

## Surface Mining Reclamation and Enforcement, Interior

## § 947.700

15. The Constitution of the State and State Law.

[52 FR 11049, Apr. 7, 1987]

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

SOURCE: 48 FR 7883, Feb. 24, 1983, unless otherwise noted.

### § 947.700 Washington Federal program.

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

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

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

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

(e) The following provisions of Washington laws generally provide for more stringent environmental control and regulation of some aspects of surface coal mining operations than do the provisions of the Surface Mining Control and Reclamation Act and the regulations in this chapter. Therefore, pursuant to section 505(b) of the Act, they shall not generally be construed to be inconsistent with the Act, unless in a particular instance the rules in this Chapter are found by OSM to establish more stringent environmental controls:

(1) Washington Clean Air Act, RCW 70.94.

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(2) Washington Food Fish and Shell Fish Laws pertaining to the Department of Fisheries on operation in streams, RCW 75.

(3) Washington Hydraulic Projects Approval Law, RCW 75.20.100.

(4) Washington Forest Practices Act, RCW 76.09.

(5) Washington Water Code, RCW 90.03.

(6) Washington Water Pollution Control Act, RCW 90.48.

(7) Washington Minimum Water Flows and Levels Act, RCW 90.22.

(8) Washington Shoreline Management Act, RCW 90.58.

(9) Washington Pesticide Control Act, RCW 15.58.

(f) The following are the Washington law and regulations that generally interfere with the achievement of the purposes and requirements of the Act and are, in accordance with section 504(g) of the Act, preempted and superseded. Other Washington laws may in an individual situation interfere with the purposes and achievements of the Act and may be preempted and superseded with respect to the performance standards of §§ 947.815 through 947.828 as they affect a particular coal exploration or surface mining operation by publication of a notice to that effect in the FEDERAL REGISTER.

(1) The Washington Surface Mining Act of 1971, Revised Code of Washington (RCW) 78.44, as related to surface coal mining, except to the extent that it regulates surface coal mining operations which affect two acres or less or which otherwise are not regulated by the Surface Mining Control and Reclamation Act.

(2) Surface Mined Land Reclamation regulations, Washington Administrative Code (WAC) 332-18, as they apply to surface coal mining, except to the extent that such regulations apply to surface coal mining operations which affect two acres or less or which otherwise are not regulated by the Surface Mining Control and Reclamation Act.

(g) The Secretary may grant a limited variance from the performance standards of §§ 947.815 through 947.828 of this part if the applicant for coal exploration approval or a surface coal mining reclamation permit submitted pursuant to §§ 947.772 through 947.785 of

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this part demonstrates in the application:

(1) That such a variance is necessary because of the nature of the terrain, climate, biological, chemical, or other relevant physical conditions in the area of the mine; and

(2) If applicable, that the proposed variance is no less effective than the environmental protection requirements of the regulations in this program and is consistent with the Act.

[48 FR 7883, Feb. 24, 1983, as amended at 52 FR 13815, Apr. 24, 1987]

### § 947.701 General.

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

(b) The following modified definitions shall be applicable under § 701.5 of this chapter:

(1) *Arid and semiarid area* means, in the context of alluvial valley floors, an area of the interior western United States, west of the 100th meridian west longitude, experiencing water deficits, where water use by native vegetation equals or exceeds that supplied by precipitation. All coalfields located in North Dakota west of the 100th meridian west longitude, all coalfields in Montana, Wyoming, Utah, Colorado, New Mexico, Idaho, Nevada, and Arizona, the Eagle Pass field in Texas, and the Stone Canyon and the Lone fields in California are in arid and semiarid areas, except that all coalfields located in the State of Washington west of the crest of the Cascade Mountain Range are not in arid or semiarid areas.

(2) *Forestry (Forest Land)*. Includes land used or managed for the long-term production of wood, wood fiber, or wood derived products. All land which is capable of supporting a merchantable stand of timber and is not being actively used in a manner or for a use which is incompatible with timber growing is also included. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(c) Records required by § 701.14 of this chapter to be made available locally to the public shall be retained at the county recorder's office of the county

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in which an operation is located, and at the nearest OSM Field Office.

