

FEDERAL REGISTER: 42 FR 44920 (September 7, 1977)

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 700, 710, 715, 716, 717, 720, 721, 722, 723, 725, 740, 795, 830

Surface Mining Reclamation and Enforcement Provisions; Proposed Rules

ACTION: Proposed rules.

SUMMARY: The regulations in this chapter set out the Department of the Interior's Surface Mining Reclamation and Enforcement program as required by the Surface Mining Control and Reclamation Act of 1977 (Act). These regulations require the Secretary of the Interior to publish initial environmental protection regulations that are applicable to all coal mining operations regulated by the States until a State has an approved regulatory program or a Federal regulatory program is implemented in that State.

DATES: Comments must be received by October 7, 1977. Public hearings will be held starting at 1 p.m. on September 20, 1977, and continuing if necessary at 9 a.m. on September 21, and 22, 1977.

ADDRESSES: Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240. Public hearings will be held at the Department of the Interior Auditorium, 18th and C Streets NW., Washington, D.C.; Kiel Auditorium, 1416 Market Street, St. Louis, Mo.; Public Library Auditorium, 1347 Broadway, Denver, Colo.; and Morris Harvey College, Riggelman Hall, 2300 McCorkle Avenue, Charleston, W.Va.

FOR FURTHER INFORMATION CONTACT: Paul Reeves, Office of Surface Mining Reclamation and Enforcement, 202-343-4237.

SUPPLEMENTARY INFORMATION:

The Surface Mining Control and Reclamation Act of 1977 (the Act), Pub.L. 95-87, requires the Secretary of the Interior to publish initial environmental protection regulations that are applicable to all coal mining operations regulated by the States until a State has an approved regulatory program or a Federal regulatory program is implemented in that State. These regulations, especially dealing with water quality, were developed in consultation with the Environmental Protection Agency. The Act also requires the Secretary to implement a Federal enforcement program by February 3, 1978, which lasts for the duration of the initial program in each State. Regulations for Federal financial assistance to States for reimbursement of incremental enforcement costs during the initial regulatory program and for development, administration and enforcement of permanent State regulatory programs for the control of surface coal mining and reclamation operations are also required by the Act.

The public is urged to comment on these proposed regulations. The Department of the Interior believes that full public participation in the rulemaking process will improve the quality of its regulatory program and to this end has already held informal public information meetings in Washington, D.C. (42 FR 39491, August 4, 1977) and has already established a continuing liaison with State regulatory authorities.

In light of the volume of comments expected on the regulations proposed and the short time available to meet the statutory deadline for final regulations, we request that, wherever possible, comments be identified by the pertinent section number of the regulations in the left hand margin, and presented section-by-section on separate pages. We also request that wherever possible, people making written and oral presentations at the public hearings preface their comments on individual sections by identifying that section by number. Individuals making oral statements at the public hearing are requested to limit their statements to 15 minutes. A brief discussion of the major parts in the proposed regulations follows.

Part 700 is a general statement of the scope, objectives and applicability of these regulations. It also states the responsibilities of the Secretary, the Director and the States and defines terms used throughout the chapter. The authority of the Secretary, the Director of the Office of Surface Mining Reclamation and Enforcement and other governmental bodies is described, their responsibilities distinguished and the Federal-State delegation of duties described.

Part 710 introduces the initial regulatory program. Initial performance standards which will apply to private and public lands before a permanent State program is approved by the Secretary are included.

Part 715 contains the general initial performance standards and includes regulations governing the operator's general obligation to comply with the initial standards requiring restoration of disturbed areas to suitable post mining use, backfilling and grading, disposal of spoil and waste materials in other areas, topsoil handling, protection of the hydrologic system, construction, inspection and maintenance of dams, use of explosives, and revegetation.

Part 716 contains the special initial performance standards and includes regulations governing steep slope mining, prime farmlands, mountaintop removal, special bituminous coal mines, anthracite coal mines, Alaska coal mining operations and underground mines.

Part 717 contains procedures for adoption of State laws and regulations when they prescribe more stringent standards of performance than the general or special performance standards of this chapter provide.

Part 720 sets forth the regulations governing enforcement activities to be carried out by the States during the initial regulatory program.

Part 721 provides for Federal inspections on the basis of (1) at least two consecutive State inspection reports indicating a violation; (2) information provided by a State or person indicating a violation; (3) random inspections of each operation at least once each six months; and (4) the Secretary's own initiative.

Part 722 sets out the general procedures governing issuance by Federal inspectors of orders of cessation, notices of violation and orders to show cause.

Part 723 contains the regulations governing the assessment of civil penalties and prescribes the use of a mandatory point system in determining the amount of the penalty.

Part 725 sets forth the policies and procedures for reimbursements to States for the incremental costs of enforcing performance standards during the initial regulatory program.

Part 740 sets forth the policies and procedures for grants to States to develop, administer and enforce approved State programs for the control of surface coal mining and reclamation.

Part 795 provides for financial and other assistance to eligible small coal mine operators in determining the hydrologic consequences of mining and reclamation. The analyses are to be performed by qualified public and private laboratories and paid for by the regulatory authority.

Part 830 provides a procedure for dealing with acts of job discrimination due to exercise of rights under the Act.

GENERAL

Part 700 is intended to reiterate the purposes and objectives of the Act and familiarize the public with the various programs and procedures the new Office of Surface Mining will be implementing.

The authority and responsibility sections describe the chain of authority in general terms from the Secretary to the Director of the Office to the various Federal and State authorities. The Assistant Secretary, Energy and Minerals, although not mentioned in the Act, will perform key Secretarial duties under the Act and has general Secretarial responsibility for the program.

Definitions are either taken directly from the Act or derived from generally accepted sources. These definitions are applicable to all parts of the regulations, except where stated otherwise in a particular part or section.

For the purpose of these regulations, the term "permit" includes a mining plan approved under 30 CFR Part 211 held by a lessee of Federal or Indian lands; "State regulatory authority" includes the State agency during the initial program as well as the permanent regulatory program; and "surface coal mining and reclamation operations" includes all surface and

underground coal mining operations. These broader definitions are required to fully implement the Congressional intent expressed in the Act and legislative history.

The regulations in Section 700.12 describe how interested persons can obtain consideration of rulemaking proposals regarding matters within the authority of the Office. The regulations contain public notice requirements and provide for an opportunity to request hearings. They have been designed to encourage public participation in the policymaking process of the Office.

Part 710. Initial Regulatory Program, includes the rules and procedures applicable during the initial period between promulgation of these rules and the implementation of a permanent Federal or State program. Dates and deadlines are set out in this part which affect Federal, State, and private lands. Proposed rules for Indian lands are being published separately as 25 CFR 177, Subpart B.

Section 710.11 states who is covered by the provisions of the Act and regulations. Surface and underground coal mining operations in States regulating coal mining are covered by these regulations during the initial regulatory program.

SMALL OPERATOR EXEMPTION

Under section 502 of the Act, the initial performance standards will apply to virtually all operators on private lands where coal mining operations are regulated by a State, nine months from the date of enactment. However, certain small operators with permits may be exempted for a period of up to seven months to January 1, 1979, from complying with the performance standards, except the standard governing the handling of spoil in Section 716.2 of the proposed regulations.

The proposed regulations in Section 710.12 establish procedures for obtaining this exemption. They require submission of information and documents essential to determine an applicant's right to the exemption. Although consideration was given to a simple affidavit under oath as a means of establishing eligibility, the virtue of simplicity is more than outweighed by the need to strictly enforce the tonnage restrictions on eligibility. In determining total annual production, the Secretary will attribute to each person production from operations in which that person has a substantial interest.

The procedure for processing each application calls for a recommendation to the Director by the State regulatory authority and an opportunity for public comment. In accordance within the legislative history, the proposed regulations provide the States the opportunity to play a significant role while saving for the Secretary the authority to make the final decision and residual authority to process an application completely in the event that a State fails to make a timely recommendation.

DRAFTING INFORMATION

The principal authors of the proposed regulations in Parts 700 and 710 are: Michael Bradley, Office of Surface Mining Task Force, Edward Clair, Office of the Solicitor, and Neil Strauss, Office of Hearing and Appeals, Department of the Interior.

GENERAL PERFORMANCE STANDARDS

PARTS 715. GENERAL PERFORMANCE STANDARDS, AND 716, SPECIAL PERFORMANCE STANDARDS, propose standards of performance for coal mining operations. The Congress has defined "surface coal mining operations" in the Act to include "surface impacts incident to an underground coal mine". The Department is preparing these initial regulations to control the more serious adverse environmental impacts of mining, both deep and surface. The regulations recognize the distinct difference between surface coal mining and underground coal mining by referencing those standards for underground mining which differ from surface mining in a separate section of the regulations.

The Department's intention is to promulgate enforceable standards that are understood by the operator and the regulatory authority. This intention is reflected by relatively detailed development of most standards. However, the Department solicits technical information that will improve the clarity of the regulations while meeting the intent of the Act to protect society and the environment from the adverse effects of coal mining.

SECTION 715.12, *SIGNS AND MARKERS*, deals with signs throughout the permit area. The marking of permit areas, blasting areas and other special activity areas where caution must be exercised by the operator and other personnel is

common practice in many States. While minimum spacing requirements are proposed, the specific dimensions and lettering requirements are expected to be regulated by the State regulatory authority during the initial regulatory program.

