

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 903**

RIN 1029-AB81

**Surface Mining and Reclamation Operations Under a Federal Program for Arizona****AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.**ACTION:** Final rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior (DOI) is promulgating a Federal program to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in the State of Arizona. This includes surface effects of underground coal mining. This program is necessary in order to regulate surface coal mining activities that may be undertaken in Arizona under applicable provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), and under OSM regulations on standards and procedures relating to a Federal program for a State in the absence of a State program.

**EFFECTIVE DATE:** May 12, 1995.**FOR FURTHER INFORMATION CONTACT:**

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**I. Background**

Under section 504(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 et seq., the Secretary of the Interior (the Secretary) is required to promulgate a Federal program for a State in which there are or may be conducted surface coal mining operations on non-Federal and non-Indian lands for, among other reasons, the failure of the State to submit a proposed State program to the Secretary. Upon promulgation of a Federal regulatory program, the

Secretary becomes the regulatory authority.

Once a decision is made by OSM that a Federal regulatory program is necessary for a State, the Secretary must make several determinations before promulgating a program, as outlined below.

Section 504(a) of SMCRA requires that the Secretary take into consideration the nature of the State's terrain, climate, biological, chemical, and other relevant physical conditions. This requirement is also set forth in the regulations for the promulgation of Federal programs at 30 CFR Part 736.

Section 505(b) of SMCRA and 30 CFR 736.22(a)(1) also provide that if a State has more stringent land use and environmental protection laws or regulations than SMCRA, they shall not be construed to be inconsistent with SMCRA or the Secretary's regulations. If the State's laws or regulations establish more stringent standards than those of SMCRA or the Secretary's regulations, or if the State regulates any aspect of the environment which neither SMCRA nor the Secretary's regulations protect, the Secretary would then specifically preserve those State standards in the Federal program. Thus, the Secretary believes that the requirements of section 505(b) of SMCRA can best be met by identifying any State laws and regulations which impose equivalent or more stringent environmental controls and by listing them in § 903.700(e) of the Federal program.

Also, in promulgating a program for a State, section 504(g) of SMCRA specifies that any State statutes or regulations which regulate surface mining and reclamation operations subject to SMCRA will be superseded and preempted by the Federal program to the extent that they interfere with the achievement of the purposes and requirements of SMCRA and the Federal program. This provision is reinforced by section 505(a) of SMCRA, which states that only those State laws and regulations that are inconsistent with SMCRA and its implementing regulations shall be superseded by the Federal program.

Thus, those State statutes and rules regulating the same activities as those covered by the Federal statute and regulations, but which do not provide as much protection as do the Federal statute and regulations, are considered to interfere with the achievement of the purposes of SMCRA and must be identified and preempted by OSM.

Finally, according to section 504(h) of SMCRA, a Federal program must include a process for coordinating the review and issuance of surface mining

permits with other Federal or State permits applicable to the proposed operation. The Federal statutes with which compliance must be coordinated in the issuance of a surface mining permit are set out at 30 CFR 736.22(c). State statutes for which a permit is required must be identified in the process of promulgating a Federal program, and the Federal program must provide for coordination with the permit review and issuance procedures required by those statutes.

Federal programs are based on the Secretary's permanent program regulations, 30 CFR Chapter VII, Subchapters A, F, G, H, J, K, L, and M, which implement five essential aspects of the surface coal mining regulatory program: permitting, performance standards, designation of lands as unsuitable for mining, bonding, and inspection and enforcement. These regulations establish procedures and performance standards under SMCRA and form the benchmark for State and Federal regulatory programs.

The permanent program regulations refer to the "regulatory authority," which is the Secretary under a Federal program. The Secretary has delegated all of his authority under SMCRA to the Assistant Secretary—Land and Minerals Management. (Secretarial Order No. 3013, Nov. 9, 1977, and Order No. 3099, Dec. 22, 1983). With limited exceptions, the Assistant Secretary has in turn redelegated all of this authority under SMCRA to the Director, OSM (216 Departmental Manual 1, November 9, 1977). Thus, the Director of OSM is the official directly responsible for the implementation of a Federal regulatory program.

