report Form ONRR–4110, Oil Transportation Allowance Report Form ONRR–4295, Gas Transportation Allowance Report Form ONRR–4393, Request to Exceed Regulatory Allowance Limitation ¹ Form ONRR–4410, Accounting for Comparison [Dual Accounting] Form ONRR–4411, Safety Net Report
1012–0003, 30 CFR Parts 1227, 1228, and 1229, Delegated and Cooperative Activities with States and Indian Tribes.	No forms for the following collections: • Written delegation proposal to perform auditing and investigative activities • Request for cooperative agreement and subsequent requirements
1012–0004, 30 CFR Parts 1210 and 1212, Royalty and Production Reporting.	Form ONRR–2014, Report of Sales and Royalty Remittance Form ONRR–4054 (Parts A, B, and C), Oil and Gas Operations Report Form ONRR–4058, Production Allocation Schedule Report
1012–0005, 30 CFR Parts 1202, 1204, 1206, and 1210, Federal Oil and Gas Valuation.	Form ONRR–4377, Stripper Royalty Rate Reduction Notification Form ONRR–4393, Request to Exceed Regulatory Allowance Limitation ¹
1012–0006, 30 CFR Part 1243, Suspensions Pending Appeal and Bonding.	No form for the following collection: • Federal oil valuation support information Form ONRR–4435, Administrative Appeal Bond Form ONRR–4436, Letter of Credit Form ONRR–4437, Assignment of Certificate of Deposit
1012–0008, 30 CFR Part 1218, Collection of Monies Due the Federal Government.	No forms for the following collections: • Self bonding • U.S. Treasury securities Form ONRR–4425, Designation Form for Royalty Payment Responsibility
1012–0009, 30 CFR Part 1220, OCS Net Profit Share Payment Reporting.	No forms for the following collections: • Cross-lease netting documentation • Indian recoupment approval
1012–0010, 30 CFR Parts 1202, 1206, 1210, 1212, 1217, and 1218, Solid Minerals and Geothermal Resources Collections.	No form for the following collection: • Net profit share payment information Form ONRR–4430, Solid Minerals Production and Royalty Report Form ONRR–4292, Coal Washing Allowance Report Form ONRR–4293, Coal Transportation Allowance Report
	No forms for the following collections: • Facility data—solid minerals • Sales contracts—solid minerals • Sales summaries—solid minerals

¹ Lessees use Form ONRR–4393 for both Federal and Indian oil and gas leases. The form resides with ICR 1012–0005, but ONRR includes the burden hours for Indian leases in ICR 1012–0002.

[73 FR 15892, Mar. 26, 2008, as amended at 73 FR 58875, Oct. 8, 2008; 76 FR 76615, Dec. 8, 2011; 78 FR 30204, May 22, 2013]

§ 1210.20 What if I disagree with the burden hour estimates?

Burden hour estimates are included on the ONRR Web site at http://www.onrr.gov/Laws_R_D/FRNotices/FRInfColl.htm. Send comments on the accuracy of these burden estimates or suggestions on reducing the burden to the Office of Natural Resources Revenue, Attention: Rules & Regs Team, 1012–XXXX P.O. Box 25165, Denver, CO 80225–0165. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of informa-

tion unless it displays a currently valid OMB control number.

[73 FR 15892, Mar. 26, 2008, as amended at 74 FR 46907, Sept. 14, 2009; 76 FR 76615, Dec. 8, 2011]

§ 1210.21 How do I report my taxpayer identification number?

(a) Before paying or reporting to ONRR, you must obtain a payor code (see the ONRR *Minerals Revenue Reporter Handbook*, which is available on the Internet at <http://www.onrr.gov/FM/Handbooks/default.htm>; also see § 1210.56

for further information on how to obtain a handbook). At the time you request a payor code, you must provide your Employer Identification Number (EIN) by submitting:

- (1) An IRS Form W-9; or
- (2) An equivalent certification containing:
 - (i) Your name;
 - (ii) The name of your business, if different from your name;
 - (iii) The form of your business entity; for example, a sole proprietorship, corporation, or partnership;
 - (iv) The address of your business;
 - (v) The EIN of your business; and
 - (vi) A signed and dated certification that you are a U.S. citizen or resident alien and that the EIN number provided is correct.

(b) If you are already paying or reporting to ONRR but do not have an EIN, ONRR may request that you submit an IRS Form W-9 or equivalent certification containing the information required under paragraph (a)(2) of this section.

(c) The collection of this data is not subject to the provisions of the Paperwork Reduction Act because only information necessary to identify the respondent [5 CFR 1320.3(h)] is required.

(d) The EIN you provide to ONRR under paragraph (a) of this section:

(1) Means the taxpayer identification number (TIN) of an individual or other person (whether or not an employer), which is assigned under 26 U.S.C. 6011(b), or a corresponding version of prior law, or under 26 U.S.C. 6109;

(2) Must contain nine digits separated by a hyphen as follows: 00-0000000; and

(3) May not be a Social Security Number.

[48 FR 35641, Aug. 5, 1983, 76 FR 76615, Dec. 8, 2011]

§ 1210.30 What are my responsibilities as a reporter/payor?

Each reporter/payor must submit accurate, complete, and timely information to ONRR according to the requirements in this part. If you discover an error in a previous report, you must file an accurate and complete amended report within 30 days of your discovery of the error. If you do not comply,

ONRR may assess civil penalties under 30 CFR part 1241.

§ 1210.40 Will ONRR keep the information I provide confidential?

The ONRR will treat information obtained under this part as confidential to the extent permitted by law as specified at 43 CFR part 2.

Subpart B—Royalty Reports—Oil, Gas, and Geothermal Resources

SOURCE: 73 FR 15892, Mar. 26, 2008, unless otherwise noted.

§ 1210.50 What is the purpose of this subpart?

The purpose of this subpart is to explain royalty reporting requirements when energy and mineral resources are removed from Federal and Indian oil and gas and geothermal leases and federally approved agreements. This includes leases and agreements located onshore and on the Outer Continental Shelf (OCS).

§ 1210.51 Who must submit royalty reports?

(a) Any person who pays royalty to ONRR must submit royalty reports to ONRR.

(b) Before you pay or report to ONRR, you must obtain a payor code. To obtain a payor code, refer to the *ONRR Minerals Revenue Reporter Handbook* for instructions and ONRR contact information (also see § 1210.56 for information on how to obtain a handbook).

§ 1210.52 What royalty reports must I submit?

You must submit a completed Form ONRR-2014, Report of Sales and Royalty Remittance, to ONRR with:

- (a) All royalty payments; and
- (b) Rents on nonproducing leases, where specified in the lease.

§ 1210.53 When are my royalty reports and payments due?

(a) Completed Forms ONRR-2014 for royalty payments and the associated payments are due by the end of the month following the production month (see also § 1218.50 of this chapter).

§ 1210.54

30 CFR Ch. XII (7–1–17 Edition)

(b) Completed Forms ONRR-2014 for rental payments, where applicable, and the associated payments are due as specified by the lease terms (see also § 1218.50 of this chapter).

(c) You may submit reports and payments early.

§ 1210.54 Must I submit this royalty report electronically?

(a) You must submit Form ONRR-2014 electronically unless you qualify for an exception under § 1210.55(a).

(b) As of December 31, 2011, all reporters/payors must report to ONRR electronically via the eCommerce Reporting Web site. All reporters/payors also must report royalty data directly or upload files using the ONRR electronic web form located at <https://onrrreporting.onrr.gov>. You must upload your files in one of the following formats: The American Standard Code for information interchange (ASCII) or Comma Separated Values (CSV) formats. You must create your external files in the proprietary ASCII and CSV file layout formats defined by ONRR. You can generate these external files from your system application. Reporters/payors also can access detailed information and instructions regarding how to use the eCommerce Reporting Web site at http://www.onrr.gov/FM/PDFDocs/eCommerce_FAQ.pdf.

(c) Refer to our electronic reporting guidelines in the *ONRR Minerals Revenue Reporter Handbook*, for the most current reporting options, instructions, and security measures. The handbook may be found on our Internet Web site or you may call your ONRR customer service representative (see § 1210.56 for further information on how to obtain a handbook).

[73 FR 15892, Mar. 26, 2008, as amended at 77 FR 25879, May 2, 2012]

§ 1210.55 May I submit this royalty report manually?

(a) The ONRR will allow you to submit Form ONRR-2014 manually if:

(1) You have never reported to ONRR before. You have 3 months from the date your first report is due to begin reporting electronically;

(2) You report only rent, minimum royalty, or other annual obligations on Form ONRR-2014; or

(3) You are a small business, as defined by the U.S. Small Business Administration, and you have no computer.

(b) If you meet the qualifications under paragraph (a) of this section, you may submit your form manually to ONRR by:

(1) U.S. Postal Service regular or express mail addressed to Office of Natural Resources Revenue, P.O. Box 25627, Denver, CO 80225-0627; or

(2) Special courier or overnight mail addressed to Office of Natural Resources Revenue, Building 85, Room A-614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

[73 FR 15892, Mar. 26, 2008, as amended at 77 FR 25879, May 2, 2012]

§ 1210.56 Where can I find more information on how to complete the royalty report?

(a) Refer to the *ONRR Minerals Revenue Reporter Handbook* for specific guidance on how to prepare and submit Form ONRR-2014. You may find the handbook at <http://www.onrr.gov/FM/Handbooks/default.htm> or from the contacts on that Web page.

(b) Reporters/payors should refer to the handbook for specific guidance on royalty reporting requirements. If you require additional information, you should contact ONRR at the above address. A customer service telephone number is also listed in our handbook.

(c) You may find Form ONRR-2014 at http://www.onrr.gov/FM/Forms/AFSoil_Gas.htm or from contacts listed on that Web page.

[48 FR 35641, Aug. 5, 1983, 76 FR 76615, Dec. 8, 2011; 77 FR 25879, May 2, 2012]

§ 1210.60 What definitions apply to this subpart?

Terms used in this subpart have the same meaning as in 30 U.S.C. 1702.

§ 1210.61 What additional reporting requirements must I meet for Indian oil valuation purposes?

(a) If you must report and pay under § 1206.52 of this chapter, you must use Sales Type Code ARMS on Form ONRR-2014.

(b) If you must report and pay under § 1206.53 of this chapter, you must use

Sales Type Code NARM on Form ONRR-2014.

(c) If you must report and pay under § 1206.54 of this chapter, you must use Sales Type Code OINX on Form ONRR-2014.

(d) You must report one of the following crude oil types in the product code field of Form ONRR-2014:

- (1) Sweet (code 61);
- (2) Sour (code 62);
- (3) Asphaltic (code 63);
- (4) Black Wax (code 64); or
- (5) Yellow Wax (code 65).

(e) All of the remaining requirements of this subpart apply.

[80 FR 24814, May 1, 2015]

Subpart C—Production Reports— Oil and Gas

SOURCE: 73 FR 15892, Mar. 26, 2008, unless otherwise noted.

§ 1210.100 What is the purpose of this subpart?

The purpose of this subpart is to explain production reporting requirements when energy and mineral resources are removed from Federal and Indian oil and gas leases and federally approved agreements. This includes leases and unit and communitization agreements located onshore and on the Outer Continental Shelf (OCS).

§ 1210.101 Who must submit production reports?

(a) If you operate a Federal or Indian oil and gas lease or federally approved unit or communitization agreement, you must submit production reports.

(b) Before reporting production to ONRR, you must obtain an operator number. To obtain an operator number, refer to the ONRR *Minerals Production Reporter Handbook* for instructions and ONRR contact information (also see § 1210.106 for information on how to obtain a handbook).

§ 1210.102 What production reports must I submit?

(a) Form ONRR-4054, Oil and Gas Operations Report. If you operate a Federal or Indian onshore or OCS oil and gas lease or federally approved unit or communitization agreement that con-

tains one or more wells that are not permanently plugged or abandoned, you must submit Form ONRR-4054 to ONRR:

(1) You must submit Form ONRR-4054 for each well for each calendar month, beginning with the month in which you complete drilling, unless:

(i) You have only test production from a drilling well; or

(ii) The ONRR tells you in writing to report differently.

(2) You must continue reporting until:

(i) The Bureau of Land Management (BLM) or ONRR approves all wells as permanently plugged or abandoned or the lease or unit or communitization agreement is terminated; and

(ii) You dispose of all inventory.

(b) Form ONRR-4058, Production Allocation Schedule Report. If you operate an offshore facility measurement point (FMP) handling production from a Federal oil and gas lease or federally approved unit agreement that is commingled (with approval) with production from any other source prior to measurement for royalty determination, you must file Form ONRR-4058.

(1) You must submit Form ONRR-4058 for each calendar month beginning with the month in which you first handle production covered by this section.

(2) Form ONRR-4058 is not required whenever all of the following conditions are met:

(i) All leases involved are Federal leases;

(ii) All leases have the same fixed royalty rate;

(iii) All leases are operated by the same operator;

(iv) The facility measurement device is operated by the same person as the leases/agreements;

(v) Production has not been previously measured for royalty determination; and

(vi) The production is not subsequently commingled and measured for royalty determination at an FMP for which Form ONRR-4058 is required under this part.

§ 1210.103 When are my production reports due?

(a) The ONRR must receive your completed Forms ONRR-4054 and

§ 1210.104

ONRR-4058 by the 15th day of the second month following the month for which you are reporting.

(b) A report is considered received when it is delivered to ONRR by 4 p.m. mountain time at the addresses specified in §1210.105. Reports received after 4 p.m. mountain time are considered received the following business day.

§ 1210.104 Must I submit these production reports electronically?

(a) You must submit Forms ONRR-4054 and ONRR-4058 electronically unless you qualify for an exception under §1210.105.

(b) As of December 31, 2011, all reporters/payors must report to ONRR electronically via the eCommerce Reporting Web site. All reporters/payors also must report production data directly or upload files using the ONRR electronic web form located at <https://onrrreporting.onrr.gov>. You must upload your files in one of the following formats: The American Standard Code for information interchange (ASCII) or Comma Separated Values (CSV) formats. You must create your external files in the proprietary ASCII and CSV file layout formats defined by ONRR. You can generate these external files from your system application. Reporters/payors also can access detailed information and instructions regarding how to use the eCommerce Reporting Web site at http://www.onrr.gov/FM/PDFDocs/eCommerce_FAQ.pdf.

(c) Refer to our electronic reporting guidelines in the *ONRR Minerals Production Reporter Handbook* for the most current reporting options, instructions, and security measures. The handbook may be found on our Internet Web site or you may call your ONRR customer service representative (see §1210.106 for further information on how to obtain a handbook).

[73 FR 15892, Mar. 26, 2008, as amended at 77 FR 25880, May 2, 2012]

§ 1210.105 May I submit these production reports manually?

(a) The ONRR will allow you to submit Forms ONRR-4054 and ONRR-4058 manually if:

(1) You have never reported to ONRR before. You have 3 months from the

30 CFR Ch. XII (7-1-17 Edition)

day your first report is due to begin reporting electronically; and

(2) You are a small business, as defined by the U.S. Small Business Administration, and you have no computer.

(b) If you meet the qualifications under paragraph (a) of this section, you may submit your forms manually to ONRR by:

(1) U.S. Postal Service regular or express mail addressed to Office of Natural Resources Revenue, P.O. Box 25627, Denver, CO 80225-0627; or

(2) Special courier or overnight mail addressed to Office of Natural Resources Revenue, Building 85, Room A-614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

[73 FR 15892, Mar. 26, 2008, as amended at 77 FR 25879, May 2, 2012]

§ 1210.106 Where can I find more information on how to complete these production reports?

(a) Refer to the *ONRR Minerals Production Reporter Handbook* for specific guidance on how to prepare and submit Forms ONRR-4054 and ONRR-4058. You may find the handbook at <http://www.onrr.gov/FM/Handbooks/default.htm> or from contacts listed on that Web page.

(b) Production reporters should refer to the handbook for specific guidance on production reporting requirements. If you require additional information, you should contact ONRR at the above address. A customer service telephone number is also listed in our handbook.

(c) You may find Forms ONRR-4054 and ONRR-4058 at http://www.onrr.gov/FM/Forms/AFSOil_Gas.htm or from contacts listed on that Web page.

[48 FR 35641, Aug. 5, 1983, 76 FR 76615, Dec. 8, 2011; 77 FR 25880, May 2, 2012]

Subpart D—Special-Purpose Forms and Reports—Oil, Gas, and Geothermal Resources

SOURCE: 73 FR 15892, Mar. 26, 2008, unless otherwise noted.

§ 1210.150 What is the purpose of this subpart?

This subpart identifies specific special-purpose reports and provides general information, reporting options, and reporting addresses. See § 1210.10 for a complete listing of all information collections, including forms and references for specific information collections.

§ 1210.151 What reports must I submit to claim an excess allowance?

(a) *General.* If you are a lessee, you must submit Form ONRR-4393, Request to Exceed Regulatory Allowance Limitation, to request approval from ONRR to exceed prescribed transportation and processing allowance limits on Federal oil and gas leases and prescribed transportation allowance limits on Indian oil and gas leases under part 1206 of this chapter.

(b) *Reporting options.* You may find Form ONRR-4393 at http://www.onrr.gov/FM/Forms/AFSOil_Gas.htm or from contacts listed on that Web page.

(c) *Reporting address.* Submit completed Form ONRR-4393 as follows:

(1) Complete and submit the form electronically as an e-mail attachment;

(2) Send the form by U.S. Postal Service regular or express mail addressed to Office of Natural Resources Revenue, P.O. Box 25165, Denver, CO 80225-0165; or

(3) Deliver the form to ONRR by special courier or overnight mail addressed to Office of Natural Resources Revenue, Building 85, Room A-614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

[48 FR 35641, Aug. 5, 1983, 76 FR 76615, Dec. 8, 2011; 77 FR 25879, 25880, May 2, 2012]

§ 1210.152 What reports must I submit to claim allowances on an Indian lease?

(a) *General.* You must submit three additional forms to ONRR to claim transportation or processing allowances on Indian oil and gas leases:

(1) You must submit Form ONRR-4110, Oil Transportation Allowance Report, to claim an allowance for expenses incurred by a reporter/payor to

transport oil from the lease site to a point remote from the lease where value is determined under § 1206.55 of this chapter.

(2) You must submit Form ONRR-4109, Gas Processing Allowance Summary Report, to claim an allowance for the reasonable, actual costs of removing hydrocarbon and nonhydrocarbon elements or compounds from a gas stream under § 1206.180 of this chapter.

(3) You must submit Form ONRR-4295, Gas Transportation Allowance Report, to claim an allowance for the reasonable, actual costs of transporting gas from the lease to the point of first sale under § 1206.178 of this chapter.

(b) *Reporting options.* You must submit Forms ONRR-4110, ONRR-4109, and ONRR-4295 manually. You may find the forms at http://www.onrr.gov/FM/Forms/AFSOil_Gas.htm or from contacts listed on that Web page.

(c) *Reporting address.* You may submit completed Forms ONRR-4110, ONRR-4109, and ONRR-4295 by:

(1) U.S. Postal Service regular or express mail addressed to Office of Natural Resources Revenue, P.O. Box 25165, Denver, CO 80225-0165; or

(2) Special courier or overnight mail addressed to Office of Natural Resources Revenue, Building 85, Room A-614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

[48 FR 35641, Aug. 5, 1983, 76 FR 76615, Dec. 8, 2011; 77 FR 25879, 25880, May 2, 2012]

§ 1210.153 What reports must I submit for Indian gas valuation purposes?

(a) *General.* For Indian gas valuation, under certain conditions under § 1206.172 of this chapter, lessees must submit the following forms:

(1) Form ONRR-4410, Accounting for Comparison (Dual Accounting), Part A or part B; and/or

(2) Form ONRR-4411, Safety Net Report.

(b) *Reporting options.* You must submit Forms ONRR-4410 and ONRR-4411 manually. You may find the forms at http://www.onrr.gov/FM/Forms/AFSOil_Gas.htm or from contacts listed on that Web page.

(c) *Reporting address.* You must submit completed Forms ONRR-4410 and ONRR-4411 by:

§ 1210.154

(1) U.S. Postal Service regular or express mail addressed to Office of Natural Resources Revenue, P.O. Box 25165, Denver, CO 80225-0165; or

(2) Special courier or overnight mail addressed to Office of Natural Resources Revenue, Building 85, Room A-614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

[48 FR 35641, Aug. 5, 1983, 76 FR 76615, Dec. 8, 2011; 77 FR 25879, 25880, May 2, 2012]

§ 1210.154 What documents or other information must I submit for Federal oil valuation purposes?

(a) *General.* The ONRR may require you to submit documents or other information to ONRR to support your valuation of Federal oil under part 1206 as part of audit compliance.

(b) *Reporting options.* You must submit the documents or other information manually.

(c) *Reporting address.* You must submit required documents or other information by:

(1) U.S. Postal Service regular or express mail addressed to Office of Natural Resources Revenue, P.O. Box 25165, Denver, CO 80225-0165; or

(2) Special courier or overnight mail addressed to Office of Natural Resources Revenue, Building 85, Room A-614, MS 392B2, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

[73 FR 15892, Mar. 26, 2008, as amended at 77 FR 25879, May 2, 2012]

§ 1210.155 What reports must I submit for Federal onshore stripper oil properties?

(a) *General.* Operators who have been granted a reduced royalty rate by the Bureau of Land Management (BLM) under 43 CFR 3103.4-2 must submit Form ONRR-4377, Stripper Royalty Rate Reduction Notification, under 43 CFR 3103.4-2(b)(3).

(b) *Reporting options.* You may find Form ONRR-4377 at http://www.onrr.gov/FM/Forms/AFSOil_Gas.htm. You may file the form:

(1) Electronically by filling the form out in electronic format and submitting it to ONRR as an e-mail attachment; or

30 CFR Ch. XII (7-1-17 Edition)

(2) Manually by filling out the form and submitting it by:

(i) U.S. Postal Service regular or express mail addressed to Office of Natural Resources Revenue (ONRR), P.O. Box 25165, Denver, CO 80225-0165; or

(ii) Special courier or overnight mail addressed to Office of Natural Resources Revenue, Building 85, Room A-614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

[48 FR 35641, Aug. 5, 1983, 76 FR 76615, Dec. 8, 2011; 77 FR 25879, 25880, May 2, 2012]

§ 1210.156 What reports must I submit for net profit share leases?

(a) *General.* After entering into a net profit share lease (NPSL) agreement, a lessee must report under part 1220 of this chapter.

(b) *Reporting options.* You must submit the required report manually.

(c) *Reporting address.* You must submit the required documents by:

(1) U.S. Postal Service regular or express mail addressed to Office of Natural Resources Revenue, P.O. Box 25165, Denver, CO 80225-0165; or

(2) Special courier or overnight mail addressed to Office of Natural Resources Revenue, Building 85, Room A-614, MS 382B2, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

[73 FR 15892, Mar. 26, 2008, as amended at 77 FR 25879, May 2, 2012]

§ 1210.157 What reports must I submit to suspend an ONRR order under appeal?

(a) *General.* Reporters/payors or other recipients of ONRR Office of Natural Resources (MRM) Revenue orders who appeal an order may be required to post a bond or other surety, under part 1243 of this chapter. The ONRR accepts the following surety types: Form ONRR-4435, Administrative Appeal Bond; Form ONRR-4436, Letter of Credit; Form ONRR-4437, Assignment of Certificate of Deposit; Self-bonding; and U.S. Treasury Securities.

(b) *Reporting options.* You must submit these forms and other documents manually. You may find the forms and other documents under Surety Instrument Posting Instructions on our Internet Web site at <http://www.onrr.gov>

www.onrr.gov/Laws_R_D/FRNotices/ICR0122.htm.

(c) *Reporting address.* You may submit the required forms and other documents as specified in the Surety Instrument Posting Instructions or by:

(1) U.S. Postal Service regular or express mail addressed to Office of Natural Resources Revenue, P.O. Box 25165, Denver, CO 80225-0165;

(2) Special courier or overnight mail addressed to Office of Natural Resources Revenue, Building 85, Room A-614, MS 64220, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

[48 FR 35641, Aug. 5, 1983, 76 FR 76615, Dec. 8, 2011; 77 FR 25879, May 2, 2012]

§ 1210.158 What reports must I submit to designate someone to make my royalty payments?

(a) *General.* You must submit Form ONRR-4425, Designation Form for Royalty Payment Responsibility, if you want to designate a person to make royalty payments on your behalf under § 1218.52 of this chapter.

(b) *Reporting options.* You must submit Form ONRR-4425 manually. You may find the form at http://www.onrr.gov/FM/Forms/AFSOil_Gas.htm.

(c) *Reporting address.* You must submit completed Form ONRR-4425 by:

(1) U.S. Postal Service regular or express mail addressed to Office of Natural Resources Revenue, P.O. Box 25165, Denver, CO 80225-0165; or

(2) Special courier or overnight mail addressed to Office of Natural Resources Revenue, Building 85, Room A-614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

[48 FR 35641, Aug. 5, 1983, 76 FR 76615, Dec. 8, 2011; 77 FR 25879, 25880, May 2, 2012]

Subpart E—Production and Royalty Reports—Solid Minerals

SOURCE: 66 FR 45771, Aug. 30, 2001, unless otherwise noted.

§ 1210.200 What is the purpose of this subpart?

This subpart explains your reporting requirements if you produce coal or

other solid minerals from Federal or Indian leases. Included are your requirements for reporting production, sales, and royalties.

§ 1210.201 How do I submit Form ONRR-4430, Solid Minerals Production and Royalty Report?

(a) *What to submit.* (1) You must submit a completed Form ONRR-4430 for—

(i) Production of all coal and other solid minerals from any Federal or Indian lease;

(ii) Sale of any such mineral;

(iii) Any such mineral held in stockpile or inventory; and

(iv) Payment of rents (other than those for which you receive from ONRR a Courtesy Notice as defined in § 1218.51(a) of this chapter), minimum royalty, deferred bonus, advance royalty, minimum royalty payable in advance, settlements, recoupments, and other financial obligations.

(2) You must submit a completed Form ONRR-4430 for any product you sell from a remote storage site. If you sell from five or fewer remote storage sites, you must report sales from each site on separate Forms ONRR-4430. If you sell from more than five remote storage sites, you must total the data from all sites and report the summarized data on one Form ONRR-4430.

(3) Instructions for completing and submitting Form ONRR-4430 are available on our Internet reporting web site or you may contact us toll free at 1-888-201-6416.

(b) *When to submit.* (1) Unless your lease terms specify a different frequency for royalty payments, you must submit your Form ONRR-4430 on or before the end of the month following the month in which you produce any solid mineral, sell any solid mineral, or hold any solid mineral production in stockpile or inventory. However, if the last day of the month falls on a weekend or holiday, your Form ONRR-4430 is due on the next business day.

(2) If your lease terms specify a different frequency for royalty payment, then you must submit your Form ONRR-4430 on or before the date on which you must pay royalty under the terms of the lease.

(3) You must submit your Form ONRR-4430 for payment of rents (other

than those for which you receive from ONRR a Courtesy Notice as defined in §1218.51(a) of this chapter), minimum royalty, deferred bonus, advance royalty, minimum royalty payable in advance, settlements, recoupments, and other financial obligations on or before the date on which you must pay those obligations under the terms of the lease.

(4) If the information on a previously reported Form ONRR-4430 is no longer correct, you must submit a revised Form ONRR-4430 by the last day of the month in which you learn that the previously reported information is no longer correct, except when the last day of the month falls on a weekend or holiday. If the last day of the month falls on a weekend or holiday, your revised Form ONRR-4430 is due on the first business day of the following month.

(c) *How to submit.* (1) You must submit Form ONRR-4430 electronically using our Internet reporting web site unless you meet the conditions in paragraph (c)(2). We will provide written instructions and a valid login and password before you begin reporting.

(2) You are not required to report electronically if you are a small business as defined by the U.S. Small Business Administration (13 CFR 121.201) and you have no computer, no plans to purchase a computer, and no contract with an electronic reporting service.

(3) If you do not report electronically, you must submit the completed Form ONRR-4430 to us at one of the following addresses, unless ONRR publishes notice in the FEDERAL REGISTER giving a different address:

(i) *For U.S. Postal Service regular mail or Express Mail:* Office of Natural Resources Revenue (ONRR), P.O. Box 25627, Denver, CO 80225-0627; or

(ii) *For courier service or overnight mail (excluding Express Mail):* Office of Natural Resources Revenue, Building 85, Denver Federal Center, Room A-614, Denver, Colorado 80225.

[66 FR 45771, Aug. 30, 2001; 66 FR 50827, Oct. 5, 2001; 77 FR 25879, May 2, 2012]

§ 1210.202 How do I submit sales summaries?

(a) *What to submit.* (1) You must submit sales summaries for all coal and other solid minerals produced from Federal and Indian leases and for any remote storage site from which you sell Federal or Indian solid minerals. You do not have to submit a sales summary for those months in which you do not sell any Federal or Indian production.

(2) If you sell from five or fewer remote storage sites, you must submit a sales summary for each site. If you sell from more than five remote storage sites, you may total the data from all sites and submit the summarized data as one sales summary. The details you report on the sales summary are for the same sales reported on Form ONRR-4430.

(3) Use the following table to determine the time frames for submitting sales summaries and the data elements you must include. Your submitted sales summaries must include the following data but may be internally generated documents from your own records. You do not need to re-format them before submitting them to us:

Data element	Coal	Sodium/potassium	Western phosphate	Metals	All other leases with ad valorem royalty terms	All other leases with no ad valorem royalty terms
(i) Purchaser Name or Unique Identification.	Monthly	Monthly	Monthly	Monthly	Monthly	As Requested
(ii) Sales Units	Monthly	Monthly	Monthly	Monthly	Monthly	Monthly
(iii) Gross Proceeds	Monthly	Monthly	Not Required	Monthly	Monthly	Not Required
(iv) Processing or washing costs.	Monthly	Monthly	Not Required	Monthly	Monthly	Not Required
(v) Transportation costs	Monthly	Monthly	Not Required	Monthly	Monthly	Not Required
(vi) Name of product type sold.	Not Required	Monthly	Not Required	Monthly	Monthly	As Requested
(vii) Btu/lb	Monthly	Not Required	Not Required	Not Required	Not Required ..	Not Required
(viii) Ash %	Monthly	Not Required	Not Required	Not Required	Not Required ..	Not Required
(ix) Sulfur %	Monthly	Not Required	Not Required	Not Required	Not Required ..	Not Required
(x) lbs SO ₂	Monthly	Not Required	Not Required	Not Required	Not Required ..	Not Required
(xi) Moisture %	Monthly	Not Required	Monthly	Not Required	Not Required ..	Not Required

Natural Resources Revenue Off., Interior

§ 1210.204

Data element	Coal	Sodium/po- tassium	Western phosphate	Metals	All other leases with ad valo- rem royalty terms	All other leases with no ad valorem royalty terms
(xii) By-product Units	Not Required	As Re- quested.	Monthly	As Re- quested.	As Requested	Not Required
(xiii) P2O5 %	Not Required	Not Required	Monthly	Not Required	Not Required ..	Not Required
(xiv) Size	Not Required	Not Required	Not Required	Not Required	As Requested	Not Required
(xv) Net Smelter Return data.	Not Required	Not Required	Not Required	Monthly	Not Required ..	Not Required
(xvi) Other Data e.g., Roy- alty Calculation Work- sheet.	As Re- quested.	Monthly	As Requested	As Re- quested.	As Requested	As Requested.

(b) *When to submit.* (1) For leases with ad valorem royalty terms (that is, leases for which royalty is a percentage of the value of production), you must submit your sales summaries monthly at the same time you submit Form ONRR-4430. You do not have to submit a sales summary for any month in which you did not sell Federal or Indian production.

(2) For leases with no ad valorem royalty terms (that is, leases in which the royalty due is not a function of the value of production, such as cents-per-ton or dollars-per-unit), you must submit monthly sales summaries only if we specifically request you to do so.

(c) *How to submit.* (1) You should provide the sales summary data via electronic mail where possible. We will provide instructions and the proper email address for these submissions.

(2) If you submit sales summaries by paper copy, mail them to one of the following addresses, unless ONRR publishes notice in the FEDERAL REGISTER giving a different address:

(i) *For U.S. Postal Service regular mail or Express Mail:* Office of Natural Resources Revenue, Solid Minerals and Geothermal (A&C), MS 62530B., Denver, Colorado 80225-0165.

(ii) *For courier service or overnight mail (excluding Express Mail):* Office of Natural Resources Revenue, Solid Minerals and Geothermal (A&C), MS 62530B, Room A-614, Bldg 85, DFC, Denver, Colorado 80225.

[48 FR 35641, Aug. 5, 1983, 76 FR 76615, Dec. 8, 2011]

§ 1210.203 How do I submit sales contracts?

(a) *What to submit.* You must submit sales contracts, agreements, and contract amendments for the sale of all

coal and other solid minerals produced from Federal and Indian leases with ad valorem royalty terms.

(b) *When to submit.* (1) For coal and metal production, you must submit the required documents semi-annually, no later than March 30 and September 30 of each year.

(2) For sodium, potassium, and phosphate production, and production from any other lease with ad valorem royalty terms, you must submit the required documents only if you are specifically requested to do so.

(c) *How to submit.* You must submit complete copies of the sales contracts and amendments to us at the applicable address given in §1210.202(c)(2), unless ONRR publishes notice in the FEDERAL REGISTER giving a different address.

§ 1210.204 How do I submit facility data?

(a) *What to submit.* (1) You must submit facility data if you operate a wash plant, refining, ore concentration, or other processing facility for any coal, sodium, potassium, metals, or other solid minerals produced from Federal or Indian leases with ad valorem royalty terms, regardless of whether the facility is located on or off the lease.

(2) You do not have to submit facility data for those months in which you do not process solid minerals produced from Federal or Indian leases and do not have any such minerals in stockpile inventory.

(3) You must include in your facility data all production processed in the facility from all properties, not just production from Federal and Indian leases.

(4) Facility data submissions must include the following minimum information:

§ 1210.205

(i) Identification of your facility;
(ii) Mines served;
(iii) Input quantity;
(iv) Input quality or ore grade (except for coal);
(v) Output quantity; and
(vi) Output quality or product grades.
(5) Your submitted facility data may be internally generated documents from your own records. You do not need to re-format them before submitting them to us.

(b) *When to submit.* You must submit your facility data monthly at the same time you submit your Form ONRR-4430.

(c) *How to submit.* (1) You should provide the facility data via electronic mail where possible. We will provide instructions and the proper email address for these submissions before you begin reporting.

(2) If you submit facility data by paper copy, send it to the applicable address given in § 1210.202(c)(2).

§ 1210.205 What reports must I submit to claim allowances on Indian coal leases?

(a) *General.* You must submit the following ONRR forms to claim a transportation or washing allowance, as applicable, on Indian coal leases:

(1) Form ONRR-4292, Coal Washing Allowance Report, to claim an allowance for the reasonable, actual costs incurred to wash coal under § 1206.458 of this chapter.

(2) Form ONRR-4293, Coal Transportation Allowance Report, to claim an allowance for the reasonable, actual costs of transporting coal to a sales point or a washing facility remote from the mine or lease under § 1206.461 of this chapter.

(b) *Reporting options.* You must submit the forms manually. You may find the forms at http://www.onrr.gov/FM/Forms/AFSSol_Min.htm.

(c) *Reporting address.* You must submit completed Forms ONRR-4292 and ONRR-4293 by:

(1) U.S. Postal Service regular or express mail addressed to Office of Natural Resources Revenue, P.O. Box 25165, Denver, CO 80225-0165; or

(2) Special courier or overnight mail addressed to Office of Natural Resources Revenue, Building 85, Room A-

30 CFR Ch. XII (7-1-17 Edition)

614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

[73 FR 15897, Mar. 26, 2008, as amended at 76 FR 76615, Dec. 8, 2011; 77 FR 25879, 25880, May 2, 2012; 78 FR 30205, May 22, 2013]

§ 1210.206 Will I need to submit additional documents or evidence to ONRR?

(a) Federal and Indian lease terms allow us to request detailed statements, documents, or other evidence necessary to verify compliance with lease terms and conditions and applicable rules.

(b) We will request this additional information as we need it, not as a regular submission.

[66 FR 45771, Aug. 30, 2001. Redesignated at 73 FR 15897, Mar. 26, 2008]

§ 1210.207 How will information submissions be kept confidential?

Information submitted under this part that constitutes trade secrets or commercial and financial information that is identified as privileged or confidential, or that is exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, shall not be available for public inspection or made public or disclosed without the consent of the lessee, except as otherwise provided by law or regulation.

[66 FR 45771, Aug. 30, 2001. Redesignated at 73 FR 15897, Mar. 26, 2008]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources

SOURCE: 56 FR 57286, Nov. 8, 1991, unless otherwise noted.

§ 1210.350 Definitions.

Terms used in this subpart shall have the same meaning as in § 1206.351 of this chapter.

§ 1210.351 Required recordkeeping.

Information required by ONRR shall be filed using the forms prescribed in

Natural Resources Revenue Off., Interior

§ 1212.50

this subpart, which are available from ONRR. Records may be maintained on microfilm, microfiche, or other recorded media that are easily reproducible and readable. See subpart H of 30 CFR part 1212.

§ 1210.352 Special forms and reports.

The ONRR may require submission of additional information on special forms or reports. When special forms or reports other than those referred to in this subpart are necessary, ONRR will give instructions for the filing of such forms or reports. Requests for the submission of such forms will be made in conformity with the requirements of the Paperwork Reduction Act of 1980 and other applicable laws.

[56 FR 57286, Nov. 8, 1991. Redesignated at 72 FR 24467, May 2, 2007]

§ 1210.353 Monthly report of sales and royalty.

You must submit a completed Report of Sales and Royalty Remittance (Form ONRR-2014) each month once sales or use of production occur, even though sales may be intermittent, unless ONRR otherwise authorizes. This report is due on or before the last day of the month following the month in which production was sold or used, together with the royalties due to the United States.

[78 FR 30206, May 22, 2013]

§ 1210.354 Reporting instructions.

Refer to ONRR's *Minerals Revenue Reporter Handbook—Oil, Gas, and Geothermal Resources* for specific guidance on how to prepare and submit required information collection reports and forms to ONRR. You may find the handbook at <http://www.onrr.gov/FM/Handbooks/default.htm> or from contacts listed on that Web page.

[77 FR 25880, May 2, 2012]

Subpart I—OCS Sulfur [Reserved]

PART 1212—RECORDS AND FILES MAINTENANCE

Subpart A—General Provisions [Reserved]

Subpart B—Oil, Gas, and OCS Sulphur—General

Sec.

1212.50 Required recordkeeping and reports.

1212.51 Records and files maintenance.

1212.52 Definitions.

Subpart C—Federal and Indian Oil [Reserved]

Subpart D—Federal and Indian Gas [Reserved]

Subpart E—Solid Minerals—General

1212.200 Maintenance of and access to records.

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources

1212.350 Definitions.

1212.351 Required recordkeeping and reports.

Subpart I—OCS Sulfur [Reserved]

AUTHORITY: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

SOURCE: 48 FR 35641, Aug. 5, 1983, unless otherwise noted. Redesignated at 75 FR 61084, Oct. 4, 2010.

Subpart A—General Provisions [Reserved]

Subpart B—Oil, Gas, and OCS Sulphur—General

§ 1212.50 Required recordkeeping and reports.

All records pertaining to offshore and onshore Federal and Indian oil and gas leases shall be maintained by a lessee, operator, revenue payor, or other person for 6 years after the records are generated unless the recordholder is notified, in writing, that records must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the recordholder is released by

§ 1212.51

written notice of the obligation to maintain records.

[49 FR 37345, Sept. 21, 1984]

§ 1212.51 Records and files maintenance.

(a) *Records.* Each lessee, operator, revenue payor, or other person shall make and retain accurate and complete records necessary to demonstrate that payments of rentals, royalties, net profit shares, and other payments related to offshore and onshore Federal and Indian oil and gas leases are in compliance with lease terms, regulations, and orders. Records covered by this section include those specified by lease terms, notices and orders, and by the various parts of this chapter. Records also include computer programs, automated files, and supporting systems documentation used to produce automated reports or magnetic tape submitted to the Office of Natural Resources Revenue (ONRR).

(b) *Period for keeping records.* Lessees, operators, revenue payors, or other persons required to keep records under this section shall maintain and preserve them for 6 years from the day on which the relevant transaction recorded occurred unless the Secretary notifies the record holder of an audit or investigation involving the records and that they must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the recordholder is released in writing from the obligation to maintain the records. Lessees, operators, revenue payors, or other persons shall maintain the records generated during the period for which they have paying or operating responsibility on the lease for a period of 6 years.

(c) *Inspection of records.* The lessee, operator, revenue payor, or other person required to keep records shall be responsible for making the records available for inspection. Records shall be provided at a business location of the lessee, operator, revenue payor, or other person during normal business hours upon the request of any officer, employee or other party authorized by the Secretary. Lessees, operators, revenue payors, and other persons will be

30 CFR Ch. XII (7-1-17 Edition)

given a reasonable period of time to produce historical records.

[49 FR 37345, Sept. 21, 1984; 49 FR 40576, Oct. 17, 1984, as amended at 67 FR 19111, Apr. 18, 2002]

§ 1212.52 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

[49 FR 37345, Sept. 21, 1984]

Subpart C—Federal and Indian Oil [Reserved]

Subpart D—Federal and Indian Gas [Reserved]

Subpart E—Solid Minerals— General

§ 1212.200 Maintenance of and access to records.

(a) All records pertaining to Federal and Indian solid minerals leases shall be maintained by a lessee, operator, revenue payor, or other person for 6 years after the records are generated unless the record holder is notified, in writing, that records must be maintained for a longer period. When an audit or investigation is underway, records shall be maintained until the record holder is released by written notice of the obligation to maintain records.

(b) The ONRR shall have access to all records of the operator/lessee pertaining to compliance to Federal royalties, including, but not limited to:

(1) Qualities and quantities of all products mined, processed, sold, delivered, or used by the operator/lessee.

(2) Prices received for mined or processed products, prices paid for like or similar products, and internal transfer prices.

(3) Costs of mining, processing, handling, and transportation.

[47 FR 33193, July 30, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983, and amended at 51 FR 15767, Apr. 28, 1986; 54 FR 1532, Jan. 13, 1989]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources

SOURCE: 56 FR 57286, Nov. 8, 1991, unless otherwise noted.

§ 1212.350 Definitions.

Terms used in this subpart shall have the same meaning as in § 1206.351.

§ 1212.351 Required recordkeeping and reports.

(a) *Records.* Each lessee, operator, revenue payor, or other person shall make and retain accurate and complete records necessary to demonstrate that payments of royalties, rentals, and other amounts due under Federal geothermal leases are in compliance with laws, lease terms, regulations, and orders. Records covered by this section include those specified by lease terms, notices, and orders, and those identified in paragraph (c) of this section. Records also include computer programs, automated files, and supporting systems documentation used to produce automated reports or magnetic tapes submitted to ONRR.

(b) *Period for keeping records.* All records pertaining to Federal geothermal leases shall be maintained by a lessee, operator, revenue payor, or other person for 6 years after the records are generated unless the recordholder is notified, in writing, before the expiration of that 6-year period that records must be maintained for a longer period for purposes of audit or investigation. When an audit or investigation is underway, records shall be maintained until the recordholder is released by written notice of the obligation to maintain records.

(c) *Access to records.* The Director for Office of Natural Resources Revenue shall have access to all records in the possession of the lessee, operator, revenue payor, or other person pertaining to compliance with royalty obligations under Federal geothermal leases (regardless of whether such records were generated more than 6 years before a request or order to produce them and they otherwise were not disposed of), including, but not limited to:

(1) Qualities and quantities of all products extracted, processed, sold, delivered, or used by the operator/lessee;

(2) Prices received for products, prices paid for like or similar products, and internal transfer prices; and

(3) Costs of extraction, power generation, electrical transmission, and by-product transportation.

(d) *Inspection of Records.* The lessee, operator, revenue payor, or other person required to keep records shall be responsible for making the records available for inspection. Records shall be made available at a business location of the lessee, operator, revenue payor, or other person during normal business hours upon the request of any officer, employee, or other party authorized by the Secretary. Lessees, operators, revenue payors, and other persons will be given a reasonable period of time to produce records.

[56 FR 57286, Nov. 8, 1991, as amended at 67 FR 19111, Apr. 18, 2002]

Subpart I—OCS Sulfur [Reserved]

PART 1217—AUDITS AND INSPECTIONS

Subpart A—General Provisions [Reserved]

Subpart B—Oil and Gas, General

Sec.

1217.50 Audits of records.

1217.51 Lease account reconciliation.

1217.52 Definitions.

Subpart C—Oil and Gas, Onshore [Reserved]

Subpart D—Oil, Gas and Sulfur, Offshore [Reserved]

Subpart E—Coal

1217.200 Audits.

Subpart F—Other Solid Minerals

1217.250 Audits.

Subpart G—Geothermal Resources

1217.300 Audits or review of records.

1217.301 Lease account reconciliations.

1217.302 Definitions.

Subpart H—Indian Lands [Reserved]

AUTHORITY: 35 Stat. 312; 35 Stat. 781, as amended; secs. 32, 6, 26, 41 Stat. 450, 753, 1248; secs. 1, 2, 3, 44 Stat. 301, as amended; secs. 6, 3, 44 Stat. 659, 710; secs. 1, 2, 3, 44 Stat. 1057;

§ 1217.50

47 Stat. 1487; 49 Stat. 1482, 1250, 1967, 2026; 52 Stat. 347; sec. 10, 53 Stat. 1196, as amended; 56 Stat. 273; sec. 10, 61 Stat. 915; sec. 3, 63 Stat. 683; 64 Stat. 311; 25 U.S.C. 396, 396a-f, 30 U.S.C. 189, 271, 281, 293, 359. Interpret or apply secs. 5, 5, 44 Stat. 302, 1058, as amended; 58 Stat. 483-485; 5 U.S.C. 301, 16 U.S.C. 508b, 30 U.S.C. 189, 192c, 271, 281, 293, 359, 43 U.S.C. 387, unless otherwise noted.

SOURCE: 48 FR 35641, Aug. 5, 1983, unless otherwise noted. Redesignated at 75 FR 61084, Oct. 4, 2010.

Subpart A—General Provisions [Reserved]

Subpart B—Oil and Gas, General

AUTHORITY: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

SOURCE: 49 FR 37345, Sept. 21, 1984, unless otherwise noted.

§ 1217.50 Audits of records.

The Secretary, or his/her authorized representative, shall initiate and conduct audits relating to the scope, nature and extent of compliance by lessees, operators, revenue payors, and other persons with rental, royalty, net profit share and other payment requirements on a Federal or Indian oil and gas lease. Audits also will relate to compliance with applicable regulations and orders. All audits will be conducted in accordance with the notice and other requirements of 30 U.S.C. 1717.

§ 1217.51 Lease account reconciliation.

Specific lease account reconciliations shall be performed with priority being given to reconciling those lease accounts specifically identified by a State or Indian tribe as having significant potential for underpayment.

