

FEDERAL REGISTER: 45 FR 32715 (May 19, 1980)

DEPARTMENT OF THE INTERIOR

AGENCY: Geological Survey

30 CFR Part 211

Geological Survey; Coal Mining Operations

ACTION: Proposed rule.

SUMMARY: The rules in this Chapter delineate the functions and responsibilities of the Geological Survey (GS) for coal mining operations on Federal lands and govern coal mining operations for production, development, mineral resource recovery and protection, royalties, diligent development, and maximum economic recovery (MER) on Federal lands under the Mineral Leasing Act of 1920, as amended (MLA). The rules also recodify the regulations in 30 CFR Part 211 relating to the initial Federal Lands Program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

DATE: Interested persons may submit written comments on the proposed rules on or before July 3, 1980.

ADDRESSES: Comments should be addressed to Chief, Conservation Division, (M.S. 650) U.S. Geological Survey, U.S. Department of the Interior, Reston, Virginia 22092. Comments will be available for public review at the above address from 7:45 to 4:15 p.m. on regular working days. [Page 32716]

FOR FURTHER INFORMATION CONTACT: Mr. Andrew V. Bailey, Chief Branch of Mining Operations, Conservation Division, U.S. Geological Survey, Reston, Virginia 22092, (703) 860-7506; FTS -- 926-7506.

SUPPLEMENTARY INFORMATION:

On May 17, 1976, the Department adopted regulations (41 FR 20252) which govern operations for discovery, testing, development, mining, preparation, reclamation, and handling of coal under leases, licenses, and permits issued for federally owned coal. On August 22, 1978, the Department modified those regulations in the Federal Register (43 FR 37181) to implement the initial regulatory program of the SMCRA on Federal lands. On March 13, 1979, the Office of Surface Mining Reclamation and Enforcement (OSM) published its final permanent regulatory program regulations (44 FR 14902 to 15463) which include provisions for a permanent Federal Lands Program, 30 CFR Chapter VII, Subchapter D, which fully implements SMCRA on Federal lands. On December 31, 1979, these regulations were amended to postpone the implementation schedule for the permanent phase of the Federal Lands Program.

These proposed revisions of 30 CFR Part 211 (1) separate environmental and reclamation requirements and responsibilities of SMCRA for mining on Federal lands in 30 CFR Subchapter D from the requirements and responsibilities of the GS under the MLA, as amended, and proposed 30 CFR 211.1 through 211.80; (2) retain and clarify the mining responsibilities and requirements of the MLA, and the 30 CFR Part 211 regulations of May 17, 1976, for production, development, mineral resource recovery and protection, royalties, and exploration outside of an approved OSM permit area; (3) revise and clarify the existing regulations and requirements of the Federal Coal Leasing Amendments Act of 1976 (FCLAA) for maximum economic recovery (MER), diligent development, continued operations, and Logical Mining Units (LMU); and (4) recodify the regulations in 30 CFR Part 211 relating to the initial Federal Lands Program under SMCRA.

These proposed rules contain the responsibilities and requirements of the GS under the MLA, as amended, in Sections 211.2 through 211.80. The initial Federal Lands Program of OSM is recodified in Sections 211.81 through 211.99.

RELATION TO FEDERAL LANDS PROGRAM

On August 22, 1978, final regulations were published in the Federal Register (43 FR 37181) that revised 30 CFR Part 211 to comply with the requirements of Section 523 of SMCRA. The purpose of these revisions was to adopt for Federal lands the existing portions of the initial regulatory program issued by OSM in 30 CFR Part 700 et seq. As explained in the Federal Register (43 FR 37181), these revisions represented the initial phase of the Federal Lands Program which is required by section 523 of SMCRA and are intended to remain in effect until they are completely superseded by implementation of the permanent Federal Lands Program in a State.

On March 13, 1979, the Department published final rules implementing a permanent Federal Lands Program in 30 CFR Parts 740 through 745 (44 FR 15332 to 15341) as a part of the overall permanent regulatory program (44 FR 15312 to 15463) of

OSM. These rules became effective on April 12, 1979. As originally adopted, the regulations required that after April 12, 1979, all persons submitting a mining plan for new mine or for the addition of new acreage to be mined at an existing operation shall obtain a permit pursuant to the requirements of 30 CFR Chapter VII, Subchapter D, prior to the commencement of surface coal mining and reclamation operations. Section 741.11 of the rules of March 13, 1979, sets forth a schedule for compliance with the permanent program on Federal lands which required that on or after October 12, 1979, existing or new operations will be required to comply with the performance standards in 30 CFR Subchapter K, and that, no later than 2 months after the effective date of a State program or a Federal program for a State, all operators could be required to file a complete permit application. Eight months after the effective date of a State program or Federal program, operators must have obtained a new permit to conduct mining and reclamation operations on Federal lands, except in certain circumstances as specified in 30 CFR 741.11(d).

In response to a petition from the State of Montana, the Department has recently revised the schedule contained in 30 CFR 470.11, as published on March 13, 1979. The amended schedule, published on December 31, 1979 (44 FR 77440-77447), postpones the implementation of the permanent Federal Lands Program until approval of a State program or implementation of a Federal program for a State. The new schedule applies to all surface coal mining operations on Federal lands and to all States. Once the Federal Lands Program is fully implemented in all of the States under the schedule in 30 CFR 741.11, the rules in Sections 211.81 through 211.99 relating to the initial regulatory program will become obsolete and will be revoked.

The Department proposes to recodify the applicable provisions of the initial regulatory program on Federal lands as Sections 211.81 through 211.99. Revisions are restricted to rearrangement, deletion, clarification, and recodification of the text, except in those instances explained below.

It is proposed to amend the regulations in six places to delete the phrase "permit, lease or license" or the phrase "leased, permitted or licensed lands" wherever they occur. The specific sections involved are:

<i>Existing Section in Part 211</i>	<i>New Section in 30 CFR Part 211.81-99</i>
1. Section 211.1(a)	Section 211.81(a)
2. Section 211.3(a)(3)(ii)	Section 211.83(a)(3)(ii)
3. & 4. Section 211.3(a)(3)(iv)	Section 211.83(a)(iv)
5. & 6. Section 211.10(a)(2)(i)	Section 211.886 (a) and (b)

The reason for these changes is that the terms "lease, license or permit" and "leased, licensed or permitted lands" are associated with the disposition of federally owned coal under the Mineral Leasing Act of 1920, as amended, and the Mineral Leasing Act for Acquired Lands of 1947. The terms do not reflect the fact that under Section 701(4) of the Surface Mining Control and Reclamation Act, private surface overlying federal owned coal and privately owned coal overlain by federally owned surface fall within the scope of the definition of "Federal Lands." This concept was discussed in the preamble to the final permanent program regulations of the Office of Surface Mining at 44 FR 14911 (March 13, 1979). n1 That explanation is adopted herein as a part of the explanation of these proposed changes. The Department is requesting interested parties to comment on the six amendments listed above.

n1 The full text of that discussion is as follows: *Federal lands*. An effort has been made to make the Federal lands definition clearer and more concise than that in section 701(4) of the Act without changing its substance.

1. One commenter suggested deleting the phrase "including mineral interests" from the definition of "Federal lands." No rationale was given. OSM has rejected this comment since it conflicts with the statutory definition in section 701(4) of the Act, which specifically includes "mineral interest" under the definition of "Federal lands."
2. Other commenters recommended a change in the definition to exempt private lands overlying federally owned coal rights. Exemption of privately owned surface was suggested in order to clarify Congressional intent that the private surface be controlled by the owner. Congress considered and provided protection for surface owners in section 714 of the Act. An exemption for private surface would be a departure from the statutory definition. If private surface overlying Federal coal were exempted from the Federal lands definition then, arguably, the lands would fall under a State program and the State would serve as the regulatory authority over the extraction of Federal coal. This would be an unauthorized result, particularly, when under section 714 of the Act the Federal Government would be leasing the coal under the Mineral Lands Leasing Act of 1920, as amended.
3. Another commenter suggested that the Section be revised to read "any land, including surface land or mineral interest," in order to make it clear that Federal surface overlying private coal is included in the definition of Federal lands. "Federal lands" are defined as "any lands * * * owned by the United States without regard to how the United States

acquired ownership of the lands." Since OSM's interpretation of the definition is consistent with the comment, OSM believes it is unnecessary to adopt the suggested language. [Page 32717]

However, public comments on the requirements of the initial regulatory program repeated in Sections 211.81 through 211.9 were fully considered at the time the initial program was proposed in the Federal Register (42 FR 60890) on November 29, 1977. Consequently, except for the sections listed above, further comments on the substantive provisions of the rules in Sections 211.81 through 211.99 are not being requested. These sections of Part 211 will become effective upon final publication of the rules in Sections 211.2 through 211.80.

Because of the legal responsibilities of OSM under the Federal Lands Program, the Department has assigned certain responsibilities regarding coal mining operations on Federal lands between OSM and GS. These proposed rules reflect that division of responsibilities under the MLA and SMCRA. The Department also determined that GS and OSM should coordinate certain responsibilities for coal mining operations on Federal lands. The proposed rules in this part, when read in conjunction with 30 CFR Subchapter D, reflect the coordination required by OSM and GS for approval of coal mining plans, inspections, and enforcement of performance standards on Federal lands under the initial and permanent OSM Federal Lands Program and the MLA.

RESPONSIBILITIES UNDER THE MINERAL LEASING ACT

The MLA has been amended numerous times, but mostly recently by Pub. L. 94-554 and Pub. L. 94-377, know otherwise as the FCLAA. For the purposes of this preamble, we refer to the MLA and its amendments as the MLA.

The GS is responsible for management of the coal resource and mining operations pursuant to the requirements of the MLA. The GS continues to exercise the Secretary's authority for managing mining operations for the MLA requirements concerning production, development, resource recovery and protection, MER, diligent development, continued operations, and royalties. These proposed rules delineate those responsibilities and requirements and clarify certain sections of the existing regulations.

All the basic requirements in these proposed rules for diligent development and MER are found in the existing regulations of 43 CFR Part 3400 of July 19, 1979, or 30 CFR Part 211 and the MLA. These proposed rules, in accordance with the MLA, require that no mining operating plan (mining plan) shall be approved which is not found to achieve the MER of the coal within the tract, and that consolidation of coal leases into an LMU may only be approved upon determining that MER of the coal deposit or deposits is achieved.

These proposed rules attempt to conform to the final rules of the Bureau of Land Management, 43 CFR Group 3400 -- on coal management, that were published in the Federal Register on July 19, 1979 (44 FR 42584 et seq.). Any differences will be resolved upon final publication of these rules. The public is invited to comment on any differences between the respective rules. These proposed rules attempt to conform to the policy determinations of the Secretary of the Interior made on June 1 and i, 1979, especially for the determination of MER. The Department of the Interior (DOI) prepared a Final Environmental Statement on the Federal Coal Management Program in April 1979.

TRANSFER OF CERTAIN RESPONSIBILITIES TO DEPARTMENT OF ENERGY

The Department of Energy Organization Act transferred from the DOI to the Department of Energy (DOE) the responsibilities for establishing regulations for diligence requirements on Federal coal leases. When the DOE issues regulations for diligence, it may be necessary to make further revisions in this part. These proposed rules indicate the responsibilities of the GS for implementation of DOE regulations applicable to coal leasing.

EXPLORATION ON FEDERAL LANDS

The GS will continue to administer all coal exploration activities on Federal lands outside of any permit area for a surface coal mining operation approved by the Regulatory Authority under 30 CFR Chapter VII, Subchapter D. OSM will administer all coal exploration activities on Federal lands within an approved permit area for surface coal mining and reclamation operations. All applications for exploration on Federal lands outside of an approved permit area will be submitted to the Mining

Supervisor who shall make any necessary consultations with OSM. No exploration may commence on Federal lands outside of an approved permit area without the approval of an exploration plan under the proposed rules of this Part.

EDITORIAL CHANGES

The proposed rules repeated all unchanged sections of the regulations promulgated on and since May 17, 1976. Minor editorial changes were made throughout the proposed rules in order to clarify the existing regulations. The editorial changes are not intended to alter any substantial content of the existing regulations.

Pursuant to the Office of the Secretary's rules of 43 CFR Part 14, functions, responsibilities, and requirements for coal mining operations on Federal lands are referred to as "rules" rather than "regulations." References to the term "regulations" in the preamble apply to the historical use of that term in the previous revisions of 30 CFR Part 211.

REVISED SECTIONS 211.1 THROUGH 211.80

The existing 30 CFR Part 211 regulations are proposed to be revised for GS requirements and responsibilities by making the following changes to Sections 211.1 through 211.80:

1. All of the analogous environmental and reclamation provisions of the 211's for coal mining operations on Federal lands, which are now addressed in the SMCRA and 30 CFR Subchapter D, would be deleted. These proposed deletions include most of the environmental performance standards in Section 211.40, environmental requirements for mine plans in Section 211.10, environmental definitions in Section 211.2, public participation for environmental matters in Section 211.5, and all other such references throughout this Part.

2. Several references to 30 CFR Chapter VII are made in the text of this part. This is necessary because certain sections of this part are incorporated in the procedures required by the permanent Federal Lands Program of the SMCRA. A Section 211.10 plan (referred to synonymously as a "mining and operations plan" or "operation and reclamation plan") is required to be submitted by an operator for responsibilities of the operator under the MLA as a part of a mining plan. The term "mining plan" is defined at 30 CFR 740.5. Mining plans and modifications thereof would be submitted to the Regional Director pursuant to 30 CFR Part 741. Section 211.1 includes paragraphs which state the Scope and Purpose of the initial Federal Lands Program of OSM which is fully recodified in Sections 211.81 through 211.99. [Page 32718]

These proposed rules in Sections 211.2 through 211.80 attempt to conform completely to the final 30 CFR Chapter VII rules of OSM which became effective April 12, 1979. Any differences will be resolved upon final publication of these rules. The public is invited to comment on any differences or inconsistencies between these proposed rules and OSM's final rules.

3. Section 211.6 would be revised to clarify the responsibility of the GS for confidentiality of data under MLA, and to maintain a consistent approach to handling confidential data in accordance with the OSM rules.

4. Sections 211.11, 211.13, 211.20, 211.21, 211.30, 211.31, 211.32, 211.33, 211.35, 211.36, and 211.66 are proposed to be revised by eliminating the section numbers and incorporating the applicable text into other sections of Part 211. Sections 211.11, 211.30, 211.31, 211.32, 211.33, 211.35, and 211.36 would be incorporated into Section 211.40, Performance Standards. Section 211.13 would be incorporated into proposed Section 211.12 and Section 211.20 would be incorporated into proposed Section 211.62.

5. Sections 211.10, 211.12, 211.40, 211.63, 211.64, and 211.65 would be retained and revised to clarify the GS responsibilities under the MLA. Exploration plan requirements would be revised slightly to be consistent with terminology required under SMCRA. The purpose of the mining and operations plan in Section 211.10 is to indicate how the operator proposes to comply with the MLA. These rule would require the operator to include a mining and operations plan as a separate part of the mine plan submitted to the Regulatory Authority under the permanent Federal Lands Program of SMCRA. The requirements in Section 211.10 are not intended to duplicate information required under SMCRA. The public is invited to comment on the relationship of the mining and operations plan requirements to permit application requirements of OSM on Federal lands under 30 CFR 741.13.

Section 211.10 also proposes to require submission of mining plans for all private and Federal lands consolidated into an LMU prior to any mining on that LMU. Section 211.10 also proposes that approval of an LMU composed of consolidated lands would not relieve the operator of the requirements of the FCLAA. A mining plan would be required for an LMU composed of consolidated lands prior to taking any mining action on lands within the LMU and not later than 3 years from the date of the earliest Federal lease issued or readjusted after August 4, 1976, which lacks a mining plan.

Section 211.40 proposes to include performance standards for coal exploration and mining operations on Federal lands under MLA. These standards include MER, diligent development, and requirements for protection and recovery of the coal resource. Section 211.40 also proposes to include a standard for mining coal up to the lease boundary line. One purpose of this standard is to allow the Mining Supervisor to encourage the lessee to enter into back stripping agreements with adjacent leases to mine up to the boundary line, in the interest of conservation of natural resources; provided that all such agreements would be in compliance with existing State and Federal laws.