The parts of the permanent regulatory program regulations that must be included in a Federal program are listed at 30 CFR 736.22(b). They include general requirements and definitions (Parts 700 and 701), the exemption for coal extraction incident to government-financed highway or other construction (Part 707), the designation of lands as unsuitable for surface mining (Parts 761, 762, and 769), permits and permit applications (Subchapter G), small operator assistance (Subchapter H), reclamation bonding (Subchapter J), performance standards (Subchapter K), inspection and enforcement (Parts 842, 843, and 845), and blaster training and certification (Subchapter M).

Federal programs are promulgated by means of cross-referencing the permanent program rules which set the substantive standards. Cross-referencing avoids duplication of the full text of the permanent regulatory program rules for each Federal program. The Federal

regulatory program for Arizona is established at 30 CFR part 903. Sections within Part 903 cross-reference the counterpart permanent program rules. For example, for general requirements for permits and permit applications, § 903.773 of the Arizona Federal regulatory program cross-references 30 CFR part 773 of the permanent program rules by stating that 30 CFR part 773 shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

For each particular permanent program regulation which needs to be modified for use in a Federal program, an additional paragraph or paragraphs has been added under the appropriate section to modify that particular permanent regulatory program standard to make it applicable to the Federal program for a particular State or to add additional requirements or standards.

One effect of cross-referencing in a Federal program is that if a permanent program rule is revised, the corresponding Federal program rule would be similarly revised. However, the notice of proposed rulemaking would invite comments not only on the proposed rule generally, but also on how it might affect a particular Federal program. If certain changes were needed for a Federal program, then a separate provision would be added to the Federal program regulation that is the counterpart to the permanent program rule.

Several provisions of the permanent program rules are already applicable to all Federal programs because they were promulgated for application to all regulatory programs and therefore need not be cross-referenced here. These provisions are 30 CFR Chapter VII, Subchapter P—Protection of Employees; Part 706—Restrictions on Financial Interests of Federal Employees; Part 769—Petition Process for Designation of Federal Lands Unsuitable for Surface Coal Mining; Subchapter D—Federal Lands Program, Part 955—Certification of Blasters in Federal Program States and on Indian lands.

On October 6, 1982, OSM published in the Federal Register a proposed Federal program to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in Arizona (47 FR 44194). During the public comment period, OSM was informed by Arizona officials that all known coal reserves in Arizona are located on Indian lands. Based on this information, OSM determined at that time that a Federal program for Arizona for non-Federal and non-Indian lands was not

necessary. Therefore, by notice published in the Federal Register on January 4, 1983, OSM withdrew its proposal for a Federal program (48 FR 273).

In November 1993, OSM received a permit application for a surface coal mining operation in New Mexico, including portions extending into Arizona which may constitute activities subject to regulation under SMCRA. Accordingly, OSM determined that a regulatory program in Arizona is needed to regulate any coal exploration and/or surface coal mining and reclamation operations on non-Federal and non-Indian lands in Arizona that may occur in the future.

The State of Arizona has elected not to pursue primacy under a State program at this time. OSM published a proposed Arizona Federal program in the Federal Register on August 10, 1994 (59 FR 41208). The notice announced a 60 day comment period ending on October 11, 1994. In addition, OSM published a newspaper notice in *The Apache County Observer*, St. Johns, Arizona, located in the vicinity of the proposed mining-related activities in Arizona and provided a 30 day comment period. Consequently, pursuant to section 504(a) of SMCRA, OSM is now promulgating a Federal program for Arizona to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands.

## II. Discussion of Final Rule

As mentioned above, when promulgating a Federal program for a State, the Secretary is required by Section 504(a) of SMCRA to take into consideration the nature of the terrain, climate, biological, chemical, and other relevant physical conditions of that State. OSM has reviewed the Arizona laws and regulations to determine whether they suggest that special provisions may be necessary or appropriate based on special terrain or other physical conditions in the State.

