

FEDERAL REGISTER: 43 FR 37181 (AUGUST 22, 1978)

DEPARTMENT OF THE INTERIOR

AGENCY: Geological Survey

30 CFR Part 211

Coal Mining Operating Regulations; Modifications

ACTION: Final rule.

SUMMARY: The regulations in this chapter modify the Department's regulations to (1) require that surface and underground coal mining operations conducted on Federal lands conform to the initial environmental protection performance standards, requirements, and procedures published pursuant to the Surface Mining Control and Reclamation Act of 1977; (2) to delineate the functions and responsibilities of the U.S. Geological Survey and the Office of Surface Mining Reclamation and Enforcement, with respect to administration of the regulations in this part; (3) provide for inspections of coal mining operations on Federal lands by authorized representatives of the Office of Surface Mining Reclamation and Enforcement; (4) establish procedures for modifying existing State-Federal cooperative agreements; and (5) provide for enforcement procedures under the Act and the assessment of civil penalties for violations of the Surface Mining Control and Reclamation act. The regulations establish the Office of Surface Mining as the regulatory authority for responsibilities relating to compliance with the environmental protection standards under the Surface Mining Control and Reclamation Act of 1977 on Federal lands during the initial regulatory program unless the State is designated as such in a modified cooperative agreement.

The regulations were published in the FEDERAL REGISTER in proposed form, November 29, 1977 (42 FR 60889 (1977)). Most of the changes in the proposed regulations have been made to clarify the intent of the proposed regulations with respect to the division of authority between the responsible federal agencies and with respect to incorporation of the standards and procedures of the Surface Mining Act. Where appropriate, changes have also been made to reflect the comments received on the proposed rules. Those sections of 30 CFR 211 which have not been revised remain in effect, as amended May 17, 1976 (42 FR 20261 (1976)).

EFFECTIVE DATE: September 21, 1978.

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SUPPLEMENTARY INFORMATION:

This rulemaking modifies the existing Federal coal mining operating regulations of Part 211 of this title to comply with Section 523 of the Surface Mining Control and Reclamation Act of 1977, Pub.L. 95-87 (hereafter referred to as the Act). Section 523 of the Act requires that the Secretary implement a permanent Federal lands program which incorporates all the requirements of the Act into any Federal lease, incorporates the requirements of an approved State program, provides for cooperative agreements with the States, and retains certain responsibilities under the Federal Mineral Leasing Act, as amended. This rulemaking was proposed on November 29, 1977, in the FEDERAL REGISTER (42 FR 60889).

These regulations incorporate appropriate portions of the initial regulatory program (30 CFR 700 et seq.) into 30 CFR 211, Coal Mining Operations Regulations on Federal lands. The initial regulatory program was issued in final form by OSM on December 13, 1977 (42 FR 62639) (1977). These regulations represent the initial segment of the Federal lands program and as such constitute the first phase of applying the statute's environmental protection standards and procedures to coal mining on Federal Lands. The initial regulatory program will be in effect on Federal lands until the full permanent Federal lands program is promulgated as part of the permanent regulatory program rulemaking now underway.

These revisions to Part 211 also provide for modifying cooperative agreements entered into by the States and the Geological Survey, prior to enactment of the Surface Mining Act, under the authority of 30 CFR 211. Section 523 of the

Act requires modification of existing cooperative agreements in order to implement the initial regulatory program. Absent such modifications these regulations provide for termination of such agreements thirty days after publication. If an existing cooperative agreement is terminated, then OSM shall be the sole regulatory authority for implementing the Act.

This segment of the initial Federal lands program comprises all requirements of the initial regulatory program under the Act for coal mining operating regulations. Existing requirements of 30 CFR 211 which were not modified by the initial regulatory program of the Act and the responsibilities delegated by other laws such as the Mineral Leasing Act, as amended, have not been revised by this rulemaking and continue to apply.

As revised, Part 211 provides that Geological Survey Mining Supervisors will oversee coal exploration operations and will be responsible for compliance with royalty, development and mineral resource recovery requirements of leases and approved mining plans, and will continue to inspect operations to assure compliance with these requirements. The Director of the Geological Survey, acting initially through the mining supervisor, will be responsible for reviewing and recommending approval of those portions of the mining plan concerning royalty, development and mineral resource recovery.

The Director of the Office of Surface Mining, acting in the first instance through the Regional Director, will assume responsibility for review of proposed mining and reclamation plans and proposing approval or disapproval to the Assistant Secretary, Energy and Minerals who, by secretarial directive, has the authority to grant or deny final approval of such plans. Regional directors also will be responsible for inspection of mining operations to assure compliance with the environmental and reclamation performance standards of Part 211 and in 30 CFR Parts 715, 716 and 717.

The regulatory authority for the initial Federal lands program is the Secretary of the Department of Interior, acting by and through the Director, Office of Surface Mining, or the Director's authorized representative. In most instances, under these regulations, the authorized representative will be the Regional Director, Office of Surface Mining. Where there is an approved modified cooperative agreement in effect with a State, the regulatory authority with respect to the Federal lands program will be the authorized State regulatory authority together with the Director of OSM or his authorized representative. Although a primary policy of the Secretary is to provide for State administration of reclamation standards on Federal lands pursuant to a cooperative agreement, the Surface Mining Act requires OSM to maintain certain functions on these lands, such as assessment of civil penalties and inspection for compliance with the Act's requirements. {37182}

COMMENTS ON PROPOSED REGULATIONS

Comments pertaining to each section of this chapter have been summarized and are stated below. This is done so that the public will understand the response to each comment and will have a better understanding of the basis and purposes of the final regulations. General comments are treated below first, followed by specific comments directed to particular sections of the regulations.

GENERAL COMMENTS

1. Several commenters objected to the promulgation of the proposed regulations at this time because the "proposed modifications are a premature and improper attempt to implement Section 523 of the Surface Mining Control and Reclamation Act of 1977." One commenter specifically noted that the Act required that the permanent Federal lands program must incorporate "all the requirements of the statute. A Federal lands program cannot be developed in 'segments' as the Department proposes."

These arguments were not accepted. Coal mining on Federal lands comes under the jurisdiction of the Mineral Leasing Act, as amended, as well as the Surface Mining Control and Reclamation Act of 1977. The Secretary, under these authorities, has determined that coal mining operations on Federal lands should follow the intent of both acts. Section 523 requires adoption of all requirements of the act, and one of the requirements of the Surface Mining Control and Reclamation Act of 1977 is the development of initial regulatory procedures pursuant to Section 502(b) and (c). The Secretary has determined that these initial regulatory procedures shall be administered on Federal land as the initial segment of the Federal lands program.

2. Several commenters indicated that the respective roles of the Geological Survey, the Office of Surface Mining, and the States were not clear for the initial period on Federal lands. One commenter questioned "the need for the triplication of regulation of coal mining on Federal lands." Another similar commenter asked "Which will be the lead agency?" One

commenter suggested that the regulations should clearly "assure that various USGS officials are not considered as the regulatory authority as to non-Federal lands." Other commenters suggested that the regulations "clearly delineate which agency has jurisdiction over the issuance and enforcement of these proposed regulations because they are unclear as to which agency will have responsibility for these functions." This recommendation has been accepted and Section 211.3 of the regulations now defines the administrative functions of OSM and the Geological Survey, respectively.

As revised Section 211.3 provides that the mining supervisor will continue to exercise responsibility for: (1) Reviewing and recommending actions upon the royalty, development, and mineral resource recovery aspects of proposed mining plans, through the Director, Geological Survey, to the Regional Director, OSM; (2) overseeing exploration on Federal lands; (3) obtaining and checking coal production and sales records, determining rental and royalty liability, collecting rentals and maintaining rental and royalty accounts; (4) acting on applications for waiver, suspension or reduction of rental or minimum royalty; (5) acting on applications for suspension of operations or production; (6) inspecting operations to determine compliance with diligent development, production and resource recovery requirements of leases, licenses, and permits and approved exploration or mining plans; (7) inspecting operations at the termination of operations or lease relinquishment to determine whether rentals and royalties due are paid and lease requirements relating to development, production, and mineral resource recovery have been met; and (8) determining whether the amount of bonds is adequate to satisfy requirements of leases, permits, or licenses relating to development and production and payment of rents and royalties. In addition, the mining supervisor will continue to be primarily responsible for compliance with the provisions of Part 211 relating to underground mining in Sections 211.30 through 211.36 in consultation with the Regional Director, OSM. Finally, Section 211.72, Enforcement, has been amended to authorize the mining supervisor to issue an order of noncompliance if he finds the operator is conducting activities not in compliance with the lease, permit, license, and/or applicable regulation which threaten immediate and serious damage to the mine, the deposit being mined or other valuable deposits. Also, the mining supervisor is authorized to order immediate cessation of operations which create an imminent danger to public health and safety, or can be reasonably expected to cause significant, environmental harm to land, air, or water resources.

As amended Part 211 provides that the Regional Director shall be responsible for: (1) Recommending approval or disapproval of mining plans or major modifications of mining plans through the Director, OSM, to the Assistant Secretary, Energy and Minerals, who is the departmental officer authorized by the Secretary to approve or disapprove mining plans or modifications to mining plans; (2) regulating mining, reclamation, and abandonment operations subject to part 211 and the regulations in Parts 715, 716, and 717 of title 30 CFR; and (3) inspection and enforcement to assure compliance with all applicable performance standards.

The permanent Federal lands program, when promulgated and implemented, will specify the roles of each agency in the permanent Federal lands program. Although there may be several Federal agencies as well as the State involved in managing coal mining operations on Federal lands in the initial regulatory program, the Department intends to avoid any undue interruption in the current processing of mining plans, drafting of EA/EIS's, and inspection of coal mining operations on Federal lands. The final regulations have been edited to clarify the intent of the proposed regulations.

3. One commenter objected to the use of OSM numerical cross-references in the definition and performance standards sections without actually repeating the text of that OSM regulation, e.g., Aquifer (see Section 710.5 of this title). This style of incorporating the OSM regulations into 30 CFR 211 was adopted to eliminate the need for changing the 30 CFR 211 regulations each time the corresponding OSM regulation is revised.

4. Several commenters noted that the final OSM regulations for the initial regulatory program were published 14 days (December 13, 1977) after publication of these proposed regulations (November 29, 1977). The commenters noted that, since the final OSM regulations were to be incorporated into 30 CFR 211, there was not enough time provided "in effect" to allow for comments on the revision of 211 to conform to the regulations. One commenter observed that the numbering of the OSM regulations incorporated into the 211's was not the same as the final OSM regulations of December 13, 1977. The comments were valid, and the Department, in order to insure that there was enough time for public comment, extended by notice in the FEDERAL REGISTER (43 CFR 781) the comment period to January 13, 1978, and has revised these regulations to conform with the December 13, 1977, OSM regulations.

5. One commenter objected that there was no impact statement issued pursuant to Section 102(2)(c) of the National Environmental Policy Act. The comment was rejected because Section 702(g) of the Act stated that implementation of the Federal lands program "shall not constitute a major action within the meaning of Section 102(2)(c) of the National Environmental Policy Act." As the regulations are the first segment of the implementation of the Federal lands program, no EIS is required.