SECTION 715.13, *POSTMINING USE OF LAND*, proposes criteria and procedures to determine the postmining use of the land which serves as a reference point for other performance standards of the Act. It has been suggested that the Act is not a land use Act and the Department agrees that land planning activities are limited to those relating to coal mining operations. The Department considers the identification of an achievable postmining land use within a permit area to be essential to achieving the purposes of the Act. It is necessary to provide criteria for the regulatory authority to judge proposals as reasonably achievable and compatible with land use in the surrounding area. The regulations are not intended to create, but rather to support existing land planning capabilities.

SECTION 715.14, *BACKFILLING AND GRADING*, implements the requirement to establish a postmining land surface configuration which closely resembles the general configuration of the land surrounding the mine. The section contains backfilling, compaction and grading requirements to ensure that highwalls, regular ridges, inappropriate piles of spoil, and unapproved depressions are eliminated to meet the appropriate original contour. The section provides a means for quantifying pre-and postmining slopes in a manner intended to preclude creation of unstable slopes.

SECTION 715.15, *DISPOSAL OF SPOIL AND WASTE MATERIALS IN AREAS OTHER THAN THE MINE WORKING OR EXCAVATIONS*, requires two general methods of excess spoil placement, one on moderate sloping areas where no stream channels are to be blocked and the other, the more complex situation involving head-of-hollow fills. The Department has evaluated a number of alternatives regarding the amount of detail contained in the head-of-hollow fill section of the regulations. It believes that the regulations proposed are necessary and appropriate to ensure that spoils placed in unmined areas are constructed to remain as stable as the surrounding natural slopes. The regulations contain standards that are currently complied with by many operators and which do not prohibit the construction of head-of-hollow fills where safe and necessary. The Department feels it important to have regulatory authorities direct operators in the specifics of construction of fills. To leave all design and construction procedures to the operator without detailed analysis of such designs and specific approval of actual construction methods is not considered adequate protection of the environment or of society.

SECTION 715.16, *TOPSOIL HANDLING*, spells out requirements for removal, replacement and stockpiling of topsoil. The section recognizes the extreme importance of the A-horizon of certain soils as a seed source and growth medium. Operators are encouraged to remove and replace the A-horizon separately where it is thick enough to be mechanically separated from the underlying horizons. This procedure is practiced with success at a number of mines. The section is also designed to allow the use of other materials as topsoil when the existing topsoil is of insufficient quantity or of poorer quality than the other strata. In order to show that the alternative strata are acceptable, soil analyses, field trials or greenhouse data are required. The Department believes that situations involving areas previously mined and not reclaimed where the original topsoil was buried would be adequately handled under the alternate strata section where material suitable for plant growth would be evaluated.

SECTION 715.17, *PROTECTION OF THE HYDROLOGIC SYSTEM*, incorporates the effluent limitations promulgated by the Environmental Protection Agency and, following the directives of the Act, also covers the quality of waters flowing from the permit area after active mining and regrading (during revegetation). The Department has proposed two modifications to existing effluent limitations and especially solicits public comment regarding the proposals. The first modification is related to coal mines in the interior western United States and specifies more stringent effluent limitations for total suspended solids which are generally equal to those permit conditions recommended by EPA regional offices in that geographic area. This modification "regionalizes" the regulations in order to control, to the maximum practical extent, soil erosion in an area where soil is critical to revegetation success and water is essential. [Page 44922]

The second modification requires that discharges from the permit area caused by precipitation events equal to or less than the 25-year, 24-hour event meet the effluent limitations. Since emphasis of the Act is on the protection of the water resource, the Department determined that it was necessary to specify a precipitation event likely to occur during mining operations. Other measures of precipitation events considered were (1) a 10-year, 24-hour event and (2) a 24-hour event occurring during the life of the mine. Public comment regarding design criteria is invited. Such comments should, wherever possible, be supported by data showing size of precipitation events, impoundments, and water quality.

The regulations stress protection and reestablishment of the essential elements of the hydrologic balance in alluvial valley floors. The Department believes that Congress was resolved to protect alluvial valley floors at an early date and, while coal exchange provisions are still under development, new operations are required to perform detailed surveys and provide

representative baseline data (such data are presently characterized in the paper titled "Subirrigated Alluvial Valley Floors", prepared by the Environmental Protection Agency, Region VIII - Table 4, 1860 Lincoln Street, Denver, Colo. 80295) prior to consideration for approval of mining plans and permits.

SECTION 715.18, *DAMS CONSTRUCTED OF REFUSE MATERIALS*, provides for control of impoundments constructed of refuse materials. This complements the authority of the Mining Enforcement and Safety Administration (MESA), which has jurisdiction over such structures from the standpoint of employee health and safety. The Office jurisdiction will extend to the areas of public safety and protection of the environment. The Congress specified that regulations covering design, construction, operation, maintenance, modification, abandonment, and removal of structures be promulgated by the Secretary in cooperation with the Chief of Engineers, U.S. Army. The proposed regulations reflect initial coordination between the three agencies and provide minimum design criteria consistent with criteria governing similar structures built by the Corps of Engineers.

SECTION 715.19, *USE OF EXPLOSIVES*, requires that explosives be used only in accordance with State and Federal law and regulations promulgated by the regulatory authority. Technical studies of damage to structures indicate that amplitude and frequency of the vibration level govern the given damage evaluation of structures.

The blasting standards are based on the premise that the maximum peak particle velocity of ground motion should not exceed 2 inches per second at any public building, dwelling, or commercial structure. Although this criterion is widely used by regulatory agencies, the Department recognizes that many people advocate a lower particle velocity. Technical data on a standard of 0.5 inches per second is being assembled and the Department will specifically consider the more stringent standard before final rules are promulgated. Public comment is specifically invited on this important question.

The proposed standards also provide a delay time of 8 milliseconds between subcharges and a 5 second interval between charges. Standard tables are presented relating weight of explosive and distance to maximum particle velocity. If blasting is done in accordance with the standard tables, it will be presumed that the particle velocity criteria are met. When blasting is not done in accordance with the standard tables, seismograph records will be required on every shot.

SECTION 715.20, *REVEGETATION*, provides two measures of reclamation success, both of which are "regionalized" for various climates characterized by annual precipitation amounts. The Department has chosen to be relatively specific by establishing quantitative measures of productivity and stabilizing ability of vegetation. One measure is an absolute measure of vegetative growth on reclaimed lands. The other is a measure of growth on lands reclaimed to hayland, pasture, wildlife, habitat, or rangeland relative to ungrazed or otherwise protected areas ("enclosures") in the surrounding lands. A number of experts assisted with the development of the two tables and the Department believes the requirements are reasonable. Any additional measurements or observations supporting or affecting these standards are solicited.

SPECIAL PERFORMANCE STANDARDS

PART 716 provides environmental protection performance standards applying to special coal mining situations including mining on steep slopes, mountaintop removal, special bituminous coal mines, anthracite coal mines, coal mines located in Alaska, prime farmland, and underground mining for coal. It should be made clear that no coal operation, other than those anthracite operations to which Section 716.5 applies, may rely entirely on the guidance given in the Special Performance Standards to regulate the entire coal mining and reclamation operations. Rather, operations will be guided by a combination of these special and the general performance standards.

SECTION 716.2, *STEEP-SLOPE MINING*, closely resembles the Act (Section 515 (d)).

SECTION 716.3, *MOUNTAINTOP REMOVAL*, treats the backfilling and grading requirements of mountaintop removal activities. The Department is proposing to specify maximum slopes of regraded land on the mined mountaintop in a manner that allows retention of the maximum amount of spoil on that area compatible with long term stability, water quality and use of the land.

SECTION 716.4, *SPECIAL BITUMINOUS COAL MINES*, implements the special exemption provided by Congress in Section 527 of the Act. The Department is not aware of any special bituminous coal mines that meet the criteria of the Act other than those located in Wyoming. It has, in consultation with that State, adopted the portions of Wyoming's regulations pertaining to the backfilling and grading of such mine pits.

SECTION 716.5, *ANTHRACITE COAL MINES*, implements the special provisions for anthracite coal mines authorized by Congress in Section 529 of the Act.

SECTION 716.6, *COAL MINES IN ALASKA*, implements the authority of the Secretary to suspend performance standards of Part 715 for Alaska mining in section 708 of the Act.

SECTION 716.7, *PRIME FARMLAND*, proposes standards of performance for coal mining operations conducted on land that is considered prime farmland. Such farmlands must meet criteria prescribed by the Secretary of Agriculture.

On the basis of the legislative history and the intent of the Act, the Department proposes to issue prime farmland performance standards as a part of the initial program to apply to any permit issued on or after August 3, 1977. The basis for this decision is Section 510(d)(1) of the Act which states that prime farmland provisions shall "apply to all permits issued after the date of enactment of this Act." In addition, the conferees agreed that the protection for prime farmland should apply to all permits issued after enactment and expected the Secretary to issue regulations to implement the prime farmland provisions as soon as possible (July 12, 1977, Congressional Record, H6968).

The prime farmland provisions do not apply to land that has been used for the production of cultivated crops for less than 5 years out of the 20 years preceding the date of the permit application. The 20 year requirement is based upon farm real estate financing. Such financing is predicated on the ability of the farmer receiving a loan to repay the loan over a period of time.