[48 FR 7883, Feb. 24, 1983, as amended at 48 FR 22292, May 18, 1983]

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

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

[54 FR 52123, Dec. 20, 1989]

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

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

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

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

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

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

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

(a) Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mining and reclamation operations.

(b) The Secretary shall notify the Washington Department of Natural Re-

sources and the Department of Ecology of any area designated unsuitable or for which such designation has been requested or terminated.

### § 947.772 Requirements for coal exploration.

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

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

[52 FR 13816, Apr. 24, 1987]

### § 947.773 Requirements for permits and permit processing.

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

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

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

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

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

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

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

(3) Should the applicant not submit the information as required by § 947.773(b)(2)(ii) by the specified date, the Office may reject the application.

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When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

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

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations

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of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

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

(d) The Secretary shall coordinate, to the extent practicable, his responsibilities under the following Federal laws with the relevant Washington State laws to avoid duplication:

Federal law	Washington law
(1) Clean Water Act, as amended 33 U.S.C. 1251 <i>et seq.</i> .....	Water Pollution Control Act, Chapter 90.48 RCW
(2) Clean Air Act, as amended 42 U.S.C. 7401 <i>et seq.</i> .....	Washington Clean Air Act, Chapter 70.94 RCW.
(3) Resource Conservation and Recovery Act, 42 U.S.C. 3251	Solid Waste Management, Chapter 70.95 RCW: Hazardous Waste Disposal Act, Chapter 70.105 RCW.
(4) National Historic Preservation Act, RCW, 16 U.S.C. 470 <i>et seq.</i>	Indian Graves and Records, Chapter 27.44.
(5) Archeological and Historic Preservation Act, 16 U.S.C. 469 <i>et seq.</i>	Archeological Sites and Resources, Chapter 27.53 RCW, Office of Archeology and Historic Preservation, Chapter 43.51A, RCW.
(6) National Environmental Policy Act 42 U.S.C. 4321 <i>et seq.</i> .....	State Environmental Policy Act, Chapter 43.21C RCW.
(7) Coastal Zone Management Act 16 U.S.C. 1451, 1453–1464	Shoreline Management Act, Chapter 90.58, RCW.
(8) Section 208 of the Clean Water Act, as amended, 33 U.S.C. 1251 <i>et seq.</i>	Water Pollution Control Act, Chapter 90.48 RCW: Washington Forest Practices Act, Chapter 76.09 RCW.
(9) Endangered Species Act, 16 U.S.C. 1531 <i>et seq.</i> .....	Natural Area Preserves Act (Plants), Chapter 79.70, RCW: Department of Game, Chapter 43.17 RCW: Game Commission, Chapter 77.08, RCW.
(10) Fish and Wildlife Coordination Act 16 U.S.C. 661–667 .....	Water Resources Act of 1971, Chapter 90.54 RCW: Minimum Water Flows and Levels, Chapter 90.22 RCW.
(11) Noise Control Act, 42 U.S.C. 4903 .....	Noise Control Act of 1974, Chapter 70.107 RCW.
(12) Bald Eagle Protection Act 16 U.S.C. 668–668(d).	

(e) The Secretary shall coordinate the SMCRA permit with appropriate State and regional or local agencies to the extent possible, to avoid duplication with the following state and regional or local regulations:

(1) Department of Ecology:

Surface Water Rights Permit, RCW 90.03.250  
 Dam Safety Approval, RCW 90.03.350  
 Reservoir Permit, RCW 90.03.370  
 Approval of Change of Place or Purpose of Use (water) RCW 90.03.380  
 Ground Water Permit, RCW 90.44.050  
 New Source Construction Approval, RCW 79.94.152  
 Burning Permit, RCW 70.94.650  
 Flood Control Zone Permit, RCW 86.16.080  
 Waste Discharge Permit, RCW 90.48.180  
 National Pollution Discharge Elimination System (NPDES) Permit, RCW 90.48  
 Approval of Change of Point of Diversion, RCW 90.03.380