### *Review of State Law*

OSM has reviewed Arizona State statutes to determine which ones provide regulatory requirements for coal exploration and surface coal mining and reclamation operations as defined by SMCRA, and to identify provisions that might be either more stringent than or inconsistent with the requirements of SMCRA.

The more stringent requirements, whether State or Federal, are adopted for this program by listing in this final rule, the Arizona State statutes that set different controls and for which

compliance is required in the surface coal mining and reclamation operation. Although OSM has made a comprehensive search of Arizona law, the list in final § 903.700(c) may not be complete. OSM does not intend an omission to mean that a permit applicant or a permittee does not have to meet those obligations under State law. To the contrary, any relevant State law not superseded by these rules must be complied with by permit applicants and permittees.

Determining whether the State statutes are more stringent than the Federal regulations was done on a case-by-case basis. Citation in the Federal program of State statutes with which compliance is required is not meant as an adoption of those State statutes and regulations for purposes of enforcement by OSM. Citation of such statutes is intended as an aid to persons who must comply with both the Federal program requirements and State statutes.

In accordance with 30 CFR Part 736, OSM identifies and lists at final section 903.700(c) of the Federal program for Arizona the following Arizona statutes which, in certain circumstances, impose stricter environmental controls than are provided for under SMCRA or the Federal regulations. These more stringent Arizona statutes are described and summarized as follows:

(1) The Arizona Department of Agriculture has authority to abate public nuisances including noxious weed seeds. Arizona Revised Statutes (A.R.S.) Sections 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 to remove the nests or eggs of any bird without prior authorization of the Arizona Game and Fish Commission. A.R.S. Section 17–236.

(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 rights are subject to numerous limitations, 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.

In the proposed rule, OSM identified at § 903.700(f), the Arizona Open Pits Mining Statute, A.R.S. Section 27-421 to Section 27-425, and the Arizona Administrative Code Rules 11-1-1301 through 11-1-1315, as generally interfering with the achievement of the purposes and requirements of the Act and proposed that they be preempted and superseded to the extent they interfered with the regulation of coal exploration or surface coal mining and reclamation operations subject to

regulation under SMCRA in accordance with § 504(g) of the Act. However, in response to a reviewer's comment OSM, reexamined the above statute and regulations, and has now concluded that they do not appear to conflict with or interfere with the application of SMCRA under the Federal program for Arizona. Therefore, in this final rule OSM is not preempting any State laws or regulations, at this time. Final § 903.700(d) provides that, if, in the future, a problem arises in the application of the Federal program for Arizona due to the applicability of these or other State laws and regulations, including any that OSM may not have evaluated due to an omission, OSM will consider whether such laws or regulations interfere with the implementation of SMCRA, and if necessary will preempt and supersede them using the procedures of 30 CFR 730.11(a).

#### *Content and Organization of the Federal Program*

The content and organization of the Federal program for Arizona generally follows the permanent program regulations. However, as discussed above, instead of the full text appearing, each section includes only a reference to the pertinent permanent program regulation section. A separate paragraph is added under each section where there are deviations from the Federal permanent program regulations for the Arizona Federal program. These paragraphs will generally be found in a subsection (b).

The content and organization of the Arizona Federal program is based on the following provisions of the Federal permanent program regulations, 30 CFR Chapter VII:

- Subchapter A—General
- Subchapter F—Areas Unsuitable for Mining
- Subchapter G—Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Systems under Regulatory Programs
- Subchapter H—Small Operator Assistance
- Subchapter J—Bond and Insurance Requirements for Bonding of Surface Coal Mining and Reclamation Operations
- Subchapter K—Permanent Program Performance Standards
- Subchapter L—Permanent Program Inspection and Enforcement Procedures
- Part 955—Certification Program for Blasters

Technical literature cited by OSM in the preambles to the permanent

regulatory program (44 FR 14901-15309, March 13, 1979) and in succeeding rulemaking notices, was relied upon in developing the Arizona Federal program. The reader is referred to those preambles for a discussion of the bases and purposes of the permanent program rules referenced in the Arizona program without substantive change.