SPECIFIC COMMENTS: SECTION 211.1 - SCOPE AND PURPOSE

6. One commenter suggested that subsections 211.1(c) and (d)(1) of the existing regulations be reviewed to assure that they comply with the Act. Section 211.1(d)(1) applies to and defines existing operations pursuant to provisions of the regulations promulgated on May 17, 1976. This section required that all existing operators obtain the approval of a plan which complied with the requirements of the May 17, 1976, regulations before November 17, 1977. However, pursuant to Section 211.1(d)(2)(ii), several mining operations have been granted an administrative delay and have not yet been approved. The sections are retained as promulgated on May 17, 1976, but will be deleted when the regulations do not apply in any part to any such operation on Federal land. The compliance requirements of the act for February 3, 1978, and May 3, 1978, apply to all coal mining operations. {37183}

7. One commenter suggested that Section 211.1(e) be revised to clearly indicate relationship of Section 211.1(e) in the rules promulgated on May 17, 1976, to the Act. The commenter further suggested that the provision only be extended to environmental impact statements on the effective dates of the act. Another commenter observed that "a person who has been awaiting the completion of an EIS should not now be required at this juncture to revise its mine plan, with the added potential of further delaying the completion of the EIS."

Section 211.1(e) was not revised. Mining plans will be submitted according to Section 211.10(f) and (g). Environmental impact statements for action on mining plans shall reflect the intent of subsection 211.1(e) and implement the provisions of the act to the maximum extent possible.

SECTION 211.1(g) - SCOPE AND PURPOSE

8. One commenter requested that the applicability section be revised to distinguish between new and existing coal mining operations by amending the paragraph to include "first commence operations pursuant to a permit approved by the Mining Supervisor."

Coal mining operations on Federal lands are regulated pursuant to an approved mining plan as required by the Mineral Leasing Act of 1920, as amended. Consequently, the term "permit" as that term is used in the Surface Mining Control and Reclamation Act of 1977, is not a term which will be used during the initial Federal lands program.

9. One commenter objected to the requirement for compliance of mines on Federal lands with the effective dates in the initial regulatory procedures of Section 502 of the Act. The commenter argued that "within a 3-month period" existing mines on Federal lands will modify their operations for three different sets of standards and procedures. The commenter assumed that by August 3, 1978, all operations would be revised to conform to the permanent Federal lands program due to be promulgated on August 3, 1978.

The commenter is correct in that enactment of the Surface Mining Control and Reclamation Act does require several changes to the Department's regulations governing coal mining operations on Federal lands. However, the changes will occur over a substantial period of time and reflect the congressional intent for a phased implementation of the performance standards of the act. Moreover, the changes being made at this time do not require submission of new mining plans but only revisions or additional information as appropriate.

SPECIFIC COMMENTS: SECTION 211.2 - DEFINITIONS

10. One commenter suggested that the definition of "regulatory authority" be amended to assure that "GS officials are not considered as the regulatory authority as to non-Federal lands on which coal mining operations are being conducted under the Surface Mining Act." Another commenter indicated that the "regulatory authority" suggests that coal mining operations on Federal lands would be regulated by three distinct agencies at the same time. Another commenter recommended that the regulations define the responsibility of the State with a cooperative agreement in the definition of "regulatory authority".

In response to these comments the Department has revised the term "regulatory authority" to mean the Secretary, acting through the Director and Regional Directors of OSM or "an authorized State Regulatory Authority". The latter term is defined to mean any State regulatory authority exercising authority to regulate surface coal mining operations on Federal

lands pursuant to a State-Federal Cooperative Agreement which has been modified to comply with Section 523(c) of the Act.

SECTION 211.10 - EXPLORATION AND MINING PLANS

11. Several commenters suggested that the requirement to revise a mining plan submitted "prior to February 3, 1978," or "prior to the Act's enactment" was unreasonable or exceeded the initial requirements of the Act. One commenter objected that revisions are unreasonable because the permanent Federal Lands Program would once again require a further revision of a mining plan or permit application. Another commenter objected to the requirements as being unreasonable because they would cause "unnecessary administrative delays and added expenses" in revising plans and draft and final EIS's.

These comments were not accepted for the reason that while submission of new mining plans is not required by the revision now being made to Part 211, existing mine plans may have to be modified or revised to conform to the new requirements.

12. One commenter suggested that the relationship between a State with a cooperative agreement modified pursuant to the Act and the Department be made more clear for submission of new mining plans, revisions of mining plans, major modifications on or after February 3, 1978, and for existing operations on and after May 3, 1978.

Mining plans for new operations and major modifications submitted after February 3, 1978, in a State with a cooperative agreement will be required, pursuant to the cooperative agreement, to show the operator's plan for compliance with the initial performance standards. Any revision of a mine plan for an existing operation should be made in consultation with the State with a cooperative agreement and OSM. The regulation was amended to reflect this consultation requirement.

SPECIFIC COMMENTS: SECTION 211.40 - PERFORMANCE STANDARDS

13. Several commenters objected to specific sections of the environmental protection performance standards (30 CFR 700) in the initial regulatory program that were incorporated into the 30 CFR 211.40 regulations. The Section 211.40(a) and (b) performance standards are a composite of performance standards drafted pursuant to the initial regulatory program of the Act and the existing performance standards of Section 211 that were not modified due to the Act or represent responsibilities under other laws and regulations on Federal lands. The performance standards (30 CFR 715, 716, and 717) of the initial regulatory program of the Act were not changed due to comments received for this rulemaking and were integrated into these regulations, where applicable, exactly as promulgated on December 13, 1977, and subsequent dates.

a. One commenter suggested that subsection 211.40(a)(13)(B) which provides for a 5-year extension of the period of liability under performance bonds if natural conditions are unstable so as to favor slow revegetation be deleted or at least amended because it was inconsistent with section 515(b)(20) of the Act.

This comment is not accepted for the reason that Section 515(b)(20) is not an initial performance standard required to be implemented in the initial regulatory program. {37184}

b. One commenter suggested that Section 211.40(a)(14)(ii)(B), renumbered Section 211.40(a)(15)(ii)(B), be changed to provide protection from grazing for only livestock as "it is difficult if not impossible to control wildlife grazing." The subsection is changed to reflect this comment. The subsection was amended to take into account the amendment to Section 715.20(e)(2) in the December 13, 1977 rulemaking.

c. One commenter objected to the use of a specific requirement in 211.40(a)(16), renumbered 211.40(a)(17), of 5 feet to cover exposed coal seams. Another commenter recommended that it should be made explicit that "nothing in this section shall be construed as relieving the operator from backfilling to approximate original contour (Section 715.14)." The subsection was revised to account for minor changes in the final standards of the OSM initial regulatory program and to fully conform to the regulations in Section 715.14(j) which allowed for covering of exposed seams with 4 feet of material or treatment.

d. One commenter suggested that Section 211.40(a)(5), now renumbered Section 211.40(a)(6), should be reconstituted to retain the requirements of Section 211.40(a)(5) of May 16, 1976, that prohibited the use of mine wastes in permanent impoundments. It was also suggested that because of a modification to 30 CFR 715.17(k) in the final OSM

regulations published on December 13, 1977, the subsection should be amended to include requirements for adequate size and safe dam structures. The comment was valid, and Section 211.40(a)(5) was revised to fully conform with the December 13, 1977, regulations for permanent impoundments. The section was revised to combine the appropriate criteria of both the 211 and 715 regulations for all impoundments. The language of the limitations of 30 CFR 21.40(a)(5)(iv) on the use of wastes in impoundments and other water facilities was retained.

SPECIFIC COMMENTS: SECTION 211.40 - USE OF TERMS "MINIMIZE, CONTROL OR PREVENT"

14. In the proposed regulations of November 29, 1977, the Department indicated that the expression "minimize control, or prevent" was being considered for modification in the regulations to conform more fully with the provisions of the Act. One commenter recommended that the words "prevent" and "minimize" be deleted and the phrase "pursuant to all applicable State and Federal laws, rules, and regulations" be used. Another commenter suggested that, where applicable to water pollution, the term should be "prevent water pollution" to fully conform to the intent and requirements of the Act.

The regulations include performance standards incorporated from the initial regulatory program of the Act and the existing 30 CFR 211 regulations which were not modified by the initial regulatory program or are responsibilities delegated by the Mineral Leasing Act, as amended. The terms, "minimize, control, or prevent" occur for performance standards not fully covered or not covered at [*] by the initial OSM regulations. The terms were retained where appropriate to maintain the intent and responsibility of the 30 CFR 211's not modified by the initial OSM standards and were revised when appropriate to indicate that the specific OSM performance standard applied.

SPECIFIC COMMENTS: SECTION 211.40(B) - UNDERGROUND PERFORMANCE STANDARDS

15. One commenter objected to the incorporation of blasting requirements for surface mines in performance standards for underground mines because the initial OSM regulations did not contain blasting requirements for underground mines. This comment was valid, and the reference to the OSM standards was deleted. The existing standard of May 17, 1976, Section 211.40(a)(10), was retained as a performance standard which applies to underground mining operations. Editing was done to conform the wording and numbering of this section to part 717, underground mining general performance standards, of the initial OSM regulations.

SPECIFIC COMMENTS: 211.40 - SMALL OPERATORS

16. One commenter suggested that the provisions of Section 710.12, Special Exemption for Small Operators on State Lands, be extended to any small operators on Federal lands. No change is made in response to this comment inasmuch as the period to qualify as the small operator has expired.

SPECIFIC COMMENTS: 211.74 - VARIANCES

17. One commenter suggested that, rather than deleting the variance section in its entirety, subsection (2) should be amended to clarify that variances in a variety of individual situations are allowed by the Surface Mining Act. Another commenter noted that the deletion of the variance section would also delete the variance procedures for States with cooperative agreements.

The section on variances remains deleted. The individual sections of the OSM regulations which were incorporated into the 211's allow for certain alternatives to the environmental performance standards as specified by the Act; these alternatives will be the same on Federal lands as they are on State and private lands.

SPECIFIC COMMENTS: SECTION 211.70 - INSPECTIONS, ENFORCEMENT, AND CIVIL PENALTIES

18. Several commenters argued that the regulations allow for duplicate Federal inspections by OSM and the Geological Survey which would be "unnecessary, inefficient, costly and confusing." One commenter suggested that the regulations would create conflicts among agencies and that "only one Federal agency (either GS or OSM) assumes the responsibilities as the lead Federal agency." OSM is the lead Federal agency in the initial regulatory program on Federal lands. Inspections will

be conducted for the performance standards as modified by the initial environmental protection standards of the initial regulatory program under the requirements of 30 CFR 211.70. OSM would only inspect on Federal lands for the same reasons and under the same authority as on State and private lands such as in response to a citizen complaint. The modified cooperative agreements in a State with Federal lands will define the exact role as to inspection between the Office of Surface Mining and the State. In any case, the Geological Survey will inspect for those other responsibilities delegated by the Mineral Leasing Acts, as amended. The intent of the Department is to eliminate duplicative inspections through the cooperative agreements and by memoranda of understanding to coordinate inspections between OSM, the Geological Survey and the surface managing agencies.

