

FEDERAL REGISTER: 59 FR 27932 (May 27, 1994)

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 779, 780, 783, and 784

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Land Use Information; Part IV

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) is amending its regulations governing the information that must be submitted in a permit application concerning premining and postmining land use. The regulations are being amended for the purpose of eliminating duplicative and/or unnecessary reporting requirements in order to simplify and reduce the reporting burden for permit applicants.

EFFECTIVE DATE: June 27, 1994.

FOR FURTHER INFORMATION CONTACT: Archana Kohli, 1951 Constitution Avenue, suite 640 NC, Washington, DC 20240; Telephone: (202) 343-3871 commercial or FTS.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of Comments and Final Rule
- III. Procedural Matters

I. BACKGROUND

On March 13, 1979, OSM promulgated permanent program rules (*44 FR 14902*) as required by section 501(b) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), *30 U.S.C. 1201* et seq. In these rules, 30 CFR part 779 establishes the minimum permit application requirements for information on existing environmental resources that may be impacted by the location and conduct of proposed surface mining activities. (Part 783 for underground mining) (*44 FR 15026*, March 13, 1979).

Thirty CFR part 780 establishes the minimum permit application requirements for surface mining operation and reclamation plans. (Part 784 for underground mining) (*44 FR 15047*, March 13, 1979).

The information requirements of parts, 779, 780, 783, and 784 accord with the prescriptions of sections 507, 508, 515, and 516 of the Act in two ways: First, the permit application submitted pursuant to these parts must contain sufficient information to meet the public disclosure requirements of the Act. Second, the permit application must also contain sufficient information for the regulatory authority to be able to find in writing, on the basis of that information and information otherwise available, whether the proposed operation should be permitted.

The level of detail and scope of information required in the permit application will vary depending on the needs of the regulatory authority to fulfill its responsibility to make sound approval decisions based on the findings prescribed under section 510(b) or SMCRA and 30 CFR 773.15(c). The information required in a permit application is, in the main, intended to assist the regulatory authority in determining whether the applicant can comply with the performance standards for surface and underground mining and whether reclamation of these areas is feasible.

The information requirements of parts 779, 780, 783, and 784 impose a significant reporting burden on permit applicants to obtain, analyze, and present information to both the regulatory authority and the public when seeking to permit a surface coal mining operation. Under the Paperwork Reduction Reauthorization Act of 1986, OSM is responsible for ensuring that its rules do not impose any unnecessary reporting burden on the permit applicant (*44 U.S.C. 3507(a)(1)(B)*). In 1987, OSM established a work group to review its regulatory program and permitting rules. One purpose of the review was to determine whether changes to the information requirements of the permitting rules could be

made to reduce the reporting burden on the permit applicant without compromising the implementation of the purposes and provisions of the Act.

After reviewing the work group's recommendations regarding rule changes, OSM identified two changes to its regulations governing surface and underground mining activities which are the subject of this rulemaking. While OSM recognizes its obligation under the Paperwork Reduction Reauthorization Act of 1986 to ensure that public reporting burden be minimized, the Office also recognizes the need to maintain a stable regulatory program implementing the Act. On this basis, the balance of the work group's recommended rule changes were rejected because OSM felt the insignificant reduction in reporting burden which they would afford did not justify the potential disruption to the regulatory program which would be caused by such changes.

On January 8, 1993 (*57 FR 3458*), OSM proposed a rulemaking based on two of these recommendations. The public comment period closed on March 9, 1993. For surface mining activities, this final rulemaking consolidates the land use information requirements of sections 30 CFR 779.22 and 30 CFR 780.23 into final 30 CFR 780.23 and deletes the slope measurement requirements of 30 CFR 779.25(a)(11). For the counterpart regulations governing underground mining activities, this rulemaking consolidates the land use information requirements of 30 CFR 783.22 and 30 CFR 784.15 into final 30 CFR 784.15 and deletes the slope measurement requirements of 30 CFR 783.25 (a)(11).

Because the cited regulations governing underground activities are identical to counterpart regulations governing surface mining activities, the discussion of changes or deletions to 30 CFR 779.22, 779.25(a)(11) and 780.23 will also apply to 30 CFR 783.22, 783.25(a)(11) and 784.15.

