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DEPARTMENT OF THE INTERIOR

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

30 CFR Chapter VII: Subchapter G – Surface Coal Mining and Reclamation Operations Permits System: Parts 770, 771, 776, 778, 778, 780, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792

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 41687}

SUBCHAPTER G – SURFACE COAL MINING AND RECLAMATION OPERATIONS PERMITS SYSTEM

PART 770 – GENERAL REQUIREMENTS FOR PERMIT SYSTEMS UNDER STATE PROGRAMS

SECTION 770.5 - DEFINITIONS.

(1) The term "complete application" is defined to insure that appropriate distinction is made in this Subchapter between: (i) those permit applications which, although filed with the regulatory authority, do not contain all information needed for a final decision to approve or disapprove a permit; and, (ii) those applications which are full and complete for the purpose of a final decision by the regulatory authority.

The consequences of a "complete application" are important, since OSM proposes that the Subchapter's time constraints for action upon an application by the regulatory authority (see Parts 787, 788) begin only with the filing of a "complete application" and that only a "complete application" may be given final consideration for approval/disapproval of a permit. See Sections 510, 514(a) of the Act.

(2) The term "general area" is based upon the requirements of the Act at Section 507(b)(11) and 510(b)(3), that the regulatory authority conduct an assessment of the impact on the hydrologic balance of all anticipated mining in the "general area" around the proposed permit area, prior to issuing or denying a permit. As proposed, the term "general area" would, in general, be delimited according to "catalog units" derived from a national program administered by the Department's Office of Water Data Co-ordination (OWDC) within the U.S. Geological Survey (US GS). This program has resulted in the division of the United States into 2,100 separate geographical "catalog units," with about 700 of those units located in the coal mining areas of the country. Each "catalog unit" represents a separate surface water sub-basin. The "catalog units" are based on grouping of approximately equal sized surface water sub-basins, with approximately equivalent rainfalls within regional areas. Copies of all these maps are contained in the OSM administrative record and are being published in 1:500,000 maps of each State and will shortly be released by the US GS as a 1:750,000 map of the United States.

The "catalog units" selected are now being used as the basis for segregation of water quality and quantity data stored in the NAWDEX and WATSTORE programs of the US GS. Work is also underway to make the EPA's STORET water data storage system conformable with these units. In addition, the Geography Program of the US GS is publishing 1:250,000 land use maps of the United States which show the "catalog unit" boundaries for close correlation of land use data and water data.

Papers contained in the OSM Administrative record under Section 701.5 provide further detailed information on the process used to develop the "catalog unit" concept.

As an alternative to the use of "catalog units," OSM considered using approximately 350 larger full basin-sized areas. Those larger units are now used as "accounting units" by the USGS. This alternative has tentatively been rejected, because,

the larger units would not provide sufficiently small sizes for meaningful characterization of water quality and quantity data between separate units.

Another alternative considered was to segregate areas into units on the basis of the extent to which the surface waters overlay major coal seams. Due to the lack of any definite relationship between collection of data for determining surface water data characteristics and the extent of underlying coal seam locations, this alternative has also been tentatively rejected.

SECTION 770.12 - COORDINATION WITH REQUIREMENTS OF OTHER LAWS.

Authority for this section is found in Sections 102; 201(c)(2), (6), (9), (12); 501(b); 503(a)(4), (6); 505; 508(a)(9); 510(c); 702(a), (b), (c); and 713(a) of the Act; the Endangered Species Act of 1973, 16 U.S.C. Section 1531 et seq; The Fish and Wildlife Coordination Act, 16 U.S.C. Section 661 et seq; The National Historic Preservation Act of 1966, 16 U.S.C. Section 470; Executive Order No. 11593; The Archaeological and Historic Preservation Act of 1974, 16 U.S.C. Section 461. This Section would implement the Act's mandate to avoid duplication and coordinate permit processes under State programs with permits and environmental planning processes required under other State and Federal laws.

It should be noted that, for the Clean Air Act and Clean Water Act, Sections 780.14, 780.19(i), and 784.12(j) of this Subchapter also require that it be indicated in the application how the relevant requirements of those laws will be complied with during the conduct of mining operations. For the requirements of the Endangered Species Act, National Historic Preservation Act, and Archaeological and Historic Preservation Act, specific additional provisions of Subchapter G would provide more detailed co-ordination requirements in the context of preparation, review and decision of permit applications. See, e.g., Sections 779.12(b), 789.19(c), 779.20, 779.24(i), 780.13(b), 780.13(c)(13), 780.15, 780.23, 780.31, 783.12(b), 783.19(c), 783.20, 783.24, 784.16, 784.20, 784.22(b), 786.15(e) of this Subchapter. {41687}

PART 771 – GENERAL REQUIREMENTS FOR PERMITS AND APPLICATIONS

SECTION 771.11 - GENERAL REQUIREMENTS FOR PERMITS – OPERATORS.

Authority for this section is Sections 102; 201; 501(b); 502(d); 506(a); 515; and 516 of the Act. This Section would establish the requirement that no person conduct surface coal mining and reclamation operations without a valid permit issued under a regulatory program, on or after eight months from approval of a program, except in the limited circumstance covered by Section 771.13. Section 771.11 is proposed to implement particularly Sections 102 (b), (c), (d), (e) and 506(a) of the Act, so that mining is not conducted under regulatory programs, until after the regulatory authority has determined that the operations will be conducted in compliance with the applicable environmental protection performance standards of Subchapter K.

The Office is aware that the requirement that permits be obtained within eight months from approval of a State or Federal program will make it necessary for those States which obtain approvals of State programs to process large volumes of applications in a short period of time after the date of approval. The Office recognizes the burden that this will place on the industry, the State regulatory agencies, and the public. However, this requirement is expressly mandated under Sections 502(d) and 506(a) of the Act.

SECTION 771.13 - CONTINUED OPERATION UNDER INTERIM PERMITS.

Authority for this section is found at Sections 102 (a), (c), (d), (e); 201(c); 501(b); 502; and 506(a) of the Act. This section is proposed to implement the provision for the exception in Section 506(a), whereby a person may continue to conduct surface coal mining and reclamation operations under a permit issued under the initial regulatory program, for the time after the deadline established at Section 771.11 of this Subchapter. This limited extension of time would be available only during the time which the regulatory authority may take to complete processing and review that person's application for a permit under the permanent regulatory program. {41688}

Appropriate conditions for the utilization of this exception are proposed to insure both that: (1) exceptions are not abused by persons conducting operations out of compliance with the requirements of the interim program and (2) that they do not attempt to avoid indefinitely the requirements of the permanent regulatory program.

SECTION 771.15 - CONTINUED OPERATIONS UNDER FEDERAL PROGRAM PERMITS.

1. Authority for this section is Sections 102; 201(c); 501(b); 504(f); 505; 515; and 516 of the Act. This section is proposed primarily to implement the provisions of Sections 504(f) and 505 of the Act, whereby persons who obtain permits under a Federal program would be allowed to continue operations under those permits after a State program is approved by the Director under Part 732 of Subchapter G, to supercede a Federal program. As provided in Section 504(f) of the Act, Section 771.15 of the regulations would authorize persons who had been issued permits by the Federal program regulatory authority to obtain a substitute permit from the State regulatory authority.

In addition, the State regulatory authority could, subject to procedural safeguards, require persons continuing to operate under Federal permits to obtain revised permits, principally to incorporate additional, more stringent requirements of State laws that may not have been included in the Federal program.

2. 60-Day time limit. The Office interprets Section 504(f) of the Act to require that the regulations now being proposed specify a time limit within which persons required by the States to meet additional requirements of the State program, after withdrawal of a Federal program, must achieve compliance with the program elements involved. As proposed, Section 771.15 would generally establish a 60-day time period for those compliance obligations, with provisions for extensions of that limit based either upon a showing by the permittee that it was physically impossible to meet a 60-day limit, or, an agreement by the State regulatory authority to a longer period under an established time schedule.

The Office emphasizes that the provision for a 60-day period is only tentative and specifically solicits comments on how this time limit can be alternatively established under Section 504(f) of the Act. In particular, the following alternatives for resolution of this issue will be considered:

- (a) Whether OSM should specify a shorter or longer general time limit than 60 days?
- (b) Whether OSM should specify that extensions of the time limit may not be allowed?
- (c) Whether OSM should restrict extensions to showings of physical impossibility only?
- (d) Whether OSM should require that any extension be based on an enforceable State judicial or administrative order and/or include assessment of civil penalties against the operator for the term of the extension?

3. Hearing requirement. As proposed, this Section would require that a permittee be provided with an adjudicatory hearing, if additional requirements are to be imposed under the State program. However, this decision is only tentative and the Office solicits comments on whether the hearing required by Section 504(f) of the Act may be legislative rather than adjudicatory. Additionally, the Office solicits comments on whether procedural rules for these hearings, either adjudicatory or legislative, should be specified.

SECTION 771.17 - COMPLIANCE WITH PERMITS.

Authority for this section is Sections 102; 201(c), 501(b); 503(a); 506; 510; 515 (a), (b); and 516 (a), (b) of the Act. This section is proposed to insure that each surface coal mining and reclamation is conducted in compliance with the full range of regulatory requirements established under the Act, including this Chapter, the regulatory program, and the term and conditions included in each permit.

SECTION 771.19 - PERMIT APPLICATION FILING DEADLINES.

This section sets forth time tables for filing permit applications with the regulatory authority under an approved regulatory program.

Subsection (a) would implement the deadlines found in Sections 502(d) and 506(a) of the Act. Under Subsection (a), if an operator expects to be mining eight months or more from the time of the approval of a regulatory program, he would have to submit an application for a permit under that program no more than two months after the approval of that program by the Secretary.

Under paragraph (b)(1), a general requirement for all applications is established. This period is left to the reasonable exercise of the regulatory authority's discretion, except that the regulatory program would have to insure that applications be

filed far enough in advance of issuance of the permit as to allow for complete compliance with all requirements of this Subchapter.

Under paragraph (b)(2), applications for permit renewals would have to be filed 120 days before the expiration of the original permit, as expressly provided for in Section 506 of the Act. Under paragraph (b)(3), applications for a revision to a permit would have to be filed at least six months before the expected revision, if possible, so as to allow for enough time for compliance with processing requirements. This six months period is based upon an estimation of the average time it would take the regulatory authority to process an application for a revision, allowing for full opportunity for the public participation required by the Act (e.g., newspaper advertisements, opportunity to submit comments/objections, informal conferences).

SECTION 771.21 - PERMIT APPLICATION – GENERAL REQUIREMENTS FOR FORMAT AND CONTENTS.

1. Authority for this section is Sections 102; 201; 501(b) 503(a); 504; 507; 508; 510; 515 and 516 of the Act. This section would provide general requirements for all applications for permits under regulatory programs. Applications would be required to contain legal, financial and compliance information, existing site and adjacent area environmental resources information, and reclamation and operation plans. The environmental resources and reclamation and operations plan portions of applications would be required to contain written narratives, maps, cross-sections and other visual displays, cross-referenced to each other. Technical data submitted would have to be referenced and verified, so that the regulatory authority could evaluate the quality of the information. All institutions and governmental agencies consulted by the applicant in preparing the application would be listed, so that the information contained in the application can be easily checked and verified by the regulatory authority.

As is indicated in subsection (a), the Office is proposing to promulgate regulations which segregates requirements for the detailed information required in permit applications into three separate parts for both surface and underground mining activities. These parts are 778 to 780 for surface mining and Parts 782 to 784 for underground mining. {41689}

Parts 778 and 782 would contain detailed requirements for non-technical, legal, financial, compliance and other general information. Parts 779 and 783 would contain the requirements for information to describe the proposed permit area, mine plan area and adjacent areas, as they exist prior to mining, so that the regulatory authority is provided with an adequate baseline against which to assess the impact of the proposed operations upon those areas through the information in the operations and reclamation plan filed under Parts 780 or 784.

2. Level of detail required in applications. The Office recognizes that these regulations contain requirements that would be quite detailed and comprehensive. As a general matter, many of these requirements are expressly required by the Act, either specifically at Sections 507 or 508, or because Section 510(b) of the Act mandates that the regulatory authority have before it, prior to a final decision on an application, sufficient information upon which to assess whether the detailed requirements of the performance standards of regulatory programs can be complied with during proposed mining operations. The Office does not believe that it has discretion to waive either of these requirements. Congress has provided OSM with no authority for the issuance of variances on a general basis from the requirements of the Act. Surface Mining Regulation Litigation, 11 ERC 1593, 1599 1600 (D.D.C. 1978) (disposition of motions for preliminary injunctions); Surface Mining Regulation Litigation, * * * F. Supp. * * * (D.D.C., 1978) (Disposition of Motions for Permanent Injunction) (Mem. Op. at 3, 7, 16).

Where the Office has been provided with discretion as to permit application requirements, it has considered what level of detail and what quantity of information should be required, on a national basis, to be included in permit applications. Accordingly, many provisions of Parts 778 784 allow for case-by-case determination of the level of detail and quantity of data that will be needed for particular permit applications.

The Office emphasizes that the requirements proposed in Parts 778 780 and 782 784 are tentative and specifically solicits comments on how these requirements can be most easily borne by the States and industry, while at the same time insuring that applications are fully adequate to fulfill the requirements of the Act. The Office is especially interested in comments regarding what level of detail should be required in certain applications by small operations and how to define "small operator" for those purposes.

3. Under Section 785.16 of the permit regulations, a person who qualifies may obtain a variance in steep-slope areas from the requirement to restore the land to approximate original contour. Such a person must also obtain a permit to mine under that section.

Because such operations will result in "industrial, commercial, residential, or public use (including recreational facilities)," the full range of permit and reclamation plan requirements may be unnecessary and may be an impediment to the accomplishment of the beneficial post-mining land use when the area is small and the economics of the change marginal. OSM will consider adopting regulations providing for a simplified permit application process, which will ease the application burden on the developer, while still insuring that permits are issued in full compliance with the Act.

OSM has not yet drafted proposed regulations to accomplish this. Its present analysis is that those regulations would include and exclude the following elements of the full-scale permit process.

Include	Exclude
Part 778	None
Part 779, except	Sections 779.18, 779.19, 779.20, 779.21 779.24(f), 779.26
Part 780, except Part 785 (as applicable), especially Section 785.16	780.14, 780.15, 780.19(d), (e)(h), 780.21(b)(3), (4), 780.37

OSM solicits comments on whether such a shortened permit procedure is legal, desirable, and, if so, to what type of operations it should apply and what form the shortened permit procedure should take.

4. A concern related to the level of detail to be required in applications was that expressed by some commenters who have suggested that, for small operators, the regulatory authority itself finance and develop the application in full. This alternative has been rejected, first, because, except for the limited purposes authorized under Section 507(b)(17) of the Act and Part 795 of this Subchapter, the Act does not appear to allow for the expenditure of funds under the Act to finance the development of permit applications. Moreover, the Act contemplates that the regulatory authority will review applications developed by the applicant, thereby avoiding a conflict-of-interest in deciding whether the permit should be issued. See Sections 507, 508, 510 of the Act.

SECTION 771.23 - COPIES REQUIRED.

As proposed, this section would leave to the discretion of the regulatory authority, either by rule or case-by-case determination, the number of copies of an application which must be filed with it.

SECTION 771.25 - PERMIT FEES.

Authority for this section is Sections 102; 201(c); 501(b); 503(a); 504; and 507(a) of the Act. This section would implement the requirement of Section 507(a) that fees for permit applications are not to exceed the actual costs of processing, administering and enforcing such permits.

The Office has considered whether Section 507(a) and other relevant sections of the Act impose a floor on the amounts of permit fees that may be charged by regulatory authorities under regulatory programs. Tentatively, the Office believes that the answer to this issue is found in the unambiguous language of Section 507(a), which provides that: "(e)ach application for a * * * permit * * * shall be accompanied by a fee.* * *" (emphasis added). Accordingly, Section 771.25 would require that regulatory authorities charge a minimum permit fee, determined according to the particular requirements of each regulatory program.

For State programs, those requirements are specified in Subchapter C. For Federal programs, specific fee amounts and collection systems would be proposed under the particular Federal program regulations adopted pursuant to Part 736 of Subchapter C, based on the number of mines and expenses to the Office involved in specific States for which Federal programs would have to be implemented.

SECTION 771.27 - VERIFICATION OF APPLICATIONS.

Authority for this section is found at Sections 102; 201(c); 501(b); 503(a); 504; 507, 508 and 510 of the Act. This section is proposed to insure that all applications contain only that information upon which the applicant is prepared to rely, that the applicant retain ultimate responsibility for representations made in applications, and that applicants be fully cognizant of the obligations they propose to undertake by making applications, should a permit be issued in response to the application. {41689}

PART 776 – GENERAL REQUIREMENTS FOR COAL EXPLORATION OPERATIONS

INTRODUCTION

This part is being proposed to implement the requirements of Section 512 of the Act for the regulation of coal exploration operations on non-Federal and non-Indian lands within States under regulatory programs. Part 776 generally provides for procedures and general standards for the initiation and conduct of these operations. Part 776 is complemented by Part 815 of Subchapter K, which provides proposed environmental protection performance standards applicable to these operations. {41690}

The Office is proposing a two-tiered system of procedures which depends upon whether the exploration operation results in the removal of more or less than 250 tons of coal from the exploration area. Neither of the tiers provides for the implementation of a ""permit" system, as the Office believes that Congress did not intend that a ""permit" as defined in the Act be required for coal exploration. Although Section 512 of the Act is captioned ""Coal Exploration Permits," an analysis of the text of Section 512 and its legislative history reveals that Congress, in finally passing SMCRA did not appear to require ""permits" for these operations. See H.R. Rep. 95-218, 95th Cong., 1st Sess. 61, 173 (1977).

Section 512(a) of the Act generally requires persons conducting coal exploration operations to file a ""notice of intention to explore" with the regulatory authority prior to commencing an exploration operation. While subsection 512(a), makes environmental protection standards applicable to such operations, it contains no provision, however, for mandatory regulatory action following receipt of notices of intention to explore. Instead of a uniform permit system, Congress substituted a requirement for prior approval of the regulatory authority only for coal exploration operations involving the removal of more than 250 tons of coal (Section 512(d) of the Act). This is consistent with the policy articulated by the House Committee in eliminating the general permit system to aid small operators. Under Section 512(d), the Office believes Congress did intend that larger exploration operations be carefully scrutinized by the regulatory authority prior to the initiation of those operations.

To implement fully Congress' intent expressed in Sections 512(a) and (d), the Office is proposing to require, first, filing of only a notice of intention to explore for operations which will remove less than 250 tons of coal and, second, prior approval by the regulatory authority for operations removing more than that amount. Detailed explanation of the relevant sections of the proposed regulations follows.

SECTION 776.4 - DEFINITIONS.

This section would provide a definition for special use in Part 776. The term ""reclamation" is proposed to be specifically defined for Part 776, to distinguish it from the definition of ""reclamation" proposed at Section 701.5 of Subchapter A which is applicable to ""surface coal mining and reclamation operations." The basis of the definition for ""reclamation" for Part 776 is the Office's belief that Congress intended that this term be broadly defined to reflect the full range of responsibilities which persons subject to regulation under the Act must undertake to protect the environment. See Sections 101(c), (e); 102(c), (d); 701(27) of the Act.

SECTION 776.11 - GENERAL REQUIREMENTS: EXPLORATION OPERATIONS OF LESS THAN 250 TONS.

Authority for this section is found at Sections 102(a), (b), (c), (d), (e), (i); 201(c); 501(b); 503(a); 504; 512(a), (b) and (d) of the Act. This section would cover exploration operations which are to remove less than 250 tons of coal and is proposed to implement the requirements of Section 512(a) of the Act. Under this section, persons would be required to file a written notice of intention to explore which would include a map, the period of time of the intended exploration, the basis of the

right to enter the property for exploration and a statement of measures that will be taken by the exploring entity to protect the environment.

This information is necessary so that the regulatory authority and the public will know where and how these operations will be conducted. Provision is made to insure that information entitled to confidential treatment under Section 512(b) of the Act is protected, if contained in the notices.

The proposed requirement for including with the notice a statement of measures that will be taken to protect the environment is not intended to require regulatory approval like a permit application, as the operations covered by this section do not need to receive such prior approval. The statement is, instead, intended to be required for review by the regulatory authority to determine whether close surveillance of the actual operation will be needed in the field and so that the affected public is provided with an explanation of potential disruption to the environment.

SECTION 776.12 - GENERAL REQUIREMENTS: EXPLORATION OPERATIONS OF MORE THAN 250 TONS

General requirements: Operations of more than 250 tons. Authority for this section is found in Sections 102(a), (b), (c), (d), (e), (i); 201(c); 501(b); 503(a); 504; 512(a), (b), (d); and 515 of the Act, the Endangered Species Act of 1977 (16 U.S.C. 1531 et seq.), and regulations adopted under the Endangered Species Act. This section of the proposed regulations would implement the requirements of Subsection 512(a) and (d) of the Act by requiring persons who plan to undertake coal exploration operations involving more than 250 tons of coal to obtain prior, written approval from the regulatory authority.

In order to obtain that approval, the filing of a written application with the regulatory authority would be required. It is intended that this application would provide sufficient information for the regulatory authority to determine whether the criteria of Section 776.13 for approval or disapproval of the application will be met. Included within the minimum types of information which would be required to be contained in applications for approval is identification of both the person making application and the agent of that person who will actually be responsible at the site of exploration, so that the regulatory authority can have a readily available contact, if problems arise with the operation in the field.

The focal point of the application would be the exploration and reclamation operations plan. Information would be required in the plan to describe the existing environmental resources within the proposed exploration area, so that the regulatory authority would have a sufficient base-line upon which to assess the impacts of the proposed operations. Included within the existing site description would be information on those types of environmental resources that may be significantly affected by exploration, particularly surface water features, important fish and wildlife, special historical and cultural resources and the existing land-use of the area.

To explain how the operations will be conducted, the plan would have to provide information on the method of proposed operation, estimated amounts of coal to be removed, reclamation steps to be taken, reclamation schedules to be followed and a description of the legal basis and purpose of entry into the exploration area. This information is needed so that the regulatory authority can assess whether the proposed operations would be conducted according to the environmental protection performance standards of Part 815 of Subchapter K.

Under subsection 776.12(b), public participation in the process of approval and disapproval of applications regarding coal exploration and reclamation operations would have to be provided. This subsection is designed to implement Sections 102(i) and 517 of the Act by providing for fully informed decisions on applications by the regulatory authority. The required procedures are public notice of the filing of the application and the right to submit written comments on the application. The time-limits for the filing comments would be determined under the regulations of the particular regulatory program.

The Office emphasizes that the specific requirements for the contents of applications for approval and public participation are tentative only and specifically solicits comments on both of these matters, particularly as to the level of detail needed for adequate plans and whether additional or alternative public participation procedures, such as opportunity for an informal conference prior to approval or disapproval of the application, should be included in the final rules. {41691 }

SECTION 776.13 - APPLICATION: APPROVAL OR DISAPPROVAL.

Authority for this section is Sections 102, 201(c), 501(b), 503(a), 512, 515, 517 of the Act; Section 4 and 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); the National Historic Preservation Act of 1966 (16 USC 470 et.

seq); and regulations adopted under the Endangered Species Act.

This section is proposed mainly to implement Sections 512 (a) and (d) of the Act by specifying criteria for approval or disapproval of applications for conducting coal exploration operations submitted under Section 711.12. The principal criterion would be that, from information contained in the application, the regulatory authority must find whether the operations will comply with the performance standards of Part 815. In addition, findings must be made that interests covered under the Endangered Species Act and the National Historic Preservation Act of 1966 will be adequately protected.

Burden of proof. Under this subsection, the burden of proof would be placed upon the person seeking approval for several reasons. First, general principles of administrative law ordinarily provide for allocating the burden in this fashion. See, e.g., Administrative Procedures Act, 5 U.S.C. 556(d). Second, it is the party in possession of the relevant facts, in this case the applicant, that should be required to bear the burden of persuasion of those facts. Third, the Office believes that, generally under the Act, Congress intended for persons seeking to develop coal mineral resources to bear the burden of establishing that this development would be conducted so as to protect the environment adequately. See, e.g., Sections 102 (c), (d); 510(a)(b); 515(b)(A)(iii) of the Act.

Under subsection 776.13(c), authority is provided for conditioning approvals in order to enable the regulatory authority to tailor environmental protection performance standards to the specifics of the particular exploring entity and site.

SECTION 776.14 - APPLICATIONS: NOTICE AND HEARINGS.

Authority for this section is Sections 102; 201(c); 501(b); 503(a); 504; 512; and 517 of the Act. This section is proposed to provide for public notice by the regulatory authority of its approval or disapproval under Section 776.13 and for the regulatory authority to allow for a public hearing on its decisions.

The time-limit for requesting and the manner for conducting the hearing, if the regulatory authority decides to allow one, would be left to the discretion of the States under State programs and to the particular requirements of a specific program under Federal programs. The Office will consider whether, alternatively, detailed requirements for the conduct of the hearings should be established in the final rules, similar to those proposed under Part 789 of this Subchapter to implement Section 514 of the Act. Accordingly, the Office specifically solicits comments on the extent to which such requirements should be included in the final rules.

SECTION 776.15 - COAL EXPLORATION OPERATION COMPLIANCE DUTIES.

Authority for this section is Sections 102; 201(c); 501(b); 503(a); 504; 512; 515; 517; 518; and 521 of the Act. Subsection 776.15(a) is proposed to establish the enforceable legal requirements that will be applicable to persons conducting coal exploration operations under regulatory programs. Subsection 776.15(b) is proposed to implement the provisions of Section 512(c) of the Act. Under this subsection, persons conducting coal exploration operations are subject to the full range of sanctions available for violations of applicable legal standards under Section 518 of the Act and the regulations in Subchapter L of this Chapter. Those sanctions include civil penalties for violations of the Act and the regulations or issuance of notices and orders under Section 521 of the Act or a State program. In addition, criminal penalties may be imposed. The standards for acceptable minimum requirements for State program provisions for these sanctions are contained at Part 842 of Subchapter L.

SECTION 776.17 - PUBLIC AVAILABILITY OF INFORMATION.

Authority for this section is in Sections 102; 201(c); 501(b); 503(a); 512; and 517 of the Act. This section is proposed principally to implement the provisions of Sections 504; 512(b) and 517(f) of the Act.

Under Section 517(f) of the Act, a general rule is established for information obtained by the regulatory authority. It requires that all such information is ordinarily to be made reasonably available for public inspection and copying, in keeping with the purposes of the Act as expressed at Section 102(i) of the Act. Given this rule, information obtained by the regulatory authority for coal exploration activities conducted under Parts 776 and 815 should generally be made available to the public.

A specific exception to this rule is required by Section 512(b) of the Act, which provides for the confidential treatment of certain information submitted to the regulatory authority for the purposes of protecting a private entity's competitive rights. Section 776.15 is proposed to protect precisely the type of information protected by the statute. In addition, a provision is proposed for administrative procedures to identify and segregate from non-protected information that information which is entitled to protection under Section 512(b) of the Act. {41691}

PART 778 – SURFACE MINING PERMIT APPLICATION – MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE AND RELATED INFORMATION

INTRODUCTION

Part 778 is intended to set forth the minimum requirements under regulatory programs for non-technical information in permit applications. Information which would be submitted in permit applications under Part 778 would be primarily for the purpose of enabling the regulatory authority and interested members of the public to ascertain the particular nature of the entity which will mine the coal and those entities which have other financial interest and public record ownership interests in both the mining entity and the property which is to be mined. In addition, certain other nontechnical information needed for processing and approval/disapproval of the application would also be required.

SECTION 778.5 - DEFINITIONS.

Authority for this section is Sections 102; 201(c); 501(b); 503(a); and 507(b)(4) of the Act. This section provides the definition of the term ""principal shareholder" which is used in several places in Part 778. The definition is based upon the use of the term ""shareholder" in Section 507(b)(4) of the Act, which specifies that permit applications are to identify persons ""owning of record 10 percent or more of any class of voting stock." This would be set forth in Section 778.5, in order to avoid repetition of the entire phrase through the rest of the text of the regulations.

SECTION 778.11 - APPLICABILITY.

Authority for this section is Sections 102(a); 201(c); 501(b); 503(a); 504; 507(b), (e), (f); 508(a); 510(a), (b), and (c) of the Act. This section explains that Part 778 would apply to permit applications for surface coal mining activities under regulatory programs and not for underground coal mining activities. The corresponding part for underground mining is Part 782 of this Subchapter.

SECTION 778.12 - GENERAL. {41692}

Authority for this section is Sections 102(a); 201(c); 501(b); 503(a); 507(b), (e), (f); 508(a); 510(a), (b), and (c) of the Act.

SECTION 778.13 - IDENTIFICATION OF INTERESTS.

Authority for this section is, in general, Sections 102(a), (b), (c), (d), (e); 201(c); 501(b); 503(a) and 504 of the Act.

The information to be required in applications under Subsection 778.13(a) would be based upon the requirements of Section 507(b)(1) of the Act. Subsection 778.13(a), as proposed, would call for three additional items of information:

First, the equitable owner of record of the property to be mined would have to be named in the application, in order to enable the regulatory authority to locate easily such owners if their interests would be adversely affected by the proposed operations and, in the event of a violation of applicable regulations during the mining process, to locate potentially responsible parties. This requirement should not pose an additional burden on applicants as equitable owners of record could be identified by the same process of searching public property records and at the same time as for legal owners of record which is expressly required by Section 507(b)(1).

Second, the resident agent of the applicant within the state of proposed operations would have to be identified, so that the regulatory authority would have readily identifiable and locatable individual for the purpose of accepting service of legal process during the permit application stage or the operating phase. Most States have similar requirements as a pre-requisite for businesses organized outside the State to conduct business. It should not pose an additional burden on permit applicants.

Third, in order to aid in locating and discussing permit applications and problems which may arise during the conduct of mining operations, the regulatory authority would have to be provided with the telephone number of the entities to be listed in subsection (a).

Subsection 778.13(b) is proposed to implement Section 507(b)(4) of the Act. Subsection 778.13(c) is proposed to implement Section 507(b)(1)(F) of the Act. Subsection 778.13(d) is based upon Section 507(b)(4) of the Act. It would require identification of both, any existing or prior coal mining permits held by the applicant anywhere in the United States and any pending permit applications. Identification of those permits or applications would be required to aid the regulatory authority in contacting those other permit-issuing authorities in other locations. As the applicant will already have that information in its possession, these requirements should pose no additional burdens.

In addition to requiring identification of prior permits and pending applications of the applicant, Subsection 778.13(d) would also require the same information for the entities to be listed in the application under Section 507(b)(4) of the Act and paragraph 778.13(b)(3) of this Subchapter. Those entities are persons who are in a position to exercise significant control over the conduct of an applicant's business affairs and who could be responsible for violations of law incurred by the applicant, for which the applicant is responsible under Section 510(c) of the Act. As a result, information about those persons' histories of compliance with permit obligations would be relevant and useful to the regulatory authority. Because that information would be in the possession of persons who would be closely associated with the applicant, requiring the applicant to produce that information should not pose a significant burden on the industry.

Subsection 778.13(e) is proposed to implement Section 507(b)(2) of the Act. The term ""contiguous to" would be used in this section to limit the area around the proposed permit area for which owners of record must be identified, in accordance with the legislative history of Section 507(b)(2).

Subsection 778.13(f) is proposed to aid the regulatory authority in coordinating review of the permit application with the Mine Safety and Health Administration (MSHA), so that any potential conflicts between the regulatory requirements of the Mine Health and Safety Act and the Surface Mining Control and Reclamation Act could be resolved. In addition, identification of the MSHA number will be important in the case of a proposed new coal mine which might constitute a ""new source" under the Clean Water Act, 33 U.S. Code 1251, et seq.

SECTION 778.14 - COMPLIANCE INFORMATION.

Authority for this section is, in general, Sections 102; 201(c); 501(b); 503(a), 504 and 507(b) of the Act. Subsection 778.14(a) is proposed to implement Section 507(b)(5) of the act. Subsection 778.13(b) is proposed to implement the requirement under that section of the Act for ""a brief explanation of the facts involved." As the Office interprets this provision of the Act, the information regarding suspension, revocation or forfeiture of a permit or mining-related bond or similar security would be relevant to a possible determination, under the provisions of Section 510(c), that a permit not be issued if the applicant has a past history of a pattern of non-compliance with the Act, resulting in substantial and irreparable environmental harm. The information which would be required under Subsection 778.13(b) is designed to insure that a complete understanding of the background of each suspension revocation or forfeiture could be obtained by the regulatory authority.

Subsection 778.14(c) is proposed to provide for the submission to the regulatory authority of the facts needed for determining whether the applicant has met the criteria of Section 510(c) of the Act regarding non-abated violations of any State or Federal air, water or other environmental protection statutes with respect to coal mining operations. As proposed, the list of violations would be limited to those which have been incurred by the applicant in a three (3) year period prior to the date of the application, as specified in Section 510(c) of the Act. In addition, Subsection 778.14(c) would require certain information regarding the origin and subsequent history of each violation identified, so that the regulatory authority can obtain a full and complete understanding of the current status of those violations, prior to making the determination required under Section 510(c) of the Act.

SECTION 778.15 - ENTRY AND RIGHT OF ENTRY AND OPERATION INFORMATION.

This section is based upon Sections 102; 201(c); 501(b); 503(a); 507(b)(9); and 510(b)(6) of the Act. Subsection 778.15(a) is proposed to implement Section 507(b)(9) of the Act, requiring that the application contain a statement of the documents upon which the applicant bases the legal right to enter and commence mining operations on the permit area and a statement whether that right is the subject of pending court litigation. In addition, the regulatory authority may require copies of those documents in order to resolve a dispute of fact about whether a legal right claimed by the applicant exists. Of course, because of the proviso clause in paragraph 507(b)(9) of the Act, such a determination of fact would not mean that the regulatory authority was making a legal determination about the right to entry.

The Office has considered whether to require submission with the application of copies of these documents in all cases, as opposed to the routine requirement for a summary description of the documents. Tentatively, the former alternative has been rejected because of the costs of obtaining verbatim copies of these documents in cases where they would not be needed by the regulatory authority because no property dispute existed.

Subsection 778.15(b) is proposed to implement Section 510(b)(6) of the Act, so that the regulatory authority is provided with the information necessary to make the finding required by that section of the Act.

SECTION 778.16 - RELATIONSHIP TO AREAS DESIGNATED UNSUITABLE FOR MINING. {41693}

The authority for this section is Sections 102; 201(c); 501(b); 503(a); 504; 510(b)(4); 522 (a), (c), (e)(5), of the Act. Under Section 510(b)(4) of the Act, the regulatory authority is required to make a finding, prior to the issuance of a permit, that the proposed permit area is not within an area designated unsuitable for surface coal mining under Subsection 522 (a) and (d) of the Act. In addition, Section 510(b)(4) precludes the issuance of a permit where a proceeding has been commenced under a process inaugurated under Section 522 (a) and (d) of the Act, to determine whether the proposed permit area is unsuitable.

Subsection 778.16(a) is proposed to provide the regulatory authority with information in the application regarding such unsuitability determination or related pending proceeding. Subsection 778.16(b) is proposed to provide the regulatory authority with information upon which it can determine whether an applicant is entitled to an exemption under Section 510(b)(4) of the Act from the general requirements of Section 510(b)(4), where the applicant can prove that it has made substantial legal and financial commitments prior to January 4, 1977, in relation to the proposed operations. The substantive standards upon which the regulatory authority would decide the issue of entitlement to this exemption are proposed in Subchapter F relating to designation of areas unsuitable to mining. Subsection 778.16(c) is proposed to provide the regulatory authority with the information necessary to allow for the surface mining of coal under the exemption to the general preclusion of mining within 300 feet of an occupied dwelling under Section 522(e)(5) of the Act and Part 761 of Subchapter F.

SECTION 778.17 - PERMIT TERM INFORMATION.

Authority for this section is Sections 102; 201(c); 501(b); 503(a); 504; 506(c); and 507(b)(8) of the Act. Subsection 778.17(a) is proposed to implement the requirements of Section 507(b)(8) of the Act. A regulatory authority would need this information, in general, to establish the term of the permit, pursuant to the requirements of Section 506(c) of the Act and proposed Subsection 786.11(b) of this Subchapter. In addition, this information, together with the mapping information required under Parts 779 and 780 of the proposed mine plan area, would be used by the regulatory authority to delineate "permit areas" within the "mine plan area," for each phase of the proposed operations over the estimated life of the mine.

Under Section 506(c) of the Act, a permit may be issued for a term beyond the standard maximum of five (5) years, based upon a demonstration that the applicant meets certain special criteria. Subsection 778.17(b) is proposed in order to make a determination of whether an applicant meets those criteria, as provided in Subsection 786.11(a) of this Subchapter. Particular use of this section would also be intended under applications for concurrent surface and underground mining operations, pursuant to the requirements of Section 515(b)(16) of the Act and Section 785.18 of this Subchapter.

SECTION 778.18 - PERSONAL INJURY AND PROPERTY DAMAGE PROTECTION INSURANCE INFORMATION.

Authority for this section is Sections 102; 201(c); 501(b); 503(a); 504; and 507(f) of the Act. Under Section 507(f) of the Act, an applicant for a permit is required to have certain personal injury and property damage insurance or self-insurability capabilities. Substantive criteria implementing that section of the Act under these regulations are proposed at Section 806.13 of Subchapter J. Section 778.18 is proposed to insure that the regulatory authority would be provided with evidence establishing that the applicant has complied with the requirements of Section 806.13, as required by the Act.

SECTION 778.19 - IDENTIFICATION OF OTHER LICENSES AND PERMITS.

Authority for this section is Sections 102; 201(c); 501(b); 503(a); 504; 505; 508(a)(9); 510(c); 702; and 713(a) of the Act. This section is proposed in order to provide the regulatory authority with a complete description of all permits and licenses needed by the applicant to conduct the operations in question under Federal and State laws other than the Act. This information would be needed so that the regulatory authority could insure that the operations, as proposed, would not be inconsistent with the requirements of those other statutes and laws, to enable the regulatory authority to utilize the expertise of other governmental agencies involved in reviewing and approving the proposed operations, and to avoid duplication of effort in the collection and analysis of technical information which may have already been collected or analyzed by another permitting or licensing agency.

SECTION 778.20 - IDENTIFICATION OF LOCATION OF PUBLIC OFFICE FOR FILING OF APPLICATION.

Authority for this section is Sections 102 (a) and (i); 201(c); 501(b); 503(a); 504; 507(b)(6) and 507(e) of the Act. Under Section 507(b)(6) of the Act, the applicant must identify, in the permit application, the location of where the application will be made available for public inspection as required under Section 507(e) of the Act. Section 778.20 is proposed to implement section 507(b)(6).

SECTION 778.21 - NEWSPAPER ADVERTISEMENT AND PROOF OF PUBLICATION.

Authority for this section is Sections 102; 201(c); 501(b); 503(a); 504; 507(b)(6); 507(e); and 513(a) of the Act. Under Section 507(b)(6) of the Act, the applicant is required to set forth in the permit application a copy of the newspaper advertisement announcing the filing of the permit application. The minimum standards for acceptable newspaper advertisements would be provided at Section 787.11 of this Subchapter.

Section 778.21 is proposed to implement the requirement of Section 507(b)(6) that a copy of the newspaper application and proof of publication of same be set forth in the permit application. However, inasmuch as Sections 507(b)(6) and 513(a) of the Act do not require completion of publication of the newspaper advertisement until, at a minimum, four (4) weeks after the application has been filed, Subsection 778.21(b) would require only that the copy of the advertisement and proof of publication be filed after the last date of required newspaper publication.

As proposed, copies of the advertisement and proof of publication are to be filed within one week after the last date of newspaper publication. One commenter suggested that this be changed to four weeks, because of alleged delays experienced by the commenter in obtaining proofs of publication from newspapers in rural areas. The office has decided not to adopt this suggestion yet, as it is not clear whether the commenter's experience represents general experience of the industry. Comment is specifically solicited on this problem. {41693}

PART 779 – SURFACE MINING PERMIT APPLICATIONS – MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES IN THE PERMIT AND ADJACENT AREAS

INTRODUCTION

This Part is proposed to establish the minimum requirements for regulatory program provisions on the information on environmental resources within a proposed mine plan area and adjacent area which must be assembled and submitted to the regulatory authority for surface mining activities. This Part corresponds to Part 783 for underground mining activities. It

would provide for submission to the regulatory authority of enough information to enable it to determine, together with the information required under Part 780, what impacts the proposed operations would have on areas within the mine plan area and adjacent areas and whether those operations will be conducted according to the requirements of Part 816 of Subchapter K. {41694}

The general structure of this Part has been prepared to describe these information requirements in the following format:

Section 779.11:	General pre-mining environmental assessment requirements;
Section 779.12:	Environmental resource data;
Section 779.13:	General requirements for geology and hydrology;
Section 779.14:	Descriptions of geologic features;
Section 779.15:	Groundwater hydrology and geology;
Section 779.16:	Surface and groundwater information;
Section 779.16:	Surface and groundwater information;
Section 779.17:	Alternative water supply information;
Section 779.18:	Climatological and air quality data;
Section 779.19:	Vegetation data;
Section 779.20:	Fish and wildlife resources;
Section 779.21:	Overburden analysis and topsoil mixtures;
Section 779.22:	Land use descriptions;
Section 779.23:	Preparation of maps, plans and cross-sections;
Section 779.24:	General map requirements;
Section 779.25:	Cross-section, maps and plans;
Section 779.26:	Soil resources descriptions.

SECTION 779.11 - GENERAL REQUIREMENTS.

Authority for this section is Sections 102; 201(c); 501(b); 503; 507 (b), (c), (d); 508(a); 510(b); 515; and 522(e) (3), (4), and (5) of the Act; the Endangered Species Act of 1973; Fish and Wildlife Co-ordination Act of 1966; Executive Order 11593; and the Archeological and Historic Preservation Act of 1974. This section presents general requirements for permit applicants to present adequate descriptions of the existing pre-mining environmental resources within and around the proposed mine plan area. This information will enable the regulatory authority to determine whether the applicant can comply with Part 816 of Subchapter K and whether reclamation of those areas will be feasible.

SECTION 779.12 - GENERAL ENVIRONMENTAL RESOURCES INFORMATION.

1. Authority for this section is found in Sections 102; 201(c); 501(b); 503; 507; 508; 508(a)(5); 510 and 522 of the Act.
2. Paragraph (a) would require identification of lands to be mined over the life of the mining operation and the timing of mining as it progresses. Specific authority for this is Sections 507(b)(8) and 508(a)(1) of the act. Paragraph (b) would aid in a similar determination as to Part 816 in general and for determining performance bond requirements under Subchapter J.
3. Paragraph (b) would require identification of the location of certain important cultural, pre-cultural, and natural phenomena in the proposed mine plan area and adjacent areas. Specific authority for this paragraph is Sections 102, 201; 507(b)(13), 508(a)(10), (14); 515(b) (23) and 522(e) of the Act and the National Historic Preservation Act.

One commenter has suggested that ""paleontological" descriptions be deleted from this paragraph, because the word was not specifically referenced in the Act. This requirement has not been deleted, because one of the Act's purposes is to broadly protect all ""environmental" resources.

4. Paragraph (c) would require the applicant to reveal any interest in lands adjacent to the area to be covered by the proposed mine plan area. Specific authority for this paragraph is Section 508(a)(11) of the Act.

SECTION 779.13 - DESCRIPTION OF HYDROLOGY AND GEOLOGY: GENERAL REQUIREMENTS.

1. Authority for this section is Sections 102; 201(c); 501(b); 503; 507(b); 508(a); and 515(b) of the Act. This Section would require that all applications contain a statement of the geology, hydrology, and water quality and quantity for all lands within and adjacent to the proposed mine plan area, in accordance with the more detailed requirements of sections 779.14 119.17 of this Part.

2. Paragraph (a) would require that information on adjacent areas be provided by the regulatory authority to the extent that it is available. Paragraph (b) would require that, to the extent this information is not available from a State or Federal agency at the time of the filing of an application, the applicant must gather and submit enough data to provide the information. The Office recognize that this will place a burden on applicants for those areas which have not been studied by government agencies, but it is the applicant who is seeking permission to mine. Congress clearly intended that no permits issue until the hydrologic consequences are known. Section 510(b)(3) of the Act. The applicant could choose to wait until a government agency can provide the data, but if he desires not to wait, it is the view of the Office that he must procure the necessary data. This burden may be lessened for some operators by Section 507(c) of the Act, which provides financial assistance for the requirements of this Section of the regulations to applicants whose production will not exceed 100,000 tons per year.

3. Paragraph (c) of Section 779.13 would require that no permit be approved until the information required by paragraphs (a) and (b) is available for incorporation into the application. Section 507(b)(11) of the Act is the principle authority for the requirements of paragraphs (a) (c).

The information required in this Section will enable the regulatory authority to determine whether the applicant can comply with the requirements of Sections 816.13 15, 816.31 816.39, 816.41 816.57; 816.71 816.73, 816.81 816.88, and 816.91 816.93 of Subchapter K. The technical literature used to develop sections 779.13 779.17 was the same as that used for those sections of Subchapter K, plus additional materials noted below.

SECTION 779.14 - GEOLOGY DESCRIPTION.

1. Authority for paragraphs (a) and (b)(1) is Sections 102; 201; 507(b)(11), (14) and (15); and 508(a)(12), (13), and (14) of the Act. Authority for paragraph (b)(2) is Sections 102; 201; 507(b)(15); and 508(a)(12) (14) of the Act. These paragraphs implement the requirements of the Act for geologic information needed for each application.

2. The information to be required under paragraphs (a) and (b)(1) of this Section will enable the regulatory authority to determine whether the applicant can comply with the performance standards of Sections 816.13 816.15, 816.31 816.39, 816.41 816.45; 816.59; 816.61 68; 816.71 73; 816.79; 816.91 816.93 and 816.99 of Subchapter K.

Paragraph (b)(2) allows a waiver of the requirements of paragraphs (a) and (b)(1), upon request of the applicant, where the regulatory authority already has at its disposal sufficient test or core boring data about the proposed mine plan area to make further data collection unnecessary.

2. Additional technical literature relied upon for development of this Section was:

(i) Laboratory Methods Recommended for Chemical Analysis of Mined-Land Spoils and Overburden in Western United States; U.S. Dept. of Agriculture, Agriculture Handbook, No. 525 (1977).

(ii) Field and Laboratory Methods Applicable to Overburdens and Minesoils; U.S. Environmental Protection Agency, (1978), (EPA 600/2 78 054).

(iii) Dollhopf, D. J., et al., 1977, Selective Placement of Coal Stripmine Overburden in Montana, USBM contract report H0262032, Mont. Agri. Exp. Stat., Recl. Res. Prog., Mont. St. Univ., Bozemen, Montana. {41695}

(iv) Rolston and Wiram, 1978, The Need for Selective Placement of Overburden and Equipment Considerations, Amer. Min. Cong. Jour., Vol. 64, No. 1, pp. 18 24.

3. Analytical requirements for determining overburden characteristics are highly variable and may demand regional and local specialization. (Dollhopf, 1977; Ralston, 1978; USDA, 1977; US EPA, 1978). In the west, emphasis must be directed toward the identification of undesirable acidic and alkaline soil (Dollhopf, 1977, pp. 48 51 and Rolston, 1978, p. 18). In eastern and Midwestern States, strata may contain high percentages of pyritic material (Ralston, 1978, p. 18). These problem materials can have a direct adverse impact on local and regional surface and groundwater quality and the establishment of a vegetative cover, if not properly handled.

SECTION 779.15 - GROUNDWATER HYDROLOGY AND GEOLOGY.

1. Authority for this Section is Sections 102; 201(c); 501(b); 503(a); 507(b), 508(a), 510(b)(3) and 515 of the Act. This Section would require a full description of the groundwater hydrology for the proposed mine plan area and areas beyond the plan area which will probably be affected by the proposed operation. Information collected pursuant to this Section will enable the regulatory authority to determine whether the applicant can comply with Sections 816.13 816.15, 816.31 38, 816.41 816.59, 816.71 816.73; 816.79; 816.81 88; and 816.91 816.93 of Subchapter K.

2. The occurrence and movement of groundwater in coal producing areas is a very complicated question. Groundwater resources are largely dependent on regional and local geologic conditions; multiple aquifers may exist, each having distinct water bearing characteristics. The chemical quality of the groundwater may change significantly in both unconfined and confined aquifer systems (USGS Professional Paper 427, 1970).

In areas where multiple aquifers exist, the mining operations can easily cause aquifers containing usable water to be polluted by an aquifer containing water of inferior quality, through creating inter-aquifer connections from rock fracturing. Grim & Hill, 1924. Therefore, groundwater resources must be evaluated to determine:

- (a) Location and extent of aquifers;
- (b) Water bearing characteristics of aquifers;
- (c) Chemical quality of the water contained in each aquifer that may be affected by the mining operation;
- (d) Directions of groundwater movement in aquifers;
- (e) Recharge and discharge areas for groundwater systems.

3. The occurrence and movement of groundwater is controlled by regional and local geologic conditions; therefore, geologic data coupled with hydrologic data must be carefully evaluated. The following data are believed to be necessary:

- (a) Geologic mapping
- (b) Maps showing location of water wells and springs;
- (c) Depth to water below land surface in wells;
- (d) Chemical analyses of water from wells and springs;
- (e) Yield characteristics of wells;
- (f) Well construction data (depth, perforated intervals, etc.); and
- (g) Drillers' logs.

4. In areas where historic groundwater data are not adequate to evaluate the groundwater resources, the regulatory authority may need to require test drilling to provide adequate hydrologic data. These test holes may be necessary for determining water quality in aquifers, location of aquifers, transmissivity and other parameters as required.

Technical literature used to develop this section included that literature used to develop Sections 779.14, 816.13 816.15, 816.41 816.57, 816.71 816.73, 816.79, 816.81 816.88, and 816.91 816.93, and, in addition, the following:

1. Hem, John D., Study and Interpretation of the Chemical Characteristics of Natural Water, USGS WSP 1473, 2nd Edition, 1970, 363 p.
2. Groundwater Subgroup of Water Work Group, Northern Great Plains Resource Program, Shallow Groundwater in Selected Areas in the Fort Union Coal Region, USGS Open-file Report 74-48, 1974.
3. U.S. Geological Survey Professional Paper 427, 1970; Hydrologic Influences of Strip-mining.

SECTION 779.16 - SURFACE AND GROUNDWATER INFORMATION.

1. Authority for this Section is Sections 102; 201(c); 501(b); 503(a); 507(b)(10) (15); 508(a)(12) (13); 510(b)(3) and 515(b) of the Act. Information collected pursuant to this section would enable the regulatory authority to determine whether the applicant can comply with performance standard of Sections 816.13- 816.15, 816.31-816.39, 816.41-816.59, 816.71-816.73, 816.79, 816.81-816.88, 816.91-816.93, and 816.133 of Subchapter K.

Under this section, the applicant would identify surface and groundwater information to establish baseline conditions and to determine specific requirements necessary to successfully minimize adverse impacts to the hydrologic balance of the mining area.

2. Parameters that would be required to be monitored under this section should be regarded as a minimum listing, based on those polluting substances for which specific effluent limits are being proposed at Sections 816.41-816.42 of Subchapter K.

Minimum pre-operation sampling frequencies of specific substances and water flow data are being proposed by expected variations in the components to be monitored. Seasonal variations as a minimum should be elucidated, and in some instances diurnal cycles of certain parameters may need to be determined. This monitoring should last for a minimum of one year, and two years or more may need to be specified by the regulatory authority in some instances, depending upon the amount of historical information. Sampling locations, techniques, preservation, and analyses are other considerations that require proper attention to obtain valid, representative information.

3. Analytical procedures and techniques to be followed in obtaining this water quality information are those contained in the following publications. American Waterworks Association, 1977, Standard Methods for the Examination of Water and Wastewaters. U.S. Environmental Protection Agency, T3Manual of Methods for Chemical Analyses of Water and Wastes (EPA 625/6-74-003), and the EPA National Water Quality Analysis Regulations at 40 CFR 136.

4. Models. Based upon a preliminary review of technical literature, the office believes that it may be useful to specify that applications be required to contain the results of mathematical modeling of ground and surface water for water quantity (flows) and for total suspended solids/sediment, total dissolved solids, iron, total manganese and acid as these parameters must be evaluated for impact of the proposed operations, prior to issuance of a permit on the hydrologic balance.

"Modeling", in this context, would mean a "... system of postulates, data, and inferences presented as a mathematical description" of the way in which proposed surface coal mining and reclamation operations would impact on ground and surface water. (Webster). The literature reviewed suggests that techniques are now available to model, in a sufficiently predictive manner, the quality and quantity of surface and ground waters through and around coal-mined areas. These techniques should be expected to be improved with the collection across the country of site-specific baseline data. Although the output of the available models may not be of high accuracy in all cases, the offices not aware of any other equally well-organized mechanism available for predicting cumulative hydrologic impacts over substantial lengths of time.

