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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: 372 Date: August 28, 1987

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

Approval: /signed/ Title: Director

1. Purpose. Under the provisions of 30 CFR 773.13(d) (3), the Office of Surface Mining Reclamation and Enforcement (OSMRE), in its capacity as the regulatory authority on certain lands, is establishing policy and procedures to ensure confidentiality of qualified information submitted as a part of an application for a mining permit, permit revision, or permit renewal. This directive applies to all OSMRE employees processing applications for permits, revisions and renewals of operations on Indian lands, Federal land where the State has not been delegated full permitting authority pursuant to a cooperative agreement, and on State and private lands where OSMRE has instituted a Federal Program.

2. Definitions.

a. Application. In this directive, application means the information required to be submitted by 30 CFR Chapter VII Subchapter G to obtain a permit as defined in 30 CFR 701.5, an exploration permit under 30 CFR 772.12, a revision of a permit under 30 CFR 774.13 or renewal of a permit under 30 CFR 774.15.

b. Confidential Information. Confidential Information is defined as, and limited to, the following:

(1) Information that 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.

(2) Information about the nature and location of archeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979 (P.L. 96-95, 16 U.S.C. 470).

(3) Information required under section 508 of the Surface Mining Control and Reclamation Act this is not on public file pursuant to State law and that the applicant has requested in writing to be held confidential.

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

3. Policy/Procedures.

a. Policy.

(1) The FPE shall adhere to the provisions of the applicable State or Federal program with respect to the confidentiality of application materials. Where such provisions are absent or incomplete, the FPE shall develop procedures consistent with this directive. Only information labeled confidential by the applicant and information on the nature and location of archeological resources on public or Indian lands shall be reviewed for possible withholding from public disclosure. The FPE shall ensure that adequate public notice and opportunity to comment is provided when an application containing information labeled confidential is submitted. Under the procedure described in 30 CFR 773.13(c), the FPE may, 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 shall provide prospective applicants with an information sheet that outlines how an application should be marked when confidentiality is requested. Prospective applicants shall be advised that a decision by OSMRE to release application information labeled confidential by the applicant would delay processing of the permit application.

Information that the applicant wishes to be kept confidential must be clearly identified and submitted in a form separate from the remainder of the application. The applicant shall 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 applicant should 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) or the State or Federal program counterpart thereof.

3b.1.

(2) Public Notice. If the applicant has labeled any of the application information confidential, the FPE after determining that the application is administratively complete, shall notify the applicant to publish the newspaper advertisement required by the State or Federal program counterpart to 30 CFR 773.13(a)(1) 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 notice shall also inform persons both seeking and opposing disclosure how to express their opinions and to whom. In addition, the information contained in the notice shall be placed in all copies of the application made available for public review.

(3) Public Comment. The FPE shall provide an opportunity for public comment on confidentiality-related matters and shall handle any comments in a manner consistent and concurrent with the procedures outlined in 30 CFR 773.13(b) and (c), or the State or Federal program counterparts thereof.

(4) Determination of Confidentiality. Prior to completing the review of the application, the FPE shall make a determination as to the confidentiality of the application information, using the criteria contained in the State or Federal program counterpart to 30 CFR 773.13(d)(3) and considering all public comments received. This decision shall be reviewed by the appropriate Field Solicitor prior to being made public. This determination shall be made within 30 days of the last publication of the notice required under the State or Federal program counterpart to 30 CFR 773.13(a)(1), unless additional time is necessary to obtain public comment or to deal with unforeseen circumstances. The applicant, commenters and all other interested parties shall be promptly notified of the decision and their appeal rights. If any material requested to be held confidential is determined to be not qualified for such treatment, the applicant shall be instructed to add that material to the application material on file for inspection pursuant to 30 CFR 773.13(a)(2), or the State or Federal program counterpart thereof.

Any information labeled confidential in the application but disqualified by the FPE shall be made available for public inspection no sooner than 15 days after disqualification in order to allow the decision to be appealed, and no later than 30 days after notice of the determination is provided to the applicant and other parties. The applicant and any other party with an interest that may be adversely affected has the right to appeal the decision within 15 days to the Interior Board of Land Appeals.

3b.4.

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. Application information labeled confidential which the FPE determines to be qualified shall not be made available for public inspection.

(5) File Maintenance. In order to protect the integrity of information designated as confidential, the FPE shall maintain such information in locked files in a location separate from other permit application files. Access shall be controlled by the head of the appropriate FPE. Each application in the public access files shall contain a reference to the confidential file where appropriate.

4. Reporting Requirements. None.

5. References.

a. OSMRE Directive INF-3 "Freedom of Information Act", dated July 9, 1985.

b. 30 CFR 773.13

6. Effect on Other Documents. None.

7. Effective Date. This directive becomes effective for all applications received after the date the directive is issued.

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