A. LAND USE INFORMATION RULES

Section 30 CFR 779.22 identified the premining land use information required in a permit application.

Section 779.22(a) required that the application contain a statement of the condition, capability, and productivity of the land within the proposed permit area. Section 779.22(a)(1) required that the application contain a map and a narrative that describes the use of the proposed permit area at the time of filing and the premining land use if its use was changed within five years before the date of application. The map was used to compare premining land uses with proposed postmining land uses. Section 779.22(a)(1) implemented section 508(a)(2)(A) of the Act.

Section 779.22(a)(2) required that the permit application include a narrative of the capability and productivity of the land to support a number of uses which can be used in analyzing the land use description contained in section 779.22(a)(1). Environmental information from Section 779.22(a)(2) together with land use information from Section 779.22(a)(1) provided a foundation for the reclamation plan required by former section 30 CFR 780.23 (Reclamation plan: Postmining land uses). Section 779.22(a)(2) and its two subsections, (i) and (ii), implemented sections 508 (a)(2) (B) and (C) of the Act.

Section 779.22(b) required a description of premining land use conditions for previously mined areas. These regulations provided that an application for a previously mined area identify the type of mining method used, the coal seams or other mineral strata mined, the extent of coal or minerals removed, the approximate dates of past mining, and the uses of the land preceding mining. According to the 1979 Preamble, this information, if available, was intended to be used by the operator and the regulatory authority to assure that the mining operation will be conducted in a manner which mitigates the environmental damage caused by the previous mining activities (*44 FR 15041*, March 13, 1979). The 779.22(b)(5) informational requirements as to the uses of land preceding prior mining implemented sections 508(a)(2)(A) and 515(b)(2) of the Act. The balance of Section 779.22(b) is not specifically required by the Act.

Section 779.22(c) required that the application describe the proposed mining area's existing land uses and their classifications under local law. Information from this section was used by the regulatory authority to evaluate the proposed postmining land uses and to assess the compatibility of the proposed land use with the existing land use policies and plans. The information required by this section was essentially the same information required by former Section 780.23(a)(4) and (b). Section 779.22(c) implemented Section 508(a)(3) of the Act.

Section 30 CFR 780.23 established the criteria used to approve a postmining land use analysis and plan. Section 780.23 implemented Section 508(a) (3) and (4) of the Act.

Section 780.23(a) required that the applicant's reclamation plan describe the proposed postmining land use. Included must be a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses which must conform to the existing land use policies and plans. Section 780.23(a) implemented Section 508(a)(3) of the Act.

Section 780.23(a)(1) required a description of the proposed postmining land use and the method in which the proposed postmining land use is attained. Section 780.23(a)(1) implemented section 508(a)(4) of the Act.

Section 780.23(a)(2) required specific management plans when range and grazing is proposed as a postmining land use. Range or grazing management plans are not specifically required by the Act.

Section 780.23(a)(3) required information needed to support approval for an alternative postmining land use when requested under Section 816.133. Section 780.23(a)(3) implemented section 508(a)(3) of the Act.

Section 780.23(a)(4) required that consideration be given to making proposed mining activities consistent with the existing surface owner plans and applicable State and local land use plans and programs. Section 780.23(a)(4) implemented section 508(a)(3) of the Act.

Section 780.23(b) provided that the reclamation plan include a copy of the comments of the proposed land use by the legal or equitable owner of record of the surface of the proposed permit area and the applicable State and local government agency. Section 780.23(b) implemented section 508(a)(3) of the Act.

B. SLOPE MEASUREMENT

Section 30 CFR 779.25 (Cross sections, maps, and plans) required slope measurements against which new mining effects can be compared. Section 779.25(a)(11) required the applicant to include the existing slopes of the proposed mine site. The 1979 preamble indicates that slope can be derived from either a topographic map or from field calculations (*44 FR 15045*, March 13, 1979). These slope measurements were to be used by the regulatory authority to evaluate the applicant's ability to achieve approximate original contour. There is no specific requirement in the Act to provide preexisting slope measurements.

II. DISCUSSION OF COMMENTS AND FINAL RULE

OSM received letters on the proposed rule from eight commenters representing industry, State regulatory authorities, Federal and State agencies, and individual citizens. OSM has reviewed each comment carefully and has considered the commenters' suggestions and remarks in writing this final rule.

