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DEPARTMENT OF THE INTERIOR

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Chapter VII: Subchapter D – Federal Lands Program: Parts 740, 741, 742, 743, 744, 745
Surface Coal Mining and Reclamation Operations Permanent Regulatory Program

ACTION: Proposed rules.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement is seeking comments on these proposed rules which would implement a nationwide permanent program for the regulation of surface and underground mining operations by the States and the Federal Government as required by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). These proposed rules are intended to strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy.

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{Preamble: 43 FR 41681}

SUBCHAPTER D – FEDERAL LANDS PROGRAM

PART 740 – GENERAL REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION ON FEDERAL LANDS

Part 740 sets forth the general definitions and administrative responsibilities for surface coal mining and reclamation operations on Federal lands. The term "mining plan" is defined as a complete mining and reclamation plan approved by the Secretary which complies with the requirements of the Mineral Leasing Act of 1920, as amended, the Surface Mining Control and Reclamation Act of 1977, and all other applicable laws and regulations. This definition is intended to reflect the fact that both of these Acts require mining and reclamation plans to be filed, and that surface coal mining and reclamation may not be conducted unless a mining plan has been approved by the Secretary (30 U.S.C. 207(c) and 30 U.S.C. 1273). Essentially an application for a mining plan approval would contain the information required for a permit to meet the requirements of the Surface Mining Control and Reclamation Act and a mining and operations plan which would meet the requirements imposed by the Mineral Leasing Act, as amended. The requirements for a Mineral Leasing Act which will cover the life of the mine, will be set forth in regulations to be promulgated by the United States Geological Survey in 30 CFR 211 when the regulations in this Subchapter become effective. The first three parts of the application for mining plan approval thus become the "permit application" for the purposes of the Federal Lands Program.

This section also sets forth the responsibilities for review of permit applications among the Office of Surface Mining, the Geological Survey, and the State Regulatory Authority in states which have entered into a State-Federal cooperative agreement. It is proposed that the Office of Surface Mining and the State regulatory authority would be responsible for reviewing the permit application, but the Geological Survey will be responsible for the review of Mineral Leasing Act mining and operations plan which is required to be filed with the permit application. This division is intended to reflect the apportionment of authority set forth in the two Acts. The apportionment of authority under the two Acts precludes any other alternative with respect to division of responsibilities for review of permit applications. The Department believes the proposed method for submission of applications to obtain authorization to conduct operations will facilitate review by the agencies involved and would impose no additional burden on applicants.

Section 512(e) of the Act provides that coal exploration on Federal lands shall be governed by Section 4 of the Federal Coal Leasing Amendments Act of 1975 (90 Stat. 1085 30 U.S.C. 201(b)). Section 4 provides for the issuance of coal exploration licenses, which may only be issued for lands on which a coal lease has not been issued. Regulations governing issuance of coal exploration licenses are found in 30 CFR Part 3507. Coal explorations under licenses are primarily for the purpose of obtaining geological and geophysical data and information upon which to determine whether coal deposits of sufficient quality and quantity exist in an area to justify leasing the lands involved. Under existing Departmental procedures, the Geological Survey is responsible for making such resource determinations and recommending establishment of leasing areas. Accordingly, it is proposed that the Survey will continue to be responsible for supervising the conduct of coal exploration license operations. However, coal exploration operations conducted on leased lands under a permit issued pursuant to this Chapter will be supervised by OSM.

Section 740.4(d) requires the Regional Director to, ""consult and obtain the consent of the authorized officer of the surface managing agency with respect to special requirements relating to protection of natural resources." This provision is required by Section 6 of the Federal Coal Leasing Amendments Act of 1975 (90 Stat. 1807 30 U.S.C. 207(c)), which states that, ""Where the land involved is under the surface jurisdiction of another Federal agency, that other agency must consent to the terms of such approval."

Section 740.4(f) requires that the Regional Director consult with the authorized representative of the surface managing agency for approval of all bonds. Concurrence on performance bonds is needed to assure that the bond is adequate to protect natural resources not otherwise covered by these regulations and to achieve the desired post-mining land use. {41681}

PART 741 – PERMITS

Part 741 provides for application for and revision, renewal and cancellation of permits to conduct surface coal mining operations on Federal lands. Only the Secretary has the authority to approve mining permits.

The permit application requirements for the Federal lands program are intended to be identical to that of State programs pursuant to Subchapter G except for requirements imposed by other Acts. The preamble to the State permit application process explains the Federal lands permit regulations which are parallel to those of the State program. Those additional requirements will be discussed in the following paragraphs on individual regulations.

SECTION 741.4 - RESPONSIBILITIES

Section 741.4(b) provides for joint review of applications for permits, revisions and renewals by the authorized State regulatory authorities and the Regional Directors where cooperative agreements under Section 523(c) of the Act are in effect. A joint review is required because the State will review for compliance with State reclamation standards, and the Regional Director will review the requirements of the National Environmental Policy Act and will incorporate the review and recommendations of other Federal agencies.

SECTION 741.11 - GENERAL OBLIGATIONS

Section 741.11(a) requires that all operators of surface coal mining and reclamation operations file a complete permit application not later than two (2) months following the effective date of the regulations in this Subchapter. The legislative history of the Act indicates that Congress intended the effective date of the Federal lands program to be the effective date of the regulations in this Subchapter. The authority for the time periods within which to file an application and obtain a permit contained in Sections 741.11(a) and (b) may be found in Section 506(a) of the Act. These requirements are extended to private lands where both Federal and private lands are included in the same mining plan.

SECTION 741.12 - PERMIT APPLICATIONS

The Department proposes in Section 741.12(d) that the information to be included in the application for mining plan approval shall be identical to that required in Subchapter G. Accordingly, the regulations cross-referenced to pertinent Parts of Subchapter G for the information and data to be included in the application. An alternative, repeating verbatim all of the requirements of this Part was rejected since it would be too highly repetitious and would unduly increase the bulk of the regulations. The same method is proposed for regulations governing the procedure to obtain authorization to conduct special types of mining operations in Section 741.13.

SECTION 741.13 - PERMITS FOR SPECIAL OPERATIONS

This Section also requires that a Federal lessee protection bond must be submitted to the Regional Director when the applicant cannot obtain written consent of a permittee or lessee to enter and commence surface coal mining operations on Federal lands. This type of bond is specifically required by Section 715 of the Act to secure payment of any damages to the surface estate. This is a requirement in Section 715 of the Act.

SECTION 741.14 - PERMIT TERMS {41682}

Section 741.14(b) provides for termination of the permit by the Secretary if surface coal mining operations have not commenced within three years, unless extended under specific circumstances. Permits on Federal lands cannot be extended beyond the period allowed for diligent development in accordance with Section 7 of the amended Mineral Leasing Act of 1920. This restriction is found in Section 506(c) of the Surface Mining Act.

SECTION 741.16 - CRITERIA FOR PERMIT APPROVAL OR DENIAL

Sections 741.16(a), (b) and (c) contain certain criteria for approval of permits. These criteria are the same as prescribed in Part 786, except for the requirements in subparagraph (d), (e) and (f) which require additional findings applicable only to operations on Federal lands.

SECTION 741.17 - PUBLIC PARTICIPATION IN PERMIT REVIEW PROCESS

Section 741.17 contains the requirements for public participation in the permit review process. The requirements are identical to those in Part 787. In practice, the Regional Director will be responsible for providing notice of permit applications, obtaining the views of interested parties and governmental agencies and scheduling conferences and public meetings on applications. These requirements are authorized by Section 513(a) of the Act.