SPECIFIC COMMENTS: SECTION 211.75(b) - COOPERATIVE AGREEMENTS

19. Several commenters objected to the short time frame proposed for modification of the cooperative agreements pursuant to the Act. Commenters recommended that the deadline of February 3, 1978, be extended. Another group of commenters suggested that the administrative relationships between OSM, the States with cooperative agreements, and the Geological Survey were not clearly indicated in the regulations and that the surface managing agencies were not explicitly mentioned at all. One commenter suggested that each section of the regulations indicate the specific relationships of the Federal agencies to each State with a cooperative agreement. Another commenter argued that the procedures for "modifying existing State-Federal cooperative agreements" were not fully specified in the regulations. Another commenter recommended that the EPA participate in the review and concur with the cooperative agreements. {37185}

Section 523(c) of the Act provides for the modification of existing cooperative agreements to enable the States to continue regulation on Federal lands if the modifications comply with the procedures in Section 502 of the Act. The comments objecting to the proposed date of February 3, 1978, are valid, and the Department has revised the date for completion of the modification of the cooperative agreements to the effective date of these regulations. Each cooperative agreement may be different depending on the varying State laws and regulations and practice as well as unique physical or climatological characteristics of the Federal lands.

Negotiations with respect to cooperative agreements will include a comparison of State laws and regulations with the 211's which now incorporate the initial regulatory program of the Act. The regulations only include general dates and broad procedures to allow for the individual negotiations required in each State which are on-going. The modified cooperative agreements will be effective for the same time period as the initial regulatory program on Federal lands; that is, until the permanent Federal lands program is promulgated and implemented, at which point they can be modified to conform to the requirements of the permanent regulatory program or will terminate.

OTHER CHANGES TO PART 211

In addition to the changes previously discussed relating to the division of responsibilities between GS and OSM in Section 211.3, Responsibilities, a number of other sections have been amended to reflect the administrative realignment of responsibilities from GS to OSM. These amendments are as follows:

1. Section 211.4(a) has been amended to require operations to be conducted pursuant to the obligations and applicable performance standards in Part 211 and 30 CFR Parts 715, 716 and 717 and any notices or orders issued by Regional Directors or mining supervisors.
2. Section 211.4(d) is amended to provide that the determination of the Regional Director shall be final with respect to necessity for or adequacy of actions to meet the requirements of that paragraph.
3. Section 211.4(e) requires operators to report to either the Regional Director or the mining supervisor accidents threatening damage to a mine, the lands or resources, or accidents which could cause air or water pollution.
4. Section 211.5(a), Procedures and public participation, is amended to require that major decisions of the Regional Directors shall be in writing and shall be available for public inspection in their offices.
5. Section 211.5(b) is amended to require that all proposed mining plans and major modifications be available for public inspection in the office of the appropriate Regional Director and that the Regional Director shall mail notices of availability

to appropriate Federal and State agencies and be published in the FEDERAL REGISTER. The protection against public disclosure of confidential information found in Section 211.6 remains in effect and governs this section.

6. Section 211.5(c) is amended to provide that the Regional Director conduct public hearings when requested prior to release of bonds, approval of final abandonment of operations, and approval of new mining plans or major modifications.

7. Section 211.10(a), Exploration and mining plans, is amended to require that exploration plans be submitted to the mining supervisor and that mining plans be submitted to the Regional Director. This is in accord with the Department's decision that during the initial Federal land regulatory program GS will continue to oversee exploration activities on Federal lands.

This subsection is also amended to require that operators submit eleven copies of proposed mining plans to the Regional Director. The existing regulation requires submission of seven copies. The additional four copies are needed for review by OSM.

8. Section 211.10(c)(6)(xii) is amended to authorize the Regional Director to determine additional criteria of the analyses of stratum of overburden.

9. Section 211.10(c)(7)(vi) is amended to authorize the Regional Director and the mining supervisor to determine whether auger mining may be approved.

10. Section 211.10(d)(1) has been amended to delineate the respective functions and responsibilities of the Regional Directors, mining supervisors and authorized State regulatory authorities and surface managing agencies, with respect to mining plan approvals. Pursuant to Secretarial decision, the approval of the Assistant Secretary, Energy and Minerals, must be obtained for all mining plans.

11. Section 211.10(d)(2)(i) is amended to authorize the Regional Director, with the approval of the Director, OSM, to require revisions or supplements to approved mining plans, to adjust to changed conditions, changed regulations or statutory requirements. Pursuant to Secretarial decision, the approval of the Assistant Secretary, energy and minerals must be secured for all significant revisions and supplements. Mining supervisors are authorized to request changes in plans, through the Regional Director, with respect to development, production and resource recovery requirements.

12. Section 211.11 is amended by requiring the mining supervisor to consult with the Regional Director regarding measures to protect wells and boreholes, and to require operators to notify the Regional Director if operations reveal unsuspected wells or boreholes.

13. Section 211.12(e), Mine maps, is amended to provide that operators file the annual current operations mine map required by the subsection with the Regional Director as well as the mining supervisor.

14. Section 211.12(d) is amended to authorize either the mining supervisor or the Regional Director to require vertical projections and cross-sections.

15. Section 211.21(a), Core and test holes, is amended to require the mining supervisor to consult with the Regional Director before authorizing use of drill holes to be utilized as surveillance wells.

16. Section 211.21(c) is amended to require consultation with the Regional Director before the mining supervisor may approve transfer of an exploratory well for further use as a water well.

17. Section 211.30, Underground mining - maximum recovery, is amended to require the concurrence of the Regional Director in approvals by the mining supervisor of permanent abandonment of entries, levels or panel working in which pillars have not been completely extracted within safe limits.

18. Section 211.31 is amended to require the mining supervisor to consult with the Regional Director regarding subsidence monitoring systems and to require that records of subsidence surveys be accessible for review by the Regional Director as well as the mining supervisor.

19. Section 211.41(a), Completion of operations and abandonment - grading and backfilling, is amended to provide that the operator submit grading and backfilling reports to the Regional Director instead of the mining supervisor.

20. Section 211.41(d)(1) is amended to require notices of intention to cease or abandon operations be sent by the operator to the Regional Director.

21. Section 211.41(a)(2) is amended to provide that upon cessation or termination of operations the Regional Director, the mining supervisor, and the appropriate authorized officer of the surface managing agency conduct a joint inspection of the leased, licensed, or permitted area to determine whether all operations have been completed in accordance with terms of the lease, license, or permit and the approved mining plan. If the inspection shows that the operator has complied with all such terms, conditions, and requirements, the Regional Director will recommend to the appropriate authorized officer that the appropriate period of liability be terminated. {37186}

22. Section 211.41(d)(3) is amended to provide that the Regional Director will consult with surface owner if the surface is not owned by the United States before recommending any termination of bond liability.

23. Section 211.61(a) and (b) are amended to provide that reports required therein be filed with the Regional Director, and to provide for joint inspections of revegetated areas by the Regional Director and the authorized officer of the Federal surface managing agency.

24. Section 211.75, Applicability of State law, has been amended as follows:

1. Subsection (a) applies to States that did not have an approved State-Federal cooperative agreement on or before August 3, 1977 (the date of enactment of Pub.L. 95-87). It requires that any State law or regulation which the Secretary determines by rulemaking to be a more stringent performance standard for the regulation of surface coal mining and reclamation than that provided under a performance standard in Part 211 or in 30 CFR Parts 715, 716, and 717 shall be adopted by the Secretary unless the Secretary determines that the law or regulation is inconsistent with the Act. As proposed, subsection (a) provided that the Secretary might decline to adopt a State law or regulations if he determined that: (1) Application of the requirements of such laws or regulations would unreasonably and substantially prevent the mining of Federal coal in such State; or (2) such laws and regulations are inconsistent. Upon consideration, the Department has determined that it is constrained from applying the first test by section 505 of the Act which provides that no State law or regulation shall be superseded by any provision of the Act only if it is determined to be inconsistent with the Act.

2. Subsection (b) has been amended to state the minimum requirements for cooperative agreements and to correct the impression that "new" rather than "modified" agreements are required.

3. Subsection (c) is amended to indicate that upon promulgation of the Federal lands program pursuant to section 523(a) of the Act the Secretary will review any cooperative agreements then in effect to determine whether the authorized State regulatory authority has the authority and resources to implement such program.

25. Section 211.78, Civil Penalties, is amended to provide that civil penalties may be assessed by OSM for violations of the Act, applicable performance standard in part 211 and 30 CFR Parts 715, 716, and 717, or any State laws or regulations adopted as Federal law as part of a State-Federal cooperative agreement, or any State standard adopted pursuant to 30 CFR Part 718, and the terms, conditions, or requirements of an approved mining and reclamation plan. As amended the subsection provides that OSM will consider violation found on Federal lands by an authorized State regulatory authority in determining whether to assess a civil penalty.

OTHER INFORMATION

The Department has determined that a regulatory analysis is not required under section 3 of Executive Order 12044.

Pursuant to Section 702(d) of the Act, publication of this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The principal authors of this rulemaking are Thomas V. Leshendok, Branch of Mining Operations, USGS, 703-860-7506, Carl Close, Assistant Director, State and Federal Lands, 202-343-4225, and Chedville L. Martin, Staff Attorney, Division of Surface Mining, Office of the Solicitor, 202-343-5207.

Under the authority delegated to the Secretary of the Interior by the Mineral Leasing act of 1920, as amended, and the Surface Mining Control and Reclamation Act of 1977, Part 211, Chapter II, Title 30 of the Code of Federal Regulations is

amended as set forth below:

1. Section 211.1 is amended by revising paragraph (a) and adding new paragraphs (g) and (h) as follows:

SECTION 211.1 - SCOPE AND PURPOSE.

(a) These regulations apply to surface coal mining and reclamation operations on Federal lands, including but not limited to the discovery, testing, development, mining, preparation, and handling of coal under leases, licenses, and permits issued for Federally owned coal, regardless of surface ownership, pursuant to the regulations in 43 CFR Group 3500 and the Alaska Coal Leasing Act of October 20, 1914, as amended (38 Stat. 741; 48 U.S.C. 432-445) the provisions of the Surface Mining Reclamation Control and Enforcement Act of 1977 (91 Stat. 445; 30 U.S.C. 1201-1328) and the Mineral Leasing Act of 1920, amended (30 U.S.C. 180 et seq.). Except as may otherwise be provided in 25 CFR Chapter I and this subsection, these regulations do not apply to such operations on tribal or allotted Indian lands under leases and permits issued subject to 25 CFR Part 177. A mining plan for an operation to be conducted on both Federal lands and Indian lands shall be subject to concurrent review pursuant to the requirements of this part and 25 CFR Part 177.

[Missing text]

(g) All surface and underground coal mining operations on Federal lands, shall comply with the general performance standards of 30 CFR 715 and the special performance standards of 30 CFR 716 and the performance standards for underground mines in 30 CFR 717 which apply to the operations. Any environmental protection or reclamation requirement contained in this part which is less stringent than any requirement contained in Parts 715, 716 and 717 is hereby superseded.

(h) All surface coal mining operations on Federal lands in Alaska from which coal has been mined on or after August 3, 1977, shall comply with all performance standards in 30 CFR 715, 716 and 717 subject to the procedures in Section 716.6.

2. Section 211.2 is amended as follows:

SECTION 211.2 - DEFINITIONS.

(a) Remove all paragraph designations from those existing definitions which are retained.

(b) The following definitions are removed: Acid or toxic producing materials, approximate original contour, compaction, impoundment, overburden, road, significant vegetation, spoil, surface owner, topsoil, valley floors, waste.

(c) The following definitions are added alphabetically to read as follows:

ACID DRAINAGE. See Section 710.5 of this title.

ACID FORMING MATERIALS means earth materials that contain sulfide mineral or other materials which, if exposed to air, water, or weathering processes, will cause acids that may create acid drainage.