The final rulemaking simplifies the current regulations by promulgating a single new rule, 30 CFR 780.23 (Land use information), to replace the two former land use information rules. Final Section 780.23 combines sections from former 780.23 (Reclamation plan: Postmining land uses) and former 779.22 (Land use information). This rulemaking deletes former Section 779.22 in its entirety. Paragraphs from former Section 779.22 needed to implement prescriptions of the Act have been relocated to final 780.23. The final rule also deletes 30 CFR 779.25(a)(11) (Cross sections, maps, and plans) in its entirety.

A. LAND USE INFORMATION

Listed below is an outline of the informational requirements that are incorporated into final 30 CFR 780.23 (Reclamation plan: Land use information). This rule is identical to proposed 30 CFR 780.23 except as indicated below.

1. Final section 780.23(a) requires that the applicant provide a statement of the condition, capability, and the productivity of the land within the proposed permit area. Section 780.23(a) is identical to former Section 779.22(a). No comments were received addressing the redesignation of this section. Section 780.23(a) implements section 508(a)(2) of the Act.

2. Final Section 780.23(a)(1) requires a map and supporting narrative describing the uses of the land at the time of the filing of the application. The description must also include any changes to the land use which occurred during the past

five years, except in a case where the application is for lands which were previously mined, in which case the description must include the use of the land prior to any mining to the extent such information is available. Final section 780.23(a)(1) incorporates the provisions of former Section 779.22 (a)(1) and (b)(5). Proposed section 780.23(a)(1) was identical to former Section 779.22(a)(1) except that it would have deleted the five-year limit on the historical land use description. As proposed, Section 780.23(a)(1) would have also subsumed the reporting requirements of Section 779.22(b)(5).

Several commenters felt that the proposed deletion of the five-year limit on the historical land use description would have added to the reporting burden on the applicant and that the information collected would often be unnecessary. One commenter supported the proposed change and believed that there was sufficient enabling language for the regulatory agency's requirement of a historical land use description. OSM has reconsidered the proposal and agrees with the concerns of the commenters opposing the deletion of the five-year time frame in that it may add an unnecessary reporting burden on the applicant.

Section 515(b)(2) of the Act requires that the operation restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining and section 508(a)(2)(A) requires the reclamation plan to include a statement on the condition of the land to be covered by the permit prior to any mining, including the uses existing at the time of the application and, if the land has a history of previous mining, the uses which preceded any mining. Accordingly, final Section 780.23(a)(1) will retain the five-year limit on the historical land use description of former Section 779.22(a)(1) and will include for previously mined areas the land use reporting provisions of former Section 779.22(b)(5) which are required to implement sections 508(a)(2)(A) and 515(b)(2) of the Act.

3. Final Section 780.23(a)(2) requires that the applicant provide a narrative of the land capability and productivity, which analyzes the land use description in conjunction with other environmental resource information. Final Section 780.23(a)(2) is identical to former Section 779.22(a)(2). No comments were received addressing this redesignation. Section 780.23(a)(2)(i) implements section 508(a)(2)(B) of the Act and Section 780.23(a)(2)(ii) implements section 508(a)(2)(C) of the Act.

4. Final section 780.23(b) requires that the applicant provide a statement on the utility and capacity of the reclaimed land to support a variety of alternative uses. Final Section 780.23(b) is identical to former Section 780.23(a). No comments were received addressing this redesignation. Section 780.23(b) implements section 508(a)(3) of the Act.

5. Final Section 780.23(b)(1) requires that the applicant discuss how the proposed postmining land use will be achieved. Final Section 780.23(b)(1) is identical to former Section 780.23(a)(1). No comments were received addressing this redesignation. Section 780.23(b)(1) implements sections 508(a)(4) of the Act.

6. Final Section 780.23(b)(2) requires that the applicant include a detailed description of proposed postmining land uses that are different from the premining land uses. Final Section 780.23(b)(2) is identical to former section 780.23(a)(3). No comments were received addressing this redesignation. Section 780.23(b)(2) implements sections 508(a)(2)(A) and 508(a)(3) of the Act.