SECTION 741.23 - TRANSFER, ASSIGNMENT OR SALE OF RIGHTS

Subpart 741.23 contains provisions whereby a transfer, assignment or sale of the rights granted under a permit may be made upon approval of the Secretary, in accordance with Part 792. The provision in paragraph (e) is intended to clarify the fact that rights granted under a permit are separate and distinct from the leasehold rights granted under a lease issued pursuant to the Mineral Leasing Act. Transfers of leasehold rights must be approved in accordance with Section 30 of the Mineral Leasing Act, as amended (30 U.S.C. 187), which requires Secretarial approval of any assignment or subletting. The regulations in 43 CFR 3506 contain the requirements for obtaining approval of such assignments. {41682}

PART 742 – BONDS ON FEDERAL LANDS

Lessees are required under 43 CFR 3504 to submit a Federal lease bond to assure compliance with the terms and conditions relating to diligence, production, royalty and rental of a Federal coal lease issued under the Mineral Leasing Act of 1920. The performance bond required by this Part assures compliance with performance standards under SMCRA. These regulations propose that after the effective date of this Subchapter, lessees with existing Federal lease bonds issued under 43 CFR 3504 may apply for the release of that portion of the bond that is already covered by the performance bond issued under Section 742.12(a). After the effective date of this Subchapter, permit applicants will be required to obtain the performance bond required by this Part and a Federal lease bond will continue to be required under 43 CFR 3504. The authority for the Federal lease bond requirement may be found in the Mineral Leasing Act. However, the coverage of the Federal lease bond will be limited to lease terms and conditions to avoid dual bonding.

Section 509 of the Act authorizes acceptance of bonds without separate surety under certain conditions. The regulations of this Part do not contain a provision pursuant to this Section. Standards for protection of public resources have traditionally been set at the highest level, thus precluding self-bonding. Public comment is invited upon whether such a provision should or should not be included.

Subpart 742.13 provides for a Federal lessee protection bond in those instances where Federally-owned coal is to be mined, the surface of the land is subject to a lease or permit not held by the operator, and the applicant is unable to obtain the consent of the permittee or lessee to enter and commence surface coal mining. This provision is authorized by Section 715 of the Act.

Subpart 742.17 requires a liability insurance policy to compensate all persons injured or property damaged as a result of surface coal mining and reclamation operations in accordance with Part 806, except that as proposed this section would prohibit the application on Federal lands of the provision for self-insurance equivalency in Part 806. As in the case of

self-bonding, self-insurance is prohibited in the interest of providing the highest possible protection on public lands. Public comment is invited on this provision. {41682}

PART 743 – INSPECTIONS, ENFORCEMENT, AND CIVIL PENALTIES

Part 743 provides for inspection of surface coal mining and reclamation operations and enforcement of applicable laws and regulations.

The primary responsibility for inspection to assure compliance with environmental protection requirements on Federal lands rests with the Regional Director. These responsibilities may be assumed by a State regulatory authority under a State-Federal Cooperative Agreement entered into pursuant to Part 745 of this Subchapter.

The Mining Supervisor is responsible for inspection to assure compliance with lease terms and conditions relating to coal development, production and resource recovery. It is the responsibility of the Mining Supervisor to coordinate inspections through the Regional Director to the maximum extent practicable. The internal procedure to accomplish this is set forth in a division of responsibility between the Office of Surface Mining, the Geological Survey and the Bureau of Land Management in a document approved July 5, 1978. {41682}

PART 744 – PERFORMANCE STANDARDS ON FEDERAL LANDS

The purpose of this Part is to set forth unique performance standards applicable to operations on Federal lands which are not found in Subchapter K. These standards relate to obligations imposed by the Mineral Leasing Act, as amended. The public is invited to comment on any additional performance requirements which should be included in this Part. In addition, this Part sets forth the procedures and requirements for temporary or permanent abandonment of operations. As used in this Part, "abandonment" is intended to be synonymous with "suspension" or "termination" of operations. {41682}

PART 745 – STATE-FEDERAL COOPERATIVE AGREEMENTS

Part 745 provides the criteria and procedures for a Cooperative Agreement between the Secretary and a State including requirements and limitations. The legislative history of the Act indicates that the primary objective of Cooperative Agreements is to take into account mixed sections of the private and Federally owned surface. This ownership pattern has effectively provided State control over alternate sections of land. The purpose of Cooperative Agreements is to bring all such sections into a single regulatory program. The authority for this Part may be found in Section 523(c) of the Act.

Section 523(c) of the Act, unlike other sections, does not prescribe detailed requirements for the State-Federal Cooperative Agreements. Consequently, the Office may be very flexible on the procedures to be followed. Certain provisions are required by the Surface Mining Act or other Acts which prohibit the Secretary of the Interior from delegating his authority.

A number of comments were received on a draft version of this Part suggesting changes and additions, including in one case a complete rewrite of the Part. One commenter suggested that the entire part be deleted from the regulations. The Office has elected not to accept this suggestion for the reason that failure to promulgate regulations implementing Section 523(c) of the Act would leave the States and the public completely uninformed about the procedures for entering into cooperative agreements; the limitations of each agreement; and the terms, conditions or circumstances under which such agreements may be modified or terminated. Although the Office of Surface Mining recognizes that cooperative agreements will be slightly different from State to State in order to take into account differing factors, such as a State's legal authority to regulate operations on Federal lands, it is felt that regulations setting forth minimum standards for cooperative agreements are essential.

SECTION 745.11 - APPLICATION AND AGREEMENT {41683}

Section 745.11, which was titled General requirements and limitation in a preproposed draft has been re-titled Application and Agreement and reorganized to set forth the data and information which it believes the Office of Surface Mining and the Secretary will need in order to make the determination required by Section 523(c) of the Act that the State has the necessary

personnel and funding to fully implement a cooperative agreement. Much of the information is the same as, or similar to, information States are required to file under Part 771, in order to obtain approval of a State program. It is not intended that duplicative information would be collected. Accordingly, Section 745.11(b) would not require States to repeat information which it has already submitted as a part of its State Program application. Comments are requested on the need for additional information or reasons why particular information should not be required.

Section 745.11(c), (d) and (e) would establish procedures for participation by the public and governmental entities in the review of a proposed cooperative agreement. These procedures are similar to the requirements for public participation in various other parts of the regulations and would include a requirement for a public meeting to be held in the State capitol one month after the notice of a request to enter into an agreement is published in the Federal Register and newspapers of general circulation throughout the State. The Office recognizes that some States may elect to request a cooperative agreement at the same time an application for a State program is filed. Accordingly, it proposed that the public meeting requirement in this Part could be combined with the meeting required by Part 732 for a State program. Comments on the proposed procedure for public participation are requested.

The Office has not accepted a comment that cooperative agreements require provisions for citizen participation in inspection and enforcement procedures because citizen participation is already assured in other provisions of this Chapter. Such participation is required as part of the State regulatory program upon which the cooperative agreement is based. Also, not accepted is a suggested requirement that quarterly reports to the Regional Director be required concerning the number of State inspections, the number of violation and cessation orders, and the amount of permit fees. The Office has no information before it to justify requiring quarterly reports and believes the nature and timing of reports that should be required can best be resolved as a part of the cooperative agreement.

SECTION 745.13 - AUTHORITY RESERVED BY THE SECRETARY

Section 745.13 recites the authority which the Office believes must be reserved to the Secretary and cannot be delegated to a State under a cooperative agreement. The authority for the reservation in subparagraphs (a), (c), (d), (e), (f), and (i) is found in Section 523(c) of the Surface Mining Act. The reservations in subparagraphs (g), (h), (b), and (l) are required by the Mineral Leasing Act. In addition, the Office has concluded that the authority to prepare environmental impact statements required by the National Environmental Policy Act should not be delegated in light of court decisions, such the opinion in Conservation Society for Southern Vermont vs. Secretary of Transportation 362 F. Supp. 627.