§ 1217.52 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

Subpart C—Oil and Gas, Onshore [Reserved]

Subpart D—Oil, Gas and Sulfur, Offshore [Reserved]

30 CFR Ch. XII (7–1–17 Edition)

Subpart E—Coal

§ 1217.200 Audits.

An audit of the accounts and books of operators/lessees for the purpose of determining compliance with Federal lease terms relating to Federal royalties may be required annually or at other times as directed by the Director for Office of Natural Resources Revenue. The audit shall be performed by a qualified independent certified public accountant or by an independent public accountant licensed by a State, territory, or insular possession of the United States or the District of Columbia, and at the expense of the operator/lessee. The operator/lessee shall furnish, free of charge, duplicate copies of audit reports that express opinions on such compliance to the Director for Office of Natural Resources Revenue within 30 days after the completion of each audit. Where such audits are required, the Director for Office of Natural Resources Revenue will specify the purpose and scope of the audit and the information which is to be verified or obtained.

[47 FR 33195, July 30, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983, as amended at 67 FR 19112, Apr. 18, 2002]

Subpart F—Other Solid Minerals

§ 1217.250 Audits.

An audit of the lessee's accounts and books may be made annually or at such other times as may be directed by the mining supervisor, by certified public accountants, and at the expense of the lessee. The lessee shall furnish free of cost duplicate copies of such annual or other audits to the mining supervisor, within 30 days after the completion of each auditing.

[37 FR 11041, June 1, 1972. Redesignated at 48 FR 35641, Aug. 5, 1983]

Subpart G—Geothermal Resources

SOURCE: 72 FR 24468, May 2, 2007, unless otherwise noted.

§ 1217.300 Audit or review of records.

The Secretary, or his/her authorized representative, will initiate and conduct audits or reviews relating to the scope, nature, and extent of compliance by lessees, operators, revenue payors, and other persons with rental, royalty, fees, and other payment requirements on a Federal geothermal lease. Audits or reviews will also relate to compliance with applicable regulations and orders. All audits or reviews will be conducted in accordance with this part.

§ 1217.301 Lease account reconciliations.

Specific lease account reconciliations will be performed with priority being given to reconciling those lease accounts specifically identified by a State as having significant potential for underpayment.

§ 1217.302 Definitions.

Terms used in this subpart will have the same meaning as in 30 U.S.C. 1702.

Subpart H—Indian Lands [Reserved]

PART 1218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

Subpart A—General Provisions

Sec.

- 1218.10 Information collection.
- 1218.40 Assessments for incorrect or late reports and failure to report.
- 1218.41 Assessments for failure to submit payment of same amount as Form MMS-2014 or bill document or to provide adequate information.
- 1218.42 Cross-lease netting in calculation of late-payment interest.

Subpart B—Oil and Gas, General

- 1218.50 Timing of payment.
- 1218.51 How to make payments.
- 1218.52 How does a lessee designate a Designee?
- 1218.53 Recoupment of overpayments on Indian mineral leases.
- 1218.54 Late payments.
- 1218.55 Interest payments to Indians.
- 1218.56 Definitions.

Subpart C—Oil and Gas, Onshore

- 1218.100 Royalty and rental payments.
- 1218.101 Royalty and rental remittance (naval petroleum reserves).
- 1218.102 Late payment or underpayment charges.
- 1218.103 Payments to States.
- 1218.104 Exemption of States from certain interest and penalties.
- 1218.105 Definitions.

Subpart D—Oil, Gas and Sulfur, Offshore

- 1218.150 Royalties, net profit shares, and rental payments.
- 1218.151 Rental fees.
- 1218.152 Fishermen's Contingency Fund.
- 1218.153 [Reserved]
- 1218.154 Effect of suspensions on royalty and rental.
- 1218.155 Method of payment.
- 1218.156 Definitions.

Subpart E—Solid Minerals—General

- 1218.200 Payment of royalties, rentals, and deferred bonuses.
- 1218.201 Method of payment.
- 1218.202 Late payment or underpayment charges.
- 1218.203 Recoupment of overpayments on Indian mineral leases.

Subpart F—Geothermal Resources

- 1218.300 Payment of royalties, rentals, and deferred bonuses.
- 1218.301 Method of payment.
- 1218.302 Late payment or underpayment charges.
- 1218.303 May I credit rental towards royalty?
- 1218.304 May I credit rental towards direct use fees?
- 1218.305 How do I pay advanced royalties I owe under BLM regulations?
- 1218.306 May I receive a credit against production royalties for in-kind deliveries of electricity I provide under contract to a State or county government?
- 1218.307 How do I pay royalties due for my existing leases that qualify for near-term production incentives under BLM regulations?

Subpart G—Indian Lands [Reserved]

Subpart H—Service of Official Correspondence

- 1218.500 What is the purpose of this subpart?
- 1218.520 What definitions apply to this subpart?
- 1218.540 How does ONRR serve official correspondence?
- 1218.560 How do I submit Form ONRR-4444?
- 1218.580 When do I submit Form ONRR-4444?

Subpart I [Reserved]

Subpart J—Debt Collection and Administrative Offset

- 1218.700 What definitions apply to the regulations in this subpart?
- 1218.701 What is ONRR's authority to issue these regulations?
- 1218.702 What happens to delinquent debts you owe ONRR?
- 1218.703 What notice will ONRR give you of our intent to refer a matter to Treasury to collect a debt?
- 1218.704 What is ONRR's policy on interest and administrative costs?
- 1218.705 What is ONRR's policy on recommending revocation of your ability to engage in Federal or Indian leasing, licensing, or granting of easements, permits, or rights-of-way?
- 1218.706 What debts may ONRR refer to Treasury to collect by administrative offset or tax refund offset?

AUTHORITY: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 3335, 3711, 3716–18, 3720A, 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

SOURCE: 48 FR 35641, Aug. 5, 1983, unless otherwise noted. Redesignated at 75 FR 61084, Oct. 4, 2010.

Subpart A—General Provisions

§ 1218.10 Information collection.

The information collection requirements contained in this part have been approved by OMB under 44 U.S.C. 3501 *et seq.* The forms, filing date, and approved OMB clearance numbers are identified in § 1210.10 of this chapter.

[57 FR 41867, Sept. 14, 1992]

§ 1218.40 Assessments for incorrect or late reports and failure to report.

(a) An assessment of an amount not to exceed \$10 per day may be charged for each report not received by Office of Natural Resources Revenue (ONRR) by the designated due date for geothermal, solid minerals, and Indian oil and gas leases.

(b) An assessment of an amount not to exceed \$10 per day may be charged for each incorrectly completed report for geothermal, solid minerals, and Indian oil and gas leases.

(c) For purpose of assessments discussed in this section, a report is defined as follows:

(1) For coal and other solid minerals leases, a report is each line on Form ONRR-4430, Solid Minerals Production and Royalty Report; or on Form ONRR-2014, Report of Sales and Royalty Remittance, as appropriate.

(2) For Indian oil and gas and all geothermal leases, a report is each line on Form ONRR-2014.

(d) An assessment under this section shall not be shared with a State, Indian tribe, or Indian allottee.

(e) The amount of the assessment to be imposed pursuant to paragraphs (a) and (b) of this section shall be established periodically by ONRR. The assessment amount for each violation will be based on ONRR's experience with costs and improper reporting. The ONRR will publish a Notice of the assessment amount to be applied in the FEDERAL REGISTER.

[49 FR 37346, Sept. 21, 1984. Redesignated and amended at 51 FR 15767, Apr. 28, 1986; 52 FR 27546, July 22, 1987; 52 FR 37452, Oct. 7, 1987; 57 FR 52720, Nov. 5, 1992; 59 FR 38906, Aug. 1, 1994; 66 FR 45773, Aug. 30, 2001; 73 FR 15897, Mar. 26, 2008]

§ 1218.41 Assessments for failure to submit payment of same amount as Form ONRR-2014 or bill document or to provide adequate information.

(a) The ONRR may assess an amount not to exceed \$250 when the amount of a payment submitted by a reporter/payor for geothermal, solid minerals, and Indian oil and gas leases is not equivalent in amount to the total of individual line items on the associated Form ONRR-2014, Form ONRR-4430, or a bill document, unless ONRR has authorized the difference in amount.

(b) The ONRR may assess an amount not to exceed \$250 for each payment for geothermal, solid minerals, and Indian oil and gas leases submitted by a reporter/payor that cannot be automatically applied to the associated Form ONRR-2014, Form ONRR-4430, or a bill document because of inadequate or erroneous information submitted by the reporter/payor.

(c) For purposes of this section, inadequate or erroneous information is defined as:

(1) Absent or incorrect payor-assigned document number, required to be identified by the reporter/payor in Block 4 on Form ONRR-2014 (document

4 number), or the reuse of the same incorrect payor-assigned document 4 number in a subsequent reporting period.

(2) Absent or incorrect bill document invoice number (to include the three-character alpha prefix and the nine-digit number) or the payor-assigned document 4 number required to be identified by the reporter/payor on the associated payment document, or the reuse of the same incorrect payor-assigned document 4 number in a subsequent reporting period.

(3) Absent or incorrect name of the administering Bureau of Indian Affairs Agency/Area office; or the word "allotted" or the tribe name on payment documents remitted to ONRR for an Indian tribe or allottee. If the payment is made by EFT, the reporter/payor must identify the tribe/allottee on the EFT message by a pre-established five-digit code.

(4) Absent or incorrect ONRR-assigned payor code on a payment document.

(5) Absent or incorrect identification on a payment document.

(d) For purposes of this section, the term "Form ONRR-2014" includes submission of reports of royalty information, such as Form ONRR-4430.

(e) For purposes of this section, a bill document is defined as any invoice that ONRR has issued for assessments, late-payment interest charges, or other amount owed. A payment document is defined as a check or wire transfer message.

(f) The amount of the assessment to be imposed pursuant to paragraphs (a) and (b) of this section shall be established periodically by ONRR. The assessment amount will be based on ONRR's experience with costs and improper reporting and/or payment as specified in this section. The ONRR will publish a Notice in the FEDERAL REGISTER of the assessment amount to be applied with the effective date.

[58 FR 45438, Aug. 30, 1993, as amended at 73 FR 15897, Mar. 26, 2008]

§ 1218.42 Cross-lease netting in calculation of late-payment interest.

(a) Interest due from a payor on any underpayment for any Federal mineral lease or leases (onshore or offshore)

and on any Indian tribal mineral lease or leases for any production month shall not be reduced by offsetting against that underpayment any overpayment made by the payor on any other lease or leases, except as provided in paragraph (b) of this section. Interest due from a payor or any underpayment on any Indian allotted lease shall not be reduced by offsetting against any overpayment on any other Indian allotted lease under any circumstances.

(b) Royalties attributed to production from a lease or leases which should have been attributed to production from a different lease or leases may be offset to determine whether and to what extent an underpayment exists on which interest is due if the following conditions are met:

(1) The error results from attributing and reporting an equal volume of production, produced from a lease or leases during a particular production month, to a different lease or leases from which it was not produced for the same or another production month;

(2) The payor is the same for the lease or leases to which production was attributed and the lease or leases to which it should have been attributed;

(3) The payor submits production reports, pipeline allocation reports, or other similar documentary evidence pertaining to the specific production involved which verifies the correct production information;

(4) The lessor is the same for the leases involved (in the case of Indian tribal leases, the same tribe is the lessor); and

(5) The ultimate recipients of any royalty or other lease revenues under any applicable permanent indefinite appropriations are the same for, and receive the same percentage of revenue from, the leases.

(c) If ONRR assesses late-payment interest and the payor asserts that some or all of the interest assessed is not owed pursuant to the exception set forth in paragraph (b) of this section, the burden is on the payor to demonstrate that the exception applies in the specific circumstances of the case.

§ 1218.50

(d) The exception set forth in paragraph (b) of this section shall not operate to relieve any payor of liability imposed by statute or regulation for erroneous reporting.

[57 FR 62206, Dec. 30, 1992]

Subpart B—Oil and Gas, General

SOURCE: 49 FR 37346, Sept. 21, 1984, unless otherwise noted.

§ 1218.50 Timing of payment.

(a) Royalty payments are due at the end of the month following the month during which the oil and gas is produced and sold except when the last day of the month falls on a weekend or holiday. In such cases, payments are due on the first business day of the succeeding month. Rental payments are due as specified by the lease terms.

(b) Invoices will be issued and payable as final collection actions. Payments made on an invoice are due as specified by the invoice.

(c) All payments to ONRR are due as specified and are not deferred or suspended by reason of an appeal having been filed unless such deferral or suspension is approved in writing by an authorized ONRR official.

(d)(1) Notwithstanding the provisions of paragraph (a) of this section and corresponding lease terms and §1210.52 of this chapter, the due date for submittal of royalty payments and Reports of Sales and Royalty Remittance (Form ONRR-2014) for the production months of July, August, September, and October 2005 for Federal offshore and onshore oil and gas leases by oil and gas lessees or royalty payors who make the certification required under paragraph (d)(2) of this section is extended until January 3, 2006.

(2) The extended due dates in paragraph (d)(1) of this section will apply to royalty payments and Reports of Sales and Royalty Remittance (Form ONRR-2014) by any lessee or royalty payor who certifies that a hurricane that struck the Gulf of Mexico coast of the United States in August or September 2005 disrupted the lessee's or payor's operations to the extent that it prevented the lessee or royalty payor from making an accurate royalty payment

30 CFR Ch. XII (7-1-17 Edition)

or submitting an accurate Form ONRR-2014.

(3) A lessee's or royalty payor's certification under paragraph (d)(2) of this section that it is unable to generate and submit either an accurate royalty report or an accurate royalty payment will extend the due date for both royalty reporting and royalty payment.

(4) Paragraphs (d)(1) through (d)(3) of this section do not apply to Indian leases or to Federal leases for minerals other than oil and gas.

(5) You should submit your certifications under paragraph (d)(2) of this section to Financial Management, Office of Natural Resources Revenue, P.O. Box 25627, Denver, CO 80225-0627.

(e)(1) A lessee or royalty payor who submits a certification required under paragraph (d)(2) of this section may rely on the extended due dates prescribed in paragraph (d)(1) of this section unless and until ONRR notifies the lessee or royalty payor or operator that ONRR does not accept the certification.

(2) If ONRR notifies the lessee or royalty payor that ONRR does not accept the lessee's or royalty payor's certification under paragraph (d)(2) of this section, the due date for royalty payments and Reports of Sales and Royalty Remittance will be the date specified in the notice.

[49 FR 37346, Sept. 21, 1984, as amended at 70 FR 56853, Sept. 29, 2005; 73 FR 15898, Mar. 26, 2008; 77 FR 25880, May 2, 2012]

§ 1218.51 How to make payments.

(a) Definitions.

ACH—Automated Clearing House. A type of EFT using the ACH bank-to-bank network.

Courtesy Notice—An ONRR-issued notice of rental or bonus due.

Deferred Bonus Payment—Lease bonus paid in equal annual installments over a specified number of years.

EFT—Electronic Funds Transfer. Any paperless transfer of funds initiated through an electronic terminal. For ONRR purposes, EFT includes Fedwire and ACH transfers, such as *Pay.gov*.

Fedwire—A type of EFT using the Federal Reserve Wire network.

Natural Resources Revenue Off., Interior

§ 1218.51

Invoice document identification—The ONRR-assigned invoice document identification (three-alpha and nine-numeric characters).

Pay.gov—A type of EFT using the ACH network that is initiated by a payor on the *Pay.gov* Web site.

Payment—Any monies for royalty, bonus, rental, late payment charge, assessment, penalty, or other money sent to ONRR.

Person—Any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity). The term does not include Federal agencies.

Report—Form ONRR-2014, *Report of Sales and Royalty Remittance*.

(b) *General instructions*. You must make all payments to ONRR electronically to the extent it is cost effective and practical. If you pay money to ONRR or to an Indian tribe or allottee, you must follow these procedures:

(1) If ONRR instructs you to use EFT, you must use EFT for all payments to ONRR and/or a tribe.

(2) Contact ONRR before using EFT. ONRR will provide you with EFT payment instructions.

(3) Separate any payments on a Federal lease from any payments on an Indian lease.

(4) If you are not required to use EFT, use one of the following types of payment documents. ONRR prefers that you use these payment documents in the order presented:

(i) Commercial check drawn on a solvent bank;

(ii) Certified check;

(iii) Cashier's check;

(iv) Money order;

(v) Bank draft drawn on a solvent bank; or

(vi) Federal Reserve check.

(5) You must include your payor code on all payments.

(6) You must pay in U.S. dollars.

(c) *How to complete a non-EFT payment*. (1) Make any payment on a Federal lease payable to: "Department of the Interior—Office of Natural Resources Revenue" or "DOI-ONRR."

(2) For an Indian allottee payment, send a separate payment for each Bureau of Indian Affairs (BIA) agency or area office represented by the leases on your report or invoice document. You

must include the name of the applicable BIA agency or area office on your payment. Make your payment document payable to: "Department of the Interior—Office of Natural Resources Revenue for BIA [Name] Agency (allotted)" or "DOI-ONRR for BIA [Name] Agency (allotted)."

(3) For an Indian tribal payment other than a lockbox payment, send a separate payment for each tribe represented by the leases on your report or invoice document. You must include the name of the Indian tribe on your payment. Make it payable to: "Department of the Interior—Office of Natural Resources Revenue for BIA [Name of Tribe]" or "DOI-ONRR for BIA [Name of Tribe]."

(4) For an Indian tribal lockbox payment, follow the instructions ONRR provides you on how to report and make the lockbox payment. These instructions are specific to each tribe's lockbox written agreement with the bank authorized to receive payments on the tribe's mineral leases. You will receive these instructions from ONRR when you are required to use a tribal lockbox for reports and payments.

(d) *Where to send a non-EFT payment when you use the U.S. Postal Service*. (1) For a payment to an Indian tribal lockbox, send your payment to the appropriate tribal lockbox address.

(2) For a Federal nonproducing lease rental or deferred bonus payment, send it to: Office of Natural Resources Revenue, P.O. Box 25627, Denver, CO 80225-0627.

(e) *Where to send a non-EFT payment when you use a courier or overnight delivery service*. You should send this type of payment to:

Office of Natural Resources Revenue, Building 85, Denver Federal Center, 6th Avenue and Kipling Street, Room A-614, Denver, CO 80225.

(f) *How to prepare and what to include on your payment document*. (1) For Form ONRR-2014 payments, you must include both your payor code and your payor-assigned document number.

(2) For invoice payments, including RIK invoice payments, you must include both your payor code and invoice document identification.

(3) For bonus payments:

§ 1218.52

(i) For one-fifth bonus payments for offshore oil, gas, and sulphur leases, follow the instructions in the Notice of Lease Offering.

(ii) For payment of the four-fifths bonus for an offshore lease, use EFT and follow the instructions in § 1218.155(c).

(iii) For the successful bidder's bonus in the competitive sale of a coal, geothermal, or offshore mineral (other than oil, gas or sulfur) lease, follow the instructions and terms of the Notice of Competitive Lease Sale.

(iv) For installment payments of deferred bonuses, you must use EFT.

(4) If you are paying a lease rental you must:

(i) See § 1218.155(c) for instructions on how to pay first-year rentals of an offshore oil, gas, or sulfur lease;

(ii) See the Notice of Lease Offering for instructions on how to pay first-year rentals other than those covered in paragraph (f)(4)(i) of this section.

(iii) Include the ONRR Courtesy Notice, when provided, or write your payor code and government-assigned lease number on the payment document when paying a rental that is not reported on Form ONRR-2014 and not paid by EFT.

(g) *When is a payment to ONRR due?*

(1) All payments are due to ONRR at the time law, regulation, or lease terms require unless ONRR approves a change according to part 1243 of this chapter. If you file an appeal, and the requirement to submit payment is suspended, the original payment due date for purposes such as calculating late payment interest is not changed.

(2) If you use the U.S. Postal Service, courier, or overnight mail to send your payment, it is due at the ONRR addresses in paragraphs (d) and (e) of this section before 4 p.m. Mountain Time on the due date, regardless of when you sent it.

(3) If you use EFT to send your payment, it is due in the ONRR account by the payment due date. You are responsible for your actions or your bank's actions that cause a late or incorrect payment. You will not be held responsible for mechanical or system failures of EFT payments.

(h) *What happens if payments are late or overdue?* (1) If ONRR receives your

30 CFR Ch. XII (7-1-17 Edition)

payment late, ONRR will impose a late-payment interest charge under § 1218.54.

(2) If you do not pay an amount you owe, ONRR may assess civil penalties under part 1241 of this chapter or other applicable regulations.

[62 FR 19498, Apr. 22, 1997, as amended at 66 FR 45773, Aug. 30, 2001; 67 FR 19112, Apr. 18, 2002; 73 FR 15898, Mar. 26, 2008; 77 FR 25880, May 2, 2012]

§ 1218.52 How does a lessee designate a Designee?

(a) If you are a lessee under 30 U.S.C. 1702(7), and you want to designate a person to make all or part of the payments due under a lease on your behalf under 30 U.S.C. 1712(a), you must notify ONRR or the applicable delegated state in writing of such designation by submitting Form ONRR-4425, Designation Form for Royalty Payment Responsibility. Your notification for each lease must include the following:

(1) The lease number for the lease;

(2) The type of products you make payments for e.g., oil, gas.

(3) The type of payments you are responsible for e.g., royalty, minimum royalty, rental.

(4) Whether you are:

(i) A lessee of record (record title owner) in the lease; or

(ii) An operating rights owner (working interest owner) in the lease, and the percentage of your operating rights ownership in the lease;

(5) The name, address, Taxpayer Identification Number (TIN), and phone number of your Designee;

(6) The name, address, and phone number of the individual to contact for the person you named in paragraph (a)(5) of this section;

(7) Your TIN;

(8) The date the designation is effective;

(9) The date the designation terminates, if applicable, and

(10) A copy of the written designation;

(b) The person you designate under paragraph (a) of this section is your Designee under 30 U.S.C. 1701(24) and 30 U.S.C. 1712(a).

(c) If you want to terminate a designation you made under paragraph (a)

Natural Resources Revenue Off., Interior

§ 1218.56

of this section, you must submit a revised Form ONRR-4425 before the termination stating:

(1) The date the designation is due to terminate; and

(2) If you are not reporting and paying royalties and making other payments to ONRR, a new designation under paragraph (a) of this section.

(d) ONRR may require you to provide notice when there is a change in the percentage of your record title or operating rights ownership.

[62 FR 42066, Aug. 5, 1997, as amended at 73 FR 15898, Mar. 26, 2008]

§ 1218.53 Recoupment of overpayments on Indian mineral leases.

(a) Whenever an overpayment is made under an Indian oil and gas lease, a payor may recoup the overpayment through a recoupment on Form ONRR-2014 against the current month's royalties or other revenues owed on the same lease. However, for any month a payor may not recoup more than 50 percent of the royalties or other revenues owed in that month under an individual allotted lease or more than 100 percent of the royalties or other revenues owed in that month under a tribal lease.

(b) With written permission authorized by tribal statute or resolution, a payor may recoup an overpayment against royalties or other revenues owed in that month under other leases for which that tribe is the lessor. A copy of the tribe's written permission must be furnished to ONRR pursuant to instructions for reporting recoupments in the ONRR revenue reporter handbook. See part 1210 of this chapter. Recouping overpayments on one allotted lease from royalties paid to another allotted lease is specifically prohibited.

(c) Overpayments subject to recoupment under this section include all payments made in excess of the required payment for royalty, rental, bonus, or other amounts owed as specified by statute, regulation, order, or terms of an Indian mineral lease.

(d) The ONRR Director or his/her designee may order any payor to not recoup any amount for such reasonable period of time as may be necessary for

ONRR to review the nature and amount of any claimed overpayment.

[60 FR 3087, Jan. 13, 1995, as amended at 67 FR 19112, Apr. 18, 2002]

§ 1218.54 Late payments.

(a) An interest charge shall be assessed on unpaid and underpaid amounts from the date the amounts are due.

(b) The interest charge on late payments shall be at the underpayment rate established by the Internal Revenue Code, 26 U.S.C. 6621(a)(2) (Supp. 1987).

(c) Interest will be charged only on the amount of the payment not received. Interest will be charged only for the number of days the payment is late.

(d) A portion of the interest collected will be paid to a State where the State shares in mineral revenues from Federal leases.

(e) An overpayment on a lease or leases may be offset against an underpayment on a different lease or leases to determine a net underpayment on which interest is due pursuant to conditions specified in § 1218.42.

[49 FR 37346, Sept. 21, 1984, as amended at 55 FR 37230, Sept. 10, 1990; 57 FR 62206, Dec. 30, 1992]

§ 1218.55 Interest payments to Indians.

(a) All interest collected from unpaid or underpayments on Indian tribal or allotted leases will be paid to the tribe or allottee.

(b) Any disbursement of Indian mineral revenues not made by the due date as required in § 1219.103 of this chapter shall accrue interest.

(c) Interest shall be computed at the underpayment rate established by the Internal Revenue Code, 26 U.S.C. 6621(a)(2) (Supp. 1987).

(d) The interest shall be payable only for the number of days the disbursement is late.

[49 FR 37346, Sept. 21, 1984, as amended at 55 FR 37230, Sept. 10, 1990]

§ 1218.56 Definitions.

Terms used in this subpart shall have the same meaning as in 30 U.S.C. 1702.

[49 FR 37346, Sept. 21, 1984. Redesignated at 51 FR 15767, Apr. 28, 1986]

Subpart C—Oil and Gas, Onshore

§ 1218.100 Royalty and rental payments.

(a) *Payment of royalties and rentals.* As specified under the provisions of the lease, the lessee shall submit all rental payments when due and shall pay in value or deliver in production all royalties in the amounts of value or production determined by ONRR to be due.

(b) If the lessor elects to take royalty in oil or gas, unless otherwise agreed upon, such royalty shall be delivered on the leasehold, by the lessee to the order of and without cost to the lessor, as instructed by the Director.

(c) *Method of payment.* The payor shall tender all payments in accordance with § 1218.51.

[47 FR 47773, Oct. 27, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983, and amended at 52 FR 23815, June 25, 1987]

§ 1218.101 Royalty and rental remittance (naval petroleum reserves).

Remittance covering payments of royalty or rental on naval petroleum reserves must be accomplished by necessary identification information and sent direct to the Director, Naval Petroleum Reserves in California.

[47 FR 47773, Oct. 27, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983]

§ 1218.102 Late payment or underpayment charges.

(a) The failure to make timely or proper payments of any monies due pursuant to leases, permits, and contracts subject to these regulations will result in the collection by the ONRR of the full amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments on minerals production have already been made timely and otherwise in accordance with instructions provided by ONRR to the payor. However, late payment charges assessed with respect to any Indian lease, permit, or contract shall be collected and paid to the Indian or tribe to which the amount overdue is owed.

(b) Late payment charges will be assessed on any late payment or under-

payment from the date that the payment was due until the date that the payment was received at the ONRR addresses specified in § 1218.51. Payments received at the specified ONRR addresses after 4 p.m. mountain time are considered received the following business day.

(c) Late payment charges apply to all underpayments and payments received after the date due. The charges include production and minimum royalties; assessments for liquidated damages; administrative fees and payments by purchasers of royalty taken-in-kind; or any other payments, fees, or assessments that a lessee/operator/permittee/payor/royalty taken-in-kind purchaser is required to pay by a specified date. The failure to pay past due amounts, including late-payment charges, will result in the initiation of other enforcement proceedings.

(d) An overpayment on a lease or leases may be offset against an underpayment on a different lease or leases to determine a net underpayment on which interest is due pursuant to conditions specified in § 1218.42.

[47 FR 47773, Oct. 27, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983, and amended at 49 FR 37347, Sept. 21, 1984; 57 FR 41868, Sept. 14, 1992; 57 FR 62206, Dec. 30, 1992; 67 FR 19112, Apr. 18, 2002]

§ 1218.103 Payments to States.

(a) Any amount that is payable by ONRR to a State but is not paid on the due date, as specified in § 1219.100 of this chapter, or that is held in a suspense account pending resolution of a dispute as specified in § 1219.101 of this chapter, shall accrue interest payable to the State.

(b) Interest shall be computed at the underpayment rate established by the Internal Revenue Code, 26 U.S.C. 6621(a)(2) (Supp. 1987).

(c) Interest shall be computed only for the number of days the disbursement is late. In the case of suspended amounts subject to interest, it shall be computed beginning with the calendar day following the day that the monies normally would have been paid to the State had they not been in suspense.

[49 FR 37347, Sept. 21, 1984, as amended at 55 FR 37230, Sept. 10, 1990]

§ 1218.104 Exemption of States from certain interest and penalties.

(a) States are exempt from being assessed for any interest or penalties found to be due against the Department of the Interior for failure to comply with the Emergency Petroleum Allocation Act of 1973, as amended, or any regulation issued by the Secretary of Energy thereunder concerning the certification or processing of crude oil taken in-kind as royalty by the Secretary.

(b) Any State shall be assessed for its share of any overcharge resulting from a determination that DOI failed to comply with the Emergency Petroleum Allocation Act of 1973, as amended. Each State's share shall be assessed against monies owed to the State. Such assessment shall be first against monies owed to such State as a result of royalty audits prior to January 12, 1983, the enactment date of the Federal Oil and Gas Royalty Management Act of 1982, then against other monies owed. The State shall be liable for any balance.

(c) A State's liability for repayment of an overcharge under this section shall exist for any amounts resulting from a judgment in a civil suit or as the result of settlement of a claim through a negotiated agreement. State liability would be offset against future mineral revenue distributions to the State.

[49 FR 37347, Sept. 21, 1984]

§ 1218.105 Definitions.

Terms used in this subpart have the same meaning as in 30 U.S.C. 1702.

[49 FR 37347, Sept. 21, 1984]

Subpart D—Oil, Gas and Sulfur, Offshore**§ 1218.150 Royalties, net profit shares, and rental payments.**

(a) As specified under the provisions of the lease, the lessee shall submit all rental payments when due and shall pay in value or deliver in production all royalties and net profit shares in the amounts of value or production determined by ONRR to be due.

(b) The failure to make timely or proper payments of any monies due

pursuant to leases, permits, and contracts subject to these regulations will result in the collection of the amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments on minerals production have already been made timely and otherwise in accordance with instructions provided by ONRR to the payor.

(c) Late payment charges will be assessed on any late payment or underpayment from the date that the payment was due until the date that the payment was received at the ONRR addresses specified in § 1218.51. Payments received at the specified ONRR addresses after 4 p.m. mountain time are considered received the following business day.

(d) Late payment charges apply to all underpayments and payments received after the date due. These charges include production and minimum royalties; assessments for liquidated damages; administrative fees and payments by purchasers of royalty taken-in-kind; or any other payments, fees, or assessments that a lessee/operator/payor/permittee/royalty taken-in-kind purchaser is required to pay by a specified date. The failure to pay past due amounts, including late payment charges, will result in the initiation of other enforcement proceedings.

(e) An overpayment on a lease or leases, excluding rental payments, may be offset against an underpayment on a different lease or leases to determine a net underpayment on which interest is due pursuant to conditions specified in § 1218.42.

[47 FR 22528, May 25, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983, and amended at 49 FR 37347, Sept. 21, 1984; 52 FR 23815, June 25, 1987; 57 FR 41868, Sept. 14, 1992; 57 FR 62206, Dec. 30, 1992; 67 FR 19112, Apr. 18, 2002]

§ 1218.151 Rental fees.

The annual rental paid in any year is in addition to, and is not credited against, any royalties due from production. The lessee must pay an annual rental as shown in paragraphs (a), (b), and (c) of this section. Discovery means one or more wells on the lease that meet the requirements in part 250, subpart A of this title.

§ 1218.152

30 CFR Ch. XII (7–1–17 Edition)

(a) This paragraph applies to any lease not covered by paragraph (b) or paragraph (c) of this section.

For—	Issued as a result of a sale held—	The lessee must pay rental—
(1) An oil and gas lease	Before March 26, 2001	On or before the first day of each lease year before the discovery of oil or gas on the lease.
(2) An oil and gas lease	After March 26, 2001	On or before the first day of each lease year before the discovery of oil or gas on the lease, then on or before the last day of each lease year in any full year in which royalties on production are not due.
(3) A mineral lease for other than oil or gas.	Before March 26, 2001	On or before the first day of each lease year before the discovery of paying quantities.
(4) A mineral lease for other than oil or gas.	After March 26, 2001	On or before the first day of each lease year before the date the first royalty payment is due on the lease, then on or before the last day of each lease year in any full year in which royalties on production are not due.

(b) This paragraph applies to any lease created by segregating a portion of a producing lease when there is no actual or allocated production on the segregated portion. The lessee must

pay an annual rental for the segregated portion at the rate specified in the lease. The lessee must pay the rental as shown in the following table.

If the lease results from a segregation—	The lessee must pay rental—
(1) Before March 26, 2001	On or before the first day of each lease year before the discovery of oil or gas on the segregated portion.
(2) After March 26, 2001	On or before the first day of each lease year before the discovery of oil or gas on the lease, then on or before the last day of each lease year in any full year in which royalties on production are not due.

(c) For leases issued subject to the net profit sharing provisions, annual rental payments shall be due and payable in advance, on the first day of each lease year which commences prior to the date the first profit share payment becomes due. The owner of any lease created by the segregation of a portion of a lease subject to net profit sharing provisions, shall pay an annual rental for such segregated portion at the rate per acre or hectare specified in the lease. This rental shall be payable each year following the year in which the segregation becomes effective and shall continue to be due and payable, in advance, on the first day of each year which commences prior to the date the first profit share payment becomes due.

§ 1218.152 Fishermen's Contingency Fund.

Upon the establishment of the Fishermen's Contingency Fund, any holder of a lease issued or maintained under the Outer Continental Shelf Lands Act and any holder of an exploration permit or of an easement or right-of-way for the construction of a pipeline, shall pay an amount specified by the Director, ONRR, who shall assess and collect the specified amount from each holder and deposit it into the Fund. With respect to prelease exploratory drilling permits, the amount will be collected at the time of issuance of the permit.

[52 FR 5458, Feb. 23, 1987]

[44 FR 38276, June 29, 1979, as amended at 45 FR 69175, Oct. 17, 1980; 47 FR 25972, June 16, 1982. Redesignated at 47 FR 47006, Oct. 22, 1982, and at 48 FR 35641, Aug. 5, 1983; 66 FR 11518, Feb. 23, 2001; 67 FR 19112, Apr. 18, 2002]

§ 1218.153 [Reserved]**§ 1218.154 Effect of suspensions on royalty and rental.**

(a) ONRR will not relieve the lessee of the obligation to pay rental or minimum royalty for or during the suspension if the Bureau of Safety and Environmental Enforcement (BSEE) Regional Supervisor:

(1) Grants a suspension of operations or production, or both, at the request of the lessee; or

(2) Directs a suspension of operations or production, or both, under 30 CFR 250.173(a).

(b) ONRR will not require a lessee to pay rental or minimum royalty for or during the suspension if the BSEE Regional Supervisor directs a suspension of operations or production, or both, except as provided in (a)(2) of this section.

(c) If the lease anniversary date falls within a period of suspension for which no rental or minimum royalty payments are required under paragraph (b) of this section, the prorated rentals or minimum royalties are due and payable as of the date the suspension period terminates. These amounts shall be computed and notice thereof given the lessee. The lessee shall pay the amount due within 30 days after receipt of such notice. The anniversary date of a lease shall not change by reason of any period of lease suspension or rental or royalty relief resulting therefrom.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979. Redesignated and amended at 47 FR 47006, 47007, Oct. 22, 1982. Further redesignated at 48 FR 35641, Aug. 5, 1983 and amended at 51 FR 19063, May 27, 1986; 54 FR 50616, Dec. 8, 1989; 64 FR 72775, Dec. 28, 1999; 73 FR 15898, Mar. 26, 2008; 76 FR 38561, July 1, 2011; 78 FR 30206, May 22, 2013]

§ 1218.155 Method of payment.

(a) *Payment of royalties and rentals.* With the exception of first-year rental, the payor shall tender all payments in accordance with § 1218.51. First-year rental shall be paid in accordance with paragraph (c) of this section.

(b) *Payment of the one-fifth bonus bid amount.* (1) Each lease bid must include a payment for the one-fifth bonus bid deposit amount unless the bidder is

otherwise directed by the Secretary. Further instructions on how to make payment with the bid will be included in the notice of each lease offering. EFT may be used as a method of payment for the one-fifth bonus bid amount.

(2) Beginning with lease offerings held after February 1, 1984, the one-fifth bonus amount received from a high bidder shall be deposited into an escrow account created pursuant to an agreement between the Departments of the Interior and Treasury, pending acceptance or rejection of the bid. The one-fifth bonus funds will be invested in public debt securities. Investment of this amount by the U.S. Government does not indicate acceptance of the bid. The one-fifth bonus amounts submitted with bids other than the highest valid bid will be returned to respective bidders after bids are opened, recorded, and ranked. Return of such amounts will not affect the status, validity, or ranking of bids. The one-fifth bonus bid amount received from any high bidder and held by the Government pending acceptance or rejection, will be returned with actual interest earned, if the bid is subsequently rejected. The interest accrued during the period held in the account pending acceptance or rejection of the bid will accrue to the Government when the bid is accepted.

(c) *Payment of the four-fifths bonus bid amount and the first year's rental.* Payment shall be made to ONRR by EFT unless otherwise directed by the Secretary. The payment by EFT via the FRCS must be received by the Federal Reserve Bank of New York no later than noon, eastern standard time, on the 11th business day after receipt of the lease forms by the successful bidder. A "business day" is considered to be a day on which the OCS regional office issuing the lease is open for business. The lease will not be executed by the appropriate ONRR official until payment is received. Failure to remit by EFT or as directed by the Secretary within the time specified above will result in forfeiture of the one-fifth bonus bid amount and the lease will not be executed by the appropriate ONRR official. Payors will not be held responsible for late payment due to actions

§ 1218.156

beyond their control, such as mechanical or systems failure of FRCS or FDS. Payors will be held responsible for incorrect actions of their bank which result in late payments. A 2-day grace period will be allowed to make up a deficient payment, but a late payment charge will be assessed for this late payment and a penalty will also be assessed if appropriate. Late payment charges will be assessed in accordance with subpart B of this part.

(d) *General.* (1) Payors using the appropriate means of payment (EFT, check, etc.) may pay for multiple lease obligations with a single remittance but must ensure that the payment complies with subpart B of this part and the remittance advice adequately identifies the single payment. The format to be used for such identification will be provided by the ONRR Accounting Center.

(2) Where to pay.

(3) The ONRR mailing addresses for payments to ONRR are specified in § 1218.51.

(4) Payments received at the ONRR addresses after 4 p.m. mountain time are considered received the following business day.

(e) *Miscellaneous payments.* Payments shall be made to the manager of the appropriate Outer Continental Shelf field office by cash, check or bank draft payable to "Department of the Interior—ONRR" for miscellaneous payments such as:

(1) Pipeline rights-of-way application filing fees and rentals, pipeline accessory site rentals and application fees, and other related costs.

(2) Filing and approval fees for transfers of interest in leases.

[49 FR 8605, Mar. 8, 1984, as amended at 52 FR 23815, June 25, 1987; 53 FR 43201, Oct. 26, 1988; 57 FR 41868, Sept. 14, 1992; 62 FR 19499, Apr. 22, 1997; 67 FR 19112, Apr. 18, 2002; 73 FR 15898, Mar. 26, 2008]

§ 1218.156 Definitions.

Terms used in this subpart have the same meaning as in 30 U.S.C. 1702.

[52 FR 23815, June 25, 1987]

30 CFR Ch. XII (7–1–17 Edition)

Subpart E—Solid Minerals— General

§ 1218.200 Payment of royalties, rentals, and deferred bonuses.

As specified under the provisions of the lease, the lessee shall submit all rental and deferred bonus payments when due and shall pay in value all royalties in the amount determined by ONRR to be due.

[52 FR 23815, June 25, 1987]

§ 1218.201 Method of payment.

You must tender all payments in accordance with § 1218.51, except as follows:

(a) For purposes of this section, *report* means the Solid Minerals Production and Royalty Report, Form ONRR-4430, rather than the Form ONRR-2014.

(b) For Form ONRR-4430 payments, include both your customer identification and your customer document identification numbers on your payment document, rather than the information required under § 1218.51(f)(1).

(c) For a rental payment that is not reported on Form ONRR-4430, include the ONRR Courtesy Notice when provided or write your customer identification number and Government-assigned lease number on the payment document, rather than the information required under § 1218.51(f)(4)(iii).

[66 FR 45773, Aug. 30, 2001]

§ 1218.202 Late payment or underpayment charges.

(a) The failure to make timely or proper payment of any monies due pursuant to leases and contracts subject to these rules will result in the collection by ONRR of the full amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments on minerals production have already been made timely and otherwise in accordance with instructions provided by ONRR to the operator/lessee. However, late payment charges assessed with respect to any Indian lease, permit, or contract shall be collected and paid to the Indian or tribe to which the amount overdue is owed.

(b) Late payment charges will be assessed on any late payment or underpayment from the date that the payment was due until the date that the payment was received at the ONRR addresses specified in §1218.51. Payments received at the specified ONRR addresses after 4 p.m. mountain time are considered received the following business day.

(c) Late payment charges are calculated on the basis of a percentage assessment rate. In the absence of a specific lease, permit, license or contract provision prescribing a different rate, this percentage assessment rate is prescribed by the Department of the Treasury as the "Treasury Current Value of Funds Rate."

(d) This rate is available in the Treasury Fiscal Requirements Manual Bulletins that are published prior to the first day of each calendar quarter for application to overdue payments or underpayments in the new calendar quarter. The rate is also published in the Notices section of the FEDERAL REGISTER and indexed under "Fiscal Service/Notices/Funds Rate; Treasury Current Value."

(e) Late payment charges apply to all underpayments and payments received after the date due. These charges include production, minimum, or advance royalties; assessments for liquidated damages; or any other payments, fees, or assessments that an operator/lessee is required to pay by a specified date. The failure to pay past due payments, including late payment charges, will result in the initiation of other enforcement proceedings.

(f) An overpayment on a lease or leases may be offset against an underpayment on a different lease or leases to determine a net underpayment on which interest is due pursuant to conditions specified in §1218.42.

[47 FR 33195, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983, and further redesignated at 52 FR 23815, June 25, 1987, as amended at 57 FR 41868, Sept. 14, 1992; 57 FR 62207, Dec. 30, 1992; 59 FR 14559, Mar. 29, 1994; 65 FR 55189, Sept. 13, 2000; 67 FR 19112, Apr. 18, 2002]

§ 1218.203 Recoupment of overpayments on Indian mineral leases.

(a) Whenever an overpayment is made under an Indian solid mineral lease, a payor may recoup the overpayment through a recoupment on Form ONRR-4430 against the current month's royalties or other revenues owed on the same lease. However, for any month a payor may not recoup more than 50 percent of the royalties or other revenues owed in that month under an individual allotted lease or more than 100 percent of the royalties or other revenues owed in that month under a tribal lease.

(b) With written permission authorized by tribal statute or resolution, a payor may recoup an overpayment against royalties or other revenues owed in that month under other leases for which that tribe is the lessor. A copy of the tribe's written permission must be furnished to ONRR for reporting recoupments. Call 1-888-201-6416 for instructions. Recouping overpayments on one allotted lease from royalties paid to another allotted lease is specifically prohibited.

(c) Overpayments subject to recoupment under this section include all payments made in excess of the required payment for royalty, rental, bonus, or other amounts owed as specified by statute, regulation, order, or terms of an Indian mineral lease.

(d) The ONRR Director or his/her designee may order any payor to not recoup any amount for such reasonable period of time as may be necessary for ONRR to review the nature and amount of any claimed overpayment.

[60 FR 3087, Jan. 13, 1995, as amended at 66 FR 45773, Aug. 30, 2001; 66 FR 50827, Oct. 5, 2001]

Subpart F—Geothermal Resources

§ 1218.300 Payment of royalties, rentals, and deferred bonuses.

As specified under the provisions of the lease, the lessee shall submit all rental and deferred bonus payments when due and shall pay in value all royalties in the amount determined by ONRR to be due.

[52 FR 23815, June 25, 1987]

§ 1218.301

§ 1218.301 Method of payment.

The payor shall tender all payments in accordance with § 1218.51.

[52 FR 23815, June 25, 1987]

§ 1218.302 Late payment or underpayment charges.

(a) The failure to make timely or proper payment of any monies due pursuant to leases and contracts subject to these regulations will result in the collection by the ONRR of the full amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments on minerals production have already been made timely and otherwise in accordance with the instructions provided by the ONRR to the payor.

(b) Late payment charges will be assessed on any late payment or underpayment from the date that the payment was due until the date that the payment was received at the ONRR addresses specified in § 1218.51. Payments received at the specified ONRR addresses after 4 p.m. Mountain Time are considered received the following business day.

(c) Late payment charges are calculated on the basis of a percentage assessment rate. In the absence of a specific lease, permit, license or contract provision prescribing a different rate, this percentage assessment rate is prescribed by the Department of the Treasury as the "Treasury Current Value of Funds Rate."

(d) This rate is available in the Treasury Fiscal Requirements Manual Bulletins that are published prior to the first day of each calendar quarter for application to overdue payments or underpayments in the new calendar quarter. The rate is also published in the Notices section of the FEDERAL REGISTER and indexed under "Fiscal Service/Notices/Funds Rate; Treasury Current Value."

(e) Late payment charges apply to all underpayments and payments received after the date due. These charges include production, minimum, and compensatory royalties; assessments for liquidated damages; administrative fees and payments by purchasers of royalty taken-in-kind; or any other

30 CFR Ch. XII (7-1-17 Edition)

payments, fees, or assessments that a lessee/operator/payor/royalty taken-in-kind purchaser is required to pay by a specified date. The failure to pay past due payments, including late payment charges, will result in the initiation of other enforcement proceedings.

(f) An overpayment on a lease or leases may be offset against an underpayment on a different lease or leases to determine a net underpayment on which interest is due pursuant to conditions specified in § 1218.42.

[47 FR 22528, May 25, 1982. Redesignated at 48 FR 35641, Aug. 5, 1983, and further redesignated at 51 FR 15767, Apr. 28, 1986 and 52 FR 23815, June 25, 1987, as amended at 57 FR 41868, Sept. 14, 1992; 57 FR 62207, Dec. 30, 1992; 59 FR 14559, Mar. 29, 1994; 65 FR 55189, Sept. 13, 2000; 67 FR 19112, Apr. 18, 2002]

§ 1218.303 May I credit rental towards royalty?

(a)(1) For Class II leases as defined in § 1206.351 of this chapter, and for Class III leases as defined in that section that elect under 43 CFR 3200.7(a)(2) to be subject to all of the BLM regulations promulgated for leases issued after August 8, 2005 you may credit the annual rental that you paid before the first day of the year for which the annual rental is owed against the royalty due for the lease year for which the rental was paid. You may not apply any annual rental paid in excess of the royalty due for a particular lease year as a credit against any royalty due in any subsequent lease year.