ACT. See Section 700.5 of this title.

ALLUVIAL VALLEY FLOORS means unconsolidated streamlaid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits {37187}

APPROXIMATE ORIGINAL CONTOUR means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain with all highwalls and spoil piles eliminated. Water impoundments may be permitted where the regulatory authority determines that they are in compliance with Section 715.17 of this chapter.

AQUIFER. See Section 710.5 of this title.

AUGER MINING. See Section 700.5 of this title.

AUTHORIZED STATE REGULATORY AUTHORITY means any State regulatory authority exercising authority to regulate surface coal mining operations on Federal lands pursuant to a State/Federal cooperative agreement which has been modified to comply with the requirements of section 523(c) of the Act and promulgated as a rulemaking pursuant to this part.

COMBUSTIBLE MATERIAL. See Section 710.5 of this title.

COMPACTION means the reduction of pore spaces among the particles of soil or rock, generally done by running heavy equipment over the earth materials.

DISTURBED AREA. See Section 710.5 of this title.

DIVERSION. See Section 710.5 of this title.

DOWNSLOPE. See Section 710.5 of this title.

EMBANKMENT. See Section 710.5 of this title.

FEDERAL LANDS. See Section 700.5 of this title.

GROUNDWATER. See Section 710.5 of this title.

HIGHWALL. See Section 710.5 of this title.

HYDROLOGIC BALANCE. See Section 710.5 of this title.

HYDROLOGIC BALANCE. See Section 710.5 of this title.

IMPOUNDMENT means a closed basin formed naturally or artificially built which is dammed or excavated for the retention of water, sediment, or waste.

INTERMITTENT OR PERENNIAL STREAM. See Section 710.5 of this title.

LEACHATE. See Section 710.5 of this title.

NOXIOUS PLANTS. See Section 710.5 of this title.

OFFICE. See Section 700.5 of this title.

OPERATOR means a lessee, licensee, or one conducting operations on lands under the authority of the lessee or licensee. In addition, the term "operator" includes a person holding a permit as these terms are defined in Section 700.5 of this title. During the initial regulatory program applicable to this part the term operator includes the term "permittee" as used in Parts 715, 716, and 717 of this title.

OUTSLOPE. See Section 710.5 of this title.

OVERBURDEN means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

PERMIT. See Section 700.5 of this title.

PERSON. See Section 700.5 of this title.

PRODUCTIVITY. See Section 710.05 of this title.

RECHARGED CAPACITY. See Section 710.5 of this title.

RECURRENCE INTERVAL. See Section 710.5 of this title.

REGIONAL DIRECTOR means a Regional Director of the Office of Surface Mining or his designated representative.

REGULATORY AUTHORITY means the Secretary, acting by and through the Director, Office of Surface Mining, the Regional Directors of the Office of Surface Mining when authorized by this part, and an authorized State regulatory authority.

ROADS means access and haul roads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations, including roads used by coalhauling vehicles leading to transfer, processing, or storage areas. The term includes any such road used and not graded to approximate original contour within 45 days of construction other than temporary roads used for topsoil removal and coal haulage roads within the pit area. Roads maintained with public funds such as all Federal, State, and county roads are excluded.

RUNOFF WATER. See Section 710.5 of this title.

SEDIMENT. See Section 710.5 of this title.

SEDIMENTATION POND. See Section 710.5 of this title.

SLOPE. See Section 710.5 of this title.

SOIL HORIZONS. See Section 710.5 of this title.

SPOIL means overburden that has been removed during surface mining.

STABILIZE. See Section 710.5 of this title.

SURFACE COAL MINING OPERATIONS. See Section 700.5 of this title.

SURFACE COAL MINING AND RECLAMATION OPERATION. See Section 700.5 of this title.

SURFACE MANAGING AGENCY means a Federal agency having administrative jurisdiction over the surface of Federal lands or over Federal minerals.

SURFACE WATER. See Section 710.5 of this title.

SUSPENDED SOLIDS. See Section 710.5 of this title. {37187}

TOXIC-FORMING MATERIALS means earth materials or wastes which, if acted upon by air, water, or weathering processes, may produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

TOXIC MINE DRAINAGE. See Section 10.5 of this title.

WASTE means earth materials, which are combustible, physically unstable, or acid-forming or toxic-forming, wasted or otherwise separated from product coal and are slurried or otherwise transported from coal processing facilities or preparation plants after physical or chemical processing, cleaning, or concentrating of coal.

WATER TABLES. See Section 710.5 of this title.

3. Section 211.3 is amended in its entirety as follows:

SECTION 211.3 - RESPONSIBILITIES.

(a) Subject to the supervisory authority of the Secretary, the regulations in this part shall be administered as follows:

(1) The Mining Supervisor, acting under the supervision and control of the Director, Division Chief and Conservation Manager, is empowered to oversee prospecting, exploration, testing, development operation and shall be

responsible for operator compliance with the royalty, development and resource recovery aspects of approved mining and reclamation plans, and shall:

(i) Records of production; rentals and royalties. Obtain and check coal production and sales records, determine rental and royalty liability of lessees and licenses; collect and deposit rental and royalty accounts. (ii) Waiver, suspension, or reduction of rental or minimum royalty. Act on applications for waiver, suspension, or reduction of rental or minimum royalty filed pursuant to 43 CFR 3503.2(d).

(iii) Suspension of operations and production. Act on applications for suspension of operations or production, or both, filed pursuant to 43 CFR 3503.3-2(e).

(iv) Cessation and abandonment of operations. Upon receipt of notice of proposed abandonment of operations or relinquishment of a lease, permit or license, conduct an inspection to determine whether all rentals and royalties due the lessor have been paid the lessor and the development, production and mineral resource recovery requirement of the lease have been met.

(v) Inspection of operations. Examine, as frequently as necessary, but at least quarterly, the lease, permit, or licensed lands where operations for the discovery, testing, development, mining, preparation and handling of coal are conducted or are to be conducted; inspect such operations, for the purpose of determining compliance with diligent development, production and resource recovery requirement and determining whether waste or degradation of mineral substances or damage to formations or deposits is being minimized, and whether all provisions of applicable laws, regulations and orders, all terms and conditions of leases, permits or licenses and approved exploration or mining plans relating to diligent development, production and resource recovery are being complied with. {37188}

(vi) Reports and recommendations. Make reports to the Division Chief through the conservation manager, with copies to Regional Director as to the general conditions of lands under lease, permit or license and the manner in which operations are being conducted; and submit information and recommendations for protecting the coal, the coal bearing formations and other mineral resources. A copy of all such reports shall be furnished to the operator upon request, and shall be made available for public inspection during normal business hours at the Office of the Mining Supervisor and the Regional Director.

(vii) Wells or prospect holes. Prescribe or approve the methods for protecting coal-leasing formations and other resources from damage or contamination that might be incurred as a result of any wells or prospect holes drilled into, or through the coal bearing formations for any purpose, on leased or licensed lands embraced within a coal exploration plan.

(viii) Trespass. Report to the appropriate authorized officers any trespass that involves exploration activities.

(ix) Compliance. Require operators to conduct mining operations subject to this part in compliance with all orders, all terms and conditions of leases, permits or licenses, and all terms of the approved mining plan relating to development, production and mineral resource recovery and protection and payment of rents and royalties.

(x) Performance bonds. Determine whether the total amount of any bond or bonds furnished with respect to operations subject to this Part is at all times adequate to satisfy the requirements of the permit, lease or license relating to development, production and mineral resource recovery and protection, and payment of rents and royalties, and notify the appropriate authorized officer in the event of any inadequacies.

(2) The Regional Director is empowered to recommend to the Director, OSM, approval, disapproval, approval upon condition, of mining plans or major modifications of mining plans pursuant to the provisions of this part and 30 CFR Parts 715, 716, and 717.

(3) The Regional Director, acting under the supervision and control of the Director, OSM, is empowered to regulate mining, reclamation and abandonment operations subject to the provisions of this part and the regulations in 30 CFR Parts 715, 716 and 717 of this title. The Regional Director, in the performance of his duties, may consult with and solicit the views of the Mining Supervisor, other appropriate Federal, State and local agencies and other interested parties and shall:

(i) Inspection of operations. Examine, as frequently as necessary, but not less than one partial inspection per month and one complete inspection per calendar quarter, the lease, permit, or licensed lands where surface coal mining operations are conducted or land which may be affected by such operations; inspect such operations for the purpose of determining whether all provisions of applicable performance standards in this part and in 30 CFR Parts 715, 716, and 717 and orders relating to the conduct of operations and reclamation of affected lands, and all environmental and reclamation requirements of approved mining plans are being complied with.

(ii) Compliance. Require operators to conduct mining and reclamation operations subject to this part in compliance with all provisions of the applicable performance standards in this part and in 30 CFR Parts 715, 716, and 717, all orders, and all terms and conditions of leases, permits, or licenses, and all requirements of approved mining plan.

(iii) Manner and form of records, reports, and notices. Recommend to the Director, OSM, the manner and form in which records of mining and reclamation operations, reports, and notices shall be made to comply with the act.

(iv) Cessation and abandonment of operations. Upon receipt of notice of proposed abandonment of operations or relinquishment of a lease, permit, or license, inspect and determine whether the operator has completed his operations in accordance with all applicable terms and conditions and report to the appropriate authorized officer of the

surface managing agency whether the lands have been properly conditioned for abandonment; and recommend that the period of liability under the appropriate bond or bonds be terminated. Before making his recommendation to the surface managing agency, the Regional Director shall consult with and, where required, obtain the concurrence of the mining supervisor. When the surface of the lands in a lease, permit, or license is not owned by the United States, the Regional Director shall, in addition, notify the surface owner and take into account his comments and recommendations when making his recommendations to the surface managing agency.

(v) Trespass. Report to the appropriate authorized officer any trespass that involves removal of coal.

(vi) Compliance or performance bonds. Determine whether the total amount of any bond or bonds furnished with respect to operations subject to this part is at all times adequate to satisfy the estimated costs of completion of remaining reclamation requirements of the approved mining plan and notify the appropriate authorized officer in the event of any inadequacies.

4. Section 211.4 - General obligations is amended as follows:

SECTION 211.4 - GENERAL OBLIGATIONS.

(a) All operations involving the discovery, testing, development, mining, preparation, and handling of coal, and the reclamation and abandonment of affected lands, shall be conducted pursuant to the obligations and applicable performance standards in this part and in 30 CFR Parts 715, 716, and 717 and shall conform to the provisions of all other applicable laws and regulations, including effluent and emission limitations; the terms and conditions of any applicable lease, permit, or license; the requirements of any applicable approved exploration or mining plan; and any notices or orders issued by the Regional Director or by the mining supervisor.

[Missing text]

(d) The operator shall take such action as may be needed to minimize, control, or prevent (1) soil erosion; (2) pollution of air; (3) pollution of surface or ground water, (4) serious diminution of the normal flow of water; (5) adverse impact upon fish and wildlife, especially threatened or endangered species, and their habitat; (6) permanent damage to vegetative growth, crops, or timber; (7) creation of unsafe or hazardous conditions; (8) damage to improvements, whether owned by the United States, its permittees, licensees, or lessees, or by others; (9) damage to the recreational, cultural, scientific, historical, and known or suspected archeological and paleontological values of the land; and (10) adverse impacts upon adjacent land uses. Good housekeeping practices shall be observed at all times. Where any question arises as to the necessity for, or the adequacy of an action to meet the requirements of this paragraph, the determination of the Regional Director shall be final, subject to the right of appeal as provided in 43 CFR Part 4.