Section 211.40 also proposes to require that applications for extensions of the deadline for meeting diligent development in accordance with 43 CFR 3475.4 be submitted to the Mining Supervisor for review and recommendation of approval or denial to the Secretary.

6. Sections 211.62, 211.63, and 211.64 would be revised to clarify procedures and correct oversights for computation of royalty payments due on all coal mined, recovered from coal waste, and recovered by in situ methods. These rules propose to change the royalty payment requirement of Section 211.63 from a quarterly submission to a monthly submission. These rules also propose to delegate to the GS the Secretary's authority under the MLA to act on applications for reduction of royalty and to establish a procedure for acting on such applications.

7. The existing responsibilities and requirements in Sections 211.70, 211.71, and 211.72 for inspections and enforcement under the MLA would be retained. The GS solicits comments on whether the Department should consider revising these sections to utilize the same procedures and administrative actions required by OSM for enforcement actions on Federal lands under the SMCRA. Section 211.72 is proposed to be revised to reflect GS responsibilities relating to enforcement of DOE regulations applicable to coal leasing under the Department of Energy organization Act.

8. Section 211.80, LMU's, would be added. Regulations which define LMU's are found in 43 CFR Part 3400. Section 211.80 clarifies the existing regulations as to the GS's responsibilities for LMU's, specifies criteria for establishing LMU's, and indicates the operator's requirements and responsibilities.

REVISED SECTIONS 211.81 THROUGH 211.99

It is proposed that the provisions in 30 CFR Part 211, as amended on August 22, 1978, which relate to the initial Federal Lands Program under SMCRA be recodified in Title 30 CFR Sections 211.81 through 211.99. It is intended that the substantive requirements of the August 22, 1978, amendments remain unchanged except to add clarifying language where necessary. The proposed changes are as follows:

1. Section 211.3(a)(1) [new Section 211.83(a)(1)] has been modified by deleting paragraphs (a)(1)(i) through (a)(1)(x) of Section 211.3. These requirements would be incorporated into proposed rules 30 CFR 211.1 through 211.80. The last sentence of new Section 211.83(a)(1) is modified to be consistent with proposed 30 CFR 211.1 through 211.80.

2. Section 211.10(a)(1)(i) is redesignated Section 211.86(a) and is revised to clarify the division of functional responsibilities between GS and OSM as they relate to exploration operations. In accordance with the Under Secretary's decision of July 5, 1978, and the Memorandum of Understanding entered into on October 24, 1979, GS will retain responsibility for exploration operations on leased lands outside a permit area. OSM will have responsibility for exploration operations in the permit area or that area of land on which mining and reclamation operations are occurring or are expected to occur prior to the time a permit is approved pursuant to 30 CFR Part 741.

3. Sections 211.10(f) and (g) are deleted because the period covered by these provisions has expired.

4. A new Section 211.81(c) would be added to clarify the period of applicability of the requirements of revised Sections 211.81 through 211.99.

5. Section 211.70 [new Section 211.97] is retitled, Inspections, Enforcement, and Civil Penalties. This section would incorporate all of the provisions of Sections 211.70, 211.72, and 211.78.

6. Several provisions in the existing regulations relating to State/Federal Cooperative Agreements are to be deleted or modified as follows:

a. Section 211.10(e) is proposed to be recodified Section 211.86(g), and the reference to Section 211.75(c) is redesignated Section 211.99(c). Additionally, it is proposed that the references to 30 CFR 211.10(c) in paragraphs (1) through (6) be redesignated 30 CFR 211.86(d).

b. Section 211.75 is proposed to be renumbered Section 211.99.

c. Sections 211.76 and 211.77 are proposed to be deleted and comparable provisions, if adopted, will be codified in 30 CFR Subchapter D. [Page 32719]

OTHER INFORMATION

The DOI has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. Publication of this rulemaking has been determined by the Department not to be a major Federal action significantly affecting the quality of the human environment, and no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. Section 4332(2)(C)) is required.

The proposed rules in Sections 211.1 through 211.80 contain no new major revisions that are not addressed in existing rules or the MLA. There are no new major recordkeeping or reporting requirements.

These proposed rules were drafted by a work group comprised of GS Mining Supervisors and staffs of the Regional Conservation Manager, Denver, and the Chief, Conservation Division. Preparation of the rules is under the responsibility of Andrew V. Bailey, Chief, Branch of Mining Operations, Conservation Division, U.S. Geological Survey, Reston, Virginia 22092.

PRIMARY AUTHORS

The primary authors of these proposed rules at the time of drafting were: Andrew Bailey, Chief, Branch of Mining Operations, and Thomas Leshendok, Geologist, Branch of Mining Operations, Conservation Division, U.S. Geological Survey, Reston, Virginia 22092, phone (703) 860-7506; Earl Cox, Mining Engineer, Office of the Conservation Manager, Conservation Division, U.S. Geological Survey, Central Region, Denver Federal Center, Lakewood, Colorado 80225; Paul Storrs, Area Mining Supervisor, Central Rocky Mountain Area, Conservation Division, U.S. Geological Survey, Denver, Colorado 80225; Albert Czarnowsky, Area Mining Supervisor, Southern Rocky Mountain Area, Conservation Division, U.S. Geological Survey, Albuquerque, New Mexico 87102; Jackson Moffitt, Area Mining Supervisor, Western Rocky Mountain Area, Conservation Division, U.S. Geological Survey, Salt Lake City, Utah 84138, as assisted by Chedville, L. Martin, Staff Attorney, Division of Surface Mining, Office of the Solicitor; John Carlson, Office of Surface Mining; and Ann Vance, Staff Attorney, Division of Energy and Resources, Office of the Solicitor.

It is proposed to revise Part 211, Chapter II, Title 30 of the Code of Federal Regulations as set forth below.

Dated: May 13, 1980.

Joan M. Davenport,
Assistant Secretary -- Energy and Minerals.

PART 211 -- COAL MINING OPERATING RULES

SECTION

- 211.1 Scope and purpose.
- 211.2 Definitions.
- 211.3 Responsibilities.
- 211.4 General obligations of the operator.
- 211.5 Procedures and public participation.
- 211.6 Confidentiality.
- 211.10 Exploration and mining and operations plans.
- 211.12 Operation mine maps.

PERFORMANCE STANDARDS

- 211.40 Exploration, surface mining, and underground mining standards.
- 211.41 Completion of operations and abandonment.

REPORTS, RECORDS, ROYALTIES, AND AUDITS

- 211.62 Reports.
- 211.63 Royalties.
- 211.65 Audits
- 211.65 Audits
- 211.66 Maintenance of and access to records

INSPECTION, ISSUANCE OF ORDERS, ENFORCEMENT, AND APPEALS

- 211.70 Inspections.
- 211.71 Notices and orders.
- 211.72 Enforcement.
- 211.73 Appeals.

LOGICAL MINING UNITS

- 211.80 Logical mining units.

INITIAL REGULATORY PROGRAM ON FEDERAL LANDS OF THE SURFACE MINING CONTROL AND RECLAMATION ACT 1977

- 211.81 Applicability.
- 211.82 Definitions.
- 211.83 Responsibilities.
- 211.84 General obligations of the operator.
- 211.85 Procedures and public participation.
- 211.86 Exploration and mining plans.
- 211.87 Approaching oil, gas, or water wells.
- 211.88 Mine maps.
- 211.89 Failure of lessee to furnish maps.
- 211.90 Core and test holes.
- 211.91 Maximum recovery for underground mining.
- 211.92 Subsidence.
- 211.93 Development of leased tracts through adjoining mines.
- 211.94 Operating and reclamation standards.
- 211.95 Completion of operations and abandonment.
- 211.96 Reports.
- 211.97 Inspections, enforcement, and civil penalties.
- 211.98 Appeals.
- 211.99 Applicability of State law.

Authority. -- 30 U.S.C. 181 et seq.; 30 U.S.C. 351-395; and 38 Stat. 741.

SECTION 211.1 - SCOPE AND PURPOSE.

(a) *Scope* . (1) The regulations in Sections 211.1 through 211.80 of this part shall govern operations for the exploration, development, mining, preparation, and handling of coal under leases, exploration licenses, and licenses issued for federally owned coal, regardless of surface ownership, pursuant to the Mineral Leasing Act of 1920, as amended (MLA), the regulations in 43 CFR Group 3400, and the Alaska Coal Leasing Act of October 20, 1914, as amended (38 Stat. 741; 48 U.S.C. 432-445). Except as may otherwise be provided in 25 CFR Chapter I, these regulations do not apply to operations for the testing, development, mining, preparation, and handling of coal in Indian lands under leases and permits issued under the regulations in 25 CFR Parts 171, 172, 174, and 177.

(2) The regulations in Sections 211.81 through 211.99 constitute the initial regulatory program for Federal lands required by section 502 and section 523 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 U.S.C. 1252 and 1273). These regulations apply to surface coal mining and reclamation operations on Federal lands, including but not limited to the discovery, testing, development, mining, preparation, and handling of coal. Except as may otherwise be provided in 25 CFR Chapter I and this subsection, these regulations do not apply to such operations on tribal or allotted Indian lands under leases and permits issued subject to 25 CFR Part 177. A mining plan for an operation to be conducted on both Federal and Indian lands shall be subject to concurrent review pursuant to the requirements of this part and 25 CFR Part 177.

(b) *Purpose* . (1) The purposes of the rules in Sections 211.2 through 211.80 of this part are to assure orderly and efficient development, mining, preparation, and handling operations; to assure production practices that prevent avoidable waste or loss of coal or other mineral resources; to avoid damage to coal-bearing or other mineral-bearing formations; to encourage maximum economic recovery (MER) and use of coal resources; to assure that operations meet requirements of diligent development and continuous operations; to protect the public health and safety; to ensure effective and reasonable regulation of surface and underground coal mining operations in accordance with the requirements of Sections 211.2 through 211.80 of this part; to require a proper record and accounting of all coal produced; and to assure efficient and environmentally sound exploration

operations outside an approved Office of Surface Mining Reclamation and Enforcement (OSM) permit area for surface mining and reclamation operations. [Page 32720]

(2) The purposes of the rules in Sections 211.81 through 211.99 of this part are to ensure the protection of public health and safety and of environmental resources during and after surface coal mining and reclamation operations on Federal lands, and to ensure the completion of reclamation capable of restoring the land after mining to the same or higher uses which it would have supported prior to mining.

(c) *Exploration Licenses* . The rules govern operations for exploration on unleased Federal lands issued in accordance with regulations in 43 CFR Part 3410, Exploration Licenses.

(d) *Office of Surface Mining* . The responsibility for enforcement of the SMCRA (91 Stat. 445, 30 U.S.C. 1201 et seq.) and the environmental and reclamation rules for surface coal mining operations contained in this Chapter, including Sections 211.81 through 211.99, is vested in the OSM, Department of the Interior (DOI).

(e) *Worker Health and Safety* . The responsibility for enforcement of the Federal Coal Mine Health and Safety Act of 1969, as amended, (83 Stat. 742; 30 U.S.C. 801) and the coal mine health and safety rules contained in Chapter I of this title is vested in the Mine Safety and Health Administration (MSHA), Department of Labor.

(f) *Effective Date* . These rules are effective upon publication as final rulemaking, except that a plan under 30 CFR 211.10(c) is required pursuant to 30 CFR Part 741.

SECTION 211.2 - DEFINITIONS.

(a) As used in Sections 211.2 through 211.80 of this part, the following terms shall have the following meanings:

Advance royalty means an advance payment authorized in lieu of continued operations.

Coal reserve base means the tons of coal in place contained in beds of (1) metallurgical or metallurgical-blend coal 12 inches or more; anthracite, semianthracite, bituminous, and subbituminous coal 28 inches or more thick; and lignite 60 inches or more thick to a depth of 500 feet below the lowest surface elevation; (2) metallurgical and metallurgical-blend coal 24 inches or more thick, anthracite, semianthracite, bituminous and subbituminous coal 48 inches or more thick; and lignite 84 or more inches thick occurring from 50 to 3,000 feet; and (3) any thinner bed of metallurgical, anthracite, semianthracite, bituminous, and subbituminous coal and lignite at any horizon above 3,000 feet which is presently being mined or for which there is evidence that it could be commercially mined at this time. Coal reserve base includes measured, indicated, and inferred categories as defined in General Mining Order No. 1.

Conservation Manager means a Conservation Manager, Conservation Division, Geological Survey (GS).

Daylighting is a term used to define the surface mining procedure for exposing an underground mined area to remove remaining coal.

Development means preparing a mine for production by drilling, excavating, sinking shafts, slopes, or driving drifts.

Director means the Director of the U.S. Geological Survey, DOI.

Division Chief means the Chief of the Conservation Division, GS.

Exploration license means a license issued by the authorized officer under 43 CFR Part 3410 to permit the licensee to explore for coal on unleased Federal lands.

Exploration plan means a detailed plan to identify the depth, thickness, extent, and quality of coal resources, and shows the location and type of exploration work to be conducted, environmental protection procedures, present and proposed roads, and reclamation and abandonment procedures to be followed upon completion of operations.

General Mining Order means a formal numbered order issued by the Mining Supervisor, with prior approval of the Division Chief, and published in the Federal Register after opportunity for public comment. The order implements rules in Sections 211.2 through 211.80 of this part.

Leased Lands, Leased Premises, or Leased Tract means lands embraced within a Federal coal lease and subject to the rules in this part.

Lessee means any person or persons, partnership, association, corporation, or municipality to whom a Federal coal lease is issued, or an assignee of such lease under an approved assignment.

License means a license to mine coal pursuant to the provisions of 43 CFR Part 3340.

Licensee means the holder of an exploration license or a license to mine.

Maximum economic recovery (MER) means, after safety factors are taken into account, the extraction of all portions of the coal deposit within a Federal lease that have a private incremental cost of recovery (including reclamation costs and opportunity costs) less than or equal to the market value of the coal.

Method of operation means the methods and manner by which activities are performed by the operator, as described in an exploration or mining plan.

Mine means an underground or surface excavation and the surface or underground support facilities that contribute directly or indirectly to mining, production, preparation, and handling of coal.

Mineable reserve base means the tons of coal in place contained only in the area and thickness which is commercially mineable with no deductions for coal to be left in pillars, fenders, property barriers, and other areas where mining is not permissible, such as (1) coal under land determined to be prime farmland, (2) coal under certain alluvial valley floors, (3) land classified as unsuitable for coal mining under OSM regulations, (4) land designated as containing historic, cultural, or archaeological sites protected under provisions of 36 CFR Part 800, (5) lands in the proximity of or containing the habitat of certain endangered species, and (6) lands with zoning restrictions.

Mining and operations plan means a detailed plan submitted under 30 CFR Part 211 as part of the mining plan showing that the proposed operation meets the requirements of the MLA for development, production, resource recovery and protection, diligence, and MER requirements pursuant to Sections 211.2 through 211.80 of this part.

Mining Supervisor means the Area Mining Supervisor, Conservation Division, GS, or District Mining Supervisor or other subordinates acting under his direction.

Notice of availability means formal notification by the Mining Supervisor to appropriate Federal, State, and local government agencies; to the surface and mineral owners; and to the public through posting in the appropriate county clerk's office of the availability for inspection of the proposed establishment of a Logical Mining Unit (LMU). The notice will adequately define the proposed action, will establish a specific time limit for public review and comments, and will provide for a public hearing at the request of anyone adversely affected by the proposed action.

Operator means lessee, licensee, or one conducting operations on a lease or exploration license under the authority of a lessee or licensee.

Preparation means the physical or chemical treatment to prepare coal for market or to remove noncoal waste and other impurities in order to enhance the quality and therefore the value of the coal. Treatment includes crushing, sizing, drying, cleaning, mixing, or other processing. [Page 32721]

Permanent abandonment for exploration operations means the completion of all activities conducted under an approved exploration plan, including plugging of all drill holes and reclamation of all disturbed surfaces.