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Technical literature reviewed included:

- (a). EPA, 1976, "Proceedings of the Conference on Environmental Modeling and Simulation," EPA 600/9 76 018;
- (b). R. W. Nelson, "Identification and Evaluation of Specific Techniques and Computer Models Useful in the Analysis of Subsurface Contaminant Migration – Outline of Study II for the Physical and Life Sciences Technology Section, Research Dept., Atlantic Richfield Hanford, Co.;
- (c). Nelson, R. W., "Evaluating the Environmental Consequences of Ground Water Contaminations," Computer Services Corp. (Richland, Washington);
- (d). Konilcow and Bredihoeft, 1974, "Modeling Flow and Chemical Quality Changes in an Irrigated Stream – Aquifer System." AGU, Water Resources Research;
- (e). Gillham and Faroodelen, 1974, "Sensitivity-Analysis of Input Parameters in Numerical Modeling of Steady-State Regional Ground Water Flow," AGU, Water Resources Research;
- (f). Gilhar, 1974, "Stochastic Analysis of Phreatic Aquifers," AGU, Water Resources Research;
- (g). Kunkel, 1973, "Data Requirements for Modeling a Ground Water System in an Arid Region," USGS WRT 4 73;
- (h). Zand, et al., 1976, "Static Transport and Modeling of Water Quality in a Small Stream," Vol. 4; No. 2, Mar.-Apr., 1976, USGS Research, p. 233 240.
- (i). Gelhas, L. W. and J. L. Wilson, 1974. "Ground Water Quality Modeling," U12, No. 6, Ground Water;
- (j). Hundoon, 1974, "Finite Difference As Applied to the Solution of Ground Water Flow Problems," Wyoming Water Resources Research Institute, Laramie, Wy.;
- (k). Prickett and Lonnquist, 1971, "Selected Digital Computer Techniques for Ground Water Resource Evaluation," Illinois State Water Survey, Urbana, Ill.;
- (l). US EPA and the National Water Well Association, 1976. "Proceedings of the Third National Ground Water Quality Symposium," Special Issue, Vol. 14, No. 6, Nov.-Dec., 1976;
- (m). Meyer, C. F. and D. C. Kleinecke, 1968, "Development of Capabilities for Mathematical Modeling of Ground Water Flow By Use of Digital Computers; TEMPO-General Electric Co., Santa Barbara, 68TMP 96;
- (n). Bachmad, et al. 1978, "Utilization of Numerical Ground Water Models For Water Resources Management," EPA Rpt. 60018 78 012;
- (o). De Wiest, R. J. M., 1968, "Geohydrology," John Wiley & Sons, N.Y. Chapter 8;
- (p). Davis, and De Wiest, 1969, "Hydrology," John Wiley & Sons, N.Y.;
- (q). Poluhainous-Kuching, P., 1972, "Theory of Ground Water Movement," translated by De Wiest, Princeton Univ. Press, Princeton, N.J., Chapters VI and XVI;
- (r). Karplus, W. J. 1958, "Analogy Simulation-Solution of Fluid Problems," McGraw Hill, N.Y., Part 2.

The Office has not, however, yet formulated the text of specific regulations to address water modeling. It specifically solicits comments on this matter, particularly on the following questions:

1. Whether applicable models have been calibrated and/or verified for use in coal mining situations?
2. What are the costs of using those models in field situations?
3. What levels of accuracy may be expected to be obtained with available models?

Following a final review of the literature and any comments received, the office may propose, as part of the final regulations, specific provisions regarding models.

SECTION 779.17 - ALTERNATIVE WATER SUPPLY INFORMATION.

Authority for this Section is Sections 102; 201; 507(b)(11); 508(a)(13); 510(b)(3) and 717(b) of the Act. As proposed, this Section would require identification of water sources that could be used to replace water supply rights which would be damaged by the proposed mining operation, as is required under proposed Section 816.54 of the performance standards.

SECTION 779.18 - CLIMATOLOGICAL DATA.

Authority for this Section is Sections 102; 201; 501(b); 503(a); 507(b)(12); and 508(a)(5) of the Act. Here climatological data concerning temperature, precipitation, and air quality would be required, if requested by the regulatory authority. These data may be needed by the regulatory authority, in evaluating whether the applicant will be able to comply with the performance standards of Sections 816.21-.24; 816.31-.38; 816.41-.50; 816.56; 816.65; 816.71 816.73; 816.81 816.88; 816.91 816.97; 816.100 816.117, and 816.133 of Subchapter K.

SECTION 779.19 - VEGETATION DATA.

(1) Authority for this Section is Sections 102; 201; 501(b); 503; 504; 508(a)(2)(B C); 508(a)(3), (4), (5); 510(b)(2); 515(b)(2); and 515(b)(19) of the Act. This Section would require submission of the location of the proposed vegetation reference area; and, if required by the regulatory authority, a vegetation map of the proposed mine plan area, the proposed reference area, and certain adjacent areas.

A vegetation map and description may be required in the permit application by the regulatory authority for the following reasons:

- (i) To assist in evaluation of the natural vegetative capability of the site and to determine if the operations will be conducted in accordance with Sections 816.45 816.46, 816.97, 816.111 816.117, and 816.133 of Subchapter K.
- (ii) To quantitatively characterize the vegetation in the reference area and permit area for establishing comparability of the permit area.
- (iii) To identify those species of vegetation that may contribute to important post-mining land use values of the permit area, by serving as seed sources for revegetating the land or as important habitat types for fish and wildlife.
- (iv) To help in evaluating the present and potential productivity of the site, which must be described in the application under Sections 508(a)(2)-(4) and 515(b)(2) of the Act.
- (v) To establish premining site conditions for wildlife and fish habitats.

(2) Technical literature used in the formulation of this Section was:

1. Curtis, J. T., (1959), ""The Vegetation of Wisconsin, An Ordination of Plant Communities," Univ. of Wisconsin Press, Madison, 657 p.
2. Goff, F. G., (1967), ""Methods Used in Field Investigations of Vegetation and Soils in Milfred, C. J. et al, Soil Resources and Forest Ecology of Menoninee County, Wisconsin," Bulletin 55, Univ. of Wisconsin Geological and Natural History Survey, p. 187 189.
3. Daubenmire, R. F., (1968), ""Plant Communities, A Textbook of Plant Synecology," Harper and Row, New York, 300 p.
4. Kuchler, A. W., (1964), ""Potential Natural Vegetation of the Coterminous Untied States" (Map and Manual), N. York, Am. Geographic Society, 116 p.
5., (1967), ""Vegetation Mapping," New York, Ronald Press Co., 472 p.
6. Braun, E. L., (1950), ""Deciduous Forests of Eastern North America," Philadelphia, Blakiston Co.

7. Radford, A. E., (1977), ""Natural Area and Diversity Classification System, A Standardized Scheme for Basic Inventory of Species Community and Habitat Diversity," Univ. of N. Carolina Student Stores, Chapel Hill, 70 p.
8. Wharton, C. H., (1978), ""Natural Environment of Georgia," Atlanta, Georgia, Dept. of Natural Resources, 227 p.
9. Carter, V. A., et al., (1977), ""Wetland Classification and Mapping in Western Tennessee," Proceedings of 2nd Annual William T. Pecora Memorial Symposium, Oct. 25 29, 1976, Sioux Falls, pp. 213 234.
10. Carter, V., and Burbank, J. H., (1978), ""Wetland Classification System for the Tennessee Valley Region," TVA Tech. Note, B 24 FFWD, Morris, TN. (In press).
11. Soc. of American Foresters (1940), ""Forest Cover Types of Eastern United States," Washington, DC, Report of Committee on Forest Types, p. 39.
12. Costin, H. J., (1958), ""Study of Plant Communities," W. H. Freeman & Co., San Francisco.
13. Davis, J. A., (1977), New York Fish and Game Journal Soc., 24 No. 2, An Ecosystem Classification of New York State For Natural Resource Management, p. 129 143.
14. Giles, R. H., (1969), ""Wildlife Management Techniques," Wildlife Society, Washington, D.C., Chap. 12 13, p. 119 232.
15. Benton, A. H. and Werner, W. E., (1965), Manual of Field Biology and Ecology, 4th Edition, Minneapolis, Burgess Pub. Co.
16. Pfister, R. D., et al., (1977), ""Forest Habitat Types of Montana," USDA - Forest Service, General Technical Report No. INT 34, 174 p.
17. Daubenmire, R. A., (1973), ""Comparison of Approaches to the Mapping of Forest Land for Intensive Management," Forestry Chronical 49:87-91.
18. Daubenmire, R. and Daubenmire, J. B., (1968), ""Forest Vegetation of Eastern Washington and Northern Idaho," Washington Agricultural Experiment Station Technical Bulletin 60, 104 p.
19. Deitschman, G. H., (1973), ""Mapping of Habitat Types Throughout a National Forest," USDA Forest Service General Technical Report INT 11, 14 p., 1973. {41697}
20. Cowardin, L., et al., (1977), ""Classification of Wetland and Deep Water Habitats of the United States" (An Operational Draft), Fish and Wildlife Service, Dept. of Interior.
21. Wielgolaski, F. A., (1972), ""Vegetation Types and Plant Biomass in Tundra," Arct. Alp. Reg. 4:289 306.
22. Arkley, R. J., (1972), ""Factor Analysis of Ecosystem Components for the Barrow Intensive Site," 1970, p. 121 127, in S. Bowen (ed) Proc., 1972, U.S. Tundra Biome Symposium, U.S. Tundra Biome, 211 p.
23. Billings, W. D. and H. A. Nooney, (1968), ""Ecology of Arctic and Alpine Plants," Biol. Rev. 43:481 530, 1968.
24. Frances, C. J., (1978), American Birds, Vol. 32, No. 1, ""Understanding Quantitative Surveys of Vegetation."
25. Zedler, P. H., and F. G. Goff, (1973), ""Size-Association Analysis of Forest Successional Trend in Wisconsin," Ecol. Monogr. 43:(1):77 94.
26. Anclair, A. N., and Cottam, H., (1971), ""Dynamics of Black Cherry (*Pinnas serotina* Erhr.) in Southern Wisconsin Oak Forest," Ecol. Monogr. 41(2):153 177.

(3) Vegetation maps, if required, should be of a scale of 1:24,000 or larger. Mapping units should be chosen using recent aerial photographs, to delineate homogeneous vegetative areas, but units selected should be field checked for accuracy, before transfer to the map. Submitted with application.

(4) Quantitative vegetation sampling, on the ground, is useful in establishing species frequency, density and productivity for vegetation map units. Quantitative sampling techniques differ from rangeland to forest to tundra. The following references from the foregoing list are believed to be most useful in describing quantitative techniques: Numbers 1 4; 6 8; 10 13; 15, 16, 18, 20 26.

SECTION 779.20 - FISH AND WILDLIFE RESOURCES.

(1) Authority for this Section is Sections 102; 201; 501(b); 503; 506; 507(b)(11); 508(a); 510(b); and 515(b) of the Act. Paragraph (a) of this section would require the results of animal population studies to be submitted in the application. Paragraph (b) would require that the populations shall be studied in the degree of detail specified by the regulatory authority, according to two general types of sources for that information: The first source would be data which may already exist for the immediate or general area of the proposed operations as published in professional journals or other readily available scientific publications. The second source would be from field collection, under guidelines from the regulatory authority, after consultation with State or Federal fish and wildlife agency staffs. This would include original field studies, to the degree necessary to fill gaps in the scientific knowledge obtainable from the literature.

The information to be required by this Section will enable the regulatory authority to determine whether the applicant will be able to comply with Section 816.97 of the performance standards. Guidance for baseline data collection under this Section may be found in "A Systems Approach to Baseline Studies,"; James B. State, et al. U.S. Fish and Wildlife Service, Western Energy and Land Use Team, Fort Collins, Colorado, Publication O.B.S. 78-21 (1978).

(2) Alternatives : In drafting this Section and section 780.15 of this paragraph the following alternative methods for permit information regarding fish & wildlife were considered:

(i) Group "A":

(1) In all cases, require a detailed survey of every fish and wildlife species present in the mine plan area and adjacent area, including population densities for each species and plans for protection;

(2) Require specific species inventory, habitat discussion and protection plans for species selected by a regulatory authority, after consultation with local fish and wildlife agencies;

(3) Require no detailed data in permit applications, except for an inventory and a plan for protecting any endangered or species existing in the area and any additional information as required by the Endangered Species Act;

(ii) Group B:

(4) For all mines require a detailed inventory and a protection plan for all species; and

(5) Only for mines producing more than 100,000 tons annually, require a detailed inventory and a protection plan for all species.

Fish and wildlife habitat can be temporarily damaged or completely destroyed by certain mining practices. In particular, construction of haul roads, sedimentation ponds and coal processing waste banks, as well as the primary stripping activity itself, can disturb nesting and breeding habitat, destroy food forage and disrupt the biological chain. (See technical literature cited for section 816.97). Consequently, the proposed regulations have been drafted to require that fish and wildlife habitat, in general, be protected and that features disrupted by mining activities, such as mining through a stream bed, be returned to its approximate original condition following mining.

"Group A"

Alternative 1 of Group "A" would require an in-depth survey of all fish and wildlife within the mine plan area and adjacent area. Such a survey would include identification of each and every species, data on each population, discussion of habitat requirements, and a proposed program for achieving complete or better recovery of the existing habitat and species population following mining. Such a survey would have to be conducted by a qualified fish and wildlife research team for each species. Alternative 2 of Group "A" would permit the collection of necessary data with less elaborate field analysis and interpretation. Alternative 3 of Group "A" would be to permit applicants to establish little or no fish and wildlife data base, except in those situations in which endangered species would be involved. The Office has tentatively decided to select alternative two, requiring in-depth field surveys, if no previous literature on fish and wildlife in the vicinity of the operation is available. The first alternative was rejected because of the office's understanding that there exists for many species and areas, published data that can be used, in lieu of a full field survey to develop information for permit applications. The third alternative was rejected because the Act requires protection broadly of fish and wildlife, not just endangered species. {41698 }

"Group B"

Alternatives 4 and 5 involve consideration of what requirements should be established for small operators. The first assumption is that small operators would not be exempt from these application requirements. Detailed fish & wildlife inventory data would be used to define potential stresses on the ecological chain. A protection plan would be required under section 780.15, so that reclamation efforts would be established to provide maximum use of the land and establishment of adequate vegetative cover conducive to supportive habitat. Through proper backfilling and grading of affected areas and stream channels, deteriorated habitat could be regenerated to support fish and wildlife

Alternative 5 was considered as another choice in that detailed inventories and protection plan under Part 780 would be required for only mines of production of over 100,000 tons per year. This alternative was not selected, because it is believed that even small mines can significantly and adversely affect fish & wildlife.

The Office however, has not yet decided which of alternatives 4 or 5 to hereby select and specifically solicits comments on both.

SECTION 779.21 - ANALYSES OF SELECTED OVERBURDEN TOPSOIL MIXTURES.

Authority for this Section is Sections 102; 201(c); 501(b); 503(a); 507(b); 508(a); 510(b); and 515(b) of the Act. This Section would require that applications contain the results of analyses, trials and tests required by the regulatory authority, where the applicant is proposing to use selected overburden materials instead of, or as a supplement to, topsoil in the proposed reclamation process. This information would be necessary to enable the regulatory authority to determine whether the applicant can comply with Section 816.22 of Subchapter K.

SECTION 779.22 - LAND USE DESCRIPTION.

(1) Authority for this Section is Sections 102; 201(c); 501(b); 503; 504; 507(b)(14); 508(a)(2), (3), (4), (5), (8), (10), (13), (14); 510(b); and 515(b)(2) and (10) of the Act. This Section would require applicants to describe the pre-mining land-use conditions of the lands within the proposed mine plan and adjacent areas. Paragraph (a) states the general requirement. Paragraph (b) would require description of the existing land uses and of historical land uses, if the pre-mining use is changed within 5 years prior to the beginning of the proposed mining operation. Paragraph (c) would require a description of the capability of the land, prior to mining, to support a variety of uses, a description of the pre-mining productivity of the land, and details of whether the land has been previously mined. The information required under this Section would enable the regulatory authority to determine whether the applicant would be able to comply with Section 816.133 of Subchapter K.

(2) Technical literature used in developing this Section was:

1. Toth, R. Criteria in Land Planning and Design. Landscape Architecture 62(1), 1971.
2. Moore, G. T., Emerging Methods in Environmental Design and Planning. M.I.T. Press, Cambridge, Mass. 1968.
3. Johnson, A. H., Berger, J., and McHarg, I. L., Landscape Analysis for Ecologically Sound Land Use Planning. Department of Landscape Architecture and Regional Planning. University of Penna., Phila. Pa. 1978.
4. Thurow, C., Toner, W. and Erley, D., Performance Controls for Sensitive Lands. American Society of Planning Officials Planning Advisory Service. Report Nos. 307, 308. Am. Soc. of Planning Officials, Chicago, Ill. 1975.
5. McHarg, I. L., Design with Nature, Natural History Press. Garden City, New York, 1969.

(3) The information to be required by this section would result in a report of a synthesis of the premining conditions as part of the comprehensive reclamation planning process, including the economic, engineering and legal factors which must be melded into a complete reclamation plan.

The landscape can be thought of as being composed of elements or components_(e.g., soils, geology, vegetation, hydrology, fish and wildlife, physiography (topography) and land use.) Each landscape element may provide opportunities or constraints for certain land uses. Areas which are most suitable for specific uses will have the greatest number of opportunities provided by the landscape and the least number of, or least severe, constraints imposed by the landscape for that particular use. (References 2, 3, 4)

By using an approach of combined analysis of opportunities and constraints, the environmental impacts of the planned uses can be minimized, and the best fit between the land use and the conditions of each specific reclamation site achieved. For example, areas where there is frequent flooding for extended periods provide an obvious constraint to subdivision housing. This property of the landscape lowers the inherent suitability of such areas for that use. This could be ameliorated, by using flood proofing and special construction techniques in engineering foundation structures. However, costs, both economic or ecological, will be incurred for construction and maintenance. This same area may provide little constraint for a golf course, park or agricultural use. The most cost-effective and least environmentally damaging land uses can be identified and developed to a large degree, by the landscape's characteristic properties and capabilities. (Reference 5)

SECTION 779.23 - MAPS, PLANS AND CROSS-SECTIONS: PREPARATION.

Authority for this Section is Sections 102; 201(c); 501(b); 503; 504; 507(b) (10), (13), (14), (15); 508(a)(5); and 510(b) of the act. Paragraph (a) of this section would require that maps, plans and cross-sections, to be supplied in the application. Through section 779.25, be prepared by, or under the direction of, certain qualified professionals, so that the quality of these documents can be assured. Paragraph (b) of section 779.23 would require that maps be at an appropriate scale and contain all of the information typical of USGS topographical maps, so that complete information about the area can be obtained by the regulatory authority.

Through years of map making and usage, the USGS 7 ½ minute maps have developed as the standard for mapping topography and geology. They show enough detail, in general, to provide a baseline for reestablishing the premining topography. High quality map information is necessary to help the regulatory authority evaluate the applicants' ability to comply with essentially all of the performance standards in Part 816.

SECTION 779.24 - MAPS: GENERAL REQUIREMENTS.

This Section has 13 paragraphs, all of which implement particular requirements of the Act. Specific authority of the Act for each paragraph includes, but is not limited to:

(a) Section 507(a)(1). (Ownership of the surface and subsurface estates would have to be established.)

(b) Section 507(b)(9). (A map showing the areas that the operator can legally mine is needed to determine the maximum extent of the proposed mining operations.)

(c) Sections 507(b)(8); 508(a)(1). (The total impact of the operation on the environment cannot be assessed without knowing the total area to be mined, when and where it is to be done, and any additional areas expected to be mined.)

(d) Sections 507(b)(13) and 522(e)(5). (Identification of structures and their use is need to determine the impact of mining on other functions in the community.)

(e) Sections 507(b)(13); 508(a)(2); 515(b)(2). (Disruption or potential disruption by the operations of various pipelines, railroads, utilities, irrigation works, wells, etc. must be established, to prevent problems to the surrounding public community and establish any need for relocation or rebuilding of these facilities.)

(f) Sections 507(b)(13); 508(a)(2)(C); 515(b)(9). (Areas selected as the standard for reference when revegetation is being evaluated must be located so that a determination of their suitability and representativeness may be established.)

(g) Sections 507(b)(11) and (13); 508(a)(13); 515(b)(10). (Surface water flow and users in the affected area need to be established to determine the interruptions that will be caused by mining and the corrections that will be need both during and after mining).

(h) Sections 507(b)(13); 522(e)(4). (Locations of highways and roads on or near the mine need to be established, to prevent disruption of traffic flows, hazards to travelers, and provide for the proper restoration of traffic flow and access after mining). {41699}

(i) Sections 507(b)(13); 508(a)(10), (14); 522(e)(3). (The area affected may include sites of recreation, scientific or social significance that must be evaluated to determine whether they should be saved, how the mining should proceed around the site, precautions needed at the site, and reclamation procedures needed to maintain the values associated with the site).

(j) Sections 507(b)(13); 508(a)(10), (14); 515(b)(23); 522(e)(5). (Cemeteries must be identified to plan their relocation or avoidance and prevent exposing mine workers to health hazards).

(k) Section 522(e). (Areas that are established or are being considered for inclusion in National Wild and Scenic River Systems or National Trails System must be located to avoid damage to these irreplaceable national resources).

(l) Sections 507(b)(13) and (14); 508(a)(14). (The location and depth of water, gas and oils is needed to establish premining data on their condition and to be sure they are avoided or properly accounted for during mining).

(m) Section 508(a)(14).

SECTION 779.25 - CROSS-SECTION MAPS AND PLANS.

Authority for this Section is Sections 102, 201, 501(b), 503, 504, 507(b)(11); 508(a) and 515(b) of the Act. Information which would be required under this section would provide the regulatory authority with complete information about the proposed mining site, so that the applicants ability to comply with the performance standards of Part 816 could be properly evaluated.

- (1) Under paragraph (a), the coal seams to be extracted, their nature, depth and thickness would be determined, to establish the amount of material to be removed, the hydrologic effects of removing the seam, and the nature of the final pit floor. From this data the reclamation requirements will be established.
- (2) Under paragraph (b), crop lines would be described, to establish the limits of the proposed mining operations. The strike and dip of the seams are useful in estimating the probable extent of the surface operations and the mining method to be used.
- (3) The Act does not allow surface mining to take place closer than 500 feet for underground workings without special approval. Under paragraph (c) maps locating the underground workings would provide a basis for assessing the potential physical and environmental hazards of mining in their vicinity. The safe distance for mining near these hazards could then be established.
- (4) Under paragraph (d), the premining subsurface hydrologic regime would be established, to determine the changes that mining would cause to the hydrologic balance, to help plan corrections for negative impacts, and set standards for post mining groundwater flows.
- (5) Surface water systems, both natural and man-made, would be located under paragraph (e), to help establish water table data, recharge relationships, interruptions to both natural and artificial water courses, possible relocation routes, and post-mining flow paths.
- (6) The discharge of industrial waste on or near the mine needs to be established, to determine the effect on groundwater and surface water during and after mining. Under paragraph (f), that information would provide baseline data for original non-mine pollution levels, and allow for the design of systems to control industrial waste flows.
- (7) Under paragraphs (g) and (h), previous surface mining activities would be shown, to establish what areas were disturbed by operations other than the proposed one, to locate areas to be handled under abandoned mined lands funds, to assess the present environmental damage of the old workings, and to properly establish reclamation criteria based on the natural condition of the land, not the present disturbed condition.
- (8) Environmental control facilities would be identified under paragraph (h) to anticipate, minimize, or avoid the interruption of their operation.
- (9) The requirement of paragraph (i) is found generally in section 515(b) (14) of the Act. Under this paragraph, slope measurements could be made from topographic maps. However this paragraph would allow for the use only of maps with 10 feet minimum contour intervals, where slopes are over 20 degrees, and only maps of 5 feet maximum intervals, where slopes are less than 20 degrees. This requirement is based on a need for more detail of slope data than is found on standard 7.5 minute USGS maps. USGS maps commonly use 20 degree intervals in steep slope areas and 10 degree intervals in less steep areas. This reduces knowledge of vertical variation over substantial horizontal distances, thereby reducing knowledge of the "approximate original contour" which Congress mandated to be reconstructed in most cases. The Office does not believe that the use of more detailed maps for slope measurements will create substantial burden for the industry. Indeed, the use of shorter contour intervals on mining plan maps is already widespread in the industry. (See Memorandum to OSM Administrative Record on "Mine Plans Submitted to EPA, Region 8, Denver, Colorado").
- (10) In addition to being required by the Act, the paragraphs of Section 779.25 would require information which will enable the regulatory authority to evaluate the applicants' ability to comply with the following Sections of Part 816 of Subchapter K.
 - (a) 816.61-.68; 816.121-.126; 816.99
 - (b) 816.50-.55
 - (c) 816.61-.68; 816.50-.55; 816.121-.126
 - (d) 816.50-.55; 816.61-.68
 - (e) 816.41-.59; 816.33 .34
 - (f) 816.41, .42, .52, .55
 - (g) 816.21-.25; 816.32; 816.41-.57; 816.111-.117
 - (h) 816.21-.25; 816.32; 816.41-.57; 816.71-.73; 816.81-.93; 816.111-.116
 - (i) 816.102.

SECTION 779.26 - SOIL RESOURCES DESCRIPTION.

Authority for this Section is Sections 102; 201; 501(b); 503, 504 and 507(b)(11); 508(a); and 515(b) of the Act. This Section would require the submission of a description of the soil resources of the mine plan area, through a soil survey, to enable the regulatory authority to make determinations under sections 515(b)(2), (4), (5), and (6) of the Act. These determinations would be related to enforcement of the performance standards of Section 816.22(b), (c), and (e), 816.111-816.116 and 816.133 of Subchapter K. {41700}

PART 780 – SURFACE MINING PERMIT APPLICATION – MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

INTRODUCTION

Part 780 is proposed to establish the heart of the permit application; the mining operations and reclamation plan. The regulatory authority will utilize this information, together with the description of the existing environmental resources obtained under Part 779 to predict whether the lands to be mined can be reclaimed and if the operations can be conducted in compliance with the environmental protection performance standards of Part 816, Subchapter K.

SECTION 780.11 - OPERATION PLAN: GENERAL REQUIREMENTS.

Authority for this Section is Sections 102; 501(b); 503; 507(b); 508(a); 510(b); and 515(b) of the Act. This Section would require that each application contain a description of the proposed mining operations, including a narrative of mining methods and procedures proposed to be used in the operation of the mine. Paragraph (2) of this Section would require the narrative to explain the construction, modification, use and maintenance and removal of certain mine operation facilities.

The requirements of this Section are designed to aid the regulatory authority in determining whether the applicant can meet the following performance standards of Subchapter K:

Section 780.11(a)(1)
Section 816.62
Section 780.11(a)(2)(ii)
Section 816.39
Section 780.11(a)(iii)
Sections 816.46, 816.48 and 816.91
Section 780.11(a)(iv)
Sections 816.21-816.24, 816.71-816.73, 816.100-816.106
Section 780.11(a)(2)(v)
Sections 816.32-816.36 and 816.59
Section 780.11(a)(2)(vi)
Sections 816.81-816.88 and 816.91-816.93
Section 780.11(a)(2)(vii)
Section 816.39
Section 780.11(a)(2)(viii)
Sections 816.41-816.46, 816.50 and 816.56 702

SECTION 780.12 - OPERATIONS PLAN: BLASTING.

Authority for this Section is Sections 507(g) and 508(a)(13) of the Act. This Section requires that each application for a surface mining permit provide a narrative description of the blasting operations to be used in the proposed mining operations. Specific information about the types and amounts of explosives, their handling and use are required in paragraphs (a)-(g). This is necessary for the proper evaluation by the regulatory authority of the possible environmental and public safety consequences of the use of explosives during the proposed mining operation and are needed to determine whether the applicant can meet the performance standards found in Sections 816.41, 816.60 and 816.61-816.68 of subchapter K.

SECTION 780.13 - OPERATIONS PLAN: MAPS AND PLANS.

Authority for this Section is Sections 102; 201(b); 501(b); 503; 504; 507(b); 507(g); 508(a); 517; and 522(e)(4) of the Act. In addition to the narrative plans to be required by the preceding Sections, this Section of Part 780 would require each application to include maps and plans relevant to the proposed operation. Some of these maps and plans would have to be prepared by specified professionals as required under Sections 507 and 508 of the Act. Accurate maps and plans are needed by the regulatory authority to properly determine whether the planned operation should be approved, modified, or disapproved.

The requirements of this Section are designed to aid the regulatory authority in determining whether the applicant can meet numerous performance standards. The Subsection of 780.13 and the performance standards are designed to provide information as follows:

Section 780.13(a)

Sections 816.21-816.24, 816.31-816.32, 816.36; 816.38-816.39; 816.41; 816.43-46; 816.49; 816.56; 816.59; 816.71-816.73; 816.79; 816.81; 816.83; 816.87-816.77; 816.91; 816.101; 816.121-816.124; and 816.133.

Section 780.13(b)

Section 816.124.

Section 780.13(c)(1)

Section 816.39.

Section 780.13(c)(2)

Sections 816.21-816.24; 816.21-816.24; 816.31-816.32; 816.43-816.46; 816.56; 816.71-816.73; 816.81; 816.83; 816.91-816.93; and 816.99-816.101.

Section 780.13(c)(13)

Sections 816.36; 816.39; 816.81; 816.91; and, 816.95.

Section 780.13(c)(4)

Sections 816.21-816.24; 816.71-816.73; 816.81-816.88; and 816.101-816.105.

Section 780.13(c)(5)

Sections 816.43-816.50; 816.55; 816.83; and, 816.91.

Section 780.13(c)(6)

Section 816.95.

Section 780.13(c)(7)

Sections 816.39; 816.81; 816.83; 816.86; and 816.91.

Section 780.13(c)(8)

Section 780.13(c)(9)

Section 780.13(c)(10)

Sections 816.46; 816.49; 816.91-816.93.

Section 780.12(c)(11)

Sections 816.56; 816.73-816.76; 816.81; 816.91; 816.100-816.106; and 816.133.

Section 780.13(c)(12)

Sections 816.41-816.42; 816.52; 816.95; and 816.97.

Section 780.13(c)(13)

Section 816.133. 702

SECTION 780.14 - AIR POLLUTION CONTROL PLAN.

Section 780.14 of the proposed regulations would establish the permit application requirements, so that the regulatory authority is provided with comprehensive and reliable information on the air quality impact of the proposed surface coal mining operation. This Section is intended to assure that proposed surface coal mining operations meet all national ambient air quality standards and any other applicable Federal or State air quality standards.

In general, the proposed regulations are structured on both a regional and a projected production level basis. This is proposed, in part, because of the current status of technical literature and air quality regulations in the field. The regulations also recognize the potential variations in air quality impact depending upon climate, geology and operating characteristics of surface coal mining operations in different parts of the country.

Legal authority : Permit application regulations for air quality are supported by Sections 102, 201(c), 501(b), 503(a) and (b), 507(b), 508(a)(9), 515(b)(4), and 515(b)(24) of the Act. Specifically, Congress in Section 515(b)(4) of the Act provides that all operators shall:

(S)tabilize and protect all surface areas including spoil piles affected by the surface coal mining and reclamation operation to effectively control erosion and attendant air and water pollution. (Emphasis added)

Thus, if a surface area is affected by surface coal mining and reclamation operations, the operator must effectively control attendant air pollution. The phrase ""surface coal mining and reclamation" operation is broadly defined in the Act to mean surface mining operations and all operations necessary and incident to reclamation. Section 701(28), 30 U.S.C. Section 1291. The office believes that haul roads and access roads must be controlled because the definition of the phrase ""surface coal mining." includes not only activities conducted on the surface of lands in connection with the surface mine, but also haul roads and access roads.

To implement this performance standard Congress has required that each permit application contain the steps to be taken to comply with applicable air quality laws and regulations. Section 508(a)(9), 30 U.S.C. 1258. The surface mining permit cannot be approved unless the regulatory authority finds in writing that the permit application meets requirements of the Act including the requirement to effectively control air pollution from all surface areas. Sections 515(b)(1)-(2), 30 U.S.C. Sections 1260(b)(1)-(2).

The permit application requirements listed in Subsections 780.14(a), (b) and (c) are the first critical steps in the process of assuring that all surface coal mining operations effectively control air pollution from all surface areas. {41701}

Technical literature : The following technical literature, State laws and regulations and other materials support the Sections of the regulations.

Literature Support

1. Axetell, Survey of Fugitive Dust from Coal Mines, EPA-908/1-78-003 PEDCO Environmental, Inc., February, 1978.
2. Cook, Fugitive Dust from Western Surface Coal Mines, Mathtech, Inc., Oct., 1976.
3. Evaluation of Fugitive Dust Emissions from Mining, T1 EPA-68-02-1321 PEDCO Environmental, Inc., June, 1976.
4. Bass, Impact of Significant Deterioration Proposals upon Western Surface Coal Mining Operations, PB-253, 254, FEA May, 1976.
5. Air Quality Effects Analysis of Falkirk Mine, North Dakota State Department of Health, June, 1977.
6. Mann, Compilation of Air Pollutant Emission Factors, Second Edition, 11.2 Fugitive Dust Sources, December, 1975.
7. Craig, Guide for Wind Erosion Control on Cropland in the Great Plains States, U.S. Depart. of Agriculture, July, 1964.
8. A Review of State Regulations for Controlling Fugitive Dust Emissions, PEDCO Environmental Specialists, August, 1976.
9. Applicant Information for Air Pollution Emission Permits Coal Mine Operations, Colorado Department of Health.
10. Identification of a Feasible Regulation for Controlling Localized Fugitive Dust Emissions, PEDCO Environmental, Inc., AP42 (undated).
11. Environmental Assessment of Surface Mining Methods: Head of Hollow Fills and Mountaintop Removal, Skelly and Loy Interim Report, March, 1977.
12. EPA memorandum on Fugitive Dust from Surface Mines, dated May 15, 1978 (Note: Table of Typical Fugitive Dust Control Measures Observed at Western Coal Mines.)
13. Kimball, Particulate Emissions Control – Mining and Processing, EPA draft memorandum, undated.
14. Draft Environmental Statement, Southwestern Wyoming Coal, Vol. 1 and 2, Department of the Interior, April, 1978.
15. Nehring, Coal Development and Government Regulation in the Northern Great Plains: A Preliminary Report, R-1981-NSF/RC, August 1976.
21. Where We Agree, Report of the National Coal Policy Project, Center for Strategic and International Studies, Georgetown University (1978).
22. The Clean Air Act, as amended (42 U.S.C. 1857 et seq).
23. 40 C.F.R. Section 50.8.

24. 40 C.F.R. Section 51, Appendix B.
25. 40 C.F.R. Section 60.250.
26. Dvorak, The Environmental Effects of Using Coal for Generating Electricity, (Draft) Argonne National Laboratory, Argonne, Illinois, March 1977.
27. Pomerance, Statement on behalf of Friends of the Earth Public Meeting on Preliminary Proposed Draft Regulations, Washington, D.C., August 3, 1978.
28. Lippmann, Handbook of Physiology Section 9: Reactions to Environmental Agents, Ks, American Physiological Society 1977.
29. Quality Assurance Requirements for Prevention of Significant Deterioration, Air Monitoring EPA (1978).
30. Task Group on Lung Dynamics Committee, Health Physics (1966).
31. Assemblage of Data on Air Quality in Central and Southern Utah and Assessing the Impact of Coal Development in this Region on the Air Quality, Aerovironment, Inc.
32. Air Quality Criteria for Particulate Matter, HEW (1969).
33. Morrow, Airborne Contaminants Environmental Sciences on Interdisciplinary Monograph (1973).

Regional Separation: The proposed regulations separate surface coal mining operations into two regions. For operations west of the 100th meridian west longitude, the regulations have been refined to distinguish between operations with projected production levels exceeding 1 million tons of coal per year and those operations with lesser production levels. The regulations recognize, however, that surface coal mining activities may have production levels less than 1 million tons per year, but the overall air quality impact may be more significant than the impact from a single large mine when mining operations are aggregated with other major emitting facilities in the air quality control region or adjacent regions. In this instance, the regulatory authority is given the discretion to require the same air quality review as that required for single mining operations exceeding 1 million tons of coal per year. In any event a monitoring program and fugitive dust plan would be required.

For operations east of the 100th meridian west longitude, the regulations give the State regulatory authority the discretion to call for an air quality review and monitoring program if the proposed surface coal mining operations, in conjunction with other existing or proposed major emitting facilities would cause or contribute to levels of air pollution in excess of any national ambient air quality standards or other applicable Federal or State air quality standards.

Structure of regulations. Each subsection of the permit application regulations addressing air quality would be broken down into three separate components. The components include:

- (a) an air quality review which normally would include air pollution diffusion modeling;
- (b) an ambient air quality monitoring program to accurately ascertain the air quality on a continuing basis in the vicinity of the surface coal mining operation; and
- (c) a plan and commitment to employ fugitive dust control practices.

Within the constraint of having to meet national ambient air quality standards and any other applicable Federal or State air quality standards, surface coal mining operators are given the flexibility to select from a wide variety of effective control techniques which are, in part, listed in Sections 816.95(b) and (c) of the performance standards.

Existing operations with production levels in excess of 1 million tons per year include Utah International Navajo mine; Decker Mine No. 1; Peabody Black Mesa; Amax Belle Agriculture; Western Energy Coalstrip; Arch Minerals Seminoe No. 1; Pacific Power and Light Dave Johnson; Arch Minerals Seminoe No.2; Peabody Kayenta; Kemmerrer Sorensen; Peabody Big Sky; and Knife River Beulah. The Office proposes mandatory air quality review to assure that such operations do not result in air pollution in excess of national ambient air quality standards for total suspended particulate matter and other applicable Federal and State air quality standards.

Western surface coal mining operations can create air quality problems principally from increased fugitive dust levels. (Literature Support items 1, 2, 3, 4, 5, 6, 10, 15, 26). In particular, in March of 1978, EPA released a report prepared by PEDCO Environmental, Inc., entitled ""Survey of Fugitive Dust from Coal Mines" ("PEDCO Report"). This study shows that western coal mines are ""major emitting facilities" (Section 169 of the Clean Air Act defines ""major emitting facility" to include 29 industrial sources and any other source with the potential to emit two hundred fifty tons per year of any air pollutant.)

PEDCO evaluated five western surface coal mines for the purpose of determining emission factors for 12 mining operations. Upwind and downwind ambient sampling was performed to develop emission factors for each mining operation.

PEDCO said the general ranking of sources in decreasing order is Haul roads; Open storage piles; Dragline; Exposed areas; Fly-ash dump; Front end loader; Topsoil removal; Blasting; Truck dump; Drilling; Shovel/Truck loading; Train loading.

Haul roads were found to be the largest source and generally responsible for twice as much emission as the next source. At a production rate of 1 million tons of coal per year, PEDCO estimated 1750 ton/yr. of particulate matter would be emitted from a surface coal mine. (PEDCO Report at 69.) {41702}

PEDCO also performed size distribution analyses of the measured particulate matter to allow for assessments of health effects. Particulate less than 10 microns in size is generally considered to be respirable and thus more dangerous to public health. Air Quality Criteria for Particulate Matter, U.S. Department of Health, Education and Welfare, Washington, D.C., Publication Number A-49. January 1969, Lippmann (1977); Task Group on Lung Dynamics Committee (1966); Morrow, (1973). Fifteen percent of the particulate matter was less than 10 microns in size. (PEDCO Report at 56.) Thus, even a small western surface mine emits 265 ton/yr. of respirable particulate matter.

It appears that when surface coal mines are aggregated in a region, the air quality impact could be more pronounced. For instance, the Department of the Interior Draft Environmental Statement for development of coal in southwestern Wyoming analyzes 4 proposed surface coal mines for that region. North Block (1.4 million tons/yr.), Twin Creek (2.5 million tons/yr.), South Haystack (3.0 million tons/yr.) and Black Butte (6.3 million tons/yr.) would, according to PEDCO, combine to increase particulate matter emissions by 7450 tons/yr. Total respirable particulate matter would exceed 1000 tons/yr. The existing and private production plus the proposed four surface mines are projected to produce approximately 30 million tons of coal per year by 1985. This corresponds to an increase of 18,000 tons of particulate matter per year of which approximately 2,700 tons would be respirable.

The PEDCO study included locating high volume samplers approximately 10, 20, 30, and 40 m. downwind of the source. PEDCO also attempted to develop a "'fallout function" to assess the deposition rate of the emissions with distance from the sources. However, emission rates did not consistently decrease with distance from the source. Therefore, a published fallout factor was used in developing the emission factors. PEDCO views the emission factors to be valid for air quality impact assessments within 5 km. from the source. According to the consultant, where important air quality impacts occur at greater than a 5 km. distance from the mining operation other emission factors must be adapted. PEDCO did not perform any remote ambient air quality sampling simultaneously. However, other studies have explicitly analyzed the remote ambient air quality impact of western surface mines and concluded that national primary and secondary ambient air quality can be exceeded. Bass, Impact of Significant Deterioration Proposals upon Western Surface Coal Mining Operations, PB 253, 254 FEA May (1976).

For example the proposed surface coal mines for southwestern Wyoming, (North Block (1.4 million tons per year), Twin Creek (2.5 million tons per year), South Haystack (3 million tons per year), Long Canyon (2 million tons per year), and Black Butte (6.3 million ton per year) are projected to exceed the 24 hour primary national ambient air quality standard out to 1.2 miles, (NB3-2) 1.4 miles (TC3-5), 2.4 miles (SH3-2), 2.4 miles (LC 3-2) and 3.8 miles (BB3-2) respectively. (Southwestern Wyoming EIS). Thus, additional control measures may be necessary to assure that the surface mining proceeds without jeopardizing air quality standards.

The Office considered lowering the mandatory air quality review below 1 million tons of coal per year for western surface coal mines. Section 169 of the Clean Air Act defines a "'major emitting facility" to include sources with the potential to emit two hundred and fifty tons per year of any pollutant. Using PEDCO's emission factor of 1.2 lb/ton of coal mined, any western coal mine operation with a production level exceeding 425,000 tons per year should require an air quality review. However, the Department recognizes that to some extent portions of the fugitive dust will fall out in the permit area.

The Office considered mandatory air quality review for surface coal mines with production exceeding 3 million tons/yr. and 5 million tons/yr. However, one million tons per year of coal production from a western mine appears to be the most appropriate starting point since such an operation can result in 1,750 tons of particulate matter per year of which 15 percent or 265 tons per year can be respirable. This total emission rate, over six times the Congressional cutoff for a major emitting facility is proposed as a necessary starting point to analyze the air quality impact of large western surface mines.

Regarding application of the regulations in the east and Midwest, the PEDCO report explicitly states that the developed emission factors are limited to western surface coal mines. (PEDCO report at 68). However, other studies have evaluated the fugitive dust emissions from eastern and midwestern mines. (Literature support items 3, 6, 8, 11, 26). Moreover, Peabody Coal Company, owner of some of the largest surface coal mines in the Midwest and east (River King, Illinois (6.4 million

tons/yr.) and Sinclair, Kentucky (3.5 million tons/yr.) has agreed that fugitive dust can be a problem locally in all coal regions. Report of the National Coal Policy Project, Where We Agree, (1978).

To assure that State regulatory authorities have the discretion to address such air quality problems in the midwest and east, the Department has proposed in Section 780.14(c) that the regulatory authority can require an air quality review if it determines that the proposed operation in conjunction with other major emitting facilities would cause or contribute to air pollution in excess of any applicable Federal or State air quality standards. Authority for this Subsection of the regulations is explicitly found in Sections 508(a)(9) and 515(b)(4) of the Act.

Alternatives Considered:

1. Exempt fugitive dust from regulation under the Surface Mining Act.

Advantages:

- (a) Most States are not prepared for sophisticated surface mining air quality review and monitoring.
- (b) The coal industry will support such a regulation.

Disadvantages:

- (a) Conflicts with 515(b)(4) of the Surface Mining Act.
- (b) Massive amounts of particulate matter will be emitted into the ambient air thereby degrading air quality beyond Clean Air Act standards necessary to protect public health and welfare.
- (c) The failure to monitor air quality will possibly mask an air quality problem.

2. Require Best Management Practices to control fugitive dust with the goal or standard of ""avoiding a public nuisance" or ""good housekeeping."

Advantages:

- (a) Avoids sophisticated surface mining air quality review and monitoring.
- (b) [Missing text]
- (c) May be consistent with 515(b)(4) of the Surface Mining Act.

Disadvantages:

- (a) No assessment of the public health and welfare problems resulting from particulate matter emissions.
- (b) No firm air quality standard to measure compliance.

3. Require air pollution assessments, monitoring and control as necessary to achieve and maintain ambient air quality standards and other applicable Federal or State air quality standards.

Advantages:

- (a) Particulate matter emission control is required to the level necessary to protect public health and welfare from adverse air quality impacts (presently may exclude PSD standards).
- (b) May be consistent with 515(b)(4) of the Surface Mining Act.

Disadvantages:

- (a) Requires monitoring and air quality review which is probably presently beyond the capability of most States.

4. Require air pollution assessments, monitoring and control as necessary to achieve and maintain ambient air quality standards, prevention of significant deterioration standards and other applicable Federal and State air quality standards.

{41703}

Advantages:

- (a) Consistent with 515(b)(4) of the Surface Mining Act and Section 127 of the Clean Air Act.
- (b) Implements clear congressional intent embodied in the Clear Air Act and Surface Mining Act.
- (c) Assures full panoply of air quality review, monitoring and control.

Disadvantages:

- (a) May be inconsistent with EPA's ""fugitive dust exemption" for surface coal mines.
- (b) Requires monitoring and air quality review which is probably presently beyond the capability of most States.

Option 1 was rejected because it is inconsistent with the Surface Mining Control and Reclamation Act's mandate to regulate attendant air pollution from all surface areas. Option 2 was rejected because it fails to provide a meaningful standard to protect public health and welfare from the air pollution impacts of surface coal mining operations. Option 4 was rejected because, for the present, EPA may not have included surface coal mining operations in Prevention of Significant Deterioration Regulations. See 40 C.F.R. Sections 51.24(b)(6), 51.24(l), 51.24(k)(5). Option 3 was selected for the foregoing reasons.

SECTION 780.15 - FISH AND WILDLIFE PLAN.

Authority for this Section is sections 102; 205; 501; 503; 504; 507(b); 508(a); and 515(b)(2), (10), (17), (19), (23), (24) of the Act, the Endangered Species Act of 1973; and the Fish and Wildlife Coordination Act. This Section would require applicants for a permit to explain how they plan to minimize adverse impacts of the proposed operation to fish, wildlife and related environmental values. Subsection (a) would require a narrative statement on this subject. Subsection (b) would require the applicant to explain how the best technology currently available will be used, if needed, to minimize impacts of the operation after revegetation of the mine plan area. Subsection (c) would require copies of statements from applicable State and Federal fish and wildlife agencies which have reviewed the proposed impact control measures and monitoring plans. Subsection (d) would require a narrative statement on specific measures, techniques, and monitoring methods to be used to protect or enhance three categories of organisms or habitats where they exist in the proposed permit area.

These statements are necessary to allow the regulatory authority to objectively determine whether the proposed mining operation will adversely affect fish and wildlife resources and whether the applicant can comply with the performance standards of Section 816.97 of Subchapter K.

Under this section the person contemplating surface mining activities would specify how the best technology currently available will be applied to ensure that the best interests of fish and wildlife and related environmental values will be accommodated in mining and reclamation activities. It provides some latitude for the applicant, if he determines that achievement of fish and wildlife is not practicable, to show why, and to show how what he does propose, will minimize adverse impacts on those resources.

State and Federal wildlife agencies are provided an opportunity to comment on the plan's adequacy.

The plan would explain how the applicant will provide for the preservation of (1) threatened or endangered species and their habitats (2) eagles, migratory birds and game animals protected by State or Federal law and (3) unique habitats such as wetlands, riparian areas, and nesting, nursery or wintering areas. For discussion of this on the specifics of the plan, depending on the size of the mine, see the preamble to section 779.20.

Technical literature: Guidance on mitigation of surface mining impacts on fish and wildlife may be found in the document, ""An Environmental Guide to Western Surface Mining Part II: Impact, Mitigation and Monitoring," FWS/OBS 78/05 Draft, which assembles information about the effects of surface coal mining on fish and wildlife and recommends ways for mitigating anticipated adverse impacts and for monitoring mitigation success and impact effects. The manual was written for the Western Energy and Land Use Team (WELUT) of the U.S. Fish and Wildlife Service to allow for reasonable decisions for the protection of fish and wildlife resources when drafting federal coal lease stipulations for surface mine development projects. Direct and indirect effects of 36 activities associated with surface mining are traced to the point of ecological impact. Existing stipulations with respect to each activity are evaluated and an approach for developing site-specific stipulations is recommended.

Another publication, ""A Systems Approach to Ecological Baseline Studies," FWS/OBS78/21, 1978, defines and standardizes a holistic approach to ecological baseline studies for energy conversion projects in the western United States. The manual was written for WELUT as part of EPA's Interagency Energy/Environmental Research and Development Program. Using a detailed, step-by-step approach, the manual recommends a general process for baseline study design. To help bridge the gap between the general case and the particular, examples from various development projects are included which demonstrate the application of the techniques described.

Additional alternatives considered: One commenter has said the proposed regulations give too much discretionary power to the regulatory authority. According to this commenter without assured input from State wildlife agencies, resource management agencies and citizens, it is more than likely that fish and wildlife will not be protected. Specifically, endangered, rare, critical, and protected species may need special mention to protect species integrity.

OSM, however, proposes that the regulatory authorities be largely responsible for assuring that rare and endangered species and migratory species receive full and adequate protection. The Office has proposed a method to ensure that fish and wildlife values are addressed. Moreover State wildlife agencies will have the opportunity to assume a role of monitoring the impacts of surface mining.

OSM further proposes that, beyond the point of satisfying all the minimum requirements of existing Federal and State laws governing clean air and water standards as well as the environmental standards in the Surface Mining Control and Reclamation Act, including rare and endangered species and migratory bird protection, the States should have the prerogative for deciding how far they will go to totally protect all species of fish and wildlife. The Office invites comments on how to divide the responsibility for determining best technology currently available to protect fish and wildlife resources.

SECTION 780.17 - RECLAMATION PLAN - INTRODUCTION.

Authority for this Section is Sections 102; 201(c); 501(b); 503; 507(c); 508(a); 510(b); 515(b) of the Act. In addition to the operations plan, blasting plan, air pollution control plan, and fish and wildlife plan called for by Sections 780.11 15, each applicant for a permit would be required to submit a reclamation plan designed to demonstrate how the applicant will comply with the environmental protection performance standards of Section 515 of the Act, Subchapter K of these regulations and the regulatory program. Elements of the reclamation plan are specified in Sections 780.19 27.

Sections 780.19 23 are mandated by the Act for all mining operations. Section 780.25 and Section 780.27 will not apply to all applicants, but will apply to any applicant planning the use of diversion structures in the proposed operation or proposing a surface mining operation near an underground mine. Sections 780.31, 780.33 and 780.35 will also not apply to all applicants. Section 780.37 will apply to all applicants. {41704}

All of the reclamation plan requirements are necessary to enable the regulatory authority to objectively evaluate the proposed mining and reclamation operation to determine whether the operations will be conducted in compliance with the environmental protection performance standards. See Section 510(b)(2) of the Act.

SECTION 780.19 - RECLAMATION PLAN – GENERAL REQUIREMENTS.

(1) General authority for this Section is Sections 102; 201(c); 501(b); 503; and 507(c) of the Act. Each of the 11 paragraphs of this Section is required by additional Sections of the Act cited below. Each of these paragraphs is intended to provide information for the general purpose expressed under Section 780.17.

(2) Paragraph (a) would require a detailed timetable for the accomplishment of each major step in the reclamation plan. Authority: Section 508(a)(7).

(3) Paragraph (b) would require a detailed estimate of the cost of reclamation for the proposed area with supporting calculations to be used by the regulatory authority to determine the amount of performance bonds needed under Subchapter J. Authority: Sections 508(a)(5); 509(a).

(4) Paragraph (c) would require a plan for backfilling, stabilization, compacting and grading of the proposed area with cross-sections describing the anticipated profiles and surface configuration of the post-mining permit area. Authority: Sections 507(b)(14); 508(a)(5), (10); 515(b)(3), (4), (5), (6), (8), (10), (11), (13), (17), (22).

(5) Paragraph (d) would require a plan for topsoil handling and replacement and revegetation of the proposed permit area, including at least six elements which are enumerated. Authority: Sections 507(b)(14); 508(a)(5), (10); 515(b)(5), (6), (10), (13), (17), (19), (20), (22).

(6) Paragraph (e) would require a description of the measures selected for maximizing the recovery of the coal resource from the proposed area, so that the area will not have to be disturbed in the future. Authority: Sections 508(a)(6); 515(b)(1).

(7) Paragraph (f) would require the submission of information to determine if the requirement of Section 816.103 will be complied with by the applicant. Section 515(b)(14) of the Act.

(8) Paragraph (g) would require a description with maps, of the measures to be used to seal mine openings and case or manage drill or other bore holes in the permit area. Authority: Sections 507(b) (11), (13); 508(a) (5), (13); 515(b)(10)(A).

(9) Paragraph (h) would require a description of how mining equipment and facilities will be removed from the area when their use has ended. Authority: Sections 508(a) (3), (4), (5).

(10) Paragraph (i) would require a description of the steps to be taken during the life of the permit to comply with Federal air and water laws and the State air, water, health and safety laws. Authority: Sections 508(a) (9), (13); 515(b) (4), (8), (10).

Section 780.19 is designed to aid the regulatory authority in determining whether the applicant will be able to meet the many requirements of Subchapters which are identified in the text of the section.

SECTION 780.21 - RECLAMATION PLAN: PROTECTION OF HYDROLOGIC BALANCE.

(1) Authority for this Section is found in Sections 507(b) (11), (13); 508(a) (5), (9), (10), (13); 515(b) (4), (8), (10), (13), (17), (18), (23); 717(b) of the Act. Paragraph (a) would require each plan to contain a narrative, description with supporting materials to assure the protection of the quality and quantity of water and the rights of present use to the water in the mine plan and adjacent areas.

(2) Paragraph (b) would require the description of Subsection (a) to include five subsidiary plans to establish how Sections 816.41 816.57 of Subchapter K will be complied with. Technical literature used in consideration of this Section was that literature also used for Section 816.41 816.57 of Subchapter K.

(3) Regarding the monitoring plan, the Office has considered two alternatives raised by commenters to the proposed monitoring requirements. Those are discussed in detail in the preamble to Section 816.42.

(4) Paragraph (c) would require that the description required by Subsection (a) include a statement (1) of the probable hydrologic consequences of the proposed mining and reclamation operation, listing the parameters to be included in that discussion and (2) the probable cumulative impacts of all anticipated mining in the area around and including the proposed operations area required by Sections 507(b)(11) and 510(b)(3) of the Act.