(e) The operator shall promptly report to the Regional Director or the mining supervisor, as appropriate, by telephone, accidents threatening damage to the mine, the lands, or other resources, or accidents which could cause air or water pollution, along with corrective actions initiated. Within 30 days after any such accident the operator shall submit a detailed report to the appropriate official as requested, of any damage caused by such accident and any corrective actions taken. The obligation set forth in this paragraph shall be in addition to any obligations, which may arise pursuant to the Federal Mine Safety and Health Act of 1977, and any regulations promulgated thereunder. {37189}

(f) The operator shall submit to the mining supervisor the reports required by Part 200 of this chapter.

5. Section 211.5 is amended as follows:

SECTION 211.5 - PROCEDURES AND PUBLIC PARTICIPATION.

(a) Written findings. Except as may be otherwise expressly set forth in this part, all major decisions and determinations of any Regional Director or mining supervisor acting pursuant to this part, 30 CFR Chapter VII, or 43 CFR Subpart 3041 shall be in writing, shall set forth with reasonable specificity the facts and the rationale upon which such decisions or determinations are based, and shall be available for public inspection during normal business hours at the offices of such Regional Director or mining supervisor.

(b) Availability of proposed plans and major modifications of plans. All proposed mining plans and major modifications thereof, submitted under Section 211.10 of this part shall be available for public inspection in the office of the appropriate

Regional Director subject to the restrictions contained in Section 211.6. To allow for such public inspection, a notice of the availability of any such plan or modification shall be prepared by the Regional Director and promptly posted at his office and mailed to the surface owner, if other than the United States, to appropriate Federal and State agencies, and to the clerk or other appropriate officer in the county in which the proposed operations are located for posting or publication in accordance with the procedures of that office. A copy of the notice shall be published by the Regional Director in the FEDERAL REGISTER. No action with respect to approval of any such plan or modification shall be taken by the Regional Director for a period of 30 days after publication in the

FEDERAL REGISTER. A copy of such notice shall be published by the operator in a local newspaper of general circulation in the locality of the proposed operation at least once a week for 4 consecutive weeks.

(c) Public participation. (1) Upon the timely written request to the appropriate Regional Director of any person having an interest which is or may be adversely affected, a public meeting shall be conducted with respect to any of the following actions:

(i) Release of any substantial portion of a bond submitted pursuant to this part covering obligations of performance or reclamation, including revegetation.

(ii) Approval of final abandonment of any operation or portion thereof.

(iii) Approval of a new mining plan or major modification thereof.

(2) Prior to the making of any decision or the taking of any of the actions described in paragraph (1) hereof, a notice of availability of such proposed decision or action shall be published in a newspaper of general circulation in the geographical area involved at least once in each of 2 consecutive weeks. In addition, not less than 20 days prior to the making of any such decision such notice shall be posted at the appropriate State or regional offices of the Bureau of Land Management and the Geological Survey; mailed to the operator, to all appropriate Federal and State agencies, including all agencies whose concurrence or consultation is sought or required, and to the surface owner if other than the United States; and published in the FEDERAL REGISTER. Such notice shall set a reasonable time period, not less than 20 days from the date of publication in the FEDERAL REGISTER, within which any person having an interest which is or may be adversely affected may, in writing, request a public meeting thereon.

(3) A complete transcript of any such public meeting including any written comments submitted for the record, shall be kept and maintained available to the public during normal business hours at the appropriate Federal office under whose auspices such meeting is conducted, and shall be furnished at cost to any interested party. In making any decision or taking any action subject to any such public meeting, the Regional Director shall take into account all testimony submitted at such meeting, including any written comments submitted for the record. All such decisions or determinations shall be subject to appeal by any person adversely affected pursuant to the provisions of 43 CFR Part 4.

6. Section 211.10 is amended as follows:

SECTION 211.10 - EXPLORATION AND MINING PLANS.

(a) General.

(1)(i) Before conducting any operation under a coal exploration license or exploration on leased, licensed, or permitted lands, other than casual use, the operator shall submit to the mining supervisor, and obtain his approval of an exploration plan. Casual use, as used in this subsection means activities which do not cause significant surface disturbance or damage to lands, resources, and improvements, such as activities which do not include use of heavy equipment or explosives, or vehicular movement off established roads and trails which causes such disturbance.

(ii) Before conducting any surface coal mining operation on leased, permitted, or licensed lands, the operator shall submit to the Regional Director, and obtain approval of a mining plan; on any lease issued or readjusted after August 4, 1976, the first mining plan shall be submitted to the Regional Director not later than 3 years after the effective date of the lease or 3 years after the date of readjustment, whichever is later.

(iii) The operator shall submit seven copies of such plans to the Regional Director. All such plans shall be identified by the name, address, and permit or lease number(s) of coal permits or leases, fee interest and State-owned tracts included in the plan, and shall show in detail the proposed exploration, testing, development, mining, preparation, environmental protection, monitoring, reclamation, and abandonment methods, procedures, and operations to be conducted during the life of the mine. Exploration or mining plans shall be consistent with and responsive to the requirements of the lease, permit, or license for maximizing recovery of mineral resources, for the protection of nonmineral resources, for the protection of land, air, and water resources during and after mining, and for the reclamation of the surface of the lands affected by the operations. The exploration or mining plans shall show that environmental protection and reclamation is an

integral part of the proposed operations and will progress as contemporaneously as practicable with such operations, and shall provide sufficient information to substantiate the effectiveness of the proposed reclamation method as required by this part and 30 CFR 715, 716, and 717.

[Missing text]

(c) Mining plans.

[Missing text]

(6)(xii) Logs and analyses of overburden samples of each stratum from a number of drill holes sufficient to obtain a representative sample of the overburden overlying the coal and the stratum immediately below the coal to be mined, which unless specifically authorized by the Regional Director based upon data already known to OSM or GS or upon the nature of the coal seam and geological inferences which may be drawn therefrom, shall be not less than one hole on each 40 acres. Such logs and analyses shall identify each stratum penetrated, and shall contain an analysis of each such stratum for at least the following: Nitrogen, phosphorus, potassium, pH, specific conductance, exchangeable sodium percentage, sodium absorption ratio, and other criteria requested by the Regional Director. Such analyses will be used to determine which materials shall be buried and which materials are suitable for placement near the surface for favorable propagation of vegetation.

(7)(vi) If auger mining is proposed, the location and diameter of auger holes, the depth to be drilled, and the estimated percentage of recovery. In determining whether or not to recommend approval of proposed auger mining, the Regional Director and mining supervisor shall take into account the percentage of recovery, which shall in general exceed 30 percent, and probable adverse effects upon water quality.

(d) Action on plans.

(1) The Regional Director, after reviewing and considering a proposed mining plan and all comments received thereon, and after consultation with the appropriate authorized officer of the surface managing agency shall in writing promptly recommend to the Director, OSM, approval or disapproval of such plan and such recommendation shall include the review and recommendation of the mining supervisor and the authorized State regulatory authority. In recommending approval of such a plan the Regional Director and the mining supervisor, in accordance with the division of responsibilities in Section 211.3 shall determine that such plan complies with all requirements of this part, 43 CFR Subpart 3041 and 30 CFR Parts 715, 716, and 717 or the requirements of State law in effect pursuant to a State-Federal cooperative agreement and any lease, permit, or license, and that reclamation as required thereby can be accomplished under the methods, procedures, and operations set forth in such plan. The Regional Director and the mining supervisor may recommend such conditions upon such approval as may be necessary for the plan and operations to conform to the provisions of this part and the terms and conditions of the lease, permit, or license. In recommending disapproval of a plan, the Regional Director shall indicate what modifications, if any, are necessary to achieve such conformity. No such plan may be approved unless a bond executed pursuant to the provisions of 43 CFR Subpart 3504, and conditioned upon compliance with all of the provisions of such plan, has been furnished to and approved by the appropriate authorized officer. When some or all of the proposed area is under the jurisdiction of an agency other than the Department of the Interior, such other agency must consent in writing to the terms of the mining plan prior to its approval. When some or all of the proposed area of surface coal mining operations is on Indian lands, the mine plan must also be approved in accordance with 25 CFR Part 177. {37190}

(2) Changes in plans. -

(i) By Regional Director. Approved plans may be required to be revised or supplemented at any time by the Regional Director after consultation with the operator and the mining supervisor, the appropriate authorized officer, the authorized State regulatory authority, if appropriate, to adjust to changed conditions, changed regulations, or statutory requirements and to require monitoring or to correct oversights. The mining supervisor may request the Regional Director to require changes in mining plans in connection with Geological Survey responsibilities in this part relating to diligent development, production, and resource recovery requirements. Significant revisions or supplements must be approved by the Director, OSM.

(ii) By the operator. The operator may propose changes to an approved mining plan, and shall submit a written statement of any such proposed change and the justification therefor to the Regional Director. The Regional Director shall, after consultation with the authorized State regulatory authority, the appropriate authorized officer, and the mining supervisor, in writing, promptly recommend approval, disapproval, or approval upon condition to the Director, OSM, of any such proposed change, or specify the modifications thereto under which it would be acceptable.

(iii) By petition. Any interested person may petition the Regional Director to exercise the authority set forth in subparagraph (i) hereof. Any such petition shall be in writing, shall set forth the proposed revision, and shall state with reasonable particularity facts which demonstrate adequate justification for revision of the plan or that oversights

occurred at the time of approval which make modification necessary to bring the operation and plan into conformity with the obligations and requirements of this part. Upon receipt of any such petition, the Regional Director shall promptly decide whether the facts set forth are sufficient to warrant exercise of his authority pursuant to paragraph (i) above.

(iv) Public notice. If any change proposed under this subsection would constitute a major modification of an approved plan, the Regional Director shall follow the procedures provided in Section 211.5 (b) and (c) of this part, and shall take any comments received into account in his decision.

New paragraphs (f) and (g) are added to read as follows:

(f) Mine plans for surface coal mining operations that are approved on or after February 3, 1978, shall include a description of methods of operation and measures by which the operator intends to comply with the obligations and requirements of the general environmental protection performance standards of 30 CFR Part 715, applicable special performance standards of 30 CFR Part 716, the performance standards for underground mines in 30 CFR Part 717 and the performance standards contained in this part which are not inconsistent with and less stringent than the requirements of Parts 715, 716, and 717.

(g) Mining plans covering existing surface coal mining and reclamation operations conducted on or after May 3, 1978, shall be reviewed by the Regional Director to determine compliance with the initial performance standards found in 30 CFR 715, 716, and 717, in addition to the performance standards contained in this part. If the Regional Director or an authorized State regulatory authority so requests, the operator shall prepare an analysis and, if necessary, a revision of the approved plan showing how the operator will achieve compliance with 30 CFR Parts 715, 716, and 717. If the operator fails to revise the approved plan to show how compliance will be achieved within the time for revision allowed by the Regional Director or an authorized State regulatory authority, approval to continue mining may be suspended or the Regional Director may recommend to the authorized officer of the surface managing agency that action be taken to terminate the lease.

7. Section 211.11 is amended as follows:

SECTION 211.11 - APPROACHING OIL, GAS, OR WATER WELLS.