SECTION 743.15 - AMENDMENTS

The Office has not in this draft included one commenter's suggested procedures for modification of agreements which includes detailed provisions for notice of State requests for modifications and hearings because the same subject matter is already covered by the requirements in Section 746.15 that amendments must be adopted by rulemaking.

SECTION 745.18 - STATE ACTIONS UNDER AGREEMENTS

Section 745.18 provides that permit application fees collected by a State under an agreement shall be retained by the State. Section 705(c) of the Act provides that if a State elects to enter into a cooperative agreement under Section 523(d) of the Act, the Secretary may increase the amount of annual grants by an amount which he determines is approximately equal to the amount the Federal Government would have expended for regulation of operations on Federal lands. Under the proposed provision the Secretary could either (a) allow the State to retain the permit fees and deduct the amount collected from the annual State grant or (b) require the fees to be forwarded to OSM, thereby eliminating any requirement to adjust the amount of annual State grant. The office does not believe there is a legislative history to justify a conclusion that the States are entitled to receive both the fees and the increase in annual State grants. The Office is entirely flexible on this matter and invites the States and others to comment on the most satisfactory procedure to be followed.

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{Regulations: 43 FR 41817}

SUBCHAPTER D – FEDERAL LANDS PROGRAM

PART 740 – GENERAL REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON FEDERAL LANDS

Section

740.1	Scope and purpose.
740.2	Objectives.
740.4	Responsibilities.
740.5	Definitions.

Authority: Sections 102, 201, 523, and 701 of Pub. L. 95-87, 91 Stat. 448, 449, 510, 516 (30 U.S.C. 1202, 1211, 1273, 1291); and 41 Stat. 437, as amended (30 U.S.C. 1832).

SECTION 740.1 - SCOPE AND PURPOSE.

This Subchapter is intended to:

- (a) Establish the procedures and requirements for permits to conduct surface coal mining and reclamation operations on Federal lands;
- (b) Prescribe the performance standards applicable to mining and reclamation on Federal lands;
- (c) Prescribe the requirements for bonds for mining on Federal lands;
- (d) Establish the responsibilities and procedure for inspection and enforcement on Federal lands;
- (e) Set forth the requirements for State-Federal cooperative agreements with respect to regulation by a State of surface coal mining and reclamation operations on Federal lands within a State under Section 523(c) of the Act;
- (f) Set forth the requirements for training, examination and certification of persons engaged in blasting or the use of explosives in surface coal mining operations on Federal lands; and
- (g) Define the functions and responsibilities of Federal and State agencies in administering the regulations in this Subchapter.

SECTION 740.2 - OBJECTIVE.

The objective of this Subchapter is to ensure that coal exploration and surface coal mining and reclamation operations involving Federal coal interests, regardless of surface ownership, comply with the environmental protection requirements of the Act, this Chapter and all other applicable State and Federal laws.

SECTION 740.4 - RESPONSIBILITIES.

- (a) The Secretary is responsible for the approval or disapproval of permit applications.
- (b) The Secretary, acting through the Director, is authorized to execute, modify or terminate State-Federal cooperative agreements in accordance with the procedures in 30 CFR 745.
- (c) The Secretary, acting through the Director, is responsible for the process of designating areas of Federal lands as unsuitable for all or certain types of surface coal mining operations in accordance with the procedures and requirements of 30 CFR 769.

(d) The Director is responsible for the review and for recommending approval or disapproval of permit applications. In the exercise of this responsibility the Director will consult and obtain the consent of the authorized officer of the surface managing agency with respect to special requirements relating to protection of the non-mineral resources of the lands involved, and the U.S. Geological Survey concerning requirements relating to development, production and mineral resource recovery aspects. {41818}

(e) The Director is responsible for approval of authorizations to conduct experimental practices on Federal lands in accordance with Section 741.13(c).

(f) The Regional Directors, with the concurrence of the authorized representative of the surface managing agency, are responsible for approval of performance bonds required in accordance with 30 CFR 742.

(g) The Regional Directors are responsible for inspection and enforcement to ensure compliance with the performance standards of this Chapter in accordance with 30 CFR 744.

(h) Review of the mining and operations plan section of the mining plan is the responsibility of the U.S. Geological Survey, which recommends approval or disapproval to the Secretary.

SECTION 740.5 - DEFINITIONS.

As used in this Subchapter, except where otherwise indicated:

AUTHORIZED OFFICER means any officer designated by a Federal agency having administrative jurisdiction over Federal lands or minerals to exercise his authority in matters relating to the provisions of this Subchapter.

AUTHORIZED STATE REGULATORY AUTHORITY means any State regulatory authority exercising authority to regulate surface coal mining and reclamation operations on Federal lands under a State-Federal cooperative agreement approved under 30 CFR 745.

LEASE means a Federal mineral lease, issued by BLM pursuant to the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et. seq.). The name of the specific instrument is used herein where necessary for precise meaning or fuller explanation.

LEASE TERMS AND CONDITIONS means all of the standard provisions of a Federal coal lease including provisions relating to lease duration, fees, rentals, royalties, bond, production and record keeping requirements, and lessee rights of assignment, extension and renewal, termination and expiration.

LEASE STIPULATIONS means site specific requirements relating to protection of the environment and surface and mineral resources included in Federal coal leases in addition to other terms and conditions.

MINING PLAN means a complete mining and reclamation plan that complies with the requirements of the Mineral Leasing Act of 1920 as amended, the Surface Mining Control and Reclamation Act of 1977 and all other applicable laws and regulations.

MINING SUPERVISOR means the area Mining Supervisor, Conservation Division, U.S. Geological Survey, or District Mining Supervisor or other subordinate acting under his direction.

OPERATOR means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or coal refuse piles by mining within 12 consecutive calendar months in any one location.

SURFACE MANAGING AGENCY means a Federal agency having administrative jurisdiction over the surface of Federal lands or over Federal minerals. {41818}

PART 741 – PERMITS

Section

741.1	Purpose and scope.
741.4	Responsibilities.
741.11	General obligations.
741.12	Permit applications.
741.13	Permits for special operations.
741.14	Permit terms.
741.15	Conditions of permit.
741.16	Criteria for permit approval or denial.
741.17	Public participation in permit review process.
741.18	Availability of information.
741.19	Permit review processing.
741.20	Review of permit applications.
741.21	Renewal of permits.
741.22	Review of approved permits and permit revisions. I26741.23 Transfer, assignment, or sale of rights.
741.24	Revocation of permits.

Authority: Sections 102, 201, 506, 507, 508, 509, 510, 511, 513, 514, 515, 516, 517, 522, 523, 527, and 711, Pub. L. 95 87, 91 Stat. 448, 449, 473, 474, 478, 479, 480, 483, 484, 485, 486, 495, 498, 507, 510, 513, 523. (30 U.S.C. 1202, 1211, 1256, 1257, 1258, 1259, 1260, 1261, 1263, 1264, 1265, 1266, 1267, 1272, 1273, 1301); and 41 Stat. 437, as amended (30 U.S.C. 181).

SECTION 741.1 - PURPOSE AND SCOPE.

This Part is intended to:

- (a) Ensure that surface coal mining and reclamation operations on Federal lands are conducted only after the Department has determined that reclamation required by the Act is feasible;
- (b) Establish regulatory procedures governing the process for making applications for permits on Federal lands and for the review, approval, disapproval of applications by the Department;
- (c) Establish a procedure for public participation in the permit review process;
- (d) Establish the criteria and procedures for revision or renewal of Federal permits; and
- (e) Establish procedures for the revocation of permits.

SECTION 741.4 - RESPONSIBILITIES.