(2) For purposes of this section, the term "royalty" includes any advanced royalty payable under 30 U.S.C. 1004(f) for a cessation of production.

(b) If portions of your lease are located both within and outside of a participating area, you may credit against royalty under paragraph (a) only that percentage of the rental you paid that corresponds to the percentage of the lease within the participating area on a per-acre basis.

[72 FR 24468, May 2, 2007]

§ 1218.304 May I credit rental towards direct use fees?

You may not credit annual rental toward direct use fees you are required to pay that year under § 1206.356 of this chapter. You must pay the direct use

Natural Resources Revenue Off., Interior

§ 1218.500

fees in addition to the annual rental due.

[72 FR 24468, May 2, 2007]

§ 1218.305 How do I pay advanced royalties I owe under BLM regulations?

If you pay advanced royalties under 43 CFR 3212.15(a)(1) to retain your lease:

(a) You must pay an advanced royalty monthly equal to the average monthly royalty you paid under 30 CFR part 1206, subpart H (including the amount against which you applied the annual rental as a credit) for the last 3 years the lease was producing. If your lease has been producing for less than 3 years, then use the average monthly royalty payment for the entire period your lease has been producing continuously;

(b) The ONRR must receive your advanced royalty payment before the end of each full calendar month in which no production occurs;

(c) You may credit any advanced royalty you pay against production royalties you owe after your lease resumes production. You may not reduce the amount of any production royalty paid for any year below zero.

[72 FR 24468, May 2, 2007]

§ 1218.306 May I receive a credit against production royalties for in-kind deliveries of electricity I provide under contract to a State or county government?

(a) You may receive a credit against royalties for in-kind deliveries of electricity you provide under contract to a State or county government if:

(1) The State or county to which you provide electricity would receive a portion of the royalties you paid in money for the lease under 30 U.S.C. 191 or 30 U.S.C. 1019, except as otherwise provided under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 355, because your lease is located in that State or county. If your lease is located in more than one State or county, the revenues are paid to the respective States or counties based on their proportionate shares of the total acres in the lease;

(2) The ONRR approves in advance your contract with the State or county

to which you are providing in-kind electricity; and

(3) Your contract provides that you will use the wholesale value of the electricity for the area where your lease is located to establish the specific methodology to determine the amount of the credit; and

(b) The maximum credit you may take under this section is equal to the portion of the royalty revenue that ONRR would have paid to the State or county that is a party to the contract had you paid royalty in money on all of the electricity you delivered to the State or county based on the wholesale value of the electricity. You must pay in money any royalty amount that is not offset by the credit allowed under this section, calculated based on the wholesale value of the electricity.

(c) The electricity the State or county government receives from you satisfies the Secretary's payment obligation to the State or county under 30 U.S.C. 191 or 30 U.S.C. 1019.

[72 FR 24468, May 2, 2007]

§ 1218.307 How do I pay royalties due for my existing leases that qualify for near-term production incentives under BLM regulations?

If you qualify for a production incentive under BLM regulations at 43 CFR subpart 3212, your royalty due on the production BLM determines to be qualified for a production incentive under 43 CFR 3212.23 and 3212.24 is 50 percent of the amount of the total royalty that would otherwise be due under 30 CFR part 1206, subpart H.

[72 FR 24468, May 2, 2007]

Subpart G—Indian Lands [Reserved]

Subpart H—Service of Official Correspondence

SOURCE: 71 FR 51751, Aug. 31, 2006, unless otherwise noted.

§ 1218.500 What is the purpose of this subpart?

This subpart contains instructions for designating a specific addressee of record for service of official correspondence using Form ONRR-4444,

Addressee of Record Designation for Service of Official Correspondence.

§ 1218.520 What definitions apply to this subpart?

Address of record is the address to which official correspondence is served.

Addressee of record for service of official correspondence is the person or position to whom official correspondence is served, as specified on Form ONRR-4444, or in the absence of such a form, as established in § 1218.540(b)(2). The addressee of record in a part 1290, appeal will be the person or representative making the appeal.

Official correspondence is all correspondence from ONRR or our delegates, served on companies related to matters such as: forms reporting, audit and compliance, enforcement notices, rental courtesy notices, and invoices.

§ 1218.540 How does ONRR serve official correspondence?

ONRR will serve all Notices of Non-compliance or Civil Penalty following the procedures in part 1241. We will serve all other documents following the procedures in this section.

(a) *Method of service.* ONRR will serve all official correspondence to the addressee of record by one of the following methods:

- (1) U.S. Postal Service mail;
- (2) Personal delivery made pursuant to the law of the State in which the service is effected;
- (3) Private mailing service (e.g., United Parcel Service, or Federal Express), with signature and date upon delivery, acknowledging the addressee of record's receipt of the official correspondence document; or
- (4) Any electronic method of delivery that keeps information secure and provides for a receipt of delivery or, if there is no receipt, the date of delivery otherwise documented.

(b) *Selection of addressee of record information.* (1) We will address official correspondence to the party shown on the most recently received Form ONRR-4444 for the type of correspondence at issue. The company or reporting entity is responsible for notifying ONRR of any name or address changes on Form ONRR-4444. The addressee of record in a part 1290, appeal will be the

person or representative making the appeal.

(2) If we do not receive addressee of record information from you on Form ONRR-4444, we may use the individual name and address, position title, or department name and address in our database, based on previous formal or informal communications or correspondence for the type of official correspondence at issue. Alternately, we may obtain contact information from public records and send correspondence to:

- (i) The registered agent;
- (ii) Any corporate officer; or
- (iii) The addressee of record shown in the files of any State Secretary; Corporate Commission; Federal or state agency that keeps official records of business entities or corporations; or other appropriate public records for individuals, business entities, or corporations.

(c) *Dates of service.* Except as provided in paragraph (d) of this section, ONRR considers official correspondence as served on the date that it is received at the address of record. A receipt, signed and dated by any person at that address, is evidence of service and of the date of service. If official correspondence is served in more than one manner and the dates differ, the date of the earliest service is used^[smc1].

(d) *Constructive service.* If we cannot make delivery to the addressee of record after making a reasonable effort, we deem official correspondence as constructively served 7 days after the date that we mail or electronically transmit the document. This provision covers situations such as those where no delivery occurs because:

- (1) The addressee of record has moved without filing a forwarding address or updating its Form ONRR-4444 as required under paragraph (b) of this section;
- (2) The forwarding order has expired;
- (3) The addressee of record has changed its email address without updating its Form ONRR-4444 as required under paragraph (b) of this section;
- (4) Delivery was expressly refused; or
- (5) The document was unclaimed and the attempt to deliver is substantiated by either:

- (i) The U.S. Postal Service;

(ii) A private mailing service, as described in this section;

(iii) The person who attempted to make delivery using some other method of service; or

(iv) A receipt or other documentation that ONRR attempted electronic service.

[71 FR 51751, Aug. 31, 2006, as amended at 78 FR 52433, Aug. 23, 2013]

§ 1218.560 How do I submit Form ONRR-4444?

You may obtain a copy of Form ONRR-4444 and instructions from ONRR. This form is posted at <http://www.onrr.gov/FM/Forms/default.htm>.

Submit the completed, signed form to the address designated on Form ONRR-4444 instructions.

[77 FR 25881, May 2, 2012]

§ 1218.580 When do I submit Form ONRR-4444?

Initially, you must submit Form ONRR-4444 by November 29, 2006, and subsequently, within 2 weeks of any change of your address.

Subpart I [Reserved]

Subpart J—Debt Collection and Administrative Offset

SOURCE: 77 FR 25887, May 2, 2012, unless otherwise noted.

§ 1218.700 What definitions apply to the regulations in this subpart?

As used in this subpart:

Administrative offset means the withholding of funds payable by the United States (including funds payable by the United States on behalf of a state government) to any person, or the withholding of funds held by the United States for any person, in order to satisfy a debt owed to the United States.

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of government, including a government corporation.

Day means calendar day. To count days, include the last day of the period unless it is a Saturday, Sunday, or Federal legal holiday.

Debt and *claim* are synonymous and interchangeable. They refer to, among other things, royalties, rentals, and any other monies due to, or collectible by, the United States as well as fines, fees, assessments, penalties, and any other monies that have been determined to be legally enforceable and due to the United States from any person, organization, or entity, except another Federal agency. For the purposes of administrative offset under 31 U.S.C. 3716 and this subpart, the terms “debt” and “claims” include money, funds, or property owed to, or collectible by, the United States.

Debtor means a lessee, payor, or other person that owes a debt to the United States or ONRR, or from whom ONRR collects debts on behalf of the United States, the Department, or an Indian lessor.

Delinquent or *past due* refers to the status of a debt and means a debt that is legally enforceable and has not been paid within the time limit prescribed by the applicable act, law, regulation, lease, order, demand, notice of non-compliance, and/or assessment of civil penalties, contract, decision, or any other agreement.

Department means the Department of the Interior, and any of its bureaus or offices.

Director means the Director of the Office of Natural Resources Revenue, or his or her designee.

DOJ means the U.S. Department of Justice.

FCCS means the Federal Claims Collection Standards, which are published at 31 CFR parts 900 through 904.

FMS means the Financial Management Service, a bureau of the U.S. Department of the Treasury.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under any statutory authority including, but not limited to, a mineral leasing law that authorizes exploration for and development or extraction of oil, gas, coal, any other mineral or geothermal resources, or

power generation from renewable energy sources, on Federal or Indian tribal or allotted lands or the Outer Continental Shelf. Depending on the context, lease may also refer to the land area covered by that authorization.

Legally enforceable means that there has been a final non-appealable agency determination that the debt, in the amount stated, is due, and there are no legal bars to collection by offset.

Lessee means any person to whom the United States or an Indian tribe or individual Indian mineral owner issues a Federal or Indian mineral or other resource lease, easement, right-of-way, or other agreement, an assignee of all or a part of the record title interest, or any person to whom operating rights have been assigned.

ONRR means the Office of Natural Resources Revenue, an office of the Department.

Other agreement means any agreement other than a lease and includes, but is not limited to, any agreement between you and the Department to pay the Department money, funds, or property, regardless of form.

Past due has the same meaning as “delinquent” as defined above.

Payor means any person who reports and pays royalties under a lease, regardless of whether that person is also a lessee.

Person includes a natural person or persons, profit or nonprofit corporation, partnership, association, limited liability company, trust, estate, consortium, or other entity that owes a debt to the United States.

Tax refund offset means the reduction of a tax refund by the amount of a past-due, legally enforceable debt.

You and *your* refer to the debtor.

§ 1218.701 What is ONRR’s authority to issue these regulations?

(a) The ONRR is issuing the regulations in this subpart under the authority of the FCCS, the Debt Collection Act of 1982, and the Debt Collection Improvement Act of 1996, 31 U.S.C. 3711, 3716–3718, and 3720A.

(b) The regulations in this subpart adopt and supplement the FCCS as necessary.

§ 1218.702 What happens to delinquent debts you owe ONRR?

(a) The ONRR will collect debts from you under the regulations in this subpart in addition to other applicable statutory and regulatory authorities.

(b) The ONRR will transfer to the U.S. Department of the Treasury any past due, legally enforceable nontax debt that is delinquent within 180 days from the date the debt becomes delinquent so that Treasury may take appropriate action to collect the debt or terminate the collection action under 26 U.S.C. 6402(d)(1) and (2); 31 U.S.C. 3711, 3716, and 3720A; the FCCS; and 31 CFR 285.2 and 285.5.

§ 1218.703 What notice will ONRR give you of our intent to refer a matter to Treasury to collect a debt?

(a) When the Director determines that you owe, or may owe, a legally enforceable debt to ONRR, the Director will send a written notice to you informing you that ONRR intends to refer the debt to Treasury. We will send the notice by facsimile or mail to the most current address known to us. The notice will inform you of the following:

(1) The amount, nature, and basis of the debt.

(2) The methods of offset that ONRR or Treasury may use.

(3) Your opportunity to inspect and copy agency records related to the debt.

(4) Your opportunity to enter into a written agreement with us to repay the debt.

(5) Our policy concerning interest and administrative costs under § 1218.704, including a statement that we will make such assessments against you unless we determine otherwise under the criteria of the FCCS and this part.

(6) The date by which you must remit payment to avoid additional late charges and enforced collection.

(7) The name, address, and telephone number of a contact person (or office) at ONRR who is available to discuss your debt.

(b)(1) You may not appeal the notice issued under this section unless the notice specifically provides you with the opportunity for review under 30 CFR

parts 1290 or 1241 because you did not previously receive a notice of the order, decision on appeal, or any other notice or decision that is the basis of the debt that ONRR intends to refer to Treasury, and for which you may be liable in whole or in part under applicable law. You may not dispute matters related to your delinquent debt that were the subject of a final order or appeal decision of which you were the recipient, or to which you were a party that is the basis of your delinquent debt.

(2) This section applies whether or not you appealed the order, demand, notice of noncompliance, or assessment of civil penalties under 30 CFR parts 1290 or 1241.

§ 1218.704 What is ONRR's policy on interest and administrative costs?

(a) *Interest.* (1) The ONRR will assess interest on all delinquent debts as prescribed by applicable statutes and regulations.

(i) Interest will accrue on debts involving Federal and Indian oil and gas leases under 30 CFR 1218.54, 1218.102, and 1218.150.

(ii) Interest will accrue on debts involving Federal and Indian solid mineral and geothermal resource leases under 30 CFR 1218.202 and 1218.302.

(iii) Interest will accrue on civil penalties ONRR assesses under 30 CFR part 1241.

(2) Interest begins to accrue on all debts from the date that the payment was due unless otherwise specified by law or lease terms.

(b) *Penalties.* The ONRR will assess penalties under our authority in 30 U.S.C. 1719 and 1720a, and implementing regulations at 30 CFR part 1241.

(c) *Administrative costs.* The ONRR initially will assess \$436 for administrative costs incurred as a result of your failure to pay a delinquent debt. We will publish a notice of any increase in administrative costs assessed under this section in the FEDERAL REGISTER. The ONRR also may assess \$436 for administrative costs that continue to accrue during any appeal process if:

(1) The notice we provide you under 30 CFR 1218.703 grants you the right to appeal and you exercise that right; and

(2) Your appeal is denied and we refer the delinquent debt to Treasury under this subpart.

(d) *Allocation of payments.* The ONRR will apply a partial or installment payment you make on a delinquent debt sent to Treasury, first to outstanding penalty assessments, second to administrative costs, third to accrued interest, and fourth to the outstanding debt principal.

(e) *Additional authority.* The ONRR may assess interest, penalty charges, and administrative costs on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under common law or other applicable statutory or regulatory authority.

(f) *Waiver.* The Director may decide to waive collection of all or part of the administrative costs under paragraph (c) of this section either in compromise of the delinquent debt or if the Director determines collection of this charge would be against equity and good conscience or not in the Government's best interest.

(g) The ONRR's decision whether to collect or waive collection of administrative costs under paragraph (f) of this section is the final decision for the Department and is not subject to administrative review.

§ 1218.705 What is ONRR's policy on recommending revocation of your ability to engage in Federal or Indian leasing, licensing, or granting of easements, permits, or rights-of-way?

The Director may recommend that the leasing or issuing agency, under statutory or regulatory authority applicable to that agency, revoke your ability to engage in Federal or Indian leasing, licensing, or granting of easements, permits, or rights-of-way if you inexcusably or willfully fail to pay a debt. The Director will recommend that any revocation of your ability to engage in Federal or Indian leasing, licensing, or granting of easements, permits, or rights-of-way should last only as long as your debt remains unpaid or unresolved.

§ 1218.706

§ 1218.706 What debts may ONRR refer to Treasury to collect by administrative offset or tax refund offset?

(a) The ONRR may refer any past due, legally enforceable debt you owe to ONRR to Treasury to collect through administrative offset or tax refund offset at least 60 days after we give you notice under 30 CFR 1218.703 if the debt:

(1) Is at least \$25.00 or another amount established by Treasury; and

(2) Does not involve Federal oil and gas lease obligations for which offset is precluded under 30 U.S.C. 1724(b)(3).

(b) The ONRR may refer debts reduced to judgment to Treasury for tax refund offset at any time.

PART 1219—DISTRIBUTION AND DISBURSEMENT OF ROYALTIES, RENTALS, AND BONUSES

Subparts A–B [Reserved]

Subpart C—Oil and Gas, Onshore

Sec.

1219.100 What is ONRR's timing of payment to the States?

1219.101 What receipts are subject to an interest charge?

1219.102 What is ONRR's method of payment to the States?

1219.103 How will ONRR manage payments to Indian accounts?

1219.104 What are Explanation of Payments to the States and Indian Tribes?

1219.105 What definitions apply to this subpart?

Subpart D—Oil and Gas, Offshore, GOMESA Phase I Revenue Sharing

1219.410 What does this subpart contain?

1219.411 What definitions apply to this subpart?

1219.412 How will ONRR divide the qualified OCS revenues (Phase I)?

1219.413 How will ONRR determine each Gulf producing State's share of the qualified OCS revenues (Phase I) from leases in the 181 Area in the Eastern Planning Area and the 181 South Area?

1219.414 How will ONRR allocate the qualified OCS revenues (Phase I) to coastal political subdivisions within the Gulf producing States?

1219.415 How will ONRR allocate qualified OCS revenues (Phase I) to the coastal political subdivisions if, during any fiscal year, there are no applicable leased

30 CFR Ch. XII (7–1–17 Edition)

tracts in the 181 Area in the Eastern Gulf of Mexico Planning Area?

1219.416 When will ONRR disburse funds to Gulf producing States and coastal political subdivisions?

Subpart E—Oil and Gas, Offshore, GOMESA Phase II Revenue Sharing

1219.510 What does this subpart contain?

1219.511 What definitions apply to this subpart?

1219.512 How will ONRR divide the qualified OCS revenues (Phase II)?

1219.513 How will ONRR determine each Gulf producing State's share of the qualified OCS revenues (Phase II) from leases in the 181 Area, the 181 South Area and the 2002–2007 Planning Area?

1219.514 How will ONRR allocate the qualified OCS revenues (Phase II) to coastal political subdivisions within the Gulf producing States?

1219.515 How will ONRR update the group of “historical lease sites” and “applicable leased tracts (Phase II)” used for determining the allocation of shared revenues?

1219.516 When will ONRR disburse funds to Gulf producing States and coastal political subdivisions?

AUTHORITY: Section 104, Pub. L. 97–451, 96 Stat. 2451 (30 U.S.C. 1714), Pub. L. 109–432, Div. C, Title I, 120 Stat. 3000.

SOURCE: 80 FR 81458, Dec. 30, 2015, unless otherwise noted.

Subparts A–B [Reserved]

Subpart C—Oil and Gas, Onshore

§ 1219.100 What is ONRR's timing of payment to the States?

ONRR will pay a State's share of mineral leasing revenues to the State not later than the last business day of the month in which the U.S. Treasury issues a warrant authorizing the disbursement, except for any portion of such revenues which is under challenge and placed in a suspense account pending resolution of a dispute.

§ 1219.101 What receipts are subject to an interest charge?

(a) Subject to the availability of appropriations, the Office of Natural Resources Revenue (ONRR) will pay the State its proportionate share of any interest charge for royalty and related monies that are placed in a suspense

account pending resolution of any matters that may disallow distribution and disbursement. Such monies not disbursed by the last business day of the month following receipt by ONRR will accrue interest until paid.

(b) Upon resolution of any matters that may disallow distribution and disbursement, ONRR will disburse the suspended monies found due in paragraph (a) of this section, plus interest, to the State, under the provisions of § 1219.100.

(c) ONRR will apply paragraph (a) of this section to revenues that ONRR cannot disburse to the State because the payor/lessee provided to ONRR incorrect, inadequate, or incomplete information, which prevented ONRR from identifying the proper recipient of the payment.

§ 1219.102 What is ONRR's method of payment to the States?

ONRR will disburse monies to a State by Electronic Funds Transfer (EFT).

§ 1219.103 How will ONRR manage payments to Indian accounts?

ONRR will transfer mineral revenues received from Indian leases to the appropriate Indian accounts that the Bureau of Indian Affairs (BIA) manages for allotted and Tribal revenues. These accounts are specifically designated Treasury accounts. ONRR will transfer these revenues to the Indian accounts at the earliest practicable date after such funds are received, but in no case later than the last business day of the month in which ONRR receives these revenues.

§ 1219.104 What are Explanation of Payments to the States and Indian Tribes?

(a) ONRR will describe the payments to States and BIA, on behalf of Indian Tribes or Indian allottees, discussed in this part, in ONRR-prepared Explanation of Payment reports. ONRR will prepare these reports at the lease level and will include a description of the type of payment made, the period covered by the payment, the source of the payment, sales amounts upon which the payment is based, the royalty rate, and the unit value. If any State or In-

dian Tribe needs additional information pertaining to mineral revenue payments, the State or Tribe may request this information from ONRR.

(b) ONRR will provide these reports to:

(1) States, not later than the 10th day of the month following the month in which ONRR disburses the State's share of royalties and related monies.

(2) BIA, on behalf of Tribes and Indian allottees, not later than the 10th day of the month following the month in which ONRR disburses the funds.

(c) ONRR will not include in these reports revenues that we cannot distribute to States, Tribes, or Indian allottees because the payor/lessee provided incorrect, inadequate, or incomplete information about the proper recipient of the payment, until the payor/lessee has submitted to ONRR the missing information.

§ 1219.105 What definitions apply to this subpart?

Terms that ONRR uses in this subpart will have the same meaning as in 30 U.S.C. 1702.

Subpart D—Oil and Gas, Offshore, GOMESA Phase I Revenue Sharing

§ 1219.410 What does this subpart contain?

(a) The Gulf of Mexico Energy Security Act of 2006 (GOMESA) directs the Secretary of the Interior to disburse a portion of the rentals, royalties, bonus bids, and other sums derived from certain Outer Continental Shelf (OCS) leases in the Gulf of Mexico (GOM) to the States of Alabama, Louisiana, Mississippi, and Texas (collectively identified as the Gulf producing States); to eligible coastal political subdivisions (CPSs) within those States; and to the Land and Water Conservation Fund (LWCF). Shared GOMESA revenues are reserved for the following purposes:

(1) Projects and activities for the purpose of coastal protection, including conservation, coastal restoration, hurricane protection, and infrastructure directly affected by coastal wetland losses;

(2) Mitigation of damage to fish, wildlife, or natural resources;

(3) Implementation of a federally-approved marine, coastal, or comprehensive conservation management plan;

(4) Mitigation of the impact of OCS activities through the funding of on-shore infrastructure projects; and

(5) Planning assistance and administrative costs not-to-exceed 3 percent of the amounts received.

(b) This subpart sets forth the formula and methodology ONRR uses to determine the amount of revenues allocated and disbursed to each Gulf producing State and each eligible CPS for each of fiscal years 2007 through 2016. Leasing revenues disbursed under this subpart originate from leases issued on or after December 20, 2006, in the 181 Area in the Eastern Planning Area and the 181 South Area, subject to restrictions identified in GOMESA. We collectively refer to the revenue sharing from these areas for these fiscal years as GOMESA Phase I revenue sharing. For questions related to the revenue-sharing provisions in this subpart, please contact: Program Manager, Financial Management, Office of Natural Resources Revenue, P.O. Box 25165, Denver Federal Center, Building 85, Denver, CO 80225-0165.

§ 1219.411 What definitions apply to this subpart?

For purposes of this subpart:

181 Area means the area identified in map 15, page 58, of the “Proposed Final Outer Continental Shelf Oil and Gas Leasing Program for 1997–2002,” dated August 1996, excluding the area offered in OCS Lease Sale 181, held on December 5, 2001.

181 Area in the Eastern Planning Area is comprised of the area of overlap of the two geographic areas defined as the “181 Area” and the “Eastern Planning Area.”

181 South Area means any area—

(1) Located:

(i) South of the 181 Area;

(ii) West of the Military Mission Line; and

(iii) In the Central Planning Area;

(2) Excluded from the “Proposed Final Outer Continental Shelf Oil and Gas Leasing Program for 1997–2002,” dated August 1996, of the Bureau of Ocean Energy Management; and

(3) Included in the areas considered for oil and gas leasing, as identified in map 8, page 84, of the document entitled, “Revised Outer Continental Shelf Oil and Gas Leasing Program 2007–2012,” approved December 2010.

Applicable leased tract (Phase I) means a tract that is subject to a lease under section 8 of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1337, for the purpose of drilling for, developing, and producing oil or natural gas resources, issued on or after December 20, 2006, and located fully or partially in either the 181 Area in the Eastern Planning Area or in the 181 South Area.

Central Planning Area means the Central Gulf of Mexico Planning Area of the Outer Continental Shelf, as designated in the document entitled, “Revised Outer Continental Shelf Oil and Gas Leasing Program 2007–2012,” approved December 2010.

Coastal political subdivision means a political subdivision of a Gulf producing State, any part of which is:

(1) Within the coastal zone (as defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453)) of the Gulf producing State as of December 20, 2006; and

(2) Not more than 200 nautical miles from the geographic center of any leased tract.

Coastline means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters. This is the same definition used in section 2 of the Submerged Lands Act (43 U.S.C. 1301).

Distance means the minimum great circle distance.

Eastern Planning Area means the Eastern Gulf of Mexico Planning Area of the Outer Continental Shelf, as designated in the document entitled, “Revised Outer Continental Shelf Oil and Gas Leasing Program 2007–2012,” approved December 2010.

Gulf producing State means each of the States of Alabama, Louisiana, Mississippi, and Texas.

Leased tract means any tract that is subject to a lease under section 6 or 8 of the Outer Continental Shelf Lands

Natural Resources Revenue Off., Interior

§ 1219.413

Act for the purpose of drilling for, developing, and producing oil or natural gas resources.

Military Mission Line means the north-south line at 86°41' W. longitude.

Qualified OCS revenues (Phase I) means—

(1) In the case of each of the fiscal years 2007 through 2016, all rentals, royalties, bonus bids, and other sums received by the United States from leases issued on or after December 20, 2006, located:

(i) In the 181 Area in the Eastern Planning Area.

(ii) In the 181 South Area.

(2) For applicable leased tracts intersected by the planning area administrative boundary line (*e.g.*, separating the GOM Central Planning Area from the Eastern Planning Area), only the percent of revenues equivalent to the percent of surface acreage in the 181 Area in the Eastern Planning Area will be considered qualified OCS revenues (*Phase I*).

(3) Exclusions from the term qualified OCS revenues (*Phase I*) are:

(i) Revenues from the forfeiture of a bond or other surety securing obligations other than royalties;

(ii) Civil penalties;

(iii) Royalties “taken by the Secretary in-kind and not sold.” (Pub. L. 109-432, Dec. 20, 2006);

(iv) Revenues generated from leases subject to section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g));

(v) User fees; and

(vi) Lease revenues explicitly excluded from GOMESA revenue sharing by statute or appropriations law.

§ 1219.412 How will ONRR divide the qualified OCS revenues (Phase I)?

For each of the fiscal years 2007 through 2016, the Secretary of the Treasury will deposit 50 percent of the qualified OCS revenues (Phase I) into a special U.S. Treasury account, from which ONRR will disburse 75 percent to the Gulf producing States and 25 percent to the Land and Water Conservation Fund (LWCF). Of the revenues disbursed to a Gulf producing State, we will disburse 20 percent directly to the CPSS within that State. Each Gulf producing State will receive at least 10

percent of the qualified OCS revenues (Phase I) available for allocation to the Gulf producing States each fiscal year. The following table summarizes the resulting revenue shares (adding to 100 percent):

REVENUE DISTRIBUTION OF QUALIFIED OCS REVENUES UNDER GOMESA PHASE I

Recipient of qualified OCS revenues	Percentage of qualified OCS revenues
U.S. Treasury (General Fund)	50
Land and Water Conservation Fund	12.5
Gulf Producing States	30
Gulf Producing State Coastal Political Subdivisions	7.5

§ 1219.413 How will ONRR determine each Gulf producing State's share of the qualified OCS revenues (Phase I) from leases in the 181 Area in the Eastern Planning Area and the 181 South Area?

(a) ONRR will determine the great circle distance between:

(1) The geographic center of each applicable leased tract (Phase I); and

(2) The point on the coastline of each Gulf producing State that is closest to the geographic center of each applicable leased tract (Phase I).

(b) Based on these distances, we will calculate the qualified OCS revenues (Phase I) to disburse to each Gulf producing State as follows:

(1) For each Gulf producing State, we will calculate and total, over all applicable leased tracts (Phase I), the mathematical inverses of the distances between the points on the State's coastline that are closest to the geographic centers of the applicable leased tracts (Phase I), and the geographic centers of the applicable leased tracts (Phase I). For applicable leased tracts intersected by the planning area administrative boundary line, we will use the geographic center of the entire lease for the inverse distance determination.

(2) For each Gulf producing State, we will divide the sum of each State's inverse distances from all applicable leased tracts (Phase I) calculated under paragraph (1), by the sum of the inverse distances from all applicable leased tracts (Phase I) across all four Gulf producing States. In the formulas below, I_{AL} , I_{LA} , I_{MS} , and I_{TX} represent the

§ 1219.414

sum of the inverses of the shortest distances between Alabama, Louisiana, Mississippi, and Texas and all applicable leased tracts (Phase I), respectively. We will multiply the result by the amount of shareable, qualified OCS revenues (Phase I).

Alabama Share = $(I_{AL} + (I_{AL} + I_{LA} + I_{MS} + I_{TX})) \times \text{qualified OCS revenues (Phase I)}$

Louisiana Share = $(I_{LA} + (I_{AL} + I_{LA} + I_{MS} + I_{TX})) \times \text{qualified OCS revenues (Phase I)}$

Mississippi Share = $(I_{MS} + (I_{AL} + I_{LA} + I_{MS} + I_{TX})) \times \text{qualified OCS revenues (Phase I)}$

Texas Share = $(I_{TX} + (I_{AL} + I_{LA} + I_{MS} + I_{TX})) \times \text{qualified OCS revenues (Phase I)}$

(3) If, in any fiscal year, this calculation results in less than a 10-percent allocation of the qualified OCS revenues (Phase I) to any Gulf producing State, we will recalculate the distribution. We will allocate 10 percent of the qualified OCS revenues (Phase I) to the affected State and recalculate the other States' shares of the remaining qualified OCS revenues (Phase I), omitting from the calculation the State receiving the 10-percent minimum share.

§ 1219.414 How will ONRR allocate the qualified OCS revenues (Phase I) to coastal political subdivisions within the Gulf producing States?

(a) Of the qualified OCS revenues (Phase I) allocated to a Gulf producing State's CPSS, ONRR will allocate 25 percent based on the proportion that each CPS's population bears to the population of all CPSS in the State.

(b) Of the qualified OCS revenues (Phase I) allocated to a Gulf producing State's CPSS, we will allocate 25 percent based on the proportion that each CPS's miles of coastline bears to the total miles of coastline across all CPSS in the State. However, for the State of Louisiana, we will deem CPSS without a coastline to each have a coastline one-third the average length of the coastline of all CPSS within Louisiana that have a coastline.

(c)(1) Of the qualified OCS revenues (Phase I) allocated to a Gulf producing State's CPSS, we will allocate 50 percent in amounts that are inversely proportional to the respective distances between:

(i) The point in each CPS that is closest to the geographic center of each applicable leased tract (Phase I); and

30 CFR Ch. XII (7-1-17 Edition)

(ii) The geographic center of each applicable leased tract (Phase I).

(2) However, we will exclude distances to an applicable leased tract (Phase I) from this calculation if any portion of the tract is located in a geographic area that was subject to a leasing moratorium on January 1, 2005, unless the leased tract was in production on that date.

§ 1219.415 How will ONRR allocate qualified OCS revenues (Phase I) to the coastal political subdivisions if, during any fiscal year, there are no applicable leased tracts in the 181 Area in the Eastern Gulf of Mexico Planning Area?

If, during any fiscal year, there are no applicable leased tracts in the 181 Area in the Eastern Gulf of Mexico Planning Area, ONRR will allocate revenues to the CPSS in accordance with the following criteria:

(a) Of the qualified OCS revenues (Phase I) allocated to a Gulf producing State's CPSS, we will allocate 50 percent based on the proportion that each CPS's population bears to the population of all CPSS in the State.

(b) Of the qualified OCS revenues (Phase I) allocated to a Gulf producing State's CPSS, we will allocate 50 percent based on the proportion that each CPS's miles of coastline bears to the total miles of coastline across all CPSS within the State. However, for the State of Louisiana, we will deem CPSS without a coastline to each have a coastline one-third the average length of the coastline of all CPSS within Louisiana that have a coastline.

§ 1219.416 When will ONRR disburse funds to Gulf producing States and coastal political subdivisions?

ONRR will disburse GOMESA revenues as soon as authorized and practicable within the fiscal year following the year that we collect qualified OCS revenues (Phase I).

**Subpart E—Oil and Gas, Offshore,
GOMESA Phase II Revenue
Sharing**

§ 1219.510 What does this subpart contain?

(a) GOMESA directs the Secretary of the Interior to disburse a portion of the rentals, royalties, bonus bids, and other sums derived from certain OCS leases in the GOM to the States of Alabama, Louisiana, Mississippi, and Texas (collectively identified as the Gulf producing States); to eligible CPSS within those States; and to the LWCF. GOMESA directs the Gulf producing States and CPSS to use the shared revenues for the following purposes:

(1) Projects and activities for the purpose of coastal protection, including conservation, coastal restoration, hurricane protection, and infrastructure directly affected by coastal wetland losses;

(2) Mitigation of damage to fish, wildlife, or natural resources;

(3) Implementation of a federally-approved marine, coastal, or comprehensive conservation management plan;

(4) Mitigation of the impact of OCS activities through the funding of on-shore infrastructure projects; and

(5) Planning assistance and administrative costs not-to-exceed 3 percent of the amounts received.

(b) This subpart sets forth the formula and methodology ONRR will use to determine the amount of revenues allocated and disbursed to each Gulf producing State and each eligible CPS for fiscal year 2017 and each fiscal year thereafter. Leasing revenues disbursed under this subpart (also referred to as GOMESA Phase II) originate from leases issued on or after December 20, 2006, in the 181 Area, the 181 South Area, and the GOM 2002–2007 Planning Area, subject to restrictions and caps identified in GOMESA. For questions related to the revenue-sharing provisions in this subpart, please contact: Program Manager, Financial Management, Office of Natural Resources Revenue, P.O. Box 25165, Denver Federal Center, Building 85, Denver, CO 80225–0165, or at (303) 231–3217.

§ 1219.511 What definitions apply to this subpart?

For purposes of this subpart:

181 Area is defined at § 1219.411.

181 South Area is defined at § 1219.411.

“181 Area in the Central Planning Area” is comprised of the area of overlap of the two geographic areas defined at § 1219.411 as the “181 Area” and the “Central Planning Area.”

2002–2007 Planning Area means any area—

(1) Located in—

(i) The Eastern Planning Area, as designated in the “Proposed Final Outer Continental Shelf Leasing Program 2002–2007,” dated April 2002;

(ii) The Central Planning Area, as designated in the “Proposed Final Outer Continental Shelf Leasing Program 2002–2007,” dated April 2002; or

(iii) The Western Planning Area, as designated in the “Proposed Final Outer Continental Shelf Leasing Program 2002–2007,” dated April 2002; and

(2) Not located in—

(i) An area in which no funds may be expended to conduct offshore preleasing, leasing, and related activities under sections 104 through 106 of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–54; 119 Stat. 521) (as in effect on August 2, 2005);

(ii) An area withdrawn from leasing under the “Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition,” from 34 Weekly Comp. Pres. Doc. 1111, dated June 12, 1998; or

(iii) The 181 Area or 181 South Area.

Applicable leased tract (Phase II) means a tract that is subject to a lease under section 8 of the OCSLA, for the purpose of drilling for, developing, and producing oil or natural gas resources, issued on or after December 20, 2006, and located fully or partially in either the 181 Area or the 181 South Area.

Central Planning Area is defined at § 1219.411.

Coastal political subdivision is defined at § 1219.411.

Coastline is defined at § 1219.411.

Distance is defined at § 1219.411.

Eastern Planning Area is defined at § 1219.411.

§ 1219.512

Gulf producing State is defined at § 1219.411.

Historical lease site means any tract in the 2002–2007 Planning Area leased on or after October 1, 1982, under section 8 of the OCSLA, for the purpose of drilling for, developing, and producing oil or natural gas resources.

Leased tract is defined at § 1219.411.

Military Mission Line is defined at § 1219.411.

Qualified OCS revenues (Phase II) means—

(1) In the case of fiscal year 2017 and each fiscal year thereafter, all rentals, royalties, bonus bids, and other sums received by the United States from leases that lessees enter(ed) into on or after December 20, 2006, located:

- (i) In the 181 Area;
- (ii) In the 181 South Area;
- (iii) In the 2002–2007 Planning Area.

(2) Exclusions from the term “*Qualified OCS revenues (Phase II)*” are:

(i) Revenues from the forfeiture of a bond or other surety instrument securing obligations other than royalties;

(ii) Civil penalties;

(iii) Royalties “taken by the Secretary in-kind and not sold” (Pub. L. 109–432, Dec 20, 2006);

(iv) Revenues generated from leases subject to section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g));

(v) User fees; and

(vi) Lease revenues explicitly excluded from GOMESA revenue sharing by statute or appropriations law.

(3) The term “*Qualified OCS revenues (Phase II)*” consists wholly of the two subsets defined as “*Qualified OCS revenues (Phase II—capped)*” and “*Qualified OCS revenues (Phase II—uncapped)*.”

(i) *Qualified OCS revenues (Phase II—capped)* means, in the case of fiscal year 2017 and each fiscal year thereafter, the subset of qualified OCS revenues (Phase II) received by the United States from leases that lessees enter(ed) into on or after December 20, 2006, located:

(A) In the 181 Area in the Central Planning Area; or

(B) In the 2002–2007 Planning Area.

(ii) *Qualified OCS revenues (Phase II—uncapped)* means, in the case of fiscal year 2017 and each fiscal year thereafter, the subset of qualified OCS reve-

30 CFR Ch. XII (7–1–17 Edition)

nues (Phase II) received by the United States from leases that lessees enter(ed) into on or after December 20, 2006, located:

(A) In the 181 Area in the Eastern Planning Area, or

(B) In the 181 South Area.

§ 1219.512 How will ONRR divide the qualified OCS revenues (Phase II)?

(a) For fiscal year 2017 and each fiscal year thereafter, the Secretary of the Treasury will deposit 50 percent of the qualified OCS revenues (Phase II—uncapped) into a special U.S. Treasury account, from which ONRR will disburse 75 percent to the Gulf producing States and 25 percent to the LWCF. Of the revenues disbursed to a Gulf producing State, we will disburse 20 percent directly to the CPSS within that State. Each Gulf producing State will receive at least 10 percent of the qualified OCS revenues (Phase II—uncapped) available for allocation to the Gulf producing States each fiscal year. The following table summarizes the resulting revenue shares (adding to 100 percent):

REVENUE DISTRIBUTION OF QUALIFIED OCS REVENUES (PHASE II—UNCAPPED) UNDER GOMESA PHASE II

Recipient of qualified OCS revenues	Percentage of qualified OCS revenues
U.S. Treasury (General Fund)	50
Land and Water Conservation Fund	12.5
Gulf Producing States	30
Gulf Producing State Coastal Political Subdivisions	7.5

(b) For fiscal year 2017 and each fiscal year thereafter, the Secretary of the Treasury will deposit 50 percent of the qualified OCS revenues (Phase II—capped) into a special U.S. Treasury account. The total amount of qualified OCS revenues (Phase II—capped) deposited in the special U.S. Treasury account and available for allocation to the Gulf producing States, the CPSS and the LWCF, under this subpart, cannot exceed \$500,000,000 for each of the fiscal years 2017 through 2055. After applying the cap, if applicable, ONRR will disburse 75 percent to the Gulf producing States and 25 percent to the LWCF. Of the revenues disbursed to a Gulf producing State, we will disburse 20 percent directly to the CPSS within

that State. Each Gulf producing State will receive at least 10 percent of the qualified OCS revenues (Phase II—capped) available for allocation to the Gulf producing States each fiscal year.

§ 1219.513 How will ONRR determine each Gulf producing State's share of the qualified OCS revenues (Phase II) from leases in the 181 Area, the 181 South Area, and the 2002-2007 Planning Area?

(a) ONRR will determine the great circle distance between:

(1) The geographic center of each applicable leased tract (Phase II) or historical lease site; and

(2) The point on the coastline of each Gulf producing State that is closest to the geographic center of each applicable leased tract (Phase II) or historical lease site.

(b) Based on a specific subset of these distances, we will calculate the qualified OCS revenues (Phase II—uncapped) to disburse to each Gulf producing State as follows:

(1) For each Gulf producing State, we will calculate and total, over all applicable leased tracts (Phase II) located in the 181 Area in the Eastern Planning Area or the 181 South Area, the mathematical inverses of the distances between the points on the State's coastline that are closest to the geographic centers of the applicable leased tracts (Phase II) located in the 181 Area in the Eastern Planning Area or the 181 South Area, and the geographic centers of the applicable leased tracts (Phase II) located in the 181 Area in the Eastern Planning Area or the 181 South Area.

(2) For each Gulf producing State, we will divide the sum of each State's inverse distances from all applicable leased tracts (Phase II) located in the 181 Area in the Eastern Planning Area or the 181 South Area calculated under paragraph (1), by the sum of the inverse distances from all applicable leased tracts (Phase II) located in the 181 Area in the Eastern Planning Area or the 181 South Area across all four Gulf producing States. In the formulas below, I_{AL} , I_{LA} , I_{MS} , and I_{TX} represent the sum of the inverses of the shortest distances between Alabama, Louisiana, Mississippi, and Texas and all applicable leased tracts (Phase II), respectively. We will multiply the result by

the amount of shareable, qualified OCS revenues (Phase II—uncapped).

Alabama Share = $(I_{AL} + (I_{AL} + I_{LA} + I_{MS} + I_{TX})) \times \text{qualified OCS revenues (Phase II—uncapped)}$

Louisiana Share = $(I_{LA} + (I_{AL} + I_{LA} + I_{MS} + I_{TX})) \times \text{qualified OCS revenues (Phase II—uncapped)}$

Mississippi Share = $(I_{MS} + (I_{AL} + I_{LA} + I_{MS} + I_{TX})) \times \text{qualified OCS revenues (Phase II—uncapped)}$

Texas Share = $(I_{TX} + (I_{AL} + I_{LA} + I_{MS} + I_{TX})) \times \text{qualified OCS revenues (Phase II—uncapped)}$

(3) If, in any fiscal year, this calculation results in less than a 10-percent allocation of the qualified OCS revenues (Phase II—uncapped) to any Gulf producing State, we will recalculate the distribution. We will allocate 10 percent of the qualified OCS revenues (Phase II—uncapped) to the affected State and recalculate the other States' shares of the remaining qualified OCS revenues (Phase II—uncapped), omitting from the calculation the State receiving the 10-percent minimum share.

(c) Based on a specific subset of these distances, we will calculate the qualified OCS revenues (Phase II—capped) to disburse to each Gulf producing State as follows:

(1) For each Gulf producing State, we will calculate and total, over all applicable leased tracts (Phase II) located in the 181 Area in the Central Planning Area and historical lease sites, the mathematical inverses of the distances between the points on the State's coastline that are closest to the geographic centers of the applicable leased tracts (Phase II) located in the 181 Area in the Central Planning Area and historical lease sites, and the geographic centers of the applicable leased tracts (Phase II) located in the 181 Area in the Central Planning Area and historical lease sites.

(2) For each Gulf producing State, we will divide the sum of each State's inverse distances from all applicable leased tracts (Phase II) located in the 181 Area in the Central Planning Area and historical lease sites calculated under paragraph (1), by the sum of the inverse distances from all applicable leased tracts (Phase II) located in the 181 Area in the Central Planning Area and historical lease sites across all four Gulf producing States. In the formulas

below, I_{AL} , I_{LA} , I_{MS} , and I_{TX} represent the sum of the inverses of the shortest distances between Alabama, Louisiana, Mississippi, and Texas and all applicable leased tracts (Phase II) and historical lease sites, respectively. We will multiply the result by the amount of shareable, qualified OCS revenues (Phase II—capped).

Alabama Share = $(I_{AL} + (I_{AL} + I_{LA} + I_{MS} + I_{TX}))$
 × qualified OCS revenues (Phase II—
 capped)

Louisiana Share = $(I_{LA} + (I_{AL} + I_{LA} + I_{MS} + I_{TX}))$
 × qualified OCS revenues (Phase II—
 capped)

Mississippi Share = $(I_{MS} + (I_{AL} + I_{LA} + I_{MS} + I_{TX}))$
 × qualified OCS revenues (Phase II—
 capped)

Texas Share = $(I_{TX} + (I_{AL} + I_{LA} + I_{MS} + I_{TX}))$ ×
 qualified OCS revenues (Phase II—capped)

(3) If, in any fiscal year, this calculation results in less than a 10-percent allocation of the qualified OCS revenues (Phase II—capped) to any Gulf producing State, we will recalculate the distribution. We will allocate 10 percent of the qualified OCS revenues (Phase II—capped) to the affected State and recalculate the other States' shares of the remaining qualified OCS revenues (Phase II—capped), omitting from the calculation the State receiving the 10-percent minimum share.

§ 1219.514 How will ONRR allocate the qualified OCS revenues (Phase II) to coastal political subdivisions within the Gulf producing States?

(a) Of the qualified OCS revenues (Phase II) allocated to a Gulf producing State's CPSS, ONRR will allocate 25 percent based on the proportion that each CPS's population bears to the population of all CPSS in the State.

(b) Of the qualified OCS revenues (Phase II) allocated to a Gulf producing State's CPSS, we will allocate 25 percent based on the proportion that each CPS's miles of coastline bears to the total miles of coastline across all CPSS in the State. However, for the State of Louisiana, we will deem CPSS without a coastline to each have a coastline one-third the average length of the coastline of all CPSS within Louisiana that have a coastline.

(c)(1) Of the qualified OCS revenues (Phase II) allocated to a Gulf producing State's CPSS, we will allocate 50 percent in amounts that are inversely pro-

portional to the respective distances between:

(i) The point in each CPS that is closest to the geographic center of the applicable leased tract (Phase II) or historical lease site; and

(ii) The geographic center of each applicable leased tract (Phase II) or historical lease site.

(2) However, we will exclude distances to an applicable leased tract (Phase II) from this calculation if any portion of the tract is located in a geographic area that was subject to a leasing moratorium on January 1, 2005, unless the leased tract was in production on that date.

§ 1219.515 How will ONRR update the group of “historical lease sites” and “applicable leased tracts (Phase II)” used for determining the allocation of shared revenues?

(a) As GOMESA directs, ONRR will update the group of historical lease sites in the 2002–2007 Planning Area as follows:

(1) On December 31, 2015, we will freeze the group of historical lease sites, subject to the adjustment under paragraph (a)(2) of this section.

(2) Beginning January 1, 2022, and every fifth year thereafter, we will extend the ending date for determining the group of historical lease sites for an additional five calendar years by adding any new historical lease sites to the existing group.

