

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.

§710.5

30 CFR Ch. VII (7–1–25 Edition)

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

§ 710.10

organic matter is most abundant, and 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

30 CFR Ch. VII (7-1-25 Edition)

transported from coal processing facilities 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.

(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-

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;

§710.12

30 CFR Ch. VII (7-1-25 Edition)

(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.*).