(5) This Section is designed to aid the regulatory authority determining whether the applicant will be able to meet the applicable performance standards of Part 816. Sections of the performance standards that the indicated permit requirements are designed to implement:

Section 780.21(a)	816.41
Section 780.21(a)(1)	816.41; 816.42
Section 780.21(a)(2)	816.41; 816.51; 816.52
Section 780.21(a)(3)	816.41; 816.51; 816.52
Section 780.21(b)(1)	816.41-816.44; 816.47; 816.41; 816.42
Section 780.21(b)(2)(i)	816.42
Section 780.21(b)(2)(ii)	816.42
Section 780.21(b)(3)	816.41; 816.51
Section 780.21(b)(4)	816.42; 816.52
Section 780.21(c)(1)	816.41; 816.52
Section 780.21(c)(2)	816.41; 816.52
Section 780.21(d)	816.41
Section 780.21(e)	816.41 702

SECTION 780.23 - RECLAMATION PLAN: POST-MINING LAND USES.

(1) Authority for this Section is Sections 102; 201; 501(b); 503; 504; 508(a)(3), (4), (8); and 515(b)(2) of the Act. This Section sets forth the criteria for the post-mining land use analysis and plan. Paragraph (a) would require each plan to contain a detailed description of the use or uses to which the land will be put following the proposed mining and reclamation operation, with a discussion of possible alternative uses and their relationship to existing land use policies and plans. Paragraph (b) would require that this description:

(a) Explain how the proposed post-mining land use will be achieved;

(b) Give the detailed management plans to be implemented, including, instances in which range land or grazing is the proposed post-mining use;

(c) Provide all the materials needed for approval of an alternative post-mining land use, where a land use different from the premining land use is proposed under Section 816.133.

(d) Show the consideration which has been given to making the entire operation and post-mining land use consistent with the plans of the surface owner and applicable State or local land use plans or programs.

(2) Each of the provisions of this Section is designed to aid the regulatory authority to judge whether the applicant will be able to comply with the performance standards of Section 816.133.

(3) Integration of vegetation map data with other environmental data such as soils and topography provides a synthesis that will be valuable in assessing the result of a proposed action on alternative land uses or alternative designs of proposed land uses.

To the fullest extent possible, the information requirements, especially in the areas of soils, threatened and endangered species habitats and archeological and historical data, should be filled utilizing existing data collected by various State and Federal agencies using standardized data collection techniques. Technical literature used for this section is the same as that used for Section 779.22 of this Subchapter. {41705}

SECTION 780.25 - RECLAMATION PLAN: PONDS, IMPOUNDMENTS, BANKS, DAMS, AND EMBANKMENTS.

(1) Authority for this Section is Sections 102; 201; 501; 503; 504; 507(b); 515(b)(13), (21); 515(f) of the Act. This Section requires each reclamation plan to include specific elements with maps and cross-sections of all water-holding facilities subject to the approval of the regulatory authority under Subchapter K. These elements must cover the construction, operation, maintenance, and removal of the proposed facilities.

(2) Technical literature used in formulation of this Section included all literature used in developing sections 816.44, 816.49, 816.56, 816.81-816.85, and 816.91, 816.93 of Subchapter K.

(3) The requirements of Section 780.25 are intended to produce a thorough, well-planned design of the structures and facilities covered by this section, with proper maintenance, operational and emergency procedures provided for all aspects of the project.

(4) Paragraph (b) of section 780.25 would specify the design and plan requirements submitted for sedimentation ponds, including any sedimentation ponds intended as permanent impoundments. These requirements parallel existing State and Federal plan requirements.

(5) Paragraph (c) would cover plans for coal waste embankments to meet the standard engineering requirements of the respective performance standards.

(6) Under paragraph (d), the plan requirements for coal processing waste dams would have to reflect items necessary to determine the adequacy of the structure as specified in the Act and the performance standards of these regulations.

A foundation investigation is necessary to assure the stability of the site with respect to the ability of the foundation and soil materials to suitably support the structure. Supervision by qualified persons insures investigation will be conducted in a manner which achieves the proper balance of testing and drilling. Evaluation of springs, seeps and the design of a subdrainage system are standard engineering practice to maintain low phreatic surface and accordingly an acceptable safety factor.

Stability analyses of the embankment, cut slopes, and natural slopes reduces the potential for failure by delineation of problem areas and initiation of remedial actions. Standard methods for testing and analysis must be utilized to achieve consistency in evaluation.

The potential for subsidence and resultant effects are required to be analyzed and addressed in the plan submittal to assure the protection of the structure, persons and property downstream, and the environment.

SECTION 780.27 - RECLAMATION PLAN: SURFACE MINING NEAR UNDERGROUND MINING.

Authority for this Section is Sections 102; 201; 501(b); 503; 504; 507(b); 508(a); 515(b); and 515(b) of the Act. This Section would require the application to contain information to enable the regulatory authority to determine whether the operation will be conducted in compliance with the requirements of Section 515(b)(12) of the Act and Section 816.79 of Subchapter K.

SECTION 780.29 - DIVERSIONS.

The authority for this Section are found in Sections 102, 201, 501, 503(a), 504, 507(d), 508(a), 510(b) with specific reference to Section 515(b)(10), & 17, 18 and 23) of the Act. A description of all diversions to be constructed within the mine plan area would be required, to enable the regulatory authority to determine how stream channels and overland flow would be controlled in accordance with sections 816.43, 816.44 of Subchapter K.

SECTION 780.31 - PROTECTION OF PUBLIC PARKS AND HISTORIC PLACES.

Authority for this Section is Sections 102, 201, 501(b); 503; 504; 507(b); 508(a); 515(b); and 522(e) of the Act. This information would provide the regulatory authority with the basis for administering Section 761.12(f) of proposed Subchapter F.

SECTION 780.33 - RELOCATION OF USE OF PUBLIC ROADS.

Authority for this Section is Sections 102; 201; 501(b); 503; 504; 507(b); 508(a); 515(b); and 522(e) of the Act. This information will enable the regulatory authority to administer the provision of Section 522(e)(4) of the Act and proposed Section 761.12(d) of Subchapter F.

SECTION 780.35 - DISPOSAL OF EXCESS SPOIL.

Authority for this Section is Sections 102; 201; 501; 503; 507; 508; 510; and 515 of the Act.

(1) Plan requirements for disposal of spoil are virtually identical for other fill placement and embankment design. For discussion of the permit requirements, see the Preamble for Section 780.25(d).

(2) Literature used to develop this Section was the same as for sections 816.71 816.73 of Subchapter K.

SECTION 780.37 - TRANSPORTATION FACILITIES.

Legal Authority. This section is based on Sections 102; 201; 501(b); 503; 504; 507(b); 508(a); 510(b); 515(b); and 522(e)(4) of the Act. Movement of coal within the mine plan area, is generally accomplished by one or a combination of truck haulage, conveyor, and railroads. To determine how this will be done, Section 780.37 is being proposed. This section would ensure that transportation facilities within the mine plan area are constructed, used, and maintained in a manner which complies with Sections 816.31 816.39 of Subchapter K. {41705}

PART 782 – UNDERGROUND MINING PERMIT APPLICATIONS – MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE AND RELATED INFORMATION

Part 782 concerning permits for underground mining activities is proposed to correspond to Part 778 for surface mining activities. As such, Part 782 sets forth the minimum requirements for approval of regulatory programs for general, legal, financial and compliance information required to be contained in applications for permits, so that the regulatory authority and the interested public would be provided with a detailed understanding of the nature of the entity which will mine the coal and the nature of the entities which have ownership interests in the property to be mined. Legal authorities for Part 782 are the

same as those indicated in the preceding part of this Preamble for Part 778 of this Subchapter, except to the extent that the following differences between underground mining activities has been identified by the Office.

As required by Subsections 516(a) and (d) of the Act, the Office has considered whether distinct differences exist between surface and underground mining as to the permit application contents requirements here involved. The Office has preliminarily concluded that, with the exception of one matter, no such distinct differences exist, because requirements for financial, legal, compliance and other non-technical information do not differ as between surface and underground coal mining. The single distinct difference identified is discussed in detail below. The Office emphasizes that the conclusion regarding distinct differences discussed here is tentative in nature; interested parties are invited to submit comments identifying any other known distinct differences. The Office will account for other distinct differences, if identified, in promulgating the final permanent rules.

As to right of entry and operation information under Section 782.15, the Office has identified differences between surface and underground mining. As the Office understands Section 510(b)(6) of the Act, Congress intended that the regulatory authority determination required under that section be made only with respect to the interest of surface area owners where the actual mining of coal on the surface is involved and not as to underground mine workings. Accordingly, Subsection 782.15(b) would be limited to requiring information regarding the right of the applicant to conduct mining operations only where underground mining activities would involve the actual surface mining of coal and the private mineral state to be mined has been severed from the private surface estate. For example, the applicant would be required to explain its right to conduct surface mining during the development of the face-up area for an underground mine or if coal must be mined to develop roads, dams or other facilities on the surface of the ground. The applicant would not, however, have to explain its right to dig in underground workings. {41706}

PART 783 – UNDERGROUND MINING PERMIT APPLICATIONS – MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES IN THE MINE PLAN AREAS AND ADJACENT AREAS

INTRODUCTION

This Part is proposed to establish the minimum requirements for regulatory program provisions for information on the environmental resources within the proposed mine plan area and adjacent area, which must be submitted to the regulatory authority in permit application regarding underground mining activities. This Part would provide for the submission of sufficient information to enable the regulatory authority, to determine, with the information required under Part 784, what impacts the proposed operation would have on areas within the mine plan area and adjacent areas and whether these will be conducted in compliance with the requirements of Part 817 of Subchapter K.

(1) Part 783, for underground mining activities, is proposed to correspond to Part 779. As such, Part 783 sets forth the minimum requirements for approval of regulatory programs for base-line description of environmental resources within the proposed mine plan and adjacent areas. Legal authority and the basis and purpose for Part 783 is the same as for Part 779, except to the extent that the following difference between underground mining activities and surface mining activities have been identified.

(2) The Office has, as required by Section 516 of the Act, considered whether distinct differences exist between surface and underground mining as to the permit application contents requirements have involved. Some differences have been identified, which are discussed in more detail below. However, the Office will consider whether other differences exist as a result of comments received and may modify the provision of Part 783 accordingly.

(3) Regarding information on topsoil, land use, and vegetation; Part 783 has been modified from the corresponding provisions of Part 779, to limit application requirements for those items to areas affected by surface operations and facilities. This has been done because the excavation of underground mine workings will not likely affect soil, vegetation and land uses, except where surface operations and facilities are involved.

SECTION 783.14 - GEOLOGY DESCRIPTION

(4) (a) Authority for this section is found in Sections 102; 201; 507(b); 508(a); 515(b); and 516 (a) and (d); of the Act. This section would implement the requirements of the Act for geologic information necessary for each application for a permit for

underground mining activities.

(b) The information collected pursuant to Paragraph (a) of this Section will enable the regulatory authority to determine whether the applicant can comply with the performance standards of Sections 817.13 817.15, 817.31 817.39; 817.41 817.58; 817.59, 817.61 817.73, 817.81 817.89; 817.91 817.93; 817.99, 817.101 817.103, and 817.121 817.128. Technical literature used is the same as for Sections 779.14, with additional references cited in the following discussion. Paragraph (b) would allow for a waiver of these requirements, pursuant to Section 507 (b)(15) of the Act, when the regulatory authority already has at its disposal sufficient geological data about the proposed mine plan area to make further data collection unnecessary.

(c) The detail to which each applicant would be required to describe the geology of the mine plan area and adjacent area would depend upon the complexity of the region, specific demands on current and future land uses and hydrologic regime, and the proposed method of mining. A fairly elaborate statement, discussing the alternative methods for evaluating the geologic features and the intensity of chemical and physical analyses, will be necessary to produce adequate information.

Consideration was given to establishing the most informative exploration techniques, such as geophysical, geochemical, airborne, and number and location of core samples to be required under this Section. It was decided to propose separate requirements for the mine plan area, by division of two distinct operating units when describing the underground coal mining and reclamation operation. These are: (1) those areas affected by surface operations and facilities; and, (2) those lands overlying where extraction of coal will occur, but where no direct land excavation would be expected.

(d) Those areas affected by surface operations and facilities, to be defined in Section 701.5 of this Chapter, require detailed geological analyses for several reasons. The physical properties of the disturbed overburden (consolidated or unconsolidated) must be determined to develop the necessary parameters to design structurally stable surface facilities associated with underground mining activities, such as fills, dams or embankments. Secondly, the chemical content of the disturbed overburden must be established, to ensure that the operations and facilities are conducted so as to prevent deterioration of surface or groundwater resources.

(e). Regarding surface areas which would overlie underground mine workings, it was decided to propose requiring detailed information on the bedrock overburden overlying the proposed mine working area, so that a comprehensive subsidence control plan could be developed. Sufficient geologic data is necessary in that regard, to determine the bearing strength capacity of natural or artificial support structures, as well as the effectiveness of these structures over a period of time or as influenced by inundation of the mine after cessation of operations.

Rock mechanics tests of overburden from the coal to the surface are necessary to establish the stability of the overburden once the coal is removed. Tests specified in Part 784.14(c) as being required, include, but not limited to: triaxial compressive strength tests, grain size analysis, slaking tests in air and water, and angle of internal friction of all major lithologic units overlying the coal. Rock and soil mechanics analysis of the overburden column overlying coal is essential in areas of underground mining, because such an analysis is the only tool available to predict the timing and amount of the onset of subsidence once coal is removed. That subsidence over mined voids will occur is nearly a certainty; all the scientific aid available should be brought to bear on its occurrence.

Triaxial testing is the most reliable test of compressive strength for the purpose at hand, inasmuch as the confining pressure may be varied with the vertical compression. This is desirable, because as Dunrud and Osterwald (1978, p. 22) state, ""Many * * * rocks (from the Powder River Basin of Wyoming) which were tested for point load strength, were too weak even for confined compressive strength testing * * * " Lambe and Whitman (1969, p. 36) state that triaxial testing is preferable to unconfined testing in standard rock and soil mechanics analysis because of its greater dependability.

Grain size analyses and angle of internal friction are necessary to predict strength of rock and geometry of failure of rock and soil when subjected to tensile or compressive stress prior to mining. These tests allow characterization of bedrock and unconsolidated material (Dunrud and Osterwald, 1978, p. 22; Bureau of Reclamation, 1973, p. 600). {41707}

Slaking tests, properly called slaking durability index tests, are designed to simulate, in an accelerated way, failures due to wetting, drying, and abrasion of rocks subjected to atmospheric stresses (Franklin and Chandra, 1972, p. 337).

The Office requests comment and will work with MHPA to determine whether information already required by MHPA on roof stability would satisfy this requirement in whole or in part.

Technical references used were:

- (i) Dunrud, S.R., and Osterwald, F.W., 1978, Effects of coal mine subsidence in the western Powder River Basin, Wyoming: U.S. Geol. Survey Open-File Report 78 473, 71 p.
- (ii) Franklin, J.A., and Chandra, R., 1972, The slake durability test: Internat. jour. Rock Mechanics and Mining Sci. v. 9, no. 3, p. 325 338.
- (iii) Lambe, T.W., and Whitman, R.V., 1969, Soil Mechanics: New York, John Wiley 553 p.
- (iv) U.S. Bureau of Reclamation, 1973, Design of small dams: Dept. Interior, Washington, D.C., 2nd edition, 816 p.

(f). For the area overlying underground mine workings, chemical analysis of the coal seam and lower part of the overburden will be needed to determine whether the coal seam will be acid or iron-bearing, so that appropriate mine drainage controls can be planned for as part of the proposed operations. This information would be obtained through chemical analysis of the coal samples and strata immediately around the seam. The principal elements to be analyzed, initially, include the various combinations of iron sulfide and associated elements. See U.S. Department of Agriculture Handbook No. 523 of Agriculture Handbook No. 525; US EPA Manual for Testing Overburden and Mine Spoils 1978. {41707}

PART 784 – UNDERGROUND MINING PERMIT APPLICATIONS – MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATIONS PLAN

INTRODUCTION

Part 784 for underground mining activities is proposed to correspond to Part 780 for surface mining activities. Part 784 sets forth the minimum requirements for approval of regulatory program provisions for mining operations and reclamation plans. Legal authority for this Part and the basis and purpose is the same as for Part 780, except to the extent that the following differences between underground mining activities and surface mining activities have been identified.

The Office has, as required by Section 516 of the Act, considered whether distinct differences exist between surface and underground mining for these permit application requirements. Some differences have been identified and are discussed in detail below. Also, because the order of individual sections of Part 784 is not the same as for Part 780, appropriate identification and cross-referencing is provided.

The Office will consider whether other differences exist as a result of comments received and may modify the provisions of Part 784 accordingly.

SECTION AIR QUALITY CONTROL PLAN

1. The Office has tentatively decided not to require detailed air quality control plans under Part 784, because of the lack of data on the national and regional impacts of underground mining activities on air quality.

The Office has decided not to require blasting plans for underground mining activities, because of the infrequency of surface blasting associated with those activities.

SECTION 784.12 - GENERAL REQUIREMENTS FOR RECLAMATION AND OPERATIONS PLAN.

3. The authority, basis and purpose of this section are the same as these for section 780.19 of this Subchapter.

SECTION 784.13 - PROTECTION OF HYDROLOGIC BALANCE.

4. The authority, basis and purpose of this section are the same as for section 780.21. In addition, this section provides for long-term control of permanent seals of waters inundating abandoned underground mine operations, by requiring appropriate plans as part of the application.

These plans would contain the information needed by the regulatory authority to determine if the proposed operations can be conducted during and after mining, to meet the requirements of sections 817.13-817.15 of Subchapter K.

First, for new mines in acid or iron-bearing coal seams, locations of entries must be specified to preclude gravity discharges. See section 516(b) of the Act. Particularly important for the regulatory authority, will be sufficient soils, geologic and hydrology data to assess whether mine entries can be reasonably expected to hold seals for the long-term period after cessation of mining, in view of the historic experience with the difficulties in maintaining those seals without leakage or collapse.

If these plans cannot establish that drainage will be held within the underground workings, then the applicant would, of course, be required to propose adequate plans for the use of necessary treatment facilities to ensure that mine drainage is discharged out of the underground working in accordance with section 817.42 of Subchapter K.

The following technical literature supports this requirement:

- (1) Ciolkosz, E. J. and L. T. Kardos, 1973, Soil as a Medium for the Renovation of Acid Mine Drainage, Office of Water Resources Research.
- (2) Doyle, 1978 Mine Sealing, Deep Coal Mining Waste Disposal Technology, Noyes Data Corporation, Park Ridge, N.J., 1970
- (3) Garrett, W.S. and Campbell, L. T., 1961, Design and Construction of Underground Bulkheads and Water Barriers, T1 7th Commonwealth Mining and Metallurgical Congress, Johannesburg, Vol. 3, 1283 1301;
- (4) Halleburton Company, New Mine Sealing Techniques for Water Pollution Abatement, Federal Water Quality Administration, U.S. Department of Interior.
- (5) Holuber and Penrose 1977, Laboratory Study of Self-Sealing Limestone Plugs for Mine Openings, EPA 4043019 73 011 and 67012 73 081.
- (6) Moebs, N. N. and Krickovic, S., 1970 Air Sealing Coal Mines to Reduce Water Pollution, BOM RI 7354;
- (7) US EPA, 1975, Criteria for Developing Pollution Abatement Programs for Inactive and Abandoned Mine Sites, EPA 440/9 75 008;
- (8) US EPA, 1973, Processes, Procedures and Methods to Control Pollution from Mining Activities, EPA 430/9 73;

SECTION 784.14 - RECLAMATION AND OPERATIONS PLAN: POST-MINING LAND USES.

The authority basis and purpose of this section are the same as for section 780.23 of this Subchapter.

784.15 - OPERATIONS AND RECLAMATION PLAN: PONDS, IMPOUNDMENTS, BANKS AND DAMS AND EMBANKMENTS.

6. The authority, basis and purpose of this section are the same as for 780.25 of this Subchapter.

SECTION 784.16 - PROTECTION OF PUBLIC PARKS AND HISTORIC PLACES.

The authority, basis and purpose for this section are the same as for Section 780.31 of this Subchapter.

SECTION 784.17 - RELOCATION OR USE OF PUBLIC ROADS.

The authority, basis and purpose for this Section are the same as for section 780.33 of this Subchapter.

SECTION 784.18 -UNDERGROUND DEVELOPMENT WASTE.

The authority, basis and purpose of this section are the same as for section 780.35 of this Subchapter. {41708}

SECTION 784.19 - "SUBSIDENCE CONTROL PLAN."

(a) Authority for this Section is Sections 102, 201(c); 501(b); 503(a); 405; 507(b); 508(a); 510(b); 515(b); and 516 of the Act. Section 784.19 would set out minimum requirements for subsidence control plans in permit applications for underground mining activities. The subsidence control plan must show that the operation will be conducted in compliance with the requirements of Sections 817.121 817.126 of Subchapter K. The application materials are proposed to be required according to the following:

- (1) Contain a description of the subsidence control technology to be used,
- (2) Be designed according to recognized standards,
- (3) Explain how material damage is to be prevented,
- (4) Consider relevant geotechnical and land use factors, and
- (5) Contain a plan for monitoring subsidence.

The goal of Section 784.19 is to prevent material damage to the land surface by subsidence (Section 516(b) of the Act) and insure that underground mine operators adopt the most technologically and economically feasible measures to control subsidence (Sections 102; 501(b); 516(b)(1), of the Act).

(b) Haphazard mining without consideration of the effects of subsidence can, and has resulted, in substantial material damage to private dwellings, public buildings and utilities, water quality, farmland and environmental values. Effective control of subsidence requires that mining be conducted according to an organized, comprehensive plan of action, specifically designed to prevent unacceptable damage. The essential details of this plan would be contained in this ""subsidence control plan".

(c) The types of technical information that the Office believes are needed to be set forth in an adequate subsidence control plan are based on a review of the literature in the field. This information would include:

- (i) The results of a survey of surface structures or resources that might be damaged by subsidence to establish a base-line,
- (ii) Determination of the maximum allowable ground lowering and strains which the structures and resources can withstand,
- (iii) Design of mine workings to keep ground lowering and strains within allowable limits and/or provisions for surface structures and resources to withstand the induced ground lowering and strains, and/or other provisions to limit subsidence such as backfilling of mine voids,
- (iv) Design and installation of a subsidence monitoring network that will allow determination of ground lowering and strains imposed on structures and resources,
- (v) Measurement of the initial vertical and horizontal location of the subsidence network to a degree of reasonable precision,
- (vi) Monitoring of the subsidence networks during mining to assure maximum allowable ground lowering and strains after mining, including,
- (vii) Assessment of subsidence caused damage and implementation of any necessary repairs.

(d) Each of these elements is necessary to prevent subsidence causing material damage (Section 516(b)(1) of the Act) and known technology exists to implement each element. Standards, accepted practice, or known examples are available for each element to aid mine operators in designing subsidence control plans and assure quality control in their implementation. Preparation of plans according to recognized professional standards is necessary to assure that mine operators adopt subsidence control measures that are consistent with known technology and effective in preventing material damage to the extent feasible (Section 516(b)(1) of the Act). Precedent for requiring subsidence control plan standards is provided by the Pennsylvania Bituminous Mine Subsidence and Land Conservation Act of 1966 (Ref. 28).

(e) Well defined standards exist for the surveying requirements of Section 784.19. Standards defining allowable deflections and strains for various types of structures are available in literature (Ref. 3, 4, 24, 26). Although the relationship between mining and the development of surface ground strains has not been precisely defined and additional research is required, remarkably consistent relations are found in European subsidence experience (Ref. 23) which can be applied to American longwall mining. Experience from Pennsylvania (Ref. 29) is believed to be applicable to the standard American room and pillar method of mining. Certification of plans by registered engineers or geologists is necessary to ensure plans are prepared according to professional standards.

(f). Technical literature used to develop Section 784.19 was:

1. Hill and Bates, ""Acid Mine Drainage and Subsidence – Health and Ecological Effects of Increased Coal Utilization", Resource Extraction and Handling Division, Industrial Environmental Research Laboratory-Cincinnati, U.S.

Environmental Protection Agency, Cincinnati, Ohio 45268, 1977.

2. Michael Baker Co., et al., "'A Comprehensive Program for Dealing with Mine Subsidence", ARC Report 73 163 2559, the Pennsylvania State University, Middletown, Pennsylvania, for the Appalachian Regional Commission, Washington, D.C., and the Pennsylvania Department of Environmental Resources, Harrisburg, Pennsylvania, 1976.

3. National Coal Board (British), "'Subsidence Engineers Handbook", London, 1966, 1974.

4. Michael Baker Co., Inc., Architectural Measures to Minimize Subsidence Damage, ARC Report 73 111 2551, for the Appalachian Regional Commission, Washington, D.C., and the Pennsylvania Department of Environmental Resources, Harrisburg, Pennsylvania, 1974.

5. HRS Singer, Inc., "'Overview of Subsidence Potential in Pennsylvania Coal Fields", ARC Report 73 111 2552, State College, Pennsylvania, for the Appalachian Regional Commission, Washington, D.C., and the Pennsylvania Department of Environmental Resources, Harrisburg, Pennsylvania, 1975.

6. Grey, R.E., et al., "'State of the Art of Subsidence Control", ARC Report 73 111 2559 (prepared by General Analytics, Inc., Monroeville, Pennsylvania), for the Appalachian Regional Commission, Washington, D.C., and the Department of Environmental Resources, Harrisburg, Pennsylvania, 1974, Part 2.

7. Earth Satellite Corp., "'Use of Photo Interpretation and Geological Data in the Identification of Surface Damage and Subsidence", ARC Report 73 111 2554, for the Appalachian Regional Commission, Washington, D.C., and the Pennsylvania Department of Environmental Resources, Harrisburg, Pennsylvania, 1975, pages 35 37.

8. Mullin L. Lonergan Associates, Inc., "'Local and State Regulatory Powers Dealing with Land Use and Construction in Subsidence Prone Areas", ARC Report 73 163 2557, for the Appalachian Regional Commission, Washington, D.C., and the Pennsylvania Department of Environmental Resources, Harrisburg, Pennsylvania, 1975, Appendix A.

9. U.S. Congress, 95th, 1st session, House Rept. 95 218, 1977, Surface Mining Control and Reclamation Act of 1977, Report of the Committee on Interior and Insular Affairs, House of Representatives, to accompany H.R. 2, p. 126.

10. U.S. Department of Interior, 1976, Final environmental impact statement on surface subsidence control in mining regions: U.S. Bureau of Mines FES 760 58, 90 p.

11. National Coal Board, 1963, Principles of subsidence engineering: Production Department Information Bull 63/240, 21 p., London, UK.

12. Dunrud, C.R. 12. Dunrad, C.R. 1976. Some engineering geologic factors controlling coal mine subsidence in Utah and Colorado: U.S. Geological Survey Professional Paper 969, 39 p.

13. Brauner, G., 1973, Subsidence due to underground mining; I. Theory and practices in predicting surface deformation: U.S. Bureau of Mines Info-Circ 8571, 55 p. {41709}

14. Battelle Columbus Laboratories, 1975. A systems approach to underground mining: Phase I – Problem analysis and research recommendations, 282 p.

15. Campbell, J. A. L., et al., 1975, How to predict coal mine roof conditions before mining: Mining Engineering, October, p. 37 40.

16. Vandale, A. E., 1967, Subsidence – a real or imaginary problem: Mining Engineering, September, p. 86 88.

17. Horn, G. H., 1977, Memorandum on subsidence requirements-coal: U.S. Geological Survey memo to mining supervisors.

18. Allen, A. S., 1976, Basic questions concerning coal mine subsidence in the United States: Assn. Engr. Geologists Meeting, April 1976, 19 p.

19. Amuedo and Ivey, "'Ground Subsidence and Land Use Considerations Over Coal Mines in the Boulder-Weld Coal Field, Colorado", Ameudeo and Ivey Geological Consultants, 1975.

20. G.A.I. Consultants, Inc., "'Study and Analysis of Surface Subsidence Over the Mined Pittsburgh Coal Bed", report prepared for U.S. Department of Interior, Bureau of Mines under contract no. J0366047, Monroeville, Pa., July 1977.

21. Wardell, Kenneth, "'Ground Subsidence and Control", Mining Congress Journal, January, 1969, pp. 36 43.

22. Kratzsch, Helmut, "'Reduced Subsidence by Planned Extraction", Bergbau-Archiv (Essen), Vol. 25, No. 5, December 1964, pp. 15 21.

23. Panek, Louis A., "'Methods and Equipment for Measuring Subsidence", Third Symposium on Salt, The Northern Ohio Geological Society, Inc., Cleveland, Ohio, 1966.

24. Voight, Barry and Pariseau, William, "'State of Predictive Art in Subsidence Engineering", Journal of the Soil Mechanics and Foundation Division, Proceedings of the American Society of Civil Engineers, March, 1970, pp. 721 750.

25. Legget, R.F., Duisburg Harbour Lowered by Controlled Coal Mining", Canadian Geotechnical Journal, 9, 374, 1972, pp. 874 882.

26. Brauner, Gerhard, "'Subsidence Due to Underground Mining_2. Ground Movements and Mining Damage", U.S. Bureau of Mines Information Circular 8572, 1973.

27. "'Bituminous Mine Subsidence and Land Conservation Act of 1966". Commonwealth of Pennsylvania (Department of Environmental Resources), Harrisburg, Pa.

28. Curtis, S.E., "'Talk Presented at the Roof Control Committee Meeting of the American Mining Congress,

Pittsburgh, Pa., September 18, 1968," U.S. Department of the Interior, 1976, Final Environmental Impact Statement on Surface Subsidence Control in Mining Regions, U.S. Bureau of Mines.

SECTION 784.20 - PROTECTION OF FISH AND WILDLIFE.

11. The basis and purpose for this section are the same as for Section 780.15 of this Subchapter.

SECTION 784.21 - DIVERSIONS.

12. The authority, basis and purpose for this section are the same as for Section 780.29 of this Subchapter.

SECTION 784.22 - MAPS AND PLANS.

13. The authority basis and purpose for this section is the same as for Section 780.13 of this Subchapter.

SECTION 784.23 - TRANSPORTATION FACILITIES.

14. The authority, basis and purpose of this section is the same as for Section 780.37 of Subchapter K.

SECTION 784.25 - RETURN OF COAL PROCESSING WASTE TO ABANDONED UNDERGROUND WORKINGS.

15. Authority for this section is Sections 102; 201; 501; 103; 504; 507; 508; 510; 515 and 516 of the Act.

(a) An alternative method for alleviating potential subsidence problems and disposing of coal processing wastes that would otherwise be left on the surface is to use these materials to backfill voids in abandoned underground mines. The waste material provides lateral support to mine pillars and vertical support to the mine roof and overburden, and helps stabilize the surface. The major methods of backfilling are controlled, blind, and pumped slurrying (DOI, 1976).

2. Controlled flushing is used in mines in which men can safely enter and gain access to key areas for the filling operations. Generally about one borehole per 4 acres is required for slurry placement (Whaite and Allen, 1975).

3. Blind Flushing can be used where abandoned mine openings are inaccessible because of flooding or extensive caving. Granular material is injected into the mine voids by gravity feed. Most blind flushing projects have required hundreds of holes because of the limited amount of material that can be emplaced through any one hole (Whaite and Allen 1975).

4. Pumped Slurrying. A new technique for flushing of inaccessible mine workings utilizes pumped slurry injected from the surface. (Condeub, Fleissig, and Associates 1973, Whaite and Allen 1975).

5. Fly ash has also been used in subsidence stabilization (Magnuson et al. 1970, Sturges and Clark 1970; Michael Baker 1973, p. 349).

6. The requirements of sections 784.25 would be:

- (a) development of a mine back-filling plan;
- (b) description of waste material and area to be backfilled;
- (c) description of hydrologic factors and
- (d) additional application to pneumatic backfilling.

OSM specifically requests comments and will consult with MSHA to determine the safety considerations of each of these practices to the workers at the particular mine and adjacent miners.

7. Bibliography of technical literature used to develop projections:

- (a). Baker, Michael Jr., ""Analysis of Pollution Control Costs", Prepared for the Appalachian Regional

Commission, February 1973, p. 347 349.

(b). Candeub, Fleissing and Associates, Demonstration of a technique for limiting the subsidence of Land Over Abandoned Mines, November 1973, NTIS No. PB212708.

(c). Cochran, William, ""Mine Subsidence Extent and Cost of Control in a Selected Area", USBM IC8507, 1971.

(d). Jacobsen et al., ""Subsidence Monitoring in Conjunction with Underground Mine Flushing Operations", Final Report USB Contract S0144073, October 1975.

(e). Magnuson et al, ""Utilization of Fly Ash for Remote Filling of Mine Voids", Paper presented at the 2nd Ash Utilization Symposium, Pittsburgh March 10 11, 1970.

(f). Sturges and Clark; ""Fly Ash – The Answer to Mine Subsidence Protection?", Coal Mining and Processing, April 1970.

(g). Whaite and Allen AS; ""Pumped Slurry Backfilling of Inaccessible Mine Workings For Subsidence Control", USBM IC 8667, 1975. {41709}

PART 785 – REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

INTRODUCTION

(1) In addition to drawing the general distinction between surface and underground mining activities under the Act, Congress also imposed particularized requirements for a number of special categories of coal mining. To account for these special categories in the context of establishing minimum requirements for permit system components of regulatory programs, the Office proposes to promulgate Part 785 of Subchapter G. Because the provisions of Part 785 are interrelated to proposed performance standards applicable to the special categories covered in Subchapter K, the reader is cautioned to carefully review Part 785 together with the preamble and proposed texts for Parts 818 through 828 of Subchapter K. {41710}

(2) These special permit requirements are in addition to those general permit requirements contained in Subchapter G. Those general requirements apply under Part 785, unless a special permit requirement in this Part is inconsistent with a general requirement. For instance, an applicant seeking a permit under Section 785.17 of this Part containing a variance from approximate original contour would have to meet the requirements of Part 778, but would not, in the map to be filed under Part 780, have to demonstrate how the land to be mined would be restored to its approximate original contour. Instead, it would have to show what alternative post-mining surface configuration would be used.

(3) In selecting the categories of coal mining which are specially regulated in the Act for coverage in Part 785, the Office has decided to propose special permitting regulations for all of those categories covered by the Act, except for coal mines in Alaska. Although special provision is made for Alaskan coal mines at Section 708 of the Act and special environmental protection performance standards for that mining are being proposed by the Office at Part 821 of Subchapter K, the Office does not believe it appropriate to propose special permit regulations for Alaskan mining at this time.

The decision to omit Alaskan coal mining from special permits coverage is primarily based upon the narrowness of special treatment made available for this mining under Section 708 of the Act during the permanent regulatory program. Under Section 708(a) of the Act, the Secretary was directed to contract with the National Academy of Sciences for an in-depth study of Alaskan coal mining to determine whether any of the provisions of the Act should be modified by future act of Congress. This study is to be completed by August 3, 1979. Under subsections (c) and (d) of section 708, the Secretary is authorized to make certain modifications to the environmental protection provisions of the Act or regulations adopted pursuant thereto. However, as the Office interprets those subsections, they do not necessitate the issuance of special permitting regulations. First, under Section 708(c) the Secretary is authorized to make modifications to environmental provisions of the Act or regulations adopted thereunder for mines in existence for a year prior to the Act, only until 1 year after the completion of reports required under Sections 708(a) (c) of the Act or 3 years after the date of enactment of the Act (August 3, 1980), whichever comes first. Given the very few mines to which this modification authority would be applicable, and the cut-off of that authority, in any event, early in the permanent regulatory period, the Office has tentatively concluded that special permits regulations under Part 785 are unnecessary for implementation of Section 708(d) of the Act. To the extent that special procedures are needed for implementation of Section 708(d) under the permanent regulatory program, ample provisions to implement that section are being proposed at Part 821 of Subchapter K.

Similarly, regarding the Secretary's authority under Section 708(e) of the Act to promulgate special regulations under Section 501(b) of the Act, the Office believes that sufficient provision to implement that authority is being made by proposal of Part 821. That Part would establish detailed procedural and substantive criteria, by which the types of modifications

envisioned under Part 708(e) can be accounted for. In the event, however, that further study of the Alaskan coal issue discloses the need for special permitting requirements, the Office will consider appropriate amendments to Part 785.

As for those special categories of coal mining that the Office has decided warrant special consideration in the permitting processes of regulation programs, a detailed analysis follows for Part 785.

SECTION 785.3 - RESPONSIBILITIES.

Authority for this section is Sections 102; 201(c); 501(b); 502(a); 507(b); 508(a); 510(b), (d); 515(b), (c), (d), (e); 516; 527; 529 and 711 of the Act. This Section explains the responsibilities of regulatory authorities and persons seeking to operate coal mines covered by Part 785. If a State is to allow any of the special categories of mining contained in Part 785, its State program provisions would have to meet the minimum requirements set forth in this Part for that particular type of mining. It is understood that some States may not allow for any of the special categories of mining and that some may allow only a few of the special categories. Where a Federal program is promulgated by the Secretary for a particular State, the provisions of Part 785 would be the minimum requirements for permitting special categories of mining under that program.

Section 785.3 also explains that, although special treatment is provided in Part 785 for special categories of coal mining, all other provisions of Subchapter G will be applicable to persons who seek to operate a mine in these special categories, unless specific exemption from a particular provision of Subchapter G is provided for in Part 785. This is provided to ensure that the individual sections of Part 785 are not generally construed to be waivers from the other Parts of Subchapter G.

SECTION 785.11 - ANTHRACITE SURFACE COAL MINING AND RECLAMATION OPERATIONS.

Authority for this section is found in Sections 102; 201(c); 501(b); 503(a); 507(b); 508(a); 510(b); 509; 515(b); 516 and 529 of the Act. This section will apply exclusively to those persons seeking to engage in anthracite surface coal mining and reclamation operations in Pennsylvania under a regulatory program for that State and is proposed to implement Section 529 of the Act.

1. Section 529 of the Act makes applicable to anthracite coal mines special environmental protection performance standards and certain bonding requirements of Pennsylvania law in effect on August 3, 1977, in lieu of the performance standards and equivalent bonding requirements otherwise in effect under the Act. Given the legislative history of that section of the Act and the Office's understanding that such special provisions of State law existed, as of August 3, 1977, only for the Commonwealth of Pennsylvania, the Office proposes to implement Section 529 only with respect to anthracite coal mining in Pennsylvania.

2. Under paragraph (b) of Section 785.11, permits for anthracite coal mining and reclamation operations in Pennsylvania would have to be applied for and issued according to the provisions of the Pennsylvania anthracite regulatory program in effect on August 3, 1977, only insofar as special anthracite environmental protection performance standards and bonding provisions are involved. Under Section 529(a) of the Act, special treatment is afforded for anthracite coal mining only with respect to performance standards and for specified bond limits and the period of responsibility for revegetation.

Thus, the Office is proposing that the permitting of anthracite coal mines in Pennsylvania which would otherwise be required under Subchapter G be modified only to the extent to which the requirements of Subchapter G which depend upon the generally-applicable requirements of Subchapter J (Bonding) and K (Performance Standards) must be modified to account for the special anthracite bonding and performance standards found at Parts 809 and 820 of this Chapter.

3. Under Section 529(a) of the Act, provision is made for the amendment of special anthracite regulations adopted by the Secretary under the Act, to account for changes in the special Pennsylvania anthracite regulatory program after August 3, 1977. Accordingly, authority to adopt necessary additional anthracite permits regulations is proposed at paragraph (c) of Section 785.11.

SECTION 785.12 - SPECIAL BITUMINOUS SURFACE COAL MINING AND RECLAMATION OPERATIONS. {41711}

1. Authority for this section is Sections 102; 201(c); 501(b); 503(a); 504; 507(b); 508(a); 510(b); 515(b) and 527 of the Act. This section would apply to persons engaging in "special bituminous coal mining" in Wyoming, as defined in Part 701, and

would implement Section 527 of the Act. Under that Section, the Secretary is authorized to issue regulations establishing special environmental protection performance standards for mines covered by that section, in lieu of those standards otherwise applicable under Section 515 of the Act. For the permanent regulatory program, the Office is proposing special environmental protection performance standards for "special bituminous coal mines" at Part 825 of Subchapter K. To ensure that permits would be applied for and issued according to those environmental protection performance standards, the Office is proposing Section 785.12.

2. As is the case for anthracite coal mines, the Office emphasizes that by establishing this Section, special treatment for the mines involved is afforded only to the extent that the requirements of Subchapter G were affected by modification of the otherwise applicable environmental protection performance standards of Subchapter K under the provisions of Part 825. Therefore, all other requirements of Subchapter G would apply to the permitting of special bituminous coal mines in Wyoming, except insofar as a modification were needed with respect to Part 825.

3. Under Section 527(b) of the Act, provision is made for the amendment of special bituminous coal mine regulations adopted by the Secretary under the Act, to account for changes in the special Wyoming regulatory program for those mines after August 3, 1977. Authority to adopt necessary additional special bituminous coal mining permits regulations is proposed at paragraph (d) of Section 785.12.

SECTION 785.13 - EXPERIMENTAL PRACTICES MINING.

Authority for this section is Sections 102; 201(c); 501(b); 503(a); 504; 507(b); 508(a); 510(b); 511(c); 513(a); 515(a),(b); 516; 517 and 711 of the Act. This Section is proposed to implement Section 711 of the Act and would apply to persons who wish to conduct mining under regulatory programs through the use of experimental practices involving deviations from the environmental protection performance standards of Sections 515 and 516 of the Act, Subchapter K, and the regulatory program.

1. Through Section 711 of the Act, Congress has created a narrow process for granting exemption from compliance with otherwise applicable environmental protection performance standards under the Act, to serve either of two purposes, on an experimental basis. One purpose is to encourage advances in mining and reclamation technologies. The other is to allow for a post-mining land use for industrial, commercial, residential or public use (including recreation facilities). However, because these exemptions may be allowed only " . . . in individual cases on an experimental basis, . . .", and only if approved by the Secretary, the Office has concluded that experimental practices should be authorized only under a permit issued in accordance with sufficient protective requirements. Accordingly, the Office proposes to implement Section 711 under regulatory programs by Section 785.13.

The Office believes that experimental practices should be allowed by regulatory authorities only under the precautions afforded by a permit system, in order to ensure for the "individual" determination and Secretarial approval required by the Act. Under a regulatory program permit system, detailed legal, financial, compliance and technical information would have to be presented to the regulatory authority prior to the commencement of operations. E.g. Sections 507, 508 of the Act; Parts 778 780; 782 784 of this Subchapter. Careful scrutiny of the proposed operation would be aided under a permitting system, through opportunity for public participation. E.g. Sections 513, 514 of the Act; Parts 788, 789 of this Subchapter. It is through these information and procedural requirements that the Office believes Section 711 should be implemented, so as to maximize the possibility of success of experimental practices and to minimize the probability that ill-conceived proposals will be conducted. See Section 510(b) of the Act; Section 785.13(d) of the regulations.

2. Paragraphs (a) and (b) describe the scope and objectives of Section 785.13. Under paragraph (c), the term "experimental practices" is defined, because it is used throughout this Section. The Office has proposed this definition upon the basis of the language of Section 711 of the Act, which is interpreted to limit allowable exceptions from the environmental protection performance standards to those conducted on an experimental basis.

3. Under paragraph (e) of Section 785.13, special permit application contents requirements for authorization of the use of experimental practices are proposed, in order that the regulatory authority and the Secretary are presented with the record necessary to make a determination of whether the criteria for approval of the experimental practice under Section 711 of the Act and paragraph (g) of Section 785.13 have been met. Sub-paragraphs (1) through (4) of paragraph (e) are based upon the explicit statutory criteria required for approval of an experimental practice under Section 711. Sub-paragraph (5) is based upon the Office's authority to ensure that all coal mining operations subject to the Act utilize adequate data monitoring and reporting procedures. Section 517 of the Act.

4. Under paragraph (f), it is proposed that an applicant seeking approval of an experimental practice specifically describe the exact nature of the deviation from otherwise applicable standards involved in the newspaper advertisement of the filing of a permit application required by Sections 507(b)(6) and 513(a) of the Act and Section 787.11 of this Subchapter. In addition, the regulatory authority would be required to specifically describe the experimental practices in the notifications issued to public entities and other persons as required by Section 513(a) of the Act and Section 787.11 of this Subchapter. The purpose of these requirements would be to ensure that the goal of the Act of involving maximum public participation in important decisions by the regulatory authority is fulfilled.

5. The criteria for approval or denial of the use of an experimental practice in the course of the regulatory authority's determination of whether to issue or deny a permit are proposed at paragraph (g) of Section 785.13. The burden of proof on original permit applicants will, of course, rest on the applicant as required by Section 510(a) of the Act.

The criteria for approval that are identified at subparagraph (g)(1), by cross-reference to paragraph (e) of Section 785.13, are those criteria specifically required by Section 711 of the Act and the need to ensure adequate data monitoring and reporting under Section 517 of the Act with respect to the use of the experimental practice. The requirement of subparagraph (g)(2) is proposed to ensure that the proposed experimental practice is both well-planned and will meet the purposes of the Act, by allowing for only those operations involving ""feasible" reclamation.

Finally, under subparagraph (g)(4), the regulatory authority would be required to specifically condition the permit so as to ensure, for inspection and enforcement purposes, that the approved experimental practice can be clearly identified in the field, adequately surveyed, and is not used in a fashion more broadly than that intended by Section 711. {41712}

6. Under paragraph (h) of Section 785.13, a minimum triennial review of each experimental practice permit would have to be conducted by the regulatory authority, to ensure that the criteria for authorizing the use of an experimental practice under Section 711 and paragraph (g) of Section 785.13 are, in fact achieved during the actual use of the experimental practice in the course of surface coal mining and reclamation operations.

This provision is intended to be implemented as part of the mandatory periodic review of outstanding permits by regulatory authorities required by Section 511(c) of the Act. If the regulatory authority found it necessary to require a revision or modification to a permit involving an experimental practice, it would be authorized to issue an order to ensure that the revision or modification is made, subject to the permittee's right to a hearing under Section 511(c). The manner and time of the hearing would be largely left to the discretion of the State in developing its State program. For Federal programs, the specific detailed requirements for the hearing would be left for promulgation in the regulations for each particular Federal program. However, the Office will consider whether the final rules for Part 785 should set more detailed minimum requirements on the time and manner of these hearings and specifically solicits comments on this issue.

SECTION 785.14 - STEEP SLOPE COAL MINING.

Authority for this section is sections 102; 201(c); 501(b); 503(a); 504; 507(b); 508(a); 510(b); 515(b)(3), (4), (10), (22) and 515(d) of the Act. This section would apply to persons conducting ""steep slope" surface coal mining and reclamation operations under regulatory programs and is proposed to implement Section 515(d) of the Act. Under that section of the Act, ""steep slope" coal mines are required to comply with certain environmental protection performance standards, in addition to those required under Section 515(b) of the Act.

To ensure that the permitting of ""steep slope" coal mines under regulatory programs is done to fully account for those additional environmental protection performance standards, the Office is proposing special permitting requirements at Section 785.114. Under the permanent regulatory program, the special performance standards for steep slope mines will be established under Part 826 of Subchapter K. The reader should, therefore, review this preamble and proposed Section 785.14 in conjunction with Part 826.

1. Under paragraph (b) of Section 785.14, the term ""steep slope" is to be defined by cross-reference to the definition for that term at Section 701.5 of Subchapter A. For the detailed explanation of the basis and purpose of the definition see the preamble to that Section.

2. Under paragraph (a) of Section 785.14, all steep slope mines are covered by the other paragraphs of the section, with three exceptions. The first exception, explained in subparagraph (a)(1), is explicitly provided for by the first half of the proviso clause in the main text of Section 515(d) of the Act. The second exception, for mountaintop removal mining at

paragraph (a)(2), is similarly based on the second half of the proviso clause in the main text of Section 515(d). Mountaintop removal mining permits are addressed separately at Section 785.15.

The third exception, which is at subparagraph (a)(3) of Section 785.14, pertains to surface coal mining and reclamation operations which, although conducted on steep slopes, are allowed a variance from the requirement of restoration of the affected area to approximate original contour under Section 515(e) of the Act. The permitting of mines which require these variances are addressed separately in Part 785 at Section 785.16.

3. Under paragraphs (c) and (d) of Section 785.14, the regulatory authority will be required to find, in order to issue a permit, that, in addition to proposing compliance with the general performance standards of Part 816, the applicant has demonstrated in the application that the operation will meet the requirements of the special performance standards applicable to steep slope mines proposed at Section 826.12 of Subchapter K.

SECTION 785.15 - MOUNTAINTOP REMOVAL MINING.

Authority for this section is Sections 102(b),(c),(d),(e); 201(c); 501(b); 503(a); 504; 507(b); 508(a); 510(b); 511(c); 515(b),(2), (3),(4),(10),(17),(21),(22); and 515(c). This section provides for permitting mountaintop removal mining.

1. Under Section 515(c)(1) of the Act, a State program is allowed, but not required to permit mountaintop removal mining. Accordingly, for those States which desire to allow for mountaintop removal mining under their State programs, the Office is proposing Section 785.15 to establish the minimum requirements for the Secretary's approval of the permitting components of those State programs for mountaintop removal. In addition, Section 515(c)(1) of the Act requires that any Federal program contain provisions to permit mountaintop removal mining. Section 785.15 is proposed to provide for minimum permit requirements for mountaintop removal mining which would be included within particular Federal programs.

2. Section 515(c)(3) and (4) establishes special environmental protection performance standards applicable to mountaintop removal mining. The Office is proposing to implement those provisions of the Act through Part 824 of Subchapter K. The reader should, therefore, consider this preamble and proposed Section 785.15 in conjunction with proposed Part 824.

3. The conditions under which a State regulatory authority will be authorized to issue a permit for mountaintop removal mining are proposed at paragraph (c) of Section 785.15. The provisions of subparagraph (c)(1) of this section are based on the express provisions of the main text of Section 515(c)(3) of the Act. The Office emphasizes that the types of post-mining land uses listed at subparagraph (c)(1) are the only uses authorized for mountaintop removal mining under the Act, particularly because Section 515(c) is an exception under which mountaintop removal mining is not required to conform to the Act's general requirement for restoration of the land disturbed by mining to its approximate original contour. As an exception, these provisions are to be strictly construed and the Office does not, therefore, believe that the list of acceptable post-mining land uses at Section 515(c)(3) of the Act could be broadened through administrative interpretation.

4. Four conditions are proposed at subparagraph (c)(1) of Section 785.15 on the approval of an acceptable post-mining land use for mountaintop removal mining. The first condition, at subparagraph (c)(i) is taken verbatim from the text of Section 515(c)(3)(A) of the Act.

The second condition, at section 785.15(c)(1)(ii), requires the applicant to demonstrate that the proposed post-mining use would meet the requirements of the general environmental protection performance standards at section 816.24, for approval of a post-mining use different from the premining use. Section 785.15(c)(1)(ii) is proposed principally to implement the requirements of Section 515(c)(3)(B) of the Act, which requires that an applicant for mountaintop removal mining present, according to seven criteria, specific plans and appropriate assurances in the permit application for its proposed post-mining land use. These criteria are found, as proposed for implementation by the Office, with other requirements for alternative post-mining land uses at Section 816.124, which Section 785.15(c)(1)(ii) adopts by cross-reference. The basis and purpose of those criteria are, in general, explained in the preamble to Section 816.124. {41713}

However, it is appropriate to explain here the Office's consideration of one of the criteria identified at Section 816.124, because concern has been expressed as to that matter only in the context of mountaintop removal mining. This item is the requirement that, prior to issuance of a permit, it must be demonstrated that the proposed post-mining land use is supported by letters of financial commitment from third parties for the development and maintenance of the proposed use. Section 816.124(d). This requirement is identical to a provision of the interim regulatory program (30 CFR Section 715.13(d)(4) and is based on Sections 515(b)(2) and 515(c)(3)(B)(v) of the Act.

In light of comments that obtaining such letters will be very difficult in the southern Appalachian States, the Office has considered its authority for this requirement at Section 816.124. It has concluded, based on a review of the legislative history of the Act, that Congress intended that this requirement must be fulfilled for all mountaintop removal mining prior to the issuance of a permit. See H.R. Rep. No. 95-218, 95th Cong., 1st Sess. 94, 124 (1977). The Office's view of this matter has also been sustained by the courts in a challenge to the interim program regulations. *Surface Mining Regulation Litigation*, 11 ERC 1593, 1606 (DDC., 1978). Therefore, the Office proposes to include this requirement for the permanent regulatory program.

The third and fourth conditions for approval of the post-mining land use under paragraph (c) of Section 785.15 are based on the express wording of Sections 515(c)(3)(C) and (D) of the Act and are at Section 785.15(c)(1)(iii)-(iv).

5. Under Section 515(c)(4) of the Act, the regulatory authority is required to insure that permits issued for mountaintop removal mining will include certain special environmental protection performance standards. As explained above, those standards are being proposed at Part 824 of Subchapter K. Therefore, as a condition of issuing a permit, the Office is proposing at Section 785.15(c)(2) that the applicant establish that the proposed mountaintop removal operations be conducted in compliance with Part 824, in place of complying with the general requirement for returning the land to be mined to its approximate original contour.

6. To ensure that the requirements of Part 824 are, in fact, complied with by persons obtaining permits under State programs for mountaintop removal mining and to aid State and Federal inspectors in identifying these mines, the Office proposes Section 785.15(c)(3) and (5). Subsection (c)(3) would require that the State regulatory authority make the provisions of Part 824 a specific written condition of any mountaintop removal permits. Subsection (c)(5) would require that the permit be clearly marked as authorizing mountaintop removal mining. In addition, Section 785.15(c)(4) is proposed to implement the requirements of Section 515(c)(3)(E) of the Act.

7. Under Section 515(c)(6) of the Act, the regulatory authority is required to periodically review mountaintop removal mining permits, unless the applicant affirmatively establishes that the operations involved are being conducted in compliance with all applicable provisions of law, including the terms and conditions of the permit. Under Section 511(c) of the Act, the regulatory authority is generally required to conduct periodic review of all outstanding permits for the same purposes as under Section 515(c)(6). To implement these provisions of the Act, in part, with respect to mountaintop removal mining permits under regulatory programs, the Office proposes to establish paragraph (d). This provision is intended for these permits to supplement proposed Section 790.11 of this Subchapter, the regulation which would generally implement Section 511(c) of the Act.