7. Final Section 780.23(b)(3) requires that the applicant describe the consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable State and local land use plans and programs. These provisions are identical to those of former Section 780.23(a)(4) and the first sentence of proposed Section 780.23(c) and have been redesignated as Section 780.23(b)(3) to enhance the organizational clarity of the final rule. Section 780.23(b)(3) implements section 508(a)(8) of the Act.

8. Final Section 780.23(c) requires that the applicant describe comments by the legal or equitable owner of record of the surface of the proposed permit area and the State and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation. Final Section 780.23(c) is identical to former Section 780.23(b). Section 780.23(c) implements section 508(a)(3) of the Act.

One comment was received alleging the impracticality of such a requirement and the lack of flexibility which it affords the operator in obtaining comments. However, OSM is retaining this requirement as it implements specific statutory prescriptions.

B. DELETION OF LAND USE INFORMATION REQUIREMENTS

Listed below is an outline of the informational requirements that were deleted from former rules during the formulation of final 30 CFR 780.23 (Reclamation plan: Land use information). This rule is identical to proposed 30 CFR 780.23 except as indicated below.

1. This rulemaking deletes section 30 CFR 779.22(b). This section required that if specific information about mining activities at previously mined areas is available, such information must be included in the permit application. As will be discussed below, if the information required under this section is even available, it is either provided elsewhere by the applicant in his permit application or is available from former program permitting records and is, therefore, more accessible to the regulatory authority than to the applicant.

Two commenters agreed with OSM's proposed deletion of Section 779.22(b) in its entirety. They felt that much of the information required under this provision will already be contained in the application through other applicable provisions.

a. Former Section 779.22(b)(1) required a description of the type of mining method used at any previously mined area. To the extent that the applicant is able to submit the required cross sections, maps, and plans of prior mining operations within and adjacent to the permit area under existing 30 CFR 779.25(a) (5) and (8), the regulatory authority can determine from this information the type of mining methods which were used. OSM agrees with the one comment received regarding the deletion of 779.22(b)(1) that the information provided by this section has historically been of minimal benefit.

b. Former Sections 779.22(b) (2) and (3) required a description of the coal seams or other mineral strata mined and the extent of coal or other minerals removed from the previously mined area. This information can easily be calculated by the regulatory authority from other information required to be submitted by the applicant under 30 CFR 779.25(a) (3), (4), (8), and 30 CFR 780.11(a). OSM agrees with the one comment received regarding the deletion of 779.22(b) (2) and (3) that the information provided by these sections has historically been of minimal benefit.

c. Former Section 779.22(b)(4) required a statement of the approximate dates of previous mining activities. In its 1979 rules, OSM did not require the precise dates of these activities because of the acknowledged difficulty of obtaining such information with any degree of accuracy (*44 FR 15041*, March 13, 1979). In practice, information as to the approximate dates of previous mining activities has proven to be generally unnecessary. The only time that the approximate dates of previous mining activities might be necessary is when the applicant intends to reclaim in accordance with the requirements of 30 CFR 816.106. Under those circumstances, the applicant is required by the authority, that of 30 CFR 773.15(c) and (c)(12), to affirmatively include in the permit application information as to the cessation dates of previous activities. The regulatory authority must then find in writing that the site of the proposed operation is a "previously mined area" as defined in 30 CFR 701.5. Accordingly, the continuance of Section 779.22(b) serves no useful regulatory purpose.

One commenter opposed this deletion claiming that the information of 779.22(b)(4) is necessary when judging the success at 30 CFR 816.116(5). As this section is nonexistent, the apparent intended reference is 30 CFR 816.116(b)(5). OSM rejects this comment as there is no clear relationship between the approximate date of premining operations required under 779.22(b)(4) and establishment of the baseline level of vegetative cover before redisturbance required by 816.115(b)(5). As it is, there is more than sufficient information required under the other permit application provisions of 30 CFR parts 779 and 780 for the regulatory authority to fulfill its responsibilities under Section 816.116(b)(5).