(b) Each year we will update the group of applicable leased tracts (Phase II) to include only leases that were in effect at any time during the previous fiscal year.

§ 1219.516 When will ONRR disburse funds to Gulf producing States and coastal political subdivisions?

ONRR will disburse GOMESA revenues as soon as authorized and practicable within the fiscal year following the year that we collect qualified OCS revenues (Phase II).

PART 1220—ACCOUNTING PROCEDURES FOR DETERMINING NET PROFIT SHARE PAYMENT FOR OUTER CONTINENTAL SHELF OIL AND GAS LEASES

Sec.

- 1220.001 Purpose and scope.
- 1220.002 Definitions.
- 1220.003 Information collection.
- 1220.010 NPSL capital account.
- 1220.011 Schedule of allowable direct and allocable joint costs and credits.
- 1220.012 Overhead allowance.
- 1220.013 Unallowable costs.
- 1220.014 Allocation of joint costs and credits.
- 1220.015 Pricing of materiel purchases, transfers, and dispositions.
- 1220.020 Calculation of the allowance for capital recovery.
- 1220.021 Determination of net profit share base.
- 1220.022 Calculation of net profit share payment.
- 1220.030 Maintenance of records.
- 1220.031 Reporting and payment requirements.
- 1220.032 Inventories.
- 1220.033 Audits.
- 1220.034 Redetermination and appeals.

AUTHORITY: Sec. 205, Pub. L. 95-372, 92 Stat. 643 (43 U.S.C. 1337).

SOURCE: 45 FR 36800, May 30, 1980, unless otherwise noted. Redesignated at 48 FR 1182, Jan. 11, 1983, and further redesignated at 48 FR 35642, Aug. 5, 1983, 75 FR 61087, Oct. 4, 2010.

§ 1220.001 Purpose and scope.

(a) This part 1220 establishes accounting procedures for determining the net profit share base and calculating net profit share payments due the United States for the production of oil and gas from OCS leases.

(b) The procedures established by this part 1220 apply to any OCS lease issued by the Department of the Interior under any bidding system established by § 1260.110(a) of this title which has a net profit share component.

[45 FR 36800, May 30, 1980, as amended at 46 FR 29689, June 2, 1981. Redesignated at 48 FR 1182, Jan. 11, 1983. Amended at 48 FR 35642, Aug. 5, 1983]

§ 1220.002 Definitions.

For purposes of this part 220:

Allowance for capital recovery means the amount calculated according to

procedures specified in § 1220.020. This amount allows a premium for risk initially undertaken by the lessee and a return on investment made during the capital recovery period. It is provided in lieu of interest on equipment and materiel charged to the NPSL capital account.

Capital recovery period means the period of time that begins on the date of issuance of the NPSL and ends on the last day of the month during which the sooner of the following occurs:

(1) The lessee completes the last well on the first platform specified in the development and production plan originally approved by the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE), with any approved amendments thereto, and installation of wellhead equipment. In the event the last well is dry, then the capital recovery period shall be deemed to have ended with the determination that the last well is non-productive;

(2) The balance in the NPSL capital account changes from a debit balance to a credit balance; or

(3) The lessee, at his election, chooses to terminate the capital recovery period. A decision to terminate the capital recovery period prior to the events specified in paragraphs (a) (1) and (2) of this definition shall be communicated in writing to the BOEM Director and shall be irrevocable.

Controllable materiel means materiel which at the time is so classified in the Materiel Classification Manual as most recently recommended by the Council of Petroleum Accountants Societies of North America.

Cost means an expenditure or an accrual incurred by a lessee in conducting NPSL operations.

Cost pool means a grouping of costs identified with more than one OCS lease, whether the leases are NPSLs or other types of leases.

Credit means a payment, rebate, reimbursement to a lessee, or other reduction in cost or increase in revenue attributable to NPSL operations.

Direct cost means any cost listed in § 1220.011 that benefits only NPSL operations.

Field employee means an employee below a first level supervisor who is directly employed in the NPSL project area.

First level supervisor means an employee whose primary function in NPSL operations is the direct supervision of other employees and/or contract labor directly employed on the NPSL project area in a field operating capacity.

G & G means geological, geophysical, geochemical and other similar investigations carried out on the NPSL tract.

Joint cost means any cost listed in § 1220.011 that benefits NPSL operations and one or more other operations of the lessee or an outside party.

Lessee means a person authorized by an OCS lease, or an approved assignment thereof, to develop and produce oil and gas, including all parties holding such authority by or through the lessee, and the person designated to conduct NPSL operations.

Lessee's cost of allowed employee absence means the lessee's cost of holiday, vacation, sickness, disability benefits, jury duty and other customary excused allowances.

Materiel means equipment, apparatus, and supplies.

Net profit share base means the end of the month credit balance in the NPSL capital account determined pursuant to § 1220.021. The net profit share base is the production revenue remaining after subtracting all allowable costs and adding all allowable credits (including production revenue) in accordance with the procedures established by this part 1220.

Net profit share payment means the portion of the net profit share base payable to the United States.

Net profit share rate means the percentage share of the net profit share base payable to the United States. The percentage share may be fixed in the notice of OCS lease sale or be the bid variable, depending upon the bidding system used, as established by § 1260.110(a) of this title.

NPSL means a net profit share lease, which is an OCS lease that provides for payment to the United States of a percentage share of the net profits for production of oil and gas from the tract.

This percentage share may be fixed in the notice of OCS lease sale or be the bid variable, depending on the bidding system used, as established by § 1260.110(a) of this title.

NPSL operations means all activities subsequent to issuance of the NPSL necessary and proper for the exploration, development, operation, maintenance, and final abandonment of the NPSL property.

NPSL project area means the NPSL tract, offshore facilities, and shore base facilities.

NPSL property means the NPSL tract, and materiel and offshore facilities acquired for use in NPSL operations and that are installed and/or used on the NPSL tract.

NPSL tract means a tract subject to an NPSL.

OCS lease means a Federal lease for oil and gas issued under the OCSLA.

OCS lease sale means the DOI proceeding by which leases for certain OCS tracts are offered for sale by competitive bidding and during which bids are received, announced, and recorded.

Offshore facilities means platform and support systems located offshore that are necessary to conduct NPSL operations, e.g., oil and gas handling facilities, living quarters, offices, shops, cranes, electrical supply equipment and systems, fuel and water storage and piping, heliport, marine docking installations, communication facilities, and navigation aids.

Outside party means any person who is not a lessee.

Person means person as defined in part 1260 of this title.

Personal expenses means travel and other reasonable reimbursable expenses of lessee's employees.

Production means all oil, gas, or other hydrocarbon products produced, removed, saved, or sold from the NPSL property. Gas and liquids of all kinds are included in production. Production includes the allocated share of production from a unit of which the NPSL is a part.

Production revenue means the value of all production attributable to an NPSL property, which value is determined in accordance with § 1260.110(b) of this title.

Railway receiving point or *recognized barge terminal* means the location that a vendor would use in determining the sale price to the lessee of new materiel to be delivered to the NPSL project area.

Reliable supply store means a recognized source or common stock point for the particular materiel involved.

Shore base facilities means onshore facilities necessary for NPSL operations, including:

(1) Shore base support facilities, e.g., a receiving and trans-shipment point for materiel, staging area for shuttling personnel to and from the NPSL tract, a communication, scheduling, and dispatching center; and

(2) Shore base production facilities, e.g., pumps, separating facilities, gas plants, and tankage for production from the NPSL tract.

Technical employees means those employees having special and specific engineering, geological or other professional skills, and whose primary function in NPSL operations is the handling and resolution of specific operating conditions and problems for the benefit of NPSL operations.

Tract means land located on the OCS that is offered for lease through an OCS lease sale and that is identified by a leasing map or an official protraction diagram prepared by DOI.

[45 FR 36800, May 30, 1980, as amended at 46 FR 29689, June 2, 1981. Redesignated and amended at 48 FR 1182, Jan. 11, 1983. Redesignated at 48 FR 35642, Aug. 5, 1983. Amended at 75 FR 61087, Oct. 4, 2010; 78 FR 30206, May 22, 2013]

§ 1220.003 Information collection.

(a) The Office of Management and Budget (OMB) approved the information collection requirements contained in this part under 44 U.S.C. 3501 *et seq.* The approved OMB control number is identified in 30 CFR 1210.10. The information will be used to determine all allowable direct and allocable joint costs incurred during the term of the lease, appropriate overhead allowances permitted on these costs pursuant to § 1220.012, and allowances for capital recovery calculated pursuant to § 1220.020. The information collection is mandatory in accordance with the Federal Oil

and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.*

(b) Send comments regarding the burden estimates or any other aspect of this information collection, including suggestions for reducing burden, to the Office of Natural Resources Revenue, Attention: Rules & Regs Team, OMB Control Number 1012-0009, P.O. Box 25165, Denver, CO 80225-0165.

[57 FR 41868, Sept. 14, 1992, as amended at 58 FR 64903, Dec. 10, 1993 75 FR 61087, Oct. 4, 2010; 76 FR 76616, Dec. 8, 2011]

§ 1220.010 NPSL capital account.

(a) For each NPSL tract, an NPSL capital account shall be established and maintained by the lessee for NPSL operations. The NPSL capital account shall include debit entries for all allowable direct and allocable joint costs incurred during the term of the lease, appropriate overhead allowances permitted on these costs pursuant to § 1220.012, and allowances for capital recovery calculated pursuant to § 1220.020. The NPSL capital account shall be credited with production revenues attributable to the NPSL and any other credits arising from NPSL activities.

(b) The NPSL capital account shall be kept on an accrual basis.

[45 FR 36800, May 30, 1980, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1220.011 Schedule of allowable direct and allocable joint costs and credits.

The costs and credits specified in paragraphs (a) through (p) of this section may be charged direct, or allocated to NPSL operations, as appropriate, in accordance with § 1220.014.

(a) *Lease rental.* The rent paid by the lessee for the NPSL tract is allowable.

(b) *Labor.* (1)(i) Salaries and wages of lessee's field employees, first level supervisors and technical employees employed in the NPSL project area in NPSL operations are allowable if such costs are not charged under paragraph (g) of this section.

(ii) Salaries and wages of technical employees within technical branches of the lessee's organization who are either temporarily or permanently assigned to, and directly employed in NPSL operations are allowable provided that such employees work "full time" on

some particular aspect of NPSL operations or some specific technical problem. Excluded from this category are employees assigned a role in NPSL operations as a duty collateral with other duties that do not directly benefit NPSL operations.

(iii) Salaries and wages of technical employees within technical branches of the lessee's organization who are assigned technical tasks directly related to NPSL operations may be allowable. Costs may be charged to the NPSL if supported by adequate time records showing the nature of the task and the hours spent on that task.

(2) Lessee's cost of allowed employee absence paid to employees whose salaries and wages are chargeable to NPSL operations under paragraphs (b)(1) (i) and (ii) of this section are allowable.

(3) Expenditures or contributions made pursuant to assessments imposed by governmental authority that are applicable to lessee's costs chargeable to NPSL operations under paragraphs (b)(1) (i) and (ii) and (b)(2) of this section are allowable.

(4) Reasonable personal expenses, including allowable relocation costs of employees whose salaries and wages are chargeable to NPSL operations under paragraphs (b)(1) (i) and (ii) of this section and that are paid by the lessee or for which the employees are reimbursed under the lessee's normal practice are allowable except as limited by § 1220.013(g).

(i) Allowable relocation costs include:

(A) Travel expenses, including transportation, lodging, subsistence, and reasonable incidental expenses of the employee and members of his immediate family and transportation of his household and personal effects to the new location.

(B) Other necessary and reasonable expenses normally incident to relocation, such as costs of cancelling an unexpired lease, disconnecting and re-installing household appliances, and purchases of insurance against damages to or loss of personal property are allowable. Costs of cancelling an unexpired lease shall not exceed three times the monthly rental.

(C) Closing costs (*i.e.*, brokerage fees, legal fees, appraisal fees, etc.) for the

sale of the employee's actual residence when notified of the transfer are allowable; and

(D) Continuing costs of ownership of the vacant former actual residence being sold, such as continuing mortgage principal and interest payments, maintenance of building and grounds (exclusive of fixing-up expenses), utilities, taxes, property insurance, etc., after settlement date of lease or date of new permanent residence are allowable.

(ii) The combined total of costs listed in paragraphs (b)(4)(i) (C) through (D) of this section shall not exceed 8 percent of the sales price of the property sold.

(iii) Section 1220.013(g) specifies employee relocation expenses that are not allowable as a charge to NPSL operations.

(5) Lessee's current costs of established plans for employee's group life insurance, hospitalization, pension, retirement, stock purchase, thrift, bonds, and other benefit plans of a like nature that are made available to all of lessee's employees on an equitable basis, applicable to lessee's labor cost chargeable to NPSL operations under paragraphs (b)(1) (i) and (ii) and (b)(2) of this section, are allowable. The amount of these charges shall be lessee's actual cost not to exceed 23 percent of the total charges under paragraphs (b)(1) (i) and (ii) and (b)(2) except that the Director may from time to time establish a different maximum percentage.

(6) Charges for expenses incurred under paragraphs (b)(2) through (b)(5) of this section may be made to NPSL accounts on a "when and as paid" basis or by a percentage assessment method. If the percentage assessment method is used, it shall be based upon the lessee's actual cost experience expressed as a percentage of costs chargeable under paragraphs (b)(1) (i) and (ii) and (b)(2) of this section. Under either method the lessee's own cost of administering the plans and paying the salaries and benefits defined in this paragraph shall be excluded. In determining actual cost experience of an employee benefit plan, any dividend or refunds received that are applicable to insurance or annuity policies shall be used to reduce the cost of such policies.

(c) *Materiel*. (1) Materiel purchased or furnished by a lessee as NPSL property shall be charged or credited at amounts specified in § 1220.015. The purchase and inventorying of materiel is subject to the conditions and provisions in § 1220.032.

(2) Charges to an NPSL account shall be made only for such materiel purchased or furnished as NPSL property as is reasonably practical and consistent with efficient and economical operations. The accumulation of surplus stocks shall be avoided.

(3) Credit for salvaged or returned materiel shall be made to the NPSL capital account. When the amount originally charged qualifies for the allowance for capital recovery in § 1220.020, the credit shall be calculated pursuant to § 1220.021(a)(3).

(d) *Transportation*. Transportation of employees and materiel necessary for NPSL operations to, from, and within the NPSL project area, are allowable, but subject to the following limitations:

(1) If materiel is moved to the NPSL project area, no charge shall be made to NPSL operations for a distance greater than the distance from the nearest reliable supply store, recognized barge terminal, or railway receiving point where like materiel is normally available, unless agreed to by the Office of Natural Resources Revenue (ONRR) Director.

(2) If surplus materiel is moved from the NPSL project area, no charge shall be made to NPSL operations for a distance greater than the distance to the nearest reliable supply store, recognized barge terminal, or railway receiving point unless agreed to by the ONRR Director. No charge shall be made to NPSL operations for moving materiel to other properties owned by or under the control of a lessee, unless agreed to by the ONRR Director.

(3) In the application of paragraphs (d)(1) and (d)(2) of this section, there shall be no equalization of actual gross trucking costs of \$200 or less, excluding accessorial charges.

(e) *Contract services*. Except when excluded by paragraph (f) of this section and/or § 1220.013(c), the cost of services and utilities provided under contract by outside parties to the lessee and

which constitute proper and necessary NPSL operations or support for NPSL operations, and rental charges paid to outside parties for the use of equipment used in the NPSL project area in support of NPSL operations, may be charged to NPSL operations subject to the following conditions and limitations:

(1) Contract services (including professional consulting services and contract services of technical personnel) that are entirely performed in the NPSL project area and benefit exclusively NPSL operations may be charged at the rates specified in the contract.

(2) Contract services (including professional consulting services and contract services of technical personnel) that are entirely performed in the NPSL project area and benefit the NPSL operations and operations on other tracts must be allocated among all tracts benefited and only that portion representing services benefiting the NPSL tract charged to NPSL operations.

(3) Contract services (including professional consulting services and contract services of technical personnel) that are performed at sites outside the NPSL project area may be charged to NPSL operations only if:

(i) The contracted services charged to the NPSL operations benefit only the NPSL tract or support NPSL operations;

(ii) The contract under which such services are provided deals exclusively with services benefiting the NPSL tract or NPSL operations, or the costs of the contract services which are applicable to the NPSL tract or NPSL operations are separately and specifically identified in the contract; and

(iii) Services specified in the contract relate to the resolution of specific technical problems confronting NPSL operations, or specific engineering design problems related to equipment or facilities required for NPSL operations.

(4) The cost of any contract service related to research and development is specifically excluded, as are contract services calling for feasibility studies

§ 1220.011

not directly related to specific engineering design problems or alternatives for equipment and facilities required by NPSL operations.

(f) *Legal expenses.* Expense of handling, investigating and settling litigation or claims, discharging of liens, payments of judgments and amounts paid for settlement of claims incurred in or resulting from NPSL operations, or necessary to protect or recover the NPSL property are allowable, except those costs listed in §1220.013(f) as unallowable. This includes the salaries and wages of lessee's legal staff and the expense of outside attorneys who are assigned to matters described in this paragraph if supported by adequate time records showing the nature of the matter, its direct relationship to NPSL operations, and the hours spent on the matter.

(g) *Rental of equipment and facilities furnished by lessee.* (1)(i) The NPSL capital account shall be charged for the use of equipment and facilities owned by a lessee that are proper and necessary for NPSL operations, including shore base and offshore facilities and pipelines from the tract to shore base production facilities, and that are not NPSL property. Rental charges shall be made at rates based upon actual costs of acquisition, construction, and operation. Such rates may include labor, the cost of setting up and dismantling equipment, maintenance, repairs, other operating expenses, insurance, taxes, depreciation (calculated using a method consistent with generally accepted accounting principles, consistently applied) and a return on the remaining undepreciated basis not to exceed 8 percent per year, except that the ONRR Director may from time to time establish a different maximum percentage. Any cost of acquiring real property in excess of that reasonably required to support the facilities furnished for NPSL operations shall not be included in the costs used to establish these rates. Rates charged shall not exceed average commercial rates for equipment and facilities of similar nature and capability currently prevailing in the vicinity of the NPSL project area.

(ii) The term "equipment and facilities" is used in the broad sense to in-

30 CFR Ch. XII (7-1-17 Edition)

clude equipment that may be mobile or semimobile and also installations that may be semipermanent or permanent in nature. Such equipment and facilities listed below shall be charged on the basis indicated.

Equipment/facilities	Basis of charge
A. Mobile equipment:	
Aircraft	Hour.
Automobiles	Mile or hour.
Trucks	Mile or hour.
Tractors	Hour.
Bulldozers	Hour.
Mobile cranes	Hour.
Trailer-mounted test separators	Hour.
Truck-mounted cement mixers	Hour.
Boats	Day or hour.
House trailers	Day.
B. Semimobile equipment:	
Drill rigs	Foot or day.
Workover rigs	Hour.
Pulling units	Hour.
Derricks	Day.
Drilling tender	Day.
Barges	Day.
C. Semipermanent installations:	
Skid-mounted separators	Day or volume.
Skid-mounted compressors	Day or volume.
D. Permanent installations:	
Compressor stations	Volume.
Saltwater disposal wells	Volume or wells.
Source water wells and supply systems.	Volume.
Roads	Wells.
Production/drilling platform	Volume or wells.
Canals	Wells.
Dock	Wells.
Oil storage and loading facilities.	Volume.
Gathering systems and pipeline	Volume.
ACT systems	Volume.
Laboratory services (excluding research work).	Hour or unit.
Shore base production facilities	Volume.
Shore base support facilities	Wells.
E. Miscellaneous:	
Drill pipe	Foot or day.
Casing setting tools	Day.
Well testing equipment	Day.

Equipment and facilities that are not listed shall be charged on a basis consistent with the nature of the use.

(2) In lieu of charges in paragraph (g)(1) of this section, the lessee may elect to use average commercial rates prevailing in the vicinity of the NPSL project area less 20 percent. For automotive equipment, the lessee may elect to use rates established by the ONRR Director. For other equipment for which no commercial rate exists, the lessee shall submit the basis for determining such costs to the ONRR Director for approval.

(h) *Damages and losses to NPSL property.* All costs necessary for the repair or replacement of NPSL property made

necessary because of damages or losses incurred by fire, flood, storm, theft, accident, or other causes not covered by insurance, except those resulting from lessee's negligence or willful misconduct may be charged to the NPSL capital account. Any settlement received from an insurance carrier should be credited to NPSL operations when received.

(i) *Taxes.* All taxes, except income taxes, profit share payments, and taxes based upon income, that are assessed or levied upon or in connection with NPSL operations and which have been paid by the lessee are allowable. Allowed taxes shall include, but not be limited to, production, severance, excise, ad valorem, and mineral taxes.

(j) *Insurance.* (1) Net premiums paid for insurance required to be carried for NPSL operations are allowable. For NPSL operations in which the lessee may act as self-insurer for Workmen's Compensation and Employer's Liability, the lessee may include the risk under its self-insurance program in providing coverage under State and Federal laws and charge NPSL operations at lessee's cost not to exceed manual rates.

(2) NPSL operations shall be credited for all reimbursements for costs of damage to NPSL property or personal injury. Reimbursements for damaged NPSL property shall be credited as follows:

(i) If the damaged NPSL property is replaced or repaired, to the NPSL capital account charged for the cost of replacement or repair; or

(ii) If the damaged NPSL property is not replaced or repaired, to the NPSL capital account except that if the cost of the property originally qualified for the allowance for capital recovery in §1220.020, the credit shall be calculated pursuant to §1220.021(a)(3).

(k) *Communications.* Costs of leasing, acquiring, installing, operating, repairing and maintaining communication systems, including radio, microwave facilities, and computer production controls for the NPSL operations are allowable. If communication facilities systems serving the NPSL tract serve operations and/or facilities outside the NPSL project area, charges to NPSL operations shall be made as provided in

paragraph (g) of this section or shall be allocated to NPSL operations in accordance with §1220.014.

(l) *Ecological and environmental.* Costs incurred in the NPSL project area as a result of statutory regulations for archeological and geophysical surveys relative to identification and protection of cultural resources and other environmental or ecological surveys required by the Bureau of Land Management or other regulatory authority, may be charged to the NPSL capital account. Also, the costs to provide or have available pollution containment and removal equipment, including payments to organizations and/or funds which provide equipment and/or assistance in the event of oil spills or other environmental damage are allowable. The costs of actual control and cleanup of oil spills and resulting responsibilities required by applicable laws and regulations are allowable, except that a charge shall not be allowed for any such costs attributable to the lessee's negligence or willful misconduct.

(m) *Dry or bottom hole contributions.* The costs of dry or bottom hole contributions made to obtain information about the structure or other characteristics of the geology underlying the NPSL tract are allowable.

(n) *Abandonment costs.* Actual costs incurred in the plugging of wells, dismantling of platforms and other facilities and in the restoration of the NPSL project area shall be charged to the NPSL capital account only when incurred (*i.e.*, not on an accrual basis), except that costs incurred after the cessation of production shall not be charged to the NPSL capital account. Abandonment costs in excess of offsetting revenues shall not form the basis of any claim against the United States.

(o) *Other costs.* Any other costs not covered in paragraphs (a)–(n) of this section and not disallowed by §1220.013 that are incurred by the lessee in the necessary and proper conduct of NPSL operation and are approved by the ONRR Director, are allowable. Approval of a plan of development and production for the NPSL tract by the BOEM Director shall be considered sufficient approval for these other costs provided they are separately identified

§ 1220.012

in said plan of development and production. Such separate identification shall note the nature of these other costs and may include an estimate of their magnitude. Any cost approvals under this paragraph for which the specific amounts have not been itemized are presumed to be approved provided they fall within the limits for a prudent operator. Approval of costs under this paragraph shall be approval solely for the purposes of determining allowable costs and shall not preclude a subsequent adjustment at audit of the amount of such costs.

(p) *Other credits.* Credit shall be given to the NPSL capital account, depending on when it is incurred, for NPSL property leased or used in non-NPSL operations, for the sale of information derived from test wells and G & G, and for any and all amounts earned or otherwise due lessee as a result of NPSL operations.

[45 FR 36800, May 30, 1980. Redesignated at 48 FR 1182, Jan. 11, 1983, and at 48 FR 35642, Aug. 5, 1983, as amended at 67 FR 19112, Apr. 18, 2002; 75 FR 61087, Oct. 4, 2010]

§ 1220.012 Overhead allowance.

(a) During the capital recovery period the overhead allowance shall be calculated on a percentage basis at the rate of 4 percent of allowable direct and allocable joint costs charged to the NPSL capital account, exclusive of costs specified in paragraph (c) of this section. This overhead allowance shall be debited to the NPSL capital account in accordance with § 1220.021(b)(2).

(b) For each month after the end of the capital recovery period, an overhead allowance shall be calculated on a percentage basis at the rate of 10 percent of allowable direct and allocable joint costs charged to the NPSL capital account, exclusive of costs specified in paragraph (c) of this section. This overhead allowance shall be debited to the NPSL capital account in accordance with § 1220.021(c)(2).

(c) Overhead shall not be charged on the value of:

- (1) Lease rental (§ 1220.011(a));
- (2) Contract services (§ 1220.011(e));
- (3) Taxes (§ 1220.011(i));
- (4) Re-injected hydrocarbons, originally produced from the NPSL tract, that are charged under § 1220.011(c); and

30 CFR Ch. XII (7-1-17 Edition)

(5) Credits for materiel charged under § 1220.011(c) that are salvaged, returned, or used for the benefit of non-NPSL operations.

[45 FR 36800, May 30, 1980, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1220.013 Unallowable costs.

The following costs shall not be charged as direct or joint costs to NPSL operations:

(a) Bonus payments to the United States;

(b) Interest (except as permitted under § 1220.011(g));

(c) Depreciation, depletion, amortization, or any other charge for capital recovery for materiel charged to the NPSL capital account under § 1220.011(c), except as explicitly provided by the allowance for capital recovery calculated according to § 1220.020;

(d) The cost of taking inventory;

(e) Research and development costs;

(f) The following legal expenses:

(1) The costs of litigation against the Federal government;

(2) Fines or penalties levied by any Federal agency;

(3) Settlement of claims or other litigation resulting from the lessee's violation of regulatory requirements or negligence; and

(4) The cost of the lessee's legal staff or expense of outside attorneys, except as explicitly allowed under § 1220.011(f);

(g) The following employee relocation costs (whether incurred by the employee or the lessee):

(1) Loss on the sale of a home;

(2) Purchase price of a home in the new location;

(3) Payments for employee income taxes incident to reimbursed relocation costs; and

(4) Any relocation cost in connection with an employee move that is for the primary benefit of the lessee's non-NPSL operations;

(h) The lessee's own cost of administering employee benefit plans;

(i) The cost of acquiring or constructing shore base facilities and real property improvements that are charged to NPSL operations on a rental basis under § 1220.011(g);

(j) Rentals on any facilities, the investment costs of which have been

Natural Resources Revenue Off., Interior

§ 1220.015

charged either directly or as allocable joint costs, to the NPSL capital account; and

(k) Pre-NPSL expenditures.

[45 FR 36800, May 30, 1980, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1220.014 Allocation of joint costs and credits.

(a) Joint costs shall be grouped in cost pools for allocation to NPSL and non-NPSL operations in reasonable proportion to the beneficial or causal relationships which exist between a specific cost pool and the operations. That portion of a joint cost pool that may be allocated to NPSL operations is called an allocable joint cost.

(b) The following allocation principles apply in allocating joint costs:

(1) *G & G*. *G & G* shall be allocated on a line mile per tract basis.

(2) *Wages and salaries*. Wages and salaries that are not charged as direct on the basis of time spent on a particular job shall be allocated on a reasonable and equitable basis.

(3) *Compensated personal absence, payroll taxes and personal expenses*. These items shall be allocated on the same basis as wages and salaries.

(4) *Transportation costs*. Transportation costs for employees that are not charged direct shall be allocated on the same basis as their wages and salaries.

(c) Joint credits shall be allocated in the same manner as joint costs.

(d) When the NPSL is made a part of a unit, the allowed costs shall be charged to the NPSL capital account on the basis specified in the unit operating agreement as approved by the BSEE Director. Revenues and other credits shall be made to the NPSL accounts on the same basis as specified in the approved operating agreement. Joint costs of an NPSL and a non-NPSL tract that are adjacent to one another and are on the same structure shall be allocated on a basis approved by the BSEE Director.

§ 1220.015 Pricing of materiel purchases, transfers, and dispositions.

(a)(1) *Purchased materiel*. Except as provided in paragraph (a)(2)(i) of this section, materiel purchased for use in NPSL operations shall be charged to NPSL operations at the price paid,

after deduction of any discounts received. Should any purchased materiel be defective or returned to a vendor for other reasons, the credit shall be allocated to NPSL operations when received by the lessee in accordance with § 1220.011(c)(3).

(2) *Transferred and disposal materiel*. An item of materiel, which is acquired by the lessee for use in NPSL operations by means other than purchase or disposed of by any means, shall be priced according to this subparagraph:

(i) *Condition A (new) materiel*. (A) Tubular goods, except line pipe, shall be priced at the current market price in effect on date of movement on a minimum carload or barge load weight basis, regardless of quantity transferred, equalized to the lowest published price "free on board" (f.o.b.) railway receiving point or recognized barge terminal nearest the NPSL tract where such materiel is normally available.

(B) *Line pipe*. (1) Movement of less than 30,000 pounds shall be priced at the current price in effect at date of movement, as listed by a reliable supply store nearest the NPSL tract where such materiel is normally available.

(2) Movement of 30,000 pounds or more shall be priced under the provisions for tubular goods pricing in paragraph (a)(2)(i)(A) of this section.

(C) Other materiel shall be priced at the current price in effect at date of movement, as listed by a reliable supply store or f.o.b. railway receiving point nearest the NPSL tract where such materiel is normally available.

(ii) *Condition B (good used) materiel*. Materiel in sound and serviceable condition and suitable for reuse without reconditioning:

(A) Materiel transferred to the NPSL project area shall be priced at 75 percent of current Condition A price.

(B) Materiel transferred from the NPSL project area shall be priced:

(1) At 75 percent of current Condition A price, if the materiel was originally charged to NPSL operations as Condition A materiel, or

(2) At 65 percent of current Condition A price, if the materiel was originally charged to NPSL operations as Condition B materiel at 75 percent of current Condition A price.

§ 1220.020

(iii) *Conditions C and D (other used materiel)*—(A) *Condition C.* Materiel that is not in sound and serviceable condition and not suitable for its original function until after reconditioning shall be priced at 50 percent of current Condition A price.

(B) *Condition D.* Materiel no longer suitable for its original purposes but suitable for some other purpose shall be priced on a basis commensurate with its use and comparable with that of materiel normally used for such other purpose. If the materiel has no alternative use it should be priced at prevailing prices as scrap.

(iv) *Obsolete materiel.* Materiel that is serviceable and usable for its original function and has a value less than Condition A, B, or C materiel may be valued at a price agreed to by the Director. Such price should be the equivalent of the value of the service rendered by such materiel.

(b) *Pricing conditions.* (1) Loading and unloading costs shall be charged at a rate of 15 cents per hundred weight, or such other rate as may be set by the ONRR Director, on all tubular goods movements, in lieu of loading/unloading costs sustained, when the actual hauling costs of such tubular goods is equalized under provisions of § 1220.011(d).

(2) Materiel involving erection costs shall be charged at the applicable percentage of the current knocked-down price of new materiel.

(c) When materiel subject to paragraphs (a)(2) (ii) and (iii) of this section is transferred, the cost of reconditioning shall be borne by the receiving party.

[45 FR 36800, May 30, 1980, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1220.020 Calculation of the allowance for capital recovery.

(a) For purposes of this section, the cost base for the allowance for capital recovery in a particular month shall consist of the sum of:

(1) All allowable direct and allocable joint costs chargeable to the NPSL capital account during the month less any costs specified in § 1220.012(c); plus

(2) The value of contract services chargeable to the NPSL capital ac-

30 CFR Ch. XII (7–1–17 Edition)

count during the month pursuant to § 1220.011(e); plus

(3) The capital recovery period overhead allowance, calculated in accordance with § 1220.012(a), that is chargeable to the NPSL capital account for the month; less

(4) Production revenues and other credits received during the month.

(b) If the cost base for a month is greater than zero (that is, if the sum of the charges specified in paragraphs (a) (1) through (3) of this section exceeds the value of production revenues and other credits), the allowance for capital recovery shall be calculated by multiplying the cost base by the capital recovery factor, and shall be debited to the NPSL capital account as specified in § 1220.021(b).

(c) If the cost base for a month is less than zero, the allowance for capital recovery for the NPSL capital account shall be calculated by multiplying the resulting negative cost base by the capital recovery factor. The negative product of this calculation shall be debited to the NPSL capital account as specified in § 1220.021(b).

(d) No allowance for capital recovery shall be calculated on the charges or credits related to any time period after the end of the capital recovery period.

[45 FR 36800, May 30, 1980, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1220.021 Determination of net profit share base.

(a) During each month of the lease term, the NPSL capital account shall be:

(1) Debited with allowable direct and allocable joint costs;

(2) Credited with an amount reflecting the production revenues for the month, calculated in accordance with § 1260.110(b) of this title.

(3) Credited with amounts properly credited back to the NPSL capital account as specified in § 1220.011(p). Credits associated with charges to the NPSL capital account during the capital recovery period, however, shall first be increased by the value of the credit multiplied by the recovery factor, before crediting that sum to the NPSL capital account.

(b) At the end of each month of the lease term during the capital recovery period:

(1) The transactions specified in paragraph (a) of this section shall be made to the NPSL capital account.

(2) The capital recovery period overhead allowance shall be calculated in accordance with §1220.012(a) and debited to the NPSL capital account.

(3) The allowance for capital recovery shall be calculated in accordance with §1220.020 and the allowance debited (or the negative allowance debited, as appropriate) to the NPSL capital account. (A debit entry of a negative allowance for capital recovery shall have the same effect as a credit entry of the absolute value of the allowance for capital recovery.)

(4) The balance in the NPSL capital account shall be calculated. If, as a result of the accounting transactions described in paragraphs (b) (1) through (3) of this section, there is a credit balance in the NPSL capital account, the capital recovery period will be considered terminated as of this month. The credit balance will be forwarded to the next month, which will be the first month for which a profit share payment is due.

(c) At the end of each month of the lease term following the end of the capital recovery period:

(1) The transaction specified in paragraph (a) of this section shall be made to the NPSL capital account.

(2) An overhead allowance shall be calculated in accordance with §1220.012(b) and debited to the NPSL capital account.

(3) The balance in the NPSL capital account shall be calculated.

(d) If, as a result of the accounting transactions described in paragraph (c) of this section, there is a credit balance in the NPSL capital account, this credit balance is the net profit share base for that month. The opening debit and credit balances in the NPSL capital account for any month following a month in which there is a credit balance in the NPSL capital account (except as provided in paragraph (b)(4)) of this section shall be zero.

(e) If, as a result of the accounting transactions described in paragraph (b) or (c) of this section, there is a debit

balance in the NPSL capital account, this debit balance shall be the opening debit balance in the NPSL capital account for the following month.

(f) Any credit balance in the NPSL capital account shall become the net profit share base as described in this section. Any debit balance in the NPSL capital account shall be maintained only insofar as necessary for the determination of profit share payments. Such debit balance shall not represent a claim against the United States.

[45 FR 36800, May 30, 1980. Redesignated at 48 FR 1182, Jan. 11, 1983, and at 48 FR 35642, Aug. 5, 1983, and amended at 55 FR 1210, Jan. 12, 1990; 75 FR 61087, Oct. 4, 2010]

§ 1220.022 Calculation of net profit share payment.

The net profit share payment shall be calculated by multiplying the net profit share base calculated in accordance with §1220.021 by the net profit share rate. The net profit share payment shall be paid to the United States in accordance with §1220.031.

[45 FR 36800, May 30, 1980, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1220.030 Maintenance of records.

(a) Each lessee subject to this part 1220 shall establish and maintain such records as are necessary to determine for each NPSL:

(1) The volume and disposition of all oil and gas production saved, removed or sold for each month;

(2) The value of all oil and gas production saved, removed or sold for each month;

(3) The amount and description of costs and credits to the NPSL capital account;

(4) The amount and description of all costs of acquisition, construction, and operation of equipment and facilities furnished by the lessee and charged to the NPSL capital account under §1220.011(g). Such records shall include worksheets or other documents that indicate the method used to calculate the amount of each charge made under §1220.011(g);

(5) The cumulative balance of costs and credits to the NPSL capital account; and

(6) The inventory of materiel.

§ 1220.031

30 CFR Ch. XII (7-1-17 Edition)

(b) The ledger cards showing the charges and credits to the NPSL capital account shall be maintained until thirty-six months after the cessation of NPSL operations by the lessee. All other documents, journals and records shall be maintained for thirty-six months from the due date or date of mailing of the statement of account on an NPSL, whichever comes later, except that nothing in these regulations shall limit the time of investigation or the need to produce records when prima facie evidence of fraud or willful misconduct is obtained with respect to the government's interest in the NPSL.

[45 FR 36800, May 30, 1980, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1220.031 Reporting and payment requirements.

(a) Each lessee subject to this part shall file an annual report during the period from issuance of the NPSL until the first month in which production revenues are credited to the NPSL capital account. Such report shall list the costs incurred, including allowances applied, credits received, and the balance of the NPSL capital account. Not later than 60 days after the end of the first month in which production revenues are credited to the NPSL capital account, a final report relating to the period shall be filed.

(b) Beginning with the first month in which production revenues are credited to the NPSL capital account, each lessee subject to this part 1220 shall file a report for each NPSL, not later than 60 days following the end of each month, containing the following information for the month for which the report is filed:

(1) The volume and disposition of all oil and gas production saved, removed or sold;

(2) The production revenue;

(3) The amount and description of all costs and credits to the NPSL capital account;

(4) The balance of the NPSL capital account; and

(5) The net profit share base and net profit share payment due the United States and the monthly profit share of the lessee.

(c) Each lessee subject to this part 1220 shall submit, together with the re-

port required by paragraph (b) of this section, any net profit share payment due the United States for the period covered by the report.

(d) Each lessee subject to this part 1220 shall file a report not later than 90 days after each inventory is taken, reporting the controllable materiel on hand, acquired, transferred or used.

(e) Each lessee subject to this part 1220 shall file a final report, not later than 60 days following the cessation of production, together with the appropriate net profit share payment, indicating the remaining balance and costs and credits to the NPSL capital account for the period.

(f) Reports required by this section shall be filed with the ONRR Director, either separately or as part of the reports that are currently filed.

(g) Interest shall be calculated at the prevailing rate or rates as published in the Bulletin to the Department of the Treasury Fiscal Requirement Manual, in effect for the period or periods over which the net profit share payment is owed, compounded monthly, on the amount of a net profit share payment, from the due date (60 days following the end of each month for which the payment was due) of a net profit share payment until such payment is received by the United States.

[45 FR 36800, May 30, 1980, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1220.032 Inventories.

(a) The lessee is responsible for NPSL materiel and shall make proper and timely cost and credit notations for all materiel movements affecting NPSL property. The lessee shall provide only such materiel as may be required for immediate use or is consistent with practical, efficient, and economical operations. The accumulation of surplus stocks shall be avoided by proper materiel control, inventory and purchasing. The lessee shall make timely disposition of idle and surplus materiel through sale.

(b) At reasonable intervals, but at least once every three years, inventories of controllable materiel shall be taken by the lessee. Written notice of intention to take inventory shall be given by the lessee at least 30 days before any inventory is to be taken so

that the BOEM Director may be represented at the taking of inventory. Failure of the BOEM Director to be represented at an inventory shall bind the BOEM Director to accept the inventory taken by the lessee, except in the case of willful misrepresentation or fraud.

(c) Inventory shall be valued with any generally accepted accounting method used by the lessee to value the same materiel for financial or income tax reporting purposes, provided that the method is consistently applied throughout the life of the materiel.

(d) Reconciliation shall be made of a physical inventory with the NPSL capital account by the lessee, and a list of overages and shortages shall be available to the BOEM Director for audit as provided in § 1220.033. Inventory adjustments of controllable materiel shall be made by the lessee to the NPSL capital account for overages and shortages. Controllable materiel removed from physical inventory that has not been credited to NPSL operations under § 1220.015(a)(2) shall be credited to NPSL operations at its original value, except that when the cost of the materiel originally qualified for the allowance for capital recovery in § 1220.020, the credit shall be calculated pursuant to § 1220.021(a)(3).

[45 FR 36800, May 30, 1980, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1220.033 Audits.

(a) The accounts of an NPSL lessee or of a contractor of the lessee which are related to NPSL operations shall be subject to audit by DOI or its appointed agent. Where possible, the auditor for DOI shall coordinate audit efforts with other nonoperators, if any. DOI shall have the right to initiate an audit any time within thirty-six months of the due date of the monthly statement that is to be audited or the date that the statement was mailed, whichever is later, provided, however, that audits may not be conducted any more frequently than once every year except upon a showing of fraud or willful misrepresentation.

(b)(1) When nonoperators of an NPSL lease call an audit in accordance with the terms of their operating agreement, the ONRR Director shall be noti-

fied of the audit call in the same manner as the operator is notified. DOI may elect to send an auditor with the audit team specified by the nonoperators in lieu of calling for a separate audit by DOI.

(2) If DOI determines to call for an audit, DOI shall notify the lessee of its audit call and set a time and place for the audit. Such a notice shall be sent at least thirty days before the suggested time for the audit to allow the nonoperators to join in DOI's audit in lieu of calling for their own audit. The place for the audit will normally be the place where the lessee maintains its records pertaining to the NPSL lease. The lessee shall send copies of the notice to the nonoperators on the lease. The lessee shall use reasonable effort to notify all nonoperators, but failure to include one or more nonoperators in the notification shall not void the notice.

(3) When DOI calls for an audit, DOI may suggest the date and time when the audit may commence. The estimated duration of the audit may be mentioned to the lessee as well as to the other nonoperators who may elect to supply and auditor for their own audit purposes. The lessee's office where the audit will be held may be named or, if not known, inquired about. If a visit to a field plant or field office is contemplated by the government auditor, such a field trip may be mentioned. If DOI expresses a desire to review a period on which the thirty-six month time limitation has expired, it is the lessee's prerogative to allow the review or to request that DOI adhere to the time limitation specified in these regulations.

(c)(1) Exceptions to the accounting by the lessee, whether in favor of the government or the lessee, shall be noted in a report to the lessee. The lessee shall have 60 days from the mailing of a notice of exceptions to agree to the adjustments proposed by the DOI auditor or to object to the proposed adjustments. If the lessee accepts the proposed adjustments, the adjustment shall be booked in the month in which the lessee agrees to the adjustment, except where such adjustment would have resulted in a change in any net profit share payment due the United

§ 1220.034

States. In such a case, there shall be a redetermination of the NPSL capital account pursuant to §1220.034.

(2) If the lessee disagrees with the adjustment, the lessee shall have the right to appeal the adjustment to the ONRR Director.

(d) Upon receipt of an agreement by the government auditor that there are no required audit adjustments, upon final determination with respect to any audit adjustment proposed by the government auditor, or upon the lapse of thirty-six months from the due date or date of mailing of the statement of account on an NPSL lease, whichever comes later, the books shall be closed for audit adjustment purposes, except upon a showing of fraud or willful misrepresentation.

(e) Records required to be kept under §1220.030(a) shall be made available for inspection by any authorized agent of DOI at any time during normal business hours upon the request of the ONRR Director or other authorized official.

[45 FR 36800, May 30, 1980, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1220.034 Redetermination and appeals.

(a) If, as a result of an inspection of records or an audit under §1220.033, the ONRR Director determines that there is an error in the NPSL capital account or an error in calculating the net profit share payment, whether in favor of the government or the lessee, the ONRR Director shall redetermine the net profit share base and recalculate the net profit share payment due the United States and notify the lessee of the recalculation.

(b) The lessee shall pay any additional amount of net profit share payment owed plus interest, compounded monthly, from the date that the payment was due until the date it is actually paid. Interest shall be calculated at the prevailing rate or rates as published in the Bulletin to the Department of the Treasury Fiscal Requirements Manual, in effect for the period or periods over which the payment is owed.

(c) If the recalculated profit share payment is less than the amount paid the United States, the lessee shall

30 CFR Ch. XII (7–1–17 Edition)

apply such overpayment to the next profit share payment.

(d) Within 30 days after receiving notice of the recalculation as provided in paragraph (a) of this section, the lessee may appeal the decision of the ONRR Director in accordance with the appeals provision of 30 CFR part 1290.

[45 FR 36800, May 30, 1980, as amended at 75 FR 61087, Oct. 4, 2010]

PART 1227—DELEGATION TO STATES

DELEGATION OF ONRR ROYALTY FUNCTIONS

Sec.

1227.1 What is the purpose of this part?

1227.10 What is the authority for information collection?

1227.101 What royalty management functions may ONRR delegate to a State?

1227.102 What royalty management functions will ONRR not delegate?

DELEGATION PROPOSALS

1227.103 What must a State's delegation proposal contain?

1227.104 What will ONRR do when it receives a State's delegation proposal?

HEARING PROCESS

1227.105 What are the hearing procedures?

DELEGATION PROCESS

1227.106 What statutory requirements must a State meet to receive a delegation?

1227.107 When will the ONRR Director decide whether to approve a State's delegation proposal?

1227.108 How will ONRR notify a State of its decision?

1227.109 What if the ONRR Director denies a State's delegation proposal?

1227.110 When and for how long are delegation agreements effective?

EXISTING DELEGATIONS

1227.111 Do existing delegation agreements remain in effect?

COMPENSATION

1227.112 What compensation will a State receive to perform delegated functions?

STATES' RESPONSIBILITIES TO PERFORM DELEGATED FUNCTIONS

1227.200 What are a State's general responsibilities if it accepts a delegation?

1227.201 What standards must a State comply with for performing delegated functions?

Natural Resources Revenue Off., Interior

§ 1227.101

- 1227.300 What audit functions may a State perform?
- 1227.301 What are a State's responsibilities if it performs audits?
- 1227.400 What functions may a State perform in processing production reports and royalty reports?
- 1227.401 What are a State's responsibilities if it processes production reports or royalty reports?
- 1227.500 What functions may a State perform to ensure that reporters correct erroneous report data?
- 1227.501 What are a State's responsibilities to ensure that reporters correct erroneous data?
- 1227.600 What automated verification functions may a State perform?
- 1227.601 What are a State's responsibilities if it performs automated verification?
- 1227.700 What enforcement documents may a State issue in support of its delegated function?

PERFORMANCE REVIEW

- 1227.800 How will ONRR monitor a State's performance of delegated functions?
- 1227.801 What if a State does not adequately perform a delegated function?
- 1227.802 How will ONRR terminate a State's delegation agreement?
- 1227.803 What are the hearing procedures for terminating a State's delegation agreement?
- 1227.804 How else may a State's delegation agreement terminate?
- 1227.805 How may a State obtain a new delegation agreement after termination?

