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	U·S·DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: REG - 15 Transmittal Number: 548 Date: JUN 14 1989

Subject: Policy and Procedures for Maintaining Confidentiality of Permit Application Information

Approval: [signature] **Title:** Director

1. Purpose. This directive establishes policy and procedures concerning the review and handling of information submitted as a part of an application for an exploration permit or a mining permit, permit revision or permit renewal, and designated as confidential in writing by the applicant. This directive applies to all Office of Surface Mining Reclamation and Enforcement (OSMRE) employees processing these permit applications for operations on Indian lands, Federal lands where the State has not been delegated full permitting authority pursuant to a cooperative agreement, and in States where OSMRE has instituted a Federal program.

2. Summary. This Directive reflects the following changes to OSMRE Directive REG-15 dated August 28, 1987.

a. The scope is expanded to address the confidentiality requirements for exploration permit applications, and the Purpose, Definitions, Procedures, and References sections are revised accordingly.

b. The applicability is revised to address only application information that has been labeled and submitted as confidential by the applicant and that may be protected under the confidentiality provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and its implementing regulations. The definition of "confidential information" for mining permits, revisions, and renewals is revised accordingly to delete the reference to information on the nature and location of archeological resources (para 3.b.(1)).

c. The definition of "application" is revised to correspond to the definition of that term found in 30 CFR 701.5 (para 3.a.).

d. Several revisions are made to the Procedures section. It now provides that OSMRE should make the confidentiality determination prior to completing its first technical review of the application. The time period for appeals (and the minimum waiting period for release of disqualified information) is amended from 15 to 20 days consistent with the regulations at 43 CFR Part 4 governing Department hearings and appeals procedures (para 4.b.(4)). A new paragraph is added concerning protection of confidential information provided to other Federal or State agencies (para 4.b.(6)).

3. Definitions.

a. Application. The documents and other information filed with the regulatory authority under 30 CFR Chapter VII for the issuance of permits, revisions, renewals, and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

b. Confidential Information. In the context of this directive --

(1) For mining permits, revisions, and renewals, confidential information is defined as, and limited to, the information that has been clearly identified as confidential by the applicant and submitted separately from the remainder of the application, and:

(a) pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment; or

(b) is required under section 508 of SMCRA but is not on public file pursuant to State law.

(2) For exploration permits, confidential information is defined as, and limited to, information concerning trade secrets or privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration, that the applicant has requested in writing be kept confidential.

c. Federal Permitting Entity (FPE). The OSMRE organizational unit with responsibility for receiving and processing applications, i.e., the Western Field Operations office or the Division of Tennessee Permitting.

4. Policy/Procedures.

a. Policy. Sections 507(b)(17), 508(a)(12) and 512(b) of SMCRA, and 30 CFR 773.13(d)(3) and 772.15(b) and (c), establish requirements with respect to the confidentiality of application materials for surface coal mining permits and coal exploration permits. Information labeled confidential by the applicant shall be reviewed by the FPE for possible withholding from public disclosure. The FPE shall ensure that adequate public notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of information labeled confidential by the applicant. The FPE will, if requested, hold public meetings, informal conferences, or public hearings, as appropriate, concerning the disclosure or non-disclosure of application information labeled confidential. In reaching its decision, the FPE shall consider the oral and written comments of those persons seeking and opposing disclosure of application information labeled confidential.

b. Procedures.

(1) Submission of Application. The FPE provides prospective applicants with an information sheet that outlines how an application should be marked when confidentiality is requested. Prospective applicants are advised that a decision by OSMRE to release application information labeled

confidential by the applicant may delay processing of the permit application and may require public notice and opportunity to comment on the newly released information if the quantity of material disqualified is large or if substantial controversy exists.