When mining operations are conducted in areas of known wells or boreholes that may liberate oil, gas, water, or other fluid substances, the lessee shall include in his proposed plan all measures determined necessary by the mining supervisor in consultation with the Regional Director and the appropriate oil and gas supervisor of the Geological Survey to protect wells or boreholes, and obtain maximum recovery of the coal resource. If operations reveal unsuspected wells or boreholes, the operator shall promptly notify the Regional Director and take no further actions which would disturb such wells or boreholes without the Regional Director's prior approval after consultation with the mining supervisor.

8. Section 211.12 Mine maps is amended as follows:

SECTION 211.12 - MINE MAPS. {37191}

(a) General requirements. The operator shall maintain accurate and up-to-date maps of the mine, drawn to scales acceptable to the Director, OSM. All maps shall be appropriately marked with reference to government landmarks or lines and elevations with reference to sea level. Before a mine, or section of a mine, is abandoned, closed, or made inaccessible, a survey of such mine or section shall be made and recorded on such maps and a copy shall be furnished to the Regional Director and the mining supervisor. All excavations in each separate bed shall be shown in such a manner that the production of coal for any royalty period can be accurately ascertained by the mining supervisor. Additionally, the maps shall show the name of the mine; the name of the lessee; the lease, permit, or license serial number; the lease boundary lines; surface buildings; dip of the bed; true north; map scale and explanatory legend; location, surface elevation, depth and thickness of the coal, and total depth of each borehole; auger holes; improvements; reclamation completed; topography, including subsidence resulting from mining; and the geologic and hydrologic conditions as determined from outcrops, drill holes, exploration or mining; water monitoring stations and such other information as the Regional Director or the mining supervisor may request. Copies of such maps shall be properly posted to date and furnished, in duplicate, to the Regional Director and the mining supervisor annually, or at such other times as they may request.

(d) Vertical projections and cross sections of mine workings. When required by the Regional Director or the mining supervisor, vertical projections and cross sections shall accompany plan views.

9. Section 211.13 is amended as follows:

SECTION 211.13 - FAILURE OF LESSEE TO FURNISH MAPS.

(a) Liability of lessee for expense of survey. If the operator fails to furnish a required or requested map, the Regional Director shall consult with the operator to determine the cause of the failure. If the operator refuses or cannot supply the required or requested map, the Regional Director shall employ a professionally qualified person to make the required survey and map, the cost of which shall be charged to, and promptly paid by, the operator.

(b) Incorrect maps. If any map submitted by an operator is believed to be incorrect, the Regional Director or the mining supervisor, as appropriate, shall consult with the operator to determine the cause of the owner deficiency. If the operator refuses to correct the error or deficiency in the map, the Regional Director or mining supervisor may employ professionally qualified person to make a survey and any necessary maps. If the survey shows the maps submitted by the lessee to be substantially incorrect, in whole or in part, the cost of making the survey and preparing the maps shall be charged to, and promptly paid by the operator.

10. Section 211.21 is amended as follows:

SECTION 211.21 - CORE AND TEST HOLES.

(a) Surveillance wells. With the approval of the mining supervisor, after consultation with the Regional Director, drill holes may be utilized as surveillance wells for the purpose of monitoring the effect of subsequent operations upon the quantity, quality, or pressure of ground water or mine gases.

(c) Use of wells by others. Upon receipt of a written request from the surface owner or the appropriate authorized officer, the mining supervisor, in consultation with the Regional Director, may approve the transfer of an exploratory well for further use as water well. Approval of such well transfer will be accompanied by a corresponding transfer of responsibility for any liability for damage and eventual plugging. Nothing in this paragraph shall be deemed to supersede or affect the applicability of any State law requirements with respect to such transfer.

11. Section 211.30 is amended as follows:

UNDERGROUND MINING

SECTION 211.30 - MAXIMUM RECOVERY.

Underground mining operations shall be conducted so as to yield the maximum recovery of the coal deposits consistent with the protection and use of other natural resources, sound economic practice, and the protection of the environment - land, water and air. No entry, level, or panel workings in which the pillars have not been completely extracted within safe limits shall be permanently abandoned or rendered inaccessible, except with the prior written approval of the mining supervisor and with the concurrence of the Regional Director.

12. Section 211.31 is amended as follows:

SECTION 211.31 - SUBSIDENCE.

(c) The mining supervisor, in consultation with the Regional Director, may require the operator to install a subsidence monitoring system consisting of elevation stations and tiltmeters in a number sufficient to determine the extent of any area that may be affected. All records of such surveys shall be accessible for review by the mining supervisor and the Regional Director.

13. Section 211.36 is amended as follows:

SECTION 211.36 - DEVELOPMENT OF LEASED TRACT THROUGH ADJOINING MINES.

An operator may, with the approval of the mining supervisor, mine leased lands from an adjoining underground mine on land privately owned or controlled or from adjacent leased lands, subject to the right of free access to the Federal premises by the Regional Director.

14. Section 211.40 is revised by substituting for certain of the specific performance standards of this part the initial environmental protection performance standards of 30 CFR 715, 716 and 717. Title 30 CFR 211.40 is revised to read as follows:

SECTION 211.40 - OPERATING AND RECLAMATION STANDARDS.

(a) Performance standards for surface mines. The following performance standards shall be applicable to all coal exploration, development, mining, preparation, handling, and reclamation operations on the surface of land subject to this part:

(1) The operator shall:

(i) Reclaim affected lands pursuant to his approved plan, as contemporaneously as practicable with operations.

(ii) Comply with the requirements of Section 715.13 of this title for reclaiming the land to an approved land use.

(2) The operator shall comply with the requirements of Section 715.14 of this title for backfilling, grading, and restoring approximate original contour.

(3) The operator shall stabilize and protect all surface areas, including spoil piles, affected by the coal mining and reclamation operation, to effectively control slides, erosion, subsidence, and attendant air and water pollution.

(4) The operator shall comply with the provisions of Section 715.15 of this title for disposal of spoil in areas other than the mine workings or excavations.

(5) The operator shall comply with the provisions of Section 715.16 of this title for replacing topsoil.

(6) The operator shall utilize water impoundments, water retention facilities, dams, or settling ponds only pursuant to an approved plan, and in compliance with the requirements of Sections 715.17 and 715.18 of this title, if a permanent impoundment, and shall ensure that:

{37192} (i) Such facility is adequate for its intended purposes, and the quality and quantity of impounded water will be suitable for its intended use.

(ii) Such facility is designed, located, built, used, and maintained in accordance with sound engineering standards and practices, and applicable Federal and State laws and regulations to ensure that such facilities will have necessary stability with an adequate margin of safety.

(iii) Final grading will provide adequate safety and access for proposed or reasonably anticipated water users.

(iv) Such facilities will not have a significant adverse impact on the water resources utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses: Provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person.

(v) No mine or processing waste is used in the construction of such facilities unless authorized in the approved plan and in compliance with Sections 715.17 and 715.18 of this title.

(7) The operator shall cover or plug all auger mine holes with noncombustible and impervious material and where necessary to minimize, control, or prevent harmful drainage.

(8) The operator shall comply with the requirements of Section 715.17 of this title relating to the protection of the hydrologic system.

(9) The operator shall: (i) Treat or dispose of all rubbish and noxious substances in a manner designed to minimize, control, or prevent air and water pollution and the hazards of ignition and combustion; (ii) dispose of all waste resulting from the mining and preparation of coal in a manner designed to minimize, control, or prevent air and water pollution. Waste containing coal in such quantity that it may later be separated from the waste by washing or other means shall be stored separately.

(10) Except as provided herein, the operator shall not conduct excavation or drilling operations within 500 feet of an active or abandoned underground mine. Where it can be established, by certified maps or inspection of such an underground mine, that such activities may be conducted without danger of interference with, or penetration of, an underground mine, they may be authorized in an approved plan, subject to the concurrence of the Mine Health and Safety Administration where blasting is involved, to be conducted up to but not less than 25 feet from such underground mine;

provided that, nothing in this paragraph shall preclude daylighting or similar surface coal mining activities intended to improve resource recovery, abate water pollution, or eliminate public hazards resulting from such underground mines.

(11) The operator shall comply with the blasting requirements of Section 715.19 of this title.

(12) The operator shall design to applicable standards, construct, maintain, and, when no longer necessary and unless otherwise authorized in an approved plan, remove all roads, pipelines, powerlines, and similar utility access facilities, associated bridges, culverts and ditches into and across the site of operations, in a manner that will minimize, control, or prevent erosion, siltation, and pollution of water pursuant to the requirements of Section 715.17(1)(1) through (3) of the title, and minimize, control or prevent fugitive dust, and damage to fish or wildlife or their habitat and public or private property.

(13)(i) The operator shall comply with the requirements of Section 715.17(1)(2) of this title for surfacing and constructing roads.

(ii) No access roads will be constructed unless:

(A) The operator shall have first submitted a surveyed profile accompanied by typical cross sections of the road and ditches, showing pipe, entrance and exit channels, and sediment control structures or configurations to be used on the road to meet performance standards; and

(B) The location shall have been marked, inspected, and approved by the appropriate surface managing agency and the Regional Director, and in consultation with the surface owner, if other than the United States.

(14)(i) The operator shall comply with the revegetation requirements of Section 715.20 of this title.

(ii) The operator's responsibility and liability under his performance bond for revegetation of each planting area shall extend until such time as the appropriate authorized officer, in consultation with the Regional Director and the surface owner, if other than the United States, determines that successful revegetation in compliance

with Section 715.20 of this title has occurred; Provided, however, that this period shall extend for a minimum of 5 full years after the first planting and for a total period of liability not to exceed 10 years from the first planting; and further provided, that,

(A) Where the appropriate authorized officer, in consultation with the Regional Director, the surface owner, if other than the United States, and the operator, determines that natural conditions such as annual precipitation, soil characteristics, and native vegetation are stable and favor rapid revegetation and that revegetation pursuant to paragraph (i) of this section is likely to occur before the expiration of such minimum period, such minimum period will not apply with respect to some or all of the lands included in such lease, permit, or license; and

(B) Where during any such minimum period such authorized officer, in consultation with the Regional Director, the surface owner, if other than the United States, and the operator, determines that natural conditions such as annual precipitation and soil characteristics are sufficiently unstable so as to favor only slow and uncertain revegetation, he may recommend to the Regional Director that the liability of the operator be extended for a period up to 5 years beyond the period initially established, if the financial liability that would be incurred by the operator as a result is reasonably commensurate with the increased probability of successful revegetation.

(iii) During the relevant period of liability the Regional Director and the appropriate authorized officer shall jointly inspect and evaluate the revegetated area.

(15) The operator shall:

(i) Except as provided in paragraph (ii) hereof, allow public access to and upon Federal lands subject to his lease, permit, or license only under the presence of and the control, direction and supervision of an agent of the Regional Director, authorized officer, or their authorized representative, for any lawful and proper purposes under the act, except where such access would unduly interfere with his authorized use.

(ii) Provide warning signs, fencing, flagmen, barricades and other safety and protective measures as may be necessary to regulate public access, vehicular traffic, and wildlife or livestock grazing in all areas of active operations, including lands undergoing reclamation:

(A) To protect the public, wildlife, and livestock from hazards associated with such operations;

and

(B) To protect revegetated areas from unplanned and uncontrolled grazing.