- (a) The Director, acting through the Regional Directors, has the responsibility to receive and review applications for permits, revisions, and renewals and to recommend approval, disapproval or approval upon condition to the Secretary for surface coal mining and reclamation operations in States that do not have an approved State-Federal cooperative agreement.
- (b) In a State where there is an approved State-Federal Cooperative Agreement, the authorized State regulatory authority and the Regional Director have the responsibility to jointly review applications for permits, revisions, and renewals and recommend approval, disapproval or approval upon condition to the Secretary under 30 CFR 745.
- (c) The Mining Supervisors and the authorized officers of the surface managing agencies and the Regional Directors are responsible for formulating special requirements relating to development, production and resource recovery, the conservation and protection of natural resources, and the post-mining land use to be included in mining and reclamation plans.

SECTION 741.11 - GENERAL OBLIGATIONS.

(a) Not later than two months following the effective date of the regulations in this Subchapter, all operators of surface coal mining and reclamation operations on Federal lands and other persons who expect to conduct such operations after eight months from such effective date shall file a complete application for a permit to be issued in accordance with this Subchapter. The application shall cover those areas in which the operator proposes to conduct surface mining and reclamation operations on and after eight months from the effective date.

(i) Except as provided in paragraph (b) of this Section, on or after eight months from the effective date of the regulations in this Subchapter, no person shall conduct surface coal mining and reclamation operations on Federal lands unless such person has first obtained a valid permit issued by the Office under the regulations in this Part.

(ii) Any person who conducts a surface coal mining and reclamation operation which includes both Federal and private lands shall conduct the operation on private lands in accordance with the requirements of this Part.

(b) A person who conducts surface coal mining and reclamation operations under an approved mining plan may conduct the operations beyond the period prescribed in paragraph (a) of this Section, if all of the following conditions are present:

(1) Timely and complete application for a permit has been made in accordance with the provisions of the Act and this Part; and

(2) The Office has not yet rendered an initial decision with respect to the application.

(c) No person shall conduct a surface coal mining and reclamation operation under a permit:

(1) Issued pursuant to the regulations in this Subchapter, except in compliance with the terms and conditions of the permit, the requirements of the lease or license, and any applicable State or Federal regulations; or {41819}

(2) Allowed to continue in effect pursuant to paragraph (b) of this Section, except in compliance with all terms and conditions of the permit, the requirements of the lease or license, the Act, and Parts 710, 715, 716, and 717 of this Chapter and State laws and regulations made applicable through a cooperative agreement.

SECTION 741.12 - PERMIT APPLICATIONS.

(a) Permit fee. An application for a permit to conduct surface mining and reclamation operations on Federal lands shall be accompanied by a fee to cover the administrative costs of reviewing the application. The amount of the fee shall be determined by a fee table published by the Director.

(b) Copies required. The applicant shall file seven copies of the complete permit application with the Regional Director.

(c) Contents of applications.

(1) A permit application shall be submitted as part of a Mining Plan and shall include:

(i) The legal, financial, compliance and related information required by 30 CFR 778 for surface mines or 30 CFR 782 for underground mines;

(ii) The information on environmental resources in the permit and adjacent areas required by 30 CFR 779 for surface mines or 30 CFR 783 for underground mines;

(iii) A reclamation and operation plan for surface mining operations which meets the requirements of 30 CFR 780 or, a reclamation and operation plan for underground operations which meets the requirements of 30 CFR 784; and, in addition, the method of mining, the mining sequence, and the proposed production rate for the life of the mine; and

(iv) A mining and operation plan which covers the life of the mine and meets the requirements of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et. seq.) and 30 CFR 211.

(2) An applicant seeking authorization to conduct special categories of mining shall include in his application, in addition to the information required in paragraph (a) of this Section, all of the information required by 30 CFR 785.

(3) Where the surface of the Federal lands is subject to a lease or permit issued by the Federal government, the application for a permit shall include the written consent of the permittee or lessee to enter and commence surface coal mining operations on such lands. Where written consent cannot be obtained by the applicant a Federal lessee protection bond shall be submitted to the Regional Director according to 30 CFR 742.13.

SECTION 741.13 - PERMITS FOR SPECIAL OPERATIONS.

- (a) Persons seeking to engage in special bituminous surface coal mining shall comply with 30 CFR 785.12.
- (b) Persons seeking to conduct experimental practices shall comply with 30 CFR 785.13.
- (c) Persons seeking to engage in steep slope mining shall comply with 30 CFR 785.14.
- (d) Persons seeking to engage in mountain-top removal operations shall comply with 30 CFR 785.15.
- (e) Persons seeking a permit allowing for variances from the requirement in Subchapter K requiring restoration of lands to approximate original contour shall comply with 30 CFR 785.16.
- (f) Persons seeking to engage in surface coal mining and reclamation operations on prime farmlands shall comply with 30 CFR 785.17.
- (g) Persons seeking to engage in combined surface and underground mining operations shall comply with 30 CFR 785.18.
- (h) Persons seeking to engage in surface coal mining and reclamation in or adjacent to alluvial valley floors in arid or semi-arid areas west of the 100th meridian shall comply with 30 CFR 785.19.

SECTION 741.14 - PERMIT TERMS.

- (a) Each permit to conduct surface coal mining and reclamation operations on Federal lands shall be issued for a fixed term not to exceed five years. If the applicant satisfies the following requirements, a longer specified permit term may be granted:
 - (1) A longer permit term is reasonably needed to allow the applicant to obtain necessary financing for equipment and opening of the operation and this need is verified, in writing, by the applicant's proposed source for the financing; and
 - (2) The application is full and complete for the longer term.
- (b) A permit shall terminate, if the permittee has not commenced the surface coal mining operation covered by the permit within three years of the issuance of the permit. The Secretary may grant a reasonable extension of time, upon a written showing that the extension of time is necessary because litigation precluding the commencement is threatening substantial economic loss to the permittee, or because of conditions beyond the control and without the fault or negligence of the permittee. An extension of time may not be granted if the effect of such extension would be to extend the term of a Federal coal lease beyond the period allowed for diligent development under the terms and conditions of the lease and the regulations of 43 CFR 3500. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facilities, the permittee shall be deemed to have commenced surface mining operations at such time as the construction of the synthetic fuel or generating facilities is initiated.

SECTION 741.15 - CONDITIONS OF PERMITS.

All permits issued under this Part shall reflect consideration of the diverse physical, climatological, and other unique characteristics of the Federal lands in question and shall include the terms and conditions of 30 CFR 786.

SECTION 741.16 - CRITERIA FOR PERMIT APPROVAL OR DENIAL.

- (a) No permit or revision application shall be approved, unless the application affirmatively demonstrates and the Secretary finds, in writing, on the basis of information in the application or from information otherwise available, which is documented in the approval and made available to the applicant, that the application meets the criteria for approval of permits set forth in 30 CFR 786.
- (b) Subject to valid existing rights, no permit shall be approved which adversely affects any publicly owned park or any place included or eligible for listing in the National Register of Historic Places, unless approved jointly by the Federal, State, or local agency with responsibility for such park or places;

(c) No permit shall be approved to conduct surface coal mining and reclamation operations:

(1) Within 100 feet of the outside right-of-way line of any public road, except:

(i) Where a mine access road or haulage road joins the right-of-way line; or

(ii) Where the Secretary and any necessary State authorities allow the public road to be relocated or the area affected to be within 100 feet of the road, upon the basis of a written finding, made after public notice and opportunity for public hearing in accordance with 30 CFR 741.17, that the interests of the public and each landowner affected shall be protected and upon the completion of any necessary State review; or

(2) Within 300 feet of any occupied dwelling, unless the owner thereof has consented, in writing, to mining closer than 300 feet, nor within 300 feet of any public building, school, church, community or institutional building, public park, or within 100 feet of a cemetery.