Under subparagraph (d)(1), the regulatory authority would have to review mountaintop removal mining permits within three years both from the date of original issuance and renewal of the permit, to ensure that mountaintop removal mining receives the continued long-term scrutiny that Congress intended, particularly as to the implementation of the approved post-mining land use and development of the associated valley or head-of-hollow spoil disposal site. Review by the regulatory authority would, of course, have to be conducted prior to these three-year periods under Section 790.11, if the times prescribed by that Section occur earlier with respect to particular permits.

Paragraph (d), as proposed, incorporates the provisions of Section 515(c)(6) of the Act that review by the regulatory authority of mountaintop removal mining permits need not occur, if the permittee demonstrates compliance with all applicable provisions of law. It should be noted, however, that Section 511(c) of the Act contains no similar exemption, and, therefore, when mountaintop removal mining permits would be subject to review under Section 790.11 of this Subchapter, the regulatory authority would have to, in fact, conduct that review.

The legal authority afforded the regulatory authority under Section 511(c) of the Act to modify a permit, following periodic review, is proposed to be implemented, at subparagraph (d)(2), for special reviews of mountaintop removal mining permits under Section 785.15. It is intended that modifications made to those permits under State program provisions implemented pursuant to (d)(2) will be subject to the notice and hearing requirements of Section 790.11, in order to afford appropriate due process protection to the permittee.

8. Under Section 515(c)(5) of the Act, the regulatory authority is required to promulgate certain specific regulations for the issuance of mountaintop removal mining permits. Paragraph (e) of Section 785.15 is proposed to implement that section of the Act.

SECTION 785.16 - VARIANCES FROM APPROXIMATE ORIGINAL CONTOUR.

Authority for this section is found in Sections 102 (b), (c), (d), (e); 201(c); 501(b); 503(a); 504; 507(b); 508(a); 510(b); 511(c); 512 (b), (2), (c), (4), (21), (22); 515 (d), (e) of the Act. This section concerns permits incorporating variances from approximate original contour in steep slope surface coal mining; and reclamation operations other than mountaintop removal, and is intended to implement Section 515(e) of the Act.

1. Under Section 515(e) of the Act, the regulatory authority is authorized to issue permits incorporating variances from the requirement of restoring the land disturbed by mining to its approximate original contour. Because it is a variance available under section 515(e)(2) from the approximate original contour restoration requirement of Section 515(d)(2), specifically applicable to steep slope surface coal mining, the variance is available only for steep slope surface coal mining and reclamation operations. Therefore, the Office proposes that Section 785.16 be applicable only to steep slope surface coal mining and reclamation operation under regulatory programs.
2. It is recognized that under Section 515(e)(1) of the Act, State programs may, but are not required to, allow for variances for steep slope mining from the requirement of restoration to approximate original contour. However, if such variances are to be allowed by a State, they must conform to the requirements of Section 515(e). Those states that wish to allow for these variances would, therefore, have to include provisions, at a minimum, which meet the requirements of section 785.16. Section 515(e)(1) also provides that only Federal program must allow for variance under that section. Section 785.16 would establish minimum requirements for inclusion in particular Federal programs to govern the award of these variances.
3. The term ""steep slope" as used in Section 785.16 has the same meaning as that at Section 515(d)(4) of the Act and also proposed for adoption at Section 785.14(b) of this subchapter and Section 701.5 of Subchapter A. As in the case of the exceptions given for this term at sections 785.14(a)(1) (2) and Part 826, the term ""steep slope" as used in section 785.16 will not, of course, include these cases where either only an occasional steep slope is encountered or an operation is permitted as mountaintop removal mining. See Section 515(d) of the Act.
4. Sections 515(e)(1) (4) would establish certain special environmental protection performance standards applicable to those steep slope mines which are proposed for variances from the requirement of restoration to approximate original contour. The Office is proposing to implement these performance standards at section 826.13 of subchapter K. This preamble and proposed Section 785.16 should thus be read in conjunction with proposed Section 826.13.
5. Two principal reasons were articulated by Congress for authorizing variances from restoration to approximate original contour under Section 515(e) of the Act. The first, was to allow for use of the land to be mined, after reclamation, "" . . . suitable for an industrial, commercial, residential or public use (including recreational facilities)." Sections 515(e) (1), (2), (3), (A) of the Act. Second, was to improve control of the watershed of the land affected by the mining. Sections 515(e) (1), (3)(c) of the Act. Paragraph (e) of Section 785.16 emphasizes those purposes and is proposed to state the objectives of this Section. {41714}
6. As Congress stated in section 515(e)(2) of the act, the types of post-mining land uses for which variances may be authorized under section 515(e) are limited to "" . . . an industrial, commercial, residential, or public use (including recreational facilities)." As this list is included as a condition to the grant of an exception to the general requirement of restoration of land disturbed by mining to its approximate original contour, this category of post-mining land uses is to be construed narrowly. The Office does not believe this list can be expanded upon and proposes Section 785.16 as limited to the types land-uses specifically identified at Section 515(e)(2) of the Act. See sections 785.16(c), (d)(1).
7. Under section 515(e), several specific pre-conditions would be placed upon the grant of a permit incorporating a variance under that Section. Under Section 510(b) of the Act, the regulatory authority is required to find, before issuing any permit, that the applicant has proposed to conduct its operations in compliance with all applicable provisions of the Act and regulations. To implement the conditions imposed by section 515(e) and to ensure that the regulatory authority is provided with the information needed to make the necessary determinations under Section 510(b), the Office proposes paragraph (d) of Section 785.16. This paragraph would establish seven specific pre-conditions to the issuance of a permit under Section 515(e) of that act and Section 785.16 of Subchapter G.
8. The first condition, subsection (d)(1), relates to the proposed post-mining land use for the operations involved. The main text of that subsection is taken from the wording of section 515(e)(2) of the act. Proposed subsection 785.16(e)(i) is based upon the exact wording of Section 515(e)(A) of the act.

In addition, under section 785.16(d)(1)(ii), the applicant must demonstrate that the proposed post-mining land use will meet the requirements of the general environmental protection performance standards proposed at section 816.124, for approval of a post-mining use different from the pre-mining use. Section 785.16(d)(1)(ii) is proposed to implement the requirement of Section 515(3)(B) of the act, requiring a sound design of the post-mining use. This specific criteria is found, as proposed for implementation by the Office, with the other requirements for alternative post-mining land uses at Section 816.124, which Section 785.16(d)(1)(ii) adopts by cross-reference. The basis and purpose of all of those requirements are, in general, explained in the preamble to section 816.124.

9. The second condition to issuance of a permit with a variance under Section 785.16 is as subsection (d)(2) and relates to a demonstration that watershed control of the lands within the proposed permit area will be improved by the proposed operations. This is based upon Sections 515(d)(1) and 515(d)(3)(C) of the Act. As proposed, Section 785.16(d)(2) would identify two specific situations in which watersheds would be deemed "improved". The first is a resulting reduction in the discharge of pollutants from the proposed permit area to ground or surface waters and is based on certain of the environmental protection performance standards of the Act, in which Congress indicated that such a result is beneficial. See Sections 515(b)(8)(C); 515(b)(10)(A)(ii), (B)(i); 515(b)(17). The second situation is where flooding hazards within the watershed are reduced by a reduction in peak period discharges from precipitation runoff and is also based on congressional concern, expressed in the Act, that the hazard to the public safety and property from flooding in surface mined areas in hilly terrain be reduced in operations conducted under the Act. See Sections 101(c); 515(b)(8); 515(b)(10) of the Act.

These two specific instances under which watershed control would be deemed improved are, of course, tentative and the Office will consider proposals for additional, similar criteria. Those criteria must, however, be those which are reasonably administrable, particularly so that the benefits occurring to watershed control can be practically ascertainable as judged from points before, during, and after steep slope coal mining.

10. The third condition to issuance of a permit under Section 785.16 is proposed at subsection (d)(3), as the requirement of specific written consent of the surface owner to the award of a variance. This is based on the wording of section 515(d)(2), where such written consent is required. As proposed, this requirement would have to be made in a document separate from that proffered by the applicant to meet the conditions of section 510(b)(6) of the Act and Section 778.15 of this Subchapter, regarding the right of the applicant to conduct surface coal mining operations with the permit area, where ownership of the surface and mineral estates have been served. Consent to a variance under Section 785.16 would have to be made separately from that addressed by Sections 510(b)(6) of the Act and 778.15, to ensure that the surface owner is afforded sufficient opportunity to clearly understand the rights involved and to avoid confusion of persons who may review the permit application, including interested members of the public.

11. Under Sections 515(e) (1), (2) and (4), the regulatory authority is required to ensure that permits issued for variances under Section 515(e) will include certain special environmental protection performance standards. As explained above, these standards are being proposed at Section 826.13 of Subchapter K. Therefore, as a condition of issuing a permit, the Office is proposing at Section 785.16(d)(4) that the proposed operation will be conducted in compliance with Section 826.13 of subchapter K, in place of compliance with the general requirement of Section 515(d)(2) of the Act for returning the land to its approximate original contour.

12. To ensure that the requirements of Section 826.13 are, in fact, complied with by persons obtaining permits under regulatory programs with variances under Section 515(e) of the Act, and to aid State and Federal inspectors in identifying these mines, the Office proposes Section 785.16(d)(5) (6). Subsection (d)(5) would require that the regulatory authority make the provisions of Section 826.13 a specific written condition of any permit issued under Section 785.16. Subsection (d)(6) would require that the permit be clearly marked as authorizing a variance from approximate original contour. In addition, Section 785.16(d)(7) is proposed to ensure that only those variances authorized by the Act would be approved by the regulatory authority. {41715}

13. Under Section 515(e)(6) of the Act, the regulatory authority is required to periodically review permits, including variances under that section, unless the applicant affirmatively establishes that the operations involved are being conducted in compliance with all applicable provisions of law, including the terms and conditions of the permit. Under Section 511(c) of the Act, the regulatory authority is generally required to conduct periodic review of all outstanding permits for the same purposes as under Section 515(e)(6). To implement these provisions of the Act, in part, with respect to permits including variances awarded under Section 515(e) under regulatory programs, the Office proposes to establish paragraphs (e) and (f) of Section 785.16. Paragraph (e) is intended, for these permits, to supplement proposed Section 790.11 of this Subchapter, the regulation which would generally implement Section 511(c) of the Act.

Under paragraph (e), the regulatory authority would have to review all permits within three years both from the date of original issuance and renewal of the permit, so as to ensure that the operations involved receive the continued long-term scrutiny that Congress intended, particularly as to the implementation of the approved post-mining land use and development of any associated valley or head-of-hollow fill spoil disposal site. Review by the regulatory authority would, of course, have to be conducted prior to these three-year periods under either paragraph (e), or section 790.11, if the mid-term of the permit occurs prior to three years. Paragraph (e), as proposed, incorporates the provisions of Section 515(e)(6) of the Act, where review by the regulatory authority of mountaintop removal mining permits need not occur, if the permittee demonstrates compliance with all applicable provisions of law. It should be noted, however, that Section 511(c) of the Act contains no similar exemption and, therefore, when permits including variances under Section 515(e) would be subject to review under Section 790.11 of this Subchapter, the regulatory authority would have to, in fact, conduct that review.

The legal authority afforded the regulatory authority under Section 511(c) of the Act to modify a permit, following periodic review, is proposed to be implemented at paragraph (f) for special review of permits issued under Section 785.16. It is intended that modifications made to those permits under State program provisions implemented pursuant to (f) will be subject to the notice and hearing requirements of Section 790.11, in order to afford appropriate due process protection to the permittee.

14. Under Section 515(e)(5) of the Act, the regulatory authority is required to promulgate certain specific regulations for the issuance of permits authorizing variances from approximate original contour. Paragraph (g) of section 785.16 is proposed to implement that section of the Act.

785.17 - PRIME FARMLANDS.

INTRODUCTION.

1. This section contains requirements for a permit where land to be mined may be prime farmland. The requirements intended to insure that prime farmland will be identified and adequate plans developed by the person conducting mining operations to ensure return of the land to equal or better agricultural production than before mining. This section provides for a pre-application reconnaissance inspection to determine whether prime farmland may be involved, for a negative determination if prime farmland is not involved, procedures for the application to follow if prime farmland may be involved, a reclamation plan development for mining and restoration of prime farmland and criteria for issuance of a permit for mining of prime farmland.

2. The Department proposes to require operators to comply with performance standards equivalent to Section 515(b)(7) (prime farmlands) for permits issued prior to the date of enactment of the Act, or to any revisions or renewals thereof, or to any existing surface mining operations for which a permit was issued prior to the date of enactment of the Act, if the regulatory authority finds that such mining is being conducted on prime farmlands.

Under the Act, all surface coal mining operations during a Federal or State program must comply with Sections 515(b) (2), (5) and (19). Section 515(b)(2) requires the land to be "restored to a condition capable of supporting the uses which it was capable of supporting prior to any mining or higher or better uses * * *" Section 515(b)(5) requires the topsoil and such other strata be removed, segregated and preserved if such a practice is shown to be more suitable for vegetation requirements. Section 515(b)(19) requires a permanent vegetative cover of the same seasonal variety native to the area of the land to be affected. To implement these performance standards on prime farmland the Department proposes to implement Part 823 of Subchapter K.

3. The Department has considered the applicability of Section 515(d)(2) (Grandfather clause) in the permanent program and determined in light of the requirements of Sections 515(b) (2), (5) and (9) of the Act that this Section was intended to cover solely permit requirements for surface coal mining during the interim regulatory program. This construction of the grandfather clause is consistent with congressional intent, because the requirements imposed by the proposed regulations are believed to not prohibit mining which was ongoing as of August 3, 1977. See also Surface Mining Regulation Litigation Civil Action No. 78 162 (Mem. Op at 19) (May 3, 1978). Other statutory authority for this determination is found in Sections 507, 508, 510(b), 511 and 516.

The Department invites comments with supporting data on whether this interpretation of the Act will in fact prohibit any existing surface coal mining.

4. Legal Authority for this section is Sections 102; 201; 501(b); 503(a); 504; 507(b) (11), (16); 508(a) (2), (3), (4), (5), (8), (13); 510(b), (d); and 515(b) (2), (5), (6), (7), (19), (20) of the Act. This section would apply to all surface coal mining and reclamation operations on prime farmlands.

5. Technical literature used in the development of this section is:

Aldon, E. F. 1978. Reclamation of coal-mined land in the Southwest. *Journal of Soil and Water Conservation*. Vol. 33, no. 2, pp. 751-79.

Angel, P. N. 1973. A soil analysis of the strip mine spoil bank at Fairfield, Texas. M. S. F. thesis. Stephen F. Austin State University, School of Forestry, Nacogdoches, Tex. M. S. F. thesis. 72 pp.

Argonne National Laboratory. 1978. Land reclamation program. Annual Report. July 1976-Oct. 1977. Argonne, Ill. pp. 78-83.

Beall, R. M. 1978. Mean annual runoff in the upper Ohio River Basin, 1941-70, and its historical variation. *Geological Survey Water-Supply Paper 2042*. Washington, D.C. 32 pp.

Bear, F. W. 1953. *Soils and fertilizers*. 4th edition. John Wiley and Sons. New York, pp. 92-103.

Browning, G. M. 1946. Seasonal distribution of soil moisture under different crops. *Proc. Soil Sci. Soc. of America*, Vol. 11, pp. 517-521.

Doyle, John C., Jr., 1976. Strip mining in the corn belt – The destruction of high capability agricultural land for strip-mineable coal in Illinois: Washington, D.C., Environmental Policy Institute, 30 p. {41716}

Farm Research, 1977. Mine land reclamation: *Farm Research*, v. 34, no. 3, p. 35-37, Jan. Feb. 1977. (North Dakota State University, Agriculture Experiment Station.)

Federal Register : U.S. Department of Agriculture

(1) August 23, 1977, Prime and Unique Farmlands, p. 42359-42361;

(2) January 31, 1978, Prime and Unique Farmlands, p. 4030-4033.

Fehren Backer, J. B., Jansen, I. J., and Aldrich, S. R., 1977. Reclaiming Surface-mined soil – completed and proposed studies: *Illinois Research*, v. 19, no. 2, p. 8-9 University of Illinois, College of Agriculture.

Hodder, R. L. 1975. Montana reclamation problems and remedial techniques, in Wali, M. K., ed., *Practices and problems of land reclamation in western North America*. The University of North Dakota Press, Grand Forks, N.D. pp 90-106.

Illinois State Department of Mines and Minerals, (1975), Rule 1104_Lands to be reclaimed for row crop agriculture (Statement of the rule; statement of the principal reasons for adopting the rule; in *Rules and Regulations pertaining to the Surface-Mined Land Conservation and Reclamation Act*: 18 p.: 4 Appendixes.

Johnson, William M., McCormack, Donald E., and Sampson, R. Neil, 1977. Restoring Soil Productivity on Surface-mined land: Briefing presentation by the U.S. Soil Conservation Service before the committee on Interior and Insular Affairs, U.S. House of Representatives, April 5, 1977, 4 p.

Klimstra, W. D., Haynes, R. J., and Filer, E. E. 1977. Resume of the use of nearly 200,000 acres of surface-mined land in Illinois. 32d Annual Mtg. Soil Conserve. Soc. of America Proc., pp. 135-139.

McCormack, Donald E., 1974. Soil Reconstruction – for the best soil after mining, in 2d Research and Applied Technology symposium on Mined-Land Reclamation, proceedings of Coal and the Environment Technical Conference, Oct. 22-24, 1974, Louisville, Ky.: Washington, D.C., National Coal Association, p. 150-162.

McCormack, Donald E., 1976. Soil reconstruction – selecting materials for placement in mine reclamation: *Mining Congress Journal*, v. 62, no. 9, p. 32-36. (Reprint).

Olson, T. C. 1977. Restoring the productivity of a glacial till soil after topsoil removal. *Journal of Soil and Water Conservation*, Vol. 32, no. 3, pp. 130-132.

Power, J. F., Ries, R. E., and Sandoval, F. M., 1976. Use of Soil Material on Spoils – effects of thickness and quality: *Farm research*, V. 34, no. 1, p. 23-24, Sept. Oct. 1976. (South Dakota Agricultural Experiment Station Reprint No. 891).

Simonson, R. W. 1957. What soils are, in 1957 Yearbook of Agriculture. U.S. Department of Agriculture. Pp. 17-31.

U.S. Department of Agriculture: *Soil Taxonomy*, Agriculture Handbook 436.

U.S. Department of Agriculture: *Soil Survey Manual*, Agriculture Handbook 18. {41716}

U.S. Department of Agriculture, 1965, Rainfall-erosion losses from cropland East of the Rocky Mountain-guide for selection of practices for soil and water conservation: U.S. Department of Agriculture: *Agriculture Handbook* no. 282, 47 p. (Reprinted 1972). U.S. Department of Agriculture, 1969, Diagnosis and improvement of saline and alkali soils: U.S. Department of Agriculture, *Agriculture Handbook* no. 60, 160 p.

U.S. Department of Agriculture, 1975, Perspectives on prime farmlands – Background papers for seminar on the retention of prime farmlands, July 16-17, 1975, sponsored by the USDA Committee on Land Use: Washington, D.C., U.S. Department of Agriculture, 251 p.

U.S. Department of Agriculture, 1977, Laboratory Methods Recommended for Chemical Analysis of Mined-Land Spoils and overburden in Western United States: U.S. Department of Agriculture: Agriculture Handbook, no. 525, 31 p.

U.S. Environmental Protection Agency, 1978. Field and Laboratory Methods Applicable to Overburdens and Mine soils: U.S. Environmental Protection Agency Report EPA 600/2 78 054, 204 p.

U.S. Soil Conservation service, 1951, Soil Survey Manual _pH, p. 235, 360, 361, 362; organic matter, p. 245 250; texture, p. 297; soil fertility, nitrogen, phosphorous, and potassium, p. 336; U.S. Department of Agriculture, Agriculture Handbook no. 18, 503 p.

U.S. Soil Conservation Service, 1975, Soil Taxonomy – a basic system of soil classification for making and interpreting soil surveys; U.S. Department of Agriculture, Agriculture Handbook no. 436.

U.S. Soil Conservation Service, 1976(b). List of Published Soil Surveys: Washington, D.C., U.S. Soil Conservation service, 16 p. (Duplicated Report).

6. Under Section 510(a) of the Act, the regulatory authority is required to make certain special findings before issuing permits, if the area proposed to be mined contains prime farmland. That Section requires the Secretary, in consultation with the Secretary of Agriculture, to promulgate implementing regulations. Section 785.17 is being proposed as the permit system component of those implementing regulations. In addition, other implementing regulations are being proposed at Parts 701 and 823 of this Chapter, relating to definitions and special environmental protection performance standards, respectively. The reader should consider Section 785.17 closely with the relevant provisions of proposed Parts 701 and 823.

7. Paragraph (a) explains the scope of Section 785.17. As a general rule, Section 510(d)(1) of the Act makes special prime farmland permit provisions applicable to all surface coal mining and reclamation operations on lands which are prime farmlands.

The Office has considered whether underground mining activities should be exempted from the prime farmlands provisions of Section 785.17. Tentatively, the Office has concluded that underground mining activities should not be exempted for the following reasons.

First, it has been suggested that the Office may exempt underground mining activities from the requirements of Section 510(a)(1) of the Act under the provisions of Section 516(d) of the Act, which allow for modifications to the Office's regulations on the basis of distinct differences between surface and underground mining activities. However, with respect to permits, Section 516(d) of the Act limits allowable modifications to ". . . permit application requirements (and), permit approval or denial procedures . . .," (emphasis supplied) which the Office does not believe extends to permit approval or denial criteria. Because Section 510(d) of the Act specifies such criteria, the Office does not believe that it has the authority under Section 516(d) of the Act to exempt underground mining activities from the requirements to be proposed under Section 785.17.

Even assuming that legal authority for an exemption existed, the Office has not been presented with information establishing that sufficiently distinct differences between surface and underground mining activities exist with respect to prime farmland protection. Indeed, upon inquiry by the Office to the U.S. Soil Conservation Service, the Administrator of the Service reported that the adverse effects on prime farmland from underground mining activities have been observed to be severe, particularly from the effects of subsidence. Further, the administrator has reported that prime farmland topsoil can be adequately stockpiled, even for the length of time that surface areas may be disrupted by underground mining activities. See letter of R. M. Davis, Administrator, U.S. Soil Conservation Service, June 12, 1978, to W. N. Heine, Director, OSM.

8. Definition of soil survey. Under Section 507(b)(16) of the Act, a soil survey may be needed to be provided in permit applications in some situations for the regulatory authority to determine whether the mine plan area contains prime farmland. Paragraph (b) of Section 785.17 is proposed to specifically define the term "soil survey" for those purposes. The basis for defining the term is to ensure that commonly-accepted methods, shown to be repeatable and verifiable, are used by regulatory authorities to make accurate and consistent determinations of whether lands proposed to be mined contain prime farmland. As stated in paragraph (b), "soil survey" is defined to mean a map showing the distribution of soils in the mine plan area. The technical criteria to be used to prepare these maps are listed in the technical materials identified in paragraph (b). {41717}

9. Pre-application reconnaissance investigation. Section 517(b)(16) of the Act requires the making of a reconnaissance survey to determine whether the application should contain a soil survey. Paragraph (c) of Section 785.17 is proposed to implement this requirement. The particular items of information which would be required to be addressed in the pre-application investigation are those which will enable the regulatory authority to preliminarily determine under paragraph (d) that either no soil survey is needed, because the lands in the mine plan area are clearly not prime farmland and entitled to a

negative determination under paragraph (f), or to determine that a soil survey is needed, because the result of the reconnaissance inspection does not clearly exclude the mine plan area from the prime farmland category.

10. Paragraph (d) of section 785.17 is proposed to implement the requirement of Section 507(b)(16) that an application contain a soil survey, if the reconnaissance investigation suggests the mine plan area may contain prime farmland. Based on the results of the survey, the regulatory authority would decide whether the mine plan area definitely contains prime farmland, which would require that under Section 510(d)(1) of the Act the applicant file a plan for restoration of the lands. See paragraph (e) of Section 785.17.

11. Small plots exemption. The Office is considering as a potential alternative whether mine plan areas containing small parcels of prime farmland or parcels that are clearly economically insignificant could be excluded from detailed soil survey and restoration plan requirements. Under this alternative, the applicant could proceed to file an application merely upon the basis of a reconnaissance inspection, requesting a negative determination. The basis for this alternative would be:

(1) The belief that soils removed from small inclusions of prime farmland within a mine plan area might be better used to maintain or improve the productivity of other portions of the mine plan area, rather than to recreate a small, isolated, and economically unmanageable unit of prime farmland ;

(2) The theory that small isolated parcels of prime farmland which may exist along the periphery of a mine plan area do not have a long-term productive relationship to either the rest of the mine plan area or to adjacent lands.

12. Restoration plan contents. Paragraph (e) of Section 785.17 is proposed to implement the provisions of Section 508(a)(5) and 510(d)(1) of the Act. Under this section the applicant would provide a plan for the restoration of prime farmland to be mined.

(a) The regulation would require the plan to identify each soil map unit comprising the prime farmland and contain a description of each unit. The map units and the descriptions which are to be used are those developed by the National Cooperative Soil Survey, which is the only source of such information based on known National standards. This part of the regulations also requires U.S. Soil Conservation Service to review the units and descriptions contained in the plan, which is the logical alternative, since that agency is primarily responsible for developing them.

(b) In order to determine whether the proposed mining operations will be conducted in compliance with the performance standards in Section 823.11, the application must contain a profile description of the A, B, and C horizons, of the topsoil to a depth that collectively constitute the root zone of the locally adapted cultivated crops. The other alternative considered was to require descriptions to a depth of 4 inches or to bedrock, whichever is less, to describe the horizons that constitute the root zone. The first alternative was selected, although the Office recognizes that if only the soil horizons that collectively constitute the root zone of locally adapted cultivated crops are described, the depth of horizons described would be more dependent on the crop grown than on the depth of soil. Thus, for root growth, if one was growing alfalfa for hay or a seed crop, the depth might be 20 feet. For wheat, it might be only 24 inches.

(c) The unique combination of climate and soil characteristics, which are blended together to create prime farmland, are difficult to duplicate. However, a provision is included in 785.17(e)(4) to allow an applicant to submit scientific data to the effect that spoil other than the A, B, or C horizons can be used, when it can be shown to be as effective in restoring the productivity of the prime farmland as the use of the A, B, or C horizons would be. The rationale here would be to allow for the opportunity to reconstruct more productive land with material other than the prescribed A, B, and C horizons, if it can be demonstrated that the substitute material is equally or more productive.

(d) The applicant must include the seeding or cropping procedures for the final graded land, which will adequately control erosion, regardless of the season of the year in which the regrading is completed. This may consist of an annual cover crop to improve soil and aeration and return organic matter to the surface, or the land could be put immediately back into crop production. Under any circumstance, the applicant must show that the planned land treatment will have the effect of returning the productivity of the land to its premining condition, as required by Section 508(c)(2) and 515(b)(2) of the Act.

13. Criteria for negative determination. This subsection is authorized by 507(b)(16) of the Act and describes situations where a negative determination of prime farmland can be made. In any activity involving surface mining, a pre-application investigation is necessary to determine if prime farmland, as defined in Section 701.5(8) of this Chapter may be involved. There are essentially five criteria in determining if the land involved does not contain prime farmland. The first four criteria relate to portions of the prime farmland definition that may be determined without the need of a soil survey and the last alternative relates to situations where a soil survey is available.

(a) The first criterion involves the historical use portion of the prime farmland definition (See Section 701.5). If a pre-application investigation, as required in Section 785.17(c), determines that the land has not been historically used for cultivated crops a negative determination may be requested, and no additional investigation is required.

(b) If a pre-application investigation determines that the slope of the lands is greater than 10 percent, a negative determination may be requested. This measurement must be made according to the procedures outlined in Sections 779.25(i)

or 783.25(i) of the regulations, regarding slope measurements. The definition of prime farmland in Section 701.5 states that soils qualifying as prime farmland are such that the product of K (erodability factor) times the percent slope is less than 2. The experience of U.S. Soil Conservation Service scientists indicates that all soils on slopes of greater than 10 percent, regardless of rainfall, are excluded from prime farmland. Soils with K factors less than 2 would not be shown as prime farmland, because their water holding capacity is such that they would not be identified as prime farmland. Soil Conservation Service scientists have had primary responsibility in the preparation of over 1,000 published soil surveys. Thus, a negative determination with respect to slopes greater than 10 percent is a reasonable situation to consider in a reconnaissance inspection of an area to request a negative determination. If a soil survey is available, the map unit descriptions would verify whether the concerned areas have slopes greater than 10 percent.

(c) If an investigation establishes that the average annual precipitation is 14 inches or less and the land is not irrigated or naturally subirrigated, and has no developed water supply that is dependable and of adequate quality, a negative determination may be requested. This aspect of the pre-application investigation relates to the definition of prime farmland in 701.5 and also the definitions of "subirrigated" in 701.5(a)(4). Soils with acidic or toxic moisture regimes are in sections of the country where the average annual precipitation is 14 inches or less. Experience gained in many published US SCS Soil Surveys has shown that the commonly grown cultivated crops can not be produced in 7 or more years in areas with 14 inches or less average annual precipitation, unless the soils are irrigated or naturally subirrigated. Therefore, soils with acidic or toxic moisture regimes are excluded from the definition of prime farmland, unless they have a developed irrigation water supply that is dependable; and of adequate quality. {41718}

The phrase "or naturally subirrigated" is included for those soils where the average annual rainfall is 14 inches or less, but because the soils have a natural zone of saturation that delivers water to the roots from underneath, these soils may have an echoic moisture regime, and therefore may be defined as prime farmland. If the pre-application investigation determines that the average annual precipitation is 14 inches or less, that the soils are not irrigated or naturally subirrigated, and there is no developed water supply that is dependable and of adequate quality, a negative determination of prime farmland may be requested.

(d) The fourth criterion for a negative determination relates to other criteria of prime farmland that may be determined without a soil survey. These are the determination of frequency of flooding of the land involved and the characteristics of the surface layer which are readily determined such as the amount of coarse rock fragment. The prime farmland definition would exclude soils which are flooded frequently during the growing season. Section 701.5. Frequently flooded is defined as flooding occurring more often than once in 2 years. Therefore, if soils subject to flooding are involved and records indicate these soils are subject to frequent flooding, these soils would be excluded from prime farmland.

Also, Section 701.5(8)(3)(ix) pertains to a characteristic of soil that may be determined without a soil survey. This part of the prime farmland definition relates to the amount of rock fragments coarser than 3 inches. Experience has shown that if the amount of rock fragments coarser than 3 inches is greater than 10 percent, the use of equipment necessary for planting, cultivating and harvesting is curtailed unless the coarse rock fragments are removed. The removal of these coarse rock fragments is generally uneconomical.

(e) The fifth criterion for a negative determination would apply when a soil survey of lands within the mine plan area is available and this survey indicates there are no soil map units that have been designated prime farmland by the U.S. Conservation Service. Over 65 percent of the Nation has had soil surveys completed. This includes over 1,000 published soil surveys. The list of published soil surveys is published by the United States Department of Agriculture, Soil Conservation Service and is periodically updated.

14. Consultation with the Secretary of Agriculture by the Regulatory Authority. Under Section 510(d)(1) of the Act, the regulatory authority is required to consult with the Secretary of Agriculture before issuing a permit for the mining of prime farmland. Paragraph (g)(1) of Section 785.17 is proposed to implement that requirement.

15. Permit approval or denial criteria. Paragraph (g)(2) is proposed to establish the minimum criteria for issuance of a permit authorizing the mining of prime farmland. The first criterion, Subsections 715.17(g)(2)(i) (ii), is based upon the explicit requirements of Section 510(d)(1) of the Act. The fourth criterion, finding that the applicant will comply with the special environmental protection performance standards for prime farmland of Part 823 of Subchapter K, is also based on Section 510(d)(11) of the Act which requires a showing that the soil reconstruction standards of Section 507(b)(6) of the Act, upon which Part 823 is based, will be met.

The third criterion, at Section 715.17(g)(2)(iii) is that the proposed post-mining land use must be for prime farmland. This is based on the Office's careful examination of the Act's legislative history. That examination reveals that the Act requires

that prime farmland be restored to a state capable of agricultural yield equivalent to or higher than that of surrounding prime farmland.

Under Section 510(d)(1) of the Act, a permit may be issued for the mining of prime farmlands, as defined in Section 701(20), only upon a finding that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in Section 515(b)(7) of the Act. See also 42 Fed. Reg. 62693 (1977) (to be codified in 30 C.F.R. Section 716.7). The Act requires in Section 515(b)(7) that, when prime farmlands are mined, the topsoil and other soil horizons suitable for plant growth be segregated and replaced over spoil material. The Act further provides that a permittee's performance bond shall not be released "until soil productivity for prime farmlands has returned to equivalent levels of yield as non-mined land of the same soil type in the surrounding area under equivalent management practices . . ." Section 519(c)(2).

Both the wording and content of these provisions suggest that the prime farmland is to be restored for agricultural production. Such an interpretation appears unavoidable in light of the soil reconstruction standards based on plant growth, the requirement of restoration of soil productivity and the comparison of the yield after reclamation to the yield of surrounding non-mined prime farmland.

In testimony before the Senate Public Lands and Resources Subcommittee, the Secretary stated that he favored an amendment requiring "restoration of soil productivity for prime agricultural lands." 123 Cong. Rec. S 5862 (daily ed. April 18, 1977). Subsequent discussion in Congress of the prime farmland provisions indicates an intent, similar to that of the Secretary, to avoid loss of the soil productivity of the land and to restore its agricultural yield. 123 Cong. Rec. S 8104, 8108, 8111 (daily ed. May 20, 1977).

After the House and Senate Conferees had agreed upon the final language of the surface mining bill, they explained in the Conference Report the thought behind the prime farmland provisions:

"It is the intention of the Conferees that the written finding that the regulatory authority is required to make before a permit is granted to mine on prime farmland can be based in part on the expert opinion of the regulatory authority, the operator has the technological capability to perform the soil reconstruction standards of Section 515(b)(7) and the performance of those standards will result in the restoration of the mined area to equivalent or higher levels of agricultural yield as non-mined prime farmland in the surrounding area under equivalent levels of management." {41719}

H.R. Rep. No. 493, 95th Cong., 1st Sess. 105 (1977). See also 123 Cong. Rec. S 12201 (daily ed. July 18, 1977); 123 Cong. Rec. H 7591 (daily ed. July 21, 1977).

Upon the basis of this legislative history, the Office believes that the Act requires, as a prerequisite to mining on prime farmland, that there be a finding of capability to restore the area to equivalent or higher levels of agricultural yield as prime farmland. Concomitantly, the Act requires actual reclamation of these lands for agricultural use as prime farmlands.

SECTION 785.18 - SURFACE MINING CONCURRENT WITH UNDERGROUND MINING.

Authority for this section is Sections 102, 201; 501(b); 503(a); 504; 507(b); 508(a)(5), (9); 510(b); 511(c); 515(b)(12), (16) of the Act. This section would apply to permit applications for combined surface and underground coal mining, where the applicant desires a variance from the requirement to reclaim the affected land as contemporaneously as practicable so as to conduct underground mining activities. This variance would allow the operator to use part of the highwall established by surface mining to begin his underground operations. Applicants for such a variance would be required to file complete applications for both the surface and underground operations showing why they are necessary for maximum recovery of coal and how they will avoid multiple disturbances of surface lands. The application would have to identify the area for which the variance is sought and the particular regulations from which the variance is sought. The applicant would have to assess the adverse environmental impacts of the variance and show how the spoil not used for contemporaneous backfilling will be stored.

The regulatory authority would be allowed to grant a permit for such a variance, if it finds that the plans are feasible, and coal recovery will be maximized to avoid repeated surface disturbance. It must also be found that there will be no on-site or off-site environmental damage resulting from the delay in reclamation. Liability under the performance bond would have to

be continued for the duration of the combined surface and underground coal mining activities. Permits containing such variances shall be reviewed at least once every three years by the regulatory authority.

SECTION 785.19 - ALLUVIAL VALLEY FLOORS.

Authority for this section is Sections 102; 201(c); 501(b); 503(a); 504; 507(b)(11), (13); 508(a)(3), (4), (5), (13); 510(b); 515(b)(2), (10) of the Act. This section would apply to surface coal mining and reclamation operations on or adjacent to alluvial valley floors in arid or semi-arid areas of the country west of the one-hundredth meridian.

(1) Under Section 510(b)(5) of the Act, the regulatory authority is required to make certain specified findings as to whether proposed mining operations would adversely affect alluvial valley floors and uses thereof located west of the 100th meridian. Regulations to implement that section of the Act are being proposed at Section 786.17 of Subchapter G. Under Sections 507(b) and 508(a) of the Act an applicant is required to furnish detailed information in permit applications regarding preservation of the hydrologic balance. Under Section 515(b)(10) of the Act alluvial floors are part of those aspects of the hydrologic balance which are to be protected. To ensure that the regulatory authority is provided with sufficient information to make the findings required under 510(b)(5), and to afford the protection required by Section 515(b)(10) of the Act, the Office is proposing Section 785.19.

Special environmental protection standards for protection of alluvial valley floors are proposed to implement Sections 510(b)(5) and 515(b)(10) of the Act at Part 822 of Subchapter K. Finally, definitions specifically applicable to mining near alluvial valley floors are being proposed at Part 701. The reader should thus consider Section 785.19 together with Section 786.17 and Parts 701 and 822.

(2) Technical literature used in the development of Section 785.19 includes the same technical literature as is cited in the Preamble to Section 701.5, 786.17 and Part 822, and also includes:

(a) Hardaway, J. E., Kimball, D. B., Lindsay, S. F., Schmidt, J., Erickson, L., March 1977. "Subirrigated Alluvial Valley Floors: A Reconnaissance of Their Properties and Occurrence on Coal Resource Lands in the Interior Western United States." U.S. EPA, Region VIII, Denver, Colo. in Papers Presented Before the Fifth Symposium on Surface Mining and Reclamation, NCA/BCR Coal Conference, pp. 61-135.

(b) Malde, H. E., and Boyles, J. M., 1976. "Maps of Alluvial Valley Floors and Strippable Coal in 42 7 ½ -minute Quadrangles, Big Horn, Rosebud, and Powder River Counties, Southeastern Montana," USGS. Open File Report 76-162.

(c) Office of Surface Mining, 1978, Guidance Document: "Technical Identification and Study of Alluvial Valley Floors,"

(d) Schmidt, J., 1977, "Alluvial Valley Floors in East Central Montana and their Relation to Strippable Coal Reserves; Reconnaissance Report, U.S. EPA, Region VII, in Cooperation with the State of Montana."

(e) National Academy of Sciences, Rehabilitation Potential of Western Coal Lands National Academy of Sciences, A Study for the Energy Policy Project, Washington, 1974.

(f) Cheyenne: Hydrology of the Upper Cheyenne River Basin Sediment Sources and Drainage-Basin Characteristics, Geological Survey Water Survey Water Supply Paper 1531, Washington, 1961.

(g) Hardaway, J., Meeting with State and Federal Regulatory Staff regarding technical finance paper on Identification and Study of Alluvial Valley Floors, US EPA, August 28, 1978.

(2) Section 785.19 as proposed, would provide for a two-tiered approach to the making of permit applications in areas west of the 100th meridian which are located within a valley holding a stream or within two miles of any stream. First, the applicant would be required to conduct a pre-application reconnaissance inspection in these areas holding a stream or within two miles of a stream, to determine the absence or likely presence of an alluvial valley floor in the vicinity of a proposed mine plan area. The two mile limit would be based on the results of hydrogeologic investigation indicating that groundwater in alluvial valley floor areas has been affected by coal mining at distances of up to two miles (Reference c). The two mile limit is based upon a review of data available to the Office. (Reference (c)). The Office will, however, consider other relevant data that may be submitted to it during the comment period and establish the distance limit for the pre-application inspection appropriately in the final rules. The detailed technical basis for the items which would have to be included within the pre-application investigation under Sections 785.19(c)(1)(i)-(vii) are explained in Reference (c).

Under Section 785.19(c)(2), the regulatory authority would be required to make specific findings before determining that any portion of an alluvial valley floor or stream subject to the pre-application requirements may be excluded from further consideration in the full permit application process. The criteria for those findings are explained in Reference (c). It is

expected that the regulatory authority would make these findings prior to receipt of a complete application for a permit for the area involved.

(3) If the results of the pre-application investigation were to indicate that a valley floor is located within the two-mile range, then the applicant would be required under paragraph (d) of Section 785.19 to develop detailed information for inclusion in the permit application. The basis for the requirements of paragraph (d) are explained at reference (c) and (g). {41720}

(4) The data requirements set forth in Section 785.19 are believed to be representative of standard geologic, hydrologic, biologic, and land-use studies necessary to establish characteristics which support the essential hydrologic functions of alluvial valley floors, and determine the effect of the proposed operation on agricultural activities conducted on or adjacent to the proposed mine plan area. As proposed, these requirements would allow the regulatory authority the discretion to provide more detailed guidance regarding the quantity of data to be required.

SECTION 785.20 - AUGERING OPERATIONS.

Authority for this section in Sections 102; 201; 501(b); 503; 504; 507(b); 508(a); 510(b); and 515(b) of the Act. Under Section 515(b)(9) of the Act, specific environmental protection performance standards are provided for the permanent regulatory program for surface coal mining and reclamation operations involving augering operations. Those performance standards are being proposed for implementation to ensure that the regulatory authority is provided with sufficient information in permit applications under regulatory programs to determine whether operations proposing to utilize augering will be conducted in compliance with Part 819, Section 780.20 is being proposed.

SECTION 785.21 - COAL PROCESSING PLANTS AND SUPPORT FACILITIES NOT WITHIN THE PERMIT AREA FOR A SPECIFIC MINE.

Authority for this section is Section 102; 201; 501(b); 503; 504; 506; 507(b); 508(a); 510(b); 515; 516 and 701 of the Act. Under Section 701(28)(B) of the Act certain coal processing plants and related support facilities not located within the permit area for a specific mine, but " . . . incident" to the operation of coal mines are defined to be "surface coal mining operations." Under Section 506(a) of the Act, all of those operations must obtain permits under regulatory programs, to operate on and after eight months from approval of those programs. Under Section 515 of the Act, environmental protection performance standards are applicable to those operations. Section 785.21 is being proposed to implement the Act's permit requirements for these operations and to ensure that they will be conducted in compliance with the special environmental protection performance standards being proposed for those operations at Part 827 of Subchapter K. The reader should consider Section 785.21 together with Part 827 and the provisions of Part 701, where the specific extent to which these operations will be covered under the Act are being proposed by appropriate definition.

SECTION 785.22 - IN SITU ACTIVITIES.

Authority for this section is Sections 102; 201; 501(b); 503(a); 504; 506(a); 507(b); 508(a); 510(b); 515; 516; 517 and 701 of the Act. Under Section 701(28)(A) of the Act, "in situ" mining of coal is deemed to constitute surface coal mining operations and, under Section 560(a) of the Act, can only be operated under regulatory programs pursuant to permits. Under Section 515 of the Act, environmental protection performance standards are applicable to those operations. Section 785.22 is being proposed to implement the Act's permit requirements for these operations and to ensure that they will be conducted in compliance with the special environmental protection performance standards being proposed for these operations at Part 828 of Subchapter K. The reader should consider Section 785.22 together with Part 828. {41720}

PART 786 – TERMS AND CONDITIONS OF PERMITS AND CRITERIA FOR APPROVAL OR DENIAL OF PERMITS

SECTION 786.1 - SCOPE;

SECTION 786.2 - OBJECTIVES;

SECTION 786.4 - RESPONSIBILITY.

Authority for these sections are Sections 102, 201(c); 501(b); 503; 504; 505; 506; 507; 508; 509; 510; 515; 516; 517; and

522(a), (e)(3), (5) of the Act. Part 786 is intended to provide the minimum requirements for regulatory program provisions for permit terms, permit conditions and the substantive criteria to be used by the regulatory authority in deciding whether to issue a permit.

SECTION 786.11 - PERMIT TERMS.

Authority for this section is found generally in Sections 102; 201(c); 501(b); 503(a); 505, and 506 of the Act. This Section provides minimum requirements for permit terms under State programs.

All permits, in general, would be limited to a period not to exceed five years as provided in Section 506(b) of the Act. However, the States would be free to provide for more restrictive permit periods under State programs because the Act preserves from preemption more stringent requirements of State law. See Section 505 of the Act.

One exception would be proposed from the standard five-year term for permits. This is based on the proviso clause of Section 506(b) of the Act and is proposed at subsection 786.11(a). Longer permit terms may be granted under this section, if it is necessary to allow the operator to finance the purchase of equipment to open the mine.

The Office has considered whether an additional exemption from the standard five-year permit term should be allowed for underground mining activities. Upon examination of this issue, it has been tentatively concluded that the Office has no legal authority to allow for such an exemption. Although Subsection 516(d) of the Act authorizes the Office to "modify" the general provision of the Act relating to "permit T3 application requirements, (and) permit approval or denial procedures" (emphasis supplied), the Office does not believe this extends to allow for modifications of the Act's permit term provisions. Permit term provisions are believed to be substantive criteria and "procedural" or "application" requirements covered by Subsection 516(d) of the Act.

Under Subsection 786.11(b), a permit would terminate if mining has not commenced within three years after issuance. The regulatory authority could extend the time period, if the opening of the operation were delayed by conditions beyond the control of the operator. Notice of such extensions are to be made to the public. For certain synthetic fuel facilities or major electric generating plants, surface coal mining operations would be deemed to have started at the time of the construction of those facilities. These provisions are required by Section 506(c) of the Act.

Subsection 786.11(c) is proposed to make it clear that permits are subject, during their stated terms to enforcement actions authorized under the Act. The authority for these actions are at Sections 504(d), (f); 511(c); 515(b)(16), (c), (e); 516(c); 517; 518; 519; and 521(a), (b), (d); of the Act.

SECTION 786.12 CONDITIONS OF PERMITS: GENERAL AND RIGHT OF ENTRY.

Authority for this section is found at Sections 102; 201; 501(b); 503(a); 504; 506(a); 507; 508; 509; 510; 515; 516; and 517 of the Act. So that all requirements of the Act, this chapter, and regulatory programs will be complied with by persons operating under permits issued by regulatory authorities, Section 776.12 is proposed to require that the regulatory authority place specific conditions in all permits.

Subsection 786.12(a) is proposed to insure that mining operations are conducted according to the representations made to the regulatory authority by way of the materials submitted in the application for the permit, except to the extent that the regulatory authority has otherwise directed in the permit. This provision is necessary to insure that the regulatory authority's determination that reclamation will be feasible, based upon the materials submitted in a permit application, is not undermined by deviations from representations made in the application during the actual conduct of mining and reclamation operations. {41721}

Subsection 786.12(b) is proposed primarily to implement the provisions of Section 517 of the act, requiring that authorized representatives of both the Secretary and the State regulatory authority be provided access to the areas covered by the permit or where records required to be kept by the permit are located, without delay or the need for a search warrant. The provisions of this paragraph are appropriately limited to require that such entries be allowed: (a) Where State or Federal inspectors present "appropriate credentials" and (b) that the entry be for certain specified purposes listed in subparagraphs (1) and (2) of this paragraph.

The Office has considered the question of whether requiring warrantless entries by State and Federal inspectors of permit operations would contravene the Fourth Amendment to the United States Constitution. The Office has concluded, based upon a review of the Act's legislative history and relevant case law, that such entries are lawful. *Surface Mining Regulation Litigation*, F. Supp. ____ (D.D.C., August 24, 1978) (Mem. Op. at 21-24). The Office has also proposed that, for the purposes of the right-of-entry permit condition, the offices' fee collection inspectors be deemed to be ""authorized representatives of the Secretary," to allow for the Office to fulfill its responsibilities under Sections 102(h), 201(c); 401; 402; and 403 of the Act, by collection of the fees due under Section 402.

Subsection 786.12(c) is proposed to insure that operations conducted under permits are limited to those operations which were specifically disclosed on maps submitted to the regulatory authority as part of the permit application, under either Part 779-780 for surface mining activities or under Part 782-783 for underground mining activities. This requirement is important for two reasons. First, it is only with respect to those specific lands authorized for mining under a permit that the regulatory authority will have determined that reclamation of the area to be mined will be feasible, within the term of that permit, as required by the Act. Second, under Sections 506(d) and 511(a) of the Act, mining activities outside the boundary of the lands indicated on maps submitted in the permit applications must be made the subject of a new permit application.

SECTION 786.13 - CONDITIONS OF PERMITS: ENVIRONMENT, PUBLIC HEALTH AND SAFETY.

This section is proposed to require permits issued by regulatory authorities to be specifically conditioned for the protection of the environment and public health and safety. Authority for this provision is Sections 102; 201; 501(b); 503; 504; 510; 515; 516; and 517 of the Act.

Subsection 786.13(a) would require permittees to take certain actions in the event of noncompliance with any term or condition of the permit, in order to minimize environmental harms.

Under Subsection 786.13(b), permits must be conditioned to insure adequate disposal of solids sludge, filter backwash or other pollutants removed during the course of use of water pollution or air pollution control facilities connected with the permitted surface coal mining and reclamation operations. This provision is based upon a similar provision specified in permits issued pursuant to the Clean Water Act, 33 U.S.C. 1251 et seq., for the National Pollution Discharge Elimination System Permit Program. See 40 CFR Parts 124 125.

Under Subsection 786.13(c), the regulatory authority would be required to provide for any other conditions in the permit which will be needed to further the term and conditions of the permit, the Act, the requirements of this chapter and the applicable regulatory program. This provision is proposed to insure that the regulatory authority conditions permits to account for site-specific factors requiring special attention during the conduct of the permitted operations.

Examples of such conditions would be:

1. Specific effluent limitations on pollutants in addition to, or more stringent than, those listed in the General Effluent Limitations of the Environmental Protection Performance Standards at Sections 816.41 and 817.41;
2. Alternative conditions imposed on a permittee in place of general provisions of the performance standards of subchapter K which may be waived by variances granted for certain special categories of mining under Sections 785.11, 785.12, 785.13, 785.15, 785.16, and 785.18 of this subchapter;
3. Provisions to be incorporated in permits as the result of modifications made to the permit under Part 790 of this subchapter;
4. Conditions under which the regulatory authority may authorize alternative means of achieving a performance standard, where such alternative means are specifically authorized under the provisions of Subchapter K.

SECTION 786.15 - CRITERIA FOR PERMIT APPROVAL OR DENIAL.

Authority for this section is Sections 102(b), (c), (d), (e); 201(c); 501(b); 503(a); 504; 505; 509(a), (b), (c); 510(a), (b), (c); 515(a), (b); 516(a), (b), (d); 517; and 522(a), (e), (1), (3), (4), (5) of the Act. This section would provide the substantive criteria by which a regulatory authority would approve or deny an application for a new or revised permit. This section is proposed principally to implement the requirements of Sections 510(b), (c) and 522(e) of the Act, under which surface coal

mining and reclamation operations are to be authorized only under certain limited conditions. The general requirements in the main text of section 786.15 are derived from the text of Section 510(b) of the Act. The most important principle would be that the burden of proof to show entitlement to a permit would rest with the applicant, as expressly provided for in Section 510(b) of the Act.

Subsection 786.15(a) is based on Section 510(b)(1) of the Act and is proposed to insure that all requirements applicable law governing the issuance of a permit have been complied with by the applicant and the regulatory authority. Subsection 786.15(b) is based on Section 510(b)(2) of the Act.

Under Subsection 786.15(c), the requirement of Section 510(b)(3) of the Act would be implemented. First, the regulatory authority would be required to have completed an assessment of the probable cumulative impacts of all anticipated coal mining in the area around the mine plan area on the hydrologic balance of the "general area" around the particular permit area. Second, the regulatory authority would have to determine that the proposed operations under that application have been designed to prevent material damage to the hydrologic balance outside the permit area.

With respect to the general assessment of all anticipated coal mining in the area, the regulatory authority is to utilize the information provided for that task in the application under Section 780.21(c) or 784.13(c) of this Subchapter. This information may, of course, be largely derived from data collection and analysis efforts of State and Federal agencies under Section 507(b)(11) of the Act. The Office has considered how this data is to be assessed and made available to State regulatory authority. A data collection and analysis coordination project initiated by the U.S. Geological Survey is currently underway to provide for these needs and is expected to be a functioning system for the use of regulatory authorities by the time that State programs are implemented in late 1979. {41722}

Regarding the term "hydrologic balance," the same definition given that term in the initial regulatory program at Section 710.5 of this Chapter would be continued under proposed Section 701.5. However, the Office will consider whether additional elements should be added to that definition in the rules, especially for the purposes of the regulatory authority's determination under Subsection 786.15(c). In particular, the Office will consider whether the following factors should be made specific elements of the definition of "hydrologic balance" and, accordingly, solicits comments on these factors:

- (1) General and numerical water quality standards adopted under the provisions of Section 303 of the Clean Water Act, as amended 33 U.S.C. section 1313;
- (2) Additional quantitative standards expressing the relationship between the chemical, physical, and bacteriological properties of water and the impact of varying degrees of those properties on the public uses of those waters and fish and wildlife using those waters;
- (3) Quantitative standards limiting the extent to which the quantities of water in surface and ground systems may be allowed to be disturbed in a given area by coal mining.

Under Sections 522(a) and (d) of the Act, Congress has required that State programs incorporate processes for designation of lands as unsuitable for all or certain types of coal mining. Under Section 522(e), Congress itself specifically prohibited coal mining in several instances. To insure that these provisions are implemented in the permits processes under regulatory programs, of Subsections 786.15 (d) and (e) are proposed. Under these subsections, the regulatory authority must insure that permits are not issued for areas prohibited from being mined under Section 522 of the Act and the regulations being proposed to implement this section at Subchapter F.

Under Section 510 (b)(4) of the Act, Congress specified that no permits are to be issued where either: (i) An area has been designated unsuitable for the type of coal mining involved in an application under a designation process conducted pursuant to Section 522(a), (b), and (d) of the Act, or (ii) where a proceeding for such a designation is already pending.