The numbering system of the permanent program regulations has been incorporated into the numbering system for the Arizona Federal program. Subchapter T of 30 CFR Chapter VII has been established to include regulatory programs by State in alphabetical order, and each State has been assigned a part number. As previously indicated, the regulatory program for Arizona is assigned Part 903. Program elements have been categorized under headings similar to the subchapter titles of the permanent program in 30 CFR Chapter VII.

#### *Detailed Discussion of the Arizona Program*

##### *General*

In this final rule, minor technical and editorial changes were made to the proposed rule for clarity and conciseness, including deleting redundant working, and in some places rearranging paragraphs of text in a more logical order.

Final §§ 903.700 (a) and (b) contain general statements on the scope and applicability of the program. Final § 903.700(c), which was proposed as § 903.700(e), lists Arizona State laws that include provisions regulating certain aspects of surface coal mining operations and that, in some instances, are more stringent than SMCRA and the Secretary's regulations.

Proposed § 903.700(f) identified certain State laws and regulations that would be preempted and superseded in the Arizona Federal program. However, as explained above under *Review of State Law*, OSM has determined, in response to a reviewer's comment, that preemption of State laws or regulations is not required at this time. In this final rule, § 903.700(d), which replaces proposed § 903.700(f), provides a procedure for the preemption of Arizona State laws and regulations that interfere with achievement of the purpose of SMCRA and Federal regulations if such laws and regulations would be identified at a future date.

Final §§ 903.701 through 903.707 establish the same provisions, where applicable, as 30 CFR Chapter VII, subchapter A, *General*. Final § 903.701(a) contains all applicable

general requirements, including the definitions in 30 CFR 700.5 and 701.5. Subsection (b) of § 903.701 states that, beginning on the effective date of this program and continuing until an operation has a permanent program permit issued by OSM, compliance with the interim program standards in 30 CFR Chapter VII, Subchapter B is required. Section 502(c) of SMCRA provides that all surface coal mining operations on lands on which such operations are regulated by a State shall comply with the interim program standards until a permanent program permit is issued.

Final paragraph (c) of § 903.701 provides that records required by 30 CFR 700.14 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 OSM Albuquerque Field Office. The provision in the final rule to maintain records at the county recorder's office was added to the proposed provision to maintain records only at the OSM Albuquerque Field Office, to make access easier to the general public.

Section 903.702 establishes the same requirements as Part 702, *Exemption for Coal Extraction Incidental to the Extraction of Other Minerals*. Section 903.707 establishes the same requirements as Part 707, *Exemption for Coal Extraction Incidental to Government-Financed Highway or Other Construction*.

#### Permit Fees

Final § 903.736, Permit fees, establishes the same provisions as 30 CFR 736.25.

#### Areas Designated Unsuitable for Mining

Sections 903.761 through 903.764 establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter F, *Areas Unsuitable for Mining*. However, 30 CFR 736.15(b)(1) provides that the procedures and criteria for designating lands unsuitable shall be implemented one year after a Federal program is made effective for a State. Therefore, § 903.764 provides that Part 764 shall apply beginning one year after the effective date of the Arizona program. No separate section for Federal lands is included because 30 CFR Part 769 is directly applicable and need not be made a part of a Federal program for a State.

#### Permits and Coal Exploration Approvals

Sections 903.772 through 903.785 establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter G, *Surface Coal Mining and Reclamation Operations Permits and*

*Coal Exploration Systems Under Regulatory Programs*. The following amplifications are added:

For exploration applications where 30 CFR 772.12 applies, § 903.772(b) requires that, upon receipt of notification from the regulatory authority of the 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.

Section 903.772(c) allows 30 days after publication of the public notice for persons adversely affected to file written comments. Section 903.772(d) requires the regulatory authority to act upon a complete exploration application 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.

In § 903.773, *Requirements for permits and permit processing*, subsection (b), lists Federal laws and corresponding or relevant State laws for which OSM must provide coordination to prevent or minimize duplication of effort with Arizona. Although the proposed rule included The Coastal Zone Management Act in this list, this Federal law does not appear to be relevant in Arizona. Therefore, it has been omitted in final § 903.773(b).