Permanent abandonment for mining means the completion of all development, production, and mineral resource recovery and protection requirements conducted under an approved mining and operations plan.

Production means recovering coal or commercial byproducts from a mine using surface, underground, auger methods, or in situ gasification.

Recoverable reserves means the tons of coal that can be commercially mined under existing technology and economics. It does not include coal that will be left in pillars, fenders, property barriers, or other areas where mining is not permissible such as (1) coal under land determined to be prime farmland, (2) coal under certain alluvial valley floors, (3) land classified as unsuitable for coal mining under OSM regulations, (4) land designated as containing historic, cultural, or archaeological sites protected under provisions of 36 CFR Part 800, (5) lands in the proximity of or containing the habitat of certain endangered species, and (6) lands with zone restrictions. In these rules, the terms "reserves" and "recoverable reserves" are used interchangeably. Recoverable reserves include measured, indicated, and inferred categories as defined in General Mining Order No. 1.

Resource recovery and protection includes practices to efficiently recover the coal resources subject to these rules: to avoid waste or loss of coal or other mineral resources; to prevent damage or degradation to coal-bearing or other mineral-bearing formations; to encourage MER of the coal; and to ensure that all mineral resources are protected upon abandonment.

Secretary means the Secretary of the Interior.

Subsidence means a lowering of surface elevations over an underground mine caused by loss of support and subsequent caving of strata lying above the mine.

(b) The following shall have the meanings indicated in 43 CFR 3400.0-5:

Authorized officer
Continued operations
Commercial quantities
Diligent development
Exploration
Logical mining unit (LMU)
Maximum economic recovery (MER)
Mining plan

(c) The following definitions shall have the meanings indicated in 30 CFR 700.5 and 701.5:

Alluvial Valley floors
Aquifer
Federal lands
Federal Lands Program
Groundwater
Office
Overburden
Permit
Permit area
Regional Director
Regulatory authority
Roads
Spoil
Surface coal mining and reclamation operations

SECTION 211.3 - RESPONSIBILITIES.

(a) The GS has the general responsibility to administer the MLA with respect to coal mining, production, and resource recovery operations on Federal leases and licenses and to supervise coal exploration operations outside of an approved Federal permit area for surface coal mining and reclamation operations.

(b) Subject to the supervisory authority of the Secretary, the regulations in **SECTION** 211.2 through 211.80 of this part shall be administered by the Director, through the Division Chief, the Conservation Manager, and the Mining Supervisor.

(c) The Mining Supervisor is empowered to oversee exploration, development, production, resource recovery and protection, diligent development, preparation, handling, and mineral abandonment operations subject to the provisions of this Part and, shall be responsible for:

(1) *Exploration plans* . Approve, disapprove, approve upon condition, or require modification of exploration plans for activities outside of an approved OSM permit area.

(2) *Mining plans* . Review mining plans or modifications thereof and give written concurrence on the development, production, resource recovery and protection, diligent development, continued operations, and royalty requirements of mining and operations plans prior to approval by the Secretary.

(3) *LMU applications* . Approve or disapprove LMU applications or modifications thereof; direct the establishment of an LMU in the interest of conservation; conduct public hearings as appropriate; recommend amendment to lease terms when determined necessary to assure consistency with LMU agreements; monitor and assure compliance with LMU requirements and regulations; and require reports and information for the establishment of the LMU.

(4) *Inspection of operations*, Examine as frequently as necessary, but at least quarterly, the lease, exploration license, or licensed lands where operations for the exploration, development, production, preparation, and handling of coal, resource recovery and protection, diligent development, and collection of royalties are conducted or are to be conducted; inspect such operations for the purpose of determining whether waste or degradation of mineral substances or damage to formations and deposits or nonmineral resources affected by the operations is being minimized; and determine whether all provisions of applicable laws, regulations, and orders, all terms and conditions of leases, exploration licenses, and licenses, and all requirements of approved exploration or mining and operation plans are being complied with.

(5) *Compliance* . Require operators to conduct operations subject to this part in compliance with all provisions of applicable laws, rules, and orders, all terms and conditions of leases, exploration licenses, or licenses, under the requirements of the MLA, and all requirements of approved exploration or mining and operation plans for requirements of production, development, resource recovery and protection, MER, diligent development, continued operations, and collection of royalties.

(6) *Reports and recommendations* . Make reports to the Division Chief, through the Conservation Manager, as to the general conditions of lands under lease, exploration license, or license, and the manner in which operations are being conducted and orders are being complied with; and submit information and recommendations for responsibilities of this part toward protection of the coal and the coalbearing formations, other mineral resources, and the non-mineral resources.

Furnish copies of reports to the operator upon request and make them available for public inspection, subject to the requirements of confidentiality of data in this part, during normal business hours at the office of the Mining Supervisor.

(7) *Records of production; rentals and royalties* . Obtain and audit coal production and sales including establishment of coal values in absence of arms-length transactions; collect and deposit rental and royalty payments; and maintain rental and royalty accounts.

(8) *Waiver, suspension, or reduction of rental or minimum royalty; reduction of royalties* . Act on applications for waiver, suspension, or reduction of rental or minimum royalty, and act on applications for reduction of royalties filed pursuant to 43 CFR 3473.3-2 and 30 CFR 211.63(i). [Page 32722]

(9) *Suspension of operations and production* . Act on applications for suspension of operations or production, or both, filed pursuant to 43 CFR 3473.4, and terminate, when appropriate, suspensions which have been granted, provided that approval of a suspension of operations and production shall not preclude the OSM from requiring the operator to continue to comply with the reclamation requirements of 30 CFR subchapter K and this part.

(10) *Cessation and abandonment* . Upon receipt of notice of proposed abandonment from the Regional Director or relinquishment of a lease or license, conduct an inspection to determine whether all rentals and royalties due the lessor have been paid and the development, production, mineral resource recovery and protection, abandonment, and royalty requirements to the lease or exploration license have been met.

(11) *Wells or prospect holes* . Prescribe or approve the methods for protecting coal-bearing formations from damage or contamination that might be incurred as a result of any wells or prospect holes drilled to, or through, the coal-bearing formations for any purpose under an approved exploration plan.

(12) *Trespass* . Report to the appropriate authorized officer with a copy to the Regional Director any trespass on unleased Federal lands that involves exploration activities or removal of coal, determine the quantity of coal removed, and determine the amount of trespass damages.

(13) *Extension of diligence* . Receive and act on applications by the operator for extension of diligence requirements and coordinate review of submission of applications with the authorized officer.

(14) *Water and air quality* . Inspect exploration operations to determine compliance with air and surface and ground-water management and pollution control measures required by the terms and conditions of applicable leases, exploration licenses, or licenses or approved exploration plans, and promptly notify appropriate representatives of other Federal and State agencies in the event of any noncompliance.

(15) *Implementation of regulations* . Issue General Mining Orders and other orders for enforcement, make determinations, and grant consents and approvals as necessary to implement or assure compliance with the rules in Sections 211.2 through 211.80 of this part. Any oral orders, approvals, or consents shall be promptly confirmed in writing.

(16) *Lease bonds* . (i) Determine whether the total amount of lease bond with respect to operations under this part is at all times adequate to satisfy the estimated reclamation requirements of the exploration plan.

(ii) Determine whether the total amount of any bond furnished with respect to operations subject to Sections 211.2 through 211.80 of this part is at all times adequate to satisfy the requirements of the lease or license relating to development, production,

mineral resource recovery and protection, and payments of rents and royalties; and notify the appropriate authorized officer in the event of any inadequacies.

(17) *Consultation* . Consult with the appropriate authorized officer prior to taking final action to approve an exploration plan outside an approved OSM permit area or modification thereto and to determine the amount of lease bond or modification thereto necessary to assure compliance with the exploration plan and 30 CFR Part 211. Any disagreements between the Mining Supervisor and the authorized officer arising in connection with any such final action or determination will be referred for resolution to higher authorities and, if necessary, to the Secretary of the DOI. Any such disagreements between the Mining Supervisor and the appropriate authorized officer of any Federal surface management agency not in the DOI will be referred for resolution to comparable higher authorities in each agency and, if necessary, to the respective Departments for final resolution.

SECTION 211.4 - GENERAL OBLIGATIONS OF THE OPERATOR.

(a) The operator shall conduct exploration activities, reclamation, and abandonment of exploration operations pursuant to the performance standards set forth in this part and 30 CFR 815.15, the terms and conditions of the lease or exploration license, the requirements of the approved exploration plans, and orders issued by the Mining Supervisor.

(b) The operator shall conduct surface and underground coal mining operations involving development, production, resource recovery and protection, and preparation and handling of coal in accordance with the rules in Sections 211.2 through 211.80 of this part, terms and conditions of the leases or licenses, the approved mining and operation plan, and any orders issued by the Mining Supervisor.

(c) The operator shall prevent waste of coal and other mineral resources during exploration and production and shall adequately protect the coal deposit and other mineral resources upon abandonment.

(d) The operator shall promptly report to the Mining Supervisor, by telephone, any accidents threatening loss of coal resources or damage to the mine, the lands or other mineral resources, such as, but not limited to, bumps, squeezes, highwall caving, landslides, inundation of mine with water, and gas outbursts along with corrective action initiated. Within 30 days after such accident, the operator shall submit a detailed report of damages caused by such accident and of the corrective action taken.

(e) The operator shall submit the reports required by Part 200 of this Chapter, Sections 211.2 through 211.80 of this part, and any other reports required by the Mining Supervisor.

SECTION 211.5 - PROCEDURES AND PUBLIC PARTICIPATION.

(a) *Written findings* . All major decisions and determinations of any Mining Supervisor shall be in writing; shall set forth with reasonable detail the facts and the rationale upon which such decisions or determinations are based; and shall be available for public inspection during normal business hours at the offices of the Mining Supervisor.

(b) *Availability of LMU proposals* . Applications for the approval of an LMU or modification thereof submitted under Section 211.80 of this part or a proposal by the Mining Supervisor to establish an LMU shall be available for public inspection in the office of the appropriate Mining Supervisor. To allow for such public inspection, a notice of the availability of any such proposed LMU or modification shall be prepared by the Mining Supervisor, promptly posted at his office, and mailed to the surface and coal owners, if other than the United States; to appropriate Federal and States agencies; and to the clerk or other appropriate officer in the county in which the proposed LMU is located for posting or publication in accordance with the procedures of that office.

A copy of such notice shall be published by the Mining Supervisor in a local newspaper of general circulation in the locality of the proposed operation at least once a week for 2 consecutive weeks.

No action with respect to approval of any such LMU or modification thereof shall be taken by the Mining Supervisor for a period of 30 days after such posting and mailing. [Page 32723]

(c) *Notice of proposed decision* . Prior to the final approval or establishment of any LMU, the Mining Supervisor shall publish his proposed decision in a newspaper of general circulation in the geographical area involved at least once each week for 2 consecutive weeks and shall not approve the application for at least 30 days after the first publication.

(d) *Public participation* . A public hearing shall be conducted upon the receipt of a written request to the appropriate Mining Supervisor of any person having an interest, which is or may be adversely affected by approval of the proposed LMU; provided that the written request is received within 30 days after the first publication of the notice of proposed decision in a newspaper of general circulation.

A complete transcript of any such public hearing, including any written comments submitted for the record, shall be kept and made available to the public during normal business hours at the office of the Mining Supervisor under whose auspices such meeting is conducted and shall be furnished at cost to any interested party. In making any decision or taking any action subject to such public hearing, the Mining Supervisor shall take into account all testimony submitted at such meeting, including any written comments submitted for the record.

SECTION 211.6 - CONFIDENTIALITY.

(a) Information on file with the GS relating to information obtained under this Part shall be open for public inspection and copying at reasonable times upon the written request of the applicant, pursuant to rules in 43 CFR Part 2, except that:

(1) Information such as geologic and geophysical data and maps pertaining to Federal coal reserves obtained from exploration licensees under Sections 211.2 through 211.80 of this part shall not be disclosed to the public until after the areas to which the information pertains have been leased by the Department, or until the Secretary or designee determines that release of the information to the public would not damage the competitive position of the holder of the exploration license, whichever comes first; and

(2) Information obtained from a lessee or operator under Sections 212.2 through 211.80 of this part which constitutes trade secrets and commercial or financial information which is privileged or confidential or other information which may be withheld under the Freedom of Information Act, 5 U.S.C. Section 552(b), such as geological and geophysical data and maps, shall not be available for public inspection or made public or disclosed without the consent of the lessee or operator. Provided, however, that upon termination of a lease, whether by expiration of its terms or otherwise, such information may be made available to the public.

(b) Information requested to be kept confidential under this section shall be clearly identified by the licensee, lessee, or operator by marking each page of documents submitted with the words "CONFIDENTIAL INFORMATION" at the top of the page. All pages so marked shall be physically separated from other portions of the submitted materials. All information not marked "CONFIDENTIAL INFORMATION" will be available for public inspection.

SECTION 211.10 - EXPLORATION AND MINING AND OPERATIONS PLANS.

(a) *Exploration* . (1) Except for casual use, before conducting any exploration operations on leased or licensed lands outside of an approved OSM permit area, or under a coal exploration license, the operator shall submit an exploration plan to and obtain approval from the Mining Supervisor. Casual use, as used in this subsection, means activities which do not cause significant surface disturbance or damage to lands, resources, and improvements, such as activities which do not include use of heavy equipment or explosives, or vehicular movement off established roads and trails. The operator shall submit seven copies of such plans to the Mining Supervisor.

All such plans shall be identified by the name and address of lessee or licensee and the serial numbers of leases or licenses included in the plan, and shall show in detail the exploration, reclamation, and abandonment operations to be conducted. Exploration plans shall be consistent with and responsive to the requirements of the lease or license for the protection of mineral and nonmineral resources and for the reclamation of the surface of the lands affected by the operations. The exploration plans shall show that reclamation is an integral part of the proposed operations and will progress as contemporaneously as practicable with such operations, and shall provide sufficient information to substantiate the effectiveness of the proposed reclamation method.

(2) Exploration plans shall contain all of the following: (i) The name, address, and telephone number of the applicant;

(ii) The name, address, and telephone number of the representative of the applicant who will be present at and be responsible for conducting the exploration;

(iii) An exploration and reclamation operations plan, including: (A) A narrative description of the proposed exploration area, cross-referenced to the map required under paragraph (2)(V) 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 the Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.); districts, sites, buildings, structures, or objects listed on, or eligible for listing on, the National Register of Historic Places; and known cultural or archaeological resources located within the proposed exploration area;

(B) A narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris-disposal activities;

(C) An estimated timetable for conducting and completing each phase of the exploration, drilling, and reclamation;

(D) The estimated amounts of coal to be removed, a description of the methods to be used to determine those amounts, and the proposed use of the coal removed; and,

(E) A description of the measures to be used to comply with the applicable requirements of 30 CFR 815.15 and 30 CFR 211.40(a); which shall include the methods for grading, backfilling, soil stabilization, compacting and contouring, soil preparation, fertilizer application, planting, and type and mixture of vegetation to be planted.

(iv) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area;

(v) A map at a scale of 1:24,000 or larger showing the areas of land to be substantially disturbed by the proposed exploration and reclamation. 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; existing bodies of surface water, historic, topographic, cultural and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and,

(vi) 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 that land for the purpose of conducting exploration and reclamation;

(vii) A narrative description including: (A) The method for plugging drill holes. [Page 32724]

(B) Estimated size and depth of drill holes, trenches, and test pits.

(C) The methods that will be used to protect any mineral resource encountered.

(D) Plans for transfer and modification of exploration wells for use as surveillance or monitoring wells.

(viii) Such other data as may be required by the Mining Supervisor.

(b) *Mining Plans* . (1) Before conducting any coal mining operation on Federal leases or licenses, and on any lands within an approved LMU, the operator shall submit and obtain approval of a mining plan, unless a mining plan has been approved prior to the effective date hereof under 30 CFR Part 211 or 30 CFR Part 741 for all the lands in the LMU.