(d) No permit shall be approved to conduct surface coal mining and reclamation operations until the applicant has submitted the lease bond, performance bond, and Federal lessee bond required under 30 CFR 742. {41820}

(e) If the operations are on Federal lands in a State having an approved State-Federal cooperative agreement, no permit shall be approved until both the Secretary and the authorized State regulatory authority have concurred in issuance of the permit.

(f) No permit to conduct surface coal mining and reclamation operations shall be approved unless the permit application complies with each requirement of all other applicable Federal laws, including but not limited to, the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq) and the Federal Lands Policy and Management Planning Act of 1976 (43 U.S.C. 1701 et seq.).

SECTION 741.17 - PUBLIC PARTICIPATION IN PERMIT REVIEW PROCESS.

The provisions for public participation in the permit review process in 30 CFR 787 shall apply to the review of each application to conduct surface coal mining and reclamation operations under this Subchapter.

SECTION 741.18 - AVAILABILITY OF INFORMATION.

(a) Information in a permit application on file with the Office shall be open for public inspection and copying at reasonable times upon the written request of the applicant, Provided that:

(1) Information in a permit application which pertains only to the analysis of the chemical and physical properties of the coal, except information on a mineral or elemental content which is potentially toxic in the environment, shall be kept confidential and not made a matter of public record; and

(2) Information in exploration or mining and reclamation portions of the application, which is required to be filed with the Regional Director only under Section 508 of the Act and which is not required to be disclosed by the Freedom of Information Act (5 U.S.C. 552(b)), shall be held in confidence by the Regional Director according to 43 CFR Part 2.

(b) Information in a permit application required to be kept confidential under paragraph (a) of this section, shall be clearly identified by the applicant by marking each page of the document with the words ""CONFIDENTIAL INFORMATION" at the top of the page. All pages so marked shall be physically separated from other portions of the application.

SECTION 741.19 - PERMIT REVIEW PROCESSING.

(a) Upon receipt of an application for a permit, the Regional Director shall, when a permit application or a proposed revision of an approved permit involves operations on Federal lands within the boundaries of National Forest System lands, transmit a copy of the complete application or proposed revision to the Secretary of Agriculture with a request for consent.

SECTION 741.20 - REVIEW OF PERMIT APPLICATIONS.

(a) The Director shall review the complete application, written comments, written objections submitted and records of any public meeting held under Section 741.17 and recommend approval, denial or approval upon condition to the Secretary.

(b) Before issuance of the permit, the Regional Director shall require that the applicant file a performance bond or provide other equivalent guarantees in accordance with 30 CFR 742.

(c) If the Regional Director determines that any surface coal mining operation owned or controlled by the applicant is currently in violation of the Act or of any air or water environmental protection law, rule or regulation of the United States, or of any department or agency in the United States, then, before making a decision to approve the application, the Regional Director shall require the applicant to submit proof, satisfactory to the Regional Director, Department or agency which has jurisdiction over such violation, that such violation has been corrected or, is being corrected.

(d) Before any final determination by the Regional Director that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violation of the Act of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provision of the Act, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in the Federal Lands program.

SECTION 741.21 - RENEWAL OF PERMITS.

Each valid permit issued under this Subchapter shall carry with it the right of successive renewal upon expiration, for areas within the boundaries of the existing permit, in accordance with the requirements of 30 CFR 791. Terms of a permit to conduct operations under a lease issued pursuant to the Mineral Leasing Act, as amended, may not be extended beyond the period allowed for diligent development according to Section 7 of that Act.

SECTION 741.22 - REVIEW OF APPROVED PERMITS AND PERMIT REVISIONS.

(a) The Regional Director shall, upon the basis of an inspection, complaints received, reports from permittees or other relevant information, review each Federal permit issued and outstanding at a minimum frequency of once each three years from the date of original issuance of the permit and, in any event, at least once during the term of a permit.

(b) Upon the recommendation of the Director, the Secretary may require, by order, supported by written findings, reasonable revision or modification of the permit provisions, in accordance with the procedures in 30 CFR 790.

(c) Where changes or other factors listed in 30 CFR 790 require a permit revision, the permittee may apply for a revised permit in accordance with the requirements of 30 CFR 790. The permittee shall submit seven copies of a permit revision application to the Regional Director.

SECTION 741.23 - TRANSFER, ASSIGNMENT, OR SALE OF RIGHTS.

(a) The provisions of 30 CFR 792 govern the approval by the Secretary of the transfer, assignment or sale of rights granted under a permit issued pursuant to this Subchapter.

(b) Application for transfer, assignment or sale of rights shall be filed with the Regional Director.

(c) The Regional Director, before recommending to the Director approval or disapproval of an application for transfer, assignment or sale of rights, shall obtain the concurrence of the Bureau of Land Management and the Geological Survey.

(d) The Director may authorize the Regional Director to grant the application if the Secretary approves the transfer, assignment or sale.

(e) Approval of a transfer, assignment or sale of rights granted under a permit shall not be construed to constitute a transfer or assignment of leasehold interests. Leasehold interests may only be transferred or assigned in accordance with 43 CFR 3506.

SECTION 741.24 - REVOCATION OF PERMITS.

- (a) A permit to conduct surface mining and reclamation operations on Federal lands may be revoked by the Director in accordance with the procedures in 30 CFR 843.13.
- (b) If a permit and right to mine under the Act are revoked, the Regional Director shall notify BLM and recommend that action be taken to cancel the Federal lease in accordance with the procedures in 43 CFR Subpart 3523. {41820}

PART 742 – BONDS AND LIABILITY INSURANCE ON FEDERAL LANDS

Section

742.1	Scope.
742.4	Regional Director responsibilities.
742.5	Definitions.
742.11	Federal lease bonds.
742.12	Performance bonds.
742.13	Federal lessee protection bonds.
742.14	Amount and duration of performance bonds.
742.14	Amount and duration of performance bonds.
742.15	Form of bonds.
742.16	Terms and conditions of bonds.
742.17	Terms and conditions for liability insurance.
742.18	Release of bonds.
742.19	Performance bond, forfeiture criteria and procedures. {41821}

Authority: Sections 102, 201, 507, 509, 519, 523, 715, Pub. L. 95 87, 91 Stat. 448, 449, 474, 479, 501, 510, 525 (30 U.S.C. 1207, 1211, 1257, 1259, 1269, 1273, 1305); and 41 Stat. 437, as amended (30 U.S.C. 181).

SECTION 742.1 - SCOPE.

This Part sets forth, with respect to Federal lands, the requirements for the bond required for compliance with the terms and conditions of a coal lease, license or permit under the Mineral Leasing Act of 1920, as amended, and the performance and Federal lessee protection bond required under the Surface Mining Control and Reclamation Act of 1977. This Part also sets forth procedures for setting bond amounts, provides for reduction of bond requirements where dual bonding exists and requires bonding to ensure full compliance with the requirements for reclamation of surface coal mining and reclamation operations on Federal lands. This Part also sets forth the requirements for liability insurance for surface coal mining and reclamation operations on Federal lands.

SECTION 742.4 - REGIONAL DIRECTOR RESPONSIBILITIES.

- (a) The Director shall prescribe and furnish the form for filing a performance bond. The Regional Director shall also prescribe terms and conditions for bonds and insurance.
- (b) The Director is responsible for determining the amount of the performance and Federal lessee protection bond required for each bonded area, including adjustments to the initial amount from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.
- (c) The Director is responsible for the release of performance bonds.
- (d) The Director shall initiate proceedings for forfeiture of all or part of a bond consistent with 30 CFR 808.

SECTION 742.5 - DEFINITIONS.

Federal lease bond means a surety bond payable to the United States required pursuant to 43 CFR 3504 for compliance with the terms and conditions of a Federal coal lease.