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DELEGATION OF ONRR ROYALTY FUNCTIONS

§ 1227.1 What is the purpose of this part?

This part provides procedures to delegate Federal royalty management functions to States under section 205 of the Federal Oil and Gas Royalty Management Act of 1982 (the Act), 30 U.S.C. 1735, as amended by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, Pub. L. 104-185, August 13, 1996, as corrected by Pub. L. 104-200. This part also provides procedures to delegate only audit and investigation functions to States under Pub. L. 102-154 for solid mineral leases, geothermal leases and leases subject to section 8(g)

of the Outer Continental Shelf Lands Act, 43 U.S.C. 1337(g). This part does not apply to any inspection or enforcement responsibilities of the Bureau of Land Management for onshore leases or the ONRR Offshore Minerals Management program for leases on the Outer Continental Shelf.

[62 FR 43084, Aug. 12, 1997, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1227.10 What is the authority for information collection?

(a) The Office of Management and Budget (OMB) approved the information collection requirements contained in this part under 44 U.S.C. 3501 *et seq.* The approved OMB control number is identified in 30 CFR 1210.10. We will use the information collected to review and approve delegation proposals from States wishing to perform royalty management functions.

(b) The Federal Government will reimburse some costs, as provided by statute, for delegated functions that each state performs. However, states could incur additional start-up costs, such as purchasing equipment necessary to perform a delegated function that may not be reimbursable. The ONRR estimates that each payor or reporter will coordinate their interactions and communications among the several states and with ONRR. Send comments regarding the burden estimates or any other aspect of this information collection, including suggestions for reducing burden, to the Office of Natural Resources Revenue, Attention: Rules & Regs Team, OMB Control Number 1012-0003, P.O. Box 25165, Denver, CO 80225-0165.

[62 FR 43084, Aug. 12, 1997, as amended at 75 FR 61087, Oct. 4, 2010; 76 FR 76616, Dec. 8, 2011]

§ 1227.101 What royalty management functions may ONRR delegate to a State?

(a) If there are oil and gas leases subject to the Act on Federal lands within your State, ONRR may delegate the following royalty management functions for all such Federal oil and gas leases to you under this part:

(1) Receiving and processing production or royalty reports;

§ 1227.102

(2) Correcting erroneous report data; and

(3) Performing automated verification.

(b) If there are oil and gas leases subject to the Act on Federal lands within your State, ONRR may delegate the following royalty management functions for some or all of the Federal oil and gas leases to you under this part:

(1) Conducting audits and investigations; and

(2) Issuing demands, subpoenas, and orders to perform restructured accounting, including related notices to lessees or their designees, and entering into tolling agreements under section 115(d)(1) of the Act, 30 U.S.C. 1725(d)(1).

(c) If there are oil and gas leases offshore of your State subject to section 8(g) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1337 (g), or solid mineral leases or geothermal leases on Federal lands within your State, ONRR may delegate authority to conduct audits and investigations for some or all such Federal leases.

[64 FR 36784, July 8, 1999, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1227.102 What royalty management functions will ONRR not delegate?

This section lists the principal royalty management functions that ONRR will not delegate to a State. ONRR will not delegate to a State the following functions:

(a) ONRR must collect all moneys received from sales, bonuses, rentals, royalties, civil penalties, assessments and interest. ONRR also must collect any moneys a lessee or its designee pays because of audits or other actions of a delegated State;

(b) ONRR must compare all cash and other payments it receives with payments shown on royalty reports or other documents, such as bills, to reconcile payor accounts. ONRR also must disburse all appropriate moneys to States and other revenue recipients, including refunds and interest owed to lessees and their designees;

(c) The Department of the Interior will receive, process, and decide all administrative appeals from demands or other orders issued to lessees, their designees, or any other person, includ-

30 CFR Ch. XII (7-1-17 Edition)

ing demands or orders a delegated State issues;

(d) Only ONRR may take enforcement actions other than issuing demands, subpoenas and orders to perform restructured accounting. ONRR or the appropriate Federal agency will issue notices of non-compliance and civil penalties, collect debts, write off delinquent debts, pursue litigation, enforce subpoenas, and manage any alternative dispute resolution. ONRR will conduct, coordinate and approve any settlement or other compromise of an obligation that a lessee or its designee owes;

(e) ONRR will decide all valuation policies, including issuing valuation regulations, determinations, and guidelines, and interpreting valuation regulations; and

(f) ONRR may reserve additional authorities and responsibilities not included in paragraphs (a) through (f) of this section.

[62 FR 43084, Aug. 12, 1997, as amended at 75 FR 61087, Oct. 4, 2010]

DELEGATION PROPOSALS

§ 1227.103 What must a State's delegation proposal contain?

If you want ONRR to delegate royalty management functions to you, then you must submit a delegation proposal to the Director for Office of Natural Resources Revenue. ONRR will provide you with technical assistance and information to help you prepare your delegation proposal. Your proposal must contain the following minimum information:

(a) The name and title of the State official authorized to submit the delegation proposal and execute the delegation agreement;

(b) The name, address, and telephone number of the State contact for the proposal;

(c) A copy of the legislation, State Attorney General opinion or other document that:

(1) States which State entity or entities are responsible for performing delegated functions, and if more than one entity is delegated such responsibility, the position of the highest ranking State official having ultimate authority over the collection of royalties

from leases on Federal lands within the State;

(2) Demonstrates the State's authority to:

(i) Accept a delegation from ONRR; and

(ii) Receive State or Federal appropriations to perform delegated functions;

(d) The date you propose to begin performing delegated functions;

(e) A detailed statement of the delegable functions that you propose to perform. For each function, describe the resources available in your State to perform each function, the procedures you will use to perform each function, and how you will assure that you will meet all Federal laws, lease terms, regulations and relevant performance standards. As evidence that you have or will have the resources to perform each delegable function, provide the following information:

(1) A description of the personnel you have available to perform delegated functions, including:

(i) How many persons you will assign full-time and part-time to each delegated function;

(ii) The technical qualifications of the key personnel you will assign to each function, including academic field and degree, professional credentials, and quality and amount of experience with similar functions; and

(iii) Whether these persons are currently State employees. If not, explain how you propose to hire these persons or obtain their services, and when you expect to have those persons available to perform delegated functions;

(2) A description of the facilities you will use to perform delegated functions, including:

(i) Whether you currently have the facilities in which you will physically locate the personnel and equipment you will need to perform the functions you propose to assume. If not, how you propose to acquire such facilities, and when you expect to have such facilities available; and

(ii) How much office space is available;

(3) Describe the equipment you will use to perform delegated functions, including:

(i) Hardware and software you will use to perform each delegated function, including equipment for:

(A) Document processing, including compatibility with ONRR automated systems, electronic commerce capabilities, and data storage capabilities;

(B) Accessing reference data;

(C) Contacting production or royalty reporters;

(D) Issuing demands;

(E) Maintaining accounting records;

(F) Performing automated verification;

(G) Maintaining security of confidential and proprietary information; and

(H) Providing data to other Federal agencies;

(ii) Whether you currently have the equipment you will need to perform the functions you propose to assume. If not, how you propose to acquire such equipment and when you expect to have such equipment available;

(f) Your estimates of the costs to fund the following resources necessary to perform the delegation:

(1) Personnel, including hiring, employee salaries and benefits, travel and training;

(2) Facilities, including acquisition, upgrades, operation, and maintenance; and

(3) Equipment, including acquisition, operation, and maintenance;

(g) Your plans to fund the resources under paragraph (f) of this section, including any items you will ask ONRR to fund under the delegation agreement;

(h) A statement identifying any areas where State law, including State appropriation law, may limit your ability to perform delegated functions, and an explanation of how you propose to remove any such limitation;

(i) A statement that in accordance with section 203 of the Act (30 U.S.C. 1733) persons who have access to information received under delegated functions are subject to the same provisions of law regarding confidentiality and disclosure of that information as Federal employees. Applicable laws include the Freedom of Information Act (FOIA), the Trade Secrets Act, and relevant Executive Orders. In addition, your statement must acknowledge that all documents produced, received, and

§ 1227.104

maintained as part of any delegation functions are agency records for purposes of FOIA. Therefore, persons who have access to information received under delegated functions may not use such information or provide such information to any other person, including State personnel, for purposes other than performing delegated functions. However, this limitation does not apply if the person submitting the information consents in writing to its use for other State purposes.

[62 FR 43084, Aug. 12, 1997, as amended at 67 FR 19112, Apr. 18, 2002; 75 FR 61087, Oct. 4, 2010]

§ 1227.104 What will ONRR do when it receives a State's delegation proposal?

When ONRR receives your delegation proposal, it will record the receipt date. ONRR will notify you in writing within 15 business days whether your proposal is complete. If it is not complete, ONRR will identify any missing items § 1227.103 requires. Once you submit all required information, ONRR will notify you of the date your application is complete.

[62 FR 43084, Aug. 12, 1997, as amended at 75 FR 61087, Oct. 4, 2010]

HEARING PROCESS

§ 1227.105 What are the hearing procedures?

After ONRR notifies you that your delegation proposal is complete, ONRR will schedule a hearing on your proposal, if ONRR determines a hearing is appropriate, as follows:

(a) The ONRR Director will appoint a hearing official to conduct one or more public hearings for fact finding regarding your ability to assume the delegated functions requested. The hearing official will not decide whether to approve your delegation request;

(b) The hearing official will contact you about scheduling a hearing date and location;

(c) The ONRR will publish notice of the hearing in the FEDERAL REGISTER and other appropriate media within your State;

(d) ONRR will publish notice of the proposal in the FEDERAL REGISTER. ONRR will also post the proposal on

30 CFR Ch. XII (7–1–17 Edition)

the ONRR Website, and upon request, ONRR will send a copy of the delegation proposal to the trade associations to distribute to their members, as necessary;

(e) At the hearing, you will have an opportunity to present testimony and written information in support of your proposal;

(f) Other persons may attend the hearing and may present testimony and written information for the record;

(g) ONRR will record the hearing;

(h) ONRR will maintain a record of all documents related to the proposal process;

(i) After the hearing, ONRR may require you to submit additional information in support of your delegation proposal.

[62 FR 43084, Aug. 12, 1997, as amended at 75 FR 61087, Oct. 4, 2010]

DELEGATION PROCESS

§ 1227.106 What statutory requirements must a State meet to receive a delegation?

The ONRR Director will decide whether to approve your delegation request and will ask the Secretary of the Interior to concur in the decision. That decision is solely within the ONRR Director's and the Secretary's discretion. The ONRR Director's decision, which the Secretary concurs in, is the final decision for the Department of the Interior. The ONRR Director may approve a State's request for delegation only if, based upon the State's delegation proposal and the hearing record, the ONRR Director finds that:

(a) It is likely that the State will provide adequate resources to achieve the purposes of the Act;

(b) The State has demonstrated that it will effectively and faithfully administer the ONRR regulations under the Act in accordance with subsections (c) and (d) of section 205 of the Act;

(c) Such delegation will not create an unreasonable burden on any lessee;

(d) The State agrees to adopt standardized reporting procedures ONRR prescribes for royalty and production accounting purposes, unless the State and all affected parties (including ONRR) otherwise agree;

(e) The State agrees to follow and adhere to regulations and guidelines ONRR issues under the mineral leasing laws regarding valuation of production; and

(f) Where necessary for a State to carry out and enforce a delegated activity, the State agrees to enact such laws and promulgate such regulations as are consistent with relevant Federal laws and regulations.

[62 FR 43084, Aug. 12, 1997, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1227.107 When will the ONRR Director decide whether to approve a State's delegation proposal?

The ONRR Director will decide whether to approve your delegation proposal within 90 days after your delegation proposal is considered complete under § 1227.104. ONRR may extend the 90-day period with your written consent.

[62 FR 43084, Aug. 12, 1997, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1227.108 How will ONRR notify a State of its decision?

ONRR will notify you in writing of its decision on your delegation proposal. If ONRR approves your delegation proposal, then ONRR will hold discussions with you to develop a delegation agreement detailing the functions that you will perform, the standards and requirements you must comply with to perform those functions, and any required transition period.

[62 FR 43084, Aug. 12, 1997, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1227.109 What if the ONRR Director denies a State's delegation proposal?

If the ONRR Director denies your delegation proposal, ONRR will state the reasons for denial. ONRR also will inform you in writing of the conditions you must meet to receive approval. You may submit a new delegation proposal at any time following a denial.

[62 FR 43084, Aug. 12, 1997, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1227.110 When and for how long are delegation agreements effective?

(a) Delegation agreements are effective for 3 years from the date the ONRR Director signs the delegation agreement. However, during the development of the State's delegation proposal under § 1227.108 of this part, ONRR, the delegated State, and any other affected person will determine an appropriate transition period for lessees and their designees to modify their systems to comply with any new requirements under a delegation agreement. ONRR will publish notice of the effective date of a State's delegation agreement in the FEDERAL REGISTER and that notice will inform lessees and their designees of any transition period. ONRR also will post the proposals on the ONRR Website at www.boemre.gov, and upon request, will send a copy of the delegation proposals to trade associations to distribute to their members.

(b) You may ask ONRR to renew the delegation for an additional 3 years no less than 6 months before your 3-year delegation agreement expires. You must submit your renewal request to the Director for Office of Natural Resources Revenue as follows:

(1) If you do not want to change the terms of your delegation agreement for the renewal period, you need only ask to extend your existing agreement for the 3-year renewal period. ONRR will not schedule a hearing unless you request one;

(2) If you want to change the terms of your delegation agreement for the renewal period, you must submit a new delegation proposal under this part.

(c) The ONRR Director may approve your renewal request only if ONRR determines that you are meeting the requirements of the applicable standards and regulations. If the ONRR Director denies your renewal request, ONRR will state the reasons for denial. ONRR also will inform you in writing of the conditions you must meet to receive approval. You may submit a new renewal request any time after denial.

(d) After the 3-year renewal period for your delegation agreement ends, if you wish to continue performing one or more delegated functions, you must request a new delegation agreement from

§ 1227.111

ONRR under this part. ONRR will schedule a hearing on your request, if ONRR determines a hearing is appropriate. As part of the decision whether to approve your request for a new delegation, the ONRR Director will consider whether you are meeting the requirements of the applicable standards and regulations under your existing delegation agreement.

(e) If you do not request a hearing under paragraphs (b)(1) or (d) of this section, any other affected person may submit a written request for a hearing under those paragraphs to the ONRR Associate Director for Minerals Revenue Management.

[62 FR 43084, Aug. 12, 1997, as amended at 67 FR 19112, Apr. 18, 2002; 75 FR 61087, Oct. 4, 2010]

EXISTING DELEGATIONS

§ 1227.111 Do existing delegation agreements remain in effect?

This section explains your options if you have a delegation agreement in effect on the effective date of this regulation.

(a) If you do not want to perform any royalty management functions in addition to those authorized under your existing agreement, you may continue your existing agreement until its expiration date. Before the agreement expires, if you wish to continue to perform one or more of the delegated functions you performed under the expired agreement, you must request a new delegation agreement meeting the requirements of this part and the applicable standards.

(b) If you want to perform royalty management functions in addition to those authorized under your existing agreement, you must request a new delegation agreement under this part.

(c) ONRR may extend any delegation agreement in effect on the effective date of this regulation for up to 3 years beyond the date it is due to expire.

[62 FR 43084, Aug. 12, 1997, as amended at 75 FR 61087, Oct. 4, 2010]

30 CFR Ch. XII (7–1–17 Edition)

COMPENSATION

§ 1227.112 What compensation will a State receive to perform delegated functions?

You will receive compensation for your costs to perform each delegated function subject to the following conditions:

(a) Compensation for costs is subject to Congressional appropriations;

(b) Compensation may not exceed the reasonably anticipated expenditures that ONRR would incur to perform the same function;

(c) The cost for which you request compensation must be directly related to your performance of a delegated function and necessary for your performance of that delegated function;

(d) At a minimum, you must provide vouchers detailing your expenditures quarterly during the fiscal year. However, you may agree to provide vouchers on a monthly basis in your delegation agreement;

(e) You must maintain adequate books and records to support your vouchers;

(f) ONRR will pay you quarterly or monthly during the fiscal year as stated in your delegation agreement; and

(g) ONRR may withhold compensation to you for your failure to properly perform any delegated function as provided in section 227.801 of this part.

STATES' RESPONSIBILITIES TO PERFORM DELEGATED FUNCTIONS

[62 FR 43084, Aug. 12, 1997, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1227.200 What are a State's general responsibilities if it accepts a delegation?

For each delegated function you perform, you must:

(a) Operate in compliance with all Federal laws, regulations, and Secretarial and ONRR determinations and orders relating to calculating, reporting, and paying mineral royalties and other revenues. You must seek information or guidance from ONRR regarding new, complex, or unique issues. If ONRR determines that written guidance or interpretation is appropriate, ONRR will provide the guidance or interpretation in writing to you and you

must follow the interpretation or guidance given;

(b) Comply with Generally Accepted Accounting Principles (GAAP). You must:

(1) Provide complete disclosure of financial results of activities;

(2) Maintain correct and accurate records of all mineral-related transactions and accounts;

(3) Maintain effective controls and accountability;

(4) Maintain a system of accounts that includes a comprehensive audit trail so that all entries may be traced to one or more source documents; and

(5) Maintain adequate royalty and production information for royalty management purposes;

(c) Assist ONRR in meeting the requirements of the Government Performance and Results Act (GPRA) as well as assisting in developing and endeavoring to comply with the ONRR Strategic Plan and Performance Measurements;

(d) Maintain all records you obtain or create under your delegated function, such as royalty reports, production reports, and other related information. You must maintain such records in a safe, secure manner, including taking appropriate measures for protecting confidential and proprietary information and assisting ONRR in responding to Freedom of Information Act requests when necessary. You must maintain such records for at least 7 years;

(e) Provide reports to ONRR about your activities under your delegated functions. ONRR will specify in your delegation agreement what reports you must submit and how often you must submit them. At a minimum, you must provide periodic statistical reports to ONRR summarizing the activities you carried out, such as:

(1) Production and royalty reports processed;

(2) Erroneous reports corrected;

(3) Results of automated verification findings;

(4) Number of audits performed; and

(5) Enforcement documents issued.

(f) Assist ONRR in maintaining adequate reference, royalty, and production databases as provided in the

Standards issued under § 1227.201 of this part and the delegation agreement;

(g) Develop annual work plans that:

(1) Specify the work you will perform for each delegated function; and

(2) Identify the resources you will commit to perform each delegated function;

(h) Help ONRR respond to requests for information from other Federal agencies, Congress, and the public;

(i) Cooperate with ONRR's monitoring of your delegated functions; and

(j) Comply with the *Standards* as required under § 1227.201 of this part.

§ 1227.201 What standards must a State comply with for performing delegated functions?

(a) If ONRR delegates royalty management functions to you, you must comply with the *Standards*. The *Standards* explain how you must carry out the activities under each of the delegable functions.

(b) Your delegation agreement may include additional standards specifically applicable to the functions delegated to you.

(c) Failure to comply with your delegation agreement, the *Standards*, or any of the specific standards and requirements in the delegation agreement, is grounds for termination of all or part of your delegation agreement, or other actions as provided under §§ 1227.801 and 227.802.

(d) ONRR may revise the *Standards* and will provide notice of those changes in the FEDERAL REGISTER. You must comply with any changes to the *Standards*.

[62 FR 43084, Aug. 12, 1997, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1227.300 What audit functions may a State perform?

An audit consists of an examination of records to verify that royalty reports and payments accurately reflect actual production, sales, revenues and costs, and compliance with Federal statutes, regulations, lease terms, and ONRR policy determinations.

(a) If you request delegation of audit functions, you must perform at least the following:

(1) Submitting requests for records;

§ 1227.301

(2) Examining royalty and production reports;

(3) Examining lessee production and sales records, including contracts, payments, invoices, and transportation and processing costs to substantiate production and royalty reporting;

(4) Providing assistance to ONRR for appealed demands or orders, including preparing field reports, performing remanded actions, modifying orders, and providing oral and written briefing and testimony as expert witnesses.

(b) If necessary for a particular audit, you may also perform any of the following:

(1) Issuing engagement letters;

(2) Arranging for entrance conferences;

(3) Scheduling site visits; and

(4) Issuing record releases and audit closure letters; and

(5) Holding closeout conferences.

[62 FR 43084, Aug. 12, 1997, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1227.301 What are a State's responsibilities if it performs audits?

If you perform audits you must:

(a) Comply with the *ONRR Audit Procedures Manual* and the *Government Auditing Standards* issued by the Comptroller General of the United States;

(b) Follow the ONRR Annual Audit Work Plan and 5-year Audit Strategy, which ONRR will develop in consultation with States having delegated audit authority;

(c) Agree to undertake special audit initiatives ONRR identifies targeting specific royalty issues, such as valuation or volume determinations;

(d) Prepare, construct, or compile audit work papers under the appropriate procedures, manuals, and guidelines;

(e) Prepare and submit ONRR Audit Work Plans. You may modify your Audit Work Plans with ONRR approval; and

(f) Comply with procedures for appealed demands or orders, including meeting timeframes, supplying information, and using the appropriate format.

[62 FR 43084, Aug. 12, 1997, as amended at 75 FR 61087, Oct. 4, 2010]

30 CFR Ch. XII (7–1–17 Edition)

§ 1227.400 What functions may a State perform in processing production reports or royalty reports?

Production reporters or royalty reporters provide production, sales, and royalty information on mineral production from leases that must be collected, analyzed, and corrected.

(a) If you request delegation of either production report or royalty report processing functions, you must perform at least the following:

(1) Receiving, identifying, and date stamping production reports or royalty reports;

(2) Processing production or royalty data to allow entry into a data base;

(3) Creating copies of reports by means such as electronic imaging;

(4) Timely transmitting production report or royalty report data to ONRR and other affected Federal agencies as provided in your delegation agreement and the *Standards*;

(5) Providing training and assistance to production reporters or royalty reporters;

(6) Providing production data or royalty data to ONRR and other affected Federal agencies; and

(7) Providing assistance to ONRR for appealed demands or orders, including meeting timeframes, supplying information, using the appropriate format, performing remanded actions, modifying orders, and providing oral and written briefing and testimony as expert witnesses.

(b) If you request delegation of either production report or royalty report processing functions, or both, you may perform the following functions:

(1) Granting exceptions from reporting and payment requirements for marginal properties; and

(2) Approving alternative royalty and payment requirements for unit agreements and communitization agreements.

(c) You must provide ONRR with a copy of any exceptions from reporting and payment requirements for marginal properties and any alternative royalty and payment requirements for unit agreements and communitization agreements you approve.

[62 FR 43084, Aug. 12, 1997, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1227.401 What are a State's responsibilities if it processes production reports or royalty reports?

In processing production reports or royalty reports you must:

- (a) Process reports accurately and timely as provided in the *Standards* and your delegation agreement;
- (b) Identify and resolve fatal errors to use in subsequent error correction that the State or ONRR performs;
- (c) Accept multiple forms of electronic media from reporters, as ONRR specifies;
- (d) Timely transmit required production or royalty data to ONRR and other affected Federal agencies;
- (e) Access well, lease, agreement, and reporter reference data from ONRR and provide updated information to ONRR;
- (f) For production reports, maintain adequate system software edits to ensure compliance with the provisions of 30 CFR part 1210—Forms and Reports, the ONRR *Minerals Production Reporter Handbook*, any interagency memorandum of understanding to which ONRR is a party, and the *Standards*;
- (g) For royalty reports, maintain adequate system software edits to ensure compliance with the provisions of 30 CFR part 1218, the *Oil and Gas Payor Handbook, Volume II*, "Dear Payor" letters, and the *Standards*; and
- (h) Comply with the procedures for appealed demands or orders, including meeting timeframes, supplying information, and using the appropriate format.

[62 FR 43084, Aug. 12, 1997, as amended at 67 FR 19112, Apr. 18, 2002; 73 FR 15898, Mar. 26, 2008; 75 FR 61087, Oct. 4, 2010]

§ 1227.500 What functions may a State perform to ensure that reporters correct erroneous report data?

Production data and royalty data must be edited to ensure that what is reported is correct, that disbursement is made to the proper recipient, and that correct data are used for other functions, such as automated verification and audits. If you request delegation of error correction functions for production reports or royalty reports, or both, you must perform at least the following:

- (a) Correcting all fatal errors and assigning appropriate confirmation indicators;
- (b) Verifying whether production reports are missing;
- (c) Contacting production reporters or royalty reporters about missing reports and resolving exceptions;
- (d) Documenting all corrections made, including providing production reporters or royalty reporters with confirmation reports of any changes;
- (e) Providing training and assistance to production reporters or royalty reporters;
- (f) Issuing notices, orders to report, and bills as needed, including, but not limited to, imposing assessments on a person who chronically submits erroneous reports; and
- (g) Providing assistance to ONRR for appealed demands or orders, including preparing field reports, performing remanded actions, modifying orders, and providing oral and written briefing and testimony as expert witnesses.

[62 FR 43084, Aug. 12, 1997, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1227.501 What are a State's responsibilities to ensure that reporters correct erroneous data?

To ensure the correction of erroneous data, you must:

- (a) Ensure compliance with the provisions of 30 CFR parts 1216 and 1218, any applicable handbook specified under 30 CFR 1227.401 (f) and (g), interagency memorandums of understanding to which ONRR is a party, and the *Standards*;
- (b) Ensure that reporters accurately and timely correct all fatal errors as designated in the *Standards*. These errors include, for example, invalid or incorrect reporter/payor codes, incorrect lease/agreement numbers, and missing data fields;
- (c) Submit accepted and corrected lines to ONRR to allow processing in a timely manner as provided in the *Standards* and 30 CFR part 1219; and
- (d) Comply with the procedures for appealed demands or orders, including

§ 1227.600

30 CFR Ch. XII (7–1–17 Edition)

meeting timeframes, supplying information, and using the appropriate format.

[62 FR 43064, Aug. 12, 1997, as amended at 67 FR 19112, Apr. 18, 2002; 75 FR 61087, Oct. 4, 2010]

§ 1227.600 What automated verification functions may a State perform?

Automated verification involves systematic monitoring of production and royalty reports to identify and resolve reporting or payment discrepancies. States may perform the following:

(a) Automated comparison of sales volumes reported by royalty reporters to sales and transfer volumes reported by production reporters. If you request delegation of automated comparison of sales and production volumes, you must perform at least the following functions:

(1) Performing an initial sales volume comparison between royalty and production reports;

(2) Performing subsequent comparisons when reporters adjust royalty or production reports;

(3) Checking unit prices for reasonable product valuation based on reference price ranges ONRR provides;

(4) Resolving volume variances using written correspondence, telephone inquiries, or other media;

(5) Maintaining appropriate file documentation to support case resolution; and

(6) Issuing orders to correct reports or payments;

(b) Any one or more of the following additional automated verification functions:

(1) Verifying compliance with lease financial terms, such as payment of rent, minimum royalty, and advance royalty;

(2) Identifying and resolving improper adjustments;

(3) Identifying late payments and insufficient estimates, including calculating interest owed to ONRR and verifying payor-calculated interest owed to ONRR;

(4) Calculating interest due to a lessee or its designee for an adjustment or refund, including identifying overpayments and excessive estimates;

(5) Verifying royalty rates; and

(6) Verifying compliance with transportation and processing allowance limitations;

(c) Issuing notices and bills associated with any of the functions under paragraphs (a) and (b) of this section; and

(d) Providing assistance to ONRR for any of these delegated functions on appealed demands or orders, including meeting timeframes, supplying information, using the appropriate format, taking remanded actions, modifying orders, and providing oral and written briefing and testimony as expert witnesses.

§ 1227.601 What are a State's responsibilities if it performs automated verification?

To perform automated verification of production reports or royalty reports, you must:

(a) Verify through research and analysis all identified exceptions and prepare the appropriate billings, assessment letters, warning letters, notification letters, Lease Problem Reports, other internal forms required, and correspondence required to perform any required follow-up action for each function, as specified in the *Standards* or your delegation agreement;

(b) Resolve and respond to all production reporter or royalty reporter inquiries;

(c) Maintain all documentation and logging procedures as specified in the *Standards* or your delegation agreement;

(d) Access well, lease, agreement, and production reporter or royalty reporter reference data from ONRR and provide updated information to ONRR; and

(e) Comply with procedures for appealed demands and orders, including meeting time frames, supplying information, and using the appropriate format.

§ 1227.700 What enforcement documents may a State issue in support of its delegated function?

This section explains what enforcement actions you may take as part of your delegated functions.

(a) You may issue demands, subpoenas, and orders to perform restructured accounting, including related notices to lessees and their designees. You also may enter into tolling agreements under section 15(d)(1) of the Act, 30 U.S.C. 1725(d)(1).

(b) When you issue any enforcement document you must comply with the requirements of section 115 of the Act, 30 U.S.C. 1725.

(c) When you issue a demand or enter into a tolling agreement under section 15(d)(1) of the Act, 30 U.S.C. 1725(d)(1), the highest State official having ultimate authority over the collection of royalties or the State official to whom that authority has been delegated must sign the demand or tolling agreement.

(d) When you issue a subpoena or order to perform a restructured accounting you must:

(1) Coordinate with ONRR to ensure identification of issues that may concern more than one State before you issue subpoenas and orders to perform restructured accounting; and

(2) Ensure that the highest State official having ultimate authority over the collection of royalties signs any subpoenas and orders to perform restructured accounting, as required under section 115 of the Act, 30 U.S.C. 1725. This official may not delegate signature authority to any other person.

PERFORMANCE REVIEW

§ 1227.800 How will ONRR monitor a State's performance of delegated functions?

This section explains ONRR's procedures for monitoring your performance of any of your delegated functions.

(a) A monitoring team of ONRR officials will annually review your performance of the delegated functions and compliance with your delegation agreement, the *Standards*, and 30 U.S.C. 1735, including conducting fiscal examination to verify your costs for reimbursement.

(b) The monitoring team also will:

(1) Periodically review your statistical reports required under § 1227.200(e) to verify your accuracy, timeliness, and efficiency;

(2) Check for timely transmittal of production report or royalty report information to ONRR and other affected

agencies, as applicable, to allow for proper disbursement of funds and processing of information;

(3) Coordinate on-site visits and Office of the Inspector General, General Accounting Office, and ONRR audits of your performance of your delegated functions; and

(4) Maintain reports of its monitoring activities.

[62 FR 43084, Aug. 12, 1997, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1227.801 What if a State does not adequately perform a delegated function?

If your performance of the delegated function does not comply with your delegation agreement, or the *Standards*, or if ONRR finds that you can no longer meet the statutory requirements under § 1227.106, then ONRR may:

(a) Notify you in writing of your non-compliance or inability to comply. The notice will prescribe corrective actions you must take, and how long you have to comply. You may ask ONRR for an extension of time to comply with the notice. In your extension request you must explain why you need more time; and

(b) If you do not take the prescribed corrective actions within the time that ONRR allows in a notice issued under paragraph (a) of this section, then ONRR may:

(1) Initiate proceedings under § 1227.802 to terminate all or a part of your delegation agreement;

(2) Withhold compensation provided to you under § 1227.112; and

(3) Perform the delegated function, before terminating or without terminating your delegation agreement, including, but not limited to, issuing a demand or order to a Federal lessee, or its designee, or any other person when:

(i) Your failure to issue the demand or order would result in an underpayment of an obligation due ONRR; and

(ii) The underpayment would go uncollected without ONRR intervention.

§ 1227.802 How will ONRR terminate a State's delegation agreement?

This section explains the procedures ONRR will use to terminate all or a part of your delegation agreement:

§ 1227.803

(a) ONRR will notify you in writing that it is initiating procedures to terminate your delegation agreement;

(b) ONRR will provide you notice and opportunity for a hearing under § 1227.803 of this part;

(c) The ONRR Director, with concurrence from the Secretary, will decide whether to terminate your delegation agreement.

(d) After the hearing, ONRR may:

(1) Terminate your delegation agreement; or

(2) Allow you 30 days to correct any remaining deficiencies. If you do not correct the deficiency within 30 days, ONRR will terminate all or a part of your delegation agreement.

(e) ONRR will determine the date your agreement is terminated and will notify you of that date in writing. ONRR will determine the termination date based on the number of delegated functions and the impact of the termination on all affected parties.

§ 1227.803 What are the hearing procedures for terminating a State's delegation agreement?

(a) The ONRR Director will appoint a hearing official to conduct one or more public hearings for fact finding and to determine any actions you must take to correct the noncompliance. The hearing official will not decide whether to terminate your delegation agreement;

(b) The hearing official will contact you about scheduling a hearing date and location;

(c) The hearing official will publish notice of the hearing in the FEDERAL REGISTER and other appropriate media within your State;

(d) At the hearing, you will have an opportunity to present testimony and written information on your ability to perform your delegated functions as required under this part, your delegation agreement, and the *Standards*;

(e) Other persons may attend the hearing and may present testimony and written information for the record;

(f) ONRR will record the hearing;

(g) After the hearing, ONRR may require you to submit additional information; and

30 CFR Ch. XII (7–1–17 Edition)

(h) Information presented at each public hearing will help ONRR to determine whether:

(1) You have complied with the terms and conditions of your delegation agreement; or

(2) You have the capability to comply with the requirements under § 1227.106 of this part.

[62 FR 43084, Aug. 12, 1997, as amended at 75 FR 61087, Oct. 4, 2010]

§ 1227.804 How else may a State's delegation agreement terminate?

You may request ONRR to terminate your delegation at any time by submitting your written notice of intent 6 months prior to the date on which you want to terminate. ONRR will determine the date your agreement is terminated and will notify you of that date in writing. ONRR will determine the termination date based on the number of delegated functions and the impact of the termination on all affected parties.

§ 1227.805 How may a State obtain a new delegation agreement after termination?

After your delegation agreement is terminated, you may apply again for delegation by beginning with the proposal process under this part.

PART 1228—COOPERATIVE ACTIVITIES WITH STATES AND INDIAN TRIBES

Subpart A—General Provisions

Sec.	
1228.1	Purpose.
1228.2	Policy.
1228.3	Limitation on applicability.
1228.4	Authority.
1228.5	Delegation of authority.
1228.6	Definitions.
1228.10	Information collection.

Subpart B—Oil and Gas, General [Reserved]

Subpart C—Oil and Gas, Onshore

1228.100	Entering into an agreement.
1228.101	Terms of agreement.
1228.102	Establishment of standards.
1228.103	Maintenance of records.
1228.104	Availability of information.
1228.105	Funding of cooperative agreements.

Natural Resources Revenue Off., Interior

§ 1228.6

1228.107 Eligible cost of activities.

1228.108 Deduction of civil penalties accruing to the State or tribe from the Federal share of a cooperative agreement.

AUTHORITY: Sec. 202, Pub. L. 97-451, 96 Stat. 2457 (30 U.S.C. 1732).

SOURCE: 49 FR 37348, Sept. 21, 1984, unless otherwise noted. Redesignated at 75 FR 61087, Oct. 4, 2010.

Subpart A—General Provisions

§ 1228.1 Purpose.

It is the purpose of cooperative agreements to effectively utilize the capabilities of the States and Indian tribes in developing and maintaining an efficient and effective Federal royalty management system as indicated at 30 U.S.C. 1701.

§ 1228.2 Policy.

It shall be the policy of DOI to enter into cooperative agreements with States and Indian tribes to carry out audits and related investigations and enforcement actions whenever a State or tribe initiates a request to enter into an agreement and a finding is made that a State or tribe has the ability to carry out cooperative activities in a timely and efficient manner.

§ 1228.3 Limitation on applicability.

As of the effective date of this rule, September 11, 1997, this part does not apply to Federal lands.

[62 FR 43091, Aug. 12, 1997]

§ 1228.4 Authority.

The Secretary of the Interior is authorized to enter into cooperative agreements with States and Indian tribes (30 U.S.C. 1732) to share oil or gas royalty management information, and to carry out auditing and related investigation or enforcement activities in cooperation with the Secretary.

§ 1228.5 Delegation of authority.

(a) Authority to enter into cooperative agreements to carry out audit and related investigation and enforcement activities with State and tribal governments has been delegated to the Director of the Office of Natural Resources Revenue (ONRR).

(b) Authority to enter into cooperative agreements with State and tribal governments to carry out inspection and related investigation and enforcement activities has been delegated to the Director of the Bureau of Land Management (BLM) and is not covered by this part.

(c) The entry into a cooperative agreement with either ONRR or BLM will not affect the ability of a State or Indian tribe to choose to enter into such an agreement with the other agency. A State may enter into a delegation agreement (30 U.S.C. 1735) with ONRR to perform certain functions without affecting its ability to enter into a cooperative agreement with either ONRR or BLM, or both, to cooperate in the performance of those functions which are not delegated in this part.

§ 1228.6 Definitions.

For the purposes of this part, terms shall have the same meaning as in 30 U.S.C. 1702. In addition, the following definition shall apply:

Audit means an examination of the financial accounting and lease related records of the lessee and other interest holders, who by lease or contract pay royalties or are obligated to pay royalties, rents, bonuses or other payments on Federal or Indian leases. An examination is to be conducted in accordance with generally accepted audit standards as adopted by the American Institute of Certified Public Accountants. Activities to be examined which are considered to be an audit function include reconciliation of lease accounts under the Royalty Accounting System; records of lease activities related to Federal leases located within the boundaries of the State entering into a cooperative agreement; records of lease activities related to leases located on Indian lands, and the review and resolution of exceptions processed by the official accounting systems for royalty reporters and payors maintained by the ONRR.

[49 FR 37348, Sept. 21, 1984, as amended at 67 FR 19112, Apr. 18, 2002]

§ 1228.10

30 CFR Ch. XII (7–1–17 Edition)

§ 1228.10 Information collection.

(a) The Office of Management and Budget (OMB) approved the information collection requirements contained in this part under 44 U.S.C. 3501 *et seq.* The approved OMB control number is identified in 30 CFR 1210.10. The information collected will be used to prepare a cooperative agreement with a State or Indian tribe wishing to perform royalty audits. The information should be submitted voluntarily in order to enter into a cooperative agreement authorized by 30 U.S.C. 1732.

(b) Send comments regarding the burden estimates or any other aspect of this information collection, including suggestions for reducing burden, to the Office of Natural Resources Revenue, Attention: Rules & Regs Team, OMB Control Number 1012–0003, P.O. Box 25165, Denver, CO 80225–0165.

[57 FR 41868, Sept. 14, 1992, as amended at 58 FR 64903, Dec. 10, 1993; 76 FR 76617, Dec. 8, 2011]

Subpart B—Oil and Gas, General [Reserved]

Subpart C—Oil and Gas, Onshore

§ 1228.100 Entering into an agreement.

(a) A State or Indian tribe may request the Department to enter into a cooperative agreement by sending a letter from the governor, tribal chairman, or other appropriate official with delegation authority, to the Director of ONRR.

(b) The request for an agreement shall be in a format prescribed by ONRR and should include at a minimum the following information:

(1) Type of eligible activities to be undertaken.

(2) Proposed term of the agreement.

(3) Evidence that the State or Indian tribe meets, or can meet by the time the agreement is in effect, the standards established by the Secretary for the types of activities to be conducted under the terms of the agreement.

(4) If the State is proposing to undertake activities on Indian lands located within the State, a resolution from the appropriate tribal council indicating their agreement to delegate to the State responsibilities under the terms

of the cooperative agreement for activities to be conducted on tribal or allotted land.

(c) The eligible activities to be conducted under the terms of a cooperative agreement may be funded or unfunded by the Department. See § 1228.105 of this subpart for funding of cooperative agreements.

[49 FR 37348, Sept. 21, 1984, as amended at 56 FR 10512, Mar. 13, 1991]

§ 1228.101 Terms of agreement.

(a) Agreements entered into under this part shall be valid for a period of 3 years and shall be renewable or additional consecutive 3-year periods upon request of the State or Indian tribe which is a party to the agreement.

(b) An agreement may be terminated at any time by mutual agreement and upon any terms and conditions as agreed upon by the parties.

(c) A State or Indian tribe may unilaterally terminate an agreement by giving a 120-day written notice of intent to terminate.

(d) The ONRR may commence termination of an agreement by giving a 120-day written notice of intent to terminate. ONRR shall provide the State or Indian tribe with the reasons for the proposed termination in writing if the termination is proposed because of alleged deficiencies by the State or Indian tribe in carrying out the provisions of the agreement. The State or Indian tribe will be given 60 days to respond to the notice of deficiencies and to provide a plan for correction of those deficiencies. No final action on termination shall be taken until any submission of the State or Indian tribe provided within the above prescribed 60 days has been reviewed by ONRR for content or merit.

(e) Termination of a cooperative agreement shall not bar a later request by a State or Indian tribe to enter into a subsequent cooperative agreement.

§ 1228.102 Establishment of standards.

The ONRR, after consultation with States and Indian tribes, shall establish standards for carrying out the activities under the provisions of this part. The standards will be incorporated into the agreement and shall

be no more stringent than those applicable to similar activities of the ONRR. The States and Indian tribes shall coordinate their planned auditing activities with ONRR. Where an ONRR audit team is permanently assigned to a lessee/payor, contact by State and Indian tribal auditors with the lessee/payor shall be through the ONRR auditor in residence.

§ 1228.103 Maintenance of records.

(a) The State or Indian tribe entering into a cooperative agreement under this part must retain all records, reports, working papers, and any backup materials for a period specified by ONRR. All records and support materials must be available for inspection and review by appropriate personnel of the Department including the Office of the Inspector General.

(b) The State or Indian tribe shall maintain all books and records as may be necessary to assure compliance with the provisions of chapter 1, 48 CFR 31.107 and 48 CFR subpart 31.6 (Contracts with State, local, and federally recognized Indian tribal Governments).

[56 FR 10512, Mar. 13, 1991]

§ 1228.104 Availability of information.

(a) Under the provisions of this part, information necessary to carry out the activities authorized under the terms of a cooperative agreement will be provided by DOI to the States and Indian tribes entering into such agreements. The information will consist of data provided from all relevant sources on a lease level basis for leases located within the boundaries of the State or Indian tribe which has entered into the agreement. This information will include any records or data held by the lessee or other person that have not been submitted to ONRR, but that affect Federal lease interests and could be required to be submitted under the lease terms or Federal regulations.

(b) None of the provisions of this subpart should be construed as limiting information already being provided to Indian tribes and allottees regarding their lease interests.

(c) Information will be provided by ONRR on a monthly basis and will include data on royalties, rents, and bonuses collected on the lease, volumes

produced, sales made, value of products disposed of as a sale and used as a basis for royalty calculation, and other information necessary to allow the State or tribe to carry out its responsibilities under the cooperative agreement.

(d) Proprietary data that is made available to a State or tribe under provisions of 30 U.S.C. 1733 shall be subject to the constraints of 18 U.S.C. 1905. To receive proprietary data, the State or tribe must—

(1) Demonstrate what audit, investigation, or litigation under provisions of 30 U.S.C. 1734 is planned for or underway for which this data is essential;

(2) Demonstrate why this particular data is necessary; and

(3) Agree to safeguard proprietary data as provided.

§ 1228.105 Funding of cooperative agreements.

(a)(1) The Department may, under the terms of the cooperative agreement, reimburse the State or Indian tribe up to 100 percent of the costs of eligible activities. Eligible activities will be agreed upon annually upon the submission and approval of a workplan and funding requirement.

(2) A cooperative agreement may be entered into with a State or Indian tribe, upon request, without a requirement for reimbursement of costs by the Department.

(b) All cooperative agreements under this part are subject to annual funding and the availability of appropriations specifically designated for the purpose of this part.

(c) The State or Indian tribe shall submit a voucher for reimbursement of eligible costs incurred within 30 days of the end of each calendar quarter. The State or Indian tribe must provide the Department a summary of costs incurred, for which the State or Indian tribe is seeking reimbursement, with the voucher.

[49 FR 37348, Sept. 21, 1984, as amended at 56 FR 10512, Mar. 13, 1991]

§ 1228.107 Eligible cost of activities.

(a) If a cooperative agreement provides for Federal funding, only costs directly associated with eligible activities undertaken by the State or Indian tribe under the terms of a cooperative

§ 1228.108

agreement will be eligible for reimbursement. Costs of services or activities which cannot be directly related to the support of activities specified in the agreement will not be eligible for Federal funding or for inclusion in the State's share or in the Indian tribe's share of funding that may be established in the agreement.

(b) Eligible costs are the cost of salaries and benefits associated with technical, support, and clerical personnel engaged in eligible activities; direct cost of travel, rentals, and other normal administrative activities in direct support of the project or projects; basic and specialized training for State and tribal participants; and cost of any contractual services which can be shown to be in direct support of the activities covered by the agreement. Each cooperative agreement shall contain detailed schedules identifying those activities and costs which qualify for funding and the procedures, timing, and mechanics for implementing Federal funding.

[49 FR 37348, Sept. 21, 1984, as amended at 56 FR 10512, Mar. 13, 1991]

§ 1228.108 Deduction of civil penalties accruing to the State or tribe from the Federal share of a cooperative agreement.

As provided at 30 U.S.C. 1736, 50 percent of any civil penalty collected as a result of activities under a cooperative agreement will be shared with the State or Indian tribe performing the cooperative agreement; however, the amount of the civil penalty shared will be deducted from any Federal funding owed under that cooperative agreement. ONRR shall maintain records of civil penalties collected and distributed to the States and tribes involved in cooperative agreements. Each quarterly payment of the Federal share of a cooperative agreement will be reduced by the amount of the civil penalties paid to the State or tribe during the prior quarter.

30 CFR Ch. XII (7-1-17 Edition)

PART 1229—DELEGATION TO STATES

Subpart A—General Provisions

Sec.

- 1229.1 Purpose.
- 1229.2 Policy.
- 1229.3 Limitation on applicability.
- 1229.4 Authority.
- 1229.6 Definitions.
- 1229.10 Information collection requirements.

Subpart B—Oil and Gas, General [Reserved]

Subpart C—Oil and Gas, Onshore

ADMINISTRATION OF DELEGATIONS

- 1229.100 Authorities and responsibilities subject to delegation.
- 1229.101 Petition for delegation.
- 1229.102 Fact-finding and hearings.
- 1229.103 Duration of delegations; termination of delegations.
- 1229.104 Terms of delegation of authority.
- 1229.105 Evidence of Indian agreement to delegation.
- 1229.106 Withdrawal of Indian lands from delegated authority.
- 1229.107 Disbursement of revenues.
- 1229.108 Deduction of civil penalties accruing to the State or tribe under the delegation of authority.
- 1229.109 Reimbursement for costs incurred by a State under the delegation of authority.
- 1229.110 Examination of the State activities under delegation.
- 1229.111 Materials furnished to States necessary to perform delegation.

DELEGATION REQUIREMENTS

- 1229.120 Obtaining regulatory and policy guidance.
- 1229.121 Recordkeeping requirements.
- 1229.122 Coordination of audit activities.
- 1229.123 Standards for audit activities.
- 1229.124 Documentation standards.
- 1229.125 Preparation and issuance of enforcement documents.
- 1229.126 Appeals.
- 1229.127 Reports from States.