(16) Coal storage areas shall be designed and maintained so as to eliminate fire hazards from spontaneous combustion and other accidental ignition. If a coal seam exposed by surface mining or an accumulation of slack coal or combustible waste becomes ignited during the term of a lease, the operator shall immediately take all necessary steps to extinguish the fire. {37193}

(17) Upon the completion of temporary or permanent abandonment of mining operations in all or any part of a strip pit, the face of the coal shall be covered with a minimum of 4 feet of nontoxic and noncombustible material; or, if necessary, treated to neutralize toxicity in order to prevent water pollution and sustained combustion.

(18) The driving of any underground openings by auger or other methods from any strip pit shall not be undertaken except as specifically approved by the Regional Director in an approved plan.

(19) The operator shall comply with provisions of Sections 715.11 and 715.12 of this title for availability of authorizations to operate and location of markers and signs.

(20) Operators of surface coal mining operations that are conducting mining operations on natural slopes that are defined as steep slopes shall comply with the regulations of Section 716.2 of this title.

(21) Operators of surface coal mining operations that remove entire coal seams running through the upper fraction of a mountain ridge or hill (mountaintop removal) shall comply with the requirements of Section 716.3 of this title.

(22) Operators of special bituminous surface coal mining operations that are located west of the 100th meridian west longitude as defined under Section 716.4(a) shall comply with the requirements of Section 716.4 of this title.

(23) Operators of anthracite coal mine operations must comply with the requirements of Section 716.5 of this title.

(24) Operators of surface coal mining operations conducted on land that is considered to be prime farmland pursuant to Section 716.7(b) shall comply with the special requirements of Section 716.7 of this title. The Regional Director, in consultation with the surface management agency, shall obtain a determination of prime farmlands pursuant to Section 716.7 of this title for operations on Federal lands.

(25) Operators of surface coal mining operations conducted on lands with alluvial valley floors shall comply with the applicable provisions of Section 716.17(j) of this title.

(b) Performance standards for underground mines. The following performance standards shall be applicable to all coal exploration, development, mining, preparation, handling, and reclamation operations for the surface effects of underground mines on land subject to this part. These standards, in addition to Sections 211.30, 211.31, 211.32, 211.33, and 211.35, shall apply to underground mining operations on Federal lands.

(1) Operators shall comply with the requirements of Section 717.11 of this title, authorization to operate.

(2) Operators shall comply with the requirements of Section 717.12(a) of this title, sign and marker specifications; Section 717.12(b) and mine and permit identification signs.

(3) Operators shall comply with the requirements of Section 717.14 of this title, backfilling and grading or road cuts, mine entry area cuts, and other surface work areas. These requirements apply only to the surface area disturbed to provide access to the mine and such surface disturbed during the mining operation as are identified by the regulatory authority.

(4) Operators shall comply with the requirements of Section 717.15, disposal of excess rock and earth materials on surface areas.

(5) Operators shall comply with the requirements of Section 717.17 of this title, protection of the hydrologic system, in regard to surface discharges and surface areas that are disturbed.

(6) Operators shall comply with the requirements of Section 717.18 of this title, dams constructed of or impounding waste material.

(7) Operators shall comply with Section 717.19 of this title, use of explosives, in regard to the use of explosives used during surface operations.

(8) Operators shall comply with the requirements of Section 717.20 of this title, topsoil handling and revegetation of surface areas disturbed.

(9) The operator shall reclaim affected lands, pursuant to his approved plan, to a condition capable of supporting all practicable uses which such lands were capable of supporting immediately prior to any exploration or mining, or equal, better or higher uses that have been approved in accordance with this part.

(10) The operator shall stabilize and protect all surface areas affected by the coal mining and reclamation operation to effectively control slides, erosion, subsidence, and attendant air and water pollution. The operator shall remove topsoil separately for replacement on the area pursuant to the approved plan.

(11) Coal storage areas shall be designed and maintained so as to eliminate fire hazards from spontaneous combustion and other accidental ignition. If a coal seam exposed by surface mining, an accumulation of slack coal, or combustible waste becomes ignited during the term of a lease, the operator shall immediately take all necessary steps to extinguish the fire.

(12) The operator may construct, if authorized in an approved plan, permanent water impoundments on mining sites as a part of reclamation activities only when they are adequately demonstrated to be in compliance with Sections 715.13 and 715.14 of this title in addition to the following requirements:

(i) The size of the impoundment is adequate for its intended purposes.

(ii) The impoundment dam is constructed with an adequate margin of safety compatible with that of structures constructed under Pub.L. 83-566 (16 U.S.C. 1006).

(iii) The quality of the impounded water will be suitable on a permanent basis for its intended uses and discharges from the impoundment will not degrade the quality of receiving waters below the water quality standards established pursuant to applicable State and Federal law.

(iv) Final grading will comply with the provisions of Section 715.14 of this title and will provide adequate safety and access for proposed water uses.

(v) Water impoundments will not result in the diminution of the quality and quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(13) The operator shall:

(i) Except as provided in paragraph (ii) hereof, allow public access to and upon Federal lands subject to the lease, permit, or license for all lawful and proper purposes, except where such access would unduly interfere with his authorized use.

(ii) Provide warning signs, fencing, flagmen, barricades, and other safety and protective measures as may be necessary to regulate public access, vehicular traffic, and wildlife grazing in all areas of active operations, including lands undergoing reclamation:

(A) To protect the public, wildlife and livestock from hazards associated with such operations;

and

(B) To protect revegetated areas from unplanned and uncontrolled livestock grazing.

(14) The driving of any underground openings by auger or other methods from any strip pit shall not be undertaken except as specifically approved by the Regional Director.

(15) The operator shall:

(i) Treat or dispose of all rubbish and noxious substances in a manner designed to minimize, control or prevent air and water pollution and the hazards of ignition and combustion.

(ii) Dispose of all waste resulting from the mining and preparation of coal in a manner designed to minimize, control, or prevent air and water pollution and hazards of ignition and combustion. Where surface disposal of solid wastes in areas other than the mine workings or other excavations has been authorized in the approved plan, stabilize such waste including, where necessary, constructing waste piles in compacted layers with the use of incombustible and impervious materials; shape waste piles to be compatible with the natural surrounding and terrain; cover with topsoil or other suitable material in accordance with this section, and revegetate in accordance with this section. Waste containing coal in such quantity that it may be later separated from the waste by washing or other means shall be stored separately. {37194}

(16)(i) The operator shall design to applicable standards, construct, maintain, and when no longer necessary and unless otherwise authorized in an approved plan, remove all roads, pipelines, powerlines, and similar utility access facilities and associated bridges, culverts, and ditches, into and across the site of operations, in a manner that will minimize, control, or prevent erosion, siltation, and pollution of water pursuant to the requirements of Section 717(j)(1) through (3) of this title, and minimize, control, or prevent fugitive dust, damage to fish or wildlife or their habitat, and public or private property.

(ii) No access roads will be constructed unless:

(A) The operator shall have first submitted a surveyed profile accompanied by typical cross sections of the road and ditches, showing pipe, entrance and exit channels, and sediment control structures and other structures or configurations to be used on the road to meet performance standards; and

(B) The location shall have been marked, inspected, and approved by the Regional Director in consultation with the appropriate authorized officer and the surface owner, if other than the United States.

(17)(i) The operator shall comply with the revegetation requirements of Section 715.20 of this title.

(ii) The operator's responsibility and liability under his performance bond for revegetation of each planting area shall extend until such time as the appropriate authorized officer, in consultation with the Regional Director and the surface owner if other than the United States, determines that successful revegetation in compliance with Section 715.20 of this title has occurred; provided, however, that this period shall extend for a minimum of 5 full years after the first planting and for a total period of liability not to exceed 10 years from the first planting; and further provided, that,

(A) Where the appropriate authorized officer of the surface managing agency, in consultation with the Regional Director, the surface owner, if other than the United States, and the operator, determines that natural conditions such as annual precipitation, soil characteristics, and native vegetation are stable and favor rapid revegetation and that revegetation pursuant to paragraph (i) of this section is likely to occur before the expiration of such minimum period, such minimum period will not apply with respect to some or all of the lands included in such lease, permit, or license; and

(B) Where during any such minimum period such authorized officer of the surface managing agency, in consultation with the Regional Director, the surface owner, if other than the United States, and the operator, determines that natural conditions such as annual precipitation and soil characteristics are sufficiently unstable so as to favor only slow and uncertain revegetation, he may recommend to the Regional Director that the liability of the operator be extended for a period up to 5 years beyond the period initially established, if the financial liability that would be incurred by the operator as a result is reasonably commensurate with the increased probability of successful revegetation.

(iii) During the relevant period of liability, the Regional Director and the appropriate authorized officer shall jointly inspect and evaluate the revegetated area.

15. Section 211.41 is amended as follows:

SECTION 211.41 - COMPLETION OF OPERATIONS AND ABANDONMENT.

(a) Grading and backfilling. Upon completion of backfilling and grading as required by the approved plan and prior to replacing topsoil and revegetation the operator shall submit a report thereon, in duplicate, to the Regional Director and request inspection for approval. Whenever it is determined by such inspection that the backfilling and grading has met the requirements of the approved plan, the Regional Director shall recommend to the appropriate authorized officer release of an appropriate amount of the compliance bond for the area satisfactorily backfilled and graded.

(c) Permanent abandonment. Before permanent abandonment of exploration or mining operations, all openings and excavations, including water discharge points, shall be closed or backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved plan. Drill holes, trenches, and other excavations for exploration, development, or prospecting shall be abandoned in such a manner as to protect the surface and not to endanger any present or future underground operations or any deposit of oil, gas, other mineral resources, or ground water. Methods of abandonment shall be approved in advance as required in an approved plan, and may include backfilling, regrading, revegetating, cementing, and capped casing, or combinations of these, or other methods. Reclamation and cleanup of permanently abandoned underground or surface areas around and near permanently abandoned underground or surface mines, including, except where otherwise expressly provided in an approved plan, removal of equipment and structures related to the mining operation, shall commence without delay following cessation of mining operations. Areas affected by access roads will be graded, drained, and revegetated in accordance with the approved mining plan and the approved postmining land use prior to bond release. In the event that access or haul roads are intended to remain after abandonment of the operation, pursuant to Section 211.40 of this part, they must be designed and constructed so as to be permanently stabilized, using adequate drains, water barriers, and other practices.

(d) Notice of abandonment; release of bond.

(1) Not less than 30 days prior to cessation or abandonment of operations, the operator shall submit to the Regional Director, in duplicate, a notice of his intention to cease or abandon operations, together with a statement of the exact number of acres affected by his operations, the extent and kind of reclamation accomplished, and a statement as to the structures and other facilities that are to be removed from or remain on the leased, permitted, or licensed lands.

(2) Upon receipt of such notice the Regional Director, the mining supervisor and the appropriate authorized officer or officers shall promptly make a joint inspection to determine whether all operations have been completed in accordance with the terms and conditions of all leases, permits, or licenses, and with the requirements of the approved mining plan. Where the operator has complied with all such terms, conditions, and requirements, and the regulations of this part, the Regional Director shall recommend to the appropriate authorized officer that the appropriate period of bonded liability be terminated.

(3) When the surface of lands in a lease, permit, or license is not owned by the United States, the Regional Director shall notify the surface owner and solicit and take into account his comments before recommending to the appropriate authorized officer that the period of such bond liability be terminated.

16. Section 211.62 is amended as follows:

SECTION 211.62 - REPORTS.