Federal lessee protection bond means a bond payable to the United States for use and benefit of a permittee or lessee on Federal lands to secure payment of any damages to crops or tangible improvements.

SECTION 742.11 - FEDERAL LEASE BONDS.

(a) All operators on any Federal lease shall have a Federal lease bond pursuant to this Part. Lessees holding a lease before the effective date of these regulations where the lease is covered by a bond required under 43 CFR 3504, may apply to the authorized officer for release of liability for that portion of the Federal lease bond that covers reclamation requirements.

(b) The authorized officer may release the liability for that portion of the Federal lease bond that covers reclamation requirements if:

- (1) The Federal lessee has secured a suitable bond covering the permit area under this part;
- (2) There are no pending actions or unresolved claims against existing bonds; and
- (3) The authorized officer receives concurrence from the Regional Director and the Mining Supervisor.

(c) Bonding requirements on Federal leases issued pursuant to 43 CFR 3500, after the effective date of these regulations shall not include the performance bond required in this Part.

SECTION 742.12 - PERFORMANCE BONDS.

Each operator of a surface coal mining and reclamation operation on Federal leases shall comply with the performance bond requirements of 30 CFR 800 808. The provisions for self-insurance equivalency under 30 CFR 806.14(d) shall not apply to operations on Federal lands.

SECTION 742.13 - FEDERAL LESSEE PROTECTION BONDS.

(a) In those instances where Federally owned coal is to be mined and the surface of the land is subject to a lease or permit issued by the United States and the applicant for a permit is unable to obtain the written consent of the permittee or lessee of the surface to enter and commence surface coal mining operations, the applicant shall submit to the Regional Director with his application a Federal lessee protection bond which meets the requirements of this Section. The Federal lessee protection bond is in addition to the performance bond required by Section 742.12.

(b) The bond shall be payable to the United States for the use and benefit of the permittee or lessee of the surface lands involved.

(c) The bond shall secure payment to the surface estate for any damage which the surface coal mining and reclamation operation causes to the crops, or to tangible improvements of the permittee or lessee of the surface lands.

(d) The amount of the bond shall be determined either by the parties involved or in an action brought against the operator or upon the bond in a court of competent jurisdiction.

SECTION 742.14 - AMOUNT AND DURATION OF PERFORMANCE BONDS.

The amount and duration of the performance bond for surface mining and reclamation operations on Federal lands shall be in accordance with 30 CFR 805.

SECTION 742.15 - FORM OF BONDS.

The form of the performance bond shall be established by the Regional Director and may include_

- (a) A bond executed by the applicant and a corporate surety licensed to do business in the State where the surface or underground coal mining operation is located; or
- (b) Cash deposits, negotiable bonds of the United States or State, or negotiable certificates of deposit of any bank organized or transacting business in the United States, if the applicant so chooses.

SECTION 742.16 - TERMS AND CONDITIONS OF BONDS.

- (a) The bond shall be conditioned upon faithful performance of all the requirements of the Act, this Chapter and the permit and shall cover that area under permit upon which the operator will initiate and conduct surface coal mining and reclamation operations with the initial term of the permit in accordance with 30 CFR 806.
- (b) The amount of the bond and the requirements for acceptance of a bond may be adjusted from time to time to meet the geological, hydrological and other requirements of additional acreage to be affected under the permit pursuant to the incremental expansion of the surface or underground coal mining and reclamation operation.
- (c) Duration of the bond shall be determined under 30 CFR 805.13 and shall apply to each incremental expansion of the surface or underground coal mining operation as it comes under bond.

SECTION 742.17 - TERMS AND CONDITIONS FOR LIABILITY INSURANCE.

The terms and conditions for liability insurance in 30 CFR 806 shall apply to operations on Federal lands except the provisions for self-insurance equivalency in 30 CFR 806.14(d) shall not apply.

SECTION 742.18 - RELEASE OF BONDS.

- (a) A Federal lease bond may be released by the authorized officer, upon satisfactory reclamation of a mine after cessation of operations as determined and approved by the Regional Director and the Mining Supervisor. {41822}
- (b) A performance bond shall be released in accordance with 30 CFR 807, except as provided in this Part.
- (c) A Federal lessee protection bond shall be released upon the written consent of the lessee or upon compliance with the requirements of 30 CFR 807.

SECTION 742.19 - PERFORMANCE BOND FORFEITURE CRITERIA AND PROCEDURES.

The performance bond on Federal lands shall be subject to forfeiture in accordance with 30 CFR 808. {41822}

PART 743 – INSPECTIONS, ENFORCEMENT, AND CIVIL PENALTIES – FEDERAL LANDS

Section	
743.1	Scope.
743.2	Objective.
743.4	Responsibilities.
743.11	General obligations.
743.12	Inspections.
743.13	Enforcement.

Authority: Sections 102, 201, 517, 518, 521, 523, 525 of Pub. L. 95-87, 91 Stat. 448, 449, 498, 499, 504, 510, and 511 (30 U.S.C. 1202, 1211, 1267, 1268, 1271, 1273, 1275); and 41 Stat. 437, as amended (30 U.S.C. 181).

SECTION 743.1 - SCOPE.

This Part applies to inspection of surface coal mining and reclamation operations, enforcement of applicable laws and regulations, and assessment of civil penalties on Federal lands.

SECTION 743.2 - OBJECTIVE.

The objective of this Part is to establish procedures for inspection, enforcement, and assessment of civil penalties by the Office of Surface Mining and other agencies.

SECTION 743.4 - RESPONSIBILITIES.

(a) The Regional Director is responsible for the inspection and enforcement of all coal exploration within the permit area and surface coal mining and reclamation operations on Federal lands to ensure compliance with all applicable performance standards and requirements of the approved exploration or mining permit and all terms, conditions, and stipulations of a lease, license, or permit issued under the Mineral Leasing Act of 1920 that are incorporated into an approved exploration or mining permit except as provided in paragraphs (b), (c) and (d) of this Section.

(b) The authorized State regulatory authority shall assume the inspection and enforcement functions of the Regional Director that are included in the provisions of a State-Federal cooperative agreement under 30 CFR 745.

(c) The Mining Supervisor is responsible for inspection and enforcement on Federal lands to ensure operator compliance with lease and license terms, conditions, and stipulations and with provisions of an approved exploration or mining permit relating to development, production, and resource recovery, including royalty audits and other non-field inspections.

(d) The authorized officer of the surface managing agency shall inspect leases and permit areas for compliance with terms, conditions, and stipulations relating to the management and protection of non-coal Federal material resources and the post-mining use of affected lands.

SECTION 743.11 - GENERAL OBLIGATIONS.

(a) Right of entry. The operator shall provide access and means for any authorized representative of the Regional Director, the Mining Supervisor or the authorized officer of the surface managing agency to inspect the surface coal mining and reclamation operation without advance notice to determine whether the operation is in compliance with all applicable laws, regulations, notices and orders, terms and conditions of the lease, permit or license, and the requirements of the approved mining plan.

(b) Records and Equipment. Any authorized representative of the Regional Director or the Mining Supervisor may, at reasonable times and without delay, have access to copy any records and to inspect any monitoring equipment or method of operation required under the regulations or an approved mining plan.

(c) Citizen Request. The operator shall at all reasonable times allow any authorized representative of the Regional Director to inspect or investigate the operation in response to a citizens request pursuant to 30 CFR 842.12.

SECTION 743.12 - INSPECTIONS.

(a) Coal exploration and surface coal mining and reclamation operations on Federal lands shall be inspected under provisions of Part 840 and 842 of this Chapter and in accordance with the responsibilities in Section 743.4. Inspections shall be conducted jointly when more than one agency is involved and it is practical to do so. The Regional Director may enlist the aid of other Federal inspectors when necessary to ensure compliance with an approved exploration or mining permit.