AUTHORITY: 30 U.S.C. 1735.

Subpart A—General Provisions

SOURCE: 49 FR 37350, Sept. 21, 1984, unless otherwise noted. Redesignated at 75 FR 61087, Oct. 4, 2010.

Natural Resources Revenue Off., Interior

§ 1229.100

§ 1229.1 Purpose.

The purpose of this part is to promote the effective utilization of the capabilities of the States in developing and maintaining an efficient and effective Federal royalty management system.

§ 1229.2 Policy.

It shall be the policy of the Department of the Interior (DOI) to honor any properly made petition from the Chief Executive or other appropriate official of a State seeking delegation of authority under the provisions of 30 U.S.C. 1735 and to make a delegation to conduct audits and related investigations when the Secretary finds that the provisions of 30 U.S.C. 1735 have been complied with or can be complied with by a State seeking the delegation.

§ 1229.3 Limitation on applicability.

As of the effective date of this rule, September 11, 1997, this part does not apply to Federal lands.

[62 FR 43091, Aug. 12, 1997]

§ 1229.4 Authority.

The Secretary of the DOI is authorized under provisions of 30 U.S.C. 1735 to delegate authority to States to conduct audits and related investigations with respect to all Federal lands within a State, and to those Indian lands to which a State has received permission from the respective Indian tribe(s) or allottee(s) to carry out audit activities under a delegation from the Secretary.

§ 1229.6 Definitions.

The definitions contained in 30 U.S.C. 1702 and in part 228 of this title apply to the activities carried out under the provisions of this part.

§ 1229.10 Information collection requirements.

The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than 10 respondents annually.

Subpart B—Oil and Gas, General [Reserved]

Subpart C—Oil and Gas, Onshore

AUTHORITY: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

ADMINISTRATION OF DELEGATIONS

§ 1229.100 Authorities and responsibilities subject to delegation.

(a) All or part of the following authorities and responsibilities of the Secretary under the Act may be delegated to a State authority:

(1) Conduct of audits related to oil and gas royalty payments made to the Office of Natural Resources Revenue (ONRR) which are attributable to leased Federal or Indian lands within the State. Delegations with respect to any Indian lands require the written permission, subject to the review of the ONRR, of the affected Indian tribe or allottee.

(2) Conduct of investigations related to oil and gas royalty payments made to the ONRR which are attributable to leased Federal lands or Indian lands within the State. Delegation with respect to any Indian lands require the written permission, subject to the review of the ONRR, of the affected Indian tribe or allottee. No investigation will be initiated without the specific approval of the ONRR or the Secretary's designee and in accordance with the Departmental Manual.

(b) The following authorities and responsibilities are specifically reserved to the ONRR and are not delegable under these regulations:

(1) Enforcement actions to assess and collect additional royalties identified as a consequence of audits, inspections, and investigations. These include all actions related to resolution of royalty obligations so identified, and the establishment and maintenance of payment performance bonds which may be required during the resolution process.

(2) Enforcement actions to collect civil penalties and interest charges related to findings of audits, inspections, and investigations.

(3) Administration of all appeals and all actions of the Department related to administrative and judicial litigation.

(4) Issuance of subpoenas.

§ 1229.101

(c) The provisions of this section do not limit the authority provided to the States by section 204 of the Act.

[49 FR 40026, Oct. 12, 1984]

§ 1229.101 Petition for delegation.

(a) The governor or other authorized official of any State which contains Federal oil and gas leases, or Indian oil and gas leases where the Indian tribe and allottees have given the State an affirmative indication of their desire for the State to undertake certain royalty management-related activities on their lands, may petition the Secretary to assume responsibilities to conduct audits and related investigations of royalty related matters affecting Federal or Indian oil and gas leases within the State.

(b) A State may enter into a delegation of authority under this part without affecting a State's ability to enter into a cooperative agreement under part 228 of this title.

(c) The Secretary shall carry out all factfinding and hearings he may decide are necessary in order to approve or disapprove the petition.

(d) In the event that the Secretary denies the petition, the Secretary must provide the State with the specific reasons for denial of the petition. The State will then have 60 days to either contest or correct specific deficiencies and to reapply for a delegation of authority.

[49 FR 37350, Sept. 21, 1984. Redesignated and amended at 49 FR 40025, Oct. 12, 1984]

§ 1229.102 Fact-finding and hearings.

(a) Upon receipt of a petition for delegation from a State, the Secretary shall appoint a representative to conduct a hearing or hearings to carry out factfinding and determine the ability of the petitioning State to carry out the delegated responsibilities requested in accordance with the provisions of this part.

(b) The Secretary's representative, after proper notice in the FEDERAL REGISTER and other appropriate media within the State, shall hold one or more public hearings to determine whether:

(1) The State has an acceptable plan for carrying out delegated responsibil-

30 CFR Ch. XII (7-1-17 Edition)

ities and if it is likely that the State will provide adequate resources to achieve the purposes of this part (30 U.S.C. 1735);

(2) The State has the ability to put in place a process within 60 days of the grant of delegation which will assure the Secretary that the functions to be delegated to the State can be effectively carried out;

(3) The State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary in accordance with the requirements at 30 U.S.C. 1735;

(4) The State's plan to carry out the delegated authority will be in accordance with the ONRR standards; and

(5) The State's plan to carry out the delegated authority will be coordinated with ONRR and the Office of Inspector General audit efforts to eliminate added burden on any lessee or group of lessees operating Federal or Indian oil and gas leases within the State.

(c) A State petitioning for a delegation of authority shall be given the opportunity to present testimony at a public hearing.

[49 FR 37350, Sept. 21, 1984. Redesignated and amended at 49 FR 40025, Oct. 12, 1984]

§ 1229.103 Duration of delegations; termination of delegations.

(a) Delegations of authority shall be valid for a period of 3 years and may be renewable for an additional consecutive 3-year period upon request of the State and after the appropriate factfinding required in § 1229.101. Delegations are subject to annual funding and the availability of appropriations specifically designated for the purpose of this part.

(b) A delegation of authority may be terminated at any time and upon any terms and conditions as mutually agreed upon by the parties.

(c) A State may terminate a delegation of authority by giving a 120-day written notice of intent to terminate.

(d) The Department may terminate a delegation of authority when it is determined, after opportunity for a hearing, that the State has failed to substantially comply with the provisions of the delegation of authority.

(e) No action to initiate formal hearing proceedings for termination shall

be taken until the Department has notified the State in writing of alleged deficiencies and allowed the State 120 days to correct the deficiencies.

(f) Termination of a delegation shall not bar a subsequent request by a State to regain a delegation of authority.

[49 FR 37351, Sept. 21, 1984, as amended at 49 FR 40025, Oct. 12, 1984]

§ 1229.104 Terms of delegation of authority.

Each delegation of authority under this part shall be in writing, shall incorporate all the requirements of this part, and shall specifically include:

(a) Terms obligating the State to conduct audit and investigative activities for a specific period of time;

(b) Terms describing the authorities and responsibilities reserved by the ONRR, including, but not limited to, those specified under § 1229.100;

(c) Terms requiring the State to provide annual audit workplans to include the lease universe by company, or by individual lease accounts, a description of the audit work product(s) to be delivered, and the State resources (staff and otherwise) to be committed to the delegation;

(d) Terms requiring the State to notify the ONRR of any changed circumstances which would affect the State's ability to carry out the terms of the delegation;

(e) Terms requiring coordination of delegated activities among the State, the ONRR, and the land management agencies responsible for management of the leases included in the audit universe;

(f) Terms requiring the State to maintain and make available to the ONRR all audit workpapers, documents, and information gained or developed as a consequence of activities conducted under the delegation;

(g) Terms obligating the State to adhere to all Federal laws, rules and regulations, and Secretarial determinations and orders relating to the calculation, reporting, and payment of oil and gas royalties, in all activities performed under the delegation.

[49 FR 40026, Oct. 12, 1984]

§ 1229.105 Evidence of Indian agreement to delegation.

In the case of a State seeking a delegation of authority for Indian lands as well as Federal lands, the State petition to the Secretary must be supported by an appropriate resolution or resolutions of tribal councils joining the State in petitioning for delegation and evidence of the agreement of individual Indian allottees whose lands would be involved in a delegation. Such evidence shall specifically speak to having the State assume delegated responsibility for specific functions related to royalty management activities.

[49 FR 37351, Sept. 21, 1984. Redesignated at 49 FR 40025, Oct. 12, 1984]

§ 1229.106 Withdrawal of Indian lands from delegated authority.

If at any time an Indian tribe or an individual Indian allottee determines that it wishes to withdraw from the State delegation of authority in relation to its lands, it may do so by sending a petition of withdrawal to the State. Once the petition has been received, the State shall within 30 days cease all activities being carried out under the delegation of authority on the lands covered by the petition for the tribe or allottee.

[49 FR 37351, Sept. 21, 1984. Redesignated at 49 FR 40025, Oct. 12, 1984]

§ 1229.107 Disbursement of revenues.

(a) The additional royalties and late payment charges resulting from State audit work done under a delegation of authority shall be collected by ONRR. The State's share of any amounts so collected shall be paid to the State in accordance with the provisions of 30 U.S.C. 191 and part 1219 of this title.

(b) Amounts collected for Indian leases shall be transferred to the appropriate Indian accounts (designated Treasury accounts) managed by the Bureau of Indian Affairs at the earliest practicable date after such funds are received, but in no case later than the last business day of the month in which such funds are received.

(c) ONRR shall provide to the State on a monthly basis, an accounting of collections resulting from audit work

§ 1229.108

and enforcement actions resulting from a delegation of authority. Such accounting will identify collections broken down by royalties, penalties and interest paid.

[49 FR 40026, Oct. 12, 1984]

§ 1229.108 Deduction of civil penalties accruing to the State or tribe under the delegation of authority.

Fifty percent of any civil penalty resulting from activities under a delegation of authority shall be shared with the delegated State. However, the amount of the civil penalty shared will be deducted from any Federal funding owed under a delegation of authority under the provisions of 30 U.S.C. 1735. ONRR shall maintain records of civil penalties collected and distributed to the States involved in 30 U.S.C. 1735 delegations. Each quarterly payment will be reduced by the amount of the civil penalties paid to the delegated State or tribe during the prior quarter.

[49 FR 37351, Sept. 21, 1984. Redesignated at 49 FR 40025, Oct. 12, 1984]

§ 1229.109 Reimbursement for costs incurred by a State under the delegation of authority.

(a) The Department of the Interior (DOI) shall reimburse the State for 100 percent of the direct cost associated with the activities undertaken under the delegation of authority. The State shall maintain books and records in accordance with the standards established by the DOI and will provide the DOI, on a quarterly basis, a summary of costs incurred for which the State is seeking reimbursement. Only costs as defined under the provisions of 30 U.S.C. 1735 are eligible for reimbursement.

(b) The State shall submit a voucher for reimbursement of costs incurred within 30 days of the end of each calendar quarter.

[49 FR 37351, Sept. 21, 1984]

§ 1229.110 Examination of the State activities under delegation.

(a) The Department will carry out an annual examination of the State's delegated activities undertaken under the delegation of authority.

30 CFR Ch. XII (7-1-17 Edition)

(b) The examination required by this section will consist of a management review and a fiscal examination and evaluation to determine—

(1) That activities being carried out by the State under the delegation of authority meet the standards established by the Department and in particular the provisions of 30 U.S.C. 1735; and

(2) That costs incurred by the State under the delegation of authority are eligible for reimbursement by the Department.

[49 FR 37351, Sept. 21, 1984. Redesignated at 49 FR 40025, Oct. 12, 1984]

§ 1229.111 Materials furnished to States necessary to perform delegation.

The ONRR shall provide to the State all reports, files, and supporting materials within its possession necessary to allow the State to effectively carry out the terms of the delegation specified in § 1229.104.

[49 FR 40026, Oct. 12, 1984]

DELEGATION REQUIREMENTS

SOURCE: Sections 229.120 through 229.126 appear at 49 FR 40026, Oct. 12, 1984, unless otherwise noted.

§ 1229.120 Obtaining regulatory and policy guidance.

All activities performed by a State under a delegation must be in full accord with all Federal laws, rules and regulations, and Secretarial and agency determinations and orders relating to the calculation, reporting, and payment of oil and gas royalties. In those cases when guidance or interpretations are necessary, the State will direct written requests for such guidance or interpretation to the appropriate ONRR officials. All policy and procedural guidance or interpretation provided by the ONRR shall be in writing and shall be binding on the State.

§ 1229.121 Recordkeeping requirements.

(a) The State shall maintain in a safe and secure manner all records,

workpapers, reports, and correspondence gained or developed as a consequence of audit or investigative activities conducted under the delegation. All such records shall be made available for review and inspection upon request by representatives of the Secretary and the Department's Office of Inspector General (OIG).

(b) The State must maintain in a confidential manner all data obtained from DOI sources or from payor or company sources under the delegation which have been deemed "confidential or proprietary" by DOI or a company or payor. In this regard, the State regulatory authority shall be bound by provisions of 30 U.S.C. 1733. ONRR shall provide to the State guidelines for determining confidential and proprietary material.

(c) All records subject to the requirements of paragraph (a) must be maintained for a 6-year period measured from the end of the calendar year in which the records were created. All dispositions or records must be with the written approval of the ONRR. Upon termination of a delegation, the State shall, within 90 days from the date of termination, assemble all records specified in subsection (a), complete all working paper files in accordance with § 1229.124, and transfer such records to the ONRR.

(d) The State shall maintain complete cost records for the delegation in accordance with generally accepted accounting principles. Such records shall be in sufficient detail to demonstrate the total actual costs associated with the project and to permit a determination by ONRR whether delegation funds were used for their intended purpose. All such records shall be made available for review and inspection upon request by representatives of the Secretary and the Department's Office of Inspector General (OIG).

§ 1229.122 Coordination of audit activities.

(a) Each State with a delegation of authority shall submit annually to the ONRR an audit workplan specifically identifying leases, resources, companies, and payors scheduled for audit. This workplan must be submitted 120 days prior to the beginning of each fis-

cal year. A State may request changes to its workplan (including the companies and leases to be audited) at the end of each quarter of each fiscal year. All requested changes are subject to approval by the ONRR and must be submitted in writing.

(b) When a State plans to audit leases of a lessee or royalty payor for which there is an ONRR or OIG resident audit team, all audit activities must be coordinated through the ONRR or OIG resident supervisor. Such activities include, but are not limited to, issuance of engagement letters, arranging for entrance conferences, submission of data requests, scheduling of audit activities including site visits, submission of issue letters, and closeout conferences.

(c) The State shall consult with the ONRR and/or OIG regarding resolution of any coordination problems encountered during the conduct of delegation activities.

§ 1229.123 Standards for audit activities.

(a) All audit activities performed under a delegation of authority must be in accordance with the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" as issued by the Comptroller General of the United States.

(b) The following audit standards also shall apply to all audit work performed under a delegation of authority.

(1) *General standards*—(i) *Qualifications*. The auditors assigned to perform the audit must collectively possess adequate professional proficiency for the tasks required, including a knowledge of accounting, auditing, agency regulations, and industry operations.

(ii) *Independence*. In all matters relating to the audit work, the audit organization and the individual auditors must be free from personal or external impairments to independence and shall maintain an independent attitude and appearance.

(iii) *Due professional care*. Due professional care is to be used in conducting the audit and in preparing related reports.

(iv) *Quality control*. The State governments must institute quality control review procedures to ensure that all

audits are performed in conformity with the standards established herein.

(2) *Examination and evaluation standards—Standards and requirements for examination and evaluation.* Auditors should be alert to situations or transactions that could be indicative of fraud, abuse, or illegal acts with respect to the program. If such evidence exists, auditors should forward this evidence to ONRR. The ONRR will contact the appropriate Federal law enforcement agencies. The scope of examinations are to be governed by the principle of a justifiable relationship between cost and benefit as determined by the auditor or audit supervisor. Audit procedures should reflect the most efficient method of obtaining the requisite degree of satisfaction. The auditor should determine, to the extent possible, the effect on royalty reporting of the non-arms'-length nature of related party transactions, such as transfers of oil to refinery units affiliated with the producer. A review should be made of compliance with the appropriate laws and regulations applicable to program operations. ONRR shall issue guidelines as to the definition and nature of arms'-length and non-arms'-length transactions for use in carrying out delegated audit activities.

(3) *Standards of reporting.* (i) Written audit reports are to be submitted to the appropriate ONRR officials at the end of each field examination.

(ii) A statement in the auditors' report that the examination was made in accordance with the generally accepted program audit standards (including the applicable General Accounting Office (GAO) standards) for royalty compliance audits should be in the appropriate language to indicate that the audit was made in accordance with this statement of standards.

(iii) The auditor's report should contain a statement of positive assurance on those items tested and negative assurance on those items not tested. It should also include all instances of noncompliance and instances or indications of fraud, abuse, or illegal acts found during or in connection with the audit.

(iv) The auditor's report should contain any other material deficiency

identified during the audit not covered in paragraph (b)(3)(iii) of this section.

(v) When factors external to the program and to the auditor restrict the audit or interfere with the auditor's ability to form objective opinions and conclusions (such as denial of access to information by a company), the auditor is to notify the ONRR. If the limitation is not removed, a description of the matter must be included in the auditor's report. ONRR will take all legally enforceable steps necessary to seek information necessary to complete the audit.

(vi) If certain information is prohibited from general disclosure, the auditor's report should state the nature of the information omitted and the requirement that makes the omission necessary.

(vii) Written audit reports are to be prepared in the format prescribed by the ONRR.

(viii) In instances where the extent of the audit findings or the amounts involved do not warrant it, a formal audit report need not be issued. In lieu of an audit report, a memorandum of audit findings will be prepared and placed on the case file.

[49 FR 40026, Oct. 12, 1984, as amended at 58 FR 64903, Dec. 10, 1993]

§ 1229.124 Documentation standards.

Every audit performed by a State under a delegation of authority must meet certain documentation standards. In particular, detailed workpapers must be developed and maintained.

(a) *Workpapers* are defined to include all records obtained or created in performing an audit.

(b) Each audit performed varies in scope and detail. As a result, the audit team must determine the best presentation of the workpapers for a particular audit. The following general standards of workpaper preparation are consistent with the goal of achieving proper documentation while maintaining sufficient flexibility.

(1) All relevant information obtained orally must be promptly recorded in writing and incorporated in the workpapers.

(2) Workpapers must be complete and accurate in order to provide support for findings and conclusions.

(3) Workpapers should be clear and understandable without the need for supplementary oral explanations. The information they contain must be clear, complete, and concise, so that anyone using the workpapers will be able to readily determine their purpose, the nature and scope of the work done, and the conclusions drawn.

(4) Workpapers must be legible and as neat as practicable. They must meet standards which allow their use as evidence in judicial and administrative proceedings.

(5) The information contained in workpapers should be restricted to matters which are materially important and relevant to the objectives established for the assignment.

(6) Workpapers must be in sufficient detail to permit a subsequent independent execution of each audit procedure, assuming the target company retains its accounting documentation.

§ 1229.125 Preparation and issuance of enforcement documents.

(a) Determinations of additional royalties due resulting from audit activities conducted under a delegation of authority must be formally communicated by the State, to the companies or other payors by an issue letter prior to any enforcement action. The issue letter will serve to ensure that all audit findings are accurate and complete by obtaining advance comments from officials of the companies or payors audited. Issue letters must be prepared in a format specified by the ONRR, and transmitted to the company or payor. The company or payor shall be given 30 days from receipt of the letter to respond to the State on the findings contained in the letter.

(b) After evaluating the company or payor's response to the issue letter, the State shall draft a demand letter which will be submitted with supporting workpaper files to the ONRR for appropriate enforcement action. Any substantive revisions to the demand letter will be discussed with the State prior to issuance of the letter. Copies of all enforcement action documents shall be provided to the State by ONRR upon their issuance to the company or payor.

§ 1229.126 Appeals.

(a) Appeals made pursuant to the rules and procedures at 30 CFR parts 1243 and 1290 related to demand letters issued by officers of the ONRR for additional royalties identified under a delegation of authority shall be filed with the ONRR for processing. The State regulatory authority shall, upon the request of the ONRR, provide competent and knowledgeable staff for testimony, as well as any required documentation and analyses, in support of the lessor's position during the appeal process.

(b) An affected State, upon the request of the ONRR, shall provide expert witnesses from their audit staff for testimony as well as required documentation and analyses to support the Department's position during the litigation of court cases arising from denied appeals. The cost of providing expert witnesses including travel and per diem is reimbursable under the provisions of a delegation of authority, at the Federal Government's existing per diem rates.

§ 1229.127 Reports from States.

The State, acting under the authority of the Secretarial delegation, shall submit quarterly reports which will summarize activities carried out by the State during the preceding quarter of the year under the provisions of the delegation. The report shall include:

(a) A statistical summary of the activities carried out, e.g., number of audits performed, accounts reconciled, and other actions taken;

(b) A summary of costs incurred during the previous quarter for which the State is seeking reimbursement; and

(c) A schedule of changes which the State proposes to make from its approved plan.

[49 FR 37351, Sept. 21, 1984. Redesignated at 49 FR 40025, Oct. 12, 1984]

PART 1241—PENALTIES

Subpart A—General Provisions

Sec.

1241.1 What is the purpose of this part?

1241.2 What leases are subject to this part?

1241.3 What definitions apply to this part?

1241.4 How will ONRR serve a Notice?

§ 1241.1

- 1241.5 Which ONRR enforcement actions are subject to a hearing?
- 1241.6 Which ONRR enforcement actions are not subject to a hearing?
- 1241.7 How do I request a hearing on the record on a Notice?
- 1241.8 How will DCHD conduct the hearing on the record?
- 1241.9 May I appeal the ALJ's decision?
- 1241.10 May I seek judicial review of the IBLA decision?
- 1241.11 Does my hearing request affect a penalty?

Subpart B—Notices of Noncompliance and Civil Penalties**PENALTIES WITH A PERIOD TO CORRECT**

- 1241.50 What may ONRR do if I violate a statute, regulation, order, or lease term relating to a lease subject to this part?
- 1241.51 What if I correct the violation identified in a NONC?
- 1241.52 What if I do not correct the violation identified in a NONC?

PENALTIES WITHOUT A PERIOD TO CORRECT

- 1241.60 Am I subject to a penalty without prior notice and an opportunity to correct?

Subpart C—Penalty Amount, Interest, and Collections

- 1241.70 How does ONRR decide the amount of the penalty to assess?
- 1241.71 Do I owe interest on both the penalty amount and any underlying underpayment or unpaid debt?
- 1241.72 When must I pay the penalty?
- 1241.73 May ONRR reduce my penalty once it is assessed?
- 1241.74 How may ONRR collect my penalty?

AUTHORITY: 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

SOURCE: 81 FR 50316, Aug. 1, 2016, unless otherwise noted.

Subpart A—General Provisions**§ 1241.1 What is the purpose of this part?**

This part explains:

- (a) When you may receive a NONC, FCCP, or ILCP.
- (b) How ONRR assesses a civil penalty.
- (c) How to appeal a NONC, FCCP, or ILCP.

§ 1241.2 What leases are subject to this part?

This part applies to:

- (a) All Federal mineral leases onshore and on the OCS.
- (b) All Federally-administered mineral leases on Indian Tribal and individual Indian mineral owners' lands, regardless of the statutory authority under which the lease was issued or maintained.
- (c) All easements, rights of way, and other agreements subject to 43 U.S.C. 1337(p).

§ 1241.3 What definitions apply to this part?

- (a) Unless specifically defined in paragraph (b) of this section, the terms in this part have the same meaning as in 30 U.S.C. 1702.
- (b) The following definitions apply to this part:

Agent means any individual or other person with the actual authority of, with the apparent authority of, or designated by a person subject to FOGPMA who acts or who, with apparent authority, appears to act on behalf of the person subject to FOGPMA.

ALJ means an Administrative Law Judge in the DCHD.

Assessment means a civil penalty set out in a FCCP or ILCP; it includes a dollar amount per violation for each day the violation continues. In this part "assessment" is used consistent with 30 U.S.C. 1719(k), but is distinguishable from "assessment" as defined in 30 U.S.C. 1702(19) and used in 30 U.S.C. 1702(25). Correspondence that we send to you to update you on the amount of penalties accrued or outstanding under a FCCP or ILCP we previously served on you is not an assessment.

DCHD means the Departmental Cases Hearings Division, Office of Hearings and Appeals.

FCCP means a Failure to Correct Civil Penalty Notice; it assesses a civil penalty if you fail to correct a violation identified in a NONC.

FOGMA means the Federal Oil and Gas Royalty Management Act.

IBLA means the Interior Board of Land Appeals, Office of Hearings and Appeals.

Natural Resources Revenue Off., Interior

§ 1241.6

ILCP means an Immediate Liability Civil Penalty Notice; it identifies a violation and assesses a civil penalty for the violation even if you have not been provided prior notice and an opportunity to correct the violation.

Information means any data that you provide to an ONRR data system, or otherwise provide to us for our official records, including, but not limited to, any report, notice, affidavit, record, data, or document that you provide to us, any document that you provide to us in response to our request, and any other written information that you provide to us.

Knowingly or willfully includes an act or failure to act committed with:

- (i) Actual knowledge; or
- (ii) Deliberate ignorance; or
- (iii) Reckless disregard of the facts surrounding the event or violation; it requires no proof of specific intent to defraud.

Maintains false, inaccurate, or misleading information includes providing information to an ONRR data system, or otherwise to us for our official records, and later learning that the information that you provided was false, inaccurate, or misleading, and you do not correct that information or other information that you provided to us that you know or should know contains the same false, inaccurate, or misleading information.

NONC means a Notice of Noncompliance; it identifies a violation, specifies the corrective action that must be taken, and establishes the deadline for such action to avoid a civil penalty.

Notice means a NONC, FCCP, or ILCP, as defined in this section.

OCS means the Outer Continental Shelf.

ONRR means the Office of Natural Resources Revenue (also referred to in the regulations as “we,” “our,” and “us,” as appropriate).

RSFA means the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

Submits false, inaccurate, or misleading information means that you provide false, inaccurate, or misleading information to an ONRR data system, or otherwise to us for our official records.

Violation means any action or failure to take action that is inconsistent with

the provisions of FOGPMA, RSFA, a regulation promulgated under either of those Acts, or a Federal or Indian lease as defined by FOGPMA, as amended.

You (I) means the recipient of a NONC, FCCP, or ILCP.

§ 1241.4 How will ONRR serve a Notice?

(a) We will serve a NONC, FCCP, or ILCP as set out in FOGPMA section 109(h) (30 U.S.C. 1719) by registered mail or personal service to the addressee of record or alternate, as identified in 30 CFR 1218.540.

(b) We will consider the Notice served on the date when it was delivered to the addressee of record or alternate, as identified in 30 CFR 1218.540.

§ 1241.5 Which ONRR enforcement actions are subject to a hearing?

Except as provided by § 1241.6, you may request a hearing on:

- (a) A NONC to contest your liability.
- (b) A FCCP to contest only the civil penalty amount, unless a request for hearing was filed under paragraph (a) of this section; in which case, the requests for hearing filed under paragraph (a) and this paragraph (b) will be combined into a single proceeding.
- (c) An ILCP to contest your liability, civil penalty amount, or both. If your hearing request does not state whether you are contesting your liability for the ILCP or the penalty amount, or both, you will be deemed to have requested a hearing only on the penalty amount.

(d) You may request a hearing even if you correct the violation identified in a Notice.

§ 1241.6 Which ONRR enforcement actions are not subject to a hearing?

You may not request a hearing on:

- (a) Your liability under an order identified in a NONC, FCCP, or ILCP if you did not appeal in a timely manner the order under 30 CFR part 1290 or you appealed in a timely manner the order under 30 CFR part 1290 but have exhausted your appeal rights.
- (b) Any correspondence that we send to you to update you on the amount of penalties accrued or outstanding under a FCCP or ILCP ONRR previously served on you.

§ 1241.7

30 CFR Ch. XII (7–1–17 Edition)

§ 1241.7 How do I request a hearing on the record on a Notice?

You may request a hearing on the record before an ALJ on a Notice by filing a request within 30 days of the date of service of the Notice with the DCHD, at the address indicated in your Notice. The 30 day-period to request a hearing on the record will not be extended for any reason.

§ 1241.8 How will DCHD conduct the hearing on the record?

If you request a hearing on the record under §1241.7, an ALJ will conduct the hearing under the provisions of 43 CFR 4.420 through 4.438, except when the provisions are inconsistent with the provisions of this part. We have the burden of proving, by a preponderance of the evidence, the fact of the violation and the basis for the amount of the civil penalty. Upon completion of the hearing, the ALJ will issue a decision according to the evidence presented and the applicable law.

§ 1241.9 May I appeal the ALJ's decision?

If you are adversely affected by the ALJ's decision, you may appeal that decision to the IBLA under 43 CFR part 4, subpart E.

§ 1241.10 May I seek judicial review of the IBLA decision?

You may seek judicial review of the IBLA decision under 30 U.S.C. 1719(j) in Federal District Court. You must file a suit for judicial review in Federal District Court within 90 days after the final IBLA decision.

§ 1241.11 Does my hearing request affect a penalty?

(a) If you do not correct the violation identified in a Notice, any penalty will continue to accrue, even if you request a hearing, except as provided in paragraph (b) of this section.

(b) *Standards and procedures for obtaining a stay.* If you request in a timely manner a hearing on a Notice, you may petition the DCHD to stay the assessment or accrual of penalties pending the hearing on the record and a decision by the ALJ under §1241.8.

(1) You must file your petition for stay within 45 calendar days after you receive a Notice.

(2) You must file your petition for stay under 43 CFR 4.21(b), in which event:

(i) We may file a response to your petition within 30 days after service.

(ii) The 45-day requirement set out in 43 CFR 4.21(b)(4) for the ALJ to grant or deny the petition does not apply.

(3) If the ALJ determines that a stay is warranted, the ALJ will issue an order granting your petition, subject to your satisfaction of the following condition: within 10 days of your receipt of the order, you must post a bond or other surety instrument using the same standards and requirements as prescribed in 30 CFR part 1243, subpart B; or demonstrate financial solvency using the same standards and requirements as prescribed in 30 CFR part 1243, subpart C, for any specified, unpaid principal amount that is the subject of the Notice, any interest accrued on the principal, and the amount of any penalty set out in a Notice accrued up to the date of the ALJ order conditionally granting your petition.

(4)(i) If you satisfy the condition to post a bond or surety instrument or demonstrate financial solvency under paragraph (b)(3) of this section, the accrual of penalties will be stayed effective on the date of the ALJ's order conditionally granting your petition.

(ii) If you fail to satisfy the condition to post a bond or surety instrument or demonstrate financial solvency under paragraph (b)(3) of this section, penalties will continue to accrue.

(5) Notwithstanding paragraphs (b)(1), (2), (3), and (4) of this section, if the ALJ determines that your defense to a Notice is frivolous, and a civil penalty is owed, you will forfeit the benefit of the stay, and penalties will be calculated as if no stay had been granted.

Subpart B—Notices of Noncompliance and Civil Penalties**PENALTIES WITH A PERIOD TO CORRECT****§ 1241.50 What may ONRR do if I violate a statute, regulation, order, or lease term relating to a lease subject to this part?**

If we determine that you have not followed any requirement of a statute, regulation, order, or a term of a lease subject to this part, we may serve you with a NONC explaining:

- (a) What the violation is.
- (b) How to correct the violation to avoid a civil penalty.
- (c) That you have 20 days after the date on which you are served the NONC to correct the violation, unless the NONC specifies a longer period.

§ 1241.51 What if I correct the violation identified in a NONC?

If you correct all of the violations that we identified in the NONC within 20 days after the date on which you are served the NONC, or any longer period for correction that the NONC specifies, we will close the matter and will not assess a civil penalty. However, we will consider these violations as part of your history of noncompliance for future penalty assessments under § 1241.70(a)(2).

§ 1241.52 What if I do not correct the violation identified in a NONC?

(a) If you do not correct all of the violations that we identified in the NONC within 20 days after the date on which you are served the NONC, or any longer period that the NONC specifies for correction, then we may send you an FCCP.

(1) The FCCP will state the amount of the penalty that you must pay. The penalty will:

- (i) Begin to run on the day on which you were served with the NONC.
- (ii) Continue to accrue for each violation identified in the NONC until it is corrected.

(2) The penalty may be up to \$1,196 per day for each violation identified in the NONC that you have not corrected.

(b) If you do not correct all of the violations identified in the NONC within 40 days after you are served the

NONC, or within 20 days following the expiration of any period longer than 20 days that the NONC specifies for correction, then we may increase the penalty to a maximum of \$11,967 per day for each violation identified in the NONC that you have not corrected. The increased penalty will:

(1) Begin to run on the 40th day after the date on which you were served the NONC, or on the 20th day after the expiration of any period longer than 20 days that the NONC specifies for correction.

(2) Continue to accrue for each violation identified in the NONC until it is corrected.

[81 FR 50316, Aug. 1, 2016, as amended at 82 FR 18860, Apr. 24, 2017]

PENALTIES WITHOUT A PERIOD TO CORRECT**§ 1241.60 Am I subject to a penalty without prior notice and an opportunity to correct?**

(a) We may assess a penalty for a violation identified in paragraph (b) of this section without prior notice or first giving you an opportunity to correct the violation. We will inform you of a violation without a period to correct by issuing an ILCP explaining:

- (1) What the violation is.
- (2) The amount of the civil penalty. The civil penalty for such a violation begins running on the day it was committed.

(b) ONRR may assess a civil penalty of up to:

(1) \$23,933 per day, per violation for each day that the violation continues if you:

(i) Knowingly or willfully fail to make any royalty payment by the date specified by statute, regulation, order, or a term of the lease.

(ii) Fail or refuse to permit lawful entry, inspection, or audit, including refusal to keep, maintain, or produce documents.

(2) \$59,834 per day, per violation for each day that the violation continues if you knowingly or willfully prepare, maintain, or submit a false, inaccurate, or misleading report, notice, affidavit, record, data, or any other written information.

§ 1241.70

(c) We may use any information as evidence that you knowingly or willfully committed a violation, including:

(1) The act and failure to act of your employee or agent.

(2) An email indicating your concurrence with an issue.

(3) An order that you did not appeal or an order, NONC, or ILCP for which no further appeal is available.

(4) Any written or oral communication, identifying a violation which:

(i) You acknowledge as true and fail to correct.

(ii) You fail to or cannot further appeal and fail to correct.

(iii) You correct, but you subsequently commit the same violation.

[81 FR 50316, Aug. 1, 2016, as amended at 82 FR 18860, Apr. 24, 2017]

Subpart C—Penalty Amount, Interest, and Collections

§ 1241.70 How does ONRR decide the amount of the penalty to assess?

(a) ONRR will determine the amount of the penalty to assess by considering:

(1) The severity of the violation.

(2) Your history of noncompliance.

(3) The size of your business. To determine the size of your business, we may consider the number of employees in your company, parent company or companies, and any subsidiaries and contractors.

(b) We will not consider the royalty consequence of the underlying violation when determining the amount of the civil penalty for a violation under § 1241.50 or § 1241.60(b)(1)(ii) or (b)(2).

(c) We will post the FCCP and ILCP assessment matrices and any adjustments to the matrices on our Web site.

§ 1241.71 Do I owe interest on both the penalty amount and any underlying underpayment or unpaid debt?

(a) A penalty under this part is in addition to interest that you may owe on any underlying underpayment or unpaid debt.

(b) If you do not pay the penalty amount by the due date in the bill accompanying the FCCP or ILCP, you will owe late payment interest on the penalty amount under 30 CFR 1218.54 from the date when the civil penalty payment became due under § 1241.72

30 CFR Ch. XII (7–1–17 Edition)

until the date when you pay the civil penalty amount.

§ 1241.72 When must I pay the penalty?

(a) If you do not request a hearing on a FCCP or ILCP under this part, you must pay the penalty amount by the due date specified in the bill accompanying the FCCP or ILCP.

(b) If you request a hearing on a FCCP or ILCP under this part, the ALJ affirms the civil penalty; and

(1) You do not appeal the ALJ's decision to the IBLA under § 1241.9, you must pay the civil penalty amount determined by the ALJ within 30 days of the ALJ's decision; or

(2) You appeal the ALJ's decision to the IBLA under § 1241.9, and IBLA affirms a civil penalty; and

(i) You do not seek judicial review of the IBLA's decision under 30 U.S.C. 1719(j), you must pay the civil penalty amount that IBLA determines within 120 days of the IBLA decision; or

(ii) You seek judicial review of the IBLA decision, and a court of competent jurisdiction affirms the penalty, you must pay the penalty assessed within 30 days after the court enters a final non-appealable judgment.

§ 1241.73 May ONRR reduce my penalty once it is assessed?

ONRR's Director or his or her delegate may compromise or reduce a civil penalty assessed under this part.

§ 1241.74 How may ONRR collect my penalty?

(a) If you do not pay a civil penalty amount by the date when payment is due under § 1241.72, we may use all available means to collect the penalty, including but not limited to:

(1) Requiring the lease surety, for an amount owed by a lessee, to pay the penalty.

(2) Deducting the amount of the penalty from any sum that the United States owes you.

(3) Referring the debt to the Department of the Treasury for collection under 30 CFR part 1218, subpart J.

(4) Using the judicial process to compel your payment under 30 U.S.C. 1719(k).

(b) If ONRR uses the judicial process to compel your payment, or if you seek

Natural Resources Revenue Off., Interior

§ 1243.3

judicial review under 30 U.S.C. 1719(j), and the court upholds the assessment of a penalty, the court will have jurisdiction to award the penalty amount assessed plus interest from the date of the expiration of the 90-day period referred to in 30 U.S.C. 1719(j).

et seq., 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

SOURCE: 64 FR 26254, May 13, 1999, unless otherwise noted. Redesignated at 75 FR 61087, Oct. 4, 2010.

PART 1243—SUSPENSIONS PENDING APPEAL AND BONDING—OFFICE OF NATURAL RESOURCES REVENUE

Subpart A—General Provisions

§ 1243.1 What is the purpose of this part?

This part applies to you if you are a lessee or recipient of an order. This part explains:

(a) How you may suspend compliance with an order that you (or your designee if you are a lessee) have appealed under 30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998, or under 30 CFR part 290, subpart b; and

(b) When you or another person acting on your behalf must submit a bond or other surety or demonstrate financial solvency.

§ 1243.2 What leases are subject to this part?

This part applies to all Federal mineral leases onshore and on the Outer Continental Shelf (OCS), and to all federally-administered mineral leases on Indian tribal and individual Indian mineral owners' lands.

§ 1243.3 What definitions apply to this part?

Assessment means any fee or charge levied or imposed by the Secretary or a delegated State other than:

- (1) The principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;
- (2) Any interest; or
- (3) Any civil or criminal penalty.

Designee means the person designated by a lessee under § 1218.52 of this title to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

Lessee means any person to whom the United States, or the United States on behalf of an Indian tribe or individual Indian mineral owner, issues a lease, or any person to whom all or part of the lessee's interest or operating rights in a lease has been assigned.

Subpart A—General Provisions

Sec.

- 1243.1 What is the purpose of this part?
- 1243.2 What leases are subject to this part?
- 1243.3 What definitions apply to this part?
- 1243.4 How do I suspend compliance with an order?
- 1243.5 May another person post a bond or other surety instrument or demonstrate financial solvency on my behalf?
- 1243.6 When must I or another person meet the bonding or financial solvency requirements under this part?
- 1243.7 What must a person do when posting a bond or other surety instrument or demonstrating financial solvency on behalf of an appellant?
- 1243.8 When will ONRR suspend my obligation to comply with an order?
- 1243.9 Will ONRR continue to suspend my obligation to comply with an order if I seek judicial review in a Federal court?
- 1243.10 When will ONRR collect against a bond or other surety instrument or a person demonstrating financial solvency?
- 1243.11 May I appeal the ONRR bond-approving officer's determination of my surety amount or financial solvency?
- 1243.12 May I substitute a demonstration of financial solvency for a bond posted before the effective date of this rule?

Subpart B—Bonding Requirements

- 1243.100 What standards must my ONRR-specified surety instrument meet?
- 1243.101 How will ONRR determine the amount of my bond or other surety instrument?

Subpart C—Financial Solvency Requirements

- 1243.200 How do I demonstrate financial solvency?
- 1243.201 How will ONRR determine if I am financially solvent?
- 1243.202 When will ONRR monitor my financial solvency?

AUTHORITY: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181

§ 1243.4

ONRR bond-approving officer means the Deputy Director for Office of Natural Resources Revenue or an official to whom the Deputy Director delegates that responsibility.

ONRR-specified surety instrument means an ONRR-specified administrative appeal bond, an ONRR-specified irrevocable letter of credit, a Treasury book-entry bond or note, or a financial institution book-entry certificate of deposit.

Notice of order means the notice that ONRR or a delegated State issues to a lessee that informs the lessee that ONRR or the delegated State has issued an order to the lessee's designee.

Order means an order appealable under 30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998, under 30 CFR part 290 subpart B, or under 30 CFR part 1208.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture.

[64 FR 26254, May 13, 1999, as amended at 67 FR 19113, Apr. 18, 2002]

§ 1243.4 How do I suspend compliance with an order?

(a) If you timely appeal an order, and if that order or portion of that order:

(1) Requires you to make a payment, and you want to suspend compliance with that order, you must post a bond or other surety instrument or demonstrate financial solvency under this part, except as provided in paragraph (b) of this section; or

(2) Does not require you to make a payment, compliance with that order is suspended when you meet all requirements to file that appeal.

(b) You need not meet the requirements of paragraph (a) of this section if:

(1) The order is an assessment; or

(2) Another person agrees to fulfill these requirements on your behalf under § 1243.5.

§ 1243.5 May another person post a bond or other surety instrument or demonstrate financial solvency on my behalf?

Any other person, including a designee, payor, or affiliate, may post a bond or other surety instrument or

30 CFR Ch. XII (7-1-17 Edition)

demonstrate financial solvency under this part on behalf of an appellant required to post a bond or other surety instrument under § 1243.4(a)(1).

§ 1243.6 When must I or another person meet the bonding or financial solvency requirements under this part?

If you must meet the bonding or financial solvency requirements under § 1243.4(a)(1), or if another person is meeting your bonding or financial solvency requirements, then either you or the other person must post a bond or other surety instrument or demonstrate financial solvency within 60 days after you receive the order or the Notice of Order.

§ 1243.7 What must a person do when posting a bond or other surety instrument or demonstrating financial solvency on behalf of an appellant?

If you assume an appellant's responsibility to post a bond or other surety instrument or demonstrate financial solvency under § 1243.5, you:

(a) Must notify ONRR in writing at the address specified in § 1243.200(a) that you are assuming the appellant's responsibility under this part;

(b) May not assert that you are not otherwise liable for royalties or other payments under 30 U.S.C. 1712(a), or any other theory, as a defense if ONRR calls your bond or requires you to pay based on your demonstration of financial solvency; and

(c) May end your voluntarily-assumed responsibility for posting a bond or other surety instrument only after the appellant under this part either:

(1) Pays or posts a bond or other surety instrument; or

(2) Demonstrates financial solvency.

§ 1243.8 When will ONRR suspend my obligation to comply with an order?

(a) *Federal leases.* Subject to paragraph (d) of this section, if you appeal an order regarding the payment and reporting of royalties and other payments due from Federal mineral leases onshore or on the Outer Continental Shelf (OCS), and:

(1) If the amount under appeal is less than \$10,000 or does not require payment of a specified amount, ONRR will

suspend your obligation to comply with the order. ONRR will use the lease surety posted with the Bureau of Land Management for onshore leases, and Bureau of Ocean Energy Management for OCS leases, as collateral for the obligation; or

(2) If the amount under appeal is \$10,000 or more, ONRR will suspend your obligation to comply with that order if you:

(i) Submit an ONRR-specified surety instrument under subpart B of this part within a time period ONRR prescribes; or

(ii) Demonstrate financial solvency under subpart C.

(b) *Indian leases.* Subject to paragraph (d) of this section, if you appeal an order regarding the payment and reporting of royalties and other payments due from Indian mineral leases subject to this part, and:

(1) If the amount under appeal is less than \$1,000 or does not require payment, ONRR will suspend your obligation to comply with the order. ONRR will use the lease surety posted with the Bureau of Indian Affairs as collateral for the obligation; or

(2) If the amount under appeal is \$1,000 or more, ONRR will suspend your obligation to comply with that order if you submit an ONRR-specified surety instrument under subpart B of this part within a time period ONRR prescribes.

(c) Nothing in this part prohibits you from paying any demanded amount or complying with any other requirement pending appeal. However, voluntarily paying any demanded amount or otherwise complying with any other requirement when suspension of an order is otherwise available under these rules does not create judicially reviewable final agency action under 5 U.S.C. 704.

(d) Regardless of the amount under appeal, ONRR may inform you that it will not suspend your obligation to comply with the order under paragraph (a) or (b) of this section because suspension would harm the interests of the United States or the Indian lessor.

§ 1243.9 Will ONRR continue to suspend my obligation to comply with an order if I seek judicial review in a Federal court?

(a) If you seek judicial review of an IBLA decision or other final action of the Department of the Interior regarding an order, ONRR will suspend your obligation to comply with that order pending judicial review if you continue to meet the requirements of this part.

(b) Notwithstanding the provisions of paragraph (a) of this section, ONRR may decide that it will not suspend your obligation to comply with an order. ONRR will notify you in writing of that decision and the reasons for it.

§ 1243.10 When will ONRR collect against a bond or other surety instrument or a person demonstrating financial solvency?

(a) This section applies to you if, for an appeal of an order under this part, you:

(1) Maintain a bond or an ONRR-specified surety instrument on your own behalf or for another person; or

(2) Have demonstrated financial solvency on your own behalf or for another person.

(b) ONRR may initiate collection against the bond or other surety instrument or the person demonstrating financial solvency:

(1) If the ONRR Director or the Deputy Commissioner of Indian Affairs decides your appeal adversely to you and you do not pay the amount due or appeal that decision to the IBLA under 43 CFR part 4, subpart E;

(2) If the IBLA, the Director of the Office of Hearings and Appeals, an Assistant Secretary, or the Secretary decides your appeal adversely to you, and you do not pay the amount due or pursue judicial review within 90 days of the decision;

(3) If a court of competent jurisdiction issues a final non-appealable decision adverse to you, and you do not pay the amount due within 30 days of the decision;

(4) If you do not increase the amount of your bond or other surety instrument as required under § 1243.101(b), or otherwise fail to maintain an adequate surety instrument in effect, and you do not pay the amount due under the

§ 1243.11

order within 30 days of notice from ONRR under § 1243.101(b);

(5) If the obligation to comply with an order or decision is not suspended under § 1243.8 or § 1243.9 and you do not pay the amount required under the order or decision; or

(6) If the ONRR bond-approving officer determines that you are no longer financially solvent under § 1243.202(c), and you do not pay the order amount or post a bond or other ONRR-specified surety instrument under subpart B within 30 days of that determination.