Paragraphs 786.15(d)(1) and (2) are proposed to implement those provisions of Section 510(b)(4) of the Act. Appropriate allowance has been made for the exemption from the requirement of Section 510(b)(4) for investment in "substantial legal and financial commitments prior to January 4, 1977." The substantive criteria by which a determination of whether such commitments have been made by the applicants are provided for in Subchapter F.

Under Section 522(e)(1), certain important Congressionally-designated lands are prohibited from coal mining. Under Section 522(e)(5), mining is prohibited within specified distances of certain designated structures. Regulations are being proposed to implement those provisions of the Act at Section 761.11(a), (f), (g), of Subchapter F. To account for these prohibitions on mining in regulatory program permit processes, subparagraph (d)(3) of Section 785.16 is being proposed.

Under Section 522(e)(5) of the Act, mining within 300 feet of an occupied dwelling is prohibited, subject to exception by written consent of the owner of the dwelling. Criteria for determining whether that exception should be approved in a

particular case are being proposed at Subsections 761.11(e) and 761.12(e) of Subchapter F. To account for this prohibition, subject to an approved exception, in regulatory program permit processes, Paragraph 785.16(d)(5) is proposed.

Under Section 522(e)(4) of the Act, mining which would adversely affect a public park or historical place is prohibited, unless jointly approved by the regulatory authority and agency with jurisdiction to manage the park or historic place. Criteria for determining whether that approval should be granted in a particular case are being proposed at Subsection 761.12(b) of Subchapter F. To account for this prohibition, subject to an approved exception, in regulatory program permit processes, Subsection 786.15(e) is being proposed.

Under Section 510(b)(c) of the Act, the regulatory authority is prohibited from issuing a permit for surface mining activities, where the private mineral estate has been severed from the private surface estate, unless the applicant has submitted appropriate documentation to establish its right to use the surface mining method on the lands involved. Subsection 785.16(f) is proposed to implement this provision through adoption, by cross-reference, of the requirements regarding information required to be contained on applications addressing this issue and specified in Subsections 778.15(b) and 782.15(b) of this Subchapter.

Under Section 510(c) of the Act, the regulatory authority is prohibited from issuing a permit until the applicant has demonstrated that any violations of the Act or other State or federal air, water or other environmental laws, caused by the applicant at another mining operation, have been corrected or are in the process of correction to the satisfaction of the government agency with jurisdiction over the violation. Subsection 786.15(g) is proposed to implement that provision of the Act in the context of the regulatory authority's decision on issuance or denial of a permit.

Under Section 510(c) of the Act, the regulatory authority is prohibited from issuing a permit to an applicant whose pattern of prior willful violations of the Act has resulted in irreparable damage to the environment, so as to indicate an intent not to comply with the provisions of the Act in the future. Subsection 785.16(h) is proposed to implement this provision of the Act. Provision for conducting the hearing required prior to making a determination under Subsection 785.16(h) not to issue a permit is being proposed at Subsection 788.12(d) of this Subchapter.

The mining of contiguous areas under different permits, either by the same or different permittee, can cause special problems if not adequately accounted for. As an example, one permittee could be allowed to divert a stream running through two contiguous permit areas resulting in a discharge, after diversion, into the middle of the second permittee's surface operation area. To insure that such problems are avoided, Subsection 785.16(i) is proposed to require the regulatory authority to determine that operation under a particular permit will not be inconsistent with other operations to be performed in adjacent areas.

Under Section 509(a) of the Act, a permit applicant is required to file a performance bond or other equivalent guarantee with the regulatory authority prior to the issuance of the permit. Regulation implementing Section 509 are being proposed at Subchapter J. To implement the particular provision of Section 509(a) on the posting of the bond prior to issuance of a permit, Subsection 786.15(j) is being proposed.

Under Section 510(d)(1) of the Act, certain specific findings must be made by the regulatory authority before issuing a permit for mining on prime farm land. Special permits regulations are being proposed for mining on prime farm lands under Section 785.17 of this Subchapter. To insure that the regulatory authority makes the specific findings for issuance of a permit that are required under Section 510(c) of the Act and which would be required under Section 785.17, Subsection 786.15(k) is being proposed.

Under Sections 512(b) and 515(b)(2) of the Act, the regulatory authority must find, prior to issuing a permit, that reclamation of the mine plan area will be feasible, including appropriate provision for the postmining land use. Environmental protection performance standards for protection of the postmining land use are being proposed at Sections 816.124 and 817.133 of Subchapter K, for surface mining activities and underground mining activities, respectively. To insure that the regulatory authority makes the specific findings for issuance of a permit that are needed under Section 515(b)(2) of the Act and which would be required under Sections 816.124 or 817.133, Subsection 786.15(l) is being proposed. {41723}

Under Parts 816 and 817 of Subchapter K, administration of the environmental protection performance standards system would require numerous prior approvals of the regulatory authority before the conduct of operations. To insure that those

approvals are made under regulatory programs, Subsection 786.15(m) is being proposed.

The Office has received comments concerning whether additional criteria should be established to determine the operator's ability to reclaim a mine plan area. The Office invites additional comment on this alternative to address whether the Office should require a showing that the applicant has the necessary machinery and financial capability to reclaim the land.

SECTION 786.17 - CRITERIA FOR PERMIT APPROVAL OR DENIAL: ALLUVIAL VALLEY FLOORS.

1. Authority for this section is Sections 102; 201; 501(b); 503; 504; 506(a); 507(b); 508(a); 510(b); 515(b); and 517 of the Act. Under Section 510(b)(5) of the Act, the regulatory authority is required to make certain specific findings prior to the issuance of a permit authorizing the conduct of surface coal mining and reclamation operations on or adjacent to alluvial valley floors located west of the 100th meridian of the country. Under Section 515(b)(10) of the Act, environmental protection performance standards are provided for the protection of the hydrologic balance, including of alluvial valley floors. Under Section 510(b)(3) of the Act, the regulatory authority is required, prior to the issuance of a permit, to insure that proposed operations have been designed to prevent material damage to the hydrologic balance.

Under Part 822 of Subchapter K, the Office would establish special environmental protection performance standards applicable to surface coal mining and reclamation operations on or adjacent to alluvial valley floors. To implement these provisions of the Act and to insure that operations will be conducted in full compliance with the provisions of Part 822, Section 786.17 is being proposed to provide the substantive criteria by which a regulatory authority is to decide whether to approve of a permit for mining on or adjacent to alluvial valley floors west of the 100th meridian.

Permit application information requirements for these operations are being proposed at Section 785.19 of this Subchapter. The reader of Section 786.17 should, therefore, carefully consider that section together with Section 785.18, Part 822 and certain special definitions applicable to alluvial valley floors being proposed at Section 701.5 of this Chapter.

The substantive criteria by which the regulatory authority is to determine whether a permit can be issued for mining on or adjacent to alluvial valley floors west of the 100th meridian are being proposed in Subsection 786.17(a). Three specific criteria are proposed. The first and second criteria are based upon the language of Sections 510(b)(5)(A) and (B) of the Act. The third criteria, insuring that the proposed operations will be conducted in accordance with the performance standards of Part 822 applicable to alluvial valley floors, is proposed to insure that the goal of feasible reclamation in Section 102 of the Act is implemented with respect to mining on or adjacent to alluvial valley floors.

Subsection 786.17(b) provides for two exceptions, under which applications for permits could be approved by the regulatory authority without regard to the substantive criteria specified at Subsection 786.17(a). These exceptions are specifically authorized under the proviso clause to Section 510(b)(5) of the Act.

Technical literature used to develop proposed Section 786.17 includes the literature cited in the preamble to Section 785.19 and Part 822 and, in addition, the following:

- (1) Federal Water Pollution Control Administration, Water Quality Criteria (1968);
- (2) Moss and Hoffman, Crop-Salt Tolerance-Current Assessment, Journal of Irrigation and Drainage Division of The American Society of Civil Engineers (June, 1977).

Subsection 786.17(c) is being proposed to provide specific guidelines for the use of the regulatory authority in determining the extent of acceptable impact of proposed surface coal mining and reclamation operations on farming in alluvial valley floor situations. As proposed, OSM would establish as a measure of significant impact on farming, a value of 10 percent of decrease in a farm's production capacity for harvestable crops, a 10 percent decrease of the farm's water supply or a combination of these factors which would result in a 10 percent decrease in typical annual productivity.

Specific guidelines for the use of the regulatory authority in determining whether the impact of the proposed operations on the quality or quantity of water in surface or underground water systems supplying alluvial valley floors are being proposed in Subsection 786.17(d). Under that subsection, material damage to the quantity and quality of water supplying alluvial valley floors would be defined as meaning changes in ground water or surface water which are projected to affect adversely the utility and production of sub-irrigated or flood-irrigated agricultural lands. OSM believes it would be preferable to use projected changes in water quality and quantity rather than changes in vegetation as measures of such changes, because projected damage to vegetation can be forecast only by implementing very long-term measurement programs. In contrast,

changes in water quantity and quality may be predicted with the use of hydrologic models. OSM is recommending, that the following criteria be used, unless more stringent and site-specific criteria are developed by the regulatory authority under a particular regulatory program:

- (1) Increases in total dissolved solids in excess of threshold values projected to result in crop-yield decreases (but in no case would applicable water quality standards be violated);
- (2) Increases in the average depth of water saturated zones during the growing season located within the root zones of the alluvial valley floor that would reduce the amount of subirrigable land compared to premining conditions;
- (3) Decreases in surface water flows that reduce the size of the alluvial valley floor that is irrigable; and
- (4) Changes in surface or ground water systems that are detrimental to agricultural activities through flooding or water logging.

Alternatives to these criteria that were considered in the development of this proposal included:

- (1) Merely repeating the language of the Act at Section 510(b)(5) and providing no additional guidance.
- (2) Using values of 10 to 20 percent of change in total dissolved solid content of water supplied to alluvial valley floors to determine whether material damage to water and subsequent damage to vegetation was sufficient to deny a permit.
- (3) Measuring increases to the saturated zones within the upper six feet of those zones only,
- (4) Requiring further definitions by the regulatory authority, and
- (5) Allowing no damage to water and agriculturally important vegetation of alluvial valley floors.

The basis for selection of the proposed regulations, as opposed to the above alternatives, was the legislative history of the Act, technical literature cited above and in the preamble to Part 822 and the OSM's understanding of the difficulty of comparing environmental data in a statistically significant manner. The first alternative has been tentatively rejected because of both the Office's understanding that Congress expected it to provide more detailed guidance in implementing the Act through regulations and the existence of certain common criteria used by hydrologists, geologists and land-use planners to determine the impact of industrial activity or agricultural production. The second alternative has not been adopted because of the lack of available data for streams not affected by mining, from which it would be possible to ascertain whether natural changes in total dissolved solids content could be as significant as the percentage values identified in the second alternative. Instead, it is being proposed that industrial damage to water quality be measured according to changes in total dissolved solids in absolute forms, based on data available to the regulatory authority which shows the levels of total dissolved solids that cause crop yields to begin to decline. {41724}

The third alternative considered, an assessment of increases for saturated zones within the upper six feet of these zones, only has been tentatively rejected because crops commonly grown in alluvial valley floors, such as alfalfa, have root zones that may be affected at levels deeper than six feet. Alternative four has been rejected as the sole method of implementing Section 510(b)(5) of the Act by regulation; however, discretion is being left to the regulatory authority to determine if more specific criteria should be developed. The fifth alternative of allowing for no changes in water quality, quantity or agricultural productivity under any circumstances has been rejected because of the need to account for normal variability in environmental data. Instead, quantitative limits, where proposed, are believed to represent variations slightly outside the range of normal fluctuations, as observed during field inspections and measurements of experts detailed to the Office.

PART 787 – PUBLIC PARTICIPATION IN PERMIT REVIEW PROCESS

SECTION 787.1 - SCOPE;

SECTION 787.2 - OBJECTIVES;

SECTION 787.4 - RESPONSIBILITY.

Authority for these sections is Sections 102; 201(c); 501(b); 503; 504; 507; 508; 510 (a), (b); 513; 514; 516(a); and 522(e)(4) of the Act. One of Congress' central purposes in adoption of the Act was to insure adequate provision for participation by the public in regulatory programs for surface coal mining and reclamation operations. Section 102(i) of the Act. For the permit process, Congress provided certain key elements for public participation. Part 787 is proposed to implement this congressional purpose and these provisions of the Act.

SECTION 787.11 - PUBLIC NOTICES OF FILING OF PERMIT APPLICATIONS.

1. Authority for this section is generally Sections 102; 201(c); 501(b); 503; 504; 510 (a), (b); 513(a); and 517 of the Act.

This section would govern notices of the filing of applications required to be made to the public by both applicants and the regulatory authority.

2. Under Subsection 787.11(a), the applicant would be required to run an advertisement of its application in a local newspaper, once a week for four weeks, commencing with the filing of the application with the regulatory authority. The advertisement would have to contain the name and address of the applicant, a map showing the location and boundaries of the proposed operation and other information, the general area around the proposed permit area, the location of the filing with an appropriate public office of a complete copy of the application, and the place to which written objections, comments and requests for informal conferences would be sent. The newspaper advertisement is required by Sections 507(b) and 513(a) of the Act.

Maps in newspaper advertisement. The Office is proposing that a map with certain specified detailed information be included in the newspaper advertisement, to implement the requirement of Section 513(a) of the Act that this notice contain the "precise location and boundaries of the land to be affected." A map, rather than an extended verbal discussion of these items, is proposed for the use of the lay public who may not easily understand the technical, legal, and engineering terminology that the textual description of the location and boundary of a parcel of land generally involves. See H.R. Rep. No. 93 1522, 93rd. Cong, 2d. Sess. at 76, 81 (1974). The type of map called for in the proposed regulation is already required by West Virginia state law (Sections 8, 9, Article 6, Ch. 20, W. Va. Code) for newspaper notices of the filing of surface mining permit application with the West Virginia Department of Natural Resources. The Office recognizes that requiring inclusion of a map in the newspaper advertisement may involve additional expense for permit applicants than if no map were required. However, it is believed that this will not be significant on a national basis and would be outweighed by the benefit of better notice to the public. (See Memorandum, B. J. Gregg, US DOI to D. Buente, US DOI, Sept. 1, 1978).

3. Under Section 522(e)(4) of the Act, mining is prohibited within one-hundred feet of the outside right-of-way of a public road, subject to two exceptions. Approval of those exceptions may be granted by the regulatory authority only after notice and opportunity for a public hearing. To provide for a determination of whether an exception should be granted, it is proposed, under Paragraph 787.11(a)(5), that the newspaper advertisement of filing of a permit application explain the basis for the request of the exception.

4. Under Subsection 787.11 (b) and (c), the regulatory authority is to issue written notifications of the receipt of permit applications to various other concerned Federal, State and local governmental agencies, public utilities operations, the Regional Director of the Office and other interested persons for opportunity to submit comments to the regulatory authority. This notification requirement is proposed to implement Sections 102(i), 507(e), 513(a), and 513(b) of the Act. Some States commended past notice of the filing of the application should not be required to be given to other State or Federal agencies. However, Section 513 of the Act requires that this notice be given by the regulatory authority.

5. The applicant is also required by Section 507(e) of the Act, to file a copy of the application at the courthouse of the county or other available public office in the county where the mining is proposed. Appropriate exclusion from this public filing for information entitled to confidential treatment under Sections 507(b)(17), 507(e), and 508(a)(12) of the Act would be provided.

Several comments were received regarding the time limit for filing of a copy of the application with a public office. Some States and industry commenters suggested that this be required only after the regulatory authority makes an initial determination that the application is complete, so that the public does not waste time reviewing incomplete applications. Some public interest commenters suggested that filing of the application be required as early as possible, recommending a point as the same time as the first date of required newspaper advertisement. These commenters suggested that the public be allowed as much time as possible to review permit applications, even if incomplete.

The Office has tentatively decided not to change the rule in light of these comments, because it believes that requiring filing of the application by the last date of newspaper publication strikes a reasonable balance between the public's desire to be afforded as long a comment period as possible and the States' desire to avoid the review of comments on incomplete application which are mooted by subsequent submissions of the applicant. However, further comments on this matter are solicited. {41725}

SECTION 787.12 - OPPORTUNITY FOR SUBMISSION OF WRITTEN COMMENTS ON PERMIT APPLICATIONS.

Authority for this section is Sections 102; 201(c); 501(b); 503(a); 504; 510(a), (b); and 513(a) of the Act. All persons to whom notice has been given, either through newspaper advertisement or written notification, are authorized by the Act to file comments concerning the application with the regulatory authority. Section 787.12 is proposed to implement those provisions of the Act. All comments are to be added to the copy of the application open for public inspection, immediately upon receipt by the regulatory authority, so that all interested members of the public can be made aware of issues raised regarding the permit application. As provided by Section 513(a) of the Act, the time limit and manner for submission of these comments would be left to the discretion of the regulatory authority so long as those requirements are reasonable.

Several industry commenters suggested that this section be modified to require that copies of comments be sent to the applicant. The Office agrees that applicants should be provided with opportunity to respond to comments and states further comment on how this can be best accomplished in the final rules.

SECTION 787.13 - RIGHT TO FILE WRITTEN OBJECTIONS.

Authority for this section is Sections 102; 201(c); 501(b); 503; 504; 510 (a), (b); and 513(b) of the Act. Under Section 787.13, all interested parties would have the right to file written objections to the issuance of a permit within 30 days of the last publication date of the advertisement. Copies of the objections would be sent by the regulatory authority to the applicant and filed with the copy of the application placed in a public office under Subsection 787.11(d).

SECTION 787.14 - INFORMAL CONFERENCES.

Authority for this section is Subsections 102; 201(c); 501(b); 503; 504; 510 (a), (b); 513(b); 516(a); and 522(e)(4) of the Act.

1. Under Section 513(b) of the Act, provision is made for the regulatory authority to conduct an informal conference to determine whether a permit should be issued. Section 787.14 is proposed principally to implement that section of the Act. The procedures for initiating requests of the conference are proposed in Subsection 787.14(a) and are based upon Section 513(b) of the Act. In addition, under Subsection 787.14(b), the regulatory authority would be required to honor requests for a conference as provided for in Section 513(b) of the Act. As is indicated in Section 513(b) of the Act, the conference is to be held within "a reasonable time of the receipt of an objection and request," and no specific time limit would be fixed by the proposed regulation.
2. The location of the conference, public notice for pre-conference discovery procedures, and the purpose for the conference would be determined according to the provisions of proposed paragraphs 787.14(b) (1, 2, 3, and 4). These provisions are based upon Section 513(b) of the Act and its legislative history. The legislative history of the Act indicates that Congress intended that the informal conference not be conducted according to the rules for a formal adjudicatory hearing. Accordingly, Paragraph 787.14(b)(5) is proposed to indicate that the requirements of the Administrative Procedure Act regarding formal adjudicatory hearings are not to be applied to determine the conduct of the informal conference. Additional provisions in Section 787.14 would authorize the regulatory authority to conduct the conference, receive relevant information and maintain a record until release of the applicant's performance bond, if the permit is issued, as provided in Section 513(b) of the Act.
3. Some commenters proposed that issues to be considered at the conference not be limited to those raised in the comments, objections, and requests for informal conferences received by the regulatory authority. However, the regulatory authority must have some method to prepare for the conference and the applicant needs to be adequately informed of what issues it will need to respond to at the conference. Therefore, the Office is soliciting further comment on this question.
4. Subsection 787.14(d) is proposed to implement Section 522(e)(4) of the Act, whereby exceptions to the general prohibition against conducting mining operations within 100 feet of the outside right-of-way of a public road may be authorized by the regulatory authority, subject to opportunity for a public hearing. The regulations providing for the substantive criteria by which such exceptions are to be granted proposed in Subsection 761.12(d) of Subchapter F. Subsection 787.14(d) would allow the regulatory authority to utilize an informal conference for the purposes of satisfying the requirement of a hearing under Subsection 761.12(d).

5. The Office has considered whether minimum requirements regarding the informal conference should be proposed, in addition to those formally identified in Section 787.14. Among such alternatives are providing for additional procedural rules governing the conduct of the hearing and providing for time limits for the actual conduct of the hearing. The Office has tentatively concluded not to propose such additional requirements, based upon its reading of the legislative history of Section 513(b) of the Act as indicating Congressional intent that, aside from the minimum requirements provided by the Act, the conduct of the informal conference was to be left to regulatory discretion, so as to insure that the issues to be considered at such hearings can be most expeditiously and practically resolved.

6. Some commenters suggested that this section be modified to specifically provide that any person may be a "party" to the conference, whether or not that person also has submitted comments, objections, or requests for a conference to the regulatory authority. The Office does not interpret the existing text of this section as precluding the regulatory authority from allowing those persons to become parties and, therefore, believes that no additional language is needed.

SECTION 787.15 -PUBLIC AVAILABILITY OF INFORMATION IN PERMIT APPLICATION ON FILE WITH THE REGULATORY AUTHORITY.

Authority for this section is Sections 102 (b), (c), (d), (e), (i); 201(c); 501(b); 503(a); 504; 507(b) (17); 507(e); 508(a)(12), (b); 510 (a), (b); and 517 of the Act.

Under Section 517(f) of the Act, a general rule is established for information obtained by the regulatory authority under the Act. This rule is that all of that information is ordinarily to be made reasonably available for public inspection and copying, in keeping with the purposes of the Act in Section 102(i). Further, Sections 507(b)(17) and (e) specifically provide for making publically available information in permit applications filed with the regulatory authority. Therefore, under Sections 102, 507, and 517, all information contained in applications for permits is to be generally made available to the public by the regulatory authority. Subsection 787.15(a) is proposed to implement this requirement.

The Act, however, does provide for certain exceptions to the type of information contained in permit applications that the regulatory authority is required to make available. These exceptions are provided for in Sections 507(b)(17) and 508(a)(12) and (b) of the Act. Paragraphs 787.15(a)(1) through (3) are proposed to implement these exceptions. As exclusions, these are to be interpreted narrowly.

Under Subsection 787.15(b), provision is proposed for adoption of administrative procedures to identify and segregate, from non-protected information, that information which is entitled to protection under Paragraphs 785.15(a)(1) (3). {41725}

PART 788 – REGULATORY AUTHORITY REVIEW AND DECISIONS ON PERMIT APPLICATIONS

Part 788 is proposed to set forth the procedures that the regulatory authority is to follow after receipt of an application for a permit, to decide whether to grant or deny it and to notify interested parties of that decision. {41726}

SECTION 788.12 - REVIEW OF PERMIT APPLICATION.

(1). Authority for this Section is Sections 102; 201(c); 501(b); 503; 504; 507; 508(a); 509; 510 (a), (b), (c); 513; 514(a), (b); and 522(e) of the Act. Under the Act, the regulatory authority is required to follow certain procedures for reviewing completed applications for permits. Section 788.12 is proposed to implement those provisions of the Act.

(2). Under Sections 510(a) and 514(a) (b) of the Act, the regulatory authority is required, prior to granting or denying a permit, to review the permit application materials and the results of public input from required public participation procedures. Paragraph (a) of Section 788.12 is proposed to implement these requirements. Under Section 509(a) of the Act and the regulations being proposed to implement that provision, Subchapter J, the regulatory authority must insure that, prior to issuing a permit, the applicant has filed a satisfactory performance bond or other guarantee. Section 788.12(b) is proposed to implement those provisions during the process of final review of a permit application.

(3). Under Section 510(c) of the Act, the regulatory authority is required to review the application and other relevant information about the applicant, to ascertain whether the applicant is in violation of the Act or other State and Federal air

and water environmental statutes. If the regulatory authority learns of the existence of a violation of these laws, as evidenced by issuance of written notification from the governmental agency with jurisdiction over the violation, or from other information, then the regulatory authority is precluded from issuing a permit, unless the applicant submits proof of correction of the violations. Paragraph (c) of Section 788.12 is proposed to insure that the regulatory authority implements these requirements of Section 510(c) of the Act.

(4). Under Section 510(c) of the Act, the regulatory authority is also directed not to issue a permit where 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 and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the Act." This determination is, however, to be made only after opportunity for a hearing. To implement the requirement for this hearing, paragraph (d) of Section 788.12 is proposed to require that the regulatory authority offer opportunity for an adjudicatory hearing as would be provided for in particular regulations of the regulatory program.

(a) In proposing that this hearing be adjudicatory in nature, the Office has reviewed relevant case law. Based on this review, it has tentatively concluded that the individualized nature of the factual determination that will be involved in this circumstance are the types of determinations that the courts have held that due process requires an adjudicatory, as opposed to a legislative, hearing.

(b) The Office has also considered whether the other hearing provisions required under the Act in the permit process could be utilized to satisfy the requirement of a hearing under Section 510(c) of the Act. Based upon a review of the relevant provisions of the Act, the Office has tentatively concluded that these other hearing requirements would not satisfy the provisions of Section 510(c).

As to the informal conference provided for under Section 513(b) of the Act, that hearing would appear not to be applicable in the context of Section 510(c), because, by its own terms, that conference is "informal" and not the "adjudicatory" hearing which due process is thought to require for a Section 510(c) hearing. The hearing provision of Section 514(c) of the Act also appears to be inapplicable, because that is a hearing to be provided after the regulatory authority acts on a permit, whereas the hearing under Section 510(c) of the Act is to be afforded prior to such a decision.

(c) The Office has also considered whether minimum procedural requirements should be specified in Section 788.12(d), to govern the conduct of the adjudicatory hearing under Section 510(c) of the Act. Similar minimum requirements are proposed to be required for regulatory programs for hearings under Section 514(c) of the Act. See Part 789 of this Subchapter. The Office has not yet decided whether to specify such procedural requirements under 788.12(d) and specifically solicits comments on this matter.

SECTION 788.13 - PERMIT APPROVAL OR DENIAL ACTIONS.

Authority for this Section is Sections 102; 201(c); 501(b); 503; 504; 507; 508(a); 509; 510(a), (b), (c); 514(a), (b); and 515 of the Act. Under Sections 510(a), (b), (c); 513(a), (b), and 514(a), (b) of the Act, the regulatory authority is required to reach a determination of whether to grant or deny a permit on the basis of a thorough review of a complete application and the results of public participation. Following that review, Sections 506(a), 510(a), and 514(a), (b) and (c) of the Act specify time limits and methods by which the regulatory authority is to decide whether to issue or deny a permit and make notification of that decision. Section 788.13 is proposed principally to implement those provisions.

1. Paragraph (a) of Section 788.13 would provide for a check-list of all general requirements that the regulatory authority must insure have been complied with, prior to deciding whether to issue or deny a permit according to the criteria of Section 786.15 and 786.17 of this Subchapter.

2. Paragraph (b) of Section 788.13 would provide the time limits in which the regulatory authority must act to formally grant or deny a permit after the receipt of an application. It is important to note that all of the time limits set forth in this paragraph would commence running only upon the regulatory authority's receipt of a complete application.

3. Under paragraph (b), two separate systems of time limits would be imposed on the regulatory authority. The first, at Section 788.13(b)(1), is to be applied under Sections 506(a) and 514(a) of the Act to those completed applications received by the regulatory authority at the early stages of implementation of the permanent regulatory program.

Under Section 502(d) of the Act and Section 771.19(b)(1) of this subchapter, those persons expecting to operate mines on or after eight months of approval of a regulatory program will be required to file permit applications within two months from the approval of the regulatory program. Under Section 506(a), the regulatory authority is to issue or deny a permit in response to those applications within the eight months period after approval of the program. However, a further time constraint is imposed by Section 514(a) of the Act, requiring the regulatory authority to act on any application within sixty days of the close of an informal conference held under Section 513(b).

As proposed, Section 788.13(b)(1) would implement the requirements of Sections 506(a) and 514(a), by requiring a decision on applications filed within the two months deadline of Section 502(d) of the Act and Section 771.19(b)(1) to be made within eight months of approval of the regulatory program, or within sixty days of the close of an informal conference, whichever occurs earlier. {41727}

4. After the first stage of implementation of a regulatory program covered by section 788.13(b)(1), the Act provides for no particular fixed time constraint in which the regulatory authority is to act on an application, except where an informal conference has been held. In general, Section 514(b) of the Act requires that these actions be taken within a "'reasonable time.'" However, where an informal conference has been held, then the regulatory authority is required to act within 60 days of the close of the conference. Section 788.13(b)(2) is proposed to implement these provisions of the Act. It is important to note that, as proposed, those applications filed after the two months deadline from approval of a regulatory program, as required by Section 502(d) of the Act and Section 771.19(b)(1) of this Subchapter, would be covered by the provisions of Section 788.13(b)(2).

The Office is concerned that the phrase "'reasonable time'" in this context be applied so as to insure that applications are given meaningful review and that adequate opportunity for full public participation is provided. Accordingly, the Office solicits comments on whether safeguards to insure that those ends are achieved should be provided in the final rules.

5. Under Section 510(c) of the Act, the regulatory authority is required to provide opportunity for a hearing prior to disapproving an application, because of the applicant's prior violations of the Act which show a present intent not to comply with the Act. As was explained in the preamble to Section 788.12(d), this hearing would have to be conducted separately from the informal conference procedure. Because a Section 510(c) hearing must, by the terms of that section, be conducted prior to the denial of a permit, the regulatory authority may be precluded for a substantial period of time from taking final action on the application involved, within the time constraints otherwise to be required under Section 788.13(b). As the Office interprets the Act, it is believed that Congress intended that those time constraints not preclude the conduct of a hearing required by Section 510(c) of the Act. Therefore, paragraph (b)(3) of Section 788.13 is proposed to provide for the tolling of the time limits otherwise required for a decision by the regulatory authority under Section 788.13(b).

7. Under Sections 514(a)-(c) of the Act, the regulatory authority is required to give notice of and reasons for its final decision in issuing or denying a permit. In addition, the Office will need to be advised of that decision and provided with a copy of the permit, in order to carry out its administrative, investigative, and enforcement responsibilities under sections 504, 517, 518 and 521 of the Act and Parts 733, 736, and Subchapter L of this Chapter. To implement the requirements of Section 514 and to enable the Office to perform those responsibilities, paragraph (d) of Section 788.13 is proposed.

8. Under Section 506(a) of the Act, the regulatory authority is required to give notice of the issuance of a permit to local governments in the area of the operation. Section 788.13(e) is proposed to implement that Section of the Act. {41727}

PART 789 – ADMINISTRATIVE AND JUDICIAL REVIEW OF DECISIONS BY REGULATORY ON PERMIT APPLICATIONS

Sections 514 and 526 of the Act provide for opportunities for administrative adjudicatory and for judicial review of final decisions by the regulatory authority on applications for permits and of the regulatory authority's failure to act on applications within the times required by the Act. Part 789 is proposed to implement these provisions of the Act.

SECTION 789.11 - ADMINISTRATIVE REVIEW.

Authority for this Section is Sections 102; 201(c); 501(b); 503; 504; 510 (a), (b); 514 (c), (d), (e); and 515 of the Act.

1. Under Section 514(c) of the Act, a regulatory program must afford opportunity for an adjudicatory hearing to the applicant or any person whose interest is or may be adversely affected by a final decision of the regulatory authority to grant or deny a permit. The time limit to request such a hearing is specified under Section 514(c) to be within 30 days of notice to the applicant of the decision of the regulatory authority. Paragraph (a) of Section 789.11 is proposed to implement these provisions of the Act.

2. Under Sections 514 (c) and (e) of the Act, minimum rules of procedure and time limits for the conduct and completion of the adjudicatory hearing are specified. Paragraphs (c), (d), and (e) of Section 789.11 are proposed to implement those requirements. The Office is also considering whether additional minimum procedural requirements should be specified for these hearings. Among the matters which might be specified are minimum requirements for:

- (i) Discovery including the taking of deposition and the use written interrogatories between the parties to the hearing;
- (ii) Intervention;
- (iii) Rules of evidence;
- (iv) The filing of motions and post-hearing briefs, proposed findings of fact and conclusions of law ; and
- (v) Re-consideration and re-hearing.

Those additional minimum requirements might be modeled according to the similar requirements of the Administrative Procedures Act, 5 USC Sections 554 557, and/or the existing rules for practice and procedure before the Department's Office of Hearing and Appeals in proceedings under the Act, 43 C.F.R. Part 4. The Office specifically solicits comments on whether additional minimum requirements for adjudicatory hearings under this Part should be established in the final rules.

3. Under Section 514(d) of the Act, the hearing authority under a regulatory program is authorized to provide for temporary relief, when a hearing is requested under Section 514(e) of the Act. Relief is to be based upon specific findings of the existence of certain conditions. Section 789.11(c) is proposed to implement those provisions of the Act.

The conditions stated at subparagraphs (c)(1) to (3) of Section 789.11 are based on the express language of Section 514(d) of the Act. The fourth condition of paragraph (c)(4) is proposed to make it clear that temporary relief may not include the issuance of a permit, where the action of the regulatory appealed from was the denial, in whole or in part, of a permit.

This condition is proposed on several bases. First, the Office interprets the provisions of Section 102(b), (c), (d), and (e); 201(c); 507, 508 and 510 of the Act to state a general requirement that coal mining not be allowed to be conducted until the applicant has clearly and thoroughly demonstrated, through careful scrutiny by the regulatory authority, that reclamation of the area to be disturbed by the proposed operations will be feasible. The Office feels that only a full adjudicatory hearing on the merits, not merely a temporary relief hearing, can provide for the careful scrutiny needed before a decision is made to reverse a determination of the regulatory authority that reclamation will not be feasible. Second, general principles of administrative law provide that temporary relief is available only to restore the parties to the status quo prevailing prior to the governmental decision from which relief is sought, see., e.g., *Virginia Petroleum Jobbers Assoc. FPC 259 F.2d 921 (DC Cir., 1958)*. In cases where a permit denial is involved, the status quo does not include authorization for surface coal mining and reclamations to proceed under a permit, so that the power to award temporary relief according to the general principles of administrative law does not allow for temporary issuance of a permit. {41728}

SECTION 789.12 - JUDICIAL REVIEW.

Authority for this Section is Sections 102; 201(c); 501(b); 503, 514(f); 520; and 526 of the Act. Under Section 514(f) of the Act, the applicant or any person adversely affected who has participated in administrative proceedings under Section 514(c)-(e) of the Act has the right to seek judicial review, under Section 526 of the Act, of the action of the regulatory authority in issuing or denying a permit, or of the regulatory authority's failure to act on an application within a time limit prescribed by the Act. This right of judicial review is in addition to the right to a citizen suit found in Section 520 of the Act. The right to judicial review is mandated for State programs by Section 526(e) of the Act. For Federal programs, judicial review is provided for permit cases by Sections 526(b)-(c) of the Act. Section 789.12 is proposed to implement those requirements of the Act.

PART 790 – PERMIT REVISIONS AND REGULATORY AUTHORITY REVIEW OF OUTSTANDING PERMITS

SECTION 790.11 - REGULATORY AUTHORITY REVIEW OF OUTSTANDING PERMITS.

Authority for this Section is Sections 102; 201(c); 501(b); 503; 504; 509(e); 511(c); 514; 515(b)(16); 515(c); 515(e); and 711 of the Act. Under Section 511(c) of the Act, regulatory authority is to review each permit at least once during its term. Following this review, the regulatory authority is authorized to revise or modify the permit, to assure compliance by the permittee with the Act. Similar, but particularized review, revision and modification power is provided to the regulatory authority for certain special categories of mining by Sections 515(b)(16), 515(c) and 515(e) of the Act. Section 790.11 is proposed to generally implement these requirements, along with similar provisions for special categories of mining at Sections 715.13, 715.15, 715.16 and 715.18 of this Subchapter.

SECTION 790.12 - PERMIT REVISIONS.

Authority for this Section is Sections 102; 201(c); 501(b); 503; 504; 507; 508(a); 509(a), (e); 510(a), (b), (c); 511(a); 513; 514; and 515(a), (b) of the Act. Under Section 511(a) of the Act, a permittee may apply for a permit revision during the term of its permit, together with a revised reclamation plan. Under Section 511(a)(2) of the Act, however, those revisions are not to be used to extend the area of operation beyond the original extent permit area, except for incidental boundary revisions. Section 790.12 is proposed principally to implement those provisions of the Act. {41728}

PART 791 – PERMIT RENEWALS

SECTION 791.1 - SCOPE; 792.2 - OBJECTIVE.

Authority for this Section is Sections 102; 201(c); 501(b); 503(a); 504; 506; 507; 508; 509; 510; 513; 514; and 515 of the Act.

SECTION 791.11 - GENERAL REQUIREMENTS.

Authority for this Section is Sections 102; 201; 501(b); 503; 504; and 506(d)(1) of the Act. Under Section 506(d)(1) of the Act, each permit issued under a regulatory programs can be successively renewed, within the boundaries of the original permit area, in order to continue operations within that area. Section 791.11 is proposed to implement that provision of the Act.

SECTION 791.12 - APPLICATION FOR RENEWALS.

Authority for this Section is Sections 102; 201; 501(b); 503; 504; 506(d); 507; 508; 509; 513; and 515 of the Act. To insure that the regulatory authority can make the findings necessary to authorize permit renewals, Section 791.12 is proposed to require that applications for renewals explain any changes in the original application, provide evidence of the permittee's continued satisfaction of self-insurance requirements, and that appropriate public notice be given of the filing of the application.

In addition, Paragraph (b) of Section 791.12 would provide for appropriate distinction between the review of renewal applications proposing an extension to the boundaries of the original permit area and those applications which would merely propose to continue already permitted operations. In addition, paragraph (b) make allowance for the special exemptions authorized under sections 506 and 510 of the Act for renewing certain permits involving mining on or adjacent to alluvial valley floors.

SECTION 791.13 - TERMS OF RENEWALS.

Under Section 506(d)(3) of the Act, renewals are not to be granted for a term in excess of that authorized by the Act for the original permit. Section 506(b) of the Act provides for maximum permit terms. Section 791.13 would implement those provisions of the Act.

SECTION 791.14 - APPROVAL OR DENIAL OF RENEWALS.

The criteria for determining whether an application for renewal of a permit should be awarded are provided for in Section 506(d)(1) of the Act, together with provision for establishing the burden of proof in that determination. Section 791.14 is proposed to implement those provisions of the Act. {41728}

PART 792 – TRANSFER, SALE OR ASSIGNMENT OF RIGHTS GRANTED UNDER PERMITS

INTRODUCTION

1. Section 511(b) of the Act provides that:

""No transfer, assignment, or sale of the rights granted under permit issued pursuant to this Act, shall be made without the written approval of the regulatory authority."

This provision could be construed, of itself, to prohibit the transfer, assignment, or sale of rights granted under any permit without the succeeding party first obtaining a new permit from the regulatory authority. Such a construction is, however, negated by the provision of Section 506(b) of the Act that:

""A successor in interest to a permittee who applies for a new permit within 30 days of succeeding to such interest and who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successors application is granted or denied."

In order to give effect to both of these provisions of the Act, the Office is proposing Part 792, to provide the standards and procedures for transfer, sale, or assignment of rights under permits issued by regulatory authorities under regulatory programs. The scheme being proposed would establish a two-stage process for obtaining regulatory authority approval of any transfer, sale, or assignment of those rights. I11First, the person seeking to obtain approval for transfer, assignment, or sale would have to obtain ""approval" of the regulatory authority, by establishing that it satisfies the legal, financial, ownership, and compliance requirements originally imposed upon persons making applications for new permits under the Act. Upon satisfaction of these requirements, the regulatory authority would issue written approval for the transfer, assignment, or sale of rights. Assuming that the successor thereafter continued to operate the surface coal mining and reclamation operations involved in the same manner provided for in the mining and reclamation plan approved as part of the original permit, no further approval by the regulatory authority would be required.

However, if the successor wishes to either change the method of operations from that contemplated under the original permit or expand the operations outside of that authorized as the original permit area, then further approval would have to be obtained from the regulatory authority. That approval would have to be made through application for an issuance of a revision to the existing permit or obtaining a new permit for areas previously not permitted .{41729}

The Office believes that this two-stage scheme will adequately protect public health and safety and the environment in accordance with the Act, while avoiding unnecessary regulatory authority approval, as, for example, if a successor-in-interest were required to obtain a new permit in all cases, regardless of whether the method of operations were to be changed or expanded.

2. The major alternative considered to the above scheme was to require:

(a) A person seeking to succeed to interests under a permit to obtain prior approval of the regulatory authority for succession by merely filing certain limited identification data and establishing the ability to obtain the bond coverage of the original permittee; and,

(b) Then in all cases, after approval, to obtain a new permit covering the entire operations.

This alternative has tentatively been rejected by the Office, because it would allow for transfer, sale, or assignment of rights under permits to be made without scrutiny of the nature of the ownership, financial capability, establishment of the right to conduct operations according to state law, and compliance status of the person seeking approval, which the Office believes Congress intended to be enforced prior to persons conducting surface coal mining and reclamation operations. The Office emphasizes, however, that the selection of alternatives made thus far is only tentative and specifically solicits comments as to whether that is best for implementation of the relevant requirements of the Act.

SECTION 792.11 - GENERAL REQUIREMENTS.

Authority for this Section is found in Sections 102; 201(c); 501(b); 503; 504; 506(a); 507(b); 508(a); 509; 510; 511(b); 515; and 517 of the Act. This Section would establish the general rules for the transfer, sale, or assignment of rights granted under permits issued by regulatory authorities under regulatory programs.

SECTION 792.12 - OBTAINING APPROVAL FOR TRANSFER, ASSIGNMENT OR SALE OF RIGHTS.

Authority for this Section is Sections 102; 201(c); 501(b); 503; 504; 506(a); 507(b); 508(a); 509; 510; 511(b); 513; 514; 515; and 517 of the Act. Applications for approval of transfer, sale, or assignment of rights would be required to contain non-technical legal, financial, compliance and other general information, so that, the regulatory authority could determine whether the applicant has the non-technical qualifications required by the Act to operate a surface coal mining and reclamation operation. In addition, adequate public participation in the process of approval or disapproval of the application would be provided for, by newspaper advertisement of the filing of the application and opportunity for the submission of comments to the regulatory authority. The regulatory authority would then proceed to decide whether to approve or deny the application.

SECTION 792.13 - REQUIREMENTS FOR NEW PERMITS FOR PERSONS SUCCEEDING TO RIGHTS GRANTED UNDER A PERMIT.

Authority for this Section is Sections 102; 201(c); 501(b); 503; 504; 506(a); 507; 508; 509; 510; 511; 513; 514; 515; 517; and 522(e) of the Act. Under Section 506(b) of the Act, persons succeeding to rights under an existing permit must file an application within 30 days of that succession for a new permit. As interpreted by the Office, Section 792.13 is proposed to implement that Section, by requiring persons obtaining approval under Section 792.12 to obtain a new or revised permit from the regulatory authority, if the operation were to be changed from those contemplated under the original permit or expounded outside the original permit area.

* * *

{Regulations: 43 FR 41833}

SUBCHAPTER G – SURFACE COAL MINING AND RECLAMATION OPERATIONS PERMITS SYSTEM

PART 770 – GENERAL REQUIREMENTS FOR PERMIT SYSTEMS UNDER STATE PROGRAMS

Section

770.1 Scope.

770.2 Objectives.

770.4	Responsibilities.
770.5	Definitions.
770.6	Organization.
770.11	Applicability.
770.12	Coordination with requirements under other laws.

Authority : Sections 102, 201, 501, 503, 504, 506, 507, 508, and 510, Pub. L. 95 87, 91 Stat. 445 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1256, 1257, 1258, and 1260).

SECTION 770.1 - SCOPE.

This Subchapter provides the minimum requirements for the Secretary's approval of the permit system components of regulatory programs for surface coal mining and reclamation operations. These include:

- (a) Requirements for obtaining permits;
- (b) The timing, development and filing of permit applications;
- (c) Regulatory authority review of applications, approval or denial of permits;
- (d) Administrative review of regulatory authority decisions on permits;
- (e) The terms and conditions of permits; {41834}
- (f) Public participation in the permit process;
- (g) The renewal and revision of permits;
- (h) Requirements for permits for special categories of surface coal mining and reclamation operations; and
- (i) Procedures for coal exploration operations under regulatory programs.

SECTION 770.2 - OBJECTIVES.

The objectives of this Subchapter are to ensure both that surface coal mining and reclamation operations are conducted only after the regulatory authority has first determined that reclamation is feasible and that all permitted surface coal mining and reclamation operations are conducted so as to fully protect the environment.

SECTION 770.4 - RESPONSIBILITIES.

- (a) Persons seeking to engage in surface coal mining and reclamation operations must submit an application for a permit in accordance with this Subchapter.
- (b) The regulatory authority shall review each application for a permit, approving or disapproving each permit application and issuing, conditioning, suspending, or revoking permits and renewals and revisions under an approved regulatory program.

SECTION 770.5 - DEFINITIONS.

As used throughout this Subchapter, except where otherwise indicated:

APPLICANT means a person who seeks to obtain a permit under this subchapter G and the regulatory program.

APPLICATION means the documents and other information filed with the regulatory authority under this Subchapter G and the regulatory program for the issuance of a permit.

COMPLETE APPLICATION means an application for permit which contains all information required under the Act, this Subchapter and a regulatory program.

GENERAL AREA means, with respect to hydrology, the area surrounding a proposed permit area and included within the boundaries of the unit of the Department's Office of Water Data Coordination Catalog which contains the mine. Mine sites which lie in more than one catalog unit or which may affect more than one catalog unit may have a general area larger than one catalog unit, as specified by the regulatory authority.

PROPERTY TO BE MINED means the surface and mineral estates on and underneath land which are within the permit area.

VIOLATION NOTICE means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

SECTION 770.6 - ORGANIZATION.

This Subchapter is organized according to separate parts, as follows:

- (a) Parts 770 and 771 establish introductory, definitional and other general provisions applicable for all Parts of this Subchapter.
- (b) Part 776 establishes procedures regarding coal exploration operations.
- (c) Parts 778, 779, and 780 establish specific requirements for permit application contents for surface coal mining activities.
- (d) Parts 782, 783, and 784 establish specific requirements for permit application contents for underground coal mining activities.
- (e) Part 785 establishes requirements for permits for certain special categories of coal mining.
- (f) Parts 786, 787, 788 and 789 establish requirements for the review, issuance, or denial of permits and for public participation in that process.
- (g) Parts 790, 791, and 792 establish requirements for the revision, renewal, and transfer, sale or assignment of rights under permits.

SECTION 770.11 - APPLICABILITY.

- (a) This Subchapter applies to each person who applies for a permit for surface coal mining and reclamation operations or conducts surface coal mining and reclamation operations pursuant to a permit under regulatory programs.
- (b) This Subchapter applies to each regulatory authority under a regulatory program and, where specifically provided, to the Director.

SECTION 770.12 - COORDINATION WITH REQUIREMENTS UNDER OTHER LAWS.

Each State program and each Federal program shall, to avoid duplication, provide for a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with:

(a) Any other Federal or State permit process applicable to such operations including, at a minimum, permits required under the:

- (1) Clean Water Act, as amended (33 U.S.C. Section 1251 et seq.);
- (2) Clean Air Act, as amended (42 U.S.C. Section 7401 et seq.);
- (3) Resource Conservation and Recovery Act (42 U.S.C. Section 3251 3259); and

(b) The requirements of any water quality management plans which have been approved by the Administrator of the United States Environmental Protection Agency under Section 208 or Section 303(e) of the Clean Water Act, as amended, 33 U.S.C. Sections 1288, 1313(e).

(c) The applicable requirements of the Endangered Species Act of 1973, 16 U.S.C. Sections 1531 et seq.; the Fish & Wildlife Coordination Act, 16 U.S.C. Section 661 et seq.; The National Historic Preservation Act of 1966 (as amended) (16 U.S.C. Sections 470 et. seq.); Executive Order 11593; and the Archeological and Historic Preservation Act of 1974 (16 U.S.C. Section 461 et. seq.). {41834}

PART 771 – GENERAL REQUIREMENTS FOR PERMITS AND APPLICATIONS

Section

771.1	Scope.
771.2	Objectives.
771.11	General requirements for permits – Operators.
771.13	Continued operation under interim permits.
771.15	Continued operation under Federal program permits.
771.17	Compliance with permits.
771.19	Permit application filing deadlines.
771.21	Permit applications – General requirements for format and contents.
771.25	Permit fees.
771.27	Verification of application.

Authority : Sections 102, 201, 501, 502, 503, 504, 506, 507, 508, 510, 511, 515 and 516, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. Sections 1202, 1211, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1260, 1261, 1265 and 1266).

SECTION 771.1 - SCOPE.

This Part establishes minimum criteria for general permits and applications requirements for obtaining the Secretary's approval of regulatory programs.

SECTION 771.2 - OBJECTIVES.

The objectives of this Part are to insure that all surface coal mining and reclamation operations are conducted only under permits issued in accordance with the requirements of the regulatory program, that all persons make timely application for permits, and to provide general requirements on permit fee systems and the contents of applications.

SECTION 771.11 - GENERAL REQUIREMENTS FOR PERMITS – OPERATORS.

Except as provided for in Section 771.13 on and after 8 months from the date on which a regulatory program is approved by the Secretary, no person shall engage in or carry out on non-Federal or non-Indian lands within a State any surface coal mining and reclamation operations unless that person has first obtained a valid permit issued by the regulatory authority under an approved regulatory program.

SECTION 771.13 - CONTINUED OPERATION UNDER INTERIM PERMITS.

A person conducting surface coal mining operations, under a permit issued by the regulatory authority in accordance with the requirements of section 502 of the Act may conduct these operations beyond the period prescribed in Section 771.11, if all of the following conditions are present: {41835}

- (a) Timely and complete application for a permit under the permanent regulatory program has been made to the regulatory authority in accordance with the provisions of the Act, this Subchapter and the regulatory program;
- (b) The regulatory authority has not yet rendered an initial decision with respect to such application; and
- (c) The operations are conducted in compliance with all terms and conditions of the interim permit, the requirements of the Act, Parts 710, 715, 716, and 717 of this Chapter and the State statutes and regulations adopted in accordance with subsection 502 of the Act.

SECTION 771.15 - CONTINUED OPERATION UNDER FEDERAL PROGRAM PERMITS.

A permit issued by the Regional Director pursuant to a Federal program for a State shall be valid under any superceding State program approved by the Director, provided that:

- (a) The Federal permittee has the right to apply to the State regulatory authority for a State permit to supersede the Federal permit;
- (b) The regulatory authority shall review a permit issued pursuant to the superseded Federal program to determine that the requirements of the Act and the approved State program are not violated; and
- (c) To the extent that the approved State program contains additional requirements not contained in the Federal program for the State, the State regulatory authority shall:
 - (1) Issue an order requiring the permittee to comply with such additional requirements within 60 days, unless the permittee demonstrates to the State regulatory authority that it is physically impossible to meet such additional requirements within 60 days, or unless the State regulatory authority agrees to a longer period under an established time schedule; and
 - (2) Notify the permittee in writing of the right to an adjudicatory hearing with respect to such order, in the manner and time provided for in the State program.

SECTION 771.17 - COMPLIANCE WITH PERMITS.

All persons shall conduct surface coal mining and reclamation operations under permits issued pursuant to this Subchapter and a regulatory program and shall comply with the terms and conditions of the permit and the requirements of the Act, this Chapter and the regulatory program.

SECTION 771.19 - PERMIT APPLICATION FILING DEADLINES.

(a) Initial implementation of permanent regulatory programs. Not later than 2 months following the approval of a regulatory program regardless of litigation contesting that approval, each person who conducts or expects to conduct surface coal mining and reclamation operations after the expiration of 8 months from such approval shall file an application for a permit for those operations.

(b) Filing deadlines after two months from approval of State programs:

(1) General. Each person who conducts or expects to conduct surface coal mining and reclamation operations shall file a complete application for a permit for those operations within the time established by the regulatory authority.

(2) Renewal of valid permits. An application for renewal of a permit shall be filed with the regulatory authority at least 120 days before the expiration of the permit involved.

(3) Revisions of permits. Any application for revision of a permit shall be filed with the regulatory authority at least 6 months before the date on which the permittee expects to revise mining or reclamation operations, unless the regulatory authority has determined that a period for review of the application of less than 6 months is appropriate.

SECTION 771.21 - PERMIT APPLICATIONS – GENERAL REQUIREMENTS FOR FORMAT AND CONTENTS.

(a) An application for a permit to conduct surface coal mining operations shall be filed in the format required by the regulatory authority. The application shall be complete and include, at a minimum, for surface coal mining, all the applicable information required under 30 CFR Parts 778, 779, and 780 and for underground coal mining, all the information required under 30 CFR Parts 782, 783 and 784.

(b) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the regulatory authority.

(c) All technical data submitted in the application shall be accompanied by:

(1) Names of persons or organizations which collected and analyzed such data;

(2) Dates of the collection and analyses; and

(3) Descriptions of methodology used to collect and analyze the data.

(d) The application shall state the name, address and position of officials of each private or academic research organization or governmental agency consulted by the applicant in preparation of the application regarding information on land-uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and cultural and historic features.

SECTION 771.25 - PERMIT FEES.

Each application for a permit under a regulatory program shall be accompanied by a fee, determined according to the requirements of the regulatory program.

SECTION 771.27 - VERIFICATION OF APPLICATION.

Each application for a permit shall be verified under oath, by a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief.

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PART 776 – GENERAL REQUIREMENTS FOR COAL EXPLORATION OPERATIONS

Section

776.1	Scope.
776.2	Objectives.
776.3	Responsibilities.
776.11	General requirements: Exploration operations of less than 250 tons.
776.12	General requirements: Exploration operations of more than 250 tons.
776.13	Applications: Approval or disapproval.
776.14	Applications: Notice and hearing.
776.15	Coal exploration operations compliance duties.
776.17	Public availability of information.

Authority : Sections 102, 201, 501, 503, 504, 512, 515, 516, 517, 518, and 521 Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1262, 1265, 1266, 1267, 1268 and 1271).

SECTION 776.1 - SCOPE.

This Part establishes the minimum requirements for the Secretary's approval of regulatory program coal exploration procedures. This Part applies to the regulatory authority and to any person who conducts or seeks to conduct coal explorations which substantially disturb the natural land surface.