(b)(1) The Regional Director shall coordinate inspections by Federal agencies. When the Mining Supervisor or the authorized officer of the surface managing agency determines that an inspection should be made, they shall notify the Regional Director. To the extent possible, inspections by other Federal agencies shall be scheduled concurrently with inspections by the Office. Royalty audits and other non-field inspection by the Mining Supervisor need not be coordinated with the Regional Director.

(2) The Regional Director shall conduct at least one partial inspection per month and one complete inspection per calendar quarter of each surface coal mining and reclamation operation under his jurisdiction.

(c) The inspections required under this Section shall:

- (1) Be carried out on an irregular basis;
- (2) Occur without prior notice to the person being inspected or any agent or employee of such person, except for necessary onsite meetings; and
- (3) Include the prompt filing of inspection reports adequate to enforce the requirements of this Chapter.

SECTION 743.13 - ENFORCEMENT.

(a) The provisions of 30 CFR 843 shall govern actions by the Regional Director to ensure compliance with an approved mining permit and all terms, conditions, and stipulations of a lease, license, or permit issued under the Mineral Leasing Act of 1920, as amended, that are incorporated into such permit.

(b) The Mining Supervisor shall take necessary action to ensure compliance with 30 CFR 211 for exploration outside the permit area, coal development, production and resource recovery.

(c) Civil penalties. Civil penalties for the violation of provisions of the Surface Mining Control and Reclamation Act and regulations under the Act shall be assessed by the Regional Director in accordance with 30 CFR 845. {41822}

PART 744 – PERFORMANCE STANDARDS FOR FEDERAL LANDS

Section

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| 744.1 | Scope. |
| 744.11 | Performance standards: Exploration. |
| 744.12 | Performance standards: Mining and reclamation. |
| 744.13 | Performance standards: Completion of operations and abandonment. |

Authority: Sections 102, 201, 508, 515, 516, 517, 519, 523, 701, 717 and 719 of Pub. L. 95-87, 91 Stat. 448, 449, 486, 495, 498, 501, 510, 516, 526 (30 U.S.C. 1202, 1211, 1258, 1265, 1266, 1267, 1269, 1273, 1301, 1307, and 1309); and 41 Stat. 437, as amended (30 U.S.C. 181).

SECTION 744.1 - SCOPE.

These regulations govern the conduct of all surface coal mining and reclamation operations on Federal lands, regardless of surface ownership.

SECTION 744.11 - PERFORMANCE STANDARDS: EXPLORATION.

(a) Coal exploration activities on Federal lands within a permit area shall be conducted pursuant to the requirements of the permit and the following additional requirements.

(1) Surveillance wells. With the approval of the Regional Director, in consultation with the Mining Supervisor, 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.

(2) Blowout control devices. When drilling on lands that are valuable or potentially valuable for oil and gas or geothermal resources, the operator shall, when required by the Regional Director, in consultation with the Mining Supervisor, set and cement casing in the hole and install suitable blowout prevention equipment. {41823}

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

SECTION 744.12 - PERFORMANCE STANDARDS: MINING AND RECLAMATION.

(a) All surface coal mining and reclamation on Federal lands shall be conducted pursuant to the performance standards in 30 CFR Subchapter K and any terms and conditions of the lease license or permit.

(b) The operator shall conduct surface coal mining and reclamation operations to maximize the utilization and conservation of the solid fuel resources being recovered so that re-affecting the land in the future through surface coal mining can be minimized; provided that the requirements of the Mineral Leasing Act of 1920, as amended, for maximum economic recovery and diligent development are not diminished by this requirement.

(c) When mining is conducted in areas of known wells or boreholes that may liberate oil, gas, water or other fluid substances, the operator shall promptly notify the Mining Supervisor upon encountering unsuspected wells or bore holes and take no further actions which would disturb the wells or bore holes without the Mining Supervisor's prior approval. To the extent practicable, the Mining Supervisor shall consult with the Regional Director prior to continuation of operations.

SECTION 744.13 - PERFORMANCE STANDARDS: COMPLETION OF OPERATIONS AND ABANDONMENT.

(a) Temporary abandonment. In areas in which there are no current operations, but operations are to be resumed under an approved plan, the operator shall substantially backfill, fence, protect, or otherwise effectively close all surface openings, auger holes, areas prone to subsidence, and surface facilities or workings which are a hazard to people or animals. The operator shall post conspicuous signs prohibiting entrance of unauthorized persons. All such protective measures shall be maintained in a secure condition until the operations are resumed or permanently abandoned.

(b) Permanent abandonment.

(1) Before permanent abandonment of exploration or mining operations, all openings and excavations, including water discharge points, shall be closed, backfilled, or otherwise permanently sealed and stabilized 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 a manner that protects the surface and not to endanger any present or future underground operations or any deposit of oil, gas, other mineral resources, or ground water.

(2) Methods of abandonment shall be approved in advance by the Regional Director in an approved plan, and may include backfilling, regrading, revegetating, cementing, and capped casing, or combinations of these, or other methods. Reclamation and clean-up of permanently abandoned underground or surface mining operations shall commence without delay following cessation of mining operations. Areas affected by access roads shall 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, they shall be designed and constructed to be permanently stabilized, using adequate drains, water barriers, and other practices.

(c) Notice of abandonment.

(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, with a statement of the exact number of acres affected by his operation, 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 this notice the Regional Director, the Mining Supervisor and the appropriate authorized officer 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 liability of the lease bond be terminated.

(d) Surface owner participation. 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 appropriate bond liability be terminated.

(e) Public participation. Prior to approval of final abandonment the Regional Director shall comply with the public participation requirements of 30 CFR 807. {41823}

PART 745 – STATE-FEDERAL COOPERATIVE AGREEMENTS

Section

745.1	Scope.
745.2	Objectives.
745.4	Responsibilities.
745.11	Application and agreement.
745.12	Terms.
745.13	Authority reserved by the Secretary.
745.14	Enforcement.
745.15	Amendments.
745.16	Termination.
745.17	Reinstatement.
745.18	State actions under agreements.

Authority : Sections 102, 201, 503, 507, 517, 518, 521, and 523 of Pub. L. 95 87, 91 Stat. 448, 449, 470, 474, 498, 499, 504, and 510 (30 U.S.C. 1202, 1211, 1253, 1257, 1267, 1268, 1271, 1273); and 41 Stat. 437, as amended (30 U.S.C. 181).

SECTION 745.1 - SCOPE.

This part sets forth procedures for the formulation and administration of cooperative agreements under Section 523(a) of the Act, describes provisions which must be included in the agreements, establishes criteria for approval of agreements, and lists authorities and responsibilities reserved to the Secretary.

SECTION 745.2 - OBJECTIVE.

The objective of this part is to provide for the uniform application of environmental and reclamation standards to surface coal mining operations located within a State through the exercise of regulatory authority by States with approved State programs over surface coal mining operations on Federal lands. {41824}

SECTION 745.4 - RESPONSIBILITIES.

(a) The Secretary is responsible for entering into, revising and terminating cooperative agreements upon request of the State, and for the approval of mining plans on Federal lands.

(b) The Regional Director is responsible for recommending approval or disapproval of cooperative agreements to the Director.

(c) The Director is responsible for recommending approval or disapproval to the Secretary.

SECTION 745.11 - APPLICATION AND AGREEMENT.

(a) The Governor of any State may request that the Secretary enter into a cooperative agreement with the State, if the State has an approved State program or has submitted a program for approval under 30 CFR 731, and has within its borders surface coal mining operations which are being conducted under the terms of a Federal lease.