d. Former Section 779.22(b)(5) required a statement of the premining land use for lands previously affected by mining to the extent such information is available. Final Section 780.23(a)(1) will include this requirement among its provisions. One commenter supported the proposed deletion of 779.22(b)(5) on the basis that the scope of information required by that section served little useful purpose. Another commenter contended that because the same historical land use information required by 779.22(b)(5) would also be required by proposed 780.23(a)(1), the stated purpose of the rulemaking of eliminating or reducing paperwork would not really be accomplished. In partial response to this comment and as discussed above, OSM decided not to finalize the expanded reporting requirement of proposed 780.23(a)(1) but instead retain that section's existing, less burdensome requirements. This necessitated the inclusion of former Section 779.22(b)(5) in final Section 780.23(a)(1) in order to ensure that Sections 515(b)(2) and 508(a)(2)(A) of the Act are implemented and that the land use of previously mined land is described. This description helps to ensure the restoration

of the land affected by mining will be to the same or higher or better land use than existed prior to any mining as required by the Act. The permit applicant's historical land use reporting burden continues to be reduced as the consolidation of requirements into final Section 780.23(a)(1) eliminates duplicative reporting requirements.

2. This rulemaking deletes 30 CFR 779.22(c) which required a description of the existing land uses and land use classifications under local law of the proposed permit area and adjacent areas. While OSM considers the information required by this provision to be important land use information, it is essentially the same information required by former Sections 780.23 (a)(4) and (b) redesignated in the final rule as Sections 780.23 (b)(3) and (c). These redesignated sections provide that the application indicate the consideration given to making the surface mining activities consistent with applicable State and local land use plans and programs as well as comments on the proposed use by applicable State and local agencies.

One commenter opposed this deletion alleging that proposed 780.23(c) does not specifically require the same information as was provided to the regulatory authority by former 779.22(c) deleted in this rulemaking. The commenter characterized Section 779.22(c) as serving to eliminate any doubt as to the regulatory agency's authority for requiring a description and classification of the land uses under local law. In deleting former Section 779.22(c), OSM does not intend to infer that final 780.23(c) does not continue to convey sufficient general authority for the regulatory authority to require all the information previously and specifically required by the deleted section.

3. This rulemaking also deletes former 30 CFR 780.23(a)(2) which required the submission of a detailed management plan where range or grazing was the proposed postmining land use. In 1979, OSM rejected comments to delete this section. At that time, OSM stated its belief that a detailed management plan was necessary to determine the feasibility of a proposed range/grazing postmining land use. (*44 FR 15058*, March 13, 1979). Since then, OSM has reconsidered the utility of requiring such detailed plans. In concert with this rulemaking, OSM consulted the Bureau of Land Management regarding its current views on the need for a detailed management plan to be included in the permit application for a surface coal mining and reclamation operation. The Bureau indicated that the proposed deletion of the requirement for submitting such plans would not affect its program which also required detailed management plans. OSM understands that for legitimate economic and/or ecological reasons the actual management plan implemented for a reclaimed area may often vary greatly from the detailed plan originally submitted under Section 780.23(a)(2). The uncertain benefit which may be derived from the submission of these plans is not felt to justify the burden of their preparation.

One commenter supported the deletion of Section 780.23(a)(2) stating that a detailed management plan was unnecessary. Two other commenters disagreed with the deletion but suggested a change in the regulatory language of Section 780.23(a)(2) to require a "general" instead of a "detailed" management plan. OSM does not accept that suggestion. Former Section 780.23(a)(1) which required an explanation of how the postmining land use is to be achieved has been redesignated as final section 780.23(b)(1) and should allow for the level of reporting detail necessary for the regulatory authority to determine the feasibility of any proposed range land/grazing land use.

B. VEGETATION INFORMATION

The Proposed Rules discussed the deletion of 30 CFR 779.19 (Vegetation information). This section authorizes a regulatory authority to require a map and a description of the plant communities within the proposed permit area and within any proposed reference area. OSM originally envisioned that this detailed information could be helpful in completing the vegetative land use analysis required by Section 779.22 (land use information). (*44 FR 15037*, March 13, 1979). In revisiting this issue in its proposed rule, OSM justified the deletion of Section 779.19 on the grounds that it was felt to be redundant and that other specified permit application provisions provide the regulatory authority with sufficient authority to require the level of detailed information necessary to complete Section 779.22(a)'s vegetative land use information requirements.