SECTION 716.8, *SURFACE EFFECTS OF UNDERGROUND MINES*, contains performance standards for the surface effects of underground mining. It references the performance standards in Part 715 that apply to underground coal mining operations. The Department intends to have the standards of Part 715 apply to surface impacts of underground mining such as access and haul roads, repair areas, storage areas, processing areas, shipping areas, and areas on which structures, facilities, or materials are sited. Activities associated with underground coal mining are to be governed by those particular performance standards of Part 715 reference in Section 716.8 in a manner which recognizes the distinct differences between surface and underground mining.

The Department tried the alternative of repeating those sections of Part 715 now referenced in Section 716.8 but found the resulting material to add unnecessarily to the length of the regulations. The Department will consider all recommendations regarding mechanisms to insure that underground coal mining operations meet the appropriate standards while keeping the regulations concise and understandable. [Page 44923]

ADOPTION OF STATE STANDARDS

PART 717 carries out the intention of Sections 201 and 501, of the Act to allow for the future adoption of State performance standards that are more stringent than the Federal standards. Each State may request the Secretary to review its standards in relation to the Federal standards to determine which is more stringent and whether the State's standards may be adopted by the Secretary.

DRAFTING INFORMATION

The principal authors of the proposed regulations in Parts 715 and 716 and 717 are George Davis and John Hardaway, Environmental Protection Agency, under the general supervision of Paul Reeves, Office of Surface Mining Task Force, and Jack Martin, Office of the Solicitor, Department of the Interior.

STATE ENFORCEMENT ACTIVITIES

The proposed regulations in Part 720 reflect the expectation of Congress that the States will enforce the federal performance standards during the initial period and will issue permits based on these standards. The regulations contain mandatory reporting requirements as required by the Act. Each State must supply the Office with copies of State permits issued on or after February 4, 1978, and with copies of their inspection reports relating to the federal initial performance

standards. Where States have divided regulation of blasting from water quality inspections and other surface mining inspections, reports relating to each area of the initial performance standards will be required.

FEDERAL INSPECTION

The proposed regulations provide in PART 721 for Federal inspections on the basis of at least two consecutive state inspection reports indicating a violation, or from information provided by any person which gives rise to a reasonable belief that a violation had or was occurring, or on a random basis. Since the Act contemplates active citizen involvement in the reporting of violations to the regulatory authorities, the Office is required to inspect if it receives information and has a reasonable belief that a violation is or may have occurred.

The proposed regulations further specify that Federal enforcement actions may not be nullified simply because it was later determined that there was insufficient information to create a reasonable belief. Such a provision is deemed necessary to avoid the incongruous result of invalidating enforcement actions because of subtle, delicate judgments concerning the quality and quantity of information received. The proposed regulations are believed to be in accord with the Congressional mandate to have Federal inspections in response to any reasonable evidence of a violation to help achieve maximum compliance with the initial standards.

The concept of "significant, imminent environmental harm to land, air or water resources" is approached in the proposed regulations by first defining environmental harm, then defining an imminent environmental harm and finally dealing with the concept of "significant" as it relates to environmental harm. An environmental harm is defined in the proposed regulations as any adverse impact on land, air or water resources, including plant and animal life. An environmental harm is considered "imminent" if the harm can reasonably be expected to cause such harm if the condition or practice is not abated within a reasonable time. Such definition of imminent is consonant with the concept of imminent danger which is defined in the Act. As in the case of imminent danger, a finding of imminent environmental harm must take into account the time it will reasonably take to abate the condition or practice and whether the significant environmental harm may reasonably be expected to occur during that time. If so, then a cessation order under Section 521(a)(2) of the Act would be appropriate.

An environmental harm may be "significant" even if not irreparable so long as it is appreciable and not readily repairable. Such a concept takes into account situations where measurable damage to the environment can reasonably be expected to occur but which cannot be repaired without difficulty.

The proposed regulations also deal with procedures for revoking or suspending a permit when it is determined that a pattern of violations exists or existed if those violations were either caused by the unwarranted failure of the permittee to comply with the Act, regulations or permit, or were willfully caused.

In seeking a regulatory scheme for determining when an operator has a pattern of violations, the option was considered of having an automatic finding of a pattern after a certain number of the same or related types of violations had occurred regardless of the circumstances. This would clearly define for all parties the exact conduct which would occasion the suspension or revocation of a permit. Such a scheme, however, was considered inappropriate because of the lack of flexibility and latitude in its application. It was considered more desirable to base the issuance of show cause orders upon a consideration of the circumstances surrounding the alleged pattern.

The regulations provide that a pattern exists if the operator violates unrelated provisions of the Act more than 50% above the national norm. The national norm will be determined by the Office as the enforcement data is obtained during the initial regulatory program.

CIVIL PENALTIES

Four statutory criteria are considered: History of previous violations at the particular mine; seriousness; negligence; and demonstrated good faith in achieving rapid abatement after notification of the violation. The Office must notify the person to be assessed of the amount of the proposed assessment within 30 days of the issuance of the notice of violation or cessation order. The person to be assessed has a right to administrative review and appeal to the courts.

The Office considered various methods for governing the determination of whether to assess a penalty. First, the Office considered adopting no regulations governing civil penalty assessments and considering each order and notice on a

case-by-case basis using only the language of Section 518 of the Act to guide the determination of an assessment. The Department believes such an approach would be inefficient in dealing with a substantial volume of notices and orders. would provide minimum guidance to the mining industry, the States and the public about the calculations of civil penalties and might reduce uniformity.

Second, the Office considered using a test of seriousness for the determination of whether to assess a penalty and using a schedule of proposed assessments with six levels. Such an approach may limit flexibility in determining which violations are assessed and may be less sensitive than the proposed point system in weighing and balancing the four statutory criteria.

Third, the Office considered the present proposal in various forms in which a point system is used both to make the determination of whether to assess and how much to assess.

This proposed system contains a threshold number above which penalties will be set. The Department believes that the proposed system provides reasonable specificity without eliminating flexibility to adjust the number and characteristics of violations for which civil penalties are assessed. The Department is still considering each of the above alternatives and solicits comments regarding the system which should be adopted.

The proposed regulations provide for mandatory assessment for each day a cessation order is unabated if the cessation order was issued for failure to timely abate a prior notice of violation. Other multiple day assessments are discretionary except all continuing violations that are assigned more than 70 points must be assessed separately for at least two days.

The present proposal affords the person against whom an assessment is proposed the opportunity for a conference with a representative of the Office to discuss the facts and circumstances surrounding the violation and the proposed penalty assessment. The proposed penalty may be adjusted for errors of fact and law but issues of collectability and conflicting evidence cannot be resolved by the conference officer. Any adjustments proposed by the conference officer must be documented in the record and are subject to management review. All conferences are open to the public. [Page 44924]

In arriving at the proposed regulations, the Office considered not providing for a conference but merely allowing for the submission of written information. This proposal would be less effective in achieving early and efficient adjustments of mistaken assessment.

DRAFTING INFORMATION

The principal authors of the proposed regulations in Parts 720, 721, 722 and 723 are: Richard Hall, Office of Surface Mining Task Force, Marcus McGraw, Office of the Solicitor, and Neil Strauss, Office of Hearings and Appeals, Department of the Interior.

REIMBURSEMENT TO STATES

The Act places primary responsibility for enforcement of the initial regulations on the States. Initial performance standards must be applied to new operations for which a permit is issued on or after six months from enactment and to existing operations nine months after enactment. As a consequence, States will need to incorporate the performance standards into all new permits issued on and after February 4, 1978. Existing permits will need to be revised or modified effective May 4, 1978. Enforcement of the initial standards will then be included as part of the States' ongoing inspection and enforcement program. A Federal enforcement program will provide oversight and backup to the State programs. This State-Federal enforcement program will continue until a permanent State regulatory program is approved by the Secretary and implemented by the State, or until June 4, 1980, whichever occurs first.

PROGRAM DEVELOPMENT GRANTS

The Act authorizes the Secretary to make annual grants for the development, administration, and enforcement of State regulatory programs. Program development grants are awarded independently of the administration and enforcement grants. However, the development of an approved State regulatory program, with or without Federal assistance, is a

necessary prerequisite for administration and enforcement grants. Development grants may be made to assist each State in the development of those components of a State regulatory program acceptable to the Secretary. Administration and enforcement grants will be available to assist the States in carrying out the functions necessary to maintain an approved State program.

DRAFTING INFORMATION

The principal author of the proposed regulations in Parts 725 and 740 is: Carl Close, Office of Surface Mining Task Force, Department of the Interior.

SMALL OPERATOR ASSISTANCE PROGRAM

PART 795 of the proposed regulations establishes procedures for providing assistance to eligible small operators to obtain data which will be required for permit applications under permanent program regulations. The proposed procedures are published at this time since it is assumed that assistance must start, in some cases, a full year before the permit application is filed. Under the proposed regulations, assistance may be started up to 6 months before the State submits a proposed regulatory program for the Secretary to approve.

The procedures are designed to require the operator to establish eligibility for assistance, including a showing that his production and production which can be attributed to him will be less than 100,000 tons per year. The assistance available includes laboratory services to determine the probable hydrologic consequences and to prepare a statement of the results of test borings or core sample analysis. Assistance does not include the cost for actual core or test borings.

The proposed regulations provide for development of a national list of qualified laboratories to provide authorized assistance. State regulatory authorities could designate, under approved State programs, additional laboratories. Comments on this process and the option of designating laboratories on a case-by-case basis are solicited.

DRAFTING INFORMATION

The principal author of the proposed regulations in Part 795 is: Donald Willen, Office of Surface Mining Task Force, Department of the Interior.