(b) A request for a cooperative agreement shall be submitted to the Director in writing and, unless previously submitted in the State program plan, shall include the following information:

- (1) A copy of the budget of the State regulatory authority;
- (2) A summary of the history of the State regulatory authority and a description of its powers and responsibilities other than over surface coal mining and the proportion of its staff assigned to duties not relating to surface coal mining;
- (3) The best available figures with respect to the total area of non-Federal surface mineable coal within the State, the number and extent of existing surface coal mining operations, and the expected number and extent of surface coal operations on Federal and non-Federal lands;
- (4) An organization chart and description of the staff of the State regulatory authority which states the number and types of technical and professional personnel available for administration of the cooperative agreement, and their disciplines, salaries or the amount reimbursed to other agencies for their services;
- (5) A description of the procedures which the State proposes to follow in enforcing its environmental and reclamation standards on Federal lands and a statement of the number of employees listed in paragraph (b)(4) of this section who will be available for such enforcement and the proportion of their time which will be available;
- (6) A description of the administrative and backup staff of the State regulatory authority available for enforcement on Federal lands;
- (7) A description of the physical facilities of the State regulatory authority available for enforcement on Federal lands including office space, vehicles, laboratory and testing equipment, the cost associated with such facilities;
- (8) Proposed terms of the agreement consistent with the requirements of this part; and
- (9) A certification by the Attorney General of the State that no statutory, regulatory or policy provisions exist which would limit the capability of the State regulatory authority to fully comply with the requirements of this part and of the proposed cooperative agreement.

(c) The Director shall publish a notice of the request and the terms of the proposed agreement in the Federal Register as proposed rules, and in newspapers of general circulation throughout the State. The notice shall also include:

- (1) The date, time and place of the public meeting(s) on the request to be held in compliance with paragraph (d) of this section;
- (2) The location of each office of the State regulatory authority and the name of the person in that office from whom a complete copy of the request submitted by the State may be obtained; and
- (3) A date not less than 60 days after publication of the notice within which members of the public may submit written comments on the request and the person to whom comments should be addressed;

(d) Not less than 30 days after publication of the notice required in paragraph (c) of this section, a public meeting shall be held in a suitable location in the State requesting the cooperative agreement. This meeting may be combined with public meetings required under 30 CFR 732, if appropriate.

(e) Before the expiration of the comment period, the Director shall consult with the Bureau of Land Management, Fish and Wildlife Service, the U.S. Geological Survey, and other Federal surface managing agencies to obtain their views on the request.

(f) The Director shall recommend to the Secretary that he enter into a cooperative agreement with a State if the Director finds that:

- (1) The State has an approved State program.
- (2) The State regulatory authority has sufficient budget, equipment and personnel to fully enforce the State's environmental and reclamation standards on all surface mining operations on Federal lands in the State.
- (3) The State has the legal authority to administer the cooperative agreement.
- (4) The State will cooperate with the Office of Surface Mining, the U.S. Geological Survey and the surface managing agencies in the administration of their responsibilities with respect to surface coal mining operations on Federal lands.

(g) The Secretary shall publish in the Federal Register his decision with respect to a request by a State to enter into a cooperative agreement and the reasons therefor. If he enters into a cooperative agreement, the Secretary shall publish the final terms of the agreement in the Federal Register .

SECTION 745.12 - TERMS.

Each cooperative agreement shall include:

- (a) Terms obligating the State regulatory authority to enforce the environmental and reclamation standards of the State's approved program on Federal lands and describing each applicable provision of the State's statutes, regulations and policies;
- (b) A description of the powers and authority reserved by the Secretary under section 745.13;
- (c) A description of the procedures and reasons for modification, suspension or termination of the agreement under the requirements of this Part;
- (d) Provisions for reports by the State regulatory authority to the Regional Director;
- (e) Terms obligating the State regulatory authority to maintain sufficient personnel and facilities to comply with the terms of the agreement, and to notify the Regional Director of any substantial change in State law, regulations, funding, staff and any other change which would affect the State's ability to administer the cooperative agreement; and
- (f) Terms for cooperation among the State regulatory authority, the surface managing agencies, the U.S. Geological Survey and the Office of Surface Mining.

SECTION 745.13 - AUTHORITY RESERVED BY THE SECRETARY.

The Secretary shall not delegate to any State, nor shall any cooperative agreement be construed to delegate to any State, authority over or responsibility for_

- (a) The designation of Federal lands unsuitable for surface coal mining;
- (b) The preparation of environmental impact statements or assessments;
- (c) The development of land use management plans;
- (d) The regulation of non-coal mining activities on Federal lands;
- (e) The determination of when, where and how to lease Federal coal and how much to lease;
- (f) The development of the terms for Federal coal leases, including special terms relating to mining and reclamation procedures; {41825}
- (g) The evaluation of the coal resource;
- (h) Royalties, rents, and bonuses charged in connection with Federal coal leases;
- (i) The approval or significant modification of any mine plans on Federal lands;
- (j) The enforcement of lease terms, including diligent development and maximum economic recovery requirements;
- (k) Approval of post-mining land use plans for Federal lands; and
- (l) The release of Federal lease bonds.

SECTION 745.14 - ENFORCEMENT.

The State regulatory authority shall inspect and enforce consistent with the provisions of 30 CFR 840 845, and the requirements of the State program on Federal lands leased for coal under the Mineral Leasing Act of 1920 as amended, and pursuant to an approved State-Federal cooperative agreement and the requirements of this Part.

SECTION 745.15 - AMENDMENTS.

A cooperative agreement may be amended by mutual agreement of the Secretary and the Governor of a State. Amendments shall be adopted by rulemaking.

SECTION 745.16 - TERMINATION.

(a) Termination by the State. A cooperative agreement may be terminated by the State upon written notice to the Secretary, specifying the date upon which the cooperative agreement shall be terminated. The date of termination shall not be less than 90 days from the date of the notice.

(b) Termination by the Secretary. A cooperative agreement may be terminated by the Secretary after giving notice to the State regulatory authority and affording the State regulatory authority an opportunity for a meeting in accordance with section 745.11 if the Secretary finds that:

(1) The State regulatory authority has substantially failed to comply with the regulations of this Part or provisions of the cooperative agreement; or

(2) The State regulatory authority has failed to comply with any assurance given by the State upon which approval of the cooperative agreement or grants are based.

(c) Termination by operation of law. Any cooperative agreement shall terminate:

(1) When no longer authorized by Federal law or the State laws and regulations; or

(2) Upon termination of a State program.

SECTION 745.17 - REINSTATEMENT.

(a) A State may apply for reinstatement of the cooperative agreement upon providing written evidence that the State has remedied all defects for which the agreement was terminated and is fully capable of complying with the requirements of the cooperative agreement. Any reinstatement shall be by rulemaking.

(b) The Director may recommend approval of the reinstatement to the Secretary if he finds that the State meets all the requirements for the initial approval of a cooperative agreement pursuant to this subchapter.

SECTION 745.18 - STATE ACTIONS UNDER AGREEMENTS.

This section sets forth the procedures to be followed by the State regulatory authority in the administration of a cooperative agreement.

(a) Fees.

(1) Each permit application on Federal lands shall be accompanied by a permit fee to be determined in accordance with 30 CFR 741.12. Annual fees may be assessed consistent with the State program. The fees may be less than, but shall not exceed, the actual or anticipated costs of reviewing the permit application and administering and enforcing the permit.

(2) All permit fees collected shall be retained by the State. The State shall submit reports to the Regional Director on fees collected on Federal lands containing the information and at the times required by the Regional Director.

(b) Copies of permit application. The applicant shall file the number of copies required by the regulatory authority and seven (7) copies with the Regional Director. The required copies shall be filed simultaneously and be identical in all particulars.

(c) Civil penalties. Assessment of civil penalties on surface coal mining operations conducted on Federal lands shall be determined by the procedures set forth in the cooperative agreement.

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