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PART 941—SOUTH DAKOTA

Sec.
941.700 South Dakota Federal program.
941.701 General.
941.702 Exemption for coal extraction incidental to the extraction of other minerals.
941.707 Exemption for coal extraction incident to Government-financed highway or other construction.
941.761 Areas designated unsuitable for surface coal mining by act of Congress.
941.762 Criteria for designating areas as unsuitable for surface coal mining operations.
941.764 Process for designating areas unsuitable for surface coal mining operations.
941.772 Requirements for coal exploration.
941.773 Requirements for permits and permit processing.
941.774 Revision; renewal; and transfer, assignment, or sale of permit rights.
941.775 Administrative and judicial review of decisions.
941.777 General content requirements for permit applications.
941.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.
941.779 Surface mining permit applications—minimum requirements for information on environmental resources.
941.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.
941.783 Underground mining permit applications—minimum requirements for information on environmental resources.
941.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
941.785 Requirements for permits for special categories of mining.
941.795 Small operator assistance.
941.800 General requirements for bonding of surface coal mining and reclamation operations.
941.815 Performance standards—coal exploration.
941.816 Performance standards—surface mining activities.
941.817 Performance standards—underground mining activities.
941.819 Special performance standards—auger mining.
941.822 Special performance standards—operations in alluvial valley floors.
941.823 Special performance standards—operations on prime farmland.
941.824 Special performance standards—mountaintop removal.
941.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
941.828 Special performance standards—in situ processing.
941.842 Federal inspections.
941.843 Federal enforcement.
941.845 Civil penalties.
941.846 Individual civil penalties.
941.955 Certification of blasters.

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

SOURCE: 48 FR 16823, Apr. 19, 1983, unless otherwise noted.

§ 941.700 South Dakota Federal program.

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

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

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

(d) The recordkeeping and reporting requirements of this part are the same as those of the permanent program regulations which have been approved by the Office of Management and Budget under 44 U.S.C. 3507.

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

(1) South Dakota Compiled Laws Annotated (S. D. Comp. Laws Ann.) Chap. 45–6B, section 33(1)–(5) on lands unsuitable for mining.

(2) S. D. Comp. Laws Ann. Chap. 45–6C, sections 16, 19, 27, and 28.

(3) Weed Control, S. D. Comp. Laws Ann. Chap. 38–22.

(4) Protection of fishing waters, S. D. Comp. Laws Ann. Chap. 41–13.

(5) Remedies for protection of the environment, S. D. Comp. Laws Ann. Chap. 34A–10.

(6) Air pollution control, S. D. Comp. Laws Ann. Chap. 34A–1.

(7) Water pollution control, S. D. Comp. Laws Ann. Chap. 34A–2.

(8) Solid waste disposal, S. D. Comp. Laws Ann. Chap. 34A–6.

(9) Groundwater, S. D. Comp. Laws Ann. Chap. 46–6.

(f) The following are South Dakota laws that interfere with the achievement of the purposes and requirements of the Act and are, in accordance with section 504(g) of the Act, preempted and superseded with respect to surface coal mining, except to the extent that they regulate surface coal mining operations which affect two acres or less, or which otherwise are not regulated by the Surface Mining Control and Reclamation Act.

(1) S. D. Comp. Laws Ann. Chap. 45–6B, except with respect to the criteria for designating lands unsuitable for mining, section 33(1)–(5).

(2) S. D. Comp. Laws Ann. Chap. 45–6C, except with respect to the requirements to consult with the owner of surface lands to be explored and the right of the owner to establish reasonable restrictions on exploration travel (section 16), the requirement to post an exploration reclamation bond (section 19), the prohibition of explosives use in exploration within one-half mile of a flowing water well or a domestic water well without the owner's permission (section 27), and the requirement to cap, plug, and seal all exploration test holes (section 28).

(g) The Secretary may grant a limited variance from the performance standards of §§941.815 through 941.828 of this part if the applicant for coal exploration approval or a surface mining permit submitted pursuant to §§941.772 through 941.785 demonstrates in the application that:

(1) Such variance is necessary because of the unique nature of South Dakota's terrain, climate, biological, chemical, or other relevant physical conditions; and

(2) The proposed alternative will achieve equal or greater environmental protection than does the performance requirement from which the variance is requested.

[48 FR 16823, Apr. 19, 1983, as amended at 52 FR 13814, Apr. 24, 1987]

§941.701 General.

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

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

Part 702 of this chapter, *Exemption for Coal Extraction Incidental to the Extraction of Other Minerals*, shall apply to any person who conducts coal extraction incidental to the extraction of other minerals for purposes of commercial use or sale.

[54 FR 52123, Dec. 20, 1989]

§941.707 Exemption for coal extraction incident to Government-financed highway or other construction.

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

§941.761 Areas designated unsuitable for surface coal mining by act of Congress.

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

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

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mine operations.

§941.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mine operations beginning one year after the effective date of this program.

§ 941.772 Requirements for coal exploration.