Information that the applicant wishes to be kept confidential must be clearly identified by the applicant and submitted in a form separate from the remainder of the application. The FPE should advise the applicant to mark the cover or title page of the application with a statement that alerts the reviewer to the presence of information that the applicant believes is properly treated as confidential and that states the specific basis for this belief. In addition, the FPE should also advise the applicant to mark each sheet to which it wishes to restrict access, with a short statement similar to the following:

> Use or disclosure of the information contained on this sheet is requested to be restricted under the provisions of [30 CFR 773.13(d)(3) for mining permits; or 30 CFR 772.15(b) for exploration permits; or the State or Federal program counterpart thereof].

(2) Public Notice. If the applicant has labeled any of the application information confidential, the FPE, after determining that the application is administratively complete, notifies the applicant to publish the newspaper advertisement required by 30 CFR 773.13(a)(1) for mining permits, or 30 CFR 772.12(c) for exploration permits, or the State or Federal program counterparts thereof, and to include a concise statement describing in general terms the nature of the information proposed to be withheld from disclosure and the reason for this request. The advertisement must also inform persons both seeking and opposing disclosure how to express their opinions and to whom. In addition, the information contained in the advertisement is to be placed in all copies of the application on file for public review.

(3) Public Comment. The FPE provides an opportunity for public comment on confidentiality-related matters and handles any comments in a manner consistent with the procedures outlined in 30 CFR 773.13(b) for mining permits, or 30 CFR 772.12(c) for exploration permits, or the applicable State or Federal program counterparts thereof.

(4) Determination of Confidentiality. Prior to completing the first technical review of the application, the FPE makes a determination as to the confidentiality of the application information labeled confidential by the applicant. The FPE should make the determination within 30 days of the last publication of the newspaper advertisement specified under paragraph 4.b.(2) above, unless additional time is necessary to obtain public comment or as a result of unforeseen circumstances. In reaching the decision, the FPE considers all public comments received. This decision should be reviewed by the appropriate Field Solicitor prior to being made public. The FPE promptly provides the applicant, commenters, and all other interested parties with written notification of the decision and their appeal rights.

Application information labeled confidential by the applicant which the FPE determines to be qualified is not made available for public inspection. Any information labeled confidential by the applicant but subsequently disqualified by the FPE is to be made available for public inspection in accordance with 30 CFR 773.13(a)(2) or 772.15(a), or the State or Federal counterpart thereof, no sooner than 20 days and no later than 30 days (unless the decision is under appeal) after notice of the disqualification is received by the applicant and other parties. (Verification of receipt of the notice of disqualification may be made by return receipt mail). The applicant, and any other party with an interest that may be adversely affected by the decision, has the right to appeal the decision to the Interior Board of Land Appeals within 20 days of receipt of the notice. If the decision is under appeal, the information is withheld from public inspection pending a final decision on the appeal.

If the quantity of material disqualified is large, or if substantial controversy exists, the FPE may reopen the public comment period on the application and may require the applicant to issue an appropriate public notice, to give interested parties an opportunity to comment on the application in light of the newly disclosed information.

(5) File Maintenance. In order to protect the integrity of qualified confidential information, the FPE, and any other OSMRE unit provided such information by the FPE, is required to maintain such information in locked files in a location separate from other permit application information on file for public review. Access is controlled by the respective heads of the appropriate FPE or other OSMRE offices maintaining such information. The FPE assures that each application in the public access files contains a reference to the corresponding confidential file where appropriate.

(6) Transfer of Confidential Information to Other Federal or State Agencies. In order to protect the integrity of qualified confidential information when such information must be provided to other Federal or State agencies, the FPE advises the Federal or State agency that any such information is provided by the FPE solely to ensure cooperative implementation of SMCRA and its implementing regulations and must be held confidential.

5. Reporting Requirements. None.

6. Effect on Other Documents. This Directive supersedes Directive REG-15, Transmittal Number 372, dated August 28, 1987.

7. References. 30 CFR 772.12, 772.15 and 773.13; 43 CFR Part 4.

8. Effective Date. This directive is effective upon issuance.

9. Contact. Chief, Branch of Federal and Indian Programs, (FTS) 343-1864.

10. Keywords. Confidentiality, Confidential Information.