(2) Mining plans and (modifications) thereof are submitted to the Regional Director pursuant to 30 CFR Part 741 and this part. On any lease issued or readjusted after August 4, 1976, the first mining plan containing a mining and operations plan shall be submitted to the Regional Director not later than 3 years after the effective date of the lease or 3 years after the date of readjustment unless a plan has been previously approved under 30 CFR Part 211 and/or 30 CFR Part 741 for the readjustment lease.

(3) A mining plan for any lease issued after August 4, 1976, must provide for the mining of the recoverable reserves of the LMU of which the lease is a part in a period of not more than 40 years; that period shall begin on the date of approval of the first mining plan for that LMU. Every existing Federal coal lease is considered to be an individual LMU as of June 1, 1976, until it may be combined with other Federal coal leases or with interests in non-Federal coal to form larger LMU. A mining plan for any existing lease issued prior to August 4, 1976, and consolidated into an enlarged LMU, must provide for the mining of the recoverable reserves of the LMU within 40 years from the effective date of the enlarged LMU. Information for the life of the mine shall be submitted under Section 211.10(c) of this part.

(4) Nothing in this part shall relieve the operator of an LMU of the requirement to file a mining plan under the FCLAA, 30 U.S.C. 207(c). A mining plan submitted after the approval of an LMU must cover all lands within the LMU and contain the information required by Section 211.10(c).

(5) No mining plan shall be approved which is not found to achieve the MER of the coal within the LMU.

(c) *Mining and operations plans* . The mining and operations plan shall cover operations to be conducted on leases and on any lands within an LMU under this part. The mining and operations plan under this part provides for the requirements of the MLA and shall be submitted as part of the mining plan required under 30 CFR Part 741. Mining and operations plans are reviewed and recommended for approval by the Mining Supervisor who may directly contact operators regarding requirements thereof. Formal MER determination shall be made at the time of mine plan approval based on information submitted in the mining and operations plan such as configuration of seams, actual mining costs, and revenues. The mining and operations plan shall contain all the requirements pursuant to the MLA for the life of the mine and for all lands within the LMU and shall include all of the following:

(1) Names, addresses, and telephone numbers of persons responsible for operations under the plan to whom notices and orders are to be delivered; and the names and addresses of lessees and surface and mineral owners of record, if other than the United States.

(2) A description of geologic condition, with maps and tables where appropriate, within the area where mining is to be conducted. Such description shall include, as a minimum, potential geologic hazards; and a description of the structural features

of the coal and overlying strata, including faults, cleats, joints, and fractures, and any other information required by the Mining Supervisor which would affect the orientation of the mine or production methods.

(3) A description, with maps and tables where appropriate, of other mineral resources within the LMU.

(4) A description of the proposed operation, including: (i) The quality of the coal in terms of Btu content, ash, moisture, sulphur, volatile matter, and fixed carbon content over the extent of the coal deposit. If available, information on other chemical or physical properties of the coal that may affect blending or combustion should be included.

(ii) The method of mining, including mining sequence, proposed production rate, and estimated recovery factors.

(iii) Coal reserve base, mineable reserve base, and recoverable reserves for each Federal lease covered in the mining plan. If the mining and operations plan covers an approved LMU, recoverable reserves will be reported for the non-Federal lands included in the plan. The recoverable reserves shall be reported for all coal seams considered to be of mineable thickness, considering the type of mining and the value of the coal.

(iv) Sufficient data to assure MER and to determine the recovery factor for the coal reserve base. Data includes sufficient information in the form of a narrative, cross sections, coal thickness isopachs, overburden isopachs, and quality and quantity data of all known potentially mineable seams on the lands involved. The areal extent of mining of each seam to be mined should be delineated.

(v) The engineering techniques to be used to ensure MER. The plan shall describe the method of mining, compare other mining methods, and present the justification for the method selected. For underground mining, longwall and room and pillar or conventional mining should be compared. For strip mining, draglines, shovels, scraper units, truck and shovel, or any combination of these systems should be evaluated. The selected mining system must conform to sound mining practices and be based on current technology and economics. Justification for not recovering any coal seams that may be damaged by future recovery or development of the proposed operation should be presented.

(vi) Sufficient economic data and analyses to indicate that the incremental cost of recovery (including reclamation and opportunity costs) of the coal (seams) that are proposed to be mined would be less than or equal to the market value of the coal, and sufficient economic data and analyses to indicate that the costs of recovery (including reclamation and opportunity costs) of coal (seams) that are not being recovered are greater than the market value of the coal.

(vii) The economic and engineering analyses should include processing costs and techniques for coal preparation, especially costs and techniques for coal washing or cleaning. Estimated recovery rates and comparisons of raw coal to processed coal should be included. If no coal preparation plant is planned and if the operator plans not to mine coal beds or portions of coal beds because of high sulfur, high ash, or other chemical or physical properties, the operator shall submit a narrative and analysis of the rationale for not mining such beds or portions of seams, and a rationale, including economic and engineering analyses, why a preparation plant to process such beds is not feasible. [Page 32725]

(viii) A list of all major equipment.

(ix) A description of the method of operation and measures by which the operator plans to comply with the obligations and requirements set forth in Section 211.4 and Section 211.40 of this part and any special terms and conditions of the lease or license.

(x) The anticipated starting and termination dates of each phase of the mining operation and number of acres of land to be affected.

(xi) The method of mineral abandonment proposed to protect the unmined coal deposits and other mineral resources.

(xii) The hydrology of the area as it may relate to the mining operations and recovery of the coal resource.

(xiii) Plans for protecting oil and gas wells as well as oil and gas resources when encountered. Plans should include any facilities for collection and use of gas from the coal seam or immediate overlying or underlying strata. When mining operations are conducted in areas of known wells or bore holes that may liberate oil, gas, water, or other fluid substances, the operator shall include in the proposed plan all measures determined necessary by the Mining Supervisor in consultation with the appropriate Oil and Gas Supervisor of the GS to protect wells or bore holes and obtain maximum recovery of the coal resource.

(5) Maps and cross sections.

(i) General. Plan map of the area to be mined on a suitable topographic base showing: (A) Lease boundaries and numbers.

(B) Boundaries of non-Federal coal.

(C) LMU boundaries.

(D) Surface ownership boundaries.

(E) Coal outcrop showing dips and strikes.

(F) Locations of abandoned surface and underground mines.

(ii) Structural contour map of coal (beds) to be mined.

(iii) Isopach map of coal (beds) to be mined.

(iv) Isopach map of overburden of surface mines on 20-foot intervals. If several seams are involved, interburden isopach (maps) on 10-foot intervals.

(v) Isopach map of overlying strata over underground mines on 250-foot intervals.

(vi) Drill hole location map showing elevations of collar and top of coal (beds).

(vii) Cross-section showing thickness of any coal, any rider seams above coal to be mined, location of next known deeper coal seam below deepest coal to be mined, and nature of strata beneath the coal for 20 meters.

(viii) General layout of proposed surface or strip mine showing: (A) Planned sequence of mining by year for first 5 years, thereafter in 5-year increments for the remainder of mine life.

(B) Location and width of box (cuts).

(C) Location of main haulroads.

(D) Location and width of coal fenders.

(ix) General layout of proposed underground (mines) showing: (A) Planned sequence of mining by year for first 5 years and by number in 5-year increments for the remainder of mine life.

(B) Location of shafts, slopes, main haulage entries, main return air courses, bleeder entries, and permanent barrier pillars.

(C) Sketch of typical panel showing width and length.

(D) Sketch showing typical entry system with centerline distances between entries and crosscuts.

(E) Sketch showing typical panel recovery, i.e., room and pillar, longwall, or other mining method which shows, by numbering such mining, the sequence of development and retreat.

(F) Sketch showing shaft and slope plan where applicable.

(x) Copy of any subsidence control plan required by 30 CFR 784.20.

(xi) Map showing location of surface building, tipple, coal storage area, loadout facilities, and railroad right-of-way.

(xii) Cross-section maps through mine area showing nature and thickness of overburden strata and the coal (seams) involved.

(xiii) For auger mining, a plan map showing: (A) Area to be auger mined and the location of pillars to be left for access to deeper coal.

(B) Cross sections through area to be mined showing overburden strata and coal seam.

(C) Sketch showing details of operations including coal seam thickness, auger hole spacing, diameter of holes and depth or length of auger holes.

(6) Map and coal reserve base estimate of that coal within the LMU which is left in the ground due to designation of lands as unsuitable for all or certain types of surface coal mining operations or because of alluvial valley floor provisions.

(d) *Action on plans* . (1) *Exploration plans* . The Mining Supervisor, after evaluating a proposed exploration plan outside of an approved OSM permit area for surface mining and reclamation operations and all comments received thereon, and after consultation with the appropriate authorized officer, and the Regional Director when over 250 tons of coal are to be removed by means other than drilling, or where OSM has identified special data needs shall, in writing, promptly approve or disapprove such a plan. In approving such a plan, the Mining Supervisor shall determine that such a plan complies with all requirements of this part, 30 CFR 815.15, OSM Permanent Program Performance Standards Coal -- Exploration, and any lease, or license terms or conditions. Reclamation must be accomplished as set forth in the exploration plan. The Mining Supervisor may impose additional conditions to conform to the provisions of this part. In disapproving such a plan, the Mining Supervisor shall indicate what modifications, if any, are necessary to achieve such conformity. No such plan may be approved unless a bond, executed pursuant to the provisions of 43 CFR Part 3474 and conditioned upon compliance with all of the provisions of such a plan, has been furnished to and approved by the appropriate authorized officer. When the land involved in the exploration plan is under the surface jurisdiction of an agency other than the DOI, that other agency must consent to the terms of the approval of the exploration plan.

(2) *Mining and operations plan*, (i) The Mining Supervisor, after evaluating the initial mining plan submitted to the Regional Director, shall report to the Regional Director on completeness in regard to compliance with requirements of the MLA, as amended, and this part.

(ii) The Mining Supervisor, after evaluating the mining and operations plan submitted for approval as part of the final mine plan, shall in writing concur with the mining and operations plan for compliance with the requirements of MLA, or specify objections in writing to the Secretary.

(3) No mining plan or modification shall be approved which is not found to achieve the MER of the coal within an LMU, including leases which were issued or readjusted after August 4, 1976. The determination of MER shall be made by the Mining Supervisor based on review of the mining and operations plan.

(4) No mining plan containing a mining and operations plan may be approved unless a bond executed pursuant to the provisions of 43 CFR Part 3474 and conditioned upon compliance with the provisions of the mining and operations plan has been furnished to and approved by the appropriate authorized officer, in consultation with the Mining Supervisor. [Page 32726]

(e) *Changes in plans by Mining Supervisor* . (1) Approved exploration plans may be required to be reasonably revised or supplemented at any time by the Mining Supervisor, after consultation with the operator and the appropriate authorized officer, to adjust to changed conditions to correct oversights, or to reflect changes in statutory requirements.

(2) The Mining Supervisor may require approved mining and operations plans for underground mines to be reasonably revised

or supplemented for minor modifications after consultation with the operator, to adjust to changed conditions, to correct oversights, or to adapt to new laws and regulations. Such revisions shall be made in writing, as appropriate, and copies submitted to the Regional Director.

(3) The Mining Supervisor may require approved mining and operations plans for surface mines to be reasonably revised or supplemented for minor modifications, after consultation with the operator and concurrence of the Regional Director, to adjust to changed conditions, to correct oversights, or to adapt to new laws and regulations.

(4) The Mining Supervisor shall promptly approve or disapprove in writing any such modifications, or specify conditions under which it would be accepted.

(f) *Changes by the operator* . (1) The operator may propose changes to an approved exploration plan outside the approved OSM permit area, and shall submit a written statement of any such proposed change and the justification therefor to the Mining Supervisor. The Mining Supervisor shall, after consultation with the appropriate authorized officer, in writing promptly approve or disapprove any such proposed change, or specify the modifications thereto under which it would be acceptable.

(2) The operator may propose minor modifications to the mining and operations plan for underground mines, and shall submit a written statement of such proposed change and the justification to the Mining Supervisor, with a copy to the Regional Director.

(3) The operator may propose minor modifications to the mining and operations plan for surface mines and shall submit a written statement of such proposed change and the justification to the Mining Supervisor who shall consult with and obtain the concurrence of the Regional Director.

(4) The Mining Supervisor shall promptly approve or disapprove in writing any such proposed modification, or specify the conditions under which it would be acceptable.

(g) *By petition* . Any interested person who is or may be adversely affected may petition the Mining Supervisor to exercise the authority set forth in paragraph (e) for the mining and operations plan. Any such petition shall be in writing: shall set forth the proposed modification; and shall state with reasonable particularity facts which demonstrate changed conditions, laws, or regulations or that oversights occurred at the time of approval which make modification necessary to bring the operations and plan into conformity with the obligations and requirements of Sections 211.2 through 221.80 of this part. Upon receipt of any such petition, the Mining Supervisor shall promptly decide whether the facts set forth are sufficient to warrant exercise of his authority pursuant to paragraph (e).

SECTION 211.12 - OPERATION MINE MAPS.

(a) *General requirements* . The operator shall maintain accurate and up-to-date maps of the mine, drawn to scales acceptable to the Mining Supervisor. All maps shall be appropriately marked with reference to Government landmarks or lines and elevations with reference to sea level. Before a mine, or section of a mine, is abandoned, closed, or made inaccessible, a survey of such mine or section shall be made and recorded on such maps, and a copy shall be furnished to the Mining Supervisor. All excavations in each separate bed shall be shown in such a manner that the production of coal for any royalty period can be accurately ascertained. Additionally, the maps shall show the name of the mine; the name of the lessee; the lease or license serial number; the lease boundary lines; surface buildings; dip of the (beds); true north; map scale and explanatory legend; location, surface elevation, depth, and thickness of the coal, and total depth of each drill hole; auger holes; improvements; topography, including subsidence resulting from mining; the geologic conditions as determined from outcrops, drill holes, exploration, or mining; any unusual geologic or other occurrences such as dikes, faults, unusual splits, unusual water occurrences, or other conditions that may have an influence on the MER; and such other information as the Mining Supervisor may request. Copies of such maps shall be properly posted to date and furnished, in duplicate, to the Mining Supervisor annually, or at such other times as he may request.

(b) *Underground mine maps* . Underground mine maps shall, in addition to the general requirements of paragraph (a) of this section, show all mine workings; the date of extension of the mine workings; and a coal section at the face of each working unit; the location of all surface mine fans; the position of all fire walls, dams, main pumps, fire pipelines, permanent ventilation stoppings, doors, overcasts, undercasts, permanent seals, and regulators; the direction of the ventilating current in the various parts of the mine at the time of making the latest surveys; sealed areas; known bodies of standing water in other mine workings, either in or above the workings of the mine; areas affected by squeezes; the elevations of surface and underground levels of all shafts, slopes, or drifts, and the elevation of the floor, bottom of the mine workings, or mine survey stations in roof at regular intervals in main entries, panels, or sections, and sump areas. Any maps submitted to the MHSA which show any of the specific data required by this subparagraph shall be acceptable in fulfillment of the requirements hereof. Any maps submitted to the OSM to show subsidence shall also be submitted to the Mining Supervisor.

(c) *Surface mine maps* . Surface mine maps shall, in addition to the general requirements of paragraph (a) of this section, include the date of extension of the mine workings and a detailed stratigraphic section at intervals specified in the approved mining and operations plan. Such maps shall show the highwall; all worked-out and reclaimed areas; the uncovered, but unmined, coal beds; the elevation of the top of the coal beds; and known bodies of standing water.

(d) *Vertical projections and cross sections of mine workings* .When required by the Mining Supervisor, vertical projections and cross sections shall accompany plan views.

(e) *Accuracy of maps*. The accuracy of maps furnished shall meet acceptable standards and shall be certified by a professional engineer, professional land surveyor, or other professionally qualified person.

(f) *Liability of lessee for expense of survey* . If the operator fails to furnish a required or requested map, the Mining Supervisor, if necessary, shall employ a professionally qualified person to make the required survey and map, the cost of which shall be charged to, and promptly paid by, the operator.