SECTION 776.2 - OBJECTIVES.

The objectives of this part are to insure that coal exploration operations are conducted to protect the environment and otherwise meet the requirements of the Act, this Chapter, and the regulatory program.

SECTION 776.3 - RESPONSIBILITIES.

- (a) It is the responsibility of any person conducting or seeking to conduct coal exploration operations under a regulatory program to comply with the requirements of this Part.
- (b) It is the responsibility of the regulatory authority to receive notices of intention to explore and applications for approval of exploration, approve or disapprove the applications, and to issue, condition, suspend or revoke approvals under an approved regulatory program. {41836}

SECTION 776.11 - GENERAL REQUIREMENTS: EXPLORATION OPERATIONS OF LESS THAN 250 TONS.

- (a) Any person who intends to conduct coal exploration operations during which less than 250 tons of coal will be removed in any one location shall, prior to conducting the operations, file with the regulatory authority a written notice of intention to explore.
- (b) The notice shall include:
 - (1) A precise description and map at a scale of 1:24,000 or larger of the exploration area;
 - (2) A statement of the period of intended exploration;
 - (3) A description of the basis upon which the applicant claims the right to enter such area for the purpose of conducting exploration and reclamation operations; and
 - (4) A description of the practices proposed to be followed to protect the environment.

(c) The regulatory authority shall, except as provided in Section 776.17, place such notices on public file and make them available for public inspection and copying.

SECTION 776.12 - GENERAL REQUIREMENTS: EXPLORATION OPERATIONS OF MORE THAN 250 TONS.

Any person who intends to conduct coal exploration operations in which more than 250 tons of coal are removed in any one location, shall, prior to conducting the operations, obtain the written approval of the regulatory authority in accordance with the following:

(a) Application for approval. Each application for approval shall contain, at a minimum, the following information:

- (1) The name, address and telephone number of the applicant;
- (2) The name, address and telephone number of the representative of the applicant who will be present at and be responsible for conducting the exploration operations;
- (3) An exploration and reclamation operations plan, including:
 - (i) A narrative description of the proposed exploration area, cross-referenced to the map required under paragraph (a)(5) of this section, including surface topography; geological, surface water, and other physical features; vegetative cover; the distribution and important habitats of fish, wildlife, and plants, including, but not limited to, any endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. Sections 1531 et seq); districts, sites, buildings, structures or objects listed on or eligible for listing on the National Register of Historic Places; and cultural resources located within the proposed exploration area;
 - (ii) A narrative description of the current land use of the area;
 - (iii) A narrative description of the methods to be used to conduct coal exploration and reclamation operations, including, but not limited to, the types and use of equipment, drilling, blasting, road or other access route construction and excavated earth and other debris disposal activities;
 - (iv) An estimated timetable for each phase of the exploration and reclamation operations and for completion of those programs;
 - (v) The estimated amounts of coal to be removed and a description of the methods to be used to determine such amounts;
 - (vi) A description of the measures to be used to comply with the applicable requirements of Part 815, Subchapter K of this Chapter;
- (4) The name and address of the owner of record of the surface and subsurface estate of the area to be explored;
- (5) A map in a scale of 1:24,000 or larger showing the areas of land to be substantially disturbed, by the proposed exploration and reclamation operations. The map shall specifically show existing roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; the location of land excavations to be conducted; water or coal exploratory holes and wells to be drilled or altered; earth or debris disposal areas; current land uses of the area; existing bodies of surface water; historic, topographic, cultural and drainage features; and habitats of any endangered or threatened species listed under Section 4 of Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq); and
- (6) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter the exploration area for the purpose of conducting exploration and reclamation operations.

(b) Public notice and opportunity to comment. Except as provided by Section 781.17, public notice of the application and opportunity to comment shall be provided in accordance with the following:

- (1) Public notice of the filing of the application with the regulatory authority shall be posted at a public office in the vicinity of the proposed exploration area;
- (2) The public notice shall state the name and business address of the person seeking approval, the date of filing of the application, the address of the regulatory authority at which written comments on the application may be submitted, and a description of the general area of exploration;
- (3) Any person shall have the right to file written comments on the application within reasonable time limits established in the regulatory program.

SECTION 776.13 - APPLICATIONS: APPROVAL OR DISAPPROVAL.

(a) The regulatory authority shall act upon a completed application for approval within a reasonable period of time established in the regulatory program.

(b) The regulatory authority may approve a complete application filed in accordance with this Part, if it finds in writing that the applicant has demonstrated that the exploration and reclamation operations described in the application:

(1) Will be conducted in accordance with the requirements of the Act, 30 CFR Part 815, this Part and the regulatory program;

(2) Will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.) or result in the destruction or adverse modification of critical habitat of such species, and

(3) Will not adversely affect any cultural resources or districts, sites, buildings, structures, or objects listed or eligible for listing on the National Register of Historic Places, unless the proposed operations have been approved by the agency with jurisdiction over such matters.

(c) Each approval issued by the regulatory authority shall contain conditions necessary to ensure that the exploration operations will be conducted in compliance with the Act, the provisions of 30 CFR Part 815, this Part and the regulatory program.

SECTION 776.14 - APPLICATIONS: NOTICE AND HEARING.

(a) The regulatory authority may hold a hearing (a) on its decision to approve or disapprove application under Section 776.13 in the time and manner provided for in the regulatory program.

(b) The regulatory authority shall notify the applicant, in writing of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. The regulatory authority shall provide public notice of approval or disapproval of each application by publication in a newspaper of general circulation in the general vicinity of the proposed operations. {41837}

SECTION 776.15 - COAL EXPLORATION OPERATIONS COMPLIANCE DUTIES.

(a) All coal exploration and reclamation operations shall be conducted in accordance with the coal exploration operations requirements of the Act, this Part, Part 815 of this Chapter and the regulatory program, and any conditions of the approval for such operations by the regulatory authority.

(b) Any person who conducts any coal exploration operations which substantially disturb the natural land surface in violation of Section 512 of the Act, the provision of this Part, 30 CFR Part 815 or the regulatory program shall be subject to the provisions of Section 518 of the Act, Subchapter L of this Chapter, and the applicable inspection and enforcement provisions of the regulatory program.

SECTION 776.17 - PUBLIC AVAILABILITY OF INFORMATION.

(a) Except as provided in paragraph (b), of this section all information submitted to the regulatory authority under this Part shall be made available for public inspection and copying at the local offices of the regulatory authority closest to the mine.

(b) (1) The regulatory authority shall not make information available for public inspection if the person submitting it requests in writing at the time of submission that it not be disclosed and if the regulatory authority determines that the information is confidential.

(2) The regulatory authority shall determine that information is confidential if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct exploration operations. {41837}

PART 778 – SURFACE MINING PERMIT APPLICATIONS – MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE AND RELATED INFORMATION

Section	
778.1	Scope.
778.2	Objectives.
778.4	Responsibilities.
778.5	Definition.
778.11	Applicability.
778.13	Identification of interests.
778.14	Compliance information.
778.15	Right of entry and operation information.
778.16	Relationship to areas designated unsuitable for mining.
778.17	Permit term information.
778.18	Personal injury and property damage insurance information.
778.19	Identification of other licenses and permits.
778.20	Identification of location of public offices of filing of application.
778.21	Newspaper advertisement and proof of publication.

Authority : Sections 102, 201, 501, 503, 504, 506, 507, 508, 510, 515, and 522, Pub. L. 95 87, 91 Stat. 945 (30 USC 1202, 1211, 1251, 1253, 1254, 1256, 1257, 1258, 1260, 1265, and 1272).

SECTION 778.1 - SCOPE.

This Part establishes the minimum requirements regarding the legal, financial, compliance and general information that must be contained in permit applications for surface mining activities except for underground coal mining activities.

SECTION 778.2 - OBJECTIVES.

The objective of this Part is to ensure that all relevant information regarding the ownership and control of the person who conducts surface mining activities, the ownership and control of the property to be affected by the operations, the compliance status and history of such persons, and other important information is provided to the regulatory authority under a regulatory program prior to a decision to issue or deny a permit.

SECTION 778.4 - RESPONSIBILITIES.

It is the responsibility of the permit applicant to provide to the regulatory authority all of the information required by this Part.

SECTION 778.5 - DEFINITION.

As used in this Part Principal shareholder means any person who is the owner of record of 10 percent or more of any class of voting stock.

SECTION 778.11 - APPLICABILITY.

This part applies to any person who applies for a permit to conduct surface mining activities.

SECTION 778.13 - IDENTIFICATION OF INTERESTS.

(a) Each application shall contain the names, addresses, and telephone numbers of:

- (1) The permit applicant;
- (2) Every legal or equitable owner of record of the property to be mined;
- (3) The holders of record of any leasehold interest in the property to be mined;
- (4) Any purchaser of record under a real estate contract of the property to be mined;
- (5) The operator if the operator is a person different from the applicant; and
- (6) The resident agent of the applicant who will accept service of process.

(b) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association or other business entity. For businesses other than single proprietorships, the application shall contain the following information, where applicable:

- (1) Names and addresses of every officer, partner, director or other person performing a function similar to a director of the applicant;
- (2) Name and address of any person who is a principal shareholder of the applicant; and
- (3) Names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation in the United States within the 5 years preceding the date of application.

(c) If any owner of record, holder of record, purchaser of record or operator identified under paragraph (a) of this section is a business entity other than a single proprietor, the application shall contain the names and addresses of their principals, officers, and resident agents.

(d) Each application shall contain a statement of any current or previous coal mining permits in the United States held by the applicant and by any person identified in paragraph (b)(3) of this section, and of any pending permit application to conduct coal mining operations in the United States. The information shall be listed by permit or application number and shall identify the regulatory authority and State for each such coal mining operation.

(e) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(f) Each application shall contain the name of the mine, if any, and the Mine Safety and Health Administration identification number for the mine and all sections of the mine.

SECTION 778.14 - COMPLIANCE INFORMATION.

Each permit application shall contain:

(a) A statement of whether the applicant, any subsidiary, affiliate or persons controlled by or under common control with the applicant has:

- (1) Had a Federal or State mining permit suspended or revoked in the last 5 years; or
- (2) Forfeited a coal mining bond or similar security deposited in lieu of bond.

(b) If a suspension, revocation or forfeiture has occurred, a statement of the facts involved, including:

- (1) Identification number and date of issuance of the permit or date and amount of bond or similar security;
- (2) Identification of the authority that suspended, revoked or forfeited and the stated reasons for the action;
- (3) The current status of the permit, bond or similar security involved;
- (4) The date, location and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and {41838}

(5) The current status of these proceedings.

(c) A listing of each violation notice received by the applicant involving any coal mining operation pertaining to air or water environmental protection incurred during the 3 years before the application date with a statement about each violation notice, including:

- (1) The date of issuance and the issuing regulatory authority, department or agency;
- (2) A brief description of the particular violation alleged in the notice;
- (3) The date, location and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the violations;
- (4) The current status of the proceedings and of the violation notice; and
- (5) The actions, if any, taken by the applicant to abate the violation.

SECTION 778.15 - RIGHT OF ENTRY AND OPERATION INFORMATION.

(a) Each permit application shall contain:

- (1) A description of those documents upon which the applicant bases his legal right to enter and begin surface mining operations in the permit area and whether that right is the subject of pending litigation, Provided, That nothing in this Chapter gives the regulatory authority the jurisdiction to adjudicate property title disputes; and
- (2) If requested by the regulatory authority, certified copies of all documents relied upon by the applicant, except that information that specifies amounts of royalty, rent or other payments for rights to mine the coal need not be provided.

(b) Where the private mineral estate to be mined has been severed from the private surface estate:

- (1) A copy of the written consent of the surface owner to the applicant for the extraction of coal by surface mining methods; or
- (2) A copy of the document of conveyance that expressly grants or reserves the right to the applicant, or its predecessor-in-interest, to conduct the surface coal mining and reclamation operations; or
- (3) If the conveyance does not expressly grant the right to conduct surface coal mining and reclamation operations, documentation that under the applicable State law, the applicant has the legal authority to conduct surface coal mining and reclamation operations, Provided, That nothing in this section shall be construed to authorize the regulatory authority to adjudicate property rights disputes.

SECTION 778.16 - RELATIONSHIP TO AREAS DESIGNATED UNSUITABLE FOR MINING.

(a) Each application shall contain a statement of whether the proposed permit area is within an area designated unsuitable for surface coal mining under 30 CFR part 764 or under study for designation in an administrative proceeding initiated under that part.

(b) If an applicant claims the exemption in 30 CFR 786.13(d)(2), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed operations.

(c) If an applicant proposes to conduct surface coal mining and reclamation operations within 300 feet of an occupied dwelling, the application shall include a copy of the written consent of the owner of the dwelling for conducting such operations.

SECTION 778.17 - PERMIT TERM INFORMATION.

(a) Each permit application shall state the anticipated or actual starting and termination date of each phase of the mining and reclamation operation and the number of acres to be disturbed in each phase of mining and over the total life of the permit.

(b) If the applicant proposes to conduct the operations beyond a permit term of 5 years, the application shall contain the information needed for the showing required under 30 CFR 786.11(a).

SECTION 778.18 - PERSONAL INJURY AND PROPERTY DAMAGE INSURANCE INFORMATION.

Each permit application shall contain either a certificate of insurability or evidence that the self-insurance requirements in 30 CFR 806.12 are satisfied.

SECTION 778.19 - IDENTIFICATION OF OTHER LICENSES AND PERMITS.

Each permit application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed mining operation. This list shall identify each license and permit by:

- (a) Type of permit or license;
- (b) Name and address of issuing authority;
- (c) Identification of applications for permit or license or, if issued, the identification number of the permit or license; and
- (d) The date of approval or disapproval by each issuing authority.

SECTION 778.20 - IDENTIFICATION OF LOCATION OF PUBLIC OFFICE FOR FILING OF APPLICATION.

Each complete application shall identify, by name and address, the public office where the applicant will simultaneously file a copy of the application for public inspection in accordance with 30 CFR 787.11(d).

SECTION 778.21 - NEWSPAPER ADVERTISEMENT AND PROOF OF PUBLICATION.

- (a) Each application shall contain a copy of the newspaper advertisement and proof of publication of the advertisement in accordance with 30 CFR 787.11(a).
- (b) The copy of the newspaper advertisement and proof of publication shall be filed not later than one week after the last date of publication required under 30 CFR 787.11(a). {41838}

PART 779 – SURFACE MINING PERMIT APPLICATIONS – MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES IN THE PERMIT AND ADJACENT AREAS

Section	
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779.4	Responsibilities.
779.11	General requirements.
779.12	General environmental resources information.
779.13	Description of hydrology and geology: General requirements.
779.14	Geology description.
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779.16	Surface and ground water information.

779.17	Alternative water supply information.
779.18	Climatological and air quality data.
779.19	Vegetation data.
779.20	Fish and wildlife resources information.
779.21	Analyses of selected overburden or topsoil mixtures.
779.22	Land-use description.
779.23	Maps, plans, and cross-sections: Preparation.
779.24	Maps: General requirements.
779.25	Cross-section maps and plans.
779.26	Soil resources description.

Authority : Sections 102, 201, 501, 503, 504, 506, 507, 508, 510, 515, and 522, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1256, 1257, 1258, 1260, 1265, and 1272).

SECTION 779.1 - SCOPE.

This part establishes the minimum requirements for the Secretary's approval of provisions of regulatory programs for the contents of applications for surface coal mining activities related to technical information on the existing site of the mine plan area and adjacent area, except for underground coal mining activities.

SECTION 779.2 - OBJECTIVES.

The objectives of this part are to insure that:

- (a) Each application provides to the regulatory authority a complete and accurate description of the existing premining environmental resources both within the mine plan area and adjacent areas that may be affected by the proposed surface coal mining activities. {41839}
- (b) The description is in a form that enables the regulatory authority to make a decision on each application that serves the purposes of the Act.

SECTION 779.4 - RESPONSIBILITIES.

- (a) It is the responsibility of the applicant to provide all information in the application required by this part, except where specifically exempted in this part.
- (b) It is the responsibility of State and Federal Government agencies to provide information for applications as specifically required by this Part.

SECTION 779.11 - GENERAL REQUIREMENTS.

Each permit application shall include a description of the existing, premining environmental resources both within the mine plan area and adjacent areas that may be affected by the proposed surface mining activities.

SECTION 779.12 - GENERAL ENVIRONMENTAL RESOURCES INFORMATION.

- (a) The applicant shall describe the mine plan area and identify the size, sequence, and timing of the sub-areas for which it is anticipated that individual permits for mining will be requested.

(b) Each description shall identify the location and nature of archeological, paleontological, cultural, historic, and unique geological features within the mine plan area and known features in adjacent areas.

(c) Each description shall include a statement of all lands, interests in lands, options or pending bids on such interests held or made by the applicant which lands are within mine plan areas.

SECTION 779.13 - DESCRIPTION OF HYDROLOGY AND GEOLOGY: GENERAL REQUIREMENTS.

(a) Each application shall contain a description of the geology, hydrology, and water quality and quantity of all lands within the mine plan area, the adjacent area and the general area. The description shall include information on the characteristics of all surface and ground waters within the general area, and any water which will flow into or receive discharges of water from the general area. This statement shall be prepared according to sections 779.13-17 and shall conform to the following requirements:

(b) (1) Information on hydrology, water quality and quantity and geology related to hydrology of areas outside the proposed mine plan area shall be provided by the regulatory authority to the extent that this data is available from an appropriate Federal or State agency.

(2) If this information is not available from an appropriate Federal or State agency, the applicant shall gather and submit this information to the regulatory authority as part of the permit application.

(3) The permit shall not be approved by the regulatory authority until this information is available in the application.

SECTION 779.14 - GEOLOGY DESCRIPTION.

(a) Each plan shall contain a description of the geology within the mine plan area down to the deepest groundwater aquifer to be disturbed below the lowest coal seam to be mined by the proposed mining and reclamation operations, including all materials to be disturbed by such operations. Geology shall also be described for all strata below the coal seam to the extent that the strata will be disturbed by the proposed operations.

(b) (1) Test borings and core samples from the mine plan area shall be collected and analyzed to provide the following data: Location of subsurface water; logs of the drill holes showing the thickness of the overburden and coal seams; physical property analyses of the overburden and coal seams physical property analyses of the overburden, including size analysis, compaction, and erodability; chemical analysis of the overburden and strata lying immediately underneath the lowest coal seam to be mined; analyses of the coal seam(s), including, but not limited to, an analysis of sulfur content.

(2) An applicant may request that the requirement for a statement of the results of the test borings or coal samplings from the permit area be waived by the regulatory authority. The waiver may be granted only if the regulatory authority makes a written determination that the statement is unnecessary because other equivalent information is accessible in a satisfactory form.

SECTION 779.15 - GROUND-WATER HYDROLOGY AND GEOLOGY.

Ground-water hydrology shall be fully described, including, but not limited to, the lithology, thickness, depth to water, permeability, transmissability, production data, quantity and quality of water, and interrelationships with other aquifers and surface waters, for each aquifer to be disturbed or affected by mining.

SECTION 779.16 - SURFACE AND GROUND-WATER INFORMATION.

(a) Each permit application shall set forth surface and ground-water information including the location of all streams, lakes, ponds, wells, and springs, and descriptions of existing surface and underground drainage patterns throughout the year within the mine plan area and adjacent areas.

(b) Surface water information shall include:

(1) Minimum, maximum, and average depth and rate of flow conditions, establishing critical low flows and peak discharge rates of streams for a minimum of one water-year; and

(2) Water quality data establishing the characteristics of such waters in, discharging into, or which will receive flows of surface or ground water from affected areas within the proposed permit area, through all seasonal variations, showing:

(i) Total dissolved solids in milligrams per liter;

(ii) Total suspended solids in milligrams per liter;

(iii) Acidity;

(iv) pH in standard units;

(v) Total and dissolved iron in milligrams per liter;

(vi) Total manganese in milligrams per liter; and

(vii) Such other information as the regulatory authority determines is relevant.

SECTION 779.17 - ALTERNATIVE WATER SUPPLY INFORMATION.

Each permit application shall identify:

(a) The sources of water supply that could be developed to replace the water supply of an owner of interest in real property within the mine plan area and adjacent area;

(b) Persons who obtain water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source within the mine plan area and adjacent area; and

(c) The probable extent to which an owner's supply will be affected by contamination, diminution, or interruption proximately resulting from the proposed surface coal mining and reclamation operations.

SECTION 779.18 - CLIMATOLOGICAL AND AIR QUALITY DATA.

When requested by the regulatory authority, the permit application shall contain a statement of the climatological and air quality factors that are representative of the mine plan area including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds;

(c) Seasonal temperatures; and

(d) Total suspended particulates.

SECTION 779.19 - VEGETATION DATA.

(a) The permit application shall contain a statement of the location of lands proposed for use as the reference area by which the success of post-mining revegetation within the permit area is to be determined. {41840}

(b) This statement shall include a description of the vegetative cover, density and productivity of the reference area. If required by the regulatory authority, the permit application shall include a map of existing vegetation and supporting narrative that delineates and describes those areas of different vegetation or plant communities within the proposed permit and reference areas. This description shall include information adequate to predict the potential for re-establishing vegetation as required by 30 CFR 816.111 through 816.117.

(c) The area to be mapped shall also include sufficient adjacent areas to allow evaluation of vegetation as important habitat for fish and wildlife, for those species of fish and wildlife identified under 30 CFR 779.20.

SECTION 779.20 - FISH AND WILDLIFE RESOURCES INFORMATION.

- (a) The permit application shall contain a statement of the results of a study of the populations of fish and wildlife species within the mine plan area and adjacent areas.
- (b) The species of fish and wildlife shall be studied in the detail required by the regulatory authority, according to:
- (1) Published data or other information from secondary sources, as opposed to newly gathered field data; or
 - (2) Alternative written guidance provided by applicable State and Federal fish and wildlife management agencies.

SECTION 779.21 - ANALYSES OF SELECTED OVERBURDEN OR TOPSOIL MIXTURES.

Where the applicant proposes to use selected overburden materials instead of, or as a supplement to topsoil in order to comply with the topsoil handling requirements of 30 CFR 816.22, the application shall contain the results of any analyses, trials and tests required by the regulatory authority under that section.

SECTION 779.22 - LAND-USE DESCRIPTION.

- (a) The permit application shall contain a statement of the condition, capacity, and productivity of the land within the proposed mine plan area.
- (b) The statement shall include a map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within 5 years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described. If the land has been previously mined, the uses which preceded mining shall be described.
- (c) The statement shall include a land capability and productivity synthesis which includes a compilation of the land-use description under paragraphs (a) and (b) of this section with other environmental resources information required under this part. The synthesis shall provide analysis of:
- (1) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative covers and the hydrology of the site.
 - (2) The productivity of the land before mining, with the average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management; and
 - (3) A statement of whether the land has been previously mined, and, if so, the following information, to the extent obtainable:
 - (i) The type of mining method used;
 - (ii) The coal seams or other mineral strata mined;
 - (iii) The extent of coal or other minerals removed; and
 - (iv) The dates of past mining.

SECTION 779.23 - MAPS, PLANS, AND CROSS-SECTIONS: PREPARATION.

- (a) Maps, plans and cross-sections included in a permit application which are required by section 779.25 shall be prepared by or under the direction of, and certified by a qualified registered professional engineer or professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture.
- (b) Maps shall be at an appropriate scale, clearly showing the land within the mine plan area and adjacent areas, and include all the types of information set forth on topographical maps of the U.S. Geological Survey of a scale of 1:25,000 or larger.

SECTION 779.24 - MAPS: GENERAL REQUIREMENTS.

The description shall include maps, prepared in accordance with section 779.23, showing:

- (a) All boundaries of lands and names of present owners of record of lands, both surface and sub-surface, included in the proposed mine plan area and adjacent areas;
- (b) The boundaries of land within the proposed mine plan area upon which the applicant has the legal right to enter and begin surface mining operations;
- (c) The boundaries of all lands to be mined over the estimated total life of the proposed mining operations, with a description of size, sequence, and timing of the mining of subareas for which it is anticipated that additional permits will be sought;
- (d) The location of all buildings on and within 1,000 feet of the proposed mine plan area, with identification of the current use of the buildings.
- (e) The location of surface and sub-surface improvements within, or passing through or over the proposed mine plan area, including, but not limited to fences, electric power, and telephone lines, pipelines, water, oil or gas wells, drainage tile fields, and other manmade features; {41841 }
- (f) The location and boundaries of proposed reference areas for determining the success of revegetation;
- (g) The locations of water-intakes for current users of surface waters flowing into, out of, or which will receive discharges from affected areas in the proposed mine plan area;
- (h) Each highway and road located in or within 100 feet of the proposed mine plan area;
- (i) All existing public parks, archeological, paleontological, cultural, historical, and unique geological features within the proposed mine plan area and known features in adjacent areas;
- (j) Each public or private cemetery located in or within 100 feet of the proposed mine plan area;
- (k) Any land within the proposed mine plan area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act; and
- (l) Any other information required by the regulatory authority.

SECTION 779.25 - CROSS-SECTION MAPS AND PLANS.

The application shall include cross-section maps and plans prepared in accordance with 30 CFR 779.23 and updated on an annual basis, showing elevation and location of test borings core samplings, monitoring stations for water quality and quantity, air quality, and fish and wildlife used in preparation of the application, and showing the following information:

- (a) Nature, depth, and thickness of the various strata of coal to be mined, coal or rider seams above the seam to be mined, overburden, and strata immediately below the lowest coal seam to be mined;
- (b) All mineral crop lines and the strike and dip of the coal to be mined within the proposed mine plan area and adjacent areas;

- (c) Location and extent of workings of known underground mines, including mine openings to the surface areas affected by such mines, within the proposed mine plan area and adjacent areas;
- (d) Location and extent of sub-surface water, if encountered, within the proposed mine plan area or adjacent areas, including, but not limited to: aquifers and piezometric surfaces thereof through seasonal variations, the flow patterns of such sub-surface water, and the estimated elevations and contours of ground-water tables;
- (e) Location, elevation and dimensions of springs, constructed or natural surface water, streams, drainways, or irrigation ditches within the proposed mine plan area or adjacent areas;
- (f) Location and elevation of discharge of industrial wastes to surface or ground-waters within the proposed mine plan area, or at points in adjacent areas to surface waters which flow into the proposed mine plan area;
- (g) Boundaries and elevations of existing or previously surfaced-mined areas within the proposed mine plan area;
- (h) Location, elevation and dimensions of existing areas of spoil, waste, refuse and topsoil preservation, dams, other impoundments, and water treatment or air pollution control facilities within the proposed permit area;
- (i) Location and depth of water, gas or oil wells within the proposed permit area; and
- (j) Sufficient slopes to adequately represent the existing land surface configuration of the mine plan area, measured and recorded according to the following:
 - (1) Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed; or, where this is impractical, at locations specified by the regulatory authority.
 - (2) Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the regulatory authority to be representative of the premining configuration of the land.
 - (3) Slope measurements shall take into account natural variations in slope so as to provide accurate representation of the range of natural slopes and shall reflect geomorphic differences of the area to be disturbed.
 - (4) Slope measurements may be made from existing topographic maps showing contour lines, having sufficient detail and accuracy consistent with the submitted mining and reclamation plan.
 - (5) Contour lines shall be based on intervals of a maximum of 5 feet where the slope of the land is twenty (20) degrees or less and a maximum of 10 feet where slopes are greater than 20 degrees.

SECTION 779.26 - SOIL RESOURCES DESCRIPTION.

- (a) A soil map shall be prepared that delineates those portions of the mine plan area of different soil morphology and soil environment. The soil map shall provide adequate information to establish present and potential productivity levels of the land and to aid in the classification, stockpiling, and use of soil materials during mining and reclamation operations. The soil resources description shall also provide adequate information to predict the potential for reestablishing vegetation and the proposed postmining use.
- (b) The applicant shall supply such other information as required by the regulatory authority. {41841}

PART 780 – SURFACE MINING PERMIT APPLICATION – MINIMUM REQUIREMENT FOR RECLAMATION AND OPERATION PLAN

Section	
780.1	Scope.
780.2	Objectives.
780.4	Responsibilities.
780.11	Operation plan: General requirements.

780.12	Operation plan: Blasting.
780.13	Operation plan: Maps and plans.
780.14	Air pollution control plan.
780.15	Fish and wildlife plan.
780.17	Reclamation plan: Introduction.
780.19	Reclamation plan: General requirements.
780.21	Reclamation plan: Protection of hydrologic balance.
780.23	Reclamation plan: Post-mining land uses.
780.25	Reclamation plan: Ponds, impoundments, banks, and dams and embankments.
780.27	Reclamation plan: Surface mining near underground mining.
780.29	Diversions.
780.31	Protection of public parks and historic places.
780.33	Relocation or use of public roads.
780.35	Disposal of excess spoil.
780.37	Transportation facilities.

Authority : Sections 102, 201, 501, 503, 504, 506, 507, 508, 509, 510, 515, 517, and 522, Pub. L. 95 87, 91 Stat. 445 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1256, 1257, 1258, 1259, 1260, 1265, 1267, and 1272.)

SECTION 780.1 - SCOPE.

This part provides the minimum requirements for the Secretary's approval of provisions of regulatory programs for the mining operations and reclamation plan portions of applications for surface coal mining activities permits, except to the extent that different requirements for those plans are established under part 785 of this subchapter.

SECTION 780.2 - OBJECTIVES.

The objectives of this part are to establish the minimum requirements under regulatory programs for the contents of mining and reclamation plan portions of applications for permits, so that the regulatory authority is provided with comprehensive and reliable information on proposed surface coal mining and reclamation operations, and to insure that such operations are allowed to be conducted only in compliance with the Act, this chapter, and the regulatory program.

SECTION 780.4 - RESPONSIBILITIES.

(a) It is the responsibility of the applicant to provide to the regulatory authority all of the information required by this part, except where specifically exempted in this part.

(b) It is the responsibility of State and Federal governmental agencies to provide information to the regulatory authority where specifically required in this part.

SECTION 780.11 - OPERATION PLAN: GENERAL REQUIREMENTS.

Each application shall contain a description of the proposed mining operations within the mine plan area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment used or proposed to be used for all aspects of such operations.

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities within the proposed mine plan area:

- (1) Major buildings and other facilities;
- (2) Utilities services;
- (3) Dams and impoundments;
- (4) Overburden and topsoil handling and storage areas and structures;
- (5) Coal removal, handling, storage, cleaning, and transportation areas and structures;
- (6) Waste and refuse removal, handling, storage, transportation, and disposal areas and structures;
- (7) Mine facilities and layout; and
- (8) Water and air pollution control facilities.

SECTION 780.12 - OPERATIONS PLAN: BLASTING.

Each application shall contain a blasting plan for the affected area, explaining how the applicant intends to comply with the requirements of 30 CFR sections 816.61 through 816.68 and including the following information:

(a) Types and approximate amounts of explosives to be used for each type of blasting operation to be conducted;

(b) Description of procedures and plans for recording and reporting to the regulatory authority blasting information to be collected during the operation. The plan shall contain the following information:

- (1) Drilling patterns, including size, numbers, depths, spacing, and configuration of holes; 41841
- (2) Charge and packing, placement of holes;
- (3) Types of fuses and detonation controls; and
- (4) Sequence and timing of firing holes. {41842}

(c) Description of blasting warning and site access control equipment and procedures;

(d) Description of types, capabilities, sensitivities, and locations of use of blasting monitoring equipment and procedures; and

(e) Description of plans for recording and reporting to the regulatory authority the results of preblasting surveys, if required, and of the blasting monitoring program.

SECTION 780.13 - OPERATIONS PLAN: MAPS AND PLANS.

Each map, plan, and cross-section shall delineate the location on the permit area where the performance standards in 30 CFR 816 apply. Areas that were mined under the initial regulatory program or that were mined before February 3, 1978 shall also be delineated on the map. Each application shall contain maps, plans, and cross-sections of the permit area in accordance with the following provisions:

(a) Maps and plans shall have a scale of 1:25,000 or larger. Cross-sections shall have a scale prescribed by the regulatory authority. The maps, plans, and cross-sections shall show the mining operations to be conducted and the lands to be affected throughout the operation.

(b) Any change in a facility or feature caused by the proposed mining operation shall be described if the facility or feature was shown on the map and plan required by 30 CFR 779.24 and 779.25.

(c) The following shall be shown and, for subparagraphs 5, 6, 10, and 13 of this paragraph the maps and plans shall be prepared by, or under the direction of, and certified by a qualified professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture:

- (1) Buildings, utility corridors and facilities to be used within the mine plan area;
- (2) The area of land to be affected within the permit area, according to the sequence of mining and reclamation;
- (3) Each coal storage, cleaning and loading area;

- (4) Each topsoil, overburden, refuse, spoil, and waste storage area;
- (5) Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;
- (6) Each air pollution collection and control facility;
- (7) Each source of and facility relating to coal processing and pollution control waste disposal;
- (8) Each facility to be used to protect and enhance fish and wildlife and related environmental values;
- (9) Each explosive storage and handling facility;
- (10) Locations, design, and construction specifications of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankments in accordance with 30 CFR 780.25 and disposal of excess spoil in 30 CFR 780.35.
- (11) Each profile, at cross-sections specified by the regulatory authority, of the anticipated final surface configuration to be achieved for the affected areas;
- (12) Location of each water and air quality, and wildlife monitoring point; and
- (13) Location and specifications for each facility that will remain on the mine plan area as a permanent feature, after the completion of surface coal mining and reclamation operations.

SECTION 780.14 - AIR POLLUTION CONTROL PLAN.

(a) For those operations with projected production rates exceeding 1,000,000 tons of coal per year and located west of the 100th meridian west longitude, the application shall contain an air pollution control plan which includes the following:

- (1) An air quality review demonstrating that total suspended particulate matter emissions from the proposed surface coal mining operation, in conjunction with all other applicable particulate matter emission increases or reductions, would not cause or contribute to exceedances of any national ambient air quality standard in any air quality control region; or cause or contribute to exceedances of other applicable Federal or State air quality standards;

- (2) An ambient air quality monitoring program to provide adequate annual and 24 hour total suspended particulate matter sampling data to evaluate the ambient air quality impact of the surface coal mining operation. (See 40 CFR 50.7).

- (3) A plan for fugitive dust control practices as required under section 816.95, of subchapter K and necessary to achieve and maintain national ambient air quality standards and other applicable Federal and State air quality standards. I11(b) For those operations with projected production rates less than or equal to 1,000,000 tons of coal per year and located west of the 100th meridian west longitude, the application shall contain an air pollution plan which includes the following:

- (1) An air quality review, if, as determined by the regulatory authority, the applicants proposed surface coal mining operation, in conjunction with other existing and proposed major emitting facilities in the air quality control region or subregion, may:

- (i) Cause or contribute to exceedances of any national ambient air quality standard in any air quality control region; or

- (ii) Cause or contribute to exceedances of any other applicable Federal or State air quality standard;

- (2) An ambient air quality monitoring program to provide adequate annual and 24 hour total suspended particulate matter sampling data to evaluate the ambient air quality impact of the surface coal mining operation. (See 40 CFR 50.7);

- (3) A plan for fugitive dust control practices as required under section 816.95 of subchapter K and necessary to achieve and maintain National Ambient Air Quality Standards and other applicable Federal and State air quality standards.

(c) For those operations located east of the 100th meridian west longitude, each application shall contain an air pollution control plan which includes the following:

- (1) An air quality review, if, as determined by the regulatory authority, the applicant's proposed surface coal mining operation, in conjunction with other existing or proposed major emitting facilities in the air quality control region or subregion, may:

- (i) Cause or contribute to exceedances of any national ambient air quality standard in any air quality control regions, or

(ii) Cause or contribute to exceedances of any other applicable Federal or State air quality standards;

(2) An ambient air quality monitoring program, if, as determined by the regulatory authority, necessary to provide adequate annual and 24 hour total suspended particulate matter sampling data to evaluate the ambient air quality impact of the surface coal mining operation; (See 40 CFR 50.7)

(3) A plan for fugitive dust control practices as required under section 816.95 of subchapter K and necessary to achieve and maintain National Ambient Air Quality Standards and other applicable Federal and State air quality standards.

SECTION 780.15 - FISH AND WILDLIFE PLAN.

Each application shall contain a fish and wildlife plan, which provides:

(a) A statement of how the applicant proposes to use the best technology currently available for the site so that affected areas are reclaimed to a condition which will enhance fish, wildlife, and related environmental values.

(b) If the applicant determines that it will not be practicable to achieve a condition which clearly shows a trend toward enhancement of fish and wildlife resources at the time revegetation has been successfully accomplished under 30 CFR 816.111 through 816.117, the applicant shall state:

(1) Why it is not practicable to achieve such a condition; and

(2) How the condition which is achieved uses the best technology currently available to minimize adverse impacts on fish, wildlife, and related environmental values. {41843}

(c) (1) Statements from the applicable State and Federal fish and wildlife agencies on which impact control measures, management techniques, and monitoring methods, if any, are recommended for the site.

(2) If a State or Federal fish and wildlife management agency fails to respond to the applicant's written request for such a statement within 6 weeks, the applicant need not include that statement as part of the application.

(d) A statement explaining how the applicant will utilize impact control measures, management techniques, and monitoring methods to protect or enhance the following, if they are affected by the operation:

(1) Critical habitats of threatened or endangered species of plants or animals listed by the Secretary;

(2) Other species such as eagles, migratory birds or game animals, protected by State or Federal law, and their habitats;

(3) Habitat types of unique value for fish and wildlife, such as wetlands, riparian areas, cliffs supporting raptors, areas offering unique shelter or protection, reproduction and nursery areas, and wintering areas.

SECTION 780.17 - RECLAMATION PLAN: INTRODUCTION.

Each application shall contain a plan for reclamation of the lands within the permit area and adjacent areas, showing how the applicant will comply with section 515 of the act, subchapter K of this chapter and the environmental protection performance standards of the regulatory program. The plan shall include at a minimum all information required under 30 CFR 780.19 through 780.35. All maps, plans and applicable cross sections shall delineate the location on the permit area where the performance standards of 30 CFR 816 apply. Areas that were mined under the initial regulatory program or that were mined before February 3, 1978 shall also be delineated on the map.

SECTION 780.19 - RECLAMATION PLAN: GENERAL REQUIREMENTS.

Each plan shall contain:

(a) A detailed timetable for the accomplishment of each major step in the reclamation plan;

(b) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance

bond under subchapter J of this chapter, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with cross sections that show the anticipated soil surface configuration of the permit area in accordance with sections 816.101 through 816.106;

(d) A plan for topsoil handling and replacement and for revegetation of the areas affected by surface mining activities in accordance with sections 816.21 through 816.25 and sections 816.111 through 816.117 including, but not limited to, descriptions of:

- (1) Timing of revegetation steps;
- (2) Species of plants and trees to be used;
- (3) Methods and amounts of seed or numbers of seedlings to be planted per acre;
- (4) Mulching techniques;
- (5) Irrigation, if appropriate, and pest and disease control measures, if any;
- (6) Measures proposed for comparison of revegetation of the permit area with the reference area; and
- (7) A soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(e) A description of the measures selected for conducting the mining operation so that maximum use and conservation of the coal resource is ensured to minimize the need to remine the land in the future;

(f) A description of measures to be employed to insure that all debris, acid-forming and toxic-forming, or materials constituting a fire hazard are disposed of in accordance with 30 CFR 816.103;

(g) A description, including appropriate cross sections and maps, of the measures to be used to seal mine openings, and plug, case or manage drill and other bore holes within the proposed permit area in accordance with 30 CFR 816.11 through 816.14;

(h) A description of how mining and other equipment and facilities will be removed from the permit area when no longer needed in accordance with 30 CFR 816.121 816.122; and

(i) A description of steps to be taken during the term of the permit to comply with the requirements of the Clean Air Act (42 U.S.C. Section 7401 et seq.), the Clean Water Act (33 U.S.C. Section 1251 et seq.), and other applicable air and water quality laws and regulations and any applicable health and safety standards.

SECTION 780.21 - RECLAMATION PLAN: PROTECTION OF HYDROLOGIC BALANCE.

(a) Each plan shall contain a detailed description, with appropriate maps and cross section drawings, of the measures to be taken during and after the mining and reclamation process, in accordance with 30 CFR 816, to ensure the protection of:

- (1) The quality of surface and ground water systems, both within the mine plan area and adjacent areas, from the adverse effects of the surface coal mining and reclamation operations;
- (2) The rights of present users to surface and ground water; and
- (3) The quantity of surface and ground water both within the mine plan area and adjacent area from the adverse effects of the surface coal mining and reclamation operation, and to provide alternative sources of water where the protection of quantity cannot be ensured.

(b) The description shall include the following:

- (1) A plan for the control of surface and ground water drainage into, through and out of the area to be affected by the mining operation;
- (2) A plan for the treatment, where required under subchapter K and the regulatory program, of surface or ground water drainage from the area to be disturbed by the mining operation, and proposed quantitative limits on pollutants in discharges of the drainage according to the more stringent of the following:
 - (i) Subchapter K and the regulatory program, or;
 - (ii) Other applicable State and Federal laws;

- (3) A plan for the restoration of the water recharge capacity of the mine plan area to its approximate pre-mining condition; and
- (4) A plan for the collection, recording, and reporting of ground and surface water quality and quantity data according to the performance standards of subchapter K and the regulatory program and providing for:
- (i) Adequate monitoring of all discharge from the affected area;
 - (ii) Adequate data to describe the likely daily and seasonal variation in discharges from the affected area in terms of water flow, pH, total iron, total manganese, and total suspended solids and, if requested by the regulatory authority, any other parameter characteristic of the discharge;
 - (iii) Monitoring at appropriate frequencies to measure normal and abnormal variations in concentration;
 - (iv) An analytical quality control system including standard methods of analysis such as those specified in 40 CFR 136; and
 - (v) A regular report of all measurements to the regulatory authority within 60 days of sample collection unless violations of permit conditions occur in which case the regulatory authority shall be notified immediately after receipt of analytical results by the permittee. If the discharge is subject to regulations by a Federal or State permit issued in compliance with the Clean Water Act of 1972 (33 U.S.C. Section 1251 1378), a copy of the completed reporting form supplied to meet the permit requirements may be submitted to the regulatory authority to satisfy the reporting requirements if the data meet the sampling frequency and other requirements of this paragraph. {41844}

(c) The description shall include a statement of the:

(1) Probable hydrologic consequences of the proposed mining and reclamation operations, both off and on the mine site with respect to the hydrologic regime, quantity and quality of water in surface and groundwater systems under all seasonal conditions, including the contents of dissolved and total suspended solids, total iron, pH, total manganese, and other parameters required by the regulatory authority; and

(2) Probable cumulative impacts of all anticipated mining in the general area around the proposed operations upon the hydrology of the area and particularly upon water availability.

(d) Information required under paragraph (c) with respect to hydrology, water quality and quantity and geology related to hydrology of areas outside the proposed mine plan area shall be provided by the regulatory authority to the extent that this information is available from an appropriate Federal or State agency. If this information is not available from a Federal or State agency, the applicant shall gather and submit this information to the regulatory authority as part of the permit application. The permit shall not be approved by the regulatory authority until this information is available in the application to enable the regulatory authority to make an adequate assessment of the impact on the hydrologic balance under this section.

SECTION 780.23 - RECLAMATION PLAN: POST-MINING LAND USES.

(a) Each plan shall contain a detailed description of the proposed use of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans.

(b) The description of the proposed post-mining land use shall set forth the following:

(1) How the proposed post-mining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(2) Where range or grazing is the proposed post-mining use, the detailed management plans to be implemented;

(3) Where a land use different from the pre-mining land use is proposed, all materials needed for approval of the alternative use under 30 CFR 816.124; and

(4) The consideration which has been given to making all of the proposed surface coal mining and reclamation operation consistent with surface owner plans, and applicable State and local land use plans and programs.

(c) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or

equitable owner of record of the surface of the mine plan area and the State and local government agencies which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation.

SECTION 780.25 - RECLAMATION PLAN: PONDS, IMPOUNDMENTS, BANKS, DAMS AND EMBANKMENTS.

(a) General. Each plan shall contain a description, map, and cross-section drawing of each temporary and permanent sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, which shall comply with 30 CFR 816.46, 816.49, 816.56, 816.81 816.85, and 816.91 through 816.93. Each plan shall cover geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate.

(b) Sedimentation ponds.

(1) Sedimentation ponds, whether temporary or permanent, shall be designed according to the criteria in 30 CFR 816.46. Any sedimentation pond or earthen structure which will remain on the mine plan area as a permanent water impoundment shall meet the criteria 30 CFR 816.49 and shall be designed according to the criteria established under Pub. L. 83 566 (16 U.S.C. Section 1006). Each plan shall contain design specifications based on the appropriate precipitation event and shall be approved by a registered professional engineer.

(2) Each plan shall, at a minimum, comply with the requirements of the Mine Health and Safety Administration, 30 CFR 77.216 2, for designing temporary or permanent sedimentation pond or coal processing waste dams or impoundments.

(c) Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 30 CFR 816.81- 816.85 and shall be approved by a registered professional engineer.

(d) Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to conform with the criteria in 30 CFR 816.91- 816.93. Each plan shall contain the results of geotechnical investigation of the proposed dam or embankment foundation area to determine the structural competence of the bedrock foundation material to support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(1) The number, location and depth of borings on test pits shall be determined with respect to the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions;

(2) The character of the bedrock and proposed abutment sites and any adverse geologic conditions shall be considered as to the particular dam or embankment site and reservoir site;

(3) Each plan shall identify all springs, seepage, and ground water flow observed or anticipated during wet periods in an area of the proposed dam or embankment;

(4) Consideration shall be given to the possibility of mud flows, rock debris falls or other landslide condition into the dam or embankment or into the impounded material; and

(5) A survey shall be made regarding the potential effects of subsidence of the subsurface strata due to past and future mining operations.

(e) Each plan under paragraphs (b) and (d) of this section shall include a stability analysis of each structure, if the structure is at least 20 feet high and impounds more than 200 acre-feet. The stability analysis shall include, but is not limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

SECTION 780.27 - RECLAMATION PLAN: SURFACE MINING NEAR UNDERGROUND MINING.

For a surface mining operation to be conducted within 500 feet of an underground mine, the plan shall describe the measures to be used to comply with the requirements of the regulatory authority and the Mine Health and Safety Administration as required under 30 CFR 816.79.

SECTION 780.29 - DIVERSIONS.

Each application shall contain descriptions, including maps and cross sections, of stream channel diversions and other diversions constructed to control overland flow around or through the mine plan area in compliance with the performance standards of 30 CFR 816.43 816.44.

SECTION 780.31 - PROTECTION OF PUBLIC PARKS AND HISTORIC PLACES.

For any public parks or historic places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to minimize or prevent the impacts in order to obtain approval of the regulatory authority and other agencies under 30 CFR 761.12(f). {41845}

SECTION 780.33 - RELOCATION OR USE OF PUBLIC ROADS.

Each plan shall describe, with appropriate maps and cross section drawings, the measures to be used by the applicant to ensure that the interests of the public and landowners affected are protected if, under 30 CFR 761.12(d), the applicant seeks to have the regulatory authority's approval of:

- (a) Conducting the proposed operations within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join such right-of-way; or,
- (b) Relocating the public road.

SECTION 780.35 - DISPOSAL OF EXCESS SPOIL.

(a) Each plan shall contain descriptions, including appropriate maps and cross section drawings, of the proposed disposal site and design of the spoil disposal structures which shall comply with the requirements in 30 CFR 816.71 816.73. These plans shall cover the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate.

(b) Disposal of excess spoil, whether in a valley or head-of-hollow fill structure, shall be designed to conform with the criteria in 30 CFR 816.71 816.73. Each plan shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

- (1) The character of bedrock and any adverse geologic conditions in the disposal area,
- (2) A survey identifying all springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the disposal site;
- (3) A survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations;
- (4) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and
- (5) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and shall be accompanied by the alternatives considered in selecting the specific design parameters and methods.

(c) In steep slope areas where rock-toe buttresses and spoil embankments are required to ensure the stability of the spoil disposal structures, these additional requirements shall be complied with:

- (1) The number, location, and depth of borings or test pits shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and
- (2) The engineering parameters utilized to design the rock-toe buttress and spoil embankment shall be

determined in accordance with paragraph (b)(5) of this section.

(d) These engineering analyses shall be performed by a registered professional engineer, engineering geologist or other qualified person. All on-site geotechnical investigations shall be supervised by an engineer or engineering geologist.

SECTION 780.37 - TRANSPORTATION FACILITIES.

Each plan shall contain a description of each road, conveyor or rail system to be constructed, used, or maintained within the mine plan area. The description shall include a map and an appropriate cross section plan and shall include the following:

- (a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.
- (b) A report of appropriate geotechnical analysis where approval of the regulatory authority is required for steep cut slopes under 30 CFR 816.32(b)(2).
- (c) A description of measures to be taken for alteration or relocation of a natural drainway for approval by the regulatory authority under 30 CFR 816.32(b)(4).
- (d) A description of material, other than a rock headwall, to be used for protection of the inlet end of a ditch relief culvert, for approval by the regulatory authority under 30 CFR 816.32(c)(3).
- (e) A description of measures to be taken to obtain approval of the regulatory authority for construction of a road embankment over 15 feet in height over a stream under 30 CFR 816.32(d). {41845}

PART 782 – UNDERGROUND MINING PERMIT APPLICATIONS – MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE AND RELATED INFORMATION

Section

782.1	Scope.
782.2	Objectives.
782.4	Responsibilities.
782.5	Definitions.
782.11	Applicability.
782.13	Identification of interests.
782.14	Compliance information.
782.15	Right of entry and operation information.
782.16	Relationship to areas designated unsuitable for mining.
782.17	Permit term information.
782.18	Personal injury and property damage insurance information.
782.19	Identification of other licenses and permits.
782.20	Identification of location of public office for filing of application.
782.21	Newspaper advertisement and proof of publication.

Authority: Sections 102, 201, 501, 503, 504, 506, 507, 508, 509, 510, 515, 516, and 522 of Pub. L. 95 87, 91 Stat. 445 (30 U.S.C. Sections 1201, 1211, 1251, 1253, 1254, 1256, 1257, 1258, 1259, 1260, 1265, 1266, 1272).

SECTION 782.1 - SCOPE.

This part establishes the minimum requirements for the Secretary's approval of regulatory program provisions regarding legal, financial, compliance and general information that must be contained in permit applications for underground mining activities.

SECTION 782.2 - OBJECTIVES.

The objective of this part is to ensure that all relevant information regarding the ownership and control of the person who conducts any underground mining activities, the ownership and control of the property to be affected by the operations, the compliance status and history of such persons, and other important information is provided to the regulatory authority before a decision to issue or deny a permit.

SECTION 782.4 - RESPONSIBILITIES.

It is the responsibility of the permit applicant to provide to the regulatory authority all of the information required by this part.

SECTION 782.5 - DEFINITIONS.

As used in this part, principal shareholder means any person who is the owner of record of 10 percent or more of any class of voting stock.

SECTION 782.11 - APPLICABILITY.

This part applies to any person who applies for a permit to conduct underground mining activities.

SECTION 782.13 - IDENTIFICATION OF INTERESTS.

(a) Each application shall contain the names and addresses and telephone numbers of:

- (1) The permit applicant;
- (2) Every legal or equitable owner of record of the property to be mined;
- (3) The holders of record of any leasehold interest in the property to be mined;
- (4) Any purchaser of record under a real estate contract of the property to be mined;
- (5) The operator, if the operator is a person different from the applicant; and
- (6) The resident agent of the applicant who will accept service of process.

(b) Each application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association or other business entity. For businesses other than single proprietorships, the application shall contain the following information, where applicable: {41846}

(1) Names and addresses of every officer, partner, director or other person performing a function similar to a director of the applicant;

(2) Name and address of any person who is a principal shareholder of the applicant; and

(3) Names under which the applicant, partner, or principal shareholder previously operated a surface mining operation in the United States within the 5 years preceding the date of application.

(c) If any owner of record, holder of record, purchaser of record or operator identified under paragraph (a) of this section is a business entity other than a single proprietor, the application shall contain the names and addresses of their principals, officers, and resident agents.

(d) Each application shall contain a statement of any current or previous coal mining permits in the United States held

by the applicant and by any person identified in paragraph (b)(3) of this section and of any pending permit application to conduct coal mining operations in the United States. The statement shall include a list by permit or application number, regulatory authority, and State for each such coal mining operation.

(e) Each application shall contain the names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(f) Each application shall contain the name of the mine, if any, and the Mine Safety and Health Administration identification number for the mine and all sections of the mine.

SECTION 782.14 - COMPLIANCE INFORMATION.

(a) Each application for permit shall contain a statement of whether the applicant, any subsidiary, affiliate or persons controlled by or under common control with the applicant has:

- (1) Held a Federal or State mining permit, which in the 5-year period prior to the date of submission of the application has been suspended or revoked; or
- (2) Has forfeited a coal mining bond or similar security deposited in lieu of bond.

(b) If a suspension, revocation or forfeiture has occurred, each application shall contain a statement of the facts involved, including:

- (1) Identification, by number and date of issuance, of the permit or date and amount of bond or similar security;
- (2) Identification of the authority that suspended, revoked or forfeited and the stated reasons for the action by that authority;
- (3) The current status of the permit, bond or similar security involved;
- (4) The date, location and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and
- (5) The current status of these proceedings.

(c) Each application shall contain a schedule listing violation notices of the Act and of any law, rules, or regulation of the United States or of any State or Federal department or agency in the United States pertaining to air or water environmental protection incurred by the applicant, in connection with any coal mining operation during the 3-year period before the application date. The application shall also contain a statement regarding each violation notice including:

- (1) The date of issuance and identity of the issuing regulatory authority, department, or agency;
- (2) A brief description of the particular violation alleged in the notice;
- (3) The date, location and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the violations;
- (4) The current status of the proceedings and of the violation notice; and
- (5) The actions, if any, taken by the applicant to abate the violation.

SECTION 782.15 - RIGHT OF ENTRY AND OPERATION INFORMATION.