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

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

[52 FR 13814, Apr. 24, 1987]

§ 941.773 Requirements for permits and permit processing.

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

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

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

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

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

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

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

(3) Should the applicant not submit the information as required by § 941.773(b)(2)(ii) by the specified date, the office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

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

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

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

(d) Where applicable, no person shall conduct surface coal exploration operations which result in the removal of more than 250 tons of coal, nor shall any person conduct surface coal mining operations without a permit issued by the Secretary pursuant to 30 CFR part 773, and permits, leases and certificates required by the State of South Dakota including compliance with: (1) Air pollution control, S.D. Comp. Laws Ann. Chap. 34A–1; (2) water pollution control, S.D. Comp. Laws Ann. Chap. 34A–2; and (3) solid waste disposal, S.D. Comp. Laws Ann. Chap. 34A–6.

(e) No person shall be granted a permit to conduct exploration which results in the removal of more than 250 tons of coal or shall conduct surface coal mining unless that person has acquired all required permits, leases, and certificates listed in paragraph (d) of this section.

[52 FR 13815, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

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

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

mining and reclamation operations permits.

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

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§773.6, 773.19(b)(1) and (2), and 778.21 and of part 775.

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

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

[52 FR 13815, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

§941.775 Administrative and judicial review of decisions.

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

[52 FR 13815, Apr. 24, 1987]

§941.777 General content requirements for permit applications.

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

[52 FR 13815, Apr. 24, 1987]

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

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

[52 FR 13815, Apr. 24, 1987]

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

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

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

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

(b) Each applicant for a permit shall demonstrate compliance with the South Dakota laws on air pollution, S. D. Comp. Laws Ann. Chap. 34A–1, water pollution control, S. D. Comp. Laws Ann. Chap. 34A–2, and solid waste disposal, S. D. Comp. Laws Ann. Chap. 34A–6.

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

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

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

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct underground mining.

§ 941.785 Requirements for permits for special categories of mining.

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

§ 941.795 Small operator assistance.

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

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

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

§ 941.815 Performance standards—coal exploration.

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

§ 941.816 Performance standards—surface mining activities.

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

§ 941.817 Performance standards—underground mining activities.

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

§ 941.819 Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining*, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 941.822 Special performance standards—operations in alluvial valley floors.

Part 822 of this chapter, *Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors*, shall apply to any person who conducts surface coal mining and reclamation operations on alluvial valley floors.

§ 941.823 Special performance standards—operations on prime farmland.

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

§ 941.824 Special performance standards—mountaintop removal.

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

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

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

§ 941.828 Special performance standards—in situ processing.

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

§ 941.842 Federal inspections.

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

(b) The Office will furnish a copy of any inspection report or enforcement action taken to the South Dakota Department of Water and Natural Resources upon request.

§ 941.843 Federal enforcement.

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

(b) The Office will furnish a copy of each enforcement action and order to show cause issued pursuant to this section to the South Dakota Department of Water and Natural Resources upon request.

§ 941.845 Civil penalties.

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

§ 941.846 Individual civil penalties.

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

[53 FR 3676, Feb. 8, 1988]

§ 941.955 Certification of blasters.

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

[51 FR 19462, May 29, 1986]

PART 942—TENNESSEE

Sec.

942.20 Approval of Tennessee reclamation plan for lands and waters affected by past coal mining.
942.25 Approval of Tennessee abandoned mine land reclamation plan amendments.
942.700 Tennessee Federal program.
942.701 General.
942.702 Exemption for coal extraction incidental to the extraction of other minerals.
942.707 Exemption for coal extraction incident to government-financed highway or other construction.
942.761 Areas designated unsuitable for surface coal mining by act of Congress.
942.762 Criteria for designating areas as unsuitable for surface coal mining operations.
942.764 Process for designating areas unsuitable for surface coal mining operations.
942.772 Requirements for coal exploration.
942.773 Requirements for permits and permit processing.
942.774 Revision; renewal; and transfer, assignment, or sale of permit rights.
942.775 Administrative and judicial review of decisions.
942.777 General content requirements for permit applications.
942.778 Permit applications—Minimum requirements for legal, financial, compliance, and related information.
942.779 Surface mining permit applications—Minimum requirements for information on environmental resources.
942.780 Surface mining permit applications—Minimum requirements for reclamation and operation plan.
942.783 Underground mining permit applications—Minimum requirements for information on environmental resources.
942.784 Underground mining permit applications—Minimum requirements for reclamation and operation plan.
942.785 Requirements for permits for special categories of mining.
942.795 Small operator assistance program.
942.800 Bond and insurance requirements for surface coal mining and reclamation operations.
942.815 Performance standards—Coal exploration.
942.816 Performance standards—Surface mining activities.
942.817 Performance standards—Underground mining activities.
942.819 Special performance standards—Auger mining.
942.823 Special performance standards—Operations on prime farmland.
942.824 Special performance standards—Mountaintop removal.