Numerous comments were received strongly opposing this deletion. The commenters stressed that the information of Sections 779.19 and 779.22 was "complementary and not duplicative." The commenters expressed their view that section 779.19 serves an essential and wider purpose than merely helping to complete Section 779.22(a)'s land use information requirements. These commenters further questioned whether the other permit application provisions cited by OSM in its proposed rule actually provide the regulatory authority with sufficient authority to require the detailed information relative to species diversity and ground cover which is needed to properly evaluate an operator's ability to revegetate the

disturbed area. In light of the comments opposing the proposed deletion of Section 779.19, OSM has determined to retain that section unaffected by this rulemaking.

C. PREMINING SLOPE MEASUREMENT

This rulemaking deletes section 30 CFR 779.25(a)(11) (Cross sections, maps, and plans) requiring slope measurements. OSM recognizes that premining slope measurements are needed to ensure that restored contours meet approximate original contour (AOC) conditions. The former rule was, however, redundant as it provided no additional information beyond that already available to the regulatory authority under 30 CFR 777.14(a) and OSM's technical information processing system (TIPS). In the 1979 preamble to Section 779.25, OSM acknowledged that the required slope measurements could be derived from existing topographic maps or from measurements taken in the field (*44 FR 15045*, March 13, 1979). Since that time, OSM has found that most permit applicants derive the required measurements from a topographic map rather than from field measurements. Section 777.14(a) requires a permit applicant to submit a topographic map of the permit area which includes U.S. Geological Survey topographic features. Therefore, it makes no difference whether the applicant measures the slope from a topographic map, in fulfillment of the requirements under Section 779.25(a)(11), or the regulatory authority measures the slope from the same or similar topographic map submitted under Section 777.14(a) so long as the regulatory authority has adequate information on the slope of the proposed permit area to assure that approximate original contour will be achieved. Subsequent to the 1979 promulgation and issuance of Section 779.25(a)(11), OSM has also made available to regulatory authorities the TIPS software and data analysis capabilities which allows both premining slopes and cross sections to be computed.

Several commenters agreed with the proposal to delete Section 779.25(a)(11) as they felt that the information is already available to the regulatory authority independent of any submission by the applicant. One commenter opposed the proposal on the basis that it is the operator's responsibility to supply the baseline slope measurement data. However, as discussed above, the operator is already required by Section 777.14(a) to supply the appropriate topographic maps of the permit area which represent the baseline information for slope measurement calculations. All regulatory authorities also have access to TIPS systems and have the capability to calculate premining slopes and cross sections from the topographic maps provided. This same commenter alleged that the operator may not be able to demonstrate AOC if the regulatory authority is the only party with the slope data. OSM does not agree. Irrespective of the deletion of Section 779.25(a)(11), the permit applicant must demonstrate in the plan, under the requirement of Section 816.102, the ability to meet the performance standards for AOC. Thus, the deletion of this section does not relieve the applicant of the responsibility to demonstrate how AOC is achieved in the reclamation plan.

IV. PROCEDURAL MATTERS

Federal Paperwork Reduction Act

The collections of information contained in this rule have been approved by the Office of Management and Budget under *44 U.S.C. 3501* et seq. and assigned clearance numbers 1029-0035 and 1029-0038.

Executive Order 12866

This rule has been reviewed under Executive Order 12866.

Regulatory Flexibility Act

The Department of Interior has determined, pursuant to the Regulatory Flexibility Act, *5 U.S.C. 601* et seq., that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule consolidates requirements for premining and postmining land use and thereby eliminates redundancies in the regulations with a resulting reduction in the reporting burden on the public. This should result in a cost savings to the public.

National Environmental Policy Act

OSM has prepared an environmental assessment (EA), and has made a finding that this rule will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, *42 U.S.C. 4332(2)(C)*. The EA and finding of no significant impact are on file in the OSM Administrative Record, room 660, 800 North Capitol Street NW., Washington, DC.

Executive Order 12778 on Civil Justice Reform

This rule has been reviewed under the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

To the extent that the rule would relieve, rather than impose, regulatory requirements, the rule would have no preemptive effect.

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified?

This rule modifies the implementation of SMCRA as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule is not intended to have retroactive effect.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under section 526(a) of SMCRA, 30 U.S.C. 1276(a).

Prior to any judicial challenge to the application of the rule, however, administrative procedures must be exhausted. In situations involving OSM application of the rule, applicable administrative procedures may be found at 43 CFR part 4. In situations involving State regulatory authority application of provisions equivalent to those contained in this rule, applicable administrative procedures are set forth in the particular State program.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items?