The regulations in Part 830 make it possible for employees to freely cooperate in the administration and enforcement of the Act, and discourage persons from discriminating against them for doing so. Section 703 of the Act prohibits persons from discriminating against or discharging employees or representatives of employees because the employee or representative exercised their statutory rights under the Act. Statutory rights of employees under the Act include but are not limited to the right to file a proceeding under the Act, the right to institute or cause to be instituted a proceeding under the Act and the right to testify in any proceeding resulting from the administration or enforcement of the provisions of the Act.

Regulations provide for an informal conference with the person making the complaint, the alleged discriminating official and the regional Director, upon conclusion of an investigation by the Office. The intent of the conference is to attempt to resolve problems informally without going to formal administrative proceedings.

There are two important reasons why the Informal Conference was provided. First, it will save all parties time and money. Second, it permits conciliation efforts to take place in a less formal atmosphere with all parties participating voluntarily in a good faith effort to resolve the complaint. The resolution arrived at would be a consensus rather than an imposed resolution.

The regulations also commit the Office to file a proceeding on behalf of an employee when an investigation indicates the complaint has reasonable cause. This provision was placed in the regulations to assure that non-union as well as union employees would receive the maximum protection under the Act, even when the employee might not be able to obtain the legal counsel necessary to institute a proceeding.

Regulations that would require the employee to file his own proceedings or that would require the Office to participate only as a friend of the court were rejected as not fulfilling the intent of the Act.

DRAFTING REGULATION

The principal author of the proposed regulations in Part 830 is: Jesse Jackson, Office of Surface Mining Task Force, Department of the Interior.

Interested persons may submit written comments on the proposed regulations to the Director, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240, no later than October 7, 1977.

NOTE. - The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: September 2, 1977, 9:00 a.m.
LEO M. KRULITZ, Acting Secretary of the Interior.

It is proposed to add Parts 700, 710, 715, 716, 717, 720, 721, 722, 723, 740, 795, and 830 to Title 30, Chapter VII to read as follows:

PART 700 - GENERAL

Section

700.1	Scope.
700.2	Objectives.
700.3	Authority.
700.4	Responsibilities under the Act.
700.5	Definitions.
700.11	Applicability.
700.12	Petitions to initiate rulemaking.
700.13	Prior notice of citizen suits.
700.14	Requests for records

AUTHORITY: Sections 201 and 501, Pub.L. 9887, 91 Stat. 445 (30 U.S.C. 1201).

SECTION 700.1 - SCOPE.

(a) This chapter sets forth the rules and procedures through which the Secretary of the Interior will implement the Surface Mining Control and Reclamation Act of 1977 (Pub.L. 95-87). The Act requires the Secretary to establish procedures for development and approval of programs for the regulation of surface coal mining and surface effects of underground coal mining in each State. The Act also requires the Secretary to establish an initial regulatory program which applies limited environmental performance standards to State, Federal, Indian, and private lands until the implementation of a permanent regulatory program.

(b) Regulations authorized under the Act and contained in this chapter include but are not limited to -

- (1) Environmental performance standards for surface coal mining and reclamation operations during the initial and permanent regulatory programs;
- (2) Inspection and enforcement procedures during the initial and permanent regulatory programs, including the assessment of civil penalties; [Page 44925]
- (3) Assistance to small operators in meeting permit application requirements of the permanent regulatory programs;
- (4) Requirements and approval procedures for State programs;
- (5) Requirements for surface coal mining and reclamation operations on Federal lands;
- (6) Procedures for State and Federal designation of areas unsuitable for surface coal mining operations and lands unsuitable for non-coal mining;
- (7) Conflict of interest standards for State and Federal employees;
- (8) Requirements and procedures for approval of State mining permits during the permanent regulatory program;

- (9) Requirements for posting, release, and forfeiture of performance bonds;
- (10) Standards prohibiting discrimination against employees for reporting violations of the Act and regulations;
- (11) Procedures for administering the Abandoned Mine Reclamation Fund, including approval of State plans and programs, procedures for implementing Federal programs; and
- (12) Procedure for grants for State mining and mineral research institutes.

SECTION 700.2 - OBJECTIVES.

The objectives of the regulations are to -

- (a) Establish a nationwide regulatory program to protect society and the environment from adverse effects of surface coal mining and surface impacts of underground coal mining.
- (b) Establish environmental, enforcement and administrative standards for regulatory programs;
- (c) Create a program for the reclamation of previously mined and inadequately reclaimed lands; and
- (d) Establish procedures for public review of the administrative and enforcement programs through access to data, hearings, inspections, and standing to sue for damages for non-compliance with the Act.

SECTION 700.3 - AUTHORITY.

- (a) The Secretary is authorized to administer the programs required by the Act, except -
 - (1) Provisions of the Act authorizing the Secretary of Agriculture to establish programs for the reclamation of rural lands, identification of prime agricultural lands and other responsibilities described in the Act. Regulations promulgated by the Secretary of Agriculture are in Title 7 of the Code of Federal Regulations.
 - (2) Other provisions of the Act for which responsibility is specifically assigned to other Federal agencies including the Environmental Protection Agency, Corps of Engineers, Council on Environmental Quality, and the Energy Research and Development Administration.
 - (3) Authority retained by the States to enforce State laws or regulations which are not inconsistent with the Act or these regulations.

SECTION 700.4 - RESPONSIBILITIES UNDER THE ACT.

- (a) The Director of the Office of Surface Mining Reclamation and Enforcement, under the general direction of the Assistant Secretary, Energy and Minerals, is responsible for exercising the authority of the Secretary except for -
 - (1) Initial approval or disapproval of State regulatory programs under Section 503 of the Act; and
 - (2) Designation of Federal lands as unsuitable for mining under Sections 522 and 601 of the Act.
- (b) The States are responsible for the regulation of surface coal mining and reclamation operations and the reclamation of abandoned mine lands in accordance with procedures in this Chapter.
- (c) The Secretary may delegate to a State certain authority for regulating coal mining on Federal lands through a cooperative agreement.

SECTION 700.5 - DEFINITIONS.

As used throughout the regulations of this chapter, except where otherwise indicated -

Act means the Surface Mining Control and Reclamation Act of 1977, (Pub.L 95-87).

Auger mining means a method of mining coal at a cliff or highwall by drilling holes laterally into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

Coal means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by A.S.T.M. designation 0-388-66.

Director means the Director, Office of Surface Mining Reclamation and Enforcement or his representative.

Federal lands means any land, including mineral interests, owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except Indian lands: *Provided*, That for the purposes of this Act lands or mineral interests east of the one hundredth meridian west longitude owned by the United States and entrusted to or managed by the Tennessee Valley Authority shall not be subject to Sections 714 (Surface Owner Protection) and 715 (Federal Lessee Protection) of the Act.

Federal lands program means a program established by the Secretary pursuant to Section 523 of the Act to regulate surface coal mining and reclamation operations on Federal lands.

Federal program means a program established by the Secretary pursuant to Section 504 of the Act to regulate surface coal mining and reclamation operations on lands within a State in accordance with the requirements of the Act.

Fund means the Abandoned Mine Reclamation Fund established pursuant to Section 401 of the Act.

Imminent danger to the health and safety of the public means the existence of any conditions or practice, or any violation of a permit or other requirement of the Act in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such conditions, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself to the danger during the time necessary for abatement.

Indian lands means all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.

Indian tribe means any Indian tribe, band, group, or community having a governing body recognized by the Secretary.

Office means the Office of Surface Mining Reclamation and Enforcement established under Title II of the Act.

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

Permit, except as used in references to permits during the initial regulatory program, means a permit to conduct surface coal mining and reclamation operations issued by the State regulatory authority pursuant to a State program or by the Secretary pursuant to a Federal program. During the initial regulatory program, permit means a permit to conduct surface coal mining and reclamation operations issued by a State under State law. During the initial regulatory program, permit also means a mining plan approved pursuant to Part 211 of this Title held by a lessee of Federal lands during the initial program.

Person, means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization.

Regulatory authority means the State regulatory authority where the State is administering the Act under an approved State program or the Secretary where the Secretary is administering the Act.

Secretary means the Secretary of the Interior or his representative.

Significant, imminent environmental harm to land, air, or water resource is determined as follows:

- (a) An environmental harm is any adverse impact on land, air, or water resources, including plant and animal life.
- (b) An environmental harm is imminent if a condition or practice exists which is causing or may reasonably be expected to cause such environmental harm if the condition or practice is not abated within a reasonable time. [Page 44926]
- (c) An environmental harm may be significant even if it is repairable. An environmental harm is significant if that harm is appreciable and not readily repairable.

State lands means all lands including private lands within a State except Federal or Indian lands.

State program means a program established by a State pursuant to section 503 to regulate surface coal mining and reclamation operations on lands within such State in accord with the requirements of the Act and regulations issued by the Secretary under the Act.

State regulatory authority means the department or agency in each State which has primary responsibility at the State level for administering the Act under both the initial and permanent regulatory programs.

Surface Coal Mining Operations means : (a) Activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 516 surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site; *Provided, however* , that such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percentum of the tonnage of minerals removed for purposes of commercial use or sale or coal exploration subject to Section 512 of the Act; and (b) the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land, the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

Surface coal mining and reclamation operations and all activities necessary and incident to the reclamation of such operations. This term includes the term "surface coal mining operations."