(a) Operations. The operator shall file with the Regional Director within 30 days after the end of each calendar year and within 30 days after any temporary or permanent abandonment of operations, a report, in duplicate, containing the following with respect to his operations or the operations subject to such abandonment. {37195}

(1) Serial number of the lease, permit, or license and a description of the affected lands.

(2) The number of acres disturbed and the number of acres reclaimed, including areas on which revegetation is being conducted.

(3) A description of the reclamation work remaining to be done on lands disturbed.

(b) Revegetation.

(1) The operator shall file a report, in duplicate, with the Regional Director within 30 days after each planting is completed. The report shall:

(i) Identify the lease, permit, or license.

(ii) Show the types of planting or seeding, including mixtures and amounts.

(iii) Show the date of planting or seeding.

(iv) Identify or describe the planted or seeded lands.

(v) Describe any surface manipulation, mulching, fertilization, and irrigation procedures, if any, and contain such other information as may be considered relevant.

(2) The Regional Director and the authorized officer of the Federal surface managing agency shall as soon as possible after each full growing season, inspect and evaluate the revegetated areas to determine, in consultation with the surface owner if other than the United States, whether satisfactory vegetative growth is being established, or whether additional revegetation efforts should be ordered by the Regional Director.

17. Section 211.70 is revised to read as follows:

SECTION 211.70 - INSPECTIONS.

(a) The operator shall provide access and means for any authorized representative of the regulatory authority or the mining supervisor to inspect and investigate the operation without advance notice to determine whether it is in compliance with all applicable laws, regulations, notices and orders; the terms and conditions of the lease, permit or license, and the requirements of any approved mining plan.

(b) Any authorized representative of the regulatory authority or the mining supervisor may at reasonable times, and without delay, have access to copy any records, and inspect any monitoring equipment or method of operations required under the regulations or an approved mining plan.

(c) The operator shall provide access and means at all reasonable times to any authorized representative of the regulatory authority to inspect or investigate the operation pursuant to Section 721.13 of this title to determine whether it is in compliance with the act.

18. Section 211.72 is amended as follows:

SECTION 211.72 - ENFORCEMENT.

(a) Violations of the Act, the applicable performance standards in this part and in Parts 715, 716, and 717 of this title or the requirements of State law in effect pursuant to a State-Federal cooperative agreement contained in this part or pursuant to Section 211.75(a) of this part, the terms and conditions of the lease, permit or license, the requirements of an approved mining plan, or notices or orders of the regulatory authority acting pursuant to section 521 of the Act shall be subject to the enforcement procedures set forth in part 722 of this title.

(b) If the Director or his authorized representative determines in accordance with Section 722.16 of this title that a pattern of violations of any requirement of the Act, the performance standards in this part and in parts 715, 716, and 717 of this title or the requirements of State law in effect pursuant to a State-Federal cooperative agreement contained in this part or pursuant to Section 211.75(a) of this part, the terms and conditions of the lease, permit or license, or the requirements of an approved plan he shall issue an order to show cause why the permit and right to mine should not be suspended or revoked in accordance with the procedures of Section 722.16 of this title. The issuance of such an order to show cause shall not diminish the power of the Secretary to seek cancellation of the lease, permit or license and forfeiture of any compliance bonds under other laws or regulations.

(c)(1) The appropriate authorized officer of the surface managing agency and the mining supervisor shall have the right to enter upon the lands subject to this subpart under lease or license, at any reasonable time.

(i) If the mining supervisor discovers that an operator is conducting on lands subject to this part activities which are not in compliance with the requirements of a lease, permit, or license, applicable regulations or an approved plan and such activities threaten immediate and serious damage to the mine or the deposit being mined, or other valuable deposits, the mining supervisor shall serve a notice of noncompliance upon the operator by delivery in person to him or his agent or by certified or registered mail addressed to the operator at his last known address. Failure of the operator to take action in accordance with the notice of noncompliance within the time limits specified by the mining supervisor or to initiate an appeal pursuant to part 290 of this title shall be grounds for suspension of operations subject to such notice by the mining supervisor or his recommendations for the initiation of action for cancellation of the lease, permit, or license and forfeiture of any

compliance bonds.

(ii) The notice of noncompliance shall specify in what respect the operator has failed to comply with the provisions of applicable regulations, the terms and conditions of the lease, permit, or license, the requirements of an approved plan, or the orders of the mining supervisor, and shall specify the action which must be taken to correct such noncompliance and the time limits within which such action must be taken. A written report shall be submitted by the operator to the mining supervisor and the Regional Director when such noncompliance has been corrected.

(2) If the appropriate authorized officer or the mining supervisor discovers that an operator is conducting activities on lands subject to this part which are not in compliance with the requirements of a lease or license, applicable regulations or an approved plan and such activities create an imminent danger to the health or safety of the public, or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, such authorized officer or the mining supervisor may upon consultation with an authorized representative of the regulatory authority, order the immediate cessation of such activities pursuant to section 521 of the Act and shall promptly notify the Regional Director. Upon receipt of such notification the Regional Director will exercise jurisdiction to review the order pursuant to section 521 of the Act and determine whether other remedial action is necessary.

(3) If in the judgment of the Regional Director the ordered cessation of surface coal mining and reclamation activities or any portion thereof, will not completely abate the imminent danger to health or safety of the public or the significant, imminent environmental harm to land, air, or water resources, he shall by order impose affirmative remedial action on the operator which he deems necessary to abate the imminent danger or environmental damage.

(d) Failure of the operator to take action, in accordance with an order for cessation of activities, to comply with an order of the Regional Director to take affirmative remedial action to abate an imminent danger or imminent environmental harm issued pursuant to paragraph (c) of this section, or with a written notice of noncompliance issued by an appropriate authorized officer or by the mining supervisor in accordance with the provisions of paragraph (c) of this section shall be grounds for suspension of the operation and for possible cancellation of the lease, permit, or license in accordance with the regulations in 43 CFR Part 3500 of this chapter. {37196}

(e) If in the judgment of the mining supervisor, an operator is conducting activities on lands subject to this part which fail to comply with provisions of this part, the terms and conditions of the lease, license, or permit or the requirements of approved plan, and such activities threaten immediate and serious damage to the mine or the deposits being mined, or other valuable ore-bearing mineral deposits, the mining supervisor shall order the immediate cessation of such activities, without prior notice of noncompliance. Such order may be appealed as provided in part 290 of this title. Compliance with such order shall not be suspended by reason of the taking of such an appeal, unless such suspension is ordered in writing by the official before whom such appeal is pending, and then only upon a determination by such official that such suspension will not be detrimental to the lessor or adversely affect the public interest, or upon submission of a bond deemed adequate to indemnify the lessor from any resulting loss or damage.

19. Section 211.73 is revised as follows:

SECTION 211.73 - APPEALS.

(a) Orders, determinations, decisions, and notices issued by the Regional Director pursuant to this part may be appealed pursuant to 43 CFR Part 4.

(b) Orders, determinations, decisions, and notices issued by the mining supervisor pursuant to the provisions of this part may be appealed as provided in part 290 of this title.

20. Section 211.74 is deleted:

SECTION 211.74 [Removed]

21. Section 211.75 is revised to read as follows:

SECTION 211.75 - APPLICABILITY OF STATE LAW.

(a)(1) Any State law or regulation of any State that did not have an approved State-Federal cooperative agreement on or before August 3, 1977, which is determined by the Secretary under the procedures in this section to be a more stringent performance standard for the regulation of surface coal mining and reclamation than that provided under a performance standard in this part or in 30 CFR Parts 715, 716, and 717 shall be adopted by the Secretary and applied in that State as a condition for approval of any proposed exploration or mining plan relating to the mining and reclamation of Federal lands in such State, unless the Secretary determines that the law or regulation is inconsistent with the Act.

(2) A State may request the Secretary to review the provisions of any State law or regulation to determine whether such law or regulation provides a more stringent performance standard than comparable provisions in this part. No particular form of request is required. However, the request shall be in writing and shall include the text of the State law or regulation, identification of the comparable performance standard in this part and an analysis of the reasons why the State law or regulation is a more stringent standard.

(3) If the Secretary determines that the requirements of State law or regulation may be more stringent than the comparable performance standard in this part or in 30 CFR Parts 715, 716, and 717, rulemaking shall be initiated under the procedures of section 501 of the Act and 30 CFR Part 718 for adoption of the standard.

(b) The Secretary will direct representatives of the Department to consult with appropriate representatives of each State or a number of States for the purpose of modifying existing cooperative agreements to provide for a joint Federal-State program with respect to the regulation of surface coal mining reclamation operations. Such agreements shall, at a minimum, provide for

(i) the cooperative review and approval of mining plans and permits for surface coal mining and reclamation operations on Federal lands,

(ii) enforcement by the Secretary and the authorized State regulatory authority of State environmental protection and reclamation standards if such standards are as stringent or more stringent than Federal environmental protection and reclamation standards adopted under the Act,

(iii) enforcement procedures by the State which are as effective as those required by section 502 of the Act, and

(iv) the timely reporting of all violations found by the authorized State regulatory authority to the Regional Director. Any such agreement shall be entered into by rulemaking and shall have as its principal purpose the cooperative administration and enforcement of a uniform regulatory program governing surface coal mining and reclamation operations on both Federal and State regulated lands.

(c)(1) Pursuant to Section 523 of the Surface Mining Control and Reclamation Act of 1977, any State with a cooperative agreement existing on August 3, 1977, may elect to continue regulation of surface coal mining and reclamation operations on Federal lands within the State prior to approval or disapproval by the Secretary of its State program pursuant to Section 503 of the Act, provided that such existing cooperative agreement is modified to fully incorporate the initial regulatory procedures set forth in Section 502 of the Surface Mining Control and Reclamation Act of 1977.

(2) Following promulgation of the Federal lands program pursuant to Section 523(a) of the Act, the Secretary will review any cooperative agreements then in effect to determine whether the authorized State regulatory authority has the authority and resources necessary to implement said program. Upon a determination by the Secretary that the authorized State regulatory authority does not have the necessary authority or resources, the cooperative agreement shall be terminated.

(3) The governor of any State that wishes to modify the cooperative agreement existing on August 3, 1977, shall notify the Secretary in writing of the State's intent to modify the cooperative agreement. The notice of intent to modify the cooperative agreement must have been received by the Secretary prior to December 31, 1977, and the modification to the existing cooperative agreement agreed to within 60 days of the date of publication of these regulations. Failure to give notice or to timely complete the modification shall result in termination of any cooperative agreement executed prior to August 3, 1977.

22. A new Section 211.78 is added to read as follows:

SECTION 211.78 - CIVIL PENALTIES.

The operator of any coal mining operation subject to the provisions of this part may be assessed civil penalties by the Office of Surface Mining Reclamation and Enforcement for violations of the Act, the applicable performance standards in this part and the performance standards in Parts 715, 716, and 717 of this title, or any State laws or regulations adopted as

Federal law as part of a State-Federal cooperative agreement in effect pursuant to this part, or any State standard adopted pursuant to Part 718 of this title, and the terms, conditions or requirements of an approved mining and reclamation plan or permit in accordance with the procedures in Part 723 of this title. Violations found on Federal lands by an authorized State Regulatory Authority shall be considered by the Office when determining whether to assess a civil penalty under Part 723 of this title.

Dated: August 17, 1978.

JOAN M. DAVENPORT, Assistant Secretary Energy and Minerals.

[FR Doc. 78-23543 Filed 8-21-78; 8:45 am]