§ 1243.11 May I appeal the ONRR bond-approving officer's determination of my surety amount or financial solvency?

Any decision on your surety amount under subpart B or your financial solvency under subpart C is final and is not subject to appeal.

§ 1243.12 May I substitute a demonstration of financial solvency for a bond posted before the effective date of this rule?

If you appealed an order before June 14, 1999 and you submitted an ONRR-specified surety instrument to suspend compliance with that order, you may replace the surety with a demonstration of financial solvency under this part at an administratively convenient time, such as when the surety instrument is due for renewal.

Subpart B—Bonding Requirements

§ 1243.100 What standards must my ONRR-specified surety instrument meet?

(a) An ONRR-specified surety instrument must be in a form specified in ONRR instructions. ONRR will give you written information and standard forms for ONRR-specified surety instrument requirements.

(b) ONRR will use a bank-rating service to determine whether a financial institution has an acceptable rating to provide a surety instrument adequate to indemnify the lessor from loss or damage.

(1) Administrative appeal bonds must be issued by a qualified surety company which the Department of the Treasury has approved.

30 CFR Ch. XII (7–1–17 Edition)

(2) Irrevocable letters of credit or certificates of deposit must be from a financial institution acceptable to ONRR with a minimum 1-year period of coverage subject to automatic renewal up to 5 years.

§ 1243.101 How will ONRR determine the amount of my bond or other surety instrument?

(a) The ONRR bond-approving officer may approve your surety if he or she determines that the amount is adequate to guarantee payment. The amount of your surety may vary depending on the form of the surety and how long the surety is effective.

(1) The amount of the ONRR-specified surety instrument must include the principal amount owed under the order plus any accrued interest we determine is owed plus projected interest for a 1-year period.

(2) Treasury book-entry bond or note amounts must be equal to at least 120 percent of the required surety amount.

(b) If your appeal is not decided within 1 year from the filing date, you must increase the surety amount to cover additional estimated interest for another 1-year period. You must continue to do this annually on the date your appeal was filed. We will determine the additional estimated interest and notify you of the amount so you can amend your surety instrument.

(c) You may submit a single surety instrument that covers multiple appeals. You may change the instrument to add new amounts under appeal or remove amounts that have been adjudicated in your favor or that you have paid if you:

(1) Amend the single surety instrument annually on the date you filed your first appeal; and

(2) Submit a separate surety instrument for new amounts under appeal until you amend the instrument to cover the new appeals.

Subpart C—Financial Solvency Requirements

§ 1243.200 How do I demonstrate financial solvency?

(a) To demonstrate financial solvency under this part, you must submit an audited consolidated balance sheet,

and, if requested by the ONRR bond-approving officer, up to 3 years of tax returns to the ONRR, Debt Collection Section using:

(1) The U.S. Postal Service or private delivery at Office of Natural Resources Revenue, Office of Enforcement, P.O. Box 25165, MS 64200B, Denver, Colorado 80225-0165; or

(2) Courier or overnight delivery at Office of Natural Resources Revenue, MS 64200B, Document Processing Team, Room A-614, Bldg 85, DFC, Denver, Colorado 80225-0165.

(b) You must submit an audited consolidated balance sheet annually, and, if requested, additional annual tax returns on the date ONRR first determined that you demonstrated financial solvency as long as you have active appeals, or whenever ONRR requests.

(c) If you demonstrate financial solvency in the current calendar year, you are not required to redemonstrate financial solvency for new appeals of orders during that calendar year unless you file for protection under any provision of the U.S. Bankruptcy Code (Title 11 of the United States Code), or ONRR notifies you that you must redemonstrate financial solvency.

[64 FR 26254, May 13, 1999, as amended at 76 FR 76617, Dec. 8, 2011]

§ 1243.201 How will ONRR determine if I am financially solvent?

(a) The ONRR bond-approving officer will determine your financial solvency by examining your total net worth, including, as appropriate, the net worth of your affiliated entities.

(b) If your net worth, minus the amount we would require as surety under subpart B for all orders you have appealed is greater than \$300 million, you are presumptively deemed financially solvent, and we will not require you to post a bond or other surety instrument.

(c) If your net worth, minus the amount we would require as surety under subpart B for all orders you have appealed is less than \$300 million, you must submit the following to the ONRR Debt Collection Section by one of the methods in § 1243.200(a):

(1) A written request asking us to consult a business-information, or

credit-reporting service or program to determine your financial solvency; and

(2) A nonrefundable \$50 processing fee:

(i) You must pay the processing fee to us following the requirements for making payments found in 30 CFR 1218.51. You are not required to use Electronic Funds Transfer (EFT) for these payments;

(ii) You must submit the fee with your request under paragraph (c)(1) of this section, and then annually on the date we first determined that you demonstrated financial solvency, as long as you are not able to demonstrate financial solvency under paragraph (a) of this section and you have active appeals.

(d) If you request that we consult a business-information or credit-reporting service or program under paragraph (c) of this section:

(1) We will use criteria similar to that which a potential creditor would use to lend an amount equal to the bond or other surety instrument we would require under subpart B;

(2) For us to consider you financially solvent, the business-information or credit-reporting service or program must demonstrate your degree of risk as low to moderate:

(i) If our bond-approving officer determines that the business-information or credit-reporting service or program information demonstrates your financial solvency to our satisfaction, our bond-approving officer will not require you to post a bond or other surety instrument under subpart B;

(ii) If our bond-approving officer determines that the business-information or credit-reporting service or program information does not demonstrate your financial solvency to our satisfaction, our bond-approving officer will require you to post a bond or other surety instrument under subpart B or pay the obligation.

§ 1243.202 When will ONRR monitor my financial solvency?

(a) If you are presumptively financially solvent under § 1243.201(b), ONRR will determine your net worth as described under §§ 1243.201(b) and (c) to evaluate your financial solvency at

§ 1243.202

least annually on the date we first determined that you demonstrated financial solvency as long as you have active appeals and each time you appeal a new order.

(b) If you ask us to consult a business-information or credit-reporting service or program under §1243.201(c), we will consult a service or program

30 CFR Ch. XII (7–1–17 Edition)

annually as long as you have active appeals and each time you appeal a new order.

(c) If our bond-approving officer determines that you are no longer financially solvent, you must post a bond or other ONRR-specified surety instrument under subpart B.

SUBCHAPTER B—APPEALS

PART 1290—APPEAL PROCEDURES

Sec.

1290.100 What is the purpose of this part?

1290.101 What leases are subject to this part?

1290.102 What definitions apply to this part?

1290.103 Who may file an appeal?

1290.104 What may I not appeal under this part?

1290.105 How do I appeal an order?

1290.106 How do lessees join a designee's appeal and how does joinder affect the appeal?

1290.107 Where are the rules concerning the effect of the Department not issuing a decision in my appeal within the statutory time frame?

1290.108 How do I appeal to the IBLA?

1290.109 How do I request an extension of time?

1290.110 How do I exhaust administrative remedies?

1290.111 What happens if I do not pay or appeal an order?

AUTHORITY: 5 U.S.C. 301 *et seq.*; 43 U.S.C. 1331.

SOURCE: 64 FR 26257, May 13, 1999, unless otherwise noted. Redesignated at 75 FR 61087, Oct. 4, 2010.

§ 1290.100 What is the purpose of this part?

This part tells you how to appeal Office of Natural Resources Revenue (ONRR) or delegated State orders concerning reporting to the Minerals Revenue Management (MRM) and the payment of royalties and other payments due under leases subject to this part.

[71 FR 51752, Aug. 31, 2006, as amended at 78 FR 30206, May 22, 2013]

§ 1290.101 What leases are subject to this part?

This part applies to:

(a) All Federal mineral leases onshore and on the Outer Continental Shelf (OCS); and

(b) All federally-administered mineral leases on Indian tribal and individual Indian mineral owners' lands, regardless of the statutory authority under which the lease was issued or maintained.

[64 FR 26257, May 13, 1999, as amended at 78 FR 30206, May 22, 2013]

§ 1290.102 What definitions apply to this part?

Assessment means any fee or charge levied or imposed by the Secretary or a delegated State other than:

(1) The principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

(2) Any interest; or

(3) Any civil or criminal penalty.

Delegated State means a State to which ONRR has delegated authority to perform royalty management functions under an agreement or agreements under regulations at 30 CFR part 1227.

Designee means the person designated by a lessee under 30 CFR 1218.52 to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

IBLA means the Interior Board of Land Appeals.

Indian lessor means an Indian tribe or individual Indian mineral owner with a beneficial or restricted interest in a property that is subject to a lease issued or administered by the Secretary on behalf of the tribe or individual Indian mineral owner.

Lease means any agreement authorizing exploration for or extraction of any mineral, regardless of whether the instrument is expressly denominated as a "lease," including any:

(1) Contract;

(2) Net profit share arrangement;

(3) Joint venture; or

(4) Agreement the Secretary approves under the Indian Mineral Development Act, 25 U.S.C. 2101 *et seq.*

Lessee means any person to whom the United States, or the United States on behalf of an Indian tribe or individual Indian mineral owner, issues a lease subject to this part, or any person to whom all or part of the lessee's interest or operating rights in a lease subject to this part has been assigned.

Notice of Order means the notice that ONRR or a delegated State issues to a lessee that informs the lessee that ONRR or the delegated State has issued an order to the lessee's designee.

Obligation means:

§ 1290.103

(1) A lessee's, designee's or payor's duty to:

(i) Deliver oil or gas royalty in kind; or

(ii) Make a lease-related payment, including royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, interest, penalty, civil penalty, or assessment; and

(2) The Secretary's duty to:

(i) Take oil or gas royalty-in-kind; or

(ii) Make a lease-related payment, refund, offset, or credit, including royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, or interest.

(3) The obligations identified in paragraphs (1)(i) and (2)(i) of this definition are nonmonetary obligations. The obligations identified in paragraphs (1)(ii) and (2)(ii), including the requirement to compute the amount of such obligations, are monetary obligations.

Order, for purposes of this part only, means any document issued by ONRR or a delegated State that contains mandatory or ordering language that requires the recipient to do any of the following for any lease subject to this part: Report, compute, or pay royalties or other obligations, report production, or provide other information.

(1) Order includes:

(i) An order to pay (Order to Pay) or to compute and pay (Order to Perform a Restructured Accounting); and

(ii) An ONRR or delegated State decision to deny a lessee's, designee's, or payor's written request that asserts an obligation due the lessee, designee, or payor (Denial).

(2) Order does not include:

(i) A non-binding request, information, or guidance, such as:

(A) Advice or guidance on how to report or pay, including a valuation determination, unless it contains mandatory or ordering language; and

(B) A policy determination;

(ii) A subpoena;

(iii) An order to pay that ONRR issues to a refiner or other person involved in disposition of royalty taken in kind;

(iv) A Notice of Noncompliance or a Notice of Civil Penalty issued under 30 U.S.C. 1719 and 30 CFR part 1241, or a decision of an administrative law judge or of the IBLA following a hearing on

30 CFR Ch. XII (7-1-17 Edition)

the record on a Notice of Noncompliance or Notice of Civil Penalty;

(v) A "Dear Payor," "Dear Operator," or "Dear Reporter" letter unless it explicitly includes the right to appeal in writing; or

(vi) Any correspondence that does not include the right to appeal in writing.

Party means ONRR, any person who files a Notice of Appeal, and any person who files a Notice of Joinder in an appeal under this part.

[64 FR 26257, May 13, 1999, as amended at 71 FR 51752, Aug. 31, 2006; 78 FR 30206, May 22, 2013; 79 FR 62050, Oct. 16, 2014]

§ 1290.103 Who may file an appeal?

(a) If you receive an order that adversely affects you or your lessee, you may appeal that order except as provided under § 1290.104.

(b) If you are a lessee and you receive a Notice of Order, and if you contest the order, you may either appeal the order or join in your designee's appeal under § 1290.106.

§ 1290.104 What may I not appeal under this part?

You may not appeal:

(a) An action that is not an order, as defined in this part; or

(b) A determination of the surety amount or financial solvency under 30 CFR part 243, parts B or C.

[64 FR 26257, May 13, 1999, as amended at 78 FR 30206, May 22, 2013]

§ 1290.105 How do I appeal an order?

(a)(1) You may appeal to the Director, Office of Natural Resources Revenue (ONRR Director), by filing a Notice of Appeal in the office of the official issuing the Order:

(i) Within 30 days from service of an Order to Pay or a Denial involving Federal or Indian mineral leases, or an Order to Perform a Restructured Accounting involving Indian mineral leases or Federal solid mineral or geothermal leases; or

(ii) Within 60 days from service of an Order to Perform a Restructured Accounting involving Federal oil and gas leases if a delegated State issued the Order to Perform a Restructured Accounting.

(2) If the ONRR Director, or other most senior career professional responsible for the ONRR royalty management program, issued the Order to Perform a Restructured Accounting for a Federal oil and gas lease, then you may appeal that order to the IBLA within 60 days under §1290.108.

(3) For appeals to the ONRR Director under paragraph (a)(1) of this section, within the same 30-day or 60-day period, whichever is applicable, you must file in the office of the official issuing the Order to Pay, Order to Perform a Restructured Accounting, or Denial, a statement of reasons, or written arguments, or brief that includes the arguments on the facts or law that you believe justify reversal or modification of the Order to Pay, Order to Perform a Restructured Accounting, or Denial.

(4) If you are a designee, when you file your Notice of Appeal, you must concurrently serve your Notice of Appeal on the lessees for the leases in the Order to Pay, Order to Perform a Restructured Accounting, or Denial you appealed.

(b) You may not request and will not receive an extension of time for filing the Notice of Appeal.

(c) If the office of the official issuing the order does not receive the Notice of Appeal within the time provided in paragraph (a) of this section, the Notice of Appeal will be considered timely if the office of the official issuing the order receives:

(1) The Notice of Appeal not later than 10 days after the required filing date; and

(2) The officer with whom the Notice of Appeal must be filed determines that the Notice of Appeal was transmitted to the proper office before the filing deadline in paragraph (a) of this section.

(d) If the Notice of Appeal is filed after the grace period provided in paragraph (c) of this section and was not transmitted to the proper office before the filing deadline in paragraph (a) of this section, the ONRR Director will not consider the Notice of Appeal and the case will be closed.

(e) The officer with whom the Notice of Appeal is filed will send the appeal and accompanying papers to the ONRR Director.

(f) The ONRR Director will review the record and render a decision in the case.

(g) If an order involves Indian leases, the Director, Bureau of Indian Affairs will exercise the functions vested in the ONRR Director.

[64 FR 26257, May 13, 1999, as amended at 76 FR 38561, July 1, 2011; 79 FR 62051, Oct. 16, 2014]

§ 1290.106 How do lessees join a designee's appeal and how does joinder affect the appeal?

(a) If you are a lessee, and your designee files an appeal under §1290.103, you may join in that appeal within 30 days after you receive your designee's Notice of Appeal under §1290.105(a)(2) by filing a Notice of Joinder with the office or official that issued the order.

(b) If you join in an appeal under paragraph (a) of this section, you are deemed to appeal the order jointly with the designee, but the designee must fulfill all requirements imposed on appellants under this part and 43 CFR part 4, subparts E and J. You may not file submissions or pleadings separately from the designee.

(c) If you are a lessee and you neither appeal nor join in your designee's appeal under this section, your designee's actions with respect to the appeal and any decisions in the appeal bind you.

(d) If you are a designee and you decide to discontinue participation in the appeal, you must serve written notice within 30 days before the next submission or pleading is due on:

(1) All lessees who have joined in the appeal under paragraph (a) of this section;

(2) The office or officer with whom any subsequent submissions or pleadings must be filed, including the IBLA; and

(3) All other parties to the appeal.

(e) If you have joined in the appeal under paragraph (a) of this section, and if the designee notifies you under paragraph (d) of this section that it declines to further pursue the appeal, you become an appellant and must then meet all requirements of this part and 43 CFR part 4, subparts E and J, as the appellant.

[64 FR 26257, May 13, 1999, as amended at 78 FR 30206, May 22, 2013]

§ 1290.107 Where are the rules concerning the effect of the Department not issuing a decision in my appeal within the statutory time frame?

If your appeal involves monetary or nonmonetary obligations under Federal oil and gas leases, the rules concerning the effect of the Department not issuing a final decision in your appeal within the 33-month period prescribed under 30 U.S.C. 1724(h) are located in 43 CFR part 4, subpart J.

§ 1290.108 How do I appeal to the IBLA?

(a) Any party to a case adversely affected by an order the ONRR Director issues or a decision the ONRR Director or Director, Bureau of Indian Affairs issues under this part shall have a right of appeal to the IBLA under the procedures provided in 43 CFR part 4, subpart E.

(b) Notwithstanding 43 CFR 4.414(a), a party shall file an answer or appropriate motion within 60 days after service of the statement of reasons for appeal unless an extension of time is requested and granted.

[79 FR 62051, Oct. 16, 2014]

§ 1290.109 How do I request an extension of time?

(a) If you are a party to an appeal under this part, and you need additional time after the appeal commences under 43 CFR 4.904 for any purpose:

(1) You may obtain an extension of time under this section; and

(2) You must submit a written request for an extension of time to:

(i) The office or official with whom you must file a document before the required filing date; or

(ii) If you are not seeking an extension of time to file a document, to the office or official before whom the appeal is pending.

(b) If you are an appellant, and if your appeal involves monetary or nonmonetary obligations under Federal oil and gas leases, you must agree in writing in your request to extend the period in which the Department must issue a final decision in your appeal under 30 U.S.C. 1724(h) and 43 CFR 4.906,

by the amount of time for which you are requesting an extension.

(c) If you are any other party to an appeal involving monetary or nonmonetary obligations under Federal oil and gas leases, the office or official with whom you must file the request may require you to submit a written agreement signed by the appellant to extend the period in which the Department must issue a final decision in the appeal under 43 CFR 4.906, by the amount of time for which you are requesting an extension.

(d) The office or official with whom you must file your request may decline any request for an extension of time.

(e) You must serve your request on all parties to the appeal.

[64 FR 26257, May 13, 1999, as amended at 78 FR 30206, May 22, 2013]

§ 1290.110 How do I exhaust administrative remedies?

(a) To exhaust administrative remedies, you must appeal an Office of Natural Resources Revenue (ONRR) or delegated State order:

(1) To the ONRR Director (or the Director, Bureau of Indian Affairs when Indian lands are involved); and

(2) Subsequently to the Interior Board of Land Appeals under 30 CFR part 1290, and 43 CFR part 4.

(b) This section does not apply if an order was made effective by:

(1) The Assistant Secretary for Policy, Management and Budget;

(2) The Assistant Secretary for Indian Affairs; or

(3) The Interior Board of Land Appeals under 43 CFR part 4.

(4) The Interior Board of Land Appeals under 43 CFR part 4.

[64 FR 50753, Sept. 20, 1999, as amended at 76 FR 38561, July 1, 2011; 79 FR 62051, Oct. 16, 2014]

§ 1290.111 What happens if I do not pay or appeal an order?

If you neither pay nor appeal an order under this part, that order is the final decision of the Department, you have failed to exhaust administrative remedies as required under § 1290.110(a), and you may not contest the validity or merits of that order in any subsequent proceeding to enforce that order

Natural Resources Revenue Off., Interior

§ 1290.111

under 30 U.S.C. 1719 and part 1241 of
this chapter.

PARTS 1291–1299 [RESERVED]

[79 FR 62051, Oct. 16, 2014]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters

Alphabetical List of Agencies Appearing in the CFR

List of CFR Sections Affected

Table of CFR Titles and Chapters

(Revised as of July 1, 2017)

Title 1—General Provisions

- I Administrative Committee of the Federal Register (Parts 1—49)
- II Office of the Federal Register (Parts 50—299)
- III Administrative Conference of the United States (Parts 300—399)
- IV Miscellaneous Agencies (Parts 400—500)

Title 2—Grants and Agreements

SUBTITLE A—OFFICE OF MANAGEMENT AND BUDGET GUIDANCE FOR GRANTS AND AGREEMENTS

- I Office of Management and Budget Governmentwide Guidance for Grants and Agreements (Parts 2—199)
- II Office of Management and Budget Guidance (Parts 200—299)

SUBTITLE B—FEDERAL AGENCY REGULATIONS FOR GRANTS AND AGREEMENTS

- III Department of Health and Human Services (Parts 300—399)
- IV Department of Agriculture (Parts 400—499)
- VI Department of State (Parts 600—699)
- VII Agency for International Development (Parts 700—799)
- VIII Department of Veterans Affairs (Parts 800—899)
- IX Department of Energy (Parts 900—999)
- X Department of the Treasury (Parts 1000—1099)
- XI Department of Defense (Parts 1100—1199)
- XII Department of Transportation (Parts 1200—1299)
- XIII Department of Commerce (Parts 1300—1399)
- XIV Department of the Interior (Parts 1400—1499)
- XV Environmental Protection Agency (Parts 1500—1599)
- XVIII National Aeronautics and Space Administration (Parts 1800—1899)
- XX United States Nuclear Regulatory Commission (Parts 2000—2099)
- XXII Corporation for National and Community Service (Parts 2200—2299)
- XXIII Social Security Administration (Parts 2300—2399)
- XXIV Housing and Urban Development (Parts 2400—2499)
- XXV National Science Foundation (Parts 2500—2599)
- XXVI National Archives and Records Administration (Parts 2600—2699)
- XXVII Small Business Administration (Parts 2700—2799)

Title 2—Grants and Agreements—Continued

Chap.	
XXVIII	Department of Justice (Parts 2800—2899)
XXIX	Department of Labor (Parts 2900—2999)
XXX	Department of Homeland Security (Parts 3000—3099)
XXXI	Institute of Museum and Library Services (Parts 3100—3199)
XXXII	National Endowment for the Arts (Parts 3200—3299)
XXXIII	National Endowment for the Humanities (Parts 3300—3399)
XXXIV	Department of Education (Parts 3400—3499)
XXXV	Export-Import Bank of the United States (Parts 3500—3599)
XXXVI	Office of National Drug Control Policy, Executive Office of the President (Parts 3600—3699)
XXXVII	Peace Corps (Parts 3700—3799)
LVIII	Election Assistance Commission (Parts 5800—5899)
LIX	Gulf Coast Ecosystem Restoration Council (Parts 5900—5999)

Title 3—The President

I	Executive Office of the President (Parts 100—199)

Title 4—Accounts

I	Government Accountability Office (Parts 1—199)

Title 5—Administrative Personnel

I	Office of Personnel Management (Parts 1—1199)
II	Merit Systems Protection Board (Parts 1200—1299)
III	Office of Management and Budget (Parts 1300—1399)
IV	Office of Personnel Management and Office of the Director of National Intelligence (Parts 1400—1499)
V	The International Organizations Employees Loyalty Board (Parts 1500—1599)
VI	Federal Retirement Thrift Investment Board (Parts 1600—1699)
VIII	Office of Special Counsel (Parts 1800—1899)
IX	Appalachian Regional Commission (Parts 1900—1999)
XI	Armed Forces Retirement Home (Parts 2100—2199)
XIV	Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)
XVI	Office of Government Ethics (Parts 2600—2699)
XXI	Department of the Treasury (Parts 3100—3199)
XXII	Federal Deposit Insurance Corporation (Parts 3200—3299)
XXIII	Department of Energy (Parts 3300—3399)
XXIV	Federal Energy Regulatory Commission (Parts 3400—3499)
XXV	Department of the Interior (Parts 3500—3599)
XXVI	Department of Defense (Parts 3600—3699)
XXVIII	Department of Justice (Parts 3800—3899)

Title 5—Administrative Personnel—Continued

Chap.	
XXIX	Federal Communications Commission (Parts 3900—3999)
XXX	Farm Credit System Insurance Corporation (Parts 4000—4099)
XXXI	Farm Credit Administration (Parts 4100—4199)
XXXIII	Overseas Private Investment Corporation (Parts 4300—4399)
XXXIV	Securities and Exchange Commission (Parts 4400—4499)
XXXV	Office of Personnel Management (Parts 4500—4599)
XXXVI	Department of Homeland Security (Parts 4600—4699)
XXXVII	Federal Election Commission (Parts 4700—4799)
XL	Interstate Commerce Commission (Parts 5000—5099)
XLI	Commodity Futures Trading Commission (Parts 5100—5199)
XLII	Department of Labor (Parts 5200—5299)
XLIII	National Science Foundation (Parts 5300—5399)
XLV	Department of Health and Human Services (Parts 5500—5599)
XLVI	Postal Rate Commission (Parts 5600—5699)
XLVII	Federal Trade Commission (Parts 5700—5799)
XLVIII	Nuclear Regulatory Commission (Parts 5800—5899)
XLIX	Federal Labor Relations Authority (Parts 5900—5999)
L	Department of Transportation (Parts 6000—6099)
LII	Export-Import Bank of the United States (Parts 6200—6299)
LIII	Department of Education (Parts 6300—6399)
LIV	Environmental Protection Agency (Parts 6400—6499)
LV	National Endowment for the Arts (Parts 6500—6599)
LVI	National Endowment for the Humanities (Parts 6600—6699)
LVII	General Services Administration (Parts 6700—6799)
LVIII	Board of Governors of the Federal Reserve System (Parts 6800—6899)
LIX	National Aeronautics and Space Administration (Parts 6900—6999)
LX	United States Postal Service (Parts 7000—7099)
LXI	National Labor Relations Board (Parts 7100—7199)
LXII	Equal Employment Opportunity Commission (Parts 7200—7299)
LXIII	Inter-American Foundation (Parts 7300—7399)
LXIV	Merit Systems Protection Board (Parts 7400—7499)
LXV	Department of Housing and Urban Development (Parts 7500—7599)
LXVI	National Archives and Records Administration (Parts 7600—7699)
LXVII	Institute of Museum and Library Services (Parts 7700—7799)
LXVIII	Commission on Civil Rights (Parts 7800—7899)
LXIX	Tennessee Valley Authority (Parts 7900—7999)
LXX	Court Services and Offender Supervision Agency for the District of Columbia (Parts 8000—8099)
LXXI	Consumer Product Safety Commission (Parts 8100—8199)
LXXIII	Department of Agriculture (Parts 8300—8399)
LXXIV	Federal Mine Safety and Health Review Commission (Parts 8400—8499)

Title 5—Administrative Personnel—Continued

Chap.

LXXVI	Federal Retirement Thrift Investment Board (Parts 8600—8699)
LXXVII	Office of Management and Budget (Parts 8700—8799)
LXXX	Federal Housing Finance Agency (Parts 9000—9099)
LXXXIII	Special Inspector General for Afghanistan Reconstruction (Parts 9300—9399)
LXXXIV	Bureau of Consumer Financial Protection (Parts 9400—9499)
LXXXVI	National Credit Union Administration (Parts 9600—9699)
XCVII	Department of Homeland Security Human Resources Management System (Department of Homeland Security—Office of Personnel Management) (Parts 9700—9799)
XCVIII	Council of the Inspectors General on Integrity and Efficiency (Parts 9800—9899)
XCIX	Military Compensation and Retirement Modernization Commission (Parts 9900—9999)
C	National Council on Disability (Parts 10000—10049)

Title 6—Domestic Security

I	Department of Homeland Security, Office of the Secretary (Parts 1—199)
X	Privacy and Civil Liberties Oversight Board (Parts 1000—1099)

Title 7—Agriculture

	SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE (PARTS 0—26)
	SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE
I	Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)
II	Food and Nutrition Service, Department of Agriculture (Parts 210—299)
III	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)
IV	Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)
V	Agricultural Research Service, Department of Agriculture (Parts 500—599)
VI	Natural Resources Conservation Service, Department of Agriculture (Parts 600—699)
VII	Farm Service Agency, Department of Agriculture (Parts 700—799)
VIII	Grain Inspection, Packers and Stockyards Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)
IX	Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)
X	Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

Title 7—Agriculture—Continued

Chap.	
XI	Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)
XIV	Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)
XV	Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)
XVI	Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)
XVII	Rural Utilities Service, Department of Agriculture (Parts 1700—1799)
XXVIII	Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)
XX	Local Television Loan Guarantee Board (Parts 2200—2299)
XXV	Office of Advocacy and Outreach, Department of Agriculture (Parts 2500—2599)
XXVI	Office of Inspector General, Department of Agriculture (Parts 2600—2699)
XXVII	Office of Information Resources Management, Department of Agriculture (Parts 2700—2799)
XXVIII	Office of Operations, Department of Agriculture (Parts 2800—2899)
XXIX	Office of Energy Policy and New Uses, Department of Agriculture (Parts 2900—2999)
XXX	Office of the Chief Financial Officer, Department of Agriculture (Parts 3000—3099)
XXXI	Office of Environmental Quality, Department of Agriculture (Parts 3100—3199)
XXXII	Office of Procurement and Property Management, Department of Agriculture (Parts 3200—3299)
XXXIII	Office of Transportation, Department of Agriculture (Parts 3300—3399)
XXXIV	National Institute of Food and Agriculture (Parts 3400—3499)
XXXV	Rural Housing Service, Department of Agriculture (Parts 3500—3599)
XXXVI	National Agricultural Statistics Service, Department of Agriculture (Parts 3600—3699)
XXXVII	Economic Research Service, Department of Agriculture (Parts 3700—3799)
XXXVIII	World Agricultural Outlook Board, Department of Agriculture (Parts 3800—3899)
XLI	[Reserved]
XLII	Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture (Parts 4200—4299)

Title 8—Aliens and Nationality

I	Department of Homeland Security (Immigration and Naturalization) (Parts 1—499)

Chap. **Title 8—Aliens and Nationality—Continued**

- V Executive Office for Immigration Review, Department of Justice
(Parts 1000—1399)

Title 9—Animals and Animal Products

- I Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)
II Grain Inspection, Packers and Stockyards Administration
(Packers and Stockyards Programs), Department of Agriculture (Parts 200—299)
III Food Safety and Inspection Service, Department of Agriculture
(Parts 300—599)

Title 10—Energy

- I Nuclear Regulatory Commission (Parts 0—199)
II Department of Energy (Parts 200—699)
III Department of Energy (Parts 700—999)
X Department of Energy (General Provisions) (Parts 1000—1099)
XIII Nuclear Waste Technical Review Board (Parts 1300—1399)
XVII Defense Nuclear Facilities Safety Board (Parts 1700—1799)
XVIII Northeast Interstate Low-Level Radioactive Waste Commission
(Parts 1800—1899)

Title 11—Federal Elections

- I Federal Election Commission (Parts 1—9099)
II Election Assistance Commission (Parts 9400—9499)

Title 12—Banks and Banking

- I Comptroller of the Currency, Department of the Treasury (Parts 1—199)
II Federal Reserve System (Parts 200—299)
III Federal Deposit Insurance Corporation (Parts 300—399)
IV Export-Import Bank of the United States (Parts 400—499)
V Office of Thrift Supervision, Department of the Treasury (Parts 500—599)
VI Farm Credit Administration (Parts 600—699)
VII National Credit Union Administration (Parts 700—799)
VIII Federal Financing Bank (Parts 800—899)
IX Federal Housing Finance Board (Parts 900—999)
X Bureau of Consumer Financial Protection (Parts 1000—1099)
XI Federal Financial Institutions Examination Council (Parts 1100—1199)
XII Federal Housing Finance Agency (Parts 1200—1299)
XIII Financial Stability Oversight Council (Parts 1300—1399)
XIV Farm Credit System Insurance Corporation (Parts 1400—1499)

Chap. **Title 12—Banks and Banking—Continued**

- XV Department of the Treasury (Parts 1500—1599)
- XVI Office of Financial Research (Parts 1600—1699)
- XVII Office of Federal Housing Enterprise Oversight, Department of
 Housing and Urban Development (Parts 1700—1799)
- XVIII Community Development Financial Institutions Fund, Depart-
 ment of the Treasury (Parts 1800—1899)

Title 13—Business Credit and Assistance

- I Small Business Administration (Parts 1—199)
- III Economic Development Administration, Department of Com-
 merce (Parts 300—399)
- IV Emergency Steel Guarantee Loan Board (Parts 400—499)
- V Emergency Oil and Gas Guaranteed Loan Board (Parts 500—599)

Title 14—Aeronautics and Space

- I Federal Aviation Administration, Department of Transportation
 (Parts 1—199)
- II Office of the Secretary, Department of Transportation (Aviation
 Proceedings) (Parts 200—399)
- III Commercial Space Transportation, Federal Aviation Adminis-
 tration, Department of Transportation (Parts 400—1199)
- V National Aeronautics and Space Administration (Parts 1200—
 1299)
- VI Air Transportation System Stabilization (Parts 1300—1399)

Title 15—Commerce and Foreign Trade

SUBTITLE A—OFFICE OF THE SECRETARY OF COMMERCE (PARTS 0—
29)

SUBTITLE B—REGULATIONS RELATING TO COMMERCE AND FOREIGN
TRADE

- I Bureau of the Census, Department of Commerce (Parts 30—199)
- II National Institute of Standards and Technology, Department of
 Commerce (Parts 200—299)
- III International Trade Administration, Department of Commerce
 (Parts 300—399)
- IV Foreign-Trade Zones Board, Department of Commerce (Parts
 400—499)
- VII Bureau of Industry and Security, Department of Commerce
 (Parts 700—799)
- VIII Bureau of Economic Analysis, Department of Commerce (Parts
 800—899)
- IX National Oceanic and Atmospheric Administration, Department
 of Commerce (Parts 900—999)
- XI Technology Administration, Department of Commerce (Parts
 1100—1199)
- XIII East-West Foreign Trade Board (Parts 1300—1399)

Title 15—Commerce and Foreign Trade—Continued

Chap.

- XIV Minority Business Development Agency (Parts 1400—1499)
SUBTITLE C—REGULATIONS RELATING TO FOREIGN TRADE AGREEMENTS
- XX Office of the United States Trade Representative (Parts 2000—2099)
SUBTITLE D—REGULATIONS RELATING TO TELECOMMUNICATIONS AND INFORMATION
- XXIII National Telecommunications and Information Administration, Department of Commerce (Parts 2300—2399)

Title 16—Commercial Practices

- I Federal Trade Commission (Parts 0—999)
- II Consumer Product Safety Commission (Parts 1000—1799)

Title 17—Commodity and Securities Exchanges

- I Commodity Futures Trading Commission (Parts 1—199)
- II Securities and Exchange Commission (Parts 200—399)
- IV Department of the Treasury (Parts 400—499)

Title 18—Conservation of Power and Water Resources

- I Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)
- III Delaware River Basin Commission (Parts 400—499)
- VI Water Resources Council (Parts 700—799)
- VIII Susquehanna River Basin Commission (Parts 800—899)
- XIII Tennessee Valley Authority (Parts 1300—1399)

Title 19—Customs Duties

- I U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury (Parts 0—199)
- II United States International Trade Commission (Parts 200—299)
- III International Trade Administration, Department of Commerce (Parts 300—399)
- IV U.S. Immigration and Customs Enforcement, Department of Homeland Security (Parts 400—599)

Title 20—Employees' Benefits

- I Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)
- II Railroad Retirement Board (Parts 200—399)
- III Social Security Administration (Parts 400—499)
- IV Employees' Compensation Appeals Board, Department of Labor (Parts 500—599)

	Title 20—Employees' Benefits—Continued
Chap.	
V	Employment and Training Administration, Department of Labor (Parts 600—699)
VI	Office of Workers' Compensation Programs, Department of Labor (Parts 700—799)
VII	Benefits Review Board, Department of Labor (Parts 800—899)
VIII	Joint Board for the Enrollment of Actuaries (Parts 900—999)
IX	Office of the Assistant Secretary for Veterans' Employment and Training Service, Department of Labor (Parts 1000—1099)

Title 21—Food and Drugs

I	Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)
II	Drug Enforcement Administration, Department of Justice (Parts 1300—1399)
III	Office of National Drug Control Policy (Parts 1400—1499)

Title 22—Foreign Relations

I	Department of State (Parts 1—199)
II	Agency for International Development (Parts 200—299)
III	Peace Corps (Parts 300—399)
IV	International Joint Commission, United States and Canada (Parts 400—499)
V	Broadcasting Board of Governors (Parts 500—599)
VII	Overseas Private Investment Corporation (Parts 700—799)
IX	Foreign Service Grievance Board (Parts 900—999)
X	Inter-American Foundation (Parts 1000—1099)
XI	International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)
XII	United States International Development Cooperation Agency (Parts 1200—1299)
XIII	Millennium Challenge Corporation (Parts 1300—1399)
XIV	Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)
XV	African Development Foundation (Parts 1500—1599)
XVI	Japan-United States Friendship Commission (Parts 1600—1699)
XVII	United States Institute of Peace (Parts 1700—1799)

Title 23—Highways

I	Federal Highway Administration, Department of Transportation (Parts 1—999)
II	National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

Chap.

Title 23—Highways—Continued

- III National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Title 24—Housing and Urban Development

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (PARTS 0—99)

SUBTITLE B—REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT

- I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)
- II Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)
- III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)
- IV Office of Housing and Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development (Parts 400—499)
- V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)
- VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600—699) [Reserved]
- VII Office of the Secretary, Department of Housing and Urban Development (Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)
- VIII Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs, Section 202 Direct Loan Program, Section 202 Supportive Housing for the Elderly Program and Section 811 Supportive Housing for Persons With Disabilities Program) (Parts 800—899)
- IX Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—1699)
- X Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700—1799)
- XII Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)
- XV Emergency Mortgage Insurance and Loan Programs, Department of Housing and Urban Development (Parts 2700—2799) [Reserved]
- XX Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)
- XXIV Board of Directors of the HOPE for Homeowners Program (Parts 4000—4099) [Reserved]
- XXV Neighborhood Reinvestment Corporation (Parts 4100—4199)

Title 25—Indians

Chap.

- I Bureau of Indian Affairs, Department of the Interior (Parts 1—299)
- II Indian Arts and Crafts Board, Department of the Interior (Parts 300—399)
- III National Indian Gaming Commission, Department of the Interior (Parts 500—599)
- IV Office of Navajo and Hopi Indian Relocation (Parts 700—799)
- V Bureau of Indian Affairs, Department of the Interior, and Indian Health Service, Department of Health and Human Services (Part 900)
- VI Office of the Assistant Secretary-Indian Affairs, Department of the Interior (Parts 1000—1199)
- VII Office of the Special Trustee for American Indians, Department of the Interior (Parts 1200—1299)

Title 26—Internal Revenue

- I Internal Revenue Service, Department of the Treasury (Parts 1—End)

Title 27—Alcohol, Tobacco Products and Firearms

- I Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury (Parts 1—399)
- II Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice (Parts 400—699)

Title 28—Judicial Administration

- I Department of Justice (Parts 0—299)
- III Federal Prison Industries, Inc., Department of Justice (Parts 300—399)
- V Bureau of Prisons, Department of Justice (Parts 500—599)
- VI Offices of Independent Counsel, Department of Justice (Parts 600—699)
- VII Office of Independent Counsel (Parts 700—799)
- VIII Court Services and Offender Supervision Agency for the District of Columbia (Parts 800—899)
- IX National Crime Prevention and Privacy Compact Council (Parts 900—999)
- XI Department of Justice and Department of State (Parts 1100—1199)

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR (PARTS 0—99)

SUBTITLE B—REGULATIONS RELATING TO LABOR

- I National Labor Relations Board (Parts 100—199)

Title 29—Labor—Continued

Chap.	
II	Office of Labor-Management Standards, Department of Labor (Parts 200—299)
III	National Railroad Adjustment Board (Parts 300—399)
IV	Office of Labor-Management Standards, Department of Labor (Parts 400—499)
V	Wage and Hour Division, Department of Labor (Parts 500—899)
IX	Construction Industry Collective Bargaining Commission (Parts 900—999)
X	National Mediation Board (Parts 1200—1299)
XII	Federal Mediation and Conciliation Service (Parts 1400—1499)
XIV	Equal Employment Opportunity Commission (Parts 1600—1699)
XXVII	Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)
XX	Occupational Safety and Health Review Commission (Parts 2200—2499)
XXV	Employee Benefits Security Administration, Department of Labor (Parts 2500—2599)
XXVII	Federal Mine Safety and Health Review Commission (Parts 2700—2799)
XL	Pension Benefit Guaranty Corporation (Parts 4000—4999)

Title 30—Mineral Resources

I	Mine Safety and Health Administration, Department of Labor (Parts 1—199)
II	Bureau of Safety and Environmental Enforcement, Department of the Interior (Parts 200—299)
IV	Geological Survey, Department of the Interior (Parts 400—499)
V	Bureau of Ocean Energy Management, Department of the Interior (Parts 500—599)
VII	Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)
XII	Office of Natural Resources Revenue, Department of the Interior (Parts 1200—1299)

Title 31—Money and Finance: Treasury

	SUBTITLE A—OFFICE OF THE SECRETARY OF THE TREASURY (PARTS 0—50)
	SUBTITLE B—REGULATIONS RELATING TO MONEY AND FINANCE
I	Monetary Offices, Department of the Treasury (Parts 51—199)
II	Fiscal Service, Department of the Treasury (Parts 200—399)
IV	Secret Service, Department of the Treasury (Parts 400—499)
V	Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)
VI	Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)
VII	Federal Law Enforcement Training Center, Department of the Treasury (Parts 700—799)

Title 31—Money and Finance: Treasury—Continued

Chap.

- VIII Office of International Investment, Department of the Treasury (Parts 800—899)
- IX Federal Claims Collection Standards (Department of the Treasury—Department of Justice) (Parts 900—999)
- X Financial Crimes Enforcement Network, Department of the Treasury (Parts 1000—1099)

Title 32—National Defense

SUBTITLE A—DEPARTMENT OF DEFENSE

- I Office of the Secretary of Defense (Parts 1—399)
- V Department of the Army (Parts 400—699)
- VI Department of the Navy (Parts 700—799)
- VII Department of the Air Force (Parts 800—1099)

SUBTITLE B—OTHER REGULATIONS RELATING TO NATIONAL DEFENSE

- XII Defense Logistics Agency (Parts 1200—1299)
- XVI Selective Service System (Parts 1600—1699)
- XVII Office of the Director of National Intelligence (Parts 1700—1799)
- XXVIII National Counterintelligence Center (Parts 1800—1899)
- XIX Central Intelligence Agency (Parts 1900—1999)
- XX Information Security Oversight Office, National Archives and Records Administration (Parts 2000—2099)
- XXI National Security Council (Parts 2100—2199)
- XXIV Office of Science and Technology Policy (Parts 2400—2499)
- XXVII Office for Micronesian Status Negotiations (Parts 2700—2799)
- XXVIII Office of the Vice President of the United States (Parts 2800—2899)

Title 33—Navigation and Navigable Waters

- I Coast Guard, Department of Homeland Security (Parts 1—199)
- II Corps of Engineers, Department of the Army (Parts 200—399)
- IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

Title 34—Education

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF EDUCATION (PARTS 1—99)

SUBTITLE B—REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION

- I Office for Civil Rights, Department of Education (Parts 100—199)
- II Office of Elementary and Secondary Education, Department of Education (Parts 200—299)
- III Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

Title 34—Education—Continued

Chap.

- IV Office of Career, Technical and Adult Education, Department of Education (Parts 400—499)
- V Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599) [Reserved]
- VI Office of Postsecondary Education, Department of Education (Parts 600—699)
- VII Office of Educational Research and Improvement, Department of Education (Parts 700—799) [Reserved]
- SUBTITLE C—REGULATIONS RELATING TO EDUCATION
- XI [Reserved]
- XII National Council on Disability (Parts 1200—1299)

Title 35 [Reserved]

Title 36—Parks, Forests, and Public Property

- I National Park Service, Department of the Interior (Parts 1—199)
- II Forest Service, Department of Agriculture (Parts 200—299)
- III Corps of Engineers, Department of the Army (Parts 300—399)
- IV American Battle Monuments Commission (Parts 400—499)
- V Smithsonian Institution (Parts 500—599)
- VI [Reserved]
- VII Library of Congress (Parts 700—799)
- VIII Advisory Council on Historic Preservation (Parts 800—899)
- IX Pennsylvania Avenue Development Corporation (Parts 900—999)
- X Presidio Trust (Parts 1000—1099)
- XI Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)
- XII National Archives and Records Administration (Parts 1200—1299)
- XV Oklahoma City National Memorial Trust (Parts 1500—1599)
- XVI Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation (Parts 1600—1699)

Title 37—Patents, Trademarks, and Copyrights

- I United States Patent and Trademark Office, Department of Commerce (Parts 1—199)
- II U.S. Copyright Office, Library of Congress (Parts 200—299)
- III Copyright Royalty Board, Library of Congress (Parts 300—399)
- IV Assistant Secretary for Technology Policy, Department of Commerce (Parts 400—599)

Title 38—Pensions, Bonuses, and Veterans' Relief

- I Department of Veterans Affairs (Parts 0—199)
- II Armed Forces Retirement Home (Parts 200—299)

Title 39—Postal Service	
Chap.	
I	United States Postal Service (Parts 1—999)
III	Postal Regulatory Commission (Parts 3000—3099)

Title 40—Protection of Environment	
I	Environmental Protection Agency (Parts 1—1099)
IV	Environmental Protection Agency and Department of Justice (Parts 1400—1499)
V	Council on Environmental Quality (Parts 1500—1599)
VI	Chemical Safety and Hazard Investigation Board (Parts 1600— 1699)
VII	Environmental Protection Agency and Department of Defense; Uniform National Discharge Standards for Vessels of the Armed Forces (Parts 1700—1799)
VIII	Gulf Coast Ecosystem Restoration Council (Parts 1800—1899)

Title 41—Public Contracts and Property Management	
	SUBTITLE A—FEDERAL PROCUREMENT REGULATIONS SYSTEM [NOTE]
	SUBTITLE B—OTHER PROVISIONS RELATING TO PUBLIC CONTRACTS
50	Public Contracts, Department of Labor (Parts 50-1—50-999)
51	Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51-1—51-99)
60	Office of Federal Contract Compliance Programs, Equal Employ- ment Opportunity, Department of Labor (Parts 60-1—60-999)
61	Office of the Assistant Secretary for Veterans' Employment and Training Service, Department of Labor (Parts 61-1—61-999)
62—100	[Reserved]
	SUBTITLE C—FEDERAL PROPERTY MANAGEMENT REGULATIONS SYSTEM
101	Federal Property Management Regulations (Parts 101-1—101-99)
102	Federal Management Regulation (Parts 102-1—102-299)
103—104	[Reserved]
105	General Services Administration (Parts 105-1—105-999)
109	Department of Energy Property Management Regulations (Parts 109-1—109-99)
114	Department of the Interior (Parts 114-1—114-99)
115	Environmental Protection Agency (Parts 115-1—115-99)
128	Department of Justice (Parts 128-1—128-99)
129—200	[Reserved]
	SUBTITLE D—OTHER PROVISIONS RELATING TO PROPERTY MANAGE- MENT [RESERVED]
	SUBTITLE E—FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATIONS SYSTEM [RESERVED]
	SUBTITLE F—FEDERAL TRAVEL REGULATION SYSTEM
300	General (Parts 300-1—300-99)
301	Temporary Duty (TDY) Travel Allowances (Parts 301-1—301-99)

Title 41—Public Contracts and Property Management—Continued

Chap.