SECTION 700.11 - APPLICABILITY.

The regulations in this chapter apply to all surface coal mining and reclamation operations except -

- (a) The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him;
- (b) The extraction of coal for commercial purposes by surface mining which affects two acres or less;
- (c) The extraction of coal as an incidental and non-commercial part of Federal, State, or local government financed highway or other construction;
- (d) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the mineral tonnage removed for commercial use or sale; and
- (e) The extraction of coal on Indian lands which are covered by 25 CFR 177. Subpart B.

SECTION 700.12 - PETITIONS TO INITIATE RULEMAKING.

(a) Any person or State may petition the Director to initiate a proceeding for the issuance, amendment, or repeal of any regulation issued under the Act. The petition shall be filed in the Office of the Director, Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior, Washington, D.C. 20240.

(b) The petition shall set forth a concise statement of the facts and law which require issuance, amendment, or repeal of a regulation under the Act and shall indicate whether the petitioner desires a public hearing.

(c) Upon receipt of a petition, the Director shall publish a notice in the FEDERAL REGISTER seeking comments from the public on the proposed change, and may hold a public hearing, may conduct an investigation or take other actions to determine whether or not the petition should be granted.

(d) Within 90 days from the date of receipt, the Director shall issue a written decision either granting or denying the petition. If the petition is granted the Director shall commence a rulemaking proceeding. If the petition is denied, the Director shall notify the petitioner in writing setting forth the reasons for denial.

SECTION 700.13 - PRIOR NOTICE OF CITIZEN SUITS.

A person who intends to commence a civil action on his own behalf under Section 520 of the Act shall give notice of intent to do so in accordance with the regulations of this section.

(a) Notification shall be given by certified mail to the Secretary and the Director in all cases and to the head of the State regulatory authority if the complaint involves or relates to a specific State. A copy of the notification shall be provided by first class mail to the Regional Director of the Office if the complaint involves or relates to a specific region.

(b) Notification shall be given by certified mail to the alleged violator if the complaint alleges a violation of the Act, or of any regulation, order, or permit issued under the Act.

(c) Service of a notice under this section is complete upon mailing to the last known address of the person being notified.

(d) A person giving notice regarding an alleged violation of the Act or any regulation, order, or permit issued under the Act shall state, to the extent known -

(1) Sufficient information to enable the recipient to identify the provision of the Act, rule, regulation, order, or permit allegedly violated;

(2) The action or omission alleged to constitute a violation;

(3) The person or persons responsible for the alleged violation;

(4) The dates or dates of the alleged violation;

(5) The name, address, and telephone number of the person giving notice; and

(6) The name, address, and telephone number of legal counsel, if any.

(e) A person giving notice regarding an alleged failure by the Secretary of a State regulatory authority to perform a mandatory act or duty under the Act shall state, to the extent known -

(1) The provision or provisions of the Act containing the mandatory act or duty allegedly not performed;

(2) Sufficient information to enable the recipient to identify the omission alleged to constitute the failure to perform a mandatory act or duty under the Act;

(3) The name, address, and telephone number of the person giving notice; and

(4) The name, address, and telephone number of legal counsel, if any.

SECTION 700.14 - REQUEST FOR RECORDS.

(a) Records required to be made available locally to the public under the Act shall be located at the office having jurisdiction over the area involved.

(b) Other records or documents may be requested under 43 CFR Part 2, which implements the Freedom of Information Act and the Privacy Act.

PART 710 - INITIAL REGULATORY PROGRAM

Section

710.1	Scope.
710.2	Objectives.
710.3	Authority.
710.4	Responsibility.
710.5	Definitions.
710.11	Applicability.
710.12	Special exemption for small operations on State lands.

AUTHORITY: Sections 201, 501 and 502, Pub.L. 95-87, 91 Stat. 445 (30 U.S.C. 1201)

SECTION 710.1 - SCOPE.

(a) This part provides general introductory and applicability material for the initial regulatory program required by section 502 or other sections of the Act which require early implementation of the Act for surface coal mining and reclamation operations. The initial regulatory program is effective until permanent regulatory programs are approved in accordance with Sections 503, 504 or 523 of the Act. [Page 44927]

(b) The initial regulatory program which this part introduces includes:

- (1) General performance standards of Part 715 of this chapter;
- (2) Special performance standards of Part 716 of this chapter;
- (3) Adoption of State standards of Part 717 of this chapter;
- (4) Inspection and enforcement procedures of Parts 720-723 of this chapter; and
- (5) Reimbursements to States of Part 725 of this chapter.

SECTION 710.2 - OBJECTIVES.

(a) The objectives of the initial regulatory program are to -

- (1) Protect the health and safety of the public and minimize the damage to the environment resulting from surface coal mining and the surface effects of underground coal mining during the interval between enactment of the Act and adoption of a permanent State or Federal regulatory program; and
- (2) Coordinate the State and Federal regulatory programs to accomplish the purposes of the Act.

SECTION 710.3 - AUTHORITY.

(a) The Secretary is directed to implement an initial regulatory program within six months after the date of enactment of the Act in each State which regulates surface coal mining until a State program has been approved or until a Federal program has been implemented.

(b) The Secretary is also authorized to regulate surface coal mining operations on Federal lands by the Mineral Leasing Act of February 25, 1920, as amended, (30 U.S.C. 181-287) and the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359) and on Indian lands by various Indian Lands Act. Additional regulations under these Acts are in 30 CFR Part 211, 43 CFR Part 3040 and 25 CFR Part 177.

SECTION 710.4 - RESPONSIBILITY.

(a) Under the general direction of the Assistant Secretary, Energy and Minerals the Director is responsible for administering the initial regulatory program established by the Secretary.

(b) The States are responsible for issuing permits and inspection and enforcement on State lands to insure compliance with the initial performance standards in Parts 715-716 of this chapter. States are required to file copies of inspection reports with the Office. States are also responsible for assuring that permits are not issued which would be in conflict with the prohibitions against mining found in Section 510 of the Act, particularly in regard to alluvial valley floors and prime farm lands.

SECTION 710.5 - DEFINITIONS.

As used throughout the initial regulatory program the following terms have the specified meanings unless otherwise indicated:

Acid drainage means water with a pH of less than 6.0 discharged from active or abandoned mines and from areas affected by coal mining operations.

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.

Alluvial valley floors means unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits.

Approximate original contour means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the regulatory authority determines that they are in compliance with Section 715.7 of this chapter.

Aquifer. A zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

Combustible material means organic material that is capable of burning either by fire or through a chemical process (oxidation) accompanied by the evolution of heat.

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

Disturbed area means those lands that have been affected by surface coal mining and reclamation operations.

Diversion means a channel constructed for the purpose of transporting water from areas where it is in excess to areas where it can be used or disposed of safely.

Downslope means the land surface between a valley floor and the outcrop of the lowest coalbed being mined along each highwall.

Embankment means an artificial deposit of materials that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

Ground water means subsurface water that fills available openings in rock or soil materials such that they may be considered water-saturated.

Highwall means the face of an exposed overburden and coal in an open cut of a surface or underground coal mine.

Hydrologic balance means an accounting of the quality and quantity of inflow to, outflow from, and storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the relationship between precipitation, runoff, evaporation, and the change in ground-and surface-water storage and is usually expressed by a hydrologic equation.

Hydrologic regime means the entire state of water movement in a given area. It is a function of the climate, and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form and falls as

precipitation, moves thence along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

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

Intermittent or perennial stream means a stream or part of a stream that flows continuously during all (perennial) or for at least one month (intermittent) of the calendar year as a result of ground-water discharge or surface runoff. The term does not include an ephemeral stream which is one that flows for less than one month of a calendar year and only in direct response to precipitation in the immediate watershed and whose channel bottom is always above the local water table.

Leachate means a liquid that has percolated through soil, rock or waste and has extracted dissolved or suspended materials.

Noxious plants means species that have been included on official State lists of noxious plants for the State in which the operation occurs.

Overburden means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil which overlies the coal to be mined.

Outslope means the exposed area sloping away from a bench or terrace being constructed as a part of a surface coal mining and reclamation operation.

Premining land use means the highest and best use of the land which could have been achieved, taking into account the locally accepted best land management practices, prior to any mining.

Productivity means the vegetative yield produced by a unit area for a unit of time.

Recharge capacity means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

Roads means access and haul roads constructed, used, reconstructed, improved or maintained for use in surface coal mining and reclamation operations, including use 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 county roads are excluded.

Recurrence interval means the precipitation event expected to occur, on the average, once in a specified interval. For example, the 25-year 24-hour precipitation event would be that 24-hour precipitation event expected to be exceeded on the average once in 25 years. Magnitude of such events are as defined by the National Weather Service and Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.," May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom. [Page 44928]

Run off water means precipitation that flows along the land surface before it enters a defined stream channel and becomes concentrated streamflow.

Sediment means undissolved organic and inorganic material transported or deposited by water.

Settling pond means any natural or artificial structure or depression used to remove sediment from water and store sediment or other debris.

Slope means average inclination of a surface, measured from the horizontal. Normally expressed as a unit of vertical distance to a given number of units of horizontal distance (e.g., $1v$ to $5h = 20$ percent = 11.6 degrees).

Soil horizons means a soil profile that consists of two or more layers lying one below the other and parallel to the land surface. The layers are known as horizons and are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are -

(a) *A horizon*. The uppermost layer in the soil profile often called the surface soil. It is the part of the soil in which organic matter is most abundant, and where leaching of soluble or suspended particles is the greatest.

