

## PART 937—OREGON

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

SOURCE: 47 FR 49822, Nov. 2, 1982, unless otherwise noted.

**§ 937.700 Oregon Federal program.**

(a) This part contains all rules that are applicable to surface coal mining operations in Oregon which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the Oregon Federal program.

(c) The rules in this part apply to all surface coal mining operations in Oregon conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in Oregon.

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of Oregon laws provide, where applicable, for more stringent environmental control and regulation of surface coal mining operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to Section 505(b) of the Act, they shall not be construed to be inconsistent with the Act:

(1) Oregon Revised Statutes (ORS) 468.700–468.997, pertaining to the control of water pollution.

(2) ORS 498.002 and ORS 498.705, protecting fish and wildlife and their habitats.

(3) ORS 509.125, prohibiting deleterious substances from being introduced into State waters.

(4) ORS 509.140, requiring the approval of the Fish and Wildlife Commission before explosives may be used to construct a dam or similar structure.

(5) ORS 509.600, prohibiting the injury or destruction of fish within 600 feet of any fishway. Prior approval of the Director, the Department of Fish and Wildlife, is required before constructing a dam or obstruction in State waters.

(6) ORS 509.615, requiring that artificial watercourses must be screened.

(f) The following are Oregon laws that interfere with the achievement of the purposes and requirements of the Act and are, in accordance with section 504(g) of the Act, pre-empted and superseded with respect to coal mining, except to the extent they provide for regulation of surface coal mining and reclamation operations which are exempt from the Surface Mining Control and Reclamation Act of 1977:

(1) Oregon Surface Mining and Mine Land Reclamation Act, as amended, ORS 517.750-ORS 517.990.

(2) Oregon Administrative Rules (OAR), Department of Geology and Mineral Industries, Division 30, Rules and Regulations, Oregon Mined Land Reclamation Act, OAR 632-30-005 through OAR 632-30-060.

(3) ORS 273.551 and ORS 273.775 to ORS 273.790. The contractual and leasing responsibility of the Division of Lands over State lands and minerals is not affected by this Federal program.

(4) ORS 275.340. Pre-empted to the extent that the State of Oregon construes this statute as delegating to cities and counties the authority to issue surface coal mining permits and related exploration permits.

[47 FR 49822, Nov. 2, 1982, as amended at 52 FR 13812, Apr. 24, 1987]

#### § 937.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and part 701 of this chapter shall apply to surface coal mining operations in Oregon.

#### § 937.702 Exemption for coal extraction incidental to the extraction of other minerals.

Part 702 of this chapter, *Exemption for Coal Extraction Incidental to the Extraction of Other Minerals*, shall apply to any person who conducts coal extraction incidental to the extraction of

other minerals for purposes of commercial use or sale.

[54 FR 52123, Dec. 20, 1989]

#### § 937.707 Exemption for coal extraction incidental to government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incidental to Government-financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

#### § 937.761 Areas designated unsuitable for surface coal mining by Act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply to surface coal mining and reclamation operations.

#### § 937.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mine operations beginning one year after May 28, 1982.

#### § 937.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and with the February 26, 1980, May 16, 1980, and August 15, 1980, opinions and orders of the U.S. District Court for the District of Columbia (*In re: Permanent Surface Mining Regulation Litigation* (Civ. Action No. 79-1144)).

(a) NDAC 69-05.2-25-0 shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the

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reasons and the additional time that is needed.

(c) Where coal exploration is to occur on State lands or the minerals to be explored are owned by the State, a mineral lease issued by the Oregon Division of Lands authorizing the coal exploration is required to be filed with the permit application.

[52 FR 13812, Apr. 24, 1987]

**§ 937.772 Requirements for coal exploration.**

(a) Part 772 of this chapter, *Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) Where coal exploration is to occur on State lands or the minerals to be explored are owned by the State, a mineral lease issued by the Oregon Division of Lands authorizing the coal exploration is required to be filed with the permit application.

[52 FR 13812, Apr. 24, 1987]

**§ 937.773 Requirements for permits and permit processing.**

(a) Part 773 of this chapter, *Requirements for Permits and Permit Processing*, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the application of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and negotiate the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 937.773(b)(2)(ii) by the specified date, the office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.6 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) Where applicable, no person shall conduct surface coal exploration operations which result in the removal of more than 250 tons in one location, or surface coal mining operations without permits issued and/or certificates required by the State of Oregon, including compliance with Oregon's State-wide Planning Goals (ORS 197.180) and any relevant Country Comprehensive Land Use Plans (ORS 197.005-ORS 197.775); license from the Division of State Lands where mines or exploration are on State lands (ORS 273.005-273.815); Solid Waste Disposal Permits, Hazardous Waste Transportation and