(g) *Incorrect maps* . If any map submitted by an operator is believed to be incorrect, the Mining Supervisor may employ a professionally qualified person to make a survey and may necessary maps. If the survey shows the maps submitted by the operator to be substantially incorrect, in whole or in part, the cost of making the survey and preparing the maps shall be charged to, and promptly paid by, the operator. [Page 32727]

PERFORMANCE STANDARDS

SECTION 211.40 - EXPLORATION, SURFACE MINING, AND UNDERGROUND MINING STANDARDS.

The following performance standards shall apply to exploration, development, production, mineral resource recovery and protection, MER, preparation and handling of coal under Federal coal lessees, coal licenses, exploration licenses, and approved LMU's.

(a) *Performance standards for exploration outside of an approved OSM permit area are:* (1) The operator shall comply with all applicable environmental and reclamation performance standards of 30 CFR 815.15, OSM's Permanent Program Performance Standards -- Coal Exploration.

(2) The operator shall, when required by the Mining Supervisor, set and cement casing in the hole and install suitable blowout prevention equipment when drilling on lands valuable or potentially valuable for oil and gas or geothermal resources.

(3) Exploration drill holes will be conditioned as required by this section and 30 CFR 815.12(g). In addition, all exploration drill holes will be required to be plugged and capped with at least 10 feet of cement or other permanent plugging material which is unaffected by water and hydrocarbon gases and which under normal hole pressures will prevent the migration of gases and water in the drill hole, or shall be managed to prevent water pollution and mixing of ground and surface waters and to ensure the safety of people, livestock, wildlife, and machinery.

For exploration holes drilled deeper than stripping limits, the operator shall plug, using cement or other suitable plugging material approved by the Mining Supervisor, the hole through the thickness of the coal (seams) or other mineral (deposits) for a distance of at least 50 feet above and below the coal (seams) or mineral (deposits) or to the bottom of the drill hole, unless otherwise specified in writing by the Mining Supervisor.

(4) The operator shall retain, unless otherwise authorized by the Mining Supervisor, representative samples of all drill cores or cuttings for 1 year and shall make such cores or cuttings available for inspection or analysis by the Mining Supervisor, if requested. Confidentiality of such information will be accorded pursuant to the provisions of Section 211.6 of this part.

(5) The operator may utilize exploration drill holes as surveillance wells for the purpose of monitoring subsequent operations upon the quantity, quality, or pressure of ground water or mine gases only with the written approval of the Mining Supervisor, in consultation with the Regional Director. The operator may utilize exploration drill holes for further use as water wells only after approval of the operator's written request by the Mining Supervisor and the surface owner or appropriate authorized officer, in consultation with the Regional Director. All such approvals shall be accompanied by a corresponding transfer of responsibility for any liability for damage and eventual plugging.

Nothing in this paragraph shall supersede or affect the applicability of any State law requirements for such a transfer.

(b) *General performance standards for surface and underground mines* . (1) *Maximum Economic Recovery (MER)* . The operator shall conduct operations to achieve the MER of the coal. A formal MER determination will be made at the time of mine plan approval. To gain the MER of the coal (seams), the following conditions and factors would have to be considered and evaluated by the Mining Supervisor:

- (i) Method of mining and recovery rate.
- (ii) Thickness of all coal seams encountered by drilling.
- (iii) Coal quality and value.
- (iv) Access to the coal.
- (v) Mine equipment.
- (vi) Sequence of mining.
- (vii) Thickness and characteristics of the interburden and overburden.
- (viii) Condition of immediate floor and roof rock.
- (ix) Geologic conditions such as faults, dikes, and other adverse conditions.
- (x) Distance from market.
- (xi) Method of transportation to market.
- (xii) Estimated costs of mining (including reclamation and opportunity costs) and estimated revenues.
- (xiii) Estimated costs of coal preparation plants.

(2) *Diligent development* . The operator is required to meet the diligent development requirements of 43 CFR 3475.4.

(i) Diligent development for coal leases issued prior to August 4, 1976, must be met between June 1, 1976, and June 1, 1986.

(ii) If a (leases) issued prior to August 4, 1976, is consolidated into an enlarged LMU, the LMU is required to meet diligent development between the effective date of the enlarged LMU and June 1, 1986, except that lease production between June 1, 1976, and the effective date of the enlarged LMU may be applied toward the diligence requirement of the enlarged LMU.

(iii) If Federal coal leases with different issue dates are included in the same LMU, the date for achievement of diligent development of the LMU shall be based on the date of the Federal lease with the earliest issue date. If a (leases) issued after August 4, 1976, is included in an LMU with a (leases) issued prior to August 4, 1976, the LMU must meet the diligent development requirements between the effective date of the LMU and June 1, 1986.

(iv) For leases issued after August 4, 1976, the lease must meet the diligent development requirements within 10 years after the effective date of the lease.

(v) The time to achieve diligent development on a lease cannot be extended solely by inclusion of that lease in an LMU with other leases.

(vi) Diligent development requirements for leases issued prior to August 4, 1976, may be extended in accordance with 43 CFR 3475.4(b).

(vii) When an approved LMU meets the diligent development requirements for commercial quantities, each Federal lease in the LMU is considered to have complied with the diligent development.

(viii) Applications for extension of the requirement for meeting diligent development shall be submitted in triplicate to the Mining Supervisor for review and for recommendation to the Secretary.

(3) *Continued operations*. After meeting diligent development, operators are required to comply with the continued operations requirements of 43 CFR 3475.4. The operator shall meet continued operations by the following:

(i) When diligent development has been achieved on a lease or LMU, the lease or LMU is subject to continued operations in the next lease or LMU year and each year thereafter, unless the Mining Supervisor authorizes the payment of advance royalty in lieu of continued operations.

(ii) Continued operations means production of coal equal to 1 percent of the LMU reserves for each of the first 2 years following the achievement of diligent development, and an average annual amount of 1 percent thereafter based on a 3-year period.

(iii) When an approved LMU meets continued operations, each Federal lease in the LMU is considered to have complied with the continued operations.

(iv) If an LMU fails to meet continued operations in any year, the operator may request the Mining Supervisor to authorize the payment of advance royalty in lieu thereof in accordance with 43 CFR 3473.3-2(b). [Page 32728]

(v) When the payment of advance royalty is authorized, it is paid in advance for the year following the year in which the continued operations requirement was not met.

(vi) The lessee's requests for authorization of advance royalty payments shall include the reasons the lease or LMU did not meet continued operations and show that the authorization to pay advance royalty in lieu of continued operations is in the public interest.

(vii) Advance royalty payments for each lease or LMU will be based on a percentage of the value of a minimum number of tons which shall not be less than lease terms for production. For any lease issued after August 4, 1976, the minimum number of tons shall be determined on a schedule sufficient to exhaust the lease reserve on that portion of reserves applicable to Federal leases in an LMU in 40 years from approval date of the mining plan. For any lease issued before August 4, 1976, the minimum number of tons shall be determined on a schedule sufficient to exhaust the leased reserves from June 1, 1976. The Mining Supervisor will establish a value for the coal to calculate the advance royalty owing.

(viii) Advance royalty payments made in the first 20 years of a lease issued or readjusted after August 4, 1976, can be credited against production royalty in that 20-year period only. Advance royalty paid after the first 20 years can be credited on production royalty during an extended or continued period of the lease.

(ix) The use of advance royalties in lieu of continued operation shall not be permitted for more than a total of 10 years during the life of any lease, including the life of the lease after readjustment.

(4) *Recoverable coal waste* . The operator shall store waste containing coal in such quantity that it may be later separated by washing or other means in a manner approved by the Mining Supervisor.

(5) *Unsuspected wells* . The operator shall promptly notify the Mining Supervisor if operations reveal unsuspected wells or drill holes which could affect mining operations and take no further actions which would disturb such wells or drill holes without his prior approval.

(6) *Mineral resource recovery and protection* . The operator shall conduct operations to efficiently recover the coal resources to avoid waste or loss of coal or other mineral resources; to prevent damage or degradation to coal-bearing or other mineral-bearing formation; and to insure that all mineral resources are protected upon abandonment.

(7) *Release of lease bond* . Subsequent to temporary or permanent abandonment of mining operations, the Mining Supervisor will determine if the lessee has met obligations required under the lease bond for mineral resource recovery and protection, rentals, and royalties. The Mining Supervisor will make appropriate recommendations to the appropriate authorized officer for reduction or termination of the lease bond.

(8) *Preparation plants* . The operator shall conduct coal preparation operations to avoid coal waste and to encourage maximum economic recovery. The operator shall consider utilization of coal washing or cleaning techniques in order to meet requirements for the maximum economic recovery of the coal on the LMU.

(c) *Performance standards for underground mines* . -- (1) *Maximum economic recovery (MER)* . Underground mining operations shall be conducted so as to yield the MER of the coal deposits consistent with the protection and use of other natural resources, sound economic and mining practice, and the protection of the environment. No entry, room, or panel working in which the pillars have not been completely extracted within safe limits shall be permanently abandoned or rendered inaccessible, except with the prior written approval of the Mining Supervisor.

(2) *Subsidence* . The operator shall adopt mining methods which insure MER, as determined by the Mining Supervisor, except in those areas where it is determined that a degree of subsidence is not permissible. Where recovery of the coal deposit must be limited to protect surface values, it shall be restricted after consultation with the Regional Director, OSM, according to 30 CFR 817.121 through 817.126, provided that nothing in this Section shall be construed to prohibit the general use of standard method of room and pillar mining.

Each operator of an underground coal mine shall adopt measures consistent with known technology in order to prevent or, in those instances where the mining method used requires planned subsidence in a predictable and controlled manner, control subsidence, maximize mine stability, and maintain the value and use of surface lands consistent with 30 CFR 817.121, 817.122, 817.124, and 817.126.

Where pillars are not removed and controlled subsidence is not part of the mining plan, pillars of adequate dimensions shall be left for surface stability, giving due consideration to the thickness and strength of the coal beds and of the strata above and immediately below the coal bed.

(3) *Top coal* . Top coal will not be used for primary roof support in underground mines. Where technically feasible, mining will be conducted to the roof rock, and the roof rock shall be secured as primary roof support. Mining in thick seams will recover coal to a nominal mining height in the top part of the seam. The determination of mining height will take into consideration safety factors, available equipment, and the overall seam thickness. The bottom coal left will be maintained at a uniform thickness to allow recovery in the future as new technology is developed and economics allow. Provided, however, if the operator can demonstrate to the Mining Supervisor that some top coal must be left to protect the roof rock from rapid deterioration or the top part of the seam is not marketable because of distinct quality deficiencies, top coal may be left when approved in writing by the Mining Supervisor.

(4) *Multiple seam mining* . -- (i) *Sequence of mining* . In general, the available coal in the upper beds shall be worked out before the coal in the lower beds is mined, and simultaneous workings in an upper coal bed shall be kept in advance of the workings in each lower bed. The Mining Supervisor may authorize mining of any lower beds before mining the available coal in each known upper bed only after a technical justification has been submitted to the Mining Supervisor by the operator and has shown that recovery of the upper coal will not be adversely affected.

(ii) *Protective barrier pillars in multiple seam mining* . In areas subject to multiple seam extraction, the protective barrier pillars for all main and secondary slope entries, main haulageways, primary air courses, bleeder entries, and manways in each seam shall be superimposed regardless of vertical separation of rock competency; however, modifications, exceptions, or variations of this requirement may be approved in advance by the Mining Supervisor.

(5) *Advance workings* . Where the room-and-pillar or other system of mining requires advance workings in solid coal, including entries, room, or crosscuts, the lessee shall leave sufficient pillars to ensure the MER of the coal deposits upon retreat.

(6) *Pillars left for support* . -- (i) *Barrier pillars* . The operator shall not, without the prior consent of the Mining Supervisor, mine any coal, drive any underground workings, or drill any lateral bore holes within 50 feet of any of the outside boundary lines of the leased lands, or within such greater distance of said boundary lines as the Mining Supervisor may prescribe with consideration for State law. The operator may be required to pay for unauthorized mining of barrier pillars. The Mining Supervisor may require that payment shall be up to and including the full value of the coal mined from the pillars. [Page 32729]

(ii) *Barrier pillars on adjacent unleased Federal lands* . If the coal beyond any barrier pillar has been worked out and the water level beyond the pillar is below the lessee's adjacent operations, the operator shall, on the written order of the Mining Supervisor, mine out and remove all available Federal coal in such barrier, if it can be mined without undue hardship to the lessee and with due consideration for safety and pursuant to existing surface mining, reclamation, and environmental rules.

(iii) *Privately or Indian-owned coal on adjoining premises* . If the coal in adjoining premises is privately or Indian owned and this coal has been worked out, an agreement may be made with the coal owner for the extraction of the coal remaining in the barrier pillars which otherwise may be lost.

(7) *Development of leased tract through adjoining mines* . An operator may, with the approval of the Mining Supervisor, mine leased lands from an adjoining underground mine on land privately owned or controlled or from adjacent leased lands, subject to the right of free access to the Federal premises by the Mining Supervisor.

(d) *Performance standards for surface mines* . -- (1) *Maximum economic recovery (MER)* . The operator shall conduct surface mining operations so as to yield the MER of the coal deposits consistent with the protection and use of other natural resources, sound economic and mining practice, and the protection of the environment.

(2) Pit widths for each seam shall be so engineered and designed as to minimize the amount of coal fender to be left as a permanent pillar on the spoil side of the pit.

(3) The amount of bottom or rider coal seams wasted in each pit will be minimized consistent with the coal quality standards that must be maintained by the operation.

(4) The abandonment of a mining area due to thinning of coal beds or reduction in the quality of the coal shall require the approval of the Mining Supervisor.

(5) If a coal seam exposed by surface mining or an accumulation of slack coal or combustible waste becomes ignited, the operator shall immediately take all necessary steps to extinguish the fire and protect the remaining coal.

(6) The Mining supervisor will approve the conditions under which a surface mine will be temporarily abandoned, pursuant to the requirements of development, production, resource recovery and protection, and royalties.

(7) *Barrier or boundary coal* . The operator may be required by the Mining Supervisor, in the interest of conservation of natural resources, to mine coal up to the lease boundary line; provided that the mining does not violate State law, the mining is in compliance with existing Federal environmental and reclamation laws and rules, the mining does not conflict with the existing surface rights, and the mining is carried out without undue hardship to the lessee and with due consideration for safety.

(e) *Performance standards for auger mines* . (1) If auger mining is proposed, the Mining Supervisor shall take into account the percentage of recovery, which in general shall exceed 30 percent; and the probable effects on recovering the remaining adjacent coal reserves by underground mining. If underground mining from the highwall or outcrop is contemplated in the foreseeable future, auger mining may not be approved since underground mining will assure greater recovery of the unmined reserves. Where auger mining is authorized, the Mining Supervisor will require leaving sufficient pillars at regular intervals along the highwall or outcrop to assure access to the unmined reserve. The size of pillars to be left will be determined by the Mining Supervisor and will be of sufficient size to accommodate the necessary underground development entries with sufficient barrier pillars to protect the development entries.

(2) A plan for recovery of coal by auger methods shall be designed to achieve MER.

(3) Auger mining must comply with the provisions of this part and 30 CFR 741.14(i), 30 CFR 785.20, and 30 CFR Part 819.

SECTION 211.41 - COMPLETION OF OPERATIONS AND ABANDONMENT.

(a) Before permanent abandonment of exploration operations, all openings and excavations shall be closed, backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved plan. Drill holes, trenches, and other excavations for exploration shall be abandoned in such a manner as to protect the surface and not to endanger any present or future underground operation, or any deposit of oil, gas, other mineral resources, or ground water. Areas disturbed by exploration operations outside the approved OSM permit area will be graded, drained, and revegetated in accordance with the approved plan.

(b) Upon permanent abandonment of any mining operation, the Mining Supervisor will require that the unmined coal and other mineral resources will be adequately protected.

REPORTS, RECORDS, ROYALTIES, AND AUDITS

SECTION 211.62 - REPORTS.

(a) *Exploration reports* . The operator shall file, in duplicate, with the Mining Supervisor the information required in paragraph (b):

- (1) Within 30 days after the end of each calendar quarter.
- (2) Promptly upon request.
- (3) Promptly upon completion or suspension of exploration operations.
- (4) As provided in the lease or exploration license.