(b) *B horizon*. The layer immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron or aluminum than the A or C horizons.

(c) *C horizon*. The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

Spoil means overburden that has been removed during surface mining.

Stabilize means any method used to prevent movement of soil, spoil piles or areas of disturbed earth and includes increasing bearing capacity, increasing shear strength, draining, compacting or revegetating.

Surface water means water, either flowing or standing, on the surface of the earth.

Suspended solids means organic or inorganic materials carried or held in suspension in water that will remain on a 0.45 micron filter as differentiated from dissolved solids. Dissolved solids are solids that pass into solution.

Topsoil means the A soil horizon and underlying unconsolidated materials including those portions of the B and C soil horizons that have properties capable of producing desirable vegetation.

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 means water that is discharged from active or abandoned mines and from other areas affected by coal mining operations and which contain a substance which through chemical action or physical effects is likely to kill, injure or impair an organism.

Watercourse means a natural stream course that heads in a given drainage basin and has a channel with a well-defined bed between visible banks or through a definite depression in the land and has a permanent or periodic supply of water.

Water table means upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

SECTION 710.11 APPLICABILITY.

(a) *Operations on State lands.* (1) The requirements of the initial regulatory program do not apply to surface coal mining and reclamation operations which occur on lands within a State which does not regulate such operations.

(2) General obligations. (i) A person conducting coal mining operations shall have a permit if required by the State in which he is mining and shall comply with State laws and regulations that are not inconsistent with this chapter.

(ii) A person conducting coal mining operations shall not engage in any operations which result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public.

(iii) A person conducting coal mining operations shall not engage in any operations which result in a condition or constitute a practice that causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(3) Performance Standards Obligations. (i) A person who conducts any coal mining operations under an initial permit issued by a State on or after February 3, 1978, shall comply with the requirements of the initial regulatory program. Such permits shall contain terms that comply with the relevant performance standards of the initial regulatory program.

(ii) On and after May 3, 1978, any person conducting coal mining operations shall comply with the initial regulatory program, except as provided in Section 710.12.

(iii) A person shall comply with the obligations of this section until he has received a permit to operate under a permanent State or Federal regulatory program.

(b) *Operations on Indian Lands.* On or after December 16, 1977, a person conducting coal mining operations on Indian lands shall comply with the General Performance Standards of Parts 715 and 716 of this chapter insofar as they are incorporated in Part 177, Subpart B, of Title 25 of the Code of Federal Regulations.

(c) *Operations on Federal Lands.* (1) A person conducting coal mining operations on Federal lands that commence operations on or after February 3, 1978, shall comply with the General Performance Standards of Part 715 of this chapter and the Special Performance Standards of Part 716 of this chapter.

(2) Any person conducting coal mining operations on Federal lands on and after May 3, 1978 shall comply with the General Performance Standards of Part 715 of this chapter and the Special Performance Standards of Part 716 of this chapter.

(d) *Operations on all lands.* (1) The requirements of this chapter apply to operations conducted after the effective date of these regulations on lands from which the coal has not yet been removed and to any other lands used, disturbed or redisturbed in connection with or to facilitate mining or to comply with the requirements of the Act or these regulations.

(2) Any pre-existing, nonconforming structure or facility which is used in connection with or to facilitate mining after the effective date of these regulations shall comply with the requirements of the regulations, unless -

(i) It is physically impossible to bring the structure or facility into compliance by the effective date.

(ii) The permittee or operator submits to the regulatory authority by February 3, 1978, a plan designed by a professional engineer for the reconstruction of the structure or facility.

- (iii) The regulatory authority approves the plan and
- (iv) Reconstruction is started and completed as soon as possible. No plan shall be approved unless construction is to begin by May 4, 1978, and is to be completed by November 4, 1978, at the latest.

SECTION 710.12 - SPECIAL EXEMPTION FOR SMALL OPERATORS ON STATE LANDS.

(a) As used in this section -

- (1) *Permittee* means a person holding a permit under State law and to whom the permit was originally issued.
- (2) *Renewed permit* means any extension of the original area or duration of a permit.

(b) If a person is an eligible permittee under paragraph (c) of this section and intends to conduct surface coal mining operations on or after May 3, 1978, that permittee may receive from the Director a limited exemption from the General Performance Standards of Part 715 of this chapter and the Special Performance Standards of Part 716 of this chapter. The exemption shall not -

- (1) Include the Special Performance Standard of Section 716.2(a)(1) of this chapter regarding the handling of spoil;
- (2) Apply to surface coal mining operations to be conducted under a permit or renewed permit issued on or after August 3, 1977;
- (3) Include any general or special performance standard to which a permittee is required to comply by a State;
- (4) Relieve the permittee of the general obligations imposed by Section 710.11(a) of this part regarding conditions or practices creating imminent danger or causing significant, imminent environmental harm; and [Page 44929]
- (5) Relieve the permittee of any obligations under State law, regulation or permit.

(c) A permittee is eligible for an exemption under this section -

- (1) If the actual and attributed production of that permittee is estimated by the Director not to exceed 1,000,000 tons of coal during the year ending on December 31, 1978; and
- (2) If that permittee -
 - (i) Was in existence on July 31, 1976, and during the year ending on July 31, 1977, the actual and attributed production of that permittee was 100,000 tons of coal or less from all surface and underground coal mining operations; or
 - (ii) Came into existence after July 31, 1976, and prior to May 2, 1977, and the actual and attributed production from all surface and underground coal mining operations of that permittee in the average calendar month was an amount of coal which when multiplied by 12 yields a product of 100,000 tons or less.

(d) Applications for an exemption under this section shall be submitted to the Regional Director of the Office with a copy to the State regulatory authority.

(e) The request for exemption shall include -

- (1) The name and address of the permittee and of persons who control the permittee by reason of stock ownership or otherwise.
- (2) The name, location, Mining and Enforcement and Safety Administration identification numbers and permit numbers of the surface coal mining operations for which exemption is sought, including a statement of the dates each permit was issued or renewed and will expire.
- (3) The date and method by which the permittee was created if the permittee is not an individual.
- (4) A listing of all surface and underground coal mining operations showing -

(i) Actual production for the year ending July 31, 1977, attributed to the permittee and the inclusive dates of operation.

(ii) Estimated production for the year ending December 31, 1978, attributed to the permittee and the anticipated dates of operation.

- (5) A copy of coal severance tax returns for coal produced during the year ending on July 31, 1977.

(6) A copy of a notice the permittee has published in a local newspaper of general circulation once a week for two weeks stating -

- (i) That an application for a small operator exemption will be filed;
- (ii) The name and address of the permittee;
- (iii) The location of the surface coal mining operations to which the exemption will apply; and
- (iv) That public comments may be submitted to the Director, Office of Surface Mining Reclamation and

Enforcement at the appropriate regional office address.

- (f) Production from the following operations shall be attributed to the permittee -
- (1) All coal produced by operations beneficially owned entirely by the permittee.
 - (2) The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the permittee owns more than a 5-percent interest.
 - (3) All coal produced by persons who directly or indirectly control the permittee by reason of stock ownership direction of the management or in any other manner whatsoever.
 - (4) The pro rata share of coal produced by operations so controlled by the person who controls the permittee.
- (g) The Director shall grant the request for an exemption if, upon the basis of the request and any State regulatory authority of public comments, he finds that -
- (1) The permittee has satisfied his burden of proof by demonstrating eligibility for the exemption; and
 - (2) The exemption will not be inconsistent with State law, regulation or permit terms.
- (h) Any person aggrieved by the decision of the Director under this section may appeal within 20 days from receipt of that decision to the Office of Hearings and Appeals under 43 CFR Part 4; The Office of Hearing and Appeals and the Secretary shall have the authority to stay the exemption during the pending of the appeal.
- (i) The exemption shall be effective on the date approved. It shall remain in effect until expiration or renewal of the State permit to which it applies, December 31, 1978, or until reversed, whichever is earlier.

PART 715 - GENERAL PERFORMANCE STANDARDS

Section

715.11	General obligations.
715.12	Signs and markers.
715.13	Postmining use of land.
715.14	Backfilling and grading.
715.15	Disposal of spoil and waste materials in areas other than the mine workings or excavations.
715.16	Topsoil handling.
715.17	Protection of the hydrologic system.
715.18	Dams constructed of refuse materials, general.
715.19	Use of explosives.
715.20	Revegetation.

AUTHORITY: Sections 201 and 501, Pub.L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SECTION 715.11 - GENERAL OBLIGATIONS.

- (a) *Compliance.* All surface coal mining and reclamation operations conducted on lands where any element of the operations is regulated by a State shall comply with the initial performance standards of this part according to the time schedule specified in Section 710.11 of this chapter, Special Initial Performance Standards are established by Part 716 of this chapter for -
- (1) Surface coal mining operations on steep slopes.
 - (2) Surface coal mining operations involving mountain-top removal.
 - (3) Special bituminous coal mines
 - (4) Anthracite surface coal mining operations.
 - (5) Surface coal mining operations in Alaska.
 - (6) Surface coal mining operations on prime farmlands.
 - (7) Surface effects of underground coal mines.

Where State environmental protection standards are adopted for a specific State because they are more stringent than the standards of this part, they will be published in Part 717 of this chapter.