Sewage Facilities Approval, RCW 90.48.110  
 Water Quality Certification, RCW 90.48.160

(2) Department of Natural Resources:

Burning Permit, RCW 77.04.150 & .170  
 Dumping Permit, RCW 76.04.242  
 Operating Permit for Machinery, RCW 76.04.275  
 Cutting Permit, RCW 76.08.030  
 Forest Practices, RCW 76.09.060  
 Right of Way Clearing, RCW 76.04.310  
 Drilling Permit, RCW 78.52.120

(3) Regional Air Pollution Control Agencies:

New Source Construction Approval (RCW 70.94.152)  
 Burning Permit, RCW 70.94.650

(4) Department of Fisheries:

Hydraulic Permit, RCW 75.20

(5) Department of Game:

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Hydraulic Permit, RCW 75.20.100

(6) Department of Social Health Services:

Public Sewage, WAC 248.92  
Public Water Supply, WAC 248.54

(7) Department of Labor and Industries:

Explosive license, RCW 70.74.135  
Blaster's license, WAC 296.52.040  
Purchaser's license, WAC 296.52.220  
Storage Magazine license, WAC 296.52.170

(8) Cities and Counties:

New Source Construction Approval, RCW 70.94.152  
Burning Permit, RCW 79.94.650  
Shoreline Substantial Development Permit, RCW 90.58.140  
Zoning and Building Permits, Local Ordinances

(f) Where applicable, no person shall conduct coal exploration operations which result in the removal of more than 250 tons in one location or surface coal mining and reclamation operations without first obtaining permits required by the State of Washington.

(g) The Secretary shall provide a copy of the decision to grant or deny a permit application to the Washington Department of Natural Resources, the Department of Ecology and to the County Department of Planning, if any, in which the operation is located.

[52 FR 13816, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

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

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

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

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

(2) OSMRE shall make every effort to approve or disapprove an application for permit revision within 60 days of re-

ceipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

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

[52 FR 13817, Apr. 24, 1987, as amended at 65 FR 79672, Dec. 19, 2000]

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

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

[52 FR 13817, Apr. 24, 1987]

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

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

[52 FR 13817, Apr. 24, 1987]

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

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

[52 FR 13817, Apr. 24, 1987]

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

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

**§ 947.780 Surface mining permit application—minimum requirements for reclamation and operation plan.**

(a) Part 780 of this chapter, *Surface Mining Permit Application—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations, except for § 780.15(a) of that part.

(b) Any applicant for a surface coal mining permit which is to produce more than 1,000,000 tons per year shall demonstrate compliance with local Air Pollution Control Authorities and the Washington Clean Air Act, RCW 70.94.

(c) Any applicant for a surface mining permit shall describe the steps taken to comply with the Washington Water Pollution Control Act, RCW 90.48.

[48 FR 7883, Feb. 24, 1983, as amended at 48 FR 22292, May 18, 1983]

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

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

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

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

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(b) Any application for an underground mining permit which will produce more than 1,000,000 tons per year shall demonstrate specific compliance with local Air Pollution Control Authorities and the Washington Clean Air Act, RCW 70.94.

(c) Any applicant for an underground mining permit shall also indicate how compliance will be achieved with the Washington Water Pollution Control Act, RCW 90.48.

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

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

**§ 947.795 Small operator assistance.**

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

**§ 947.800 Requirements for bonding of surface coal mining and reclamation operations.**

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

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

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

(b) Any person who conducts coal exploration operations shall comply with the Washington Forest Practices Act, RCW 76.09, and regulations promulgated pursuant to it.

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

(a) Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, shall apply to

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any person who conducts surface coal mining and reclamation operations.