(b) *Report content* . The exploration report shall contain the following information:

- (1) Identity and location of the lease or exploration license lands.
- (2) Nature of exploration operation.
- (3) Number of completed holes drilled and/or other work performed during the quarter.
- (4) Total footage drilled during the quarter or other period as determined by the Mining Supervisor.
- (5) Map showing all drill holes or other excavation locations and the coal outcrop.
- (6) Analyses of coal and other pertinent tests of information on overburden characteristics obtained from the activity during the quarter. Coal analyses includes any tests for methane or other gaseous hydrocarbons.
- (7) Signed copies of records and geological interpretation of all exploration operations performed on the lease or licensed lands, including recoverable reserve calculations along with vertical cross sections through the land.
- (8) Copies of all in-hole mechanical or stratigraphic surveys or logs, such as electric logs, gamma ray-neutron logs, sonic logs, or any other logs produced. The records shall include a log of all strata penetrated and conditions encountered such as water, quicksand, gas, or any unusual conditions.
- (9) Reclamation employed on the disturbed areas.
- (10) A statement on availability and location of the representative samples of all drill holes, cores, or cuttings retained by the operator pursuant to Section 211.40(a).
- (11) Any other information requested by the Mining Supervisor, or requested by the Regional Director through the Mining Supervisor.

(c) *Production reports and payments* . (1) Operators shall report on the form provided, within 30 days after expiration of the period covered by the report, all coal mined, the basis for computing royalty, and make all payments due.

- (2) Licensees shall report all coal mined on a semiannual basis on the report form provided.

(d) *Penalty* . If an operator records or reports less than the true weight or value for coal mined, the Secretary may impose a penalty equal to either double the amount of royalty due on the shortage, or the full value of the shortage. If, after notice, a lessee or permittee maintains false records or files false reports, the Mining Supervisor may recommend that action be initiated to cancel the lease or permit, in addition to the imposition of any penalties. [Page 32730]

(e) *Confidentiality* . Confidentiality of any information required under this Section shall be determined in accordance with Section 211.6 of this part.

SECTION 211.63 - ROYALTIES.

(a) Lessees shall submit, unless otherwise provided for in the lease, royalty payments on a monthly basis. The payment shall be made within 30 days after the end of the calendar month for which the royalty is owed.

(b) Royalty paid on a cents-per-ton basis or gross value basis shall be paid on the coal sold, used, or placed in inventory, where the inventory exceeds that which the Mining Supervisor determines to be in excess of that required for mining and processing operations.

(c) Where royalty is based on a percentage basis, the value of coal for royalty purposes shall be the gross value at the point of sale. For captive operations or other than arms-lengths transactions, the Mining Supervisor will determine the point for gross value determination and gross value.

(d) The gross value shall be the sale or contract unit price times the number of units sold. If the Mining Supervisor determines:

- (1) That a contract of sale or other business arrangement between the lessee and a purchaser of some or all of the coal

produced from the lease is not a bona fide transaction between independent parties because it is based in whole or in part upon considerations other than the value of the coal; or

(2) That no consideration is received from some or all of such coal because the lessee is consuming such coal for his own use or adding it to inventories, and for which royalty is due and payable in accordance with Section 211.62(c), the Mining Supervisor, shall determine the gross value of such coal taking into account:

(i) Any consideration received by the lessee in other related transactions.

(ii) The highest price paid for coal of like quality produced from the same general area during the lease month.

(iii) Contracts or other business arrangements between coal producers and purchasers for the sale of coal other than coal produced under such lease, which are comparable in terms, volume, time of execution, area of supply, and other circumstances; and

(iv) Such other relevant factors as the Mining Supervisor may deem appropriate.

(e) If additional processing of the coal is performed prior to sale, such as washing to remove waste, bone, or other impurities, the processing costs above the cost of primary crushing, storing, and loading may be deducted from the gross value in determining value for royalty purposes. The Mining Supervisor will allow such deductions only when, in his judgment and subject to his audit, the lessee provides an accurate account of the costs incurred and the operation meets maximum economic recovery of the coal.

(f) If a Federal coal lease is developed by in situ technology, the gross value of production, for the purpose of computing royalty, shall be the sale or contract unit price of liquid and/or gaseous products times the number of units sold; provided, however, that where the Mining Supervisor determines:

(1) That a contract of sale of other business arrangement between the lessee and a purchaser of some or all of the products from the lease is not a bona fide transaction between independent parties because it is based in whole or in part upon considerations other than the value of the products; or

(2) That no consideration is received for some or all such products because the lessee is consuming them, the Mining Supervisor shall determine the gross value of the products taking into account:

(i) Any considerations received by the lessee in other related transactions.

(ii) The highest price paid for production of like quality produced from the same general area during the lease month.

(iii) Contracts or other business arrangements between producers and purchasers for the sale of like products which are comparable in terms, volume, time of execution, area of supply, and other circumstances.

(iv) Such other relevant factors as the Mining Supervisor may deem appropriate.

(g) If a coal lease that provides for a cents-per-ton royalty is developed by in situ technology, the Mining Supervisor will establish a procedure for calculating tonnage for royalty purposes.

(h) The royalty shall be paid on the actual weight of the coal sold, used or placed in inventory.

(i) In the event waste piles or slurry ponds are reworked to recover coal, or if a market becomes available to sell the waste products containing coal, the lessee shall pay royalty at a rate specified in the lease at the time of recovery. The lessee shall make payment based on the Federal share of the coal when the coal is recovered during the term of the lease whether or not it is stored on Federal lands. Where such waste containing coal from a Federal lease is commingled with similar reject from private lands, the lessee shall maintain adequate records from which Federal ownership of coal in the waste may be determined.

(j) Applications for reduction of royalty shall be filed in triplicate with the Mining Supervisor in accordance with 43 CFR 3473.3-2 and this part. The Mining Supervisor shall review and process such application in the interest of conservation of natural resources and for the purpose of encouraging the greatest ultimate recovery of coal.

(1) If the application does not meet the criteria of 43 CFR 3473.3-2 or this part, the Mining Supervisor may reject such application or request more data from the operator.

(2) If the application meets the criteria of 43 CFR 3473.3-2 and this part, the Mining Supervisor shall act upon the application.

SECTION 211.65 - AUDITS.

An audit of the accounts and books of lessees for the purpose of determining compliance with lease terms relating to royalties may be required annually or at other such times as may be directed by the Mining Supervisor. Such audit shall be performed by a qualified independent certified public accountant or by an independent public accountant licensed by a State, territory, or insular possession of the United States or by the District of Columbia, and at the expense of the lessee. The lessee shall furnish, free of cost, duplicate copies of audit reports which express opinions on such compliance to the Mining Supervisor

within 30 days after the completion of each audit. Where such audits are required, the Mining Supervisor will specify the purpose and scope of the audit and the information which is to be verified or obtained. [Page 32731]

SECTION 211.66 - MAINTENANCE OF AND ACCESS TO RECORDS.

- (a) Lessees shall maintain current and accurate records showing: (1) The weight of all coal mined, sold, used on the premises, or otherwise disposed of, and all coal in storage (remaining in inventory).
 - (2) The prices received for all coal sold and to whom and when sold.
- (b) The Mining Supervisor, or his designee, shall have access to all records of the lessees pertaining to compliance with lease terms relating to royalties, including, but not limited to: (1) Quantities mined, processed, sold, delivered, or used by the lessee.
 - (2) Prices received for mined or processed products, prices paid for like or similar products, and internal transfer prices.
 - (3) Costs of mining, processing, handling, and transportation.
- (c) Licensees must maintain a current record of all coal mined and removed.

INSPECTION, ISSUANCE OF ORDERS, ENFORCEMENT, AND APPEALS

SECTION 211.70 - INSPECTIONS.

The operator shall provide access at all reasonable times for the Mining Supervisor to inspect or investigate the operation to determine whether it is in compliance with all applicable laws, rules, and orders; the terms and conditions of the lease or license; and the requirements of any approved exploration or mining and operations plan for:

- (a) Production practices;
- (b) Development;
- (c) Mineral resource recovery and protection;
- (d) Diligent development and continued operations;
- (e) Royalty and rental audits;
- (f) Mineral abandonment;
- (g) MER determinations; and
- (h) Environmental and reclamation practices and protection for exploration activities outside an approved OSM permit area.

SECTION 211.71 - NOTICES AND ORDERS.

(a) *Address of responsible party* . Before beginning operations, the operator shall inform the Mining Supervisor in writing of the operator's temporary and permanent post office address and the name and post office address of the superintendent or designated agent who will be in charge of the operations and who will act as the local representative of the operator. Thereafter, the Mining Supervisor shall be informed of any change of such address.

(b) *Receipt of notices and orders* . The operator shall be construed to have received all notices and orders that are mailed by certified mail, return receipt requested, posted at the mine or mine office or handed to the superintendent, the mine foreman, the mine clerk, or higher officials connected with the mine or exploration site for transmittal to the operator or his local representative.

SECTION 211.72 - ENFORCEMENT.

(a) If the Mining Supervisor determines that an operator, subject to the provisions of this part, has failed to comply with the rules of Section 211.2 through 211.80 in this part, the terms and conditions of the lease or license, the requirements of an approved exploration or mining and operations plan, or orders of the Mining Supervisor, and such noncompliance does not threaten immediate and serious damage to the mine or the deposit being mined, or other valuable mineral deposits or other resources or royalty provisions, the Mining Supervisor shall serve a notice of noncompliance upon the operator by delivery in person to him or his agent, or by certified or registered mail addressed to the operator at his last known address. Failure of the operator to take action in accordance with notice of noncompliance within the time limits specified by the Mining Supervisor, or to initiate an appeal pursuant to Part 290 of this title, shall be grounds for suspension of operations upon notice by the Mining Supervisor, or his recommendations for the initiation of action for cancellation of the lease or license and forfeiture of any lease bonds. A suspension of operations and production shall not preclude the OSM from requiring the operator to continue to comply with the reclamation requirements of 30 CFR Subchapter K and this part.

(b) The notice of noncompliance shall specify in which respect the operator has failed to comply with the provisions of applicable rules, the terms and conditions of the lease or license, the requirements of an approved exploration or mining and operations plan, or the orders of the Mining Supervisor, and shall specify the action which must be taken to correct such noncompliance and the time limits within which such action must be taken. A written report shall be submitted by the operator to the Mining Supervisor when such noncompliance has been corrected.

(c) If, in the judgment of the Mining Supervisor, an operator is conducting activities which fail to comply with the provisions of Sections 211.2 through 211.80 of this part, the terms and conditions of the lease or license, the requirements of approved exploration or mining and operations plans, or the Mining Supervisor's orders, and which threaten immediate and serious damage to the mine, the deposit being mined or other valuable ore-bearing mineral deposits, or in instance of exploration outside of an OSM permit area, serious environmental or reclamation damage, the Mining Supervisor shall order the immediate cessation of such activities, without prior notice of noncompliance. Such order may be appealed as provided in Part 290 of this title. Compliance with such order shall not be suspended by reason of the taking of such an appeal, unless such suspension is ordered in writing by the official before whom such appeal is pending, and then only upon a determination by such official that such suspension will not be detrimental to the lessor or adversely affect the public interest, or upon submission of a bond deemed adequate to indemnify the lessor from any resulting loss or damage.

(d) The Mining Supervisor shall enforce requirements of the SMCRA including Sections 211.81 through 211.98 only if he finds a violation, condition, or practice for which an authorized representative of the Secretary is required to act pursuant to 30 CFR 843.11 and 843.12.

(e) The Mining Supervisor is responsible for enforcing the regulations issued by the DOE relating to the leasing of mineral resources under the Department of Energy Organization Act, 42 U.S.C. 7152 and 7153.

SECTION 211.73 - APPEALS.

(a) Orders, determinations, decisions, and notices issued pursuant to the provisions of Sections 211.2 through 211.80 of this part may be appealed as provided in Part 290 of this title.

(b) Decisions issued by the Mining Supervisor under Section 211.72(d) for environment and reclamation requirements may be appealed pursuant to 43 CFR Part 4.

LOGICAL MINING UNITS

SECTION 211.80 - LOGICAL MINING UNITS.

General. Every Federal coal lease is considered to be an LMU on the effective date of the lease or June 1, 1976, whichever is later. Any LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both. Any LMU may be diminished by creation of other separate leases or LMU's. An LMU containing any interest (Federal or non-Federal) other than a single Federal lease shall become effective or may be enlarged only at the direction of the Mining Supervisor, or upon approval by the Mining Supervisor when requested by the lessee or operator. An LMU combining only Federal coal leases issued after August 4, 1976, may be established at the initiative of the lessee or operator, or by order of the

Mining Supervisor. The Mining Supervisor may not direct the establishment of an LMU containing leases issued prior to August 4, 1976, until the terms of the leases are readjusted to include the requirements of the FCLAA. Leases issued or readjusted prior to August 4, 1976, but not since readjusted to conform to the requirements of the FCLAA may only be included in an enlarged LMU upon an operator's application and the Mining Supervisor's approval. Any lease included in such an LMU shall be amended so that its terms and conditions are consistent with the requirements imposed on the LMU of which it has become a part.

(a) Criteria for approving or directing the establishment of an LMU. An LMU shall be approved by the Mining Supervisor if the following criteria are met:

- (1) The LMU consists of one or more Federal coal leaseholds, and may include intervening or adjacent non-Federal lands.
- (2) The LMU is contiguous and under the effective control of a single operator. (For purposes of this Part, "contiguous" shall mean having at least one point in common.)
- (3) The LMU does not exceed 25,000 acres, including Federal and non-Federal coal deposits.
- (4) The LMU can be developed as a single operation in an efficient, economical, and orderly manner with MER of the coal with due regard for:
 - (i) Conserving the coal and other resources. [Page 32732]
 - (ii) Minimizing surface occupancy and disturbance.
 - (iii) Minimizing the impact on the environment.
- (5) The LMU reserves shall be exhausted within 40 years of the approval of the first mining plan for the LMU, or within 40 years from the effective date of an enlarged LMU if all the lands of the LMU are already contained within an approved mining plan.
- (6) Only reserves shown by drilling or other exploration methods to be recoverable are included.
- (7) Geologic and geographic features, where applicable, are adequately considered in establishing the LMU.
- (8) The applicant agrees not to surrender rights to a deposit if it would interfere with or preclude MER of the coal.
- (9) If a single lease is included in more than one LMU, it will be segregated into two or more leases.
- (10) If only a portion of a lease is included in an LMU, the remaining land will be segregated into another lease or be relinquished.

(b) *Criteria for administration of LMU operations* . An LMU will be administered in accordance with the following criteria: (1) Mining plans for LMU's will be required in accordance with Sections 211.10(b) and 211.10(c) of this part.

(2) The amount of production required to meet diligent development or continued operation in an LMU shall be based on the LMU reserves; for leases consolidated into an enlarged LMU, lease production between June 1, 1976, and the effective date of the enlarged LMU may be applied toward the diligence requirement of the LMU.

(3) The achievement of diligent development and continued operation requirements anywhere within the LMU, on either Federal or non-Federal coal deposits or a combination thereof, shall be deemed to satisfy the diligent development and continued operation requirements for each Federal Lease in the LMU.

(4) Where production from non-Federal lands is the basis, in whole or in part, for satisfaction of the requirement that the lessee achieve diligent development or continued operation, the lessee must provide a certified report of such production annually, which shall include a map showing the area mined and the coal thickness mined.

(5) The rental and royalty payments on all Federal leases in an LMU will be combined, and advance royalties paid on any Federal lease in that LMU may be credited against the combined Federal production royalties.

(6) An LMU shall not provide for apportionment of production or royalties among the separate tracts based upon the coal reserves included in an LMU. Royalty will be paid only to the lessors from whose lands the coal is produced in the LMU. Royalty will be paid at the rate specified in the individual leases from which coal is produced.

(7) The boundaries of an LMU may later be modified either upon application by the lessee and with the approval of the Mining Supervisor after consultation with the authorized officer or by direction of the Mining Supervisor after consultation with the authorized officer.