Section 903.773(c), as finalized contains the stipulation that no person may conduct coal exploration or surface coal mining and reclamation operations without first obtaining all other necessary permits from the State. This section lists State laws with which the Secretary will endeavor to coordinate when issuing a permit under this Federal program. For clarity and conciseness, the listing of these State laws in final § 903.773(c) has been rearranged to group them together into related categories, as described below:

(1) Arizona towns and cities are given long-range development and planning responsibility for their jurisdictions. They are authorized to issue zoning ordinances and regulate the industrial use of municipal land and establish special zoning districts (A.R.S. Section 9-461 to Section 9-462.01). Arizona counties have general permitting authority, and violation of a county building permit is a petty offense. A.R.S. 11-322 et seq. Each County's Board of Supervisors has responsibility for promulgating and enforcing the zoning ordinances for the county, and it is

unlawful to use land in violation of a zoning regulation, ordinance or permit. Violation of such regulation, ordinance or permit is a misdemeanor. A.R.S. Section 11-808, Section 11-803, and A.R.S. Section 11-821.

(2) The Arizona law concerning the perfection of mining claims and the establishment of claims to mineral rights is found at A.R.S. Section 27-201 to 27-210. Notice of such a claim must be recorded within 90 days in the appropriate office of the County having jurisdiction over the recording of land claims. A.R.S. Section 27-203.

(3) A mineral exploration permit is required before prospecting is allowed on public land. A.R.S. Section 27-251 to Section 27-256.

(4) A permit from the Department of Health Services is required for the discharge of solid wastes and air pollutants. A.R.S. Title 49.

(5) An installation permit is required before any pollution-causing equipment may be installed. Before the equipment can commence operation, an operating permit is required. The permits are not automatically transferable. It is a misdemeanor to violate any air pollution permit, ordinance or statute, and criminal intent is not an element of proof. A.R.S. Title 49.

(6) The Department of Health Services has the responsibility for issuing water pollutant discharge permits. A.R.S. Title 49, Chapter 2.

(7) It is unlawful to discharge wastes or drainage into State waters or reduce water quality below water quality standards or discharge pollutants into waters without a permit from the Department of Health Services. A.R.S. Title 45.

(8) The Department of State Lands has the responsibility for issuing mineral prospecting permits for State lands. A.R.S. Section 37-231.

(9) The waters from all sources belong to the State and are subject to appropriation and beneficial use. In order to appropriate water or make a beneficial use of water, a permit is required from the Director of the Department of Water Resources. The approval of the Director is required before such a permit may be transferred. A secondary permit from the Director is required before use may be made of reservoir waters. A.R.S. Title 45.

Final § 903.773(d) establishes specific permit application review procedures. This is necessary to dispose of flagrantly deficient applications early in processing, to provide a procedure for obtaining additional information, and to indicate the procedure for determinations of completeness. Final § 903.773(e) allows OSM to require an

applicant to submit supplemental information to ensure compliance with applicable Federal laws and regulations other than SMCRA and its implementing regulations. Final § 903.773(f) establishes, pursuant to 30 CFR 773.15(a)(1), a time period of 60 days from the close of the comment period for the regulatory authority to issue a written decision unless additional time is necessary due to the number or complexity of the issues. The final rule at § 903.773(g) establishes a procedure for ensuring confidentiality of qualified permit application information. Such information must be labeled confidential and submitted separately to be reviewed by OSM for withholding from disclosure. In addition, § 903.773(g)(1) requires the public notice required by § 903.773(d)(3) to identify the type of information considered to be confidential. Finally, § 903.773(g)(2) requires OSM to rule on the confidentiality of labeled application information within ten days of the last publication of the notice required under § 903.773(d)(3).

Proposed § 903.774(b) was described as providing that a permit revision shall be considered significant if it may have the potential to adversely impact the potential for the achievement of reclamation and the post-mining land use. However, this provision was included under proposed § 903.774(d). Final § 903.774(c) incorporates proposed § 903.774(d). In addition, final § 903.774(c) provides that OSM's Western Support Center 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. Final § 903.774(c) also provides that a significant revision requires public notice and is subject to a formal hearing if one is requested.