- 302 Relocation Allowances (Parts 302–1—302–99)
- 303 Payment of Expenses Connected with the Death of Certain Employees (Part 303–1—303–99)
- 304 Payment of Travel Expenses from a Non-Federal Source (Parts 304–1—304–99)

Title 42—Public Health

- I Public Health Service, Department of Health and Human Services (Parts 1—199)
- IV Centers for Medicare & Medicaid Services, Department of Health and Human Services (Parts 400—599)
- V Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

Title 43—Public Lands: Interior

SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR (PARTS 1—199)

SUBTITLE B—REGULATIONS RELATING TO PUBLIC LANDS

- I Bureau of Reclamation, Department of the Interior (Parts 400—999)
- II Bureau of Land Management, Department of the Interior (Parts 1000—9999)
- III Utah Reclamation Mitigation and Conservation Commission (Parts 10000—10099)

Title 44—Emergency Management and Assistance

- I Federal Emergency Management Agency, Department of Homeland Security (Parts 0—399)
- IV Department of Commerce and Department of Transportation (Parts 400—499)

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH AND HUMAN SERVICES (PARTS 1—199)

SUBTITLE B—REGULATIONS RELATING TO PUBLIC WELFARE

- II Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)
- III Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Parts 300—399)
- IV Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services (Parts 400—499)
- V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500—599)

Title 45—Public Welfare—Continued

Chap.

- VI National Science Foundation (Parts 600—699)
- VII Commission on Civil Rights (Parts 700—799)
- VIII Office of Personnel Management (Parts 800—899)
- IX Denali Commission (Parts 900—999)
- X Office of Community Services, Administration for Children and Families, Department of Health and Human Services (Parts 1000—1099)
- XI National Foundation on the Arts and the Humanities (Parts 1100—1199)
- XII Corporation for National and Community Service (Parts 1200—1299)
- XIII Administration for Children and Families, Department of Health and Human Services (Parts 1300—1399)
- XVI Legal Services Corporation (Parts 1600—1699)
- XVII National Commission on Libraries and Information Science (Parts 1700—1799)
- XVIII Harry S. Truman Scholarship Foundation (Parts 1800—1899)
- XXI Commission on Fine Arts (Parts 2100—2199)
- XXIII Arctic Research Commission (Part 2301)
- XXIV James Madison Memorial Fellowship Foundation (Parts 2400—2499)
- XXV Corporation for National and Community Service (Parts 2500—2599)

Title 46—Shipping

- I Coast Guard, Department of Homeland Security (Parts 1—199)
- II Maritime Administration, Department of Transportation (Parts 200—399)
- III Coast Guard (Great Lakes Pilotage), Department of Homeland Security (Parts 400—499)
- IV Federal Maritime Commission (Parts 500—599)

Title 47—Telecommunication

- I Federal Communications Commission (Parts 0—199)
- II Office of Science and Technology Policy and National Security Council (Parts 200—299)
- III National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)
- IV National Telecommunications and Information Administration, Department of Commerce, and National Highway Traffic Safety Administration, Department of Transportation (Parts 400—499)

Title 48—Federal Acquisition Regulations System

- 1 Federal Acquisition Regulation (Parts 1—99)

Title 48—Federal Acquisition Regulations System—Continued

Chap.

- 2 Defense Acquisition Regulations System, Department of Defense (Parts 200—299)
- 3 Health and Human Services (Parts 300—399)
- 4 Department of Agriculture (Parts 400—499)
- 5 General Services Administration (Parts 500—599)
- 6 Department of State (Parts 600—699)
- 7 Agency for International Development (Parts 700—799)
- 8 Department of Veterans Affairs (Parts 800—899)
- 9 Department of Energy (Parts 900—999)
- 10 Department of the Treasury (Parts 1000—1099)
- 12 Department of Transportation (Parts 1200—1299)
- 13 Department of Commerce (Parts 1300—1399)
- 14 Department of the Interior (Parts 1400—1499)
- 15 Environmental Protection Agency (Parts 1500—1599)
- 16 Office of Personnel Management, Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)
- 17 Office of Personnel Management (Parts 1700—1799)
- 18 National Aeronautics and Space Administration (Parts 1800—1899)
- 19 Broadcasting Board of Governors (Parts 1900—1999)
- 20 Nuclear Regulatory Commission (Parts 2000—2099)
- 21 Office of Personnel Management, Federal Employees Group Life Insurance Federal Acquisition Regulation (Parts 2100—2199)
- 23 Social Security Administration (Parts 2300—2399)
- 24 Department of Housing and Urban Development (Parts 2400—2499)
- 25 National Science Foundation (Parts 2500—2599)
- 28 Department of Justice (Parts 2800—2899)
- 29 Department of Labor (Parts 2900—2999)
- 30 Department of Homeland Security, Homeland Security Acquisition Regulation (HSAR) (Parts 3000—3099)
- 34 Department of Education Acquisition Regulation (Parts 3400—3499)
- 51 Department of the Army Acquisition Regulations (Parts 5100—5199)
- 52 Department of the Navy Acquisition Regulations (Parts 5200—5299)
- 53 Department of the Air Force Federal Acquisition Regulation Supplement (Parts 5300—5399) [Reserved]
- 54 Defense Logistics Agency, Department of Defense (Parts 5400—5499)
- 57 African Development Foundation (Parts 5700—5799)
- 61 Civilian Board of Contract Appeals, General Services Administration (Parts 6100—6199)
- 63 Department of Transportation Board of Contract Appeals (Parts 6300—6399)

Title 48—Federal Acquisition Regulations System—Continued

Chap.

- 99 Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION
(PARTS 1—99)

SUBTITLE B—OTHER REGULATIONS RELATING TO TRANSPORTATION

- I Pipeline and Hazardous Materials Safety Administration, Department of Transportation (Parts 100—199)
- II Federal Railroad Administration, Department of Transportation (Parts 200—299)
- III Federal Motor Carrier Safety Administration, Department of Transportation (Parts 300—399)
- IV Coast Guard, Department of Homeland Security (Parts 400—499)
- V National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)
- VI Federal Transit Administration, Department of Transportation (Parts 600—699)
- VII National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)
- VIII National Transportation Safety Board (Parts 800—999)
- X Surface Transportation Board (Parts 1000—1399)
- XI Research and Innovative Technology Administration, Department of Transportation (Parts 1400—1499) [Reserved]
- XII Transportation Security Administration, Department of Homeland Security (Parts 1500—1699)

Title 50—Wildlife and Fisheries

- I United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)
- II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)
- III International Fishing and Related Activities (Parts 300—399)
- IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400—499)
- V Marine Mammal Commission (Parts 500—599)
- VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

Alphabetical List of Agencies Appearing in the CFR

(Revised as of July 1, 2017)

Agency	CFR Title, Subtitle or Chapter
Administrative Committee of the Federal Register	1, I
Administrative Conference of the United States	1, III
Advisory Council on Historic Preservation	36, VIII
Advocacy and Outreach, Office of	7, XXV
Afghanistan Reconstruction, Special Inspector General for	5, LXXXIII
African Development Foundation	22, XV
Federal Acquisition Regulation	48, 57
Agency for International Development	2, VII; 22, II
Federal Acquisition Regulation	48, 7
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agriculture Department	2, IV; 5, LXXXIII
Advocacy and Outreach, Office of	7, XXV
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Animal and Plant Health Inspection Service	7, III; 9, I
Chief Financial Officer, Office of	7, XXX
Commodity Credit Corporation	7, XIV
Economic Research Service	7, XXXVII
Energy Policy and New Uses, Office of	2, IX; 7, XXIX
Environmental Quality, Office of	7, XXXI
Farm Service Agency	7, VII, XVIII
Federal Acquisition Regulation	48, 4
Federal Crop Insurance Corporation	7, IV
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Forest Service	36, II
Grain Inspection, Packers and Stockyards Administration	7, VIII; 9, II
Information Resources Management, Office of	7, XXVII
Inspector General, Office of	7, XXVI
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
National Institute of Food and Agriculture	7, XXXIV
Natural Resources Conservation Service	7, VI
Operations, Office of	7, XXVIII
Procurement and Property Management, Office of	7, XXXII
Rural Business-Cooperative Service	7, XVIII, XLII
Rural Development Administration	7, XLII
Rural Housing Service	7, XVIII, XXXV
Rural Telephone Bank	7, XVI
Rural Utilities Service	7, XVII, XVIII, XLII
Secretary of Agriculture, Office of	7, Subtitle A
Transportation, Office of	7, XXXIII
World Agricultural Outlook Board	7, XXXVIII
Air Force Department	32, VII
Federal Acquisition Regulation Supplement	48, 53
Air Transportation Stabilization Board	14, VI
Alcohol and Tobacco Tax and Trade Bureau	27, I
Alcohol, Tobacco, Firearms, and Explosives, Bureau of	27, II
AMTRAK	49, VII
American Battle Monuments Commission	36, IV
American Indians, Office of the Special Trustee	25, VII

Agency	CFR Title, Subtitle or Chapter
Animal and Plant Health Inspection Service	7, III; 9, I
Appalachian Regional Commission	5, IX
Architectural and Transportation Barriers Compliance Board	36, XI
Arctic Research Commission	45, XXIII
Armed Forces Retirement Home	5, XI
Army Department	32, V
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 51
Bilingual Education and Minority Languages Affairs, Office of	34, V
Blind or Severely Disabled, Committee for Purchase from People Who Are	41, 51
Broadcasting Board of Governors	22, V
Federal Acquisition Regulation	48, 19
Career, Technical and Adult Education, Office of	34, IV
Census Bureau	15, I
Centers for Medicare & Medicaid Services	42, IV
Central Intelligence Agency	32, XIX
Chemical Safety and Hazardous Investigation Board	40, VI
Chief Financial Officer, Office of	7, XXX
Child Support Enforcement, Office of	45, III
Children and Families, Administration for	45, II, III, IV, X, XIII
Civil Rights, Commission on	5, LXVIII; 45, VII
Civil Rights, Office for	34, I
Council of the Inspectors General on Integrity and Efficiency	5, XCVIII
Court Services and Offender Supervision Agency for the District of Columbia	5, LXX
Coast Guard	33, I; 46, I; 49, IV
Coast Guard (Great Lakes Pilotage)	46, III
Commerce Department	2, XIII; 44, IV; 50, VI
Census Bureau	15, I
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Emergency Management and Assistance	44, IV
Federal Acquisition Regulation	48, 13
Foreign-Trade Zones Board	15, IV
Industry and Security, Bureau of	15, VII
International Trade Administration	15, III; 19, III
National Institute of Standards and Technology	15, II
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Telecommunications and Information Administration	15, XXIII; 47, III, IV
National Weather Service	15, IX
Patent and Trademark Office, United States	37, I
Productivity, Technology and Innovation, Assistant Secretary for	37, IV
Secretary of Commerce, Office of	15, Subtitle A
Technology Administration	15, XI
Technology Policy, Assistant Secretary for	37, IV
Commercial Space Transportation	14, III
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	5, XLI; 17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services, Office of	45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Financial Protection Bureau	5, LXXXIV; 12, X
Consumer Product Safety Commission	5, LXXI; 16, II
Copyright Royalty Board	37, III
Corporation for National and Community Service	2, XXII; 45, XII, XXV
Cost Accounting Standards Board	48, 99
Council on Environmental Quality	40, V
Court Services and Offender Supervision Agency for the District of Columbia	5, LXX; 28, VIII
Customs and Border Protection	19, I
Defense Contract Audit Agency	32, I

Agency	CFR Title, Subtitle or Chapter
Defense Department	2, XI; 5, XXVI; 32, Subtitle A; 40, VII
Advanced Research Projects Agency	32, I
Air Force Department	32, VII
Army Department	32, V; 33, II; 36, III; 48, 51
Defense Acquisition Regulations System	48, 2
Defense Intelligence Agency	32, I
Defense Logistics Agency	32, I, XII; 48, 54
Engineers, Corps of	33, II; 36, III
National Imagery and Mapping Agency	32, I
Navy Department	32, VI; 48, 52
Secretary of Defense, Office of	2, XI; 32, I
Defense Contract Audit Agency	32, I
Defense Intelligence Agency	32, I
Defense Logistics Agency	32, XII; 48, 54
Defense Nuclear Facilities Safety Board	10, XVII
Delaware River Basin Commission	18, III
Denali Commission	45, IX
District of Columbia, Court Services and Offender Supervision Agency for the	5, LXX; 28, VIII
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Economic Research Service	7, XXXVII
Education, Department of	2, XXXIV; 5, LIII
Bilingual Education and Minority Languages Affairs, Office of	34, V
Career, Technical and Adult Education, Office of	34, IV
Civil Rights, Office for	34, I
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Federal Acquisition Regulation	48, 34
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Career, Technical, and Adult Education, Office of	34, IV
Educational Research and Improvement, Office of	34, VII
Election Assistance Commission	2, LVIII; 11, II
Elementary and Secondary Education, Office of	34, II
Emergency Oil and Gas Guaranteed Loan Board	13, V
Emergency Steel Guarantee Loan Board	13, IV
Employee Benefits Security Administration	29, XXV
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	2, IX; 5, XXIII; 10, II, III, X
Federal Acquisition Regulation	48, 9
Federal Energy Regulatory Commission	5, XXIV; 18, I
Property Management Regulations	41, 109
Energy, Office of	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	2, XV; 5, LIV; 40, I, IV, VII
Federal Acquisition Regulation	48, 15
Property Management Regulations	41, 115
Environmental Quality, Office of	7, XXXI
Equal Employment Opportunity Commission	5, LXII; 29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Environmental Quality, Council on	40, V
Management and Budget, Office of	2, Subtitle A; 5, III, LXXXVII; 14, VI; 48, 99

Agency	CFR Title, Subtitle or Chapter
National Drug Control Policy, Office of	2, XXXVI; 21, III
National Security Council	32, XXI; 47, 2
Presidential Documents	3
Science and Technology Policy, Office of	32, XXIV; 47, II
Trade Representative, Office of the United States	15, XX
Export-Import Bank of the United States	2, XXXV; 5, LII; 12, IV
Family Assistance, Office of	45, II
Farm Credit Administration	5, XXXI; 12, VI
Farm Credit System Insurance Corporation	5, XXX; 12, XIV
Farm Service Agency	7, VII, XVIII
Federal Acquisition Regulation	48, 1
Federal Aviation Administration	14, I
Commercial Space Transportation	14, III
Federal Claims Collection Standards	31, IX
Federal Communications Commission	5, XXIX; 47, I
Federal Contract Compliance Programs, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	5, XXII; 12, III
Federal Election Commission	5, XXXVII; 11, I
Federal Emergency Management Agency	44, I
Federal Employees Group Life Insurance Federal Acquisition Regulation	48, 21
Federal Employees Health Benefits Acquisition Regulation	48, 16
Federal Energy Regulatory Commission	5, XXIV; 18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Highway Administration	23, I, II
Federal Home Loan Mortgage Corporation	1, IV
Federal Housing Enterprise Oversight Office	12, XVII
Federal Housing Finance Agency	5, LXXX; 12, XII
Federal Housing Finance Board	12, IX
Federal Labor Relations Authority	5, XIV, XLIX; 22, XIV
Federal Law Enforcement Training Center	31, VII
Federal Management Regulation	41, 102
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	5, LXXIV; 29, XXVII
Federal Motor Carrier Safety Administration	49, III
Federal Prison Industries, Inc.	28, III
Federal Procurement Policy Office	48, 99
Federal Property Management Regulations	41, 101
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II
Board of Governors	5, LVIII
Federal Retirement Thrift Investment Board	5, VI, LXXVI
Federal Service Impasses Panel	5, XIV
Federal Trade Commission	5, XLVII; 16, I
Federal Transit Administration	49, VI
Federal Travel Regulation System	41, Subtitle F
Financial Crimes Enforcement Network	31, X
Financial Research Office	12, XVI
Financial Stability Oversight Council	12, XIII
Fine Arts, Commission on	45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of the United States	45, V
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV

Agency	CFR Title, Subtitle or Chapter
Forest Service	36, II
General Services Administration	5, LVII; 41, 105
Contract Appeals, Board of	48, 61
Federal Acquisition Regulation	48, 5
Federal Management Regulation	41, 102
Federal Property Management Regulations	41, 101
Federal Travel Regulation System	41, Subtitle F
General	41, 300
Payment From a Non-Federal Source for Travel Expenses	41, 304
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Relocation Allowances	41, 302
Temporary Duty (TDY) Travel Allowances	41, 301
Geological Survey	30, IV
Government Accountability Office	4, I
Government Ethics, Office of	5, XVI
Government National Mortgage Association	24, III
Grain Inspection, Packers and Stockyards Administration	7, VIII; 9, II
Gulf Coast Ecosystem Restoration Council	2, LIX; 40, VIII
Harry S. Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	2, III; 5, XLV; 45, Subtitle A
Centers for Medicare & Medicaid Services	42, IV
Child Support Enforcement, Office of	45, III
Children and Families, Administration for	45, II, III, IV, X, XIII
Community Services, Office of	45, X
Family Assistance, Office of	45, II
Federal Acquisition Regulation	48, 3
Food and Drug Administration	21, I
Indian Health Service	25, V
Inspector General (Health Care), Office of	42, V
Public Health Service	42, I
Refugee Resettlement, Office of	45, IV
Homeland Security, Department of	2, XXX; 5, XXXVI; 6, I; 8, I
Coast Guard	33, I; 46, I; 49, IV
Coast Guard (Great Lakes Pilotage)	46, III
Customs and Border Protection	19, I
Federal Emergency Management Agency	44, I
Human Resources Management and Labor Relations Systems	5, XCVII
Immigration and Customs Enforcement Bureau	19, IV
Transportation Security Administration	49, XII
HOPE for Homeowners Program, Board of Directors of	24, XXIV
Housing and Urban Development, Department of	2, XXIV; 5, LXV; 24, Subtitle B
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Acquisition Regulation	48, 24
Federal Housing Enterprise Oversight, Office of	12, XVII
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Housing, Office of, and Multifamily Housing Assistance Restructuring, Office of	24, IV
Inspector General, Office of	24, XII
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Secretary, Office of	24, Subtitle A, VII
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Housing, Office of, and Multifamily Housing Assistance Restructuring, Office of	24, IV
Immigration and Customs Enforcement Bureau	19, IV
Immigration Review, Executive Office for	8, V
Independent Counsel, Office of	28, VII
Independent Counsel, Offices of	28, VI

Agency	CFR Title, Subtitle or Chapter
Indian Affairs, Bureau of	25, I, V
Indian Affairs, Office of the Assistant Secretary	25, VI
Indian Arts and Crafts Board	25, II
Indian Health Service	25, V
Industry and Security, Bureau of	15, VII
Information Resources Management, Office of	7, XXVII
Information Security Oversight Office, National Archives and Records Administration	32, XX
Inspector General	
Agriculture Department	7, XXVI
Health and Human Services Department	42, V
Housing and Urban Development Department	24, XII, XV
Institute of Peace, United States	22, XVII
Inter-American Foundation	5, LXIII; 22, X
Interior Department	2, XIV
American Indians, Office of the Special Trustee	25, VII
Endangered Species Committee	50, IV
Federal Acquisition Regulation	48, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, IV
Indian Affairs, Bureau of	25, I, V
Indian Affairs, Office of the Assistant Secretary	25, VI
Indian Arts and Crafts Board	25, II
Land Management, Bureau of	43, II
National Indian Gaming Commission	25, III
National Park Service	36, I
Natural Resource Revenue, Office of	30, XII
Ocean Energy Management, Bureau of	30, V
Reclamation, Bureau of	43, I
Safety and Enforcement Bureau, Bureau of	30, II
Secretary of the Interior, Office of	2, XIV; 43, Subtitle A
Surface Mining Reclamation and Enforcement, Office of	30, VII
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico, United States Section	22, XI
International Development, United States Agency for	22, II
Federal Acquisition Regulation	48, 7
International Development Cooperation Agency, United States	22, XII
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	5, XL
Investment Security, Office of	31, VIII
James Madison Memorial Fellowship Foundation	45, XXIV
Japan–United States Friendship Commission	22, XVI
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	2, XXVIII; 5, XXVIII;
Alcohol, Tobacco, Firearms, and Explosives, Bureau of	28, I, XI; 40, IV
Drug Enforcement Administration	27, II
Federal Acquisition Regulation	21, II
Federal Claims Collection Standards	48, 28
Federal Prison Industries, Inc.	31, IX
Foreign Claims Settlement Commission of the United States	28, III
Immigration Review, Executive Office for	45, V
Independent Counsel, Offices of	8, V
Prisons, Bureau of	28, VI
Property Management Regulations	28, V
Labor Department	41, 128
Employee Benefits Security Administration	2, XXIX; 5, XLII
Employees' Compensation Appeals Board	29, XXV
Employment and Training Administration	20, IV
Employment Standards Administration	20, V
	20, VI

Agency	CFR Title, Subtitle or Chapter
Federal Acquisition Regulation	48, 29
Federal Contract Compliance Programs, Office of	41, 60
Federal Procurement Regulations System	41, 50
Labor-Management Standards, Office of	29, II, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Veterans' Employment and Training Service, Office of the Assistant Secretary for	41, 61; 20, IX
Wage and Hour Division	29, V
Workers' Compensation Programs, Office of	20, I, VII
Labor-Management Standards, Office of	29, II, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Royalty Board	37, III
U.S. Copyright Office	37, II
Local Television Loan Guarantee Board	7, XX
Management and Budget, Office of	5, III, LXXVII; 14, VI; 48, 99
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II, LXIV
Micronesian Status Negotiations, Office for	32, XXVII
Military Compensation and Retirement Modernization Commission	5, XCIX
Millennium Challenge Corporation	22, XIII
Mine Safety and Health Administration	30, I
Minority Business Development Agency	15, XIV
Miscellaneous Agencies	1, IV
Monetary Offices	31, I
Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation	36, XVI
Museum and Library Services, Institute of	2, XXXI
National Aeronautics and Space Administration	2, XVIII; 5, LIX; 14, V
Federal Acquisition Regulation	48, 18
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
National and Community Service, Corporation for	2, XXII; 45, XII, XXV
National Archives and Records Administration	2, XXVI; 5, LXVI; 36, XII
Information Security Oversight Office	32, XX
National Capital Planning Commission	1, IV
National Commission for Employment Policy	1, IV
National Commission on Libraries and Information Science	45, XVII
National Council on Disability	5, C; 34, XII
National Counterintelligence Center	32, XVIII
National Credit Union Administration	5, LXXXVI; 12, VII
National Crime Prevention and Privacy Compact Council	28, IX
National Drug Control Policy, Office of	2, XXXVI; 21, III
National Endowment for the Arts	2, XXXII
National Endowment for the Humanities	2, XXXIII
National Foundation on the Arts and the Humanities	45, XI
National Geospatial-Intelligence Agency	32, I
National Highway Traffic Safety Administration	23, II, III; 47, VI; 49, V
National Imagery and Mapping Agency	32, I
National Indian Gaming Commission	25, III
National Institute of Food and Agriculture	7, XXXIV
National Institute of Standards and Technology	15, II
National Intelligence, Office of Director of	5, IV; 32, XVII
National Labor Relations Board	5, LXI; 29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III

Agency	CFR Title, Subtitle or Chapter
National Railroad Passenger Corporation (AMTRAK)	49, VII
National Science Foundation	2, XXV; 5, XLIII; 45, VI
Federal Acquisition Regulation	48, 25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII; 47, III, IV
National Transportation Safety Board	49, VIII
Natural Resources Conservation Service	7, VI
Natural Resource Revenue, Office of	30, XII
Navajo and Hopi Indian Relocation, Office of	25, IV
Navy Department	32, VI
Federal Acquisition Regulation	48, 52
Neighborhood Reinvestment Corporation	24, XXV
Northeast Interstate Low-Level Radioactive Waste Commission	10, XVIII
Nuclear Regulatory Commission	2, XX; 5, XLVIII; 10, I
Federal Acquisition Regulation	48, 20
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Ocean Energy Management, Bureau of	30, V
Oklahoma City National Memorial Trust	36, XV
Operations Office	7, XXVIII
Overseas Private Investment Corporation	5, XXXIII; 22, VII
Patent and Trademark Office, United States	37, I
Payment From a Non-Federal Source for Travel Expenses	41, 304
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Peace Corps	2, XXXVII; 22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension Benefit Guaranty Corporation	29, XL
Personnel Management, Office of	5, I, XXXV; 5, IV; 45, VIII
Human Resources Management and Labor Relations Systems, Department of Homeland Security	5, XCVII
Federal Acquisition Regulation	48, 17
Federal Employees Group Life Insurance Federal Acquisition Regulation	48, 21
Federal Employees Health Benefits Acquisition Regulation	48, 16
Pipeline and Hazardous Materials Safety Administration	49, I
Postal Regulatory Commission	5, XLVI; 39, III
Postal Service, United States	5, LX; 39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Presidio Trust	36, X
Prisons, Bureau of	28, V
Privacy and Civil Liberties Oversight Board	6, X
Procurement and Property Management, Office of	7, XXXII
Productivity, Technology and Innovation, Assistant Secretary	37, IV
Public Contracts, Department of Labor	41, 50
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Public Health Service	42, I
Railroad Retirement Board	20, II
Reclamation, Bureau of	43, I
Refugee Resettlement, Office of	45, IV
Relocation Allowances	41, 302
Research and Innovative Technology Administration	49, XI
Rural Business-Cooperative Service	7, XVIII, XLII
Rural Development Administration	7, XLII
Rural Housing Service	7, XVIII, XXXV
Rural Telephone Bank	7, XVI
Rural Utilities Service	7, XVII, XVIII, XLII
Safety and Environmental Enforcement, Bureau of	30, II
Saint Lawrence Seaway Development Corporation	33, IV

Agency	CFR Title, Subtitle or Chapter
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	5, XXXIV; 17, II
Selective Service System	32, XVI
Small Business Administration	2, XXVII; 13, I
Smithsonian Institution	36, V
Social Security Administration	2, XXIII; 20, III; 48, 23
Soldiers' and Airmen's Home, United States	5, XI
Special Counsel, Office of	5, VIII
Special Education and Rehabilitative Services, Office of	34, III
State Department	2, VI; 22, I; 28, XI
Federal Acquisition Regulation	48, 6
Surface Mining Reclamation and Enforcement, Office of	30, VII
Surface Transportation Board	49, X
Susquehanna River Basin Commission	18, VIII
Technology Administration	15, XI
Technology Policy, Assistant Secretary for	37, IV
Tennessee Valley Authority	5, LXIX; 18, XIII
Thrift Supervision Office, Department of the Treasury	12, V
Trade Representative, United States, Office of	15, XX
Transportation, Department of	2, XII; 5, L
Commercial Space Transportation	14, III
Contract Appeals, Board of	48, 63
Emergency Management and Assistance	44, IV
Federal Acquisition Regulation	48, 12
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II
Federal Motor Carrier Safety Administration	49, III
Federal Railroad Administration	49, II
Federal Transit Administration	49, VI
Maritime Administration	46, II
National Highway Traffic Safety Administration	23, II, III; 47, IV; 49, V
Pipeline and Hazardous Materials Safety Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary of Transportation, Office of	14, II; 49, Subtitle A
Transportation Statistics Bureau	49, XI
Transportation, Office of	7, XXXIII
Transportation Security Administration	49, XII
Transportation Statistics Bureau	49, XI
Travel Allowances, Temporary Duty (TDY)	41, 301
Treasury Department	2, X; 5, XXI; 12, XV; 17, IV; 31, IX
Alcohol and Tobacco Tax and Trade Bureau	27, I
Community Development Financial Institutions Fund	12, XVIII
Comptroller of the Currency	12, I
Customs and Border Protection	19, I
Engraving and Printing, Bureau of	31, VI
Federal Acquisition Regulation	48, 10
Federal Claims Collection Standards	31, IX
Federal Law Enforcement Training Center	31, VII
Financial Crimes Enforcement Network	31, X
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Investment Security, Office of	31, VIII
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
Thrift Supervision, Office of	12, V
Truman, Harry S. Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States and Mexico, International Boundary and Water Commission, United States Section	22, XI
U.S. Copyright Office	37, II
Utah Reclamation Mitigation and Conservation Commission	43, III

Agency	CFR Title, Subtitle or Chapter
Veterans Affairs Department	2, VIII; 38, I
Federal Acquisition Regulation	48, 8
Veterans' Employment and Training Service, Office of the Assistant Secretary for	41, 61; 20, IX
Vice President of the United States, Office of	32, XXVIII
Wage and Hour Division	29, V
Water Resources Council	18, VI
Workers' Compensation Programs, Office of	20, I, VII
World Agricultural Outlook Board	7, XXXVIII

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations (CFR) that were made by documents published in the FEDERAL REGISTER since January 1, 2012 are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters, parts and subparts as well as sections for revisions.

For changes to this volume of the CFR prior to this listing, consult the annual edition of the monthly List of CFR Sections Affected (LSA). The LSA is available at *www.fdsys.gov*. For changes to this volume of the CFR prior to 2001, see the “List of CFR Sections Affected, 1949–1963, 1964–1972, 1973–1985, and 1986–2000” published in 11 separate volumes. The “List of CFR Sections Affected 1986–2000” is available at *www.fdsys.gov*.

2012		30 CFR—Continued	
30 CFR	77 FR Page		77 FR Page
Chapter VII		Chapter XII—Continued	
914.15 Table amended.....	41685	1206.57 (a)(1)(i), (ii), (iii), (2)(i), (ii), (3), (5), (b)(1), (2)(iv) intro- ductory text, (A), (B), (3)(i), (ii), (4), (5) introductory text, (i), (c)(1)(iii), (iv), (v), (2)(iii), (v), (vi), (vii) and (4) corrected; CFR correction	3606
914.16 (ee) removed	41685	1210.54 (b) revised	25879
914.17 (d) and (e) added.....	41685	1210.55 (b)(1) amended	25879
915.15 Table amended.....	25871	1210.56 (a) and (c) revised	25880
926.15 Table amended.....	58025	1210.104 (b) revised	25880
931.15 Table amended	4466	1210.105 (b)(1) amended.....	25879
936.15 Table amended.....	25874	1210.106 (a) and (c) revised	25880
938.16 (bbb) removed	25877	1210.151 (c)(2) amended.....	25879
943.15 Table amended	8148, 58027	(b) revised; (c)(3) amended	25880
946.15 Table amended.....	31492	1210.152 (c)(1) amended.....	25879
948.15 Table amended; interim	40796	(b) revised; (c)(2) amended	25880
950.12 (a)(11) amended; (a)(12) re- moved	40798	1210.153 (c)(1) amended.....	25879
Chapter XII		(b) revised; (c)(2) amended	25880
1206.52 (c) introductory text, (2) introductory text, (i), (ii), (e)(3), (4) introductory text and (5) corrected; CFR correc- tion.....	3606	1210.154 (c)(1) amended.....	25879
1206.53 (c) introductory text and (d) corrected; CFR correc- tion.....	3606	(c)(2) amended.....	25880
1206.54 (a) corrected; CFR correc- tion.....	3606	1210.155 (b)(1)(i) amended	25879
1206.56 (a), (b)(2) and (d) cor- rected; CFR correction.....	3606	(b) revised; (b)(2)(ii) amended	25880
		1210.156 (c)(1) amended.....	25879
		(c)(2) amended.....	25880
		1210.157 (c)(1) amended.....	25879
		1210.158 (c)(1) amended.....	25879
		(b) revised; (c)(2) amended	25880
		1210.201 (c)(3)(i) amended	25879
		1210.205 (c)(1) amended.....	25879
		(b) revised; (c)(2) amended	25880
		1210.354 Revised	25880
		1218 Authority citation re- vised.....	25887

30 CFR (7-1-17 Edition)

30 CFR—Continued

	77 FR Page
Chapter XII—Continued	
1218.50 (d)(5) revised.....	25880
1218.51 (a) and (e) amended; (d)(2) revised; (d)(3) removed.....	25880
1218.560 Revised.....	25881
1218.700—1218.706 (Subpart J) Added.....	25887

2013

30 CFR

	78 FR Page
Chapter VII	
901.15 Table amended.....	11579
924.15 Table amended.....	64401
926.12 Added.....	10512
938.15 Table amended.....	55213
942.25 Added.....	9807
943.15 Table amended.....	11582
944.15 Table amended.....	9811
950.12 Revised.....	43063
950.15 Table amended.....	10523
950.16 (r), (s) and (t) removed (d), (e), (h), (i) and (v) through (ll) removed.....	10523 43063
Chapter XII	
1202.100 (b)(1), (2) and (c) amend- ed.....	30201
1202.150 (b)(1), (2) and (c) amend- ed.....	30201
1202.151 (c) amended.....	30201
1202.350 Correctly redesignated from 201.350.....	30201
1202.353 (a), (b), (c) and (d) amend- ed.....	30201
1204.202 (b)(3), (4), (5), (d)(2) and (e)(2) amended.....	30201
1204.206 Introductory text amended.....	30201
1204.210 Introductory text, (b) and (c) amended.....	30201
1204.215 Revised.....	30201
1206.51 Amended.....	30201
1206.56 (b)(2) amended.....	30201
1206.57 (d)(3) corrected; CFR cor- rection.....	19100
Agency heading corrected; CFR correction.....	20244
(a)(1)(i), (b)(1), (c)(1)(i), (ii), (iii) and (c)(2)(i) amended.....	30201
(c)(2)(i), (ii), (iii), (iv), (vi), (c)(4), (d)(1) and (e)(1) amended.....	30202
(c)(3) correctly amended; CFR correction.....	38829
1206.101 Amended.....	30202, 30204
1206.109 (c)(2) and (e) amended.....	30202

30 CFR—Continued

	78 FR Page
Chapter XII—Continued	
1206.110 (e)(1), (2) and (g) amend- ed.....	30202
1206.111 (1)(2) and (3) amended.....	30202
1206.112 (c)(1) amended.....	30202
1206.114 Amended.....	30202
1206.115 (a) amended.....	30202
1206.116 (a) and (b) amended.....	30202
1206.117 (a) corrected; CFR cor- rection.....	19100
Agency heading corrected; CFR correction.....	20244
(a) and (b) amended.....	30202
1206.119 (a), (b) and (c) amend- ed.....	30202
1206.120 Amended.....	30202
1206.151 Amended.....	30202, 30204
1206.152 (e)(3) amended.....	30202
1206.153 (e)(3) amended.....	30202
1206.154 (a)(1), (2) and (d)(1) amended.....	30202
1206.156 (c)(3) and (d) amended.....	30202
1206.157 (a)(1)(i), (3), (b)(1), (4), (c)(1)(i), (2)(i), (d)(1), (e)(1), (2), (3) and (f)(1) amended.....	30202
1206.158 (c)(3) and (e) amended.....	30202
1206.159 (a)(1)(i), (3), (b)(1), (c)(1)(i), (2)(i), (d)(1), (e)(1), (2) and (3) amended.....	30202
1206.172 (b)(1)(ii), (e)(4)(i), (6)(i), (ii) and (iii) amended.....	30202
1206.174 (a)(4)(ii) and (iii) amend- ed.....	30202
1206.177 (c)(3) amended.....	30202
1206.178 (a)(1)(i) and (b)(1)(ii) amended.....	30202
(d)(2), (e) and (f)(1) amended.....	30203
1206.180 (a)(1)(i), (b)(1)(ii), (c)(2) and (d) amended.....	30203
1206.251 Amended.....	30203
1206.254 Amended.....	30203
1206.257 (d)(3) amended.....	30203
1206.259 (a)(1), (b)(1), (c)(1)(i), (2)(i), (d)(1), (e)(1) and (2) amended.....	30203
1206.262 (a)(1), (b)(1), (c)(1)(i), (2)(i), (d)(1), (e)(1) and (2) amended.....	30203
1206.351 Amended.....	30203
1206.353 (m)(2) amended.....	30203
1206.354 (m)(2) amended.....	30203
1206.356 (b)(1)(ii) amended.....	30203
1206.358 (d)(1) amended.....	30203
1206.359 (l)(2) amended.....	30203
1206.364 (d)(1) and (2) amended.....	30204
1206.456 (b)(5), (d)(1), (3) and (e) amended.....	30203

List of CFR Sections Affected

30 CFR—Continued

78 FR
Page

Chapter XII—Continued	
1206.458 (a)(1), (b)(1), (c)(1)(i), (ii), (iii), (2)(i), (ii), (iii), (iv), (vi), (4), (d)(1), (e)(1) and (2) amended	30203
1206.461 (a)(1), (b)(1), (c)(1)(i), (ii), (iii), (2)(i), (ii), (iii), (iv), (vi), (4), (d)(1), (e)(1) and (2) amended	30203
1207.1 Revised	30204
1207.4 (a) amended	30204
1207.5 Amended	30204
1210.10 Table revised	30204
1210.52 Introductory text amended	30205
1210.53 (a) and (b) amended	30205
1210.54 (a) amended	30205
1210.55 (a) introductory text and (2) amended	30205
1210.56 (a) and (c) amended	30205
1210.102 (a) introductory text, (1), (b) introductory text, (1), (2) and (vi) amended	30205
1210.103 (a) amended	30205
1210.104 (a) amended	30205
1210.105 (a) introductory text amended	30205
1210.106 (c) amended	30205
1210.151 (a), (b) and (c) introductory text amended	30205
1210.152 (a)(1), (2), (3), (b), (c) introductory text amended	30205
1210.153 (a)(1), (2), (b) and (c) amended	30205
1210.155 (a) and (b) amended	30205
1210.158 (a), (b) and (c) introductory text amended	30205
1210.201 Heading, (a)(1), (2) and (3) amended	30205
(b)(1), (2), (3), (4), (c)(1) and (3) amended	30205
1210.202 (a)(2) and (b)(1) amended	30205
1210.204 (b) amended	30205
1210.205 (a) introductory text revised	30205
(a)(1), (2) and (c) amended	30206
1210.353 Revised	30206
1218.40 (c)(1) and (2) amended	30206
1218.41 Heading, (a), (b), (c)(1) and (d) amended	30206
1218.50 (d)(1) and (2) amended	30206
1218.51 (a), (f)(1) and (4)(iii) amended	30206
(a) correctly amended; CFR correction	38829
1218.52 (a) and (c) amended	30206

30 CFR—Continued

78 FR
Page

Chapter XII—Continued	
1218.53 (a) amended	30206
1218.152 Correction redesignated from 218.153	30207
1218.154 (a) and (b) amended	30206
1218.201 (a), (b) and (c) amended	30206
1218.203 (a) amended	30206
1218.500 Amended	30206
Correctly redesignated from 2218.500	30207
1218.520 Amended	30206
1218.540 (b)(1) and (2) amended	30206
(a) and (d) revised	52433
1218.560 Heading and section amended	30206
1218.580 Heading and section amended	30206
1220.002 Amended	30207
1220.011 (d)(1), (2), (g)(1)(i), (2) and (o) amended	30207
1220.014 (d) amended	30207
1220.015 (b)(1) amended	30207
1220.031 (f) amended	30207
1220.032 (b) and (d) amended	30207
1220.033 (b)(1), (c)(2) and (e) amended	30207
1220.034 (a) and (d) amended	30207
1227.110 (a) and (e) correctly amended; CFR correction	38829
1243.3 Amended	30207
1243.8 Amended	30207
1290.100 Heading and section amended	30207
1290.101 Heading and section amended	30207
1290.102 Heading and section amended	30207
1290.104 Heading and (a) amended	30207
(b) amended	30208
1290.106 (b) and (e) amended	30208
1290.108 Amended	30208
1290.109 (a) introductory text amended	30208

2014

30 CFR

79 FR
Page

Chapter VII	
723.14 Table revised	18447
724.14 (b) amended	18447
780 Heading revised	76228
780.10 Revised	76228
780.14 (b)(11) and (c) revised	76228

30 CFR (7–1–17 Edition)

30 CFR—Continued

	79 FR Page
Chapter VII—Continued	
780.25 Heading, (a) introductory text, (1) introductory text, (2), (c)(2) and (d) revised; (a)(3), (e) and (f) added; (c)(4) removed	76228
780.28 Removed	76229
780.35 Revised	76229
784.10 Revised	76229
784.16 Heading, (a) introductory text, (1) introductory text, (2), (c)(2) and (d) revised; (c)(4) removed; (e) and (f) added	76230
784.19 Revised	76230
784.23 (b)(10) and (c) revised	76230
784.28 Removed	76231
816 Authority citation revised	76231
816.10 Revised	76231
816.11 (e) revised	76231
816.43 (a)(3), (b)(1) and (4) revised; (a)(4) and (b)(5) removed; (a)(5) redesignated as new (a)(4)	76231
816.46 (b)(2) through (5) redesignated as (b)(3) through (6); new (b)(2) added	76231
816.57 Revised	76231
816.71 (a) through (d) revised	76231
817.10 Revised	76232
817.11 (e) revised	76232
817.43 (a)(3), (b)(1) and (4) revised; (a)(4) and (b)(5) removed; (a)(5) redesignated as new (a)(4)	76232
817.46 (b)(2) through (5) redesignated as (b)(4) through (7); new (b)(2) and (3) added	76232
817.57 Revised	76232
817.71 (a) through (d) revised; (k) added	76232
845.14 Table revised	18447
846.14 (b) amended	18448
934.15 Table amended	32647, 74618
934.16 Republished	74618
943.15 Table amended	45686
944.15 Table amended	32650
950.15 Table amended	17868
Chapter XII	
1290.102 Amended	62050
1290.105 (a) revised	62051
1290.108 Revised	62051
1290.110 (b)(1), (2) and (3) revised	62051
1290.111 Added	62051

30 CFR

Chapter VII	
700 Authority citation revised	6446
700.5 Amended	6446
875.11 (b) revised	6446
875.16 (b) revised	6446
875.17 Revised	6446
875.19 Revised	6446
875.20 Revised	6446
877 Authority citation revised	6446
877.1 Revised	6446
879.1 Revised	6446
879.11 (a) and (b) revised	6446
879.15 (h) revised	6447
884.13 Introductory text removed; (a) through (f) redesignated as (a)(1) through (6); new (a)(3)(1) through (7), new (4)(1) through (4), new (5)(1), (2), (3), and new (6)(1), (2) and (3) redesignated as (a)(3)(i) through (vii), (4)(i) through (iv), (5)(i), (ii), (iii), and (6)(i), (ii) and (iii); new (a) introductory text and (b) added	6447
884.17 (a) revised	6447
885.12 (b) revised	6447
885.16 Heading and (e) revised	6447
885.20 (c) revised	6447
917.16 (e) and (h) removed	63120
924 Authority citation revised	16563
924.25 Added	16563
925.15 Table amended	78664
925.16 (p)(4), (20) and (v) removed	78664
935.15 Table amended	63125
935.16 Added	63125
938.15 Table amended	63130
938.16 (h) removed	55751

Chapter XII

1206 Technical conference	66417
1206.50–1206.65 (Subpart B) Revised	24805
1210 Technical conference	66417
1210.61 Added	24814
1219 Revised	81458

2016

30 CFR

Chapter VII	
700 Policy statement	80592
700.11 Heading and (d) revised	93319
701 Policy statement	80592
701.5 Amended	93319

List of CFR Sections Affected

30 CFR—Continued

	81 FR Page
Chapter VII—Continued	
701.16 Added	93323
723 Authority citation revised	44540
723.14 Table revised; interim	44540
723.15 (b) introductory text re- vised; interim	44540
724.14 (b) amended; interim	44541
773 Policy statement	80592
Authority citation revised	93323
773.5 Revised	93323
773.7 Revised	93323
773.15 Revised	93324
773.17 Revised	93324
773.20 Added	93325
774 Policy statement	80592
Heading revised	93325
774.9 Revised	93325
774.10 Revised	93325
774.15 Revised	93326
777 Policy statement	80592
Authority citation revised	93326
777.1 Revised	93326
777.11 Revised	93327
777.13 Revised	93327
777.14 Revised	93327
777.15 Revised	93327
779 Policy statement	80592
Revised	93327
779.21 Suspension lifted	93327
780 Policy statement	80592
Revised	93330
783 Policy statement	80592
Revised	93352
783.21 Suspension lifted	93352
783.25 (a)(3), (8) and (9) suspen- sions lifted	93352
784 Policy statement	80592
Revised	93355
785 Policy statement	80592
785.10 Revised	93379
785.14 Revised	93379
785.16 Revised	93380
785.25 Revised	93381
800 (Subchapter J) Heading re- vised	93381
800 Actions on petitions	61612
Policy statement	80592
Revised	93381
816 Policy statement	80592
Revised	93392
816.101 Suspension lifted	93392
817 Policy statement	80592
Revised	93418
817.121 (c)(4)(i) through (iv) sus- pension lifted	93418
824 Policy statement	80592
Heading and authority citation revised	93445

30 CFR—Continued

	81 FR Page
Chapter VII—Continued	
824.11 Revised	93445
827 Policy statement	80592
827.12 Revised	93445
845.14 Table revised; interim	44541
845.15 (b) introductory text re- vised; interim	44541
846.14 (b) amended; interim	44541
901.15 Table amended	74304
Chapter XII	
1202.51 (b) revised	43369
1202.251 Added	43369
1206 Policy statement	49897
1206.10—1206.20 (Subpart A) Re- vised	43369
1206.100—1206.119 (Subpart C) Re- vised	43372
1206.140—1206.165 (Subpart D) Re- vised	43380
1206.250—1206.273 (Subpart F) Re- vised	43389
1206.450—1206.473 (Subpart J) Re- vised	43395
1210 Policy statement	49897
1241 Revised	50316

2017

(Regulations published from January 1,
2017, through July 1, 2017)

30 CFR

	82 FR Page
Chapter VII	
723.14 Table revised	9353
723.15 (b) introductory text re- vised	9354
724.14 (b) amended	9354
845.14 Table revised	9354
845.15 (b) introductory text re- vised	9354
846.14 (b) amended	9354
Chapter XII	
1202.51 Regulation at 81 FR 43369 postponement of effective- ness	11823
1202.251 Regulation at 81 FR 43369 postponement of effective- ness	11823
1206.10—1206.20 (Subpart A) Regu- lation at 81 FR 43369 postpone- ment of effectiveness	11823
1206.100—1206.119 (Subpart C) Regulation at 81 FR 43372 post- ponement of effectiveness	11823

30 CFR (7-1-17 Edition)

30 CFR—Continued

82 FR
Page

Chapter XII—Continued	
1206.140—1206.165 (Subpart D)	
Regulation at 81 FR 43380 post-	
ponement of effectiveness.....	11823
1206.250—1206.273 (Subpart F)	
Regulation at 81 FR 43389 post-	
ponement of effectiveness.....	11823

30 CFR—Continued

82 FR
Page

Chapter XII—Continued	
1206.450—1206.473 (Subpart J)	
Regulation at 81 FR 43395 post-	
ponement of effectiveness.....	11823
1241.52 (a)(2) and (b) introductory	
text amended.....	18860
1241.60 (b)(1) and (2) amended.....	18860