(a) Each permit application shall contain a description of those documents upon which the applicant loses his legal right to enter and begin underground mining activities in the permit area and whether that right is the subject of pending court litigation. Nothing in this chapter gives the regulatory authority the jurisdiction to adjudicate property title disputes.

(b) If requested by the regulatory authority, each application shall contain a certified copy of each document the applicant relies upon. This does not include information that specifies amounts of royalty, rent or other payments for rights to mine the coal.

(c) For underground mining operations where the associated surface operations involve surface mining of coal and where private mineral estate to be mined has been severed from the private surface estate; the application shall contain:

(1) A copy of the written consent of the surface owner to the applicant for the extraction of coal by surface mining methods; or

(2) A copy of the document of conveyance that expressly grants or reserves the right to the applicant, or its predecessor-in-interest, to conduct the surface coal mining and reclamation operations; or

(3) If the conveyance does not expressly grant the right to conduct surface coal mining and reclamation operations, documentation that under the applicable State law, the applicant has the legal authority to conduct surface coal mining and reclamation operations. Nothing in this paragraph gives the regulatory authority the jurisdiction to adjudicate property rights disputes.

SECTION 782.16 - RELATIONSHIP TO AREAS DESIGNATED UNSUITABLE FOR MINING.

(a) Each application shall contain a statement of whether the proposed permit area is within an area designated unsuitable for underground mining activities under 30 CFR Part 764 or under study for designation in an administrative proceeding initiated under that part.

(b) If an applicant claims the exemption in 30 CFR 786.13(d)(2), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed operations.

(c) If an applicant proposes to conduct surface aspects of underground mining activities within 300 feet of an occupied dwelling, the application shall include a copy of the written consent of the owner of the dwelling for conducting such operations.

SECTION 782.17 - PERMIT TERM INFORMATION.

(a) Each permit application shall contain the anticipated or actual starting and termination date of each phase of the underground mining activities, and the number of acres of surface to be disturbed in each phase of mining and over the total life of the permit.

(b) If the applicant proposes to conduct the activities beyond a permit term of 5 years, the application shall contain the information needed for the showing required under 30 CFR 786.11(a).

SECTION 782.18 - PERSONAL INJURY AND PROPERTY DAMAGE INSURANCE INFORMATION.

Each permit application shall contain either a certificate of insurance or evidence of satisfaction of other self-insurance requirements according to 30 CFR 806.13.

SECTION 782.19 - IDENTIFICATION OF OTHER LICENSES AND PERMITS.

Each permit application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed mining operation. This list shall identify each license and permit by: {41847}

(a) Type of permit or license;

(b) Name and address of issuing authority;

(c) Identification number of application for permit or license or, if issued, the identification number of the permit or

license; and

(d) The date of approval or disapproval action by each issuing authority.

SECTION 782.20 - IDENTIFICATION OF LOCATION OF PUBLIC OFFICE FOR FILING OF APPLICATION.

Each application shall identify, by name and address, the public office where the applicant will simultaneously file a copy of the application for public inspection in accordance with 30 CFR 787.11(d).

782.21 NEWSPAPER ADVERTISEMENT AND PROOF OF PUBLICATION.

(a) Each application shall contain a copy of the newspaper advertisement and proof of publication of the advertisement in accordance with 30 CFR 787.11(a).

(b) The copy of the newspaper advertisement and proof of publication shall be filed not later than 1 week after the last date of publication required under 30 CFR 787.11(a). {41847}

PART 783 – UNDERGROUND MINING PERMIT APPLICATIONS – MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES IN THE PERMIT AND ADJACENT AREAS

Section

783.1	Scope.
783.2	Objectives.
783.4	Responsibilities.
783.11	General requirements.
783.12	General environmental resources information.
783.13	Description of hydrology and geology: General requirements.
783.14	Geology description.
783.15	Ground water hydrology and geology.
783.16	Surface and ground water information.
783.17	Alternative water supply.
783.18	Climatological and air quality data.
783.19	Vegetation data.
783.20	Fish and wildlife resources information.
783.21	Analyses of selected overburden and topsoil mixtures.
783.22	Land use descriptions.
783.23	Maps, plans and cross-sections: Preparation.
783.24	Maps: General requirements.
783.25	Cross section maps and plans.
783.26	Soil resources description.

Authority : Sections 102, 201, 501, 503, 504, 506, 507, 508, 509, 510, 515, 516, 517, and 522, Pub. L. 95 87, 91 Stat. 445. (30 U.S.C. 1201, 1211, 1251, 1253, 1254, 1256, 1257, 1258, 1259, 1260, 1265, 1266, 1267, and 1272).

SECTION 783.1 - SCOPE.

This part establishes the minimum requirements for the Secretary's approval of provisions of regulatory programs for the contents of applications for permits for underground mining activities related to technical information on the existing site of the mine plan area and adjacent areas.

SECTION 783.2 - OBJECTIVES.

The objectives of this part are to insure that:

- (a) Each application provides to the regulatory authority a complete and accurate description of the existing premining environmental resources both within the mine plan area and adjacent areas that may be affected by the proposed underground mining activities.
- (b) The description is in a form that enables the regulatory authority to make a decision on an application that serves the purposes of the act.

SECTION 783.4 - RESPONSIBILITIES.

- (a) It is the responsibility of the applicant to provide all information in the application required by this part, except where specifically exempted in this part.
- (b) It is the responsibility of State and Federal Government agencies to provide application information as specifically provided for in this part.
- (c) The regulatory authority is responsible for developing and implementing a permit system.

SECTION 783.11 - GENERAL REQUIREMENTS.

Each permit application shall include a description of the existing, premining environmental resources both within the mine plan area and adjacent areas that may be affected by the underground mining activities.

SECTION 783.12 - GENERAL ENVIRONMENTAL RESOURCES INFORMATION.

- (a) The applicant shall describe the mine plan area, the size, sequence and timing of the subareas for which it is anticipated that individual permits for mining will be requested.
- (b) Each description shall identify the location and nature of archeological, paleontological, cultural, historic and unique geological features within the mine plan area and known features in adjacent areas.
- (c) Each description shall include a statement of all lands, interests in lands, options or pending bids on such interests held or made by the applicant which lands are within the mine plan area or adjacent area.
- (e) The descriptive data required in this section shall be graphically displayed on a map at a scale of 1:25,000 or larger.

SECTION 783.13 - DESCRIPTION OF HYDROLOGY AND GEOLOGY: GENERAL REQUIREMENTS.

- (a) Each application shall contain a description of the geology, hydrology, and water quality and quantity of all lands within the mine plan area and adjacent area, and the general area, together with the characteristics of all surface and ground waters within the general area, and that water which will flow into or receive discharges of water from the general area. This statement shall be applicable to sections 783.12 783.17 and shall conform to the following requirements;
- (b)(1) Information on hydrology, water quality and quantity and geology related to hydrology of areas outside the proposed mine plan area shall be provided by the regulatory authority to the extent that this data is available from an appropriate Federal or State agency.

(2) If this information is not available from the appropriate Federal or State agency, the applicant shall gather and submit this information to the regulatory authority as part of the permit application.

(3) The permit shall not be approved by the regulatory authority until this information is available in the application.

SECTION 783.14 - GEOLOGY DESCRIPTION.

(a) Each plan shall contain a description of the geology within the mine plan area down to the deepest ground water aquifer affected below the lowest coal seam to be mined by the proposed underground mining activity. The plan shall include a separate description of the geology for surface areas disturbed for the location of surface support facilities, those surface lands overlying coal to be mined and the coal to be mined.

(1) A plan shall be prepared which describes the overburden geology in those areas to be disturbed for the siting of surface support facilities (face-up area) incident to underground mining activities. The plan shall contain a detailed description of the physical and chemical characteristics of the overburden including the following data resulting from analyses of core or outcrop samples:

(i) The location of areas where subsurface water will be exposed at the face-up area;

(ii) The logs of drill holes showing the lithologic characteristics of the overburden;

(iii) The physical properties of the overburden to be disturbed including size analyses, compaction and erodability; and

(iv) Chemical analyses of the overburden to locate and identify those horizons which contain potential acid-forming or toxic-forming materials. {41848}

(2) A plan shall contain a description of the geology for those surface lands within the mine plan area which are underlain by the coal seam to be extracted and the geology of the coal seam itself. The plan shall provide a detailed description of the following:

(i) The depth and classification of the overburden;

(ii) The geologic structure of the overburden;

(iii) A standard rock mechanics analysis of earth materials making up the overburden between the coal and the surface. The analysis shall include but is not limited to, triaxial compressive strength, grain size analysis, slaking tests in air and in water, and angle of internal friction, for each major lithologic unit overlying the coal;

(iv) Pyritic content and alkalinity potential of the overburden above the coal seam to be mined; and (v) Pyrite, marcasite and sulfur content of the coal seam.

(b) An applicant may request that the requirements of paragraph (1) and (2)(i iv) of this section be waived by the regulatory authority. The waiver may be granted only if the regulatory authority makes a written determination that description required is unnecessary because other equivalent information is accessible and in a satisfactory form.

SECTION 783.15 - GROUND WATER HYDROLOGY AND GEOLOGY.

Each permit application shall describe the ground water hydrology for the affected area and mine plan area, including, but not limited to the lithology, thickness, depth to water, permeability, transmissivity, production data, quantity and quality of water, and interrelationships with other aquifers and surface waters, for each aquifer to be disturbed or affected by mining.

SECTION 783.16 - SURFACE AND GROUND WATER INFORMATION.

(a) Each permit application shall set forth surface and ground water information including the location of all streams, lakes, ponds, wells and springs, and descriptions of existing surface and underground drainage patterns throughout the year, within the mine plan area and adjacent area.

(b) Surface water information shall include:

(1) Minimum, maximum, and average depth and rate of flow conditions, establishing critical low flows and peak discharge rates of streams for a minimum of 1 water year; and

(2) Water quality data establishing the characteristics of such waters in, discharging into, or which will receive flows of surface or ground water from the affected area within the proposed permit area, through all seasonal variations, showing:

- (i) Total dissolved solids in milligrams per liter;
- (ii) Total suspended solids in milligram per liter;
- (iii) Acidity;
- (iv) pH in standard units;
- (v) Total and dissolved iron in milligrams per liter;
- (vi) Total manganese in milligrams per liter; and
- (vii) Such other information as the regulatory authority determines is relevant.

SECTION 783.17 - ALTERNATIVE WATER SUPPLY.

Each permit application shall identify:

(a) The sources of water supply that could be developed to replace water supplies of an owner of interest in real property within the mine plan area and adjacent areas including:

(1) Persons who obtain supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source within the mine plan area and adjacent area; and

(2) The probable extent to which an owner's supply will be affected, by contamination, diminution, or interruption proximately resulting from the proposed underground coal mining and reclamation operations and related surface activities.

SECTION 783.18 - CLIMATOLOGICAL AND AIR QUALITY DATA.

When requested by the regulatory authority, the permit application shall contain a statement of the climatological and air quality factors that are representative of the mine area, including:

- (a) The average seasonal precipitation;
- (b) The average direction and velocity of prevailing winds; and
- (c) Seasonal temperatures.

SECTION 783.19 - VEGETATION DATA.

(a) The permit application shall contain a statement of the location of lands proposed for use as the reference area, by which the success of post-mining revegetation of lands affected by surface operations and facilities within the mine plan area is to be determined. This statement shall include a description of the vegetative cover, diversity and productivity of the reference area.

(b) If required by the regulatory authority, the permit application shall include a map of existing vegetation and a supporting narrative that delineates and describes those areas of different vegetation or plant communities within the mine plan area and reference areas. This description shall include information adequate to predict the potential for reestablishing vegetation as required by 30 CFR 817.111 through 817.117.

(c) The area to be mapped shall also include sufficient adjacent areas to permit evaluation of vegetation on important habitat for fish and wildlife, for those species of fish and wildlife identified under 30 CFR 783.20.

SECTION 783.20 - FISH AND WILDLIFE RESOURCES INFORMATION.

- (a) The permit application shall contain a statement of the results of a study of the populations of fish and wildlife species within the mine plan area and adjacent areas.
- (b) The species of fish and wildlife shall be studied in the detail required by the regulatory authority, according to:
 - (1) Published data or other information from secondary sources, as opposed to newly gathered field data; or
 - (2) Alternative written guidance provided by applicable State and Federal fish and wildlife management agencies.

SECTION 783.21 - ANALYSES OF SELECTED OVERBURDEN AND TOP SOIL MIXTURES.

Where the applicant proposes to use selected overburden materials instead of, or as a supplement to topsoil in order to comply with the topsoil handling requirements of 30 CFR 817.22, the application shall contain the results of any analyses, trials and tests required by the regulatory authority under that section.

SECTION 783.22 - LAND USE DESCRIPTIONS.

- (a) The permit application shall contain a statement of the condition, capacity and productivity of the land within the mine plan area.
- (b) The statement shall include a map and supporting narrative of the general uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within 5 years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described. If the land has been previously mined, the uses which preceded mining shall be described.
- (c) The statement shall include a land capability and productivity synthesis which includes a compilation of the land-use description under paragraphs (a) and (b) of this section with other environmental resources information required under this part. The synthesis shall provide analysis of:
 - (1) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, and vegetative cover;
 - (2) The productivity of the land before mining, with the average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management; and {41849}
 - (3) A statement of whether the land has been previously mined, and, if so, the following information, to the extent obtainable:
 - (i) The type of mining method used;
 - (ii) The coal seams or other mineral strata mined;
 - (iii) The extent of coal or other minerals removed; and I11(iv) The dates of past mining; and
 - (4) Such other information required under Subchapter J of this Chapter.

SECTION 783.23 - MAPS, PLANS, AND CROSS-SECTIONS. PREPARATION

- (a) Maps, plans and cross-sections included in a permit application and required by Section 783.25 shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer or professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture.
- (b) Maps shall be at an appropriate scale, clearly showing the land within the permit area and adjacent areas, and include all the types of information set forth on topographical maps of the U.S. Geological Survey of a scale of 1:25,000 or larger.

SECTION 783.24 - MAPS: GENERAL REQUIREMENTS.

The description shall include maps, prepared in accordance with Section 783.23, showing:

- (a) All boundaries of lands and names of present owners of record of lands, both surface and sub-surface, included in the proposed mine plan area and adjacent areas;
- (b) The boundaries of land within the proposed mine plan area upon which the applicant has the legal right to enter and begin underground mining activities;
- (c) The boundaries of all lands to be mined over the estimated total life of the proposed mining operations, with a description of size, sequence and timing of the mining of sub-areas for which it is anticipated that additional permits will be sought;
- (d) The location of all buildings in and within 1000 feet of the mine plan area, with identification of the current use of the buildings;
- (e) The location of surface and sub-surface improvements or the mine plan area including, but not limited to fences, electric power and telephone lines, pipelines, water, oil or gas wells, drainage tile fields, and other manmade features;
- (f) The location and boundaries of proposed reference areas for determining the success of revegetation;
- (g) The locations of water-intakes for current users of surface waters flowing that may be affected by discharges from affected areas in the mine plan area;
- (h) Each highway and road located in or within 100 feet of the proposed mine plan area;
- (i) All public parks, existing archeological, paleontological, cultural, historical and unique geological features within the proposed mine plan area and known features in adjacent areas;
- (j) Each public or private cemetery located in or within 100 feet of the mine plan area;
- (k) Any land within the proposed permit area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act;
- (l) Location of all known active or abandoned mines within the mine plan area and adjacent areas;
- (m) Any other information required by the regulatory authority.

SECTION 783.25 - CROSS-SECTION MAPS AND PLANS.

The application shall include cross-section maps and plans prepared in accordance with 30 CFR 783.23 and updated on an annual basis, showing elevation and location of test borings, core samplings, monitoring stations for water quality and quantity and fish and wildlife used in preparation of the application, and showing the following information:

- (a) Nature, depth, and thickness of the various strata of coal to be mined, coal or rider seams above the seam to be mined, overburden, and strata immediately below the lowest coal seam to be mined;
- (b) All mineral crop lines and the strike and dip of the coal to be mined, within the mine plan area and adjacent areas;
- (c) Location and extent of workings of known underground mines, including mine openings to the surface areas affected by such mines, within the mine plan area and adjacent areas;

- (d) Location and extent of sub-surface water, if encountered, within the proposed mine plan area or adjacent areas, including, but not limited to: aquifers and piezometric surfaces thereof, through all seasonal variations, the flow patterns of such sub-surface water, and the estimated elevations and contours of ground-water tables;
- (e) Location, elevation and dimensions of springs, constructed or natural drainways of surface water, streams, or irrigation ditches within the proposed mine plan area or adjacent areas;
- (f) Location and elevation of discharge of industrial wastes to surface or ground-waters within the proposed mine plan area, or at points in adjacent areas to surface waters which flow into the proposed mine plan area;
- (g) Boundaries and elevations of existing or previously surfaced-mined areas within the proposed mine plan area;
- (h) Location, elevation and dimensions of existing areas of spoil, waste, refuse and topsoil preservation, dams, other impoundments, and water treatment or air pollution control facilities within the proposed mine plan area;
- (i) Location and depth of water, gas or oil wells within the proposed mine plan area; and
- (j) Sufficient slopes to adequately represent the existing land surface configuration of the mine plan area, measured and recorded according to the following:
 - (1) Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed; or, where this is impractical, at locations specified by the regulatory authority.
 - (2) Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the regulatory authority to be representative of the premining configuration of the land.
 - (3) Slope measurements shall take into account natural variations in slope so as to provide accurate representation of the range of natural slopes and shall reflect geomorphic differences of the area to be disturbed.
 - (4) Slope measurements may be made from existing topographic maps showing contour lines, having sufficient detail and accuracy consistent with the submitted mining and reclamation plan.
 - (5) Contour lines shall be based on intervals of a maximum of five (5) feet where the slope of the land is twenty (20) degrees or less and a maximum of ten (10) feet where slopes are greater than twenty (20) degrees.

SECTION 783.26 - SOIL RESOURCES DESCRIPTION.

- (a) A soil map shall be prepared that delineates those portions of the mine plan area of different soil morphology and soil environment. The soil map shall provide adequate information to establish present and potential productivity levels of the land and to aid in the classification, stockpiling and use of soil materials during mining and reclamation operations. The soil resources description shall also provide adequate information to predict the potential for reestablishing vegetation and the proposed post-mining use. {41850}
- (b) The applicant shall supply such other information as may be required by the regulatory authority.

PART 784 – UNDERGROUND MINING PERMIT APPLICATIONS – MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

Section	
784.1	Scope.
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784.23	Transportation facilities.
784.25	Return of coal processing waste to abandoned underground workings.

Authority: Sections 102, 201, 501(b), 503, 504, 506, 507, 508, 509, 510, 515, 516, 517, and 522 of Pub. L. 95 87, 91 Stat. 445 (30 U.S.C. 1201, 1202, 1211, 1251, 1253, 1254, 1256, 1257, 1258, 1259, 1260, 1265, 1266, 1267, 1267 and 1272).

SECTION 784.1 - SCOPE.

This Part provides the minimum requirements for the Secretary's approval of provisions of regulatory programs for the mining operations and reclamation plans portions of permit applications for underground coal mining activities under those programs, except to the extent that different requirements are established for those plans under Part 785 of this Subchapter.

SECTION 784.2 - OBJECTIVES.

The objectives of this Part are to establish the minimum requirements under regulatory programs for the contents of mining and reclamation plan portions of applications for permits, so that the regulatory authority is provided with comprehensive and reliable information on proposed underground coal mining and reclamation operations, and to insure that such operations are allowed to be conducted only in compliance with the Act, this Chapter and the regulatory program.

SECTION 784.4 - RESPONSIBILITIES.

- (a) It is the responsibility of the applicant to provide to the regulatory authority all of the information required by this Part, except where specifically exempted in this Part.
- (b) It is the responsibility of State and Federal governmental agencies to provide information to the regulatory authority where specifically required in this Part.

SECTION 784.11 - RECLAMATION AND OPERATIONS PLAN INTRODUCTION.

- (a) Each application shall contain a plan of the proposed mining and reclamation operations, showing how the applicant will comply with all applicable requirements of Sections 515 and 516 of the Act, Subchapter K and the regulatory program.
- (b) Each map, plan and cross-section shall delineate the location on the permit area where the performance standards in 30 CFR 817 apply. Areas that were mined under the initial regulatory program or that were mined before February 3, 1978 shall also be delineated on the map.

SECTION 784.12 - RECLAMATION AND OPERATIONS PLAN: GENERAL REQUIREMENTS.

Each plan shall contain:

- (a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques' anticipated annual and total production of coal, by tonnage, the major equipment used or proposed to be used for all aspects of the operation, within the proposed mine plan area;
- (b) A detailed timetable for the completion of each major step in the reclamation plan;
- (c) A detailed estimate of the costs of reclamation of the proposed operations required to be covered by a performance bond under Subchapter J of this Chapter, with supporting calculations for the estimates;
- (d) A plan for backfilling, soil stabilization, compacting, and grading and cross-sections that show the anticipated soil surface configuration of the permit area, in accordance with Sections 817.101 through 817.106;
- (e) A plan for topsoil handling and replacement and revegetation of the areas affected by surface operations or facilities according to 30 CFR 817.21 817.25 and 817.111 817.116 including, but not limited to, a description of:
 - (1) Timing of revegetation steps;
 - (2) Species of plants and trees to be used;
 - (3) Methods and amounts of seed or numbers of seedlings to be planted per acre;
 - (4) Mulching techniques;
 - (5) Irrigation, if appropriate, and pest and disease control measures, if any;
 - (6) Measures proposed for comparison of revegetation of the permit area with the reference area; and,
 - (7) A soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation.
- (f) A description of the measures selected for conducting the mining operation so that maximum use and conservation of the coal resource is ensured to minimize the need to re-mine the land in the future;
- (g) A description of measures to be employed to insure that all debris, acid-forming and toxic-forming or materials constituting a fire hazard are disposed of in accordance with 30 CFR 817.103;
- (h) A description, including appropriate cross-sections and maps, of the measures to be used to seal mine openings and to plug, case or manage drill and other bore holes within the proposed mine plan area in accordance with 30 CFR 817.13 817.15;
- (i) A description of how mining and other equipment and facilities will be removed from the mine plan area when no longer needed, in accordance with 30 CFR 817.11 817.132; and I11(j) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. section 7401 T1et. seq), the Clean Water Act (33 U.S.C. Sections 1251 et. seq), and other applicable air and water quality laws and regulations and any applicable health and safety standards;

SECTION 784.13 - PROTECTION OF HYDROLOGIC BALANCE.

- (a) Each application shall contain a detailed description, with appropriate maps and cross-section drawings, of the measures to be taken during and after the mining and reclamation process, in accordance with 30 CFR 817, to ensure the protection of:
 - (1) The quality of surface and ground water systems, both within the mine plan area and adjacent area, from the adverse effects of the surface coal mining and reclamation operation;
 - (2) The rights of present users to surface and ground water;
 - (3) The quantity of surface and ground water both within the mine plan area and adjacent area from the adverse effects of the surface coal mining and reclamation operation, and to provide alternative sources of water where the protection of quantity cannot be ensured; and
 - (4) Water quality by locating openings for all new drift mines working acid-producing or iron-producing

coal scans in such a manner as to prevent a gravity discharge of water from the mine.

(b) The description shall include the following:

(1) A plan for the control of surface and ground water drainage into, through and out of the area to be affected by the mining operation;

(2) A plan for the treatment, where required under Subchapter K and the regulatory program, of surface or ground water drainage from the mine plan area, and proposed quantitative limits on pollutants in discharges of the drainage according to the more stringent of the following: {41851}

(i) Subchapter K and the regulatory program, or;

(ii) Other applicable State and Federal laws;

(3) A plan for the restoration of the water recharge capacity of the mine plan area to its approximate pre-mining condition; and

(4) A plan for the collection, recording, and reporting of ground and surface water quality and quantity data according to the performance standards of Subchapter K and the regulatory program and providing for:

(i) Adequate monitoring of all discharge from the affected area;

(ii) Adequate data to describe the likely daily and seasonal variations in discharges from the mine plan areas, in terms of water flow, pH, total iron, total manganese, and total suspended solids and, if requested by the regulatory authority, any other parameter characteristic of the discharge; 111(iii) Monitoring at appropriate frequencies to measure variations in concentration;

(iv) An analytical quality control system, including standard methods of analysis such as those specified in 40 CFR 136; and

(v) A regular report of all measurements to the regulatory authority within 60 days of sample collection, unless violations of permit conditions occur in which case the regulatory authority shall be notified immediately after receipt of analytical results by the permittee. If the discharge is subject to regulation by a Federal or State permit issued in compliance with the Clean Water Act (33 USC Sections 1251-1378), a copy of the completed reporting form supplied to meet the regulatory authority to satisfy the reporting requirements if the data meets the sampling frequency and other requirements of this paragraph.

(c) The description shall include a statement of the:

(1) Probable hydrologic consequences of the proposed mining and reclamation operations, both off and on the mine plan area with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems under all seasonal conditions, including the contents of dissolved and total suspended solids, total iron, pH, total manganese, and other information required by the regulatory authority; and

(2) Probable cumulative impacts of all anticipated mining in the general area around the proposed mine plan area upon the hydrology of the area and particularly upon water availability.

(d) Information required under paragraph (c) of this Section, shall be provided by the regulatory authority, to the extent that this data is available from a Federal or State agency. If this information is not available from a Federal or State agency, the applicant shall submit this information to the regulatory authority as part of the permit application. The permit shall not be approved by the regulatory authority until this information is in the application.

(e) Each plan shall contain a detailed description, with appropriate drawings, of permanent entry seals and down-slope barriers designed to insure stability under anticipated hydraulic heads developed while promoting mine inundation after mine closure for the mine plan area.

SECTION 784.14 - RECLAMATION AND OPERATIONS PLAN: POST-MINING LAND USES.

(a) Each plan shall contain a detailed description of the proposed use of land areas affected by surface operations or facilities following reclamation, including a discussion of the capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans.

(b) The description of the proposed post-mining land use shall set forth the following:

- (1) How the proposed post-mining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;
 - (2) Where range or grazing is the proposed post-mining use, the detailed management plans to be implemented;
 - (3) Where a land-use different from the pre-mining land use is proposed, all materials needed for approval of the alternative use under 30 CFR 817.133; and
 - (4) The consideration given to making the proposed surface coal mining and reclamation operation consistent with surface owner plans, and applicable State and local land use plans and programs.
- (c) The description shall be accompanied by a copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface of the permit area and the State and local government agencies which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation.

SECTION 784.15 - RECLAMATION AND OPERATIONS PLAN: PONDS, IMPOUNDMENTS, BANKS, AND EMBANKMENTS.

(a) General. Each plan shall contain a description, map and cross-section drawing, of each temporary and permanent sedimentation pond, permanent water impoundment, coal processing waste bank and coal processing waste dam and embankment which shall comply with 30 CFR 817.46, 817.49, 817.56, 817.81 817.85 and 817.91 817.93. Each plan shall cover geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate. Each plan shall at a minimum, comply with the requirements of the Mine Health and Safety Administration, 30 CFR 77.216.2 for designing any sedimentation pond or coal processing waste dam or impoundment. Each permanent water impoundment to remain on the mine plan area after mining shall comply with the design criteria of Pub. L. 83 566 (16 USC Section 1006).

(b) Each sedimentation pond, shall be designed according to the performance standards in 30 CFR 817.48. Any sedimentation pond or earthen structure which remains on the mine plan area as a permanent water impoundment shall meet the standards in 30 CFR 817.49 and shall be designed according to the criteria of Pub.L. 83 566 (16 USC Section 1006).

(c) Coal processing waste banks Coal processing waste banks shall be designed to comply with the requirements of 30 CFR 817.81 .85 and shall be approved by a registered professional engineer.

(d) Coal processing waste dams and embankments Coal processing waste dams and embankments shall be designed to comply with the criteria in 30 CFR 817.91 .93. The plan shall include the results of a geotechnical investigation of the proposed dam or embankment foundation area to determine the structural competence of the bedrock foundation material to support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

- (1) The number, location and depth of borings or test pits shall be determined with respect to the size of the dam or embankment, and subsurface conditions.
- (2) The character of bedrock and proposed abutment sites and any adverse geologic conditions shall be considered as to the particular dam or embankment site and reservoir site.
- (3) Each plan shall identify all springs, seepage, and ground water flow observed or anticipated during wet periods in an area of the proposed dam or embankment.
- (4) Each applicant shall consider the possibility of mud flows, rock debris falls or other landslide conditions into the dam or embankment or into the impounding material. {41852}
- (5) A survey shall be made regarding the potential effects of subsidence of the geological subsurface strata due to past and future mining operations.

(e) Each plan under paragraphs (b) and (d) of this section shall include a stability analysis of each structure if the structure is at least 20 feet high and impounds more than 200 acre-feet. The stability analysis shall include, but not be limited to strength parameters, pore pressures, and long term seepage conditions. The plan shall also contain a

description of each engineering design assumption and calculation with a discussion of each alternative considered in

selecting the specific design parameters and construction methods.

SECTION 784.16 - PROTECTION OF PUBLIC PARKS AND HISTORIC PLACES.

For any public parks or historic places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used to minimize or prevent these impacts, to obtain approval of the regulatory authority and other agencies under 30 CFR 761.12(f).

SECTION 784.17 - RELOCATION OR USE OF PUBLIC ROADS.

Each plan shall describe the measures to be used by the applicant to ensure that the interests of the public and land owners affected are protected, if, under 30 CFR 761.12(d), the applicant seeks to have the regulatory authority's approval of:

- (a) Conducting the proposed operations within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join such right-of-way; or
- (b) Relocating the public road.

SECTION 784.18 - UNDERGROUND DEVELOPMENT WASTE.

(a) Each plan shall contain a description, including a map and cross-section plan of the proposed disposal method and site for placing underground development waste and spoil generated at surface areas affected by surface operations and facilities. Each plan shall cover the geotechnical investigations, design, construction, operation, maintenance and removal, if appropriate, in compliance with 30 CFR 817.121 through 817.126

SECTION 784.19 - SUBSIDENCE CONTROL PLAN.

Each plan shall describe the subsidence control to be used to achieve compliance with requirements of Sections 817.121 through 817.126 of Subchapter K, and shall be prepared in accordance with the following:

- (a) The subsidence control plan shall be designed using recognized professional standards, certified by a qualified registered professional mining engineer or engineering geologist, and approved by the regulatory authority.
- (b) It shall explain how the operations shall be conducted to prevent material damage to the surface to the extent technologically and economically feasible and maintain the value and use of surface lands within the area of influence. The area of influence is the area above and adjacent to the area to be mined as defined by an angle of draw prescribed by the regulatory authority.
- (c) The subsidence control plan shall set forth, but not be limited to, the following considerations:
 - (1) Geologic description of mine plan area required under 30 CFR 784.14;
 - (2) Maps and plans required under 30 CFR 784.22;
 - (3) Geometry, layout and progression of mine plan workings;
 - (4) Number of seams to be mined, and percent recovery after final mine pass;
 - (5) Proposed method and degree of back filling planned;
 - (6) Bearing strength and location of remnant coal pillars and barriers;
 - (7) Types and placement of artificial support; and
 - (8) A description of the mining technology to be employed.
- (d) Each plan shall contain a proposed subsidence monitoring plan, describing the existing surface areas for which a subsidence control plan is required under this Section, and the methods that will be used to evaluate subsidence during and after the proposed underground mining operation. This plan shall be prepared according to the following:

- (1) Measurements shall accurately delineate vertical and horizontal movements due to mine subsidence;
 - (i) Surveying shall be over lines of monuments installed as directed by the regulatory authority;
 - (ii) Each monument shall be constructed so that it is not affected by temperature variations, moisture, frost heave, soil creep, or disturbance by animals or people;
 - (iii) Spacing of monuments shall be such as to adequately provide information on horizontal and vertical movements as directed by the regulatory authority; and
 - (iv) Surveys shall begin and end at reference benchmarks in stable areas not subject to mine subsidence or other local instability.
- (2) Surveying shall be performed by a professional engineer or qualified surveyor using generally accepted surveying methods.
- (3) Surveys shall be at time intervals specified by the regulatory authority, but not less than semi-annually in areas of active mining. Upon completion of underground mining resurveying shall be at intervals specified by the regulatory authority and shall be continued at least as long as the life of any guarantee against damage, or until the area has subsided and stabilized.
- (4) A survey to document pre-mining conditions shall be made prior to any new underground mining operations.
- (5) A visual survey shall be made at least annually to identify and document the presence of tension cracks, fissures, structural offsets, and obvious subsidence damage to buildings, roads, railroads, dams, or other cultural features.
- (6) If the person who conducts the underground mining activity is denied reasonable access for surveying by the surface owner of lands subject to subsidence, the regulatory authority may modify the requirements of this section as appropriate.

SECTION 784.20 - PROTECTION OF FISH AND WILDLIFE.

Each application shall contain a fish and wildlife plan, for surface areas to be affected within the mine plan area and adjacent areas, which provides:

- (a) A statement of how the applicant proposes to use the best technology currently available for the site so that affected areas are reclaimed to a condition which will enhance fish, wildlife, and related environmental values.
- (b) If the applicant determines that it will not be practicable to achieve a condition which clearly shows a trend toward enhancement of fish and wildlife resources at the time revegetation has been successfully completed under 30 CFR 817.111 817.117, the applicant shall state:
 - (1) Why it is not practicable to achieve such a condition; and
 - (2) How the condition which is achieved uses best technology currently available to minimize adverse impacts on fish, wildlife, and related environmental values.
- (c) (1) Statements from applicable State and Federal fish and wildlife agencies on which impact control measures, management techniques and monitoring methods are recommended for the site.
 - (2) If a State or Federal fish and wildlife management agency fails to respond to the applicant's written request for this statement within six weeks, the applicant need not include the statement as part of the application.
- (d) A statement explaining how the applicant will utilize impact control measures, management techniques and monitoring methods to protect or enhance the following, if they are affected by the operation:
 - (1) Critical habitats of threatened or endangered species of plants or animals listed by the Secretary;
 - (2) Other species such as eagles, migratory birds or game animals, protected by State or Federal law, and their habitats; {41853}
 - (3) Habitat types of unique value for fish and wildlife, such as wetlands, riparian areas, cliffs supporting raptors, areas offering unique shelter or protection, reproduction and nursery areas, and wintering areas.

SECTION 784.21 - DIVERSIONS.

Each application shall contain descriptions, including maps and cross-section, of stream channel diversions and other diversions constructed to control overland flow around or through the mine plan area in compliance with the performance standards of 30 CFR 817.43- 817.44.

SECTION 784.22 - MAPS AND PLANS.

Each map, plan and cross-section shall delineate the location in the permit area where the performance standards in of Part 817 of Subchapter K apply. Areas that were mined under the initial regulatory program or that were mined before February 3, 1978 shall also be delineated on the map:

(a) Maps and plans shall have a scale of 1:25,000 or larger. Cross-sections shall have a scale prescribed by the regulatory authority. The maps, plans and cross-sections shall show the mining operations to be conducted and the lands to be affected throughout the operation.

(b) Any change in a facility or feature caused by the proposed mining operations shall be described if the facility or feature was shown on the map and plan required by 30 CFR 783.24- 783.25.

(c) The following features shall be shown in the maps, plans and cross-sections:

- (1) Each building, and utility corridor and facility to be used within the mine plan area;
- (2) The area of land to be affected within the mine plan area, according to the sequence of mining and reclamation;
- (3) Each coal storage, cleaning and loading area;
- (4) Each topsoil, overburden, refuse, spoil and waste storage area;
- (5) Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;
- (6) Each source of and facility relating to coal processing and pollution control waste disposal;
- (7) Each facility to be used to protect and enhance fish and wildlife and related environmental values;
- (8) Each explosive storage and handling facility;
- (9) Location, design and construction specifications for each sedimentation pond, permanent water impoundment, coal processing waste bank and coal processing waste dam and embankment according to 30 CFR 784.15 and disposal of underground development waste and excess spoil according to 30 CFR 784.18.
- (10) Each profile, at cross-sections specified by the regulatory authority, of the anticipated final surface configuration to be achieved for the affected areas;
- (11) Location of water quality, fish and wildlife, and each subsidence monitoring point;
- (12) Location and specifications for each facility that will remain on the mine plan area as a permanent feature, after the completion of surface coal mining and reclamation operations.

SECTION 784.23 - TRANSPORTATION FACILITIES.

Each plan shall contain a description of each road, conveyor and rail system to be constructed, used or maintained within the mine plan area. The description shall include a map and an appropriate cross-section plan and shall include the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis where approval of the regulatory authority is required for steep cut slopes under 30 CFR 817.32 (b)(2).

(c) A description of each measure to be taken for alteration or relocation of a natural drainway as required to obtain approval of the regulatory authority under 30 CFR 817.32(b)(4).

(d) Each application shall describe material, other than a rock headwall, to be used for protection of the inlet end of a

ditch relief culvert as required to obtain approval of the regulatory authority under 30 CFR 817.32(c)(3).

(e) Each application shall describe each measure to be taken for construction of a road embankment over 15 feet in height over a stream as required to obtain approval under 30 CFR 817.32(d).

SECTION 784.25 - RETURN OF COAL PROCESSING WASTE TO ABANDONED UNDERGROUND WORKINGS.

(a) Each plan shall describe the design, operation and maintenance of the proposed coal processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the regulatory authority under 30 CFR 817.88.

(b) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operation, surface area to be supported by the backfill and the anticipated occurrence of surface effects following backfilling.

(c) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retention of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(d) The plan shall describe each of permanent monitoring well to be located in the backfilled area, the strata underlying the mined coal, and gradient from the backfilled area.

(e) The requirements of paragraphs (a), (b), (c), and (d) of this Section shall also apply to pneumatic backfilling operations, except where the requirements specifying hydrologic monitoring is exempted by the regulatory authority. {41853}

PART 785 – REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

Section

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Authority: Sections 102, 201, 501(b), 503, 504, 506, 507, 508, 509, 510, 511, 513, 514, 515, 516, 517, 519, 527, 529, 701, and 711, Pub. L. 95 87, 91 Stat. 445 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1256, 1257, 1258, 1259, 1260, 1261, 1263, 1264, 1265, 1266, 1267, 1269, 1277, 1279, 1291, 1301).

SECTION 785.1 - SCOPE.

(a) This Part establishes the minimum requirements for permits for special categories of surface coal mining and reclamation operations. These requirements are in addition to the general permit requirements contained in this Subchapter G.

SECTION 785.2 - OBJECTIVE.

The objective of this Part is to ensure that permits are issued to categories of surface coal mining and reclamation operations only after the regulatory authority receives information that shows that the operation will be conducted according to the environmental performance standards of the Act. {41854}

SECTION 785.11 - ANTHRACITE SURFACE COAL MINING AND RECLAMATION OPERATIONS.

(a) This Section applies to any person who conducts or intends to conduct anthracite surface coal mining and reclamation operations in Pennsylvania.

(b) Each person who intends to conduct anthracite surface coal mining and reclamation operations shall apply for and obtain a permit in accordance with the requirements of this Subchapter. The following standards apply to applications for and issuance of permits:

(1) The environmental protection performance standards of 30 CFR 820.

(2) All of the provisions of Subchapter J except the specified bond limits and the period of revegetation responsibility.

(c) If the Pennsylvania anthracite permanent regulatory program is amended with respect to environmental protection performance standards, specified bond limits, or period of revegetation responsibility, the Secretary shall issue regulations necessary to meet the purposes of the Act. Each person who conducts or intends to conduct anthracite surface coal mining and reclamation operations shall comply with the additional regulations.

SECTION 785.12 - SPECIAL BITUMINOUS SURFACE COAL MINING AND RECLAMATION OPERATIONS.

(a) This section applies to any person who conducts or intends to conduct special bituminous coal mining and reclamation operations in Wyoming.

(b) Each application for a permit for a special bituminous coal mine operation shall include, as part of the mining operations and reclamation plan, the detailed descriptions, maps and plans needed to demonstrate that the operations will comply with the requirements of the Act and 30 CFR 825.

(c) The regulatory authority may issue a permit for a special bituminous coal mine operation for which a complete application has been filed in accordance with this section, if it finds, in writing, that the operation will be conducted in compliance with the Act and 30 CFR 825.

(d) Upon amendment or revision to the Wyoming regulatory program, regulations, or decisions made thereunder, governing special bituminous coal mines, the Secretary shall issue additional regulations necessary to meet the purposes of the Act.

SECTION 785.13 - EXPERIMENTAL PRACTICES MINING.

(a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations under a permit authorizing the use of experimental practices on an experimental basis, from the environmental protection performance standards of Subchapter K and a regulatory program.

(b) The purpose of this Section is to provide permit requirements for the permitting of surface coal mining and reclamation operations that encourage advances in mining and reclamation practices or allow post-mining land use for industrial, commercial, residential or public use (including recreational facilities) on an experimental basis.

(c) Experimental practice, as used in this Section, means the use of alternative surface coal mining and reclamation operational practices on an experimental basis. Experimental practices need not comply with the environmental protection performance standards of Subchapter K or a regulatory program if permitted by this Section.

(d) No person shall engage in or maintain any experimental practice, unless the experimental practice is first approved in a permit by the regulatory authority and the Director.

(e) Each person who desires to conduct an experimental practice shall submit a permit application for the approval of the regulatory authority and the Director. The permit application shall contain appropriate descriptions, maps and plans which show:

(1) The nature of the experimental practice requested.

(2) How use of the experimental practice:

(i) Encourages advances in mining and reclamation technology, or

(ii) Allows a post-mining land use for industrial, commercial, residential, or public use (including recreational facilities) on an experimental basis when the results are not otherwise attainable under the approved regulatory program.

(3) That the mining and reclamation operations proposed for use of experimental practices are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices.

(4) That the experimental practice:

(i) Is potentially more, or at least as, environmentally protective during and after the mining and reclamation operations, as those required under Subchapter K and the regulatory program; and

(ii) Will not reduce the protection afforded public health and safety below that provided by the requirements of Subchapter K and the regulatory program.

(5) That the applicant will conduct special monitoring with respect to the experimental practice during and after the operations involved. The monitoring program shall:

(i) Insure the collection and analysis of sufficient and reliable data to enable the regulatory authority and the Director to make adequate comparisons with other surface coal mining and reclamation operations employing similar experimental practices; and

(ii) Include requirements designed to identify, as soon as possible, potential risks to the environment and public health and safety from the use of the experimental practices.

(f) Each application shall contain provisions that invoke the environmental protection performance standards of Subchapter K in the event the objective of the experimental practice is a failure.

(g) All experimental practices sought shall be specifically identified in the newspaper advertisements by the applicant and the written notifications by the regulatory authority required under 30 CFR 787.11.

(h) No permit authorizing an experimental practice shall be issued, unless the regulatory authority first finds, in writing, upon the basis of both a complete application filed in accordance with the requirements of this section and the comments of the Director that:

(1) The experimental practice meets all of the requirements of paragraphs (e)(2) through (e)(5) of this section;

(2) The experimental practice is based on a clearly defined set of objectives which can reasonably be expected to be achieved;

(3) The experimental practice has been specifically approved, in writing, by the Director, based on

his findings that all of the requirements of paragraphs (e)(1) through (e)(5) of this section will be met; and

(4) The permit contains conditions which specifically:

(i) Limit the experimental practice authorized to that granted by the regulatory authority and the Director;

(ii) Impose enforceable alternative environmental protection requirements; and

(iii) Require the person to conduct the periodic monitoring, recording and reporting program set forth in the application, with such additional requirements as the regulatory authority or the Director may require.

(i) Each permit which authorizes the use of an experimental practice shall be reviewed at least every 3 years by the regulatory authority, or at least once prior to the middle of the stated permit term. After review, the regulatory authority shall require by order, supported by written findings, any reasonable revision or modification of the permit provisions necessary to ensure that the operations involved are conducted to fully protect the environment and public health and safety. Any person who is or may be adversely affected by the order shall be provided with an opportunity for a hearing as established in the regulatory program. {41855}

SECTION 785.14 - STEEP SLOPE MINING.

(a) This section applies to any persons who conducts or intends to conduct steep slope surface coal mining and reclamation operations, except:

(1) Where an operator proposes to conduct surface coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the mining operation proceeds;

(2) Where a person obtains a permit under the provisions of Section 785.15; or

(3) To the extent that a person obtains a permit incorporating a variance under Section 785.16.

(b) Steep slope, as used in this Section shall have the same meaning as in Section 826.5 of Subchapter K.

(c) Any application for a permit for surface coal mining and reclamation operations covered by this Section shall contain, in addition to all information required under the other provisions of this Subchapter, sufficient information to establish that the operations will be conducted in accordance with the requirements of 30 CFR 826.12.

(d) No permit shall be issued for any operations covered by this section, unless the regulatory authority finds, in writing, that in addition to meeting all other requirements of this Subchapter, the operation will be conducted in accordance with the requirements of 30 CFR 826.12.

SECTION 785.15 - MOUNTAINTOP REMOVAL MINING.

(a) This section applies to any person who conducts or intends to conduct mountaintop removal mining.

(b) Mountaintop removal mining means surface mining activities, where the mining operation removes an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided for in Section 824.11(b)(1) of Subchapter K of this Chapter, by removing substantially all of the overburden off the bench and creating a level plateau or a gently rolling contour, with no high walls remaining, and capable of supporting post-mining land-uses in accordance with the requirements of this Section.

(c) The regulatory authority may issue a permit for mountaintop removal mining, without regard to the requirements of 30 CFR 816.101 816.105 to restore the land disturbed by such mining to their approximate original contour, if it first finds, in writing, on the basis of a complete application, that the following requirements are met:

(1) The proposed post-mining land use of the lands to be affected will be an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) and if:

(i) After consultation with the appropriate land-use planning agencies, if any, the proposed land use

is deemed by the regulatory authority to constitute an equal or better economic or public use of the affected land compared with the pre-mining use;

(ii) The applicant demonstrates compliance with the requirements for acceptable alternative post-mining land uses of 30 CFR 816.124;

(iii) The proposed use would be compatible with adjacent land uses and existing State and local land use plans and programs; and

(iv) The regulatory authority has provided, in writing, an opportunity of not more than 60 days to review and comment on such proposed use to the governing body of general purpose government in whose jurisdiction the land is located and any State or Federal agency which the regulatory authority, in its discretion, determines to have an interest in the proposed use.

(2) The applicant has demonstrated that in place of restoration of the land to be affected to the approximate original contour under 30 CFR 816.101 816.105, the operation will be conducted in compliance with the requirements of 30 CFR 824.

(3) The requirements of 30 CFR 824 are made a specific condition of the permit.

(4) All other requirements of the Act, this Chapter, and the regulatory program are met by the proposed operations.

(5) The permit is clearly identified for mountaintop removal mining.

(d) (1) All permits granting approval of the regulatory authority for mountaintop removal mining shall be reviewed and modified not more than 3 years from the date of issuance and each renewal thereof, unless the permittee demonstrates and the regulatory authority finds, in writing, that all operations under the permit are proceeding and will continue to be conducted in accordance with the terms of the permit and requirements of the Act, this Chapter, and the regulatory program.

(2) The terms and conditions of a permit for mountaintop removal mining may be modified at any time by the regulatory authority, if it determines that more stringent measures are necessary to insure that the operation is conducted in compliance with the requirements of the Act, this Chapter, and the regulatory program.

(e) The regulatory authority shall promulgate specific regulations to govern the granting of permits in accordance with the provisions of this Section, and may impose any necessary additional requirements.

SECTION 785.16 - PERMITS INCORPORATING VARIANCES FROM APPROXIMATE ORIGINAL CONTOUR RESTORATION REQUIREMENTS.

(a) This section applies to non-mountaintop removal, steep slope surface coal mining and reclamation operations under a regulatory program where the operation is not to be reclaimed to achieve the approximate original contour required by 30 CFR 826.12(b).

(b) Steep slope as used in this section, shall have the same meaning as in 30 CFR 826.5.

(c) The objective of this section is to allow for steep slope surface coal mining and reclamation operations that:

(1) Improve watershed control of lands within the permit area and on adjacent lands; and

(2) Make land within the permit area, after reclamation, suitable for an industrial, commercial, or public use, including recreational facilities.

(d) The regulatory authority may issue a permit for surface coal mining and reclamation operations incorporating a variance from the requirement for restoration of affected lands to their approximate original contour. The regulatory authority may issue the permit only if it first finds, in writing, on the basis of a complete application, that the following requirements are met:

(1) The applicant demonstrates that the purpose of the variance is to make the lands to be affected within the permit area suitable for an industrial, commercial, residential, or public, including recreational facilities, post-mining land use if:

(i) The proposed use, after consultation with the appropriate land-use planning agencies, if any, constitutes an equal or better economic or public use; and

(ii) The applicant demonstrates compliance with the requirements for acceptable alternative post-

mining land uses of 30 CFR 816.124.

(2) The applicant demonstrates that the watershed of lands within the permit area and adjacent areas will be improved by the operations, through:

(i) A reduction in the amount of total suspended solids or other pollutants discharged to ground or surface waters from the permit area as compared to such discharges prior to mining, so as to improve public or private uses or the ecology of such waters; or {41856}

(ii) Reduced flood hazards within the watershed containing the permit area by reduction of the peak flow discharges from precipitation events or thaws; and

(iii) The appropriate State environmental agency approves the plan.

(3) The applicant shall demonstrate that the owner of the surface of the lands within the permit area has knowingly requested, in writing, as part of the application, that a variance be granted. The request shall be made separately from any surface owner consent given for the operations involved under Section 778.15 and show an understanding that the variance could not be granted without the surface owner's request.

(4) The applicant shall demonstrate that the proposed operations will be conducted in compliance with the requirements of Section 826.13 of Part 826 of Subchapter K.

(5) The requirements of Section 826.13 are made a specific condition of the permit.

(6) The permit is specifically marked as containing a variance from approximate original contour.

(7) All other requirements of the Act, this Chapter, and the regulatory program are to be met by the proposed operations.

(e) (1) Any permits incorporating a variance issued under this section shall be reviewed and modified by the regulatory authority:

(i) Not later than 3 years from the date of its issuance;

(ii) Before each permit renewal;

(iii) Not later than the middle of each permit term.

(2) If the permittee demonstrates to the regulatory authority that the operations involved have been and continue to be conducted in compliance with the terms and conditions of the permit and the requirements of the Act, this Chapter and the regulatory program the review need not be held.

(f) The terms and conditions of a permit incorporating a variance under this section may be modified at any time by the regulatory authority, if it determines that more stringent measures are necessary to insure that the operations involved are conducted in compliance with the requirements of this Act, this Chapter and the regulatory program.

(g) The regulatory authority shall promulgate specific regulations to govern the granting of variances in accordance with the provisions of this Section and may impose additional requirements as it deems to be necessary.

SECTION 785.17 - PRIME FARMLANDS.

(a) Scope. This Section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmlands, except for areas that were under a coal mining permit approved prior to August 3, 1977.

(b) Definition. Soil survey means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets for use such soils. The survey must meet the National Cooperative Soil Survey standards and be conducted according to the procedures set forth in U.S. Department of Agriculture Handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual).

(c) Pre-application investigation of prime farmland:

(1) Land shall not be considered prime farmland where the applicant can demonstrate one or more of the following situations:

(i) The land has not been historically used for the production of cultivated crops;

(ii) The slope of the land is 10 percent or greater;

(iii) The land is not irrigated or naturally subirrigated, has no developed water supply that is

dependable and of adequate quality, and the average annual precipitation is 14 inches or less;

(iv) Other factors exist, such as a very rocky surface, or the land is frequently flooded; or

(v) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. Soil Conservation Service.

(2) If the pre-application investigation establishes that the lands within the proposed permit area are not prime farmland, the applicant shall submit with the permit application a request for negative determination, in accordance with paragraph (1) of this section.

(d) Identification of prime farmland:

(1) If the results of the pre-application investigation suggest that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S. Soil Conservation Service, to determine if such lands have a soil survey and whether the applicable soil mapping units have been designated as prime farmlands. If no such soil survey has been made for the lands within the proposed permit area, the applicant shall cause such a survey to be made.

(2) When a soil survey of lands within the proposed permit area contains soil mapping units which have been designated as prime farmlands, the applicant shall submit a permit application, in accordance with paragraph (e) of this section for such designated land. {41856}

(3) When a soil survey for lands within the proposed permit area contains soil mapping units which have not been designated, after review by the U.S. Soil Conservation Service, as prime farmland, the applicant shall submit a request for negative determination for non-designated land with the permit application in accordance with paragraph (c) of this section.

(e) Application contents for prime farmland. If land within the proposed permit area is identified as prime farmland under paragraph (d) of this section, the applicant shall submit a plan for the mining and restoration of the land. The plan shall be reviewed by the U.S. Soil Conservation Service and used by the regulatory authority, with other relevant information, to judge the technological capability of the applicant to restore prime farmlands in accordance with Part 823 of Subchapter K. Each plan shall contain, at a minimum:

(1) A mapping unit description of each soil, according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in U.S. Department of Agriculture Handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual). The description shall include a representative soil profile description from within the permit area and show the depth and thickness of each of the soil horizons that:

(i) Collectively constitute the root zone of the locally adapted cultivated crops; and

(ii) Are to be removed, stored and replaced.

(2) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil in accordance with 30 CFR 823.

(3) The location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution.

(4) If applicable, documentation, such as agricultural school studies or other scientific data from comparable areas, that supports the use of other suitable material, instead of the A, B, or C soil horizon, to obtain on the restored area equivalent or higher levels of yield as non-mined prime farmlands in the surrounding area under equivalent levels of management.

(5) Plans for seeding or cropping the final graded disturbed land and the conservation practices to be used to adequately control erosion and sedimentation and restoration of an adequate soil moisture regime, during the period from completion of regrading until release of the performance bond or equivalent guarantee under Subchapter J. Proper adjustments for seasons must be proposed so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions. {41857}

(6) Available agricultural school studies, company data, or other scientific data for comparable areas that demonstrate that the proposed method of reclamation achieves, within a reasonable time, equivalent or higher levels of yield after mining as existed before mining.