The remaining subparagraphs of proposed § 903.774 have been redesignated as follows. Proposed § 903.774(d) has been incorporated into final § 903.774(c), as discussed above. Proposed § 903.774(e), which has been redesignated as final § 903.774(d), provides that OSM approve or disapprove non-significant permit revisions within a reasonable amount of time. Final § 903.774(e), which was proposed as § 903.774(f), allows 30 days

for any person having an interest that is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights to submit written comments after publication of the notice required by 30 CFR 774.17(b)(2). Final § 903.774(f), which was proposed as § 903.774(g), allows interested persons and public entities 30 days from the last publication of the notice to submit written comments on or objections to an application for significant revision or permit renewal.

The permanent program regulations at 30 CFR 779.19(a) give the regulatory authority discretion to require a map that delineates vegetation types in the proposed permit area. The final rule at § 903.779(b) requires the applicant for a surface mining permit to submit such a map. Similarly, the rule at § 903.783(b) requires a vegetation map for underground mining permits.

#### Small Operator Assistance

Section 903.795 establishes the same standards for the small operator assistance program (SOAP) as are found in Part 795 of the permanent program rules. OSM expects during its administration of the SOAP in Arizona that Federal funds will be sufficient to provide for authorized services, and it does not expect to exercise its option at 30 CFR 795.11(b). That option allows OSM to establish a formula for allocating limited funds to provide the service pursuant to Part 795. OSM will award SOAP contracts to qualified laboratories utilizing a streamlined procurement system that complies with the Federal Acquisition Regulations. Prior to issuing a Request for Proposals, OSM will announce its intention through publication in the Commerce Business Daily or other appropriate publication. OSM will qualify labs as part of its contracting process.

#### Bonding

Section 903.800 establishes the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter J, *Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations*. The final rule at § 903.800(b) requires the operator to file an application for release of performance bond no later than 30 days prior to the end of the growing season.

#### Performance Standards

Sections 903.815 through 903.828 establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter K, except for the following changes:

As proposed, §§ 903.816(b) and 903.817(b) identified revegetation

success standards as those at 30 CFR 816.116(a)(2) and 817.116(a)(2), whereas the actual standards are found at 30 CFR 816.116 (a)(2) and (b) and 817.116 (a)(2) and (b). Therefore, a minor technical correction has been made in this final rule to cross reference the appropriate success standards intended to be cited.

Final § 903.816(b) requires: (1) That the standards for revegetation success for surface mining activities shall be those specified at 30 CFR 816.116 (a)(2) and (b); and (2) that statistically valid sampling techniques for measuring success shall be included in the mining and reclamation plan.

Final § 903.817(b) requires: (1) That the standards for revegetation success for underground mining activities shall be those specified in 30 CFR 816.117 (a)(2) and (b); and (2) that statistically valid sampling techniques for measuring success shall be included in the mining and reclamation plan.

#### Inspection and Enforcement Procedures

Sections 903.842, 903.843, 903.845, and 903.846 establish the same provisions as 30 CFR Chapter VII, Subchapter L, *Permanent Program Inspection and Enforcement Procedures*. The final rules at §§ 903.842(b) and 903.843(b) require OSM to furnish to a designated Arizona State agency with jurisdiction over mining, on request, copies of inspection reports and enforcement actions, respectively.

#### Blaster Training and Certification

Section 903.955 cross-references 30 CFR Part 955 of the permanent program regulations.

#### III. Response to Public Comments

OSM published a proposed Arizona Federal program in the Federal Register on August 10, 1994 (59 FR 41208). The notice announced a 60 day comment period ending on October 11, 1994. A public hearing was scheduled for September 26, 1994, in Phoenix, Arizona, but it was not held because no one requested to testify at the hearing. On February 2, 1995, OSM also published a newspaper notice in The Apache County Observer, St. Johns, Arizona, in the vicinity of the proposed coal mining-related activities in Arizona. This notice stated that OSM would receive comments on the proposed Arizona Federal program until March 6, 1995 and will include them in the Administrative record for this rulemaking, which was reopened for that purpose. The newspaper notice also offered to hold a public hearing during the comment period, but it was not held because no one requested to testify at the hearing.