(c) *Contents of an application*. An operator must submit seven copies of the application containing the following information to the Mining Supervisor if the operator is applying on his own initiative to combine lands into an LMU, or if he is directed to do so by the Mining Supervisor, in accordance with Section 211.80, General:

- (1) Name and address of the designated operator of the LMU.
- (2) Description of the land and all known coal beds within an LMU. Identification of those beds proposed to be excluded from any Federal lease which would be a part of the LMU.
- (3) Location map of the LMU to the scale of not smaller than 1 foot = 1,000 inch which shows:
 - (i) Proposed boundaries of the LMU.
 - (ii) Lease designation and numbers.
 - (iii) Surface and mineral ownership.
 - (iv) Legal land subdivision lines.

- (v) Significant geologic and geographic features and cultural and natural resources which may influence mining methods, mining limits, and coal recovery.
 - (vi) Locations and surface elevations of drill holes that penetrate coal deposits.
 - (vii) Any lands designated as unsuitable for mining by the surface managing agency or the Regulatory Authority under the SMCRA.
- (4) Evidence of ownership or control of all the coal land in the LMU, together with a statement showing ownership or control by the applicant of any other coal contiguous to the LMU.
 - (5) Typical stratigraphic sections showing all coal beds.
 - (6) Coal analyses by coal beds where available.
 - (7) Coal isopach maps on all beds of mineable thickness.
 - (8) Overburden isopach maps for surface mineable areas only.
 - (9) Recoverable reserves for each coal bed within the LMU by individual lease for Federal lands and in aggregate for non-Federal lands that are included in the LMU proposal.
 - (10) General plan of development, including:
 - (i) Narrative describing the proposed development schedule.
 - (ii) Type and schedule of proposed development expenditures.
 - (iii) Area to be covered by the mining plan.
 - (iv) Area to be mined and projected mining sequence in at least 5-year intervals.
 - (v) Market for anticipated production.
 - (11) Statement of the advantages accruing to lessee and lessor by LMU establishment.
 - (12) Explanation of how MER of all coal in the lands will be achieved by establishment of the LMU.
 - (13) Royalty and rental rates and the issuance and/or readjustment date of each lease to be included in the application.
- [Page 32733]

(d) *Confidentiality*. If any confidential information is included in a request to establish an LMU and identified as such by the operator, it shall be treated in accordance with 43 CFR Part 2 and 30 CFR 211.6.

INITIAL REGULATORY PROGRAM ON FEDERAL LANDS OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

SECTION 211.81 - APPLICABILITY.

- (a) All surface coal mining operations on Federal lands shall comply with the General Performance Standards of 30 CFR Part 715, the Special Performance Standards of 30 CFR Part 716, and the performance standards for underground mines in 30 CFR Part 717.
- (b) All surface coal mining operations on Federal lands in Alaska from which coal has been mined on or after August 3, 1977, shall comply with all performance standards in 30 CFR Parts 715, 716, and 717 subject to the procedures in Section 716.6.
- (c) The requirements of Sections 211.81 through 211.99 are applicable on Federal lands until such time as they are superseded by the implementation of the permanent Federal lands program in a State in accordance with the provisions of 30 CFR Chapter VII, Subchapter D.

SECTION 211.82 - DEFINITIONS.

- (a) As used in Sections 211.81 through 211.99, the following terms have the specified meanings, except where otherwise indicated:

Acid drainage. See Section 710.5 of this title.

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

Act. See Section 700.5 of this title.

Alluvial valley floors means unconsolidated streamlaid deposits holding streams where water availability is sufficient for subirrigation or floor irrigation agricultural activities but does not include upland areas which are generally overlain by a thin

vener of colluvial deposits composed chiefly of debris from sheet erosion, deposits formed by concentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

Approximate original contour means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the Water impoundments may be permitted where the regulatory authority determines that they are in compliance with Section 715.17.

Aquifer. See Section 710.5 of this title.

Auger mining. See Section 700.5 of this title.

Authorized State regulatory authority means any State regulatory authority exercising authority to regulate surface coal mining operations on Federal lands pursuant to a State/Federal Cooperative Agreement which has been modified to comply with the requirements of section 523(c) of the Act.

Combustible materials. See Section 710.5 of this title.

Compaction means the reduction of pore spaces among the particles of the earth materials.

Disturbed area. See Section 700.5 of this title.

Diversion. See Section 710.5 of this title

Downslope. See Section 710.5 of this title.

Embankment. See Section 710.5 of this title.

Federal lands. See Section 700.5 of this title.

Groundwater. See Section 710.5 of this title.

Highwall. See Section 710.5 of this title.

Hydrologic balance. See Section 710.5 of this title.

Hydrologic regime. See Section 710.5 of this title.

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

Intermittent or perennial stream. See Section 710.5 of this title.

Leachate. See Section 710.5 of this title.

Noxious plants. See Section 710.5 of this title.

Office. See Section 710.5 of this title.

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

Outslope. See Section 710.5 of this title.

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

Permit. See Section 700.5 of this title.

Person. See Section 700.5 of this title.

Productivity. See Section 710.5 of this title.

Recharged capacity. See Section 710.5 of this title.

Recurrence interval. See Section 710.5 of this title.

Regional Director means a Regional Director of the OSM or his authorized representative.

Regulatory Authority means the Secretary, acting by and through the Director, OSM; the Regional Directors of the OSM; the Regional Directors of the OSM, when authorized by this part; and an authorized State Regulatory Authority.

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

Runoff water. See Section 710.5 of this title.

Sediment. See Section 710.5 of this title.

Sedimentation pond. See Section 710.5 of this title.

Slope. See Section 710.5 of this title.

Soil Horizons. See Section 710.5 of this title.

Soil means overburden that has been removed during surface mining.

Stabilize. See Section 710.5 of this title.

Surface coal mining operations. See Section 700.5 of this title.

Surface coal mining and reclamation operation. See Section 700.5 of this title.

Surface managing agency means a Federal agency having administrative jurisdiction over the surface of Federal lands or over Federal minerals.

Surface water. See Section 710.5 of this title.

Suspended solids. See Section 710.5 of this title.

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

Toxic mine drainage. See Section 710.5 of this title.

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

Water tables. See Section 710.5 of this title.

SECTION 211.83 - RESPONSIBILITIES.

(a) Subject to the supervisory authority of the Secretary, the regulations in Sections 211.81 through 211.99 shall be administered as follows:

(1) The mining Supervisor, acting under the supervision of the Director, Division Chief, and Conservation Manager, is empowered to oversee prospecting, exploration, testing, and development operations and shall be responsible for operator compliance with the royalty, development, and resource recovery aspects of approved mining and exploration plans in accordance with 30 CFR 211.2 through 211.80. [Page 32734]

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

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

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

(ii) *Compliance.* Require operators to conduct surface coal mining and reclamation operations on Federal lands in compliance with all provisions of the applicable performance standards in this Part and in 30 CFR Parts 715, 716, and 717; and orders; all terms and conditions of leases, permits or licenses; and all requirements of an approved mining plan.

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

(iv) *Cessation and abandonment of operations.* Upon receipt of notice of proposed abandonment of operations or relinquishment of a lease, permit, or license, inspect and determine whether the operator has completed his operations in accordance with all applicable requirements and report to the appropriate authorized officer of the surface managing agency whether the lands have been properly conditioned for abandonment, and recommend that the period of liability under the appropriate bond or bonds be terminated. Before making his recommendation to the surface managing agency, the Regional Director shall consult with and, where required, obtain the concurrence of the Mining Supervisor. When the surface of the lands in a lease, permit, or license is not owned by the United States, the Regional Director shall, in addition, notify the surface owner and take into account his comments and recommendations when making his recommendations to the surface managing agency.

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

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

SECTION 211.84 - GENERAL OBLIGATIONS OF THE OPERATOR.

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

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

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

(d) The operator shall submit to the Mining Supervisor the reports required by Part 211 of this Chapter.

SECTION 211.85 - PROCEDURES AND PUBLIC PARTICIPATION.

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

(b) *Availability of proposed plans and major modifications of plans.* All proposed mining plans and major modifications thereof, submitted under Section 211.86 of this part, shall be available for public inspection in the office of the appropriate Regional Director subject to the restrictions contained in Section 211.6. To allow for such public inspection, a notice of availability of any such plan or modification shall be prepared by the Regional Director and promptly posted at his office and mailed to the surface owner, if other than the United States, to appropriate Federal and State agencies, and to the clerk or other appropriate officer in the county in which the proposed operations are located for posting or publication in accordance with the procedures of that office. A copy of the notice shall be published by the Regional Director in the Federal Register. No action with respect to approval of any such plan or modification shall be taken by the Regional Director for a period of 30 days after publication in the Federal Register. A copy of such notice shall be published by the operator in a local newspaper of general circulation in the locality of the proposed operation at least once a week for 4 consecutive weeks. [Page 32735]

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

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

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

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

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

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

SECTION 211.86 - EXPLORATION AND MINING PLANS.

(a) Before conducting exploration operations, other than casual use, within an area for which a mining permit has been approved by the Regulatory Authority or within an area of land on which mining and reclamation operations are occurring or are expected to occur prior to the time a permit is approved pursuant to 30 CFR Part 741, the operator shall submit to the Regional Director and obtain approval of an exploration plan under 30 CFR Part 211. Casual use, as used in this subsection, means activities which do not cause significant surface disturbance or damage to lands, resources, and improvements, such as activities which do not include use of heavy equipment, explosives, or vehicles off established roads and trails.

(b) Before conducting any surface coal mining operation on Federal lands, the operator shall submit to the Regional Director, and obtain approval of, a mining plan in accordance with this part. On any lease issued or readjusted after August 4, 1976, the first mining plan shall be submitted to the Regional Director not later than 3 years after the effective date of the lease or 3 years after the date of readjustment, whichever is later.

(c) The operator shall submit seven copies of the mining plans to the Regional Director. All such mining plans shall be identified by the name, address, and permit or lease (numbers) of coal permits or leases, fee interest and State owned tracts included in the plan, and shall show in detail the proposed exploration, testing, development, mining, preparation, environmental protection, monitoring, reclamation, abandonment methods, procedures, and operations to be conducted during the life of the mine. Mining plans shall be consistent with the requirements of the lease, permit, or license for maximizing recovery of mineral resources, for the protection of nonmineral resources, for the protection of land, air, and water resources during and after mining, and for the reclamation of the surface of the lands affected by the operations. The mining plans shall show that environmental protection and reclamation are an integral part of the proposed operations, will progress as contemporaneously as practicable with such operations, and shall provide sufficient information to substantiate the effectiveness of the proposed reclamation method as required by this Part and 30 CFR Parts 715, 716, and 717.

(d) *Mining plans.* A mining plan shall include all of the following:

(1) Names, addresses, and telephone numbers of persons responsible for operations under the plan to whom notices and orders are to be delivered, and the names and addresses of surface owners of record, and owners of record of subsurface minerals, if other than the United States.

(2) A description, with maps and tables where appropriate, of the environment within the area where mining is to be conducted. Such description shall include as a minimum, geologic conditions, including potential geologic hazards; types, depths, and distribution of soils; types, density productivity, dominance, and distribution of vegetation; climatological data, including a monthly range of temperatures, precipitation and average direction and velocity of prevailing winds; and distribution, abundance and habitat of fish and wildlife, particularly threatened and endangered species.

(3) A description of the condition of the land covered by the mining plan, including:

(i) The uses existing at the time the mining plan is submitted for approval; and

(ii) The capability of the land, immediately prior to any mining, to support alternative uses, giving consideration to soil characteristics, including series, types, depths and distribution, topography, annual precipitation, and vegetative cover, including identification of dominant species.

(4) A description of the use which is proposed to be made of the land following reclamation which shall take into account all applicable land-use plans and programs.

(5) A description of how the proposed postmining land use is to be achieved, including any necessary support activities and facilities.

(6) A description of the proposed operations, including:

(i) The nature and extent of the coal deposit in terms of Btu content, ash, water, sulphur, volatile matter, and carbon content and including estimated recoverable reserves.

(ii) The method of mining, including mining sequence and proposed production rate.

(iii) The nature and timing of measures to be taken for surface reclamation, including as appropriate:

(A) A reclamation schedule, including the estimated timetable for each phase of the work and for final completion of the program. [Page 32736]

(B) The method of grading, backfilling, soil stabilization, and compacting and contouring.

(C) The method of soil preparation and fertilizer application.

(D) The type and mixture of shrubs, trees, grasses, forbes, or other vegetation to be planted.

(E) The method of planting, including approximate quantity and spacing.

(iv) The engineering techniques proposed to be used in mining and reclamation, including the design and construction of roads, ditches, water retention facilities, dams, or settling ponds, and the control of water drainage and accumulation.

(v) A list of all major equipment.

(vi) An estimate of the cost per acre of reclamation including a separate breakdown for the cost of backfilling and grading, replacement of topsoil, seeding and/or planting, irrigation, fertilizing, and maintenance.

(vii) The method of operation and measures by which the operator plans to comply with the obligations and requirements set forth in Section 211.84 and Section 211.94 of this part and any special terms and conditions of the lease, permit, or license.

(viii) The anticipated starting and termination dates of each phase of the mining operation and number of acres of land to be affected.

(ix) The steps to be taken to comply with all applicable air and water quality laws and regulations.

(x) The measures for ensuring the maximum practicable recovery of the mineral resources.

(xi) The method of abandonment.

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

(xiii) The hydrology of the area, including quantity and quality of water in surface and ground water systems, water levels and water table measurements, data regarding dissolved and suspended solids under seasonal flow conditions, and an assessment of the probable impacts of the anticipated mining operation upon the hydrology of the area.

(xiv) Plans for protecting oil, gas, and water wells, as well as oil, gas, and underground water resources, when encountered.

(xv) Any justification for not recovering any coal deposits that may be detrimentally affected in terms of future recovery by the coal development operations proposed.

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

(7) Suitable topographic maps or aerial photographs showing: (i) Topographic, cultural, archaeological, and natural drainage features, roads, and vehicular trails.

(ii) The name of the watershed and location of the surface stream or tributary into which mine waters will be discharged, if applicable.

(iii) Cross sections and plan views of the land to be affected, including the actual area to be mined, showing elevation and location of drill holes and depicting the following information: the nature and depth of the various strata of overburden; the nature, thickness, and extent of any coal or rider seams, if above the specific coal proposed to be mined; the nature of the strata beneath the coal to be mined for a vertical distance of at least 20 meters beneath the base of the coal seam; the location of the next known deeper coal seam below the deepest seam to be mined and representative characteristics thereof; the location of any other mineral values encountered; hydrologic data and other information relevant to the mining plan; all mineral crop lines and the strike and dip of the coal to be mined within the area of land to be affected; location and extent of known surface and underground mine workings, oil or gas wells, and water wells within 1/4 mile of the affected lands, the location of aquifers; the estimated elevation of the water table, and potentiometric surface; the location of spoil, waste, or refuse areas, and sequence of placement and topsoil preservation area; the location of all impoundments or water treatment facilities; constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation activities.

(iv) Locations of surface structures and facilities, including loading facilities.

(v) For an underground mine, in addition, the planned mine layout, including location and dimensions of shafts, slopes, drifts, crosscuts, rooms, haulageways, air courses, entries, and barrier pillars.

(e) *Action on plans*. The Regional Director, after reviewing and considering a proposed mining plan and all comments received thereon and after consultation with the appropriate authorized officer of the surface managing agency, shall, in writing, promptly recommend to the Director, OSM, approval or disapproval of such plan, and such recommendation shall include the review and recommendation of the Mining Supervisor and the authorized State Regulatory Authority. In recommending approval of such a plan, the Regional Director and the Mining Supervisor, in accordance with the division of responsibilities in Section 211.83, shall determine that such plan complies with all requirements of this part, 30 CFR Parts 715, 716, and 717, or the requirements of State law in effect pursuant to a State/Federal Cooperative Agreement and any lease, permit, or license, and that reclamation as required thereby can be accomplished under the method, procedures, and operations set forth in such plan. The Regional Director and the Mining Supervisor may recommend such conditions upon such approval as may be necessary for the plan and operations to conform to the provisions of this part and the terms and conditions of the lease, permit, or license. In recommending disapproval of a plan, the Regional Director shall indicate what modifications, if any, are necessary to achieve such conformity. No such plan may be approved unless a bond, executed pursuant to the provisions of 43 CFR Subpart 3504 and conditioned upon compliance with all of the provisions of such plan, has been furnished to and approved by the appropriate authorized officer. When some or all of the proposed area is under the jurisdiction of an Agency other than the DOI, such other Agency must consent in writing to the terms of the mining plan prior to its approval. When some or all of the proposed area of surface coal mining operations is on Indian lands, the mine plan must also be approved in accordance with 25 CFR Part 177.