Terms which are important to the understanding of this rule are set forth in 30 CFR 700.5 and 701.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

The Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

Author

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LIST OF SUBJECTS

30 CFR Part 779

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 780

Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 783

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 784

Reporting and Recordkeeping requirements, Underground mining.

Dated: May 4, 1994.

Bob Armstrong, Assistant Secretary, Land and Minerals Management.

Accordingly, 30 CFR Parts 779, 780, 783, and 784 are amended as set forth below.

PART 779-SURFACE MINING PERMIT APPLICATIONS-MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

1. The authority citation for part 779 continues to read as follows:

Authority: *30 U.S.C. 1201* et seq.; Section 115 of Pub. L. 98-146, (*30 U.S.C. 1257*), and *16 U.S.C. 470* et seq.

SECTION 779.22 -- [Removed]

2. Section 779.22 is removed.

SECTION 779.25 -- [Amended]

3. In section 779.25, paragraph (a)(11) is removed.

PART 780-SURFACE MINING PERMIT APPLICATIONS-MINIMUM REQUIREMENT FOR RECLAMATION AND OPERATION PLAN

4. The authority citation for part 780 continues to read as follows:

Authority: Pub. L. 95-87, *30 U.S.C. 1201* et seq., as amended; Section 115 of Pub. L. 98-146, *30 U.S.C. 1257*; *16 U.S.C. 470* et seq.; and Pub. L. 100-34.

5. Section 780.23 is revised to read as follows:

SECTION 780.23 -- RECLAMATION PLAN: LAND USE INFORMATION.

(a) The plan shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(1) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within 5 years before the anticipated date of beginning the proposed

operations, the historic use of the land shall also be described. In the case of previously mined land, the use of the land prior to any mining shall also be described to the extent such information is available.

(2) A narrative of land capability and productivity, which analyzes the land-use description under paragraph (a) of this section in conjunction with other environmental resources information. The narrative shall provide analyses of:

(i) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the proposed permit area; and

(ii) The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, State agricultural universities, or appropriate State natural resource or agricultural agencies.

(b) Each plan shall contain a detailed description of the proposed use, following reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use of existing land use policies and plans. This description shall explain:

(1) How the proposed post mining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use; and

(2) Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under 30 CFR 816.133.

(3) The consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable State and local land use plans and programs.

(c) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the State and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

PART 783-UNDERGROUND MINING PERMIT APPLICATIONS-MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

6. The authority citation for part 783 continues to read as follows:

Authority: *30 U.S.C. 1201* et seq.; Section 115 of Pub. L. 98-146, (*30 U.S.C. 1257*), and *16 U.S.C. 470* et seq.

SECTION 783.22 -- [Removed]

7. Section 783.22 is removed.

SECTION 783.25 -- [Amended]

8. In section 783.25, paragraph (a)(11) is removed.

PART 784-UNDERGROUND MINING PERMIT APPLICATIONS-MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

9. The authority citation for part 784 continues to read as follows:

Authority: Pub. L. 95-87, *30 U.S.C. 1201* et seq., as amended; Section 115 of Pub. L. 98-146, *30 U.S.C. 1257*; *16 U.S.C. 470* et seq.; and Pub. L. 100-34.

10. Section 784.15 is revised to read as follows:

SECTION 784.15 -- RECLAMATION PLAN: LAND USE INFORMATION.

(a) The plan shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(1) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within 5 years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described. In the case of previously mined land, the use of the land prior to any mining shall also be described to the extent such information is available.

(2) A narrative of land capability and productivity, which analyzes the land-use description under paragraph (a) of this section in conjunction with other environmental resources information. The narrative shall provide analyses of:

(i) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the proposed permit area; and

(ii) The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, State agricultural universities, or appropriate State natural resource or agricultural agencies.

(b) Each plan shall contain a detailed description of the proposed use, following reclamation, of the land within the proposed permit area including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain:

(1) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use; and

(2) Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under 30 CFR 817.133.

(3) The consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable State and local land use plans and programs.

(c) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the State and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

[FR Doc. 94-13014 Filed 5-26-94; 8:45 am]
BILLING CODE 4310-05-M