OSM received comments from two commenters on the proposed Arizona Federal program rule during the comment period of the Federal Register notice. No comments were received from the publication of the newspaper notice.

One commenter stated that the preamble to the proposed rules does not adequately explain why OSM reinstituted the process for adopting a Federal program for Arizona and that a more complete discussion of that background should be included in the preamble to minimize the potential for misinterpretation of the intent and effect of a Federal program for Arizona, especially with respect to transportation of coal.

OSM repropose a Federal program for Arizona to enable OSM to regulate surface coal mining operations that could occur in Arizona in the future either through mining operations or through other associated activities resulting from or incident to a surface coal mining operation, including coal transportation systems. When OSM became aware of a proposed surface coal mining operation in New Mexico that would include transportation facilities extending into Arizona, OSM determined that a Federal program should be in place in the event that these activities are subject to regulation under SMCRA.

The same commenter stated that OSM should make clear that it has not purported to determine that the proposed railroad in Arizona would constitute a "surface coal mining operation" subject to SMCRA. The commenter indicated that the railroad in question has been included in the permit application for the proposed mining operation to avoid undue delay while awaiting a final decision regarding the applicability of SMCRA. The commenter expressed its opinion that the railroad in question is not subject to SMCRA; however, it supports and urges adoption of the Arizona Federal program to avoid delays in connection with the permit process for the proposed mining operation with the contingency that the program should either automatically terminate or be reconsidered upon the conclusion of Interior Board of Land Appeals Case (IBLA) No. 94-366 and OSM's national rulemaking on railroads. The commenter further stated that OSM should make clear that it does not intend to apply the Arizona program to any other railroad or other facilities at this time; and that OSM should provide that the Federal program and any permit for the Arizona segment of the proposed railroad will automatically terminate or

be reconsidered when the pending proceedings regarding regulation of railroads have been concluded.

Some railroads are subject to regulation under SMCRA as support facilities resulting from or incident to surface coal mining activities. Currently, this determination is made on a case-by-case basis by the regulatory authority through the permitting process. The determination is based on an evaluation of factors such as function, proximity, and economic dependence of the facility on a surface coal mine. OSM is currently reviewing the adequacy of its regulations and policies concerning the regulation of railroads as support facilities under SMCRA and may undertake national rulemaking at some time in the future to clarify the applicability of OSM's regulations to railroads.

There are also cases pending before the Interior Board of Land Appeals that, when decided, will bear upon this issue. However, OSM believes that it is important to separate the issue of the regulation of specific railroads on a case-by-case basis from the issue of establishing a Federal program for Arizona to regulate any such activities that are determined to be surface coal mining operations. OSM believes that the establishment of a Federal program is not contingent upon whether any particular activity should or should not be subject to regulation under SMCRA. A decision whether to regulate the proposed railroad under the Arizona program will be made separately from the decision to adopt a Federal program and, if necessary, will be subject to separate administrative and judicial review proceedings. The question of which railroads are subject to regulation under SMCRA is a separate issue and is beyond the scope of this rulemaking.

OSM agrees that any permit for railroad facilities under a Federal program for Arizona may be considered for revision or termination based on regulatory or policy changes. OSM will evaluate the effect of regulatory or policy changes on other existing or proposed support facilities at the time that such changes may occur. With respect to termination of the Federal program for Arizona, Federal programs may be terminated under 30 CFR § 736.16 provided that a State program has been approved under 30 CFR Part 732. Terminations could possibly also be accomplished if OSM determines that such a program is not needed.