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Disposal Permits, Industrial Waste Disposal Permits issued by the Department of Environmental Quality (ORS 459.005–ORS 459–850); leases issued by the county where county designated forest lands are involved (ORS 275.340); noise restrictions enforced by the Department of Environmental Quality (ORS 467.010–467.990); Air Contaminant Discharge Permits (ORS 468.005–ORS 468.997), Water Pollution Control Facilities Permits, Waste Discharge Permits (ORS 468.900–ORS 468.997), Energy Facility Site Certificates (ORS 469.300–ORS 469.570, ORS 469.990, ORS 469.992) issued by the Energy Facilities Siting Council; Department of Fish and Wildlife issues permits for dam use (ORS 509.600), for use of explosives used to construct dams or similar structures (ORS 509.140); the State Fire Marshall issues Certificates of Possession for persons having or using explosives (ORS 480.210); the Division of State Lands issues license for use of dredging machines (ORS 517.611–ORS 517.700); the Department of water Resources issues permits with respect to the use, appropriation or diversion of State waters (ORS 537.130, ORS 537.135) and surface waters (ORS 537.135, ORS 537.140 and ORS 537.800), and permits relative to the design, construction and maintenance of dams, dikes or other hydraulic structures or works (ORS 540.350, ORS 540.400); matter may be removed from the beds and banks of State waters and fill may be deposited in State waters once a permit is obtained from the Division of State Lands (ORS 541.605–ORS 541.990).

[52 FR 13812, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

### § 937.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, *Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights*, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSMRE.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public no-

tice and hearing provisions of §§ 773.6, 773.19(b) (1) and (2), and 778.21 and of part 775.

(2) OSMRE shall make every effort to approve or disapprove an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstance. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

[52 FR 13813, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

### § 937.775 Administrative and judicial review of decisions.

Part 775 of this chapter, *Administrative and Judicial Review of Decisions*, shall apply to all decisions on permits.

[52 FR 13813, Apr. 24, 1987]

### § 937.777 General content requirements for permit applications.

Part 777 of this chapter, *General Content Requirements for Permit Applications*, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

[52 FR 13813, Apr. 24, 1987]

### § 937.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Permit Applications—Minimum Requirements for Legal, Financial, Compliance and Related Information*, shall apply to any person who applies for a permit to conduct

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surface coal mining and reclamation operations.

[52 FR 13813, Apr. 24, 1987]

**§ 937.779 Surface mining permit applications—minimum requirements for information on environmental resources.**

Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to conduct surface mining and reclamation operations.

**§ 937.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.**

(a) Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirement for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations on non-Federal and non-Indian lands.

(b) Any application for a permit shall demonstrate compliance with the air quality control laws (ORS 468.275 through ORS 468.350 and ORS 468.500 through ORS 468.580) administered by the Oregon Department of Environmental Quality and shall have obtained, where required, an Air Contaminant Discharge Permit from the Department of Environmental Quality (ORS 468.275 through ORS 468.350).

**§ 937.783 Underground mining permit applications—minimum requirements for information on environmental resources.**

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who submits an application to conduct underground mining operations.

**§ 937.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.**

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person

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who makes application to conduct underground mining.

**§ 937.785 Requirements for permits for special categories of mining.**

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining*, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

**§ 937.795 Small operator assistance.**

Part 795 of this chapter, *Small Operator Assistance*, shall apply to any person making application for assistance under the small operator assistance program.

**§ 937.800 General requirements for bonding of surface coal mining and reclamation operations.**

Part 800 of this chapter, *General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs*, shall apply to all surface coal mining and reclamation operations.

**§ 937.815 Performance standards—coal exploration.**

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration*, shall apply to any person conducting coal exploration operations.

**§ 937.816 Performance standards—surface mining activities.**

Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, shall apply to any person who conducts surface coal mining and reclamation operations.

**§ 937.817 Performance standards—underground mining activities.**

Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities*, shall apply to any person who conducts underground mining operations.

**§ 937.819 Special performance standards—auger mining.**

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining*, shall apply to any

person who conducts surface coal mining operations which include auger mining.

**§ 937.823 Special performance standards—operations on prime farmland.**

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland*, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

**§ 937.824 Special performance standards—mountaintop removal.**

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal*, shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

**§ 937.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.**

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine*, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

**§ 937.828 Special performance standards—in situ processing.**

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, shall apply to any person who conducts in situ processing activities.

**§ 937.842 Federal inspections.**

(a) Part 842 of this chapter, *Federal Inspections*, shall apply to all exploration and surface coal mining and reclamation operations.

(b) OSM will furnish a copy of each inspection report regarding inspections conducted pursuant to this subpart to the Oregon Department of Geology and Mineral Industries.

**§ 937.843 Federal enforcement.**

(a) Part 843 of this chapter, *Federal Enforcement*, shall apply when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) OSM will furnish a copy of each enforcement action document and order to show cause issued pursuant to this subpart to the Oregon Department of Geology and Mineral Industries.

**§ 937.845 Civil penalties.**

Part 845 of this chapter, *Civil Penalties*, shall apply when civil penalties are assessed for violations on surface mining and reclamation operations.

**§ 937.846 Individual civil penalties.**

Part 846 of this chapter, *Individual Civil Penalties*, shall apply to the assessment of individual civil penalties under section 518(f) of the Act.

[53 FR 3676, Feb. 8, 1988]

**§ 937.955 Certification of blasters.**

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

## PART 938—PENNSYLVANIA

Sec.

938.1 Scope.

938.10 State regulatory program approval.

938.11 Conditions of State regulatory program approval.

938.12 State statutory, regulatory, and proposed program amendment provisions not approved.

938.13 State statutory and regulatory provisions set aside.

938.15 Approval of Pennsylvania regulatory program amendments.

938.16 Required regulatory program amendments.

938.20 Approval of Pennsylvania abandoned mine land reclamation plan.

938.25 Approval of Pennsylvania abandoned mine land reclamation plan amendments.

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