(f) Consultation with Secretary of Agriculture and Issuance of Permit:

(1) Before any permit is issued for areas that include prime farmlands, the regulatory authority shall consult with the Secretary of Agriculture. The Secretary of Agriculture provides for review and comment of the proposed method of soil reconstruction in the plan submitted under paragraph (e) of this Section and, if inadequate, shall suggest revisions that will result in a more complete and adequate restoration. The Secretary of Agriculture has

assigned his responsibilities under this Section to the Administrator of the U.S. Soil Conservation Service. The Soil Conservation Service shall carry out consultation and review through the State Conservationist located in each State.

(2) A permit for the mining and reclamation of prime farmland may be granted by the regulatory authority, if it first finds, in writing, upon the basis of a complete application, that:

(i) The proposed post-mining land use is prime farmland;

(ii) The permit incorporates as specific conditions the contents of the plan submitted under paragraph (e) of this section, which considers any revisions suggested by the Secretary of Agriculture;

(iii) The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management; and

(iv) The proposed operations shall be conducted in compliance with the requirements of 30 CFR 823 of and other environmental protection performance standards for prime farmland of the regulatory program.

SECTION 785.18 - VARIANCES FOR DELAY IN CONTEMPORANEOUS RECLAMATION REQUIREMENT IN COMBINED SURFACE AND UNDERGROUND MINING OPERATIONS.

(a) Scope. This Section applies to any person who conducts or intends to conduct combined surface coal mining activities and underground coal mining operations where contemporaneous reclamation as required by Section 515(b)(16) is not practicable and a delay is requested to allow underground mining before the reclamation operation for the surface mining activities is completed.

(b) The objective of this Section is to allow for delay in the reclamation activity if it allows the underground mining operations to be conducted to ensure both the maximum practical recovery of coal resources and to avoid multiple disturbances of surface lands or waters.

(c) Any person who conducts surface coal mining and reclamation operations shall comply with the contemporaneous reclamation requirements of Section 515(b)(16) of the Act, these regulations, and the State program unless a variance from those requirements is granted in the permit issued to that person by the regulatory authority.

(d) Application contents for variances. Any person who desires to obtain a variance under this section shall file with the regulatory authority complete applications for both the surface coal mining activities and underground mining activities which are to be combined. The mining and reclamation operation plans for these permits shall contain appropriate narratives, maps and plans, which:

(1) Show why the proposed underground mining operations are necessary or desirable to assure maximum practical recovery of coal;

(2) Show how multiple disturbances of surface lands or waters will be avoided;

(3) Identify the specific surface areas for which a variance is sought and the particular sections of the Act, these regulations, or the State program from which a variance is being sought;

(4) Show how the operation will comply with 30 CFR 818 and with the other applicable requirements of the regulatory program;

(5) Show why the variance sought is necessary for the implementation of the proposed underground mining operations;

(6) Provide an assessment of the adverse environmental damages, if any, that will result if the reclamation proceeded in accordance with Section 515(b)(16) of the Act, these regulations, and the regulatory program; and

(7) Show how off-site storage of spoil will be conducted to comply with the requirements of the Act, 30 CFR 818, and the regulatory program.

(e) Issuance of permit. A permit incorporating a variance under this section may be issued by the regulatory authority, if it first finds, in writing, upon the basis of a complete application filed in accordance with this Section, that:

(1) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(2) The proposed underground mining activities are necessary or desirable to assure maximum practical

recovery of the mineral resource and will avoid multiple disturbance of surface land or waters;

(3) The applicant has satisfactorily demonstrated that the applications for the surface mining activities and underground mining operations conform to the requirements of the regulatory program and that all other permits necessary for the underground mining activities have been issued by the appropriate authority;

(4) The surface area of surface coal mining activities proposed for the variance have been shown by the applicant to be necessary for implementing the proposed underground mining activities;

(5) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation, as practicable, otherwise required by Section 515(b)(16) of the Act, 30 CFR 816.100 816.123 and the regulatory program.

(6) The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of Part 818 of Subchapter K and the regulatory program;

(7) Provisions for off-site storage of spoil will comply with the requirements of Part 818 of Subchapter K and the regulatory program;

(8) The liability under the bond filed by the applicant with the regulatory authority pursuant to Subchapter J of this Chapter and the regulatory program shall be for the duration of the underground mining activities and until all requirements of Subchapter J and the regulatory program have been complied with; and

(9) The permit for the surface mining activities contains specific conditions:

(i) Delineating the particular surface areas for which a variance is authorized;

(ii) Identifying the particular requirements of Part 818 and the regulatory program which are to be complied with, in lieu of the otherwise applicable provisions of Section 515(b)(16) of the Act, 30 CFR 816.100 816.123 and the regulatory program; and

(iii) Providing a detailed schedule for compliance with the particular requirements of Part 818 and the regulatory program identified under paragraph (e)(9)(i) of this Section.

(f) Review of permits containing variances. Variances granted under permits issued under this Section shall be reviewed by the regulatory authority no later than 3 years from the dates of issuance of the permit and any permit renewals. {41858}

SECTION 785.19 - SURFACE COAL MINING AND RECLAMATION OPERATIONS ON AREAS OR ADJACENT TO AREAS INCLUDING ALLUVIAL VALLEY FLOORS IN THE ARID OR SEMI-ARID AREAS WEST OF THE 100TH MERIDIAN.

(a) Scope. This section applies each person who conducts or intends to conduct surface coal mining and reclamation operations which may affect alluvial valley floors in the arid or semi-arid areas of the United States located west of the 100th meridian.

(b) No person shall engage in surface coal mining and reclamation operations subject to this Section, except under a permit issued by the regulatory authority in accordance with the requirements of 30 CFR 786.17.

(c) Pre-application reconnaissance investigation and report:

(1) Before applying for a permit to conduct surface coal mining and reclamation operations within a valley holding a stream or within 2 miles of any stream in the arid or semi-arid areas of the United States located west of the 100th meridian west longitude, the applicant shall submit to the regulatory authority the results of a field investigation of the lands proposed to be affected. The field investigators shall include sufficiently detailed geologic, hydrologic, land use, soils, and vegetation studies on areas determined in consultation with the regulatory authority to enable the regulatory authority to make a determination as to the existence of an alluvial valley floor in or near the proposed permit area. The Secretary may also choose to publish the results of alluvial valley floor mapping in which case all areas so mapped would be considered alluvial valley floors for the purposes of this paragraph. Studies performed during the investigation by the applicant shall include:

(i) Mapping of all unconsolidated stream-laid deposits holding streams including, but not limited to, geologic maps of all unconsolidated deposits, and all stream-laid deposits, maps of streams, delineation of surface watersheds and directions of shallow ground water flows through and into the unconsolidated deposits, topography

showing local and regional terrace levels, and topography of terraces, flood plains and channels showing surface

damage patterns.

(ii) Mapping of all lands included in the area in accordance with paragraph (i) of this Section and subject to agricultural activities, showing the area in which different types of agricultural lands, such as flood irrigated lands, pasture lands and undeveloped rangeland exist, and accompanied by measurements of vegetation in terms of productivity and type.

(iii) Mapping of all lands that were flood irrigated during any 5 years or more out of the 20 years immediately preceding the date of the field investigation showing the location of each diversion structure, ditch, dam related reservoir, irrigated land, and topography there.

(iv) Documentation that areas identified in paragraph (i) of this Section are, or are not, subirrigated based on appropriate combination of ground water monitoring measured 1 year's site data, soil moisture measurements, and measurements of rooting depth, soil, mottling, and water requirements of vegetation.

(v) Documentation that areas identified in paragraph (i) of this Section are, or are not, flood irrigable based on streamflow, water quality, water yield, soils measurements and topographic characteristics and based on a minimum of 1 year of on-site data.

(vi) Analysis of a series of aerial photographs including color infrared imagery flown at a time of year to show any late summer and fall differences between upland and valley floor vegetative growth and of a scale adequate for reconnaissance identification of areas that may be alluvial valley floors.

(vii) Maps showing farms that could be affected by the mining and, if any farm includes an alluvial valley floor, statements of the type and quantity of agricultural activity performed on the alluvial valley floor and its relationship to the farm's total agricultural activity including an economic analysis.

(2) Based on the studies conducted under Section 785.19(c)(1), the regulatory authority shall make a determination of the extent of any alluvial valley floors within the study area and whether any stream in the study area may be excluded from further consideration as lying within an alluvial valley floor. These determinations shall be based on:

(i) The presence of unconsolidated stream laid deposits holding streams; and,

(ii) The availability of sufficient water to support agricultural activities by delineation of:

(A) The existence of flood irrigation in the area in question or its historical use;

(B) The capability of an area to be flood irrigated, based on stream-flow water yield, soils, water quality, and topography; or,

(C) Subirrigation of the lands in question derived from the ground water system of the valley floor and not artificially maintained by ponds or reservoirs.

(d) Application contents for operations affecting designated alluvial valley floors:

(1) If land within or adjacent to the proposed permit area is identified as an alluvial valley floor and the proposed mining operation may affect that land, the applicant shall submit a complete application for the proposed mining and reclamation to be used by the regulatory authority together with other relevant information as a basis for approval or denial of the permit under Part 786. The complete application shall include detailed surveys and baseline data required by the regulatory authority for a determination of:

(i) The characteristics of the alluvial valley floor which are necessary to preserve the essential hydrologic functions during and after mining;

(ii) The significance of the area to be affected to agricultural activities;

(iii) Whether the operation will cause, or presents an unacceptable risk of causing, material damage to the quantity or quality of surface or ground waters that supply the alluvial valley floor; and

(iv) The effectiveness of proposed reclamation and identification of specific standards of performance against which the requirements of Part 822 of this chapter may be measured, including protection from damage by underground mining such as by a change in quantity or quality of water by such mining.

(2) Information required under this paragraph shall include, but not be limited to:

(i) Geologic data, including geologic structure, and surficial geologic maps, and geologic cross-sections;

(ii) Soils and vegetation data, including a detailed soil survey and chemical and physical analyses of soils, a vegetation map and narrative descriptions of quantitative and qualitative surveys and land use data including an evaluation of crop yields;

(iii) Surveys and data required under this paragraph for areas-designated as alluvial valley floors because of their flood irrigation characteristics, shall also include at a minimum, surface hydrologic data, including streamflow recording for a 1-year period, runoff, and sediment yield, field geomorphic surveys and other geomorphic

study, and water quality analyses for a full year;

(iv) Surveys and data required under this paragraph for areas designated as alluvial valley floors because of their subirrigation characteristics, shall also include, at a minimum, geohydrologic data including observation well establishment, water level measurements, ground water contour maps, testing to determine aquifer characteristics that affect waters supplying the alluvial valley floors, well and spring inventories, water quality analyses, and physical and chemical analysis of overburden to determine the effect of mining and reclamation on water quality and quantity; {41859}

(v) Plans showing how the operation will avoid, during mining and reclamation, the interruption, discontinuance or preclusion of farming on the alluvial valley floors and will not materially damage the quantity or quality of water in surface and ground water systems that supply such valley floors; and

(vi) Such other data as the regulatory authority may require.

(3) The surveys required by this paragraph should identify those geologic, hydrologic, and biologic characteristics of the alluvial valley floor necessary to support the essential hydrologic functions of an alluvial valley floor. Characteristics which support the essential hydrologic functions and which must be included in a complete application include, but are not limited to:

(i) Characteristics supporting the function of collecting water which include, but are not limited to:

(A) the amount and rate of runoff and a water balance analysis with respect to rainfall, evapotranspiration, infiltration and ground water recharge;

(B) the relief, slope, and density of the network of drainage channels;

(C) the infiltration, permeability, porosity and transmissivity of unconsolidated deposits of the valley floor that either constitute the aquifer associated with the stream or lie between the aquifer and the stream; and

(D) other factors that effect the interchange of water between surface streams and ground water systems including the depth to ground water, the direction of ground water flow, the extent to which the stream and associated alluvial ground water aquifers provide recharge to, or are recharged by bedrock aquifers.

(ii) Characteristics supporting the function of storing water which include, but are not limited to:

(A) surface roughness, slope, and vegetation of the channel, flood plain, and low terraces that retard the flow of surface waters;

(B) porosity, permeability, water-holding capacity, saturated thickness and volume of aquifers associated with streams, including alluvial aquifers, perched aquifers, and other water bearing zones found beneath valley floors; and

(C) moisture held in soils or the plant growth medium within the alluvial valley floor, and the physical and chemical properties of the subsoil that provide for sustained vegetation growth or cover during extended periods of low precipitation.

(iii) Characteristics supporting the function of regulating the flow of water which include, but are not limited to:

(A) the geometry and physical character of the valley expressed in terms of the longitudinal profile and slope of the valley and the channel, the sinuosity of the channel, the cross-section, slopes and proportions of the channels, flood plains and low terraces, the nature and stability of the stream banks and the vegetation established in the channels and along the stream banks and flood plains;

(B) the nature of surface flows as shown by the frequency and duration of flows of representative magnitude including low flows and floods; and

(C) the nature of interchange of water between streams, their associated alluvial aquifers and any bedrock aquifers as shown by the rate and amount of water supplied by the stream to associated alluvial and bedrock aquifers (i.e., recharge) and by the rates and amounts of water supplied by aquifers to the stream (i.e., baseflow);

(iv) Characteristics which make water available and which include, but are not limited to:

(A) the presence of land forms including flood plains and terraces suitable for agricultural activities;

(e) Each application for a permit under this Section shall be granted or denied according to the requirements of 30 CFR 786.17. In making a determination according to those criteria, a change in the post-mining land use compared to the land use prior to any mining shall be allowed in or adjacent to alluvial valley floors only when the essential hydrologic functions of the alluvial valley floor will be preserved.

SECTION 785.20 - AUGERING.

- (a) This Section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing augering operations.
- (b) Any application for a permit for operations covered by this Section shall contain, in the mining and reclamation operation plan, the augering methods to be used and the measures to be used to comply with 30 CFR 819.
- (c) No permit shall be issued for any operations covered by this Section, unless the regulatory authority finds, in writing, that in addition to meeting all other requirements of this Subchapter, the operation will be conducted in compliance with 30 CFR 819.

SECTION 785.21 - COAL PROCESSING PLANTS AND SUPPORT FACILITIES NOT LOCATED WITHIN THE PERMIT AREA OF A SPECIFIED MINE.

- (a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations involving coal processing plants and support facilities not within a permit area of a specific mine. Any person who operates a processing plant or support facility shall have obtained a permit from the regulatory authority under the regulatory program in accordance with the requirements of this Section.
- (b) Any application for a permit for operations covered by this Section shall contain in the mining and reclamation plan, specific plans, including descriptions, maps and cross-sections of the construction, operation, maintenance and removal of the processing plants and associated support facilities. The plan shall demonstrate that those operations will be conducted in compliance with 30 CFR 827.
- (c) No permit shall be issued for any operation covered by this Section, unless the regulatory authority finds, in writing, that, in addition to meeting all other applicable requirements of this Subchapter, the operations will be conducted in compliance with the requirements of 30 CFR 827.

SECTION 785.22 - IN SITU PROCESSING ACTIVITIES.

- (a) This Section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing in situ processing activities.
- (b) Any application for a permit for operations covered by this Section shall be made according to all requirements of this Subchapter applicable to underground mining activities. In addition, the mining and reclamation operations plan for operations involving in situ processing activities shall contain information establishing how those operations will be conducted in compliance with the requirements of 30 CFR 828, including:
- (1) Delineation of proposed holes and wells and production zone for approval of the regulatory authority;
 - (2) Specifications of drill holes and casings proposed to be used;
 - (3) A plan for treatment, confinement or disposal of all acid-forming, toxic-forming or radioactive gases, solids, or liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and
 - (4) Plans for monitoring surface and groundwater and air quality.
- (c) No permit shall be issued for operations covered by this Section, unless the regulatory authority first finds, in writing, upon the basis of a complete application made in accordance with paragraph (b) of this Section, that the operation will be conducted in compliance with all requirements of this Subchapter relating to underground mining activities, and 30 CFR 817 and 828. {41860}

PART 786 – TERMS AND CONDITIONS OF PERMITS AND CRITERIA FOR APPROVAL OR DENIAL

OF PERMITS

Section

786.1	Scope.
786.2	Objectives.
786.4	Responsibility.
786.11	Permit terms.
786.12	Conditions of permits: General and right of entry.
786.13	Conditions of permits: Environment, public health and safety.
786.15	Criteria for permit approval or denial: General. 126786.17 Criteria for permit approval or denial: Alluvial valley floors.

Authority : Sections 201, 501, 503, 505, 506, 507, 508, 509, 515, 516, 517, and 522, Pub. L. 95 87 (30 U.S.C. Sections 1211, 1251, 1255, 1256, 1257, 1258, 1259, 1260, 1265, 1266, 1267, and 1272).

SECTION 786.1 - SCOPE.

This Part sets forth the minimum requirements for the approval or denial of permits to conduct surface coal mining and reclamation operations and for the terms and conditions of permits issued under regulatory programs.

SECTION 786.2 - OBJECTIVES.

The objective of this Part is to provide the minimum requirements for the terms and conditions of permits issued under regulatory programs and the criteria by which regulatory authorities determine whether to approve or deny such permits.

SECTION 786.4 - RESPONSIBILITY.

The State regulatory authority has the responsibility to approve or deny permits under an approved State program. The Regional Director has the responsibility to approve or deny permits under a Federal program.

SECTION 786.11 - PERMIT TERMS.

- (a) Each permit shall be issued for a fixed term not to exceed 5 years. A longer fixed permit term may be granted if:
- (1) The application is full and complete for the specified longer term; and
 - (2) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment needed for opening of the operation and this need is confirmed, in writing, by the applicant's proposed source for the financing.
- (b) (1) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within 3 years of the issuance of the permit.
- (2) The regulatory authority may grant reasonable extensions of time for commencement of these operations upon a written showing that such extensions of time are necessary, if:
- (i) Litigation precludes the commencement or threatens substantial economic loss to the permittee,
- or
- (ii) There are conditions beyond the control and without the fault or negligence of the permittee.
- (3) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.
- (4) Extensions of time granted by the regulatory authority under subparagraph (b)(2) of this section shall be

specifically set forth in the permit and notice of the extension shall be made to the public.

(c) Permits may be suspended, revoked, or modified by the regulatory authority, in accordance with 30 CFR Part 736 and 30 CFR 785.13, 785.15, 785.16, 785.18 and 790.11.

SECTION 786.12 - CONDITIONS OF PERMITS: GENERAL AND RIGHT OF ENTRY.

Each permit issued by the regulatory authority shall ensure that:

(a) Except to the extent that the regulatory authority otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the complete application; and

(b) The permittee shall allow the authorized representatives of the Secretary, including, but not limited to, inspectors and fee compliance officers and the State regulatory authority, without advance notice or a search warrant, upon presentation of appropriate credentials, and without delay, to:

(1) Enter upon or through any surface coal mining and reclamation operations to:

(i) Inspect any coal mining and reclamation operation, monitoring equipment, or procedure conducted pursuant to the permit; and

(ii) Collect samples and other relevant information regarding air or water, fish and wildlife, soils, vegetation and other resources protected under the Act, this Chapter and the State program; and

(iii) Obtain access to and copy any records required to be maintained under the terms and conditions of the permit or the regulatory program.

(2) Be accompanied by private persons for the purpose of conducting an inspection in accordance with 30 CFR Parts 840 and 842.

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated on the map submitted under 30 CFR 779 or 783 and approved for the term of the permit.

SECTION 786.13 - CONDITIONS OF PERMITS: ENVIRONMENT, PUBLIC HEALTH AND SAFETY.

Each permit issued by the regulatory authority shall ensure and shall contain conditions requiring that the_

(a) Permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:

(1) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

(2) Immediate implementation of measures necessary to comply; and

(3) Warning, as soon as possible after learning of such noncompliance, any person who may be adversely affected by the noncompliance.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by Subchapter K of this Chapter, the regulatory program and which prevents violation of any other applicable State or Federal law.

(c) The permittee shall take other actions that further the terms and conditions of the permit, purposes and provisions of the Act, this Chapter, and the State program.

SECTION 786.15 - CRITERIA FOR PERMIT APPROVAL OR DENIAL: GENERAL.

No permit or revision application shall be approved, unless the application demonstrates and the regulatory authority finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval and made available to the applicant, that:

- (a) The permit application is accurate and complete and that all requirements of the Act, this Chapter, and the regulatory program have been complied with.
- (b) The applicant has demonstrated that surface coal mining and reclamation operations, as required by the Act, this Chapter, and the regulatory program can be accomplished under the mining operations and reclamation plan contained in the permit application.
- (c) The assessment of the probable cumulative effect of all anticipated coal mining in the area on the hydrologic balance, as described in 30 CFR 780.21(c) or 784.13(c), has been made by the regulatory authority, and the operations proposed under the application have been designed to prevent damage to the hydrologic balance outside the permit area. {41861 }
- (d) The area within the proposed permit is:
 - (1) Not included within an area designated unsuitable for surface coal mining under 30 CFR 764; or
 - (2) Not within an area under study for designation as unsuitable for coal mining in an administrative proceeding begun under 30 CFR 764 unless the applicant demonstrates that, before January 1, 1977 he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit; or,
 - (3) Not on any lands subject to the prohibition or limitation of Section 761.11 (a), (f), or (g); or
 - (4) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in Section 761.12(d); or
 - (5) Not within 300 feet from any occupied dwelling, except as provided for in Sections 761.11(e) and 761.12(e).
- (e) The proposed operations will not adversely affect any publicly-owned parks or places included or eligible for listing in the National Register of Historic Places, except as provided for in 30 CFR 761.12(b).
- (f) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the regulatory authority the documentation required under Section 778.15(b).
- (g) The applicant has submitted proof that any violation identified under Section 788.12(c) has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority, department, or agency which has jurisdiction over such violation.
- (h) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of the Act of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of the Act.
- (i) Surface coal mining and reclamation operations to be performed under the permit are not inconsistent with other such operations anticipated to be performed in areas adjacent to the proposed permit area.
- (j) The applicant has submitted the performance bond or other equivalent guarantee required under Subchapter J and the regulatory program.
- (k) The applicant has, with respect to prime farmland, obtained either a negative determination under Section 785.19 or has satisfied the requirements of 30 CFR 785.19 for the mining of prime farmland.
- (l) The proposed post-mining land use of the permit area has been approved by the regulatory authority in accordance with the requirements of 30 CFR 816.124 or 817.124.
- (m) The regulatory authority has made all specific approvals required under Part 816 or Part 817 of this Chapter.

SECTION 786.17 - CRITERIA FOR PERMIT APPROVAL OR DENIAL: ALLUVIAL VALLEY FLOORS.

(a) No permit or revision application, for surface coal mining and reclamation operations on lands located west of the one hundredth meridian west longitude, shall be approved by the regulatory authority, unless the application demonstrates and the regulatory authority finds, in writing, on the basis of information set forth in the application in accordance with Section 785.18, that:

(1) The proposed operations would not interrupt, discontinue, or preclude farming on alluvial valley floors, unless the premining land use has been undeveloped range land which is not significant to farming on the alluvial valley floors, or unless the area of affected alluvial valley floor is small and provides, or may provide, negligible support for production of one or more farms; and

(2) The proposed operations would not materially damage the quantity or quality of water in surface or underground water systems that supply alluvial valley floors; and

(3) The application establishes that the proposed operations would be conducted in accordance with 30 CFR 822.

(b) This section does not apply to those surface coal mining operations that:

(1) Were in production in the year preceding August 3, 1977, were located in or adjacent to an alluvial valley floor, and produced coal in commercial quantities during the year preceding August 3, 1977; or

(2) Had specific permit approval by the State regulatory authority before August 3, 1977, to conduct surface coal mining operations for an area within an alluvial valley floor.

(c) The significance of the impact of the proposed operations on farming will be based on the importance of the grazed or hayed alluvial valley floor area to one or more farm's production, or any more stringent criteria established by the regulatory authority as suitable for site-specific protection of agricultural activities in alluvial valley floors. The effect of the proposed operations on farming will be concluded to be significant, if they would eliminate, over the life of the mine, 10 percent or more of the grazing area of the farm or 10 percent or more of the hayed, cropped or otherwise harvested lands of the farm.

(d) (1) Materially damage as used in this section means changes in the quality or quantity of the water supply to any portion of an alluvial valley floor, where such changes are caused by surface coal mining and reclamation operations and result in changes in ground water quantity or quality that cause significant and adverse changes in composition, diversity, or productivity of vegetation dependent on subirrigation, or which result in changes in surface water quality and quantity that would limit the adequacy of the water for flood irrigation of the irrigable land acreage existing prior to mining.

(2) Criteria for determining that material damage would occur include, but are not limited to:

(i) Potential increases in the concentration of total dissolved solids of waters supplied to any portion of an alluvial valley floor, as measured by specific conductivity in millimhos, to levels above the threshold value at which crop yields decrease:

(A) As specified in Moss and Hoffman, Crop-Salt Tolerances – Current Assessment, June 1977, Journal of Irrigation and Drainage Division of the American Society of Civil Engineers; unless the applicant demonstrates, through testing related to crops in the locality of the proposed operations, taking into account water relationships, that higher threshold values will not result in crop yield decreases; or,

(B) For types of vegetation not listed pursuant to (A), as specified by the regulatory authority, based upon consideration of observed correlation between total dissolved solid concentrations in water and crop yield declines, taking into account an adequate margin of safety;

(ii) Potential increases in the average depth to water saturated zones (during the growing season) located within one root zone of the alluvial valley floor that would reduce the amount of subirrigable land compared to pre-mining conditions;

(iii) Potential decreases in surface flows that would reduce the amount of irrigable land compared to pre-mining conditions; and

(iv) Potential changes in the surface or ground water systems that reduce the area available to agriculture through flooding or water logging.

(e) For the purposes of this paragraph, a farm or ranch is generally considered to be a coherent land unit with acreage and boundaries in existence prior to August 3, 1977 or, if established after August 3, 1977, with those boundaries based on enhancement of the units' agricultural productivity and not related to surface coal mining operations.
{41862}

PART 787 – PUBLIC PARTICIPATION IN PERMIT REVIEW PROCESS

Section

787.1	Scope.
787.2	Objectives.
787.4	Responsibilities.
787.11	Public notices of filing of permit applications.
787.12	Opportunity for submission of written comments on permit applications.
787.13	Right to file written objections.
787.14	Informal conferences.
787.15	Public availability of information in permit applications on file with the regulatory authority.

Authority: Sections 102(i), 201, 501, 503, 507, 508, 510, 513, and 522(e), Pub. L. 95 87 (30 U.S.C. Section 1202(i), 1211, 1251, 1253, 1257, 1258, 1260, 1263, and 1272(e)).

SECTION 787.1 - SCOPE.

This Part establishes the minimum requirements for the Secretary's approval of the provisions of regulatory programs for public participation in the permit process under such programs.

SECTION 787.2 - OBJECTIVES.

The objectives of this Part are to provide for broad and effective public participation in the review, issuance or denial of permits by regulatory authorities under regulatory programs.

SECTION 787.4 - RESPONSIBILITIES.

(a) The regulatory authority and persons attempting to obtain permits under regulatory programs shall fully involve the public throughout the permit process of regulatory programs.

(b) The regulatory authority shall insure that the requirements of this Part are implemented under regulatory programs.

SECTION 787.11 - PUBLIC NOTICES OF FILING OF PERMIT APPLICATIONS.

(a) An applicant for a permit shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface mine, at least once a week for four consecutive weeks. The applicant shall place the advertisement in the newspaper at the same time the permit application is filed with the regulatory authority. The advertisement shall contain, at a minimum, the following information:

(1) the name and business address of the applicant, and (2) a map describing the exact location and boundaries of the proposed site, which shall:

- (i) Identify the area of the proposed operation to correspond with the area proposed under the permit application;
- (ii) Be large enough to allow local residents to readily identify the proposed permit area;
- (iii) Indicate the north point for the U.S. Geological Survey Quadrangle map in which the proposed

operation is contained, and the precise location of the proposed operations; and

(iv) Indicate the names and locations of all streams or other bodies of surface water, roads, and communities shown in the U.S. Geological Survey Quadrangle map for the area in which the proposed operation will occur; and

(3) The location where a copy of the application is available for public inspection under paragraph (c) of this Section; and

(4) The name and address of the regulatory authority to which written comments, objections, or requests for informal conferences on the application may be submitted under Section 787.14.

(5) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate such a road under 30 CFR 761.12(d), the advertisement shall contain a concise statement describing the public road, the particular part to be relocated, where the relocation is to occur, and the duration of the relocation.

(b) Upon receipt of an application for a permit, the regulatory authority shall issue written notification of:

(1) The applicant's intention to surface mine a particularly described tract land,

(2) The application number,

(3) Where a copy of the application may be inspected, and

(4) Where comments on the application may be submitted under Section 787.12 of this Part.

(c) The written notifications shall be sent to:

(1) Federal, State and local government agencies with jurisdiction over or an interest in the area of the proposed operations, including, but not limited to, general governmental entities and fish and wildlife and historic preservation agencies;

(2) Governmental planning agencies with jurisdiction to act with regard to land use, air or water quality planning in the area of the proposed operations;

(3) Sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas;

(4) The Federal or State Governmental agencies with authority to issue all other permits and licenses needed by the applicant in connection with operations proposed in the application; and

(5) Other persons who have requested, in writing, that the regulatory authority provide notice of proposed surface coal mining and reclamation operations in the area involved.

(d)(1) The applicant shall make a full copy of his application for a permit available for the public to inspect and copy. This can be done by filing a copy of the application submitted to the regulatory authority with the recorder at the courthouse of the county where the mining is proposed to occur. The regulatory authority may approve filing at another equivalent public office.

(2) The applicant shall file the copy by the last date of newspaper advertisement of the application. The applicant shall file any subsequent revision with the public office at the same time the revision is submitted to the regulatory authority.

(3) The copy filed in the public office does not have to include that information which pertains solely to analysis of the chemical and physical properties of the coal to be mined (except information regarding such mineral or elemental content which is potentially toxic in the environment).

SECTION 787.12 - OPPORTUNITY FOR SUBMISSION OF WRITTEN COMMENTS ON PERMIT APPLICATIONS.

(a) Written comments on permit applications may be submitted to the regulatory authority by:

(1) The public entities to whom notification is provided under Section 787.11(c)(1) (5), with respect to the effects of the proposed mining operations on the environment within their area of responsibility; and,

(2) Other persons to whom notification has been provided under Subsection 787.11(a) and 787.11(c)(6).

(b) These comments shall be submitted to the regulatory authority in the manner and within the reasonable time provided for in the regulatory program.

(c) The regulatory authority shall immediately transmit a copy of all such comments for filing and public inspection at the public office where the applicant filed a copy of the application for permit under Section 787.11(d).

SECTION 787.13 - RIGHT TO FILE WRITTEN OBJECTIONS.

(a) Any person including an officer or head of any Federal, State, or local government agency or authority shall have the right to file written objections to an initial or revised application for a permit with the regulatory authority, within 30 days after the last publication of the newspaper notice required by Section 787.11(a).

(b) The regulatory authority shall, immediately upon receipt of any written objections:

- (1) Transmit a copy of them to the applicant; and,
- (2) File a copy for public inspection at the public office where the applicant filed a copy of the application for permit under Section 787.11(d).

SECTION 787.14 - INFORMAL CONFERENCES.

(a) Procedure for requests. Any person including the officer or head of any Federal, State or local government agency or authority may, in writing, request that the regulatory authority hold an informal conference on any application for a permit. The request shall:

- (1) Briefly summarize the issues to be raised by the requestor at the conference;
- (2) State whether the requestor desires to have the conference conducted in the locality of the proposed mining;
- (3) Be filed not later than 30 days after the last publication of the newspaper advertisement placed by the applicant under Section 787.11(a).

(b) Except as provided in (c) below, if an informal conference is requested in accordance with paragraph (a) of this Section, the regulatory authority shall hold an informal conference within a reasonable time following the receipt of such objections and request. The informal conference shall be conducted according to the following requirements:

- (1) If requested under paragraph (a) of this section, it shall be held in the locality of the proposed mining.
- (2) The date, time and location of the informal conference shall be advertised by the regulatory authority in a newspaper of general circulation in the locality of the mine at least two weeks prior to the scheduled conference.
- (3) If requested, in writing, by a conference requestor in a reasonable time prior to the conference, the regulatory authority may arrange with the applicant to grant parties to the conference access to the mine area for the purpose of gathering information relevant to the conference.
- (4) The purpose of the informal conference shall be the examination of issues raised in the written objections, comments, and requests for conferences filed with the regulatory authority on the permit application.
- (5) The requirements of Section 554 of Title V of the United States Code shall not apply to the conduct of the informal conference. The conference shall be conducted by a representative of a State regulatory authority, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference proceeding, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties to the conference until final release of the applicant's performance bond pursuant to Subchapter J.

(c) If all parties requesting the informal conference stipulate agreement before the requested informal conference and withdraw their request, the informal conference need not be held.

(d) Informal conferences held in accordance with this Section may be used by the regulatory authority as the public hearing on proposed uses of public roads or relocation thereof by the applicant under 30 CFR 761.12(d).

SECTION 787.15 - PUBLIC AVAILABILITY OF INFORMATION IN PERMIT APPLICATIONS ON FILE

WITH THE REGULATORY AUTHORITY.

(a) Information contained in permit applications on file with the regulatory authority shall be open for public inspection and copying at reasonable times: Provided, That:

(1) Information pertaining to coal seams, test borings, core samplings, or soil samples in permit applications shall be made available for inspection and copying to any person with an interest which is or may be adversely affected; and

(2) Information in permit applications which pertains only to the analysis of the chemical and physical properties of the coal to be mined (excepting information regarding mineral or elemental contents of such coal, which are potentially toxic in the environment) shall, upon the written request of the applicant, be kept confidential and not made a matter of public record; and

(3) Information in the reclamation plan portions of the application, which is required to be filed with the regulatory authority under Section 508 of the Act and which is not on public file pursuant to State law, shall be held in confidence by the regulatory authority upon the written request of the applicant.

(b) The regulatory authority shall provide for procedures to maintain information required to be kept confidential under paragraph (a) separately from other portions of the permit application. This information shall be clearly identified by the applicant and submitted separately from other portions of the application. {41863}

PART 788 – REGULATORY AUTHORITY REVIEW AND DECISIONS ON PERMIT APPLICATIONS

Section

788.1	Scope.
788.2	Objectives.
788.3	Responsibilities.
788.12	Review of permit applications.
788.13	Permit approval or denial actions.

Authority: Sections 102(i), 201, 501, 503, 506, 507, 508, 509, 510, 511, 513, 514, 517, and 522(e), Pub. L. 95 87 (U.S.C. Sections 1202(i), 1211, 1251, 1253, 1256, 1257, 1258, 1259, 1260, 1261, 1263, 1264, 1267, and 1277(e)).

SECTION 788.1 - SCOPE.

This Part establishes the minimum requirements for the Secretary's approval of the provisions of regulatory programs for the review of permit applications and decisions on these applications by regulatory authorities under these programs.

SECTION 788.2 - OBJECTIVE.

The objective of this Part is to insure timely and thorough review by the regulatory authority of each permit application under a regulatory program.

SECTION 788.3 - RESPONSIBILITIES.

(a) The applicant has the responsibility of insuring that all information is provided in a complete permit application for the review by the regulatory authority in accordance with this Part and a regulatory program.

(b) The regulatory authority shall conduct timely and thorough reviews of each complete permit application under a State program.

SECTION 788.12 - REVIEW OF PERMIT APPLICATIONS.

(a) The regulatory authority shall review the complete application, written comments, written objections submitted and records of any informal conference held under 30 CFR Part 787.

(b) If the regulatory authority decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of 30 CFR Subchapter J.

(c) If the regulatory authority determines from either the schedule submitted as part of the application under 30 CFR 778.14(c) or 782.14(c) of this Subchapter, or from other available information, that any surface mining operations owned or controlled by the applicant is currently in violation of the Act, or of any law, rule, or regulation of the United States, or of any State or Federal department or agency pertaining to soil or water environmental protection, the regulatory authority shall require the applicant to submit proof, satisfactory to the regulatory authority, department, or agency which has jurisdiction over such violation, before the issuance of the permit, that the violation:

- (1) Has been corrected; or
- (2) Is in the process of being corrected.

(d) Before any final determination by the regulatory authority 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 that indicates 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 regulatory program. {41864}

SECTION 788.13 - PERMIT APPROVAL OR DENIAL ACTIONS.

(a) The regulatory authority shall grant, require modification of, or deny all applications for permits under State programs according to the requirements of 30 CFR 786 and on the basis of:

- (1) Complete applications for permits and revisions or renewals thereof;
- (2) Public participation as provided for by Part 787 of this Subchapter;
- (3) Compliance with any applicable provisions of Part 785 of this Subchapter; and
- (4) Processing and review of applications as required by this Part.

(b) The regulatory authority shall take action as required under paragraph (a) of this Section, within the following times:

(1) Initiation of regulatory programs. Except as provided for in subparagraph (b)(3), a complete application submitted to the regulatory authority within the time required by 30 CFR 771.19(b)(1) shall be processed by the regulatory authority so that a permit is granted or denied:

(i) Within eight months after the date of approval of a regulatory program, unless a State or its regulatory authority is specifically enjoined from submitting a State program, or the regulatory authority is specifically enjoined from implementing a regulatory program but in no case later than February 3, 1981; and,

(ii) If an informal conference has been held pursuant to Part 787 of this Subchapter, within 60 days from the close of the conference.

(2) Subsequent operation of regulatory programs. A complete application submitted to the regulatory authority after the time required in 30 CFR 771.19 (b) (1) shall be processed by the regulatory authority, so that a permit is granted or denied within the following times:

(i) If an informal conference has been held under Part 787 of this Subchapter, within 60 days of the close of the conference; or

(ii) If no informal conference has been held under Part 787, then within a reasonable time after the receipt by the regulatory authority of the complete application. The regulatory authority shall determine the time for processing and shall establish provisions for the processing time in the regulatory program, taking into account:

- (i) The time needed for proper investigation of the proposed permit and adjacent areas;
- (ii) The complexity of the application; and

(iii) Whether written objections or comments to the complete application have been filed with the regulatory authority.

(3) Notwithstanding any of the foregoing provisions of this Section, no time limit under the Act or this Section requiring the regulatory authority to act is considered expired from the time the regulatory authority initiates a proceeding under 30 CFR 788.12(d) until the final decision of the hearing body.

(c) If an informal conference is held under 30 CFR Part 787 the regulatory authority shall, give its written findings to the permit applicant and to each person who is a party to the conference, granting or denying the permit in whole, or in part, and stating the reasons therefor in the decision. The regulatory authority shall simultaneously transmit a copy of such findings and any permit issued to the Regional Director.

(d) If no such informal conference has been held, the regulatory authority shall give its written decision to the permit applicant, granting or denying the permit in whole, or in part, and stating the reasons in the decision. Simultaneously, the regulatory authority shall:

(1) Give a copy of its decision to:

(i) Each person and government official who filed a written objection or comment with respect to the application; and

(ii) Together with a copy of any permit issued, to the Regional Director; and

(2) Publish a summary of its decision in a newspaper or similar periodical of general circulation in the general area of the proposed operation.

(e) Within 10 days after the granting of a permit, the regulatory authority shall notify the local government officials in the local political subdivision in which the area of land to be affected is located that a permit has been issued and shall describe the location of the lands within the permit area. {41864}

PART 789 – ADMINISTRATIVE AND JUDICIAL REVIEW OF DECISIONS BY REGULATORY AUTHORITY ON PERMIT APPLICATIONS

Section

789.1	Scope.
789.2	Objectives.
789.11	Administrative review.
789.12	Judicial review.

Authority: Sections 102(i), 201, 501, 503, 514, and 526, Pub. L. 95 87 (30 U.S.C. Sections 1202(i), 1211, 1251, 1253, 1264 and 1276).

SECTION 789.1 - SCOPE.

This Part provides the minimum requirements for the Secretary's approval of regulatory program provisions for administrative and judicial review of decisions by, or the failure of the regulatory authority to act, on applications for permits.

SECTION 789.2 - OBJECTIVES.

The objectives of this Part are to provide for timely and thorough review by administrative and judicial bodies under regulatory programs on decisions of and failures to act by regulatory authorities on permit applications.

SECTION 789.11 - ADMINISTRATIVE REVIEW.

(a) Within 30 days after the applicant is notified of the final decision of the regulatory authority on the permit application, the applicant or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final determination.

(b) The regulatory authority shall hold the hearing within 30 days of such request. This hearing shall be of record, adjudicatory in nature, and no person who presided at an informal conference under Section 787.14 of this Subchapter shall either preside at the hearing, or participate in the decision thereon, or in any administrative appeal therefrom.

(c) The hearing authority may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if:

(1) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

(3) The relief is not to adversely affect the public health or safety or cause significant, imminent environmental harm to land, air or water resources; and

(4) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the regulatory authority.

(d) For the purpose of such hearing, the regulatory authority may administer oaths and affirmations, subpoena witnesses, or written, or printed materials, compel attendance of witnesses, or production of the materials, and take evidence, including, but not limited to, site inspections of the land to be affected and other surface coal mining operations carried on by the applicant in the general vicinity of the proposed operation. A verbatim record of each public hearing required by this Section shall be made, and a transcript made available on the motion of any party or by order of the regulatory authority. {41865}

(e) Within 30 days after the hearing, the regulatory authority shall issue and furnish the applicant, and each person who participated in the hearing, with the written decision of the regulatory authority granting or denying the permit, in whole or in part, and stating the reasons for the decision.

SECTION 789.12 - JUDICIAL REVIEW.

(a) Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative proceedings as an objector shall have the right to appeal as provided in paragraph (b) of this Section, if:

(1) The applicant or person is aggrieved by the decision of the hearing authority in an administrative review proceeding conducted pursuant to Section 789.11 of this Part; or,

(2) If either the regulatory authority or the hearing authority for administrative review under Section 789.11 fails to act within time limits specified in the Act, this Part, or the regulatory program.

(b) (1) State programs. Action of the regulatory authority or hearing authority identified in paragraph (a) of this Section shall be subject to judicial review by a court of competent jurisdiction, as provided for in the State program, but the availability of such review is not to be construed to limit the operation of the rights established in Section 520 of the Act.

(2) Federal programs. The action of the regulatory authority or hearing authority identified in paragraph (a) of this section is subject to judicial review by the United States District Court for the district in which the surface coal mining and reclamation operations is or would be located, in the time and manner provided for in section 526 (a)(2) and (b) of the Act. The availability of such review is not to be considered to limit the operations of rights established in Section 520 of the Act. {41865}

PART 790 – PERMIT REVISIONS AND REGULATORY AUTHORITY REVIEW OF OUTSTANDING

PERMITS

Section	
790.1	Scope.
790.2	Objectives.
790.11	Regulatory authority review of outstanding permits.
790.12	Permit revisions.

Authority: Sections 102(i), 201, 501, 506, 507, 508, 509, 510, 511, 513, 514, 515, 516, 522(c) and 526(f), Pub. L. 95 87 (30 U.S.C. Sections 1202(i), 1211, 1251, 1256, 1257, 1258, 1259, 1260, 1261, 1263, 1264, 1265, 1266, 1272(e) and 1276(f)).

SECTION 790.1 - SCOPE.

This Part establishes the minimum requirements for the Secretary's approval of regulatory program procedures for revisions to permits previously issued by the regulatory authority under regulatory programs and for affirmative periodic review by the regulatory authority of all permits previously issued under such programs.

SECTION 790.2 - OBJECTIVES.

The objectives of this Part are to:

- (a) Ensure that all permits for surface coal mining and reclamation operations are efficiently revised, prior to changes in such operations; and
- (b) Ensure that all permits issued under regulatory programs are regularly reviewed by the regulatory authority to determine that surface coal mining and reclamation operations under these permits are conducted in compliance with the Act, this Chapter and the regulatory program.

SECTION 790.11 - REGULATORY AUTHORITY REVIEW OF OUTSTANDING PERMITS.

- (a) The regulatory authority shall review each permit issued and outstanding under an approved regulatory program during the term of the permit. This review shall occur not later than the middle of the permit term and as required by 30 CFR 785.13, 785.15, 785.16, and 785.18.
- (b) After this review, the regulatory authority may, by order, require reasonable revisions or modification of the permit provisions to ensure compliance with the Act, this Chapter and the regulatory program. The permit revision or modification shall be based upon written findings and subject to notice and hearing requirements established under the regulatory program.

SECTION 790.12 - PERMIT REVISIONS.

- (a) During the term of the permit, and within the time prescribed by 30 CFR 771.19(b)(4), the permittee may submit an application for a revision of the permit, together with a revised mining reclamation operations plan, to the regulatory authority.
- (b) A revision to a permit shall be obtained:
 - (1) For changes in the surface coal mining and reclamation operations described in the original application and approved under the original permit;
 - (2) When required by an order issued under 30 CFR 790.11;
 - (3) In order to continue operation after the cancellation or material reduction of the liability insurance policy

the capability of self-insurance, the performance bond or other equivalent guarantee upon which the original permit was approved; or

(4) As otherwise required under the State program.

(c) The permit revision application shall be filed in accordance with the following:

(1) The permittee shall submit the application to the regulatory authority within the time provided for by 30 CFR 771.19(b)(4); {41865}

(2) The scale or extent of permit application information requirements and procedures, including notice and hearings, applicable to revision requests shall be as provided in the State program. Any application for a revision which proposes significant alterations in the operations described in the materials submitted in the application for the original permit under Parts 778, 779, 780, 781, 782, 783, or 785 of this Subchapter or in the conditions of the original permit, shall, at a minimum, be subject to the requirements of Parts 787 and 789 of this Subchapter.

(d) The regulatory authority shall approve or disapprove the complete application for revision, in accordance with the requirements of Parts 786 and 788, within a reasonable time as established in the regulations for the regulatory program.

(e) Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new permit and shall not be approved under this Part. {41865}

PART 791 – RENEWALS OF PERMITS

Section

791.1	Scope.
791.2	Objectives.
791.11	General requirements.
791.12	Applications for renewals.
791.13	Terms of renewals.
791.14	Approval or denial of renewals.

Authority: Sections 201, 501, 506, 507, 508, 509, 510, 515, and 516, Pub. L. 95 87 (30 U.S.C. Sections 1211, 1251, 1256, 1257, 1258, 1259, 1260, 1265 and 1266).

SECTION 791.1 - SCOPE.

This Part establishes the minimum requirements for the Secretary's approval of regulatory program procedures for the renewal by the regulatory authority of permits previously issued under such programs.

SECTION 791.2 - OBJECTIVES.

The objectives of this Part are to provide for the timely and effective review of applications for renewal of permits previously issued by the regulatory programs. This is necessary to allow surface coal mining and reclamation operations under these programs to continue, if they comply with the Act, this Chapter and the regulatory program. {41866}

SECTION 791.11 - GENERAL REQUIREMENTS.

Any valid permit issued pursuant to a regulatory program shall carry with it the right of successive renewal upon expiration, with respect to areas within the boundaries of the existing permit, in accordance with the requirements of this Part.

SECTION 791.12 - APPLICATIONS FOR RENEWALS.

(a) Contents. Applications for renewals of a permit shall be made within the time prescribed by 30 CFR 771.19(b)(2). Renewal applications shall be in a form and with contents required by the regulatory authority under the regulatory program and in accordance with subparagraph (b)(2) of this Section, including at a minimum, the following:

(1) A statement of the name and address of the permittee, the term of the renewal requested, the permit number, and a description of any changes to the matters set forth in the original application for a permit or prior permit renewals;

(2) A copy of the newspaper notice and proof of publication of same required under Section 787.11(a) of this Subchapter; and,

(3) Evidence that liability insurance policy or adequate self-insurance 30 CFR will be provided by the applicant for the proposed period of renewal.

(b) Processing and review:

(1) Application for renewal shall be subject to the requirements of public notification contained in 30 CFR 787.11.

(2) If an application for renewal of a permit includes a proposal to extend the mining and reclamation operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new permit applications under the Act, Parts 771, 778, 779, 780, 782, 783, 784, 785, 786, 787, 788, and 789 of this Subchapter, Subchapter J, and the State program.

(3) If the surface coal mining operations authorized under the original permit were not subject to the standards contained in Sections 510(b)(5) (A) and (B) of the Act and Section 785.19(e) of this Subchapter, because the permittee complies with the exceptions to Section 510(b)(5) of the Act, the portion of the application for renewal of the permit which addresses any new land areas previously identified in the reclamation plan submitted pursuant to Parts 780 or 784 of this Subchapter for the original permit shall not be subject to the standards contained in Sections 501(b)(5) (A) and (B) of the Act and Section 785.19(e) of this Subchapter.

(4) Before finally acting to grant the permit renewal, the regulatory authority shall require any additional performance bond needed by the permittee to comply with the requirements of 30 CFR 791.14(a)(4) to be filed with the authority.

SECTION 791.13 - TERMS OF RENEWALS.

Any permit renewal shall be for a term not to exceed the maximum period of 5 years for the original permit established under Section 786.11 of this Subchapter.

SECTION 791.14 - APPROVAL OR DENIAL OF RENEWALS.

(a) The regulatory authority shall, upon the basis of a complete application for renewal and completion of all procedures required under this Part, issue a renewal of a permit, unless it is established and written findings by the regulatory authority are made that:

(1) The terms and conditions of the existing permit are not being satisfactorily met;

(2) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards under the Act, Subchapter K of this Chapter, and the regulatory program;

(3) The requested renewal substantially jeopardizes the operator's continuing responsibility on existing permit areas;

(4) The operator has not provided evidence that the performance bond in effect for such operation will continue in full force and effect for any renewal requested in such application, as well as any additional bond the regulatory authority might require pursuant to Subchapter J of this Chapter; or

(5) Any additional revised or updated information required by the regulatory authority has not been provided.

(b) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal. {41866}

PART 792 – TRANSFER, SALE OR ASSIGNMENT OF RIGHTS GRANTED UNDER PERMITS

Section

792.1	Scope.
792.2	Objectives.
792.11	General requirements.
792.12	Obtaining approval for transfer, assignment or sale of rights.
792.13	Requirements for new permits for persons succeeding to rights granted under a permit.

Authority: Sections 101, 201, 501, 506, 509, 510, and 511, Pub. L. 95 87 (30 U.S.C. Sections 1201, 1211, 1251, 1256, 1257, 1260, and 1261).

SECTION 792.1 - SCOPE.

This Part establishes the minimum requirements for the Secretary's approval of regulatory program provisions for the transfer, sale or assignment of rights granted under permits issued under such programs and continuation of operations covered by such permits.

SECTION 792.2 - OBJECTIVES.

The objective of this Part is to ensure that no person conducts surface coal mining and reclamation operations through the transfer, sale or assignment of rights granted under regulatory program permits without the prior approval of the regulatory authority. This is necessary to ensure that the environment is fully protected at all times.

SECTION 792.11 - GENERAL REQUIREMENTS.

(a) No transfer, assignment, or sale of the rights granted under any permit issued pursuant to a regulatory program shall be made without the prior written approval of the regulatory authority, in accordance with this Part.

(b) Any person who has obtained the prior written approval of the regulatory authority under this Part for the transfer, sale or assignments of rights granted under permits issued to State programs, shall:

(1) If required by Sections 792.12(c) (2) (4), file a complete application with the regulatory authority for a new permit for the surface coal mining and reclamation operation covered by the existing permit within the time prescribed by Section 771.19(b)(3) of this Subchapter, and,

(2) Pending the decision of the regulatory authority on such application; conduct such operation in compliance with the Act, this chapter, the regulatory program, and the terms and conditions of the existing permit.

SECTION 792.12 - OBTAINING APPROVAL FOR TRANSFER, ASSIGNMENT OR SALE OF RIGHTS.

(a) Any person succeeding by transfer, assignment, or sale to the rights granted by a permit issued under this Subchapter shall, prior to the date of such transfer, assignment or sale:

(1) Obtain the bond coverage of the original permittee; and

(2) Provide the regulatory authority with an application for approval of such proposed transfer, assignment, or sale, including:

(i) The name and address of the existing permittee;

(ii) The name and address of the person, proposing to succeed by such transfer, assignment or sale and the name and address of that person's resident agent;

(iii) For surface mining activities, the same information as is required by 30 CFR 778.13, 778.14, 778.15, 778.16(c), 778.18 and 778.19 for applications for new permits for those activities; or {41867}

(iv) For underground mining activities, the same information as is required by 30 CFR 782.13, 782.14, 782.15, 782.16(c), 782.18 and 782.19 for applications for new permits for those activities.

(3) Obtain the written approval of the regulatory authority for transfer, assignment, or sale of rights, according to the criteria of paragraph (c) of this Section.

(b)(1) The person applying for the transfer, assignment or sale of rights granted by a permit shall advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the original permittee, the number and particular geographic location of the permit, and the address of which written comments may be sent under Subsection (b)(2).

(2) Any person including the head of any local, State or Federal government agency may submit written comments on the application for approval to the regulatory authority, within the time required by the regulations of the particular program.

(c) The regulatory authority may, upon the basis of the applicant's compliance with the requirements of paragraph (a) and (b) of this Section, grant written approval for the transfer, sale, or assignment of rights under a permit, if it first finds, in writing, that:

(1) The person seeking approval will conduct the operations covered by the permit in accordance with the criteria specified in 30 CFR 786.15 and 786.17 and the requirements of the Act, this Chapter and the regulatory program;

(2) The applicant for approval will not conduct the operation differently from those approved under the original permit, unless the applicant has applied for and received approval of a new permit from the regulatory authority, in accordance with the requirements of this Subchapter;

(3) The applicant has submitted a performance bond or other guarantee as required by Subchapter J and at least equivalent to the bond or other guarantee of the original permittee; and

(4) The applicant will continue to conduct the operations involved in full compliance with the terms and conditions of the original permit, unless and until it has obtained a new permit in accordance with this Subchapter.

SECTION 792.12 - REQUIREMENTS FOR NEW PERMITS FOR PERSONS SUCCEEDING TO RIGHTS GRANTED UNDER A PERMIT.

Any person conducting surface coal mining and reclamation operations by approval of the regulatory authority under this Part shall continue to conduct the operations involved according to the terms and conditions of the original permit, until that person has obtained a new or revised permit from the regulatory authority, in accordance with the requirements of this Subchapter.

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