(b) All operators shall have a plan of reclamation approved by the Washington Department of Fisheries for operation in affected streams, RCW 75, and shall comply with the Hydraulic Project Approval Law, RCW 75.20.100, the Shoreline Management Act, RCW 90.58, the Forest Practices Act, RCW 76.09, the Water Pollution Control Act, RCW 90.48, the Minimum Water Flows and Levels Act, RCW 90.22, and the Pesticide Control Act, RCW 15.58, and regulations promulgated pursuant to these laws.

### § 947.817 Performance standards—underground mining activities.

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

(b) All operators shall have a plan of reclamation approved by the Washington Department of Fisheries for operation in affected streams, RCW 75, and shall comply with the Hydraulic Project Approval Law, RCW 75.20.100, the Shoreline Management Act, RCW 90.58, the Forest Practices Act, RCW 76.09, the Water Pollution Control Act, RCW 90.48, the Minimum Water Flows and Levels Act, RCW 90.22, the Pesticide Control Act, RCW 15.58, and the Washington Water Code, RCW 90.03, and regulations promulgated pursuant to these laws.

### § 947.819 Special performance standards—auger mining.

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

### § 947.822 Special performance standards—operations on alluvial valley floors.

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

fields in Washington west of the crest of the Cascade Mountain Range.

[48 FR 22292, May 18, 1983]

### § 947.823 Special performance standards—operations on prime farmland.

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

### § 947.824 Special performance standards—mountaintop removal.

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

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

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

### § 947.828 Special performance standards—in situ processing.

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

### § 947.842 Federal inspections.

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

(b) Upon request OSM shall furnish a copy of any inspection report to the Washington Department of Natural Resources and the Department of Ecology. If there is a planning department

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in the county government where the operation is located, a copy of the enforcement action shall be furnished to that agency.

#### § 947.843 Federal enforcement.

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

(b) Upon request OSM shall furnish a copy of each enforcement action document and order to show cause issued pursuant to this section to the Washington Department of Natural Resources and the Department of Ecology. If there is a planning department in the county government where the operation is located, a copy of the enforcement action shall be furnished to that agency.

#### § 947.845 Civil penalties.

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

#### § 947.846 Individual civil penalties.

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

[53 FR 3676, Feb. 8, 1988]

#### § 947.955 Certification of blasters.

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

[51 FR 19462, May 29, 1986]

## PART 948—WEST VIRGINIA

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948.1 Scope.

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948.15 Approval of West Virginia regulatory program amendments.

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948.16 Required regulatory program amendments.

948.20 Approval of State abandoned mine lands reclamation plan.

948.25 Approval of West Virginia abandoned mine lands reclamation plan amendments.

948.26 Required abandoned mine land reclamation program/plan amendments. [Reserved]

948.30 State-Federal Cooperative Agreement.

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

#### § 948.1 Scope.

This part contains all rules applicable only within West Virginia that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[46 FR 5954, Jan. 21, 1981]

#### § 948.10 State regulatory program approval.

The West Virginia program, as submitted on March 3, 1980, as clarified on July 16, 1980, and as resubmitted on December 19, 1980, is conditionally approved, effective January 21, 1981. Beginning on that date and continuing until July 11, 1985, the Department of Natural Resources was deemed the regulatory authority in West Virginia for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Beginning on July 11, 1985, the Department of Energy was deemed the regulatory authority pursuant to the program transfer provisions of Enrolled Committee Substitute for House Bill 1850, as signed by the Governor of West Virginia on May 3, 1985. Beginning on October 16, 1991, the Division of Environmental Protection was deemed the regulatory authority pursuant to Enrolled Committee Substitute for House Bill 217 that was signed by the Governor on October 25, 1991. On December 3, 1991, OSM found that it was not necessary to amend the State program to effect the redesignation of the regulatory authority from the Division of Energy to the Division of Environmental Protection (58 FR 42904, August 12, 1993). Beginning on April 14, 2001, the Department of Environmental Protection was deemed the regulatory authority pursuant to Enrolled Committee Substitute for House Bill 2218.