(f) *Changes in plans* . -- (1) *By Regional Director* , Approved plans may be required to be revised or supplemented at any time by the Regional Director after consultation with the operator and the Mining Supervisor; the appropriate authorized officer; the authorized State Regulatory Authority, if appropriate, to adjust to changed conditions; changed regulations; or statutory requirements and to require monitoring or to correct oversights. The Mining Supervisor may request the Regional Director to require changes in mining plans in connection with Geological Survey responsibilities in this part relating to diligent development, production, and resource recovery requirements. Significant revisions or supplements must be approved by the Director, OSM.

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

(3) *By petition* . Any interested person may petition the Regional Director to exercise the authority set forth in subparagraph (1) hereof. Any such petition shall be in writing, shall set forth the proposed revision, and shall state with reasonable particularity facts which demonstrate adequate justification for revision of the plan or that oversights occurred at the time of approval which make modification necessary to bring the operation and the plan into conformity with the obligations and requirements of this part. Upon receipt of any such petition, the Regional Director shall promptly decide whether the facts set forth are sufficient to warrant exercise of his or her authority pursuant to paragraph (1) above.

(4) *Public Notice* . If any change proposed under this subsection would constitute a major modification of an approved plan, the Regional Director shall follow the procedures provided in Section 211.85 of this part, and shall take any comments received into account in his decision.

(g) States with Section 211.99(c) agreements.

(1) *Wyoming* . A Federal coal lessee in the State of Wyoming who must submit a mining plan under both State and Federal law shall submit to both the State Regulatory Authority and the Denver Regional Office, Office of Surface Mining, in lieu of the submission required in this Section, a mining plan or revision or modification to an approved plan containing the information required by or necessary for the State Regulatory Authority and the Secretary to determine compliance with the statutory, regulatory and other requirements identified in paragraph B1 of Article IV of the modified Cooperative Agreement, the statement required by paragraph B2 of Article IV of the modified Cooperative Agreement and the requirements of 30 CFR 211.86(d).

(2) *Utah* . A Federal coal lessee in the State of Utah who must submit a mining plan or permit under both State and Federal law shall submit to both the State Regulatory Authority and the Denver Regional Office, Office of Surface Mining, in lieu of the submission required in this Section, a mining plan or revision or modification to an approved plan containing the information required by or necessary for the State Regulatory Authority and the Secretary to determine compliance with the statutory, regulatory and other requirements identified in paragraph B1 of Article IV of the modified Cooperative Agreement, the statement required by paragraph B2 of Article IV of the modified Cooperative Agreement, and the information required by:

(i) Utah Code Ann. 1953, as amended, Section 40-8-13;

(ii) Rule M-3 of the Utah Division of Oil, Gas, and Mining, except the paragraph following (h) due to the confidentiality provision which is not in conformity with the Surface Mining Control and Reclamation Act of 1977; and

(iii) 30 CFR 211.86(d); and

(iv) Any final action by the State Regulatory Authority or the Secretary with respect to a mining plan or revision or modification submitted for approval shall be in accordance with Article IV of the modified Cooperative Agreement.

(3) *New Mexico* . A Federal coal lessee in the State of New Mexico who must submit a mining plan or permit under both State and Federal law shall submit in lieu of the mining plan required in this Section, a mining plan containing the information required by:

(i) New Mexico Stat. Section 63-34-1 et seq. NMSA 1953;

(ii) New Mexico Coal Surface Mining Commission Regulations;

(iii) 30 CFR 211.86(d); and

(iv) A statement certifying that a copy of the plan or permit application has been given to both the New Mexico Coal Surface Mining Commission and Secretary.

(4) *North Dakota* . A Federal coal lessee in the State of North Dakota who must submit a mining plan or permit application under both State and Federal law shall submit to the State Regulatory Authority and the Denver Regional Office, Office of Surface Mining, in lieu of submission required in this section, a mining plan or revision or modification to an approved plan containing the information required by or necessary for the State Regulatory Authority and the Secretary to determine compliance with the statutory, regulatory, and other requirements identified in paragraph B1 of Article IV of the modified Cooperative Agreement, and that statement required by paragraph B2 of Article IV of the modified Cooperative Agreement and requirements of 30 CFR 211.86(d).

(5) *Montana* .A Federal coal lessee in the State of Montana who must submit a mining plan under both State and Federal law shall submit to both the State Regulatory Authority and the Denver Regional Office, Office of Surface Mining, in lieu of the submission required in this section, a mining plan or revision or modification to an approved plan containing the information required by or necessary for the State Regulatory Authority and the Secretary to determine compliance with the statutory, regulatory, and other requirements identified in paragraph B1 of Article IV of the modified Cooperative Agreement and the requirements of 30 CFR 211.86(d).

SECTION 211.87 - APPROACHING OIL, GAS, OR WATER WELLS.

When mining operations are conducted in areas of known wells or bore holes that may liberate oil, gas, water, or other fluid substances, the lessee shall include in his proposed plan all measures determined necessary by the Mining Supervisor in consultation with the Regional Director and the appropriate Oil and Gas Supervisor of the GS to protect wells or bore holes and obtain maximum recovery of the coal resource. If operations reveal unsuspected wells or bore holes, the operator shall promptly notify the Regional Director and take no further actions which would disturb such wells or bore holes without the Regional Director's prior approval after consultation with the Mining Supervisor. [Page 32738]

SECTION 211.88 - MINE MAPS.

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

(b) *Vertical projections and cross sections of mine workings* . When required by the Regional Director, vertical projections and cross sections shall accompany plan views.

SECTION 211.89 - FAILURE OF LESSEE TO FURNISH MAPS.

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

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

SECTION 211.90 - CORE AND TEST HOLES.

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

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

SECTION 211.91 - MAXIMUM RECOVERY FOR UNDERGROUND MINING.

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

SECTION 211.92 - SUBSIDENCE.

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

SECTION 211.93 - DEVELOPMENT OF LEASED TRACTS THROUGH ADJOINING MINES.

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

SECTION 211.94 - PERATING AND RECLAMATION STANDARDS.

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

(1) The operator shall reclaim affected lands pursuant to his approved plan as contemporaneously as practicable with operations.

(2) The operator shall comply with the requirements of Section 715.13 of this title for reclaiming the land to an approved land use.

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

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

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

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

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

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

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

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

(iv) Such facilities will not have a significant adverse impact on the water resources utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses: Provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any property rights to any water held by any person. [Page 32739]

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

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

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

(10) The operator shall:

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

(ii) Dispose of all waste resulting from the mining and preparation of coal in manner designed to minimize, control, or prevent air and water pollution. Waste containing coal in such quantity that it may later be separated from the waste by washing or other means shall be stored separately.

(11) Except as provided herein, the operator shall not conduct excavation or drilling operations within 500 feet of an active or abandoned underground mine. Where it can be established, by certified maps or inspection of such an underground mine, that such activities may be conducted without danger or interference with, or penetration of, an underground mine, they may be authorized in an approved plan, subject to the concurrence of the MHSa where blasting is involved, to be conducted up to but not less than 25 feet from such underground mine: Provided, however, that, nothing in this paragraph shall preclude daylighting or similar surface coal mining activities intended to improve resource recovery, abate water pollution, or eliminate public hazards resulting from such underground mines.

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

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

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

(15) No access roads will be constructed unless:

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

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

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

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

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

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

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

(18) The Operator shall:

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

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

undergoing reclamation:

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

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

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

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

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

(22) The operator shall comply with provisions of Section 715.11 and Section 715.12 of this title for availability of authorizations to operate and location of markers and signs. [Page 32740]

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

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

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

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

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

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

(b) *Performance standards for underground mines* . The following performance standards shall be applicable to all coal exploration, development, mining, preparation, handling, and reclamation operations for the surface effects of underground mines on land subject to this Part. These standards, in addition to Section 211.90, Section 211.91, Section 211.92, and Section 211.93, shall apply to underground mining operations on Federal lands.

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

(2) Operators shall comply with the requirements of Section 717.12(a) of this title, Sign and Marker Specifications; and Section 717.12(b), Mine and Permit Identification Signs.

(3) Operators shall comply with the requirements of Section 717.14 of this title, backfilling and grading or Road Cuts, Mine Entry Area Cuts, and Other Surface work Areas. These requirements apply only to the surface area disturbed to provide access to the mine and such surfaces disturbed during the mining operation as are identified by the regulatory authority.

(4) Operators shall comply with the requirements of Section 717.15 of this title for Disposal of Excess Rock and Earth Materials on Surface Areas.

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

(6) Operators shall comply with the requirements of Section 717.18 of this title, Dams Constructed of or Impounding Waste Material.

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

(8) Operators shall comply with the requirements of Section 717.20 of this title, Topsoil Handling and Revegetation of Surface Areas Disturbed.

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

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

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

(12) The operator may construct, if authorized in an approved plan, permanent water impoundments on mining sites as a part of reclamation activities only when they are adequately demonstrated to be in compliance with Section 715.13 and Section

715.14 of this title, in addition to the following requirements.

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

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

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

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

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

(13) The operator shall:

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

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

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

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

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

(15) The operator shall:

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

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

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

[Page 32741]

(ii) No access roads will be constructed unless:

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

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

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

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

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

(iv) Where during any such minimum period such authorized officer of the surface managing agency, in consultation with the Regional Director, the surface owner, if other than the United States, and the operator, determines that natural conditions such as annual precipitation and soil characteristics are sufficiently unstable so as to favor only slow and uncertain revegetation, he may recommend to the Regional Director that the liability of the operator be extended for a period up to 5 years beyond the

period initially established, if the financial liability that would be incurred by the operator as a result is reasonable commensurate with the increased probability of successful revegetation.

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

SECTION 211.95 - COMPLETION OF OPERATIONS AND ABANDONMENT.

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

(b) *Permanent abandonment* . Before permanent abandonment of mining operations, all openings and excavations, including water discharge points, shall be closed or backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved plan. Drill holes, trenches, and other excavations for exploration, development, or prospecting shall be abandoned in such a manner as to protect the surface and not to endanger any present or future underground operations or any deposit of oil, gas, other mineral resources, or ground water. Methods of abandonment shall be approved in advance as required in an approved plan, and may include backfilling, regrading, revegetating, cementing, and capped casing, or combinations of these, or other methods. Reclamation and cleanup of permanently abandoned underground or surface areas around and near permanently abandoned underground or surface mines, including, except where otherwise expressly provided in an approved plan, removal of equipment and structures related to the mining operation, shall commence without delay following cessation of mining operations. Areas affected by access roads will be graded, drained and revegetated in accordance with the approved mining plan and the approved postmining land use prior to bond release. In the event that access or haul roads are intended to remain after abandonment of the operation, pursuant to Section 211.94 of this part, they must be designed and constructed so as to be permanently stabilized, using adequate drains, water barriers, and other practices.

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

(2) Upon receipt of such notice, the Regional Director, the Mining Supervisor, and the appropriate authorized officer or officers shall promptly make a joint inspection to determine whether all operations have been completed in accordance with the terms and conditions of all leases, permits, or licenses, and with the requirements of the approved mining plan. Where the

operator has complied with all such terms, conditions, and requirements, and the regulations of this part, the Regional Director shall recommend to the appropriate authorized officer that the appropriate period of bonded liability to be terminated.

(3) When the surface of lands in a lease, permit, or license is not owned by the United States, the Regional Director shall

notify the surface owner and solicit and take into account his comments before recommending to the appropriate authorized officer that the period of such bond liability be terminated.

SECTION 211.96 - REPORTS.

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

(1) Serial number of the lease, permit, or license and description of the affected lands. [Page 32742]

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

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

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

- (i) Identify the lease, permit, or license.
- (ii) Show the types of planting or seeding, including mixtures and amounts.
- (iii) Show the date of planting or seeding.
- (iv) Identify or describe the planted or seeded lands.
- (v) Describe any surface manipulation, mulching, fertilization, and irrigation procedures, if any, and contain such other information as may be considered relevant.

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

SECTION 211.97 - INSPECTIONS, ENFORCEMENT, AND CIVIL PENALTIES.

(a) *Applicability* . The provisions of this Section shall apply to all activities subject to this subpart.

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

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

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

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

(f) If the Director or his authorized representative determines in accordance with Section 722.16 of this title that a pattern of violations of any requirement of the Act, the performance standards in this part and in Parts 715, 716, and 717 of this title or the requirements of State law in effect pursuant to a State/Federal Cooperative Agreement contained in this Part or pursuant to Section 211.75(a) of this part, the terms and conditions of the lease, permit or license, the requirements of an approved plan, he shall issue an order to show cause why the permit and right to mine should not be suspended or revoked in accordance with the procedures of Section 722.16 of this title. The issuance of such an order to show cause shall not diminish the power of the

Secretary to seek cancellation of the lease, permit, or license and forfeiture of any compliance bonds under other laws or regulations.

(g) The appropriate authorized officer of the surface managing agency and the Mining Supervisor shall have the right to enter upon the lands subject to this Subpart under lease or license at any reasonable time.

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

(i) If, in the judgment of the Regional Director, the ordered cessation of surface coal mining and reclamation activities, or any portion thereof, will not completely abate the imminent danger to health or safety of the public or the significant, imminent

environmental harm to land, air, or water resources, he shall by order impose any affirmative remedial action on the operator which he deems necessary to abate the imminent danger or environmental damage. A written report shall be submitted by the operator to the Mining Supervisor and Regional Director when noncompliance has been corrected.

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

(k) *Civil penalties* . The operator of any coal mining operation subject to the provisions of this part may be assessed civil penalties by the OSM for violations of the Act, the applicable performance standards in this part and the performance standards in Parts 715, 716, and 717 of this title, or any State laws or regulations adopted as Federal law as part of a State/Federal Cooperative Agreement in effect pursuant to this part, or any State standard adopted pursuant to Part 718 of this title, and the terms, conditions, or requirements of an approved mining and reclamation plan or permit in accordance with the procedures in Part 723 of this title. Violations found on Federal lands by an authorized State Regulatory Authority shall be considered by the office when determining whether to assess a civil penalty under Part 723 of this title.

SECTION 211.98 0- APPEALS.

Orders, determinations, decisions, and notices issued by the Regional Director pursuant to this part may be appealed pursuant to 43 CFR Part 4. [Page 32743]

SECTION 211.99 - APPLICABILITY OF STATE LAW.

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

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

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

(b) The Secretary will direct representatives of the Department to consult with appropriate representatives of each State or a number of States for the purpose of modifying cooperative agreements which existed on August 3, 1977, to provide for a joint Federal/State program with respect to the regulation of surface coal mining reclamation operations under the initial regulatory program of this Part. Such agreements shall, at a minimum, provide for:

(1) The cooperative review and approval of mining plans and permits for surface coal mining and reclamation operations on Federal lands;

(2) Enforcement by the Secretary and the authorized State Regulatory Authority of State environmental protection and reclamation standards if such standards are as stringent or more stringent than Federal environmental protection and reclamation standards adopted under the Act;

(3) Enforcement procedures by the State which are as effective as those required by section 502 of the Act; and,

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

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

(2) Following promulgation of the Federal lands program pursuant to section 532(a) of the Act, the Secretary will review any cooperative agreements then in effect to determine whether the authorize State regulatory authority has the authority and resources necessary to implement said program. Upon a determination by the Secretary that the authorized State regulatory authority does not have the necessary authority or resources, the cooperative agreement shall be terminated.

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

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