The commenter stated that OSM should expressly acknowledge that its action is in no way intended to affect, much less preempt, IBLA Case No. 94-366 or the national rulemaking

proceeding regarding railroads. OSM agrees with the commenter. OSM is establishing a Federal program in Arizona to allow for regulation of any surface coal mining operations that may occur independently of and without any intent to affect or preempt any pending proceedings on railroad regulatory issues or on any rulemaking proceeding regarding railroads.

Another commenter provided the following comments which consist of corrections to State statutes and regulations referenced in the proposed Arizona Federal program rule:

Reference to the Arizona Department of Agriculture and Horticulture should be changed to read: "Arizona Department of Agriculture;" Reference to the Arizona Department of Health Services should be changed to read: "Arizona Department of Environmental Quality;" Under item (3) in the table included in § 903.773(b), add the following State law equivalent to the Resource Conservation and Recovery Act: "A.R.S. Title 49, Secs. 921-932."

These suggested corrections/additions have been added to this final rule.

This commenter also questioned whether, under § 903.700(f), all cited sections of the Arizona open Pits mining statute (A.R.S. Sections 27-421 to 27-425) are truly less stringent than SMCRA, as indicated in the proposed rule. As mentioned earlier, OSM has reevaluated the cited sections of the subject Act and finds that such preemption is not required at this time.

#### IV. Procedural Matters

##### *Federal Paperwork Reduction Act*

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

##### *Executive Order 12866*

This rule has been reviewed under Executive Order 12866.

##### *Regulatory Flexibility Act*

The Department of the Interior has determined pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this rule will not have a significant economic impact on a substantial number of small entities because no small entities are expected to apply for permits under the Arizona Federal Program and the total number of permits applied for under the program is expected to be very small.

##### *National Environmental Policy Act*

Section 702(d) of SMCRA provides that promulgation of a Federal program shall not constitute a major Federal action under the National

Environmental Policy Act, 42 U.S.C. 433. Thus, no environmental assessment or environmental impact statement is required for this rulemaking.

*Executive Order 12778 (Civil Justice Reform)*

This rule has been reviewed under the applicable standards of section 2(b)(2) of Executive Order 12778, "Civil Justice Reform" (56 FR 55195). In general, the requirements of section 2(b)(2) are covered by the preamble discussion of this rule. Individual elements of the order are addressed below:

A. What would be the preemptive effect, if any, to be given to the regulation?

As provided for under SMCRA, the regulatory program has a preemptive effect with respect to State laws and regulations less stringent than SMCRA (see above under *Discussion of Final Rule*).

B. What would be the effect of the regulation on existing Federal law or regulation, if any, including all provisions repealed or modified?

The regulations being adopted implement SMCRA in the State of Arizona, described herein, and are not intended to modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

C. Would the regulation provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA.

D. What would be the retroactive effect, if any, to be given to the regulations?

There would be no retroactive effect to the final regulation.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule. Prior to any judicial challenge to the application of the rule, however, administrative procedures must be exhausted. Applicable administrative procedures may be found at 43 CFR Part 4.

F. Would the proposed action define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items?

Terms which are important to the understanding of this rule are set forth at 30 CFR 700.5, 701.5, and 740.5.

G. Would the regulation address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

The Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

**Author**

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**List of Subjects in 30 CFR Part 903**

Coal mining, Intergovernmental relations, Surface mining, Underground mining, Reporting and recordkeeping requirements.

Dated: April 4, 1995.

Bob Armstrong,

*Assistant Secretary—Land and Minerals Management.*

Accordingly, OSM is amending 30 CFR Chapter VII, Subchapter T as set forth below:

1. Part 903 is added to read as follows:

**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 incident 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.*

**§ 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.

(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 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 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 operations 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 § 773.13(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.

(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 <b>Federal Register</b> .

(g) OSM will consider withholding information from public disclosure under § 773.13(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 § 773.13(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 § 773.13(a)(1) of this chapter, unless additional time is necessary to obtain public comment or in the event of unforeseen circumstances.

**§ 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 773.13 (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 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 § 773.13(a)(3) of this chapter of the proposed mining operations on the environment within their areas of responsibility.

**§ 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 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 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 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.

**§ 905.846 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.

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