- (b) *Authorizations to operate.* A copy of all current permits, licenses, approved plans or other authorizations to operate the mine shall be available for inspection at or near the mine site.

(c) *Mine Maps.* Any person conducting surface coal mining and reclamation operations on and after May 3, 1978, shall submit two copies of accurate maps of the mine and permit area at a scale not to exceed 1:1000, certified by a surveyor or engineer. The maps shall show as of May 3, 1978 the lands from which coal has not yet been removed, lands and structures which have been used or disturbed to facilitate mining. One copy of the mine map shall be submitted to the State regulatory authority and one copy shall be submitted to the Regional Director, OSM, before June 3, 1978.

SECTION 715.12 - SIGNS AND MARKERS.

(a) *Specifications.* All signs required to be posted shall be of a standard design that can be seen and read easily from a distance of 100 feet and they shall be made of durable material. The signs and other markers required by paragraphs (b), (c), and (d) of this section shall be maintained during all operations and until release of all bonds for the permit area. All signs and markers shall be displayed conspicuously within the permit area and conform to local ordinances and codes.

(b) *Mine and permit identification signs.* Signs identifying the mine area shall be displayed at all points of access to the mine property from public highways. Signs shall show the name, business address, and telephone number of the permittee or operator and identification numbers of mining and reclamation permits or other authorizations to operate.

(c) *Perimeter markers.* The perimeter of the mine property shall be clearly marked by durable markers that extend at least 3 feet above the ground. Permit numbers must be permanently affixed to the markers. On mine areas of 10 acres or more, the markers shall be spaced a maximum of 400 feet apart; on mine areas of less than 10 acres, the markers shall be spaced a maximum of 200 feet apart. Within the perimeter of the mine property, identification markers shall be established showing the boundary of coal which has not been removed prior to May 3, 1978. Temporary markers may be used during coal removal operations but the boundary shall be re-established by permanent markers after final surface configuration in an area is established. [Page 44930]

(d) *Buffer zone markers.* Buffer zones as defined in Section 715.17 shall be marked at not more than 200-foot intervals along the interior boundary of the buffer zone. The signs shall read "Buffer Zone - Limited Access" and be placed so as to be seen by all persons employed on the mine property.

(e) *Blasting signs.* If blasting is necessary to conduct surface coal mining operations, signs reading "Blasting Area" shall be displayed conspicuously at the edge of blasting areas along access and haul roads within the mine property. Signs reading "Blasting Area" and explaining the blasting warning and all-clear signals shall be posted at all entrances to the mine property.

(f) *Topsoil markers.* Where topsoil or other vegetation supporting material is segregated and stockpiled according to Section 715.16(c), the stockpiled material shall be marked with signs that read "Topsoil." These signs shall remain in place until the material is removed.

SECTION 715.13 - POSTMINING USE OF LAND.

(a) *General.* All disturbed areas shall promptly be restored (1) to conditions that are capable of supporting the uses which they were capable of supporting before any mining, or (2) to higher or better uses approved under criteria and procedures of paragraph (d) of this section.

(b) *Criteria for establishing premining use of land.* Criteria for establishing the premining use of the land shall be those uses which the lands have previously or were capable of supporting within the mine property, areas surrounding the mine property, or areas located in similar terrain and climate within the region that have been managed using methods considered practicable for the region. The appropriateness of postmining land use plans shall not be judged on the basis of lands that (1) were previously mined and not reclaimed to meet the standards of this part, (2) were badly eroded or overgrazed so as to change the vegetation community to one unsuitable for grazing, or (3) are otherwise determined by the regulatory authority to have been poorly managed. However, if the lands within the mine property were previously mined and not reclaimed to the standards of this part, the postmining use of the land shall be evaluated against the highest possible use compatible with surrounding unmined lands. If the premining use of the land was changed within five years of the beginning of mining, the comparison of post mining use to premining use shall include a comparison to the historic use of the land as well as its use immediately preceding mining.

(c) *Land-use categories.* Proposed land uses will be considered subject to this section when they change from one to another of the land-use categories identified in this paragraph. The regulatory authority shall consider the following categories, at a minimum, to represent differing land uses. When an alternative postmining use is proposed the permittee or operator shall meet the requirements of paragraph (d) of this section and all other applicable environmental protection performance standards of this part and Parts 716 and 717 of this chapter.

(1) *Heavy industry.* Manufacturing facilities, powerplants, airports or similar facilities.

(2) *Light industry and commercial services.* Office buildings, stores, parking facilities, apartment houses, motels, hotels or similar facilities.

(3) *Public services.* Schools, hospitals, churches, libraries, water-treatment facilities, solid-waste disposal facilities, public parks and recreation facilities, major transmission lines, major pipelines, highways, roads, underground and surface utilities and other servicing structures and appurtenances,

(4) *Residential.* Single- and multiple-family housing (other than apartment houses over three stories) with necessary support facilities. Support facilities may include commercial services incorporated in and comprising less than 5 percent of the total area of housing capacity, associated open space, and minor parking and recreation facilities supporting the housing.

(5) *Agricultural.* (i) *Cropland.* Land used primarily for the production of cultivated crops for harvest. Land used for facilities in support of farming operations are included.

(ii) *Rangeland.* Land used for grazing by livestock and big game animals on which the climax (natural potential) plant community is dominated by grasses, grasslike plants, forbs and shrubs.

(iii) *Hayland or pasture.* Land used for meadow grasses which are cut and cured for livestock feed.

(iv) *Forest.* Land used primarily for the production of adapted wood crops.

(6) *Fish and wildlife habitat.* Wetlands, fish and wildlife habitat, and areas managed primarily for fish and wildlife; may include impoundments that have a capacity of less than 20 acre-feet and a surface area at the high-water mark of less than 2 acres.

(7) *Combined uses.* Any appropriate combination of land uses where one land use is designated as the primary land use and one or more other land uses are designated as secondary land uses.

(d) *Criteria for approving alternative postmining use of land.* An alternative postmining land use may be approved by the regulatory authority, after consultation with the land owner or the surface management agency on Federal lands, if the following criteria are met. Proposals to remove an entire coal seam running through the upper part of a mountain, ridge, or hill must also meet these criteria in addition to the requirements of Section 716.3 of this chapter.

(1) The proposed land use is compatible with adjacent land use and, where applicable, with land-use policies and plans. A written statement of the views of the authorities with statutory responsibilities for land-use policies and plans shall accompany the request for approval.

(2) Available data on the long-term expected need and market show that the proposed land use can be achieved and maintained.

(3) Specific and feasible plans have been prepared which included a time schedule showing how the proposed land use will be achieved within a reasonable time after mining and how the achieved land use will be sustained. The regulatory authority may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(4) Completion of the necessary public facilities is assured as evidenced by appropriate letters of commitment to provide them in a manner compatible with the operator's plans.

(5) Specific and feasible plans for financing attainment and maintenance of the postmining land use including letters of commitment if the financing is to be provided by someone other than the permittee or operator.

(6) The plans are designed by a registered professional engineer, or other professional, who is knowledgeable about the proposed land-use category and will ensure that the plans conform to nationally accepted standards to assure adequate land stability, drainage, and vegetation cover, and will provide an appropriate aesthetic design for the postmining use of the site.

(7) The proposed use or uses will not present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water flow diminution or pollution.

(8) The use or uses will not involve unreasonable delays in reclamation.

(9) Necessary approval of measures to prevent or mitigate adverse effects on fish and wildlife has been obtained from the regulatory authority and appropriate State and Federal fish and wildlife management agencies.

(10) Proposals to change from premining land uses of rangeland, fish and wildlife habitat, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable Federal, State, and local laws, shall be reviewed by the regulatory authority to assure that -

(i) There is a firm written commitment by the permittee or by the land owner or land manager to provide

sufficient crop management after release of applicable performance bonds to assure that the proposed postmining cropland use remains practical and reasonable, and will not pose an actual or probable threat of water diminution or pollution; and

(ii) There is sufficient water available and committed to maintain crop production. [Page 44931]

(iii) The quality and quantity of topsoil has been shown to be sufficient to support the proposed use over a period of years.

(iv) The proposed cropland use will be maintained after release of applicable bonds and is not proposed only as a temporary alternative to re-establishing the premining use of the land.

(11) The regulatory authority has provided by public notice not less than 45 days nor more than 60 days for interested citizens and local, State and Federal agencies to review and comment on the proposed land use.

SECTION 715.14 - BACKFILLING AND GRADING.

In order to achieve the approximate original contour, the permittee or operator shall, except as provided in paragraphs (d), (e), and (g) of this section, transport, backfill, compact unless otherwise approved by the regulatory authority, and grade all spoil material to eliminate all highwalls, spoil piles, and depressions. Cut-and-fill terraces may be used only in those situations expressly identified in this section. Land above the highway may be disturbed only in the amount necessary to comply with this section and Section 715.17. The postmining graded slope must be determined by the premining average of natural slopes in the area as defined in paragraph (a) of this section.

(a) *Slope measurements.* (1) To determine the average natural slope of the area before mining, 10 slopes, or more as specified by the regulatory authority in accordance with site conditions, must be surveyed, measured, and recorded. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below the coal outcrop; or, where this is impractical, at locations specified by the regulatory authority. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances as determined by the regulatory authority to be representative of the premining configuration of the land.

(2) After the disturbed area has been graded and the topsoil replaced, the final graded slopes shall be measured at the beginning and end of lines established on the prevailing slope at locations representative of premining slope conditions and approved by the regulatory authority. These measurements must not be made so as to allow unacceptably steep slopes to be constructed.

(b) *Moderate slopes.* Where natural slopes are determined according to paragraph (a) of this section to average less than 20 degrees, or such lesser slope as the regulatory authority requires, the final graded slopes shall not exceed either the average maximum natural slope or any lesser slope as specified by the regulatory authority based on consideration of soil, climate, or other characteristics of the surrounding area.

(c) *Steep slopes.* (1) Where natural slopes are determined according to paragraph (a) of this section to average 20 degrees or more, or such lesser slope as the regulatory authority defines as "steep slope," the final graded slopes shall not exceed either the average maximum natural slope or any lesser slope as specified by the regulatory authority based on consideration of soil, climate, or other characteristics of the surrounding area.

(2) In order to conserve soil moisture and to control erosion on final graded slopes, cut-and-fill terraces along mine benches may be allowed if the terraces are compatible with the postmining land use approved under Section 715.13, will prevent erosion, and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(i) The width of the individual terrace bench shall not exceed 20 feet.

(ii) The vertical distance between terraces shall be as specified by the regulatory authority to prevent excessive erosion and to provide long-term stability.

(iii) The slope of the terrace face shall not exceed 1 v : 2 h (50 percent).

(iv) The terrace shall have adequate slopes to divert drainage away from the face of the terrace and into drainage systems that are stabilized by vegetation or other stabilization methods that will require minimal maintenance after mining.

(v) Culverts and underground rock drains shall not be used on the terrace unless approved by the regulatory authority.

(3) All operations on natural slopes of 20 degrees or more as stated as paragraph (c)(1) of this section shall meet the provisions of Section 716.2 of this chapter.

(d) *Mountaintop removal* . Where surface mining operations will remove entire coal seams in the upper part of a mountain, ridge, or hill by removing all of the overburden, final graded top plateau slopes on the mined area shall be less than 1 v :5h so as to create a level plateau or gently rolling configuration and the outcrops of the plateau shall not exceed 1 v :2h , except where engineering data substantiates and the regulatory authority finds that a minimum static safety factor 1.5 will be attained. Although the area need not be restored to approximate original contour, all highwalls, spoil piles, and depressions except as provided in paragraph (e) of this section shall be eliminated. All mountaintop removal operations shall meet the provisions of Section 716.3 of this chapter.

(e) *Depressions* .The requirement of this section to achieve approximate original contour does not prohibit construction of small depressions if they are approved by the regulatory authority to minimize erosion, conserve soil moisture or promote revegetation. However, the depressions shall be compatible with the approved postmining land use and shall not be inappropriate substitutes for construction of power grades on the reclaimed lands. Depressions approved under this section shall have a holding capacity of less than 1 cubic yard of water or, if it is necessary that they be larger, shall not restrict normal access to the area.

(f) *Definition of thin and thick restored overburden* . The thin overburden provisions of paragraph (g) of this section apply where the final thickness is less than 0.8 of the initial thickness. The thick overburden provisions of paragraph (h) of this section apply where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness. Final thickness is the product of the overburden thickness times the bulking factor to be determined for each mine area.

(g) *Thin overburden* . In surface coal mining operations carried out continuously in the same limited pit area for more than 1 year from the day coal removal operations begin and where the volume of all available spoil and suitable waste materials is demonstrated to be insufficient to achieve approximate original contour, surface coal mining operations shall be conducted to meet the following standards if the operations do not meet the criteria specified in Section 716.4 of this chapter:

(1) Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire mine area, to attain the lowest practicable grade, which may not exceed the angle of repose, and to provide adequate drainage and long-term stability of the regraded areas.

(2) Eliminate highwalls by reshaping to stable slopes not exceeding 1 v :2h (50 percent), or such lesser slopes as the regulatory authority may specify to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use.

(3) Transport, backfill, grade, and revegetate to achieve an ecologically sound land use compatible with the prevailing land use in unmined areas surrounding the permit area.

(4) Transport, backfill and grade to ensure that impoundments are constructed only where it has been demonstrated to the regulatory authority's satisfaction that all requirements of Section 715.17 have been met and that the impoundments have been approved by the regulatory authority as meeting the requirements of this part and all other applicable Federal and State regulations.

(h) *Thick overburden*. In surface coal mining operations where the volume of spoil is demonstrated to be more than sufficient to achieve the approximate original contour surface coal mining operations shall be conducted to meet the following standards:

(1) Transport, backfill, and grade all spoil and wastes not required in the surface mining area to achieve approximate original contour to the lowest practicable grade.

(2) Deposit, backfill, and grade excess spoil and wastes only within the permit area and dispose of such materials in conformance with Section 715.15.

(3) Transport, backfill, and grade excess spoil and wastes to maintain the hydrologic balance in accordance with Section 715.17 and to provide long-term stability. [Page 44932]

(4) Transport, backfill, grade, and revegetate wastes and excess spoil to achieve an ecologically sound land use compatible with the prevailing land uses in unmined areas surrounding the permit area.

(5) Eliminate all highwalls and depressions except as stated in paragraph (e) of this section by filling with spoil and suitable waste materials.

(i) *Regrading to remove rills and gullies* . When rills or gullies deeper than 6 inches form in areas that have been regraded and the top soil replaced but vegetation has not yet been established, the permittee shall fill, compact, or otherwise stabilize the rills and gullies and reseed or replant the areas according to Section 715.20.

(j) *Covering coal and acid-forming, toxic-forming, combustible, and other waste materials; stabilizing backfilled materials; and using waste material for fill*. (1) *Cover*. All undisturbed coal seams and any acid-forming, toxic-forming,

combustible materials or any other waste materials as identified by the regulatory authority that are exposed, used, or produced during mining shall be treated to neutralize potential toxicity and permanently covered with a minimum of 5 feet of nontoxic and noncombustible material, in order to prevent water pollution, adverse effects on plant growth and land uses, and sustained combustion.

(2) *Stabilization* . Backfilled materials shall be compacted wherever necessary to prevent leaching of toxic materials into surface or subsurface waters in accordance with Section 2020.17(g) and wherever necessary to ensure the stability of the backfilled materials. The equipment to be used, the method of compacting material and the design specifications shall be approved by the regulatory authority before the toxic materials are covered.

(3) *Use of waste materials as fill* . Before waste materials from a coal preparation or conversion facility or from other activities conducted outside the permit area such as municipal wastes are used for fill material, it must be demonstrated to the regulatory authority by means of chemical and physical analyses that use of these materials will not adversely affect water quality, water flow, and vegetation; will not present hazards to public health and safety; and will not cause instability in the backfilled area.

(k) *Grading along the contour* . All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil in accordance with Section 715.16, shall be done along the contour to minimize subsequent erosion and instability. If grading along the contour would be hazardous to equipment operators, grading in a direction other than generally parallel to the contour may be approved by the regulatory authority.

SECTION 715.15 - DISPOSAL OF SPOIL AND WASTE MATERIAL IN AREAS OTHER THAN THE MINE WORKINGS OR EXCAVATIONS.

(a) *Disposal of spoil and wastes in other than valley or head-of-hollow fills* . Spoil and waste material not required to achieve the approximate original contour may be transported to and placed in a controlled (engineered) manner in disposal areas other than the mine workings or excavations only if all the following conditions, in addition to the other requirements of this part, are met:

(1) The disposal areas shall be within the permit area, and they must be approved by the regulatory authority.

(2) The disposal areas shall be located on the most moderate sloping and naturally stable areas available as approved by the regulatory authority.

(3) Where the slope in the disposal area exceeds 1 v :5.5h (18 percent), or where otherwise required by the regulatory authority, structures such as keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be used to stabilize the fill.

(4) The disposal area does not contain springs, natural water courses or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented.

(5) The spoil and wastes shall be placed, compacted, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings, and to ensure long-term stability. The final configuration of the land must be suitable for land uses approved in accordance with Section 715.13.

(6) The fill shall be designed using recognized professional standards and approved by a registered professional engineer.

(7) All organic material shall be removed from the disposal area and the topsoil must be removed and segregated before the surplus material is placed in the disposal area. However, if approved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil.

(8) The fill shall not interrupt or encroach upon active drainage channels in a way that will impound water or cause an increase in suspended solids in the surface drainage outside the permit area over that existing before surface coal mining and reclamation operations.

(9) The fill shall be inspected for stability by a registered engineer or qualified professional specialist at least quarterly and during critical construction periods to assure removal of all organic material and topsoil, placement of underdrainage systems, and proper construction of terraces according to the approved plan. The registered engineer shall provide a certified report, after each inspection that the fill has been constructed as specified by the design approved by the regulatory authority.

(b) *Disposal of spoil in valley or head-of-hollow fills* .Waste material must not be disposed of in valley or head-of-hollow fills. Spoil to be disposed of in natural valleys must be placed in accordance with the following requirements.

(1) The disposal areas shall be within the permit area, and they must be approved by the regulatory authority and be appropriately bonded.

(2) The disposal site shall be near the ridge top of a valley selected to increase the stability of the fill and to reduce

the drainage area above the fill.

(3) A system of underdrains constructed of durable rock shall be installed along the natural drainageways of the disposal area. The drainage system shall extend from the toe to the head of the fill and contain lateral drains to each area of potential drainage or seepage. In constructing the underdrains, a maximum of 10 percent of the rock must be less than 12 inches in size; however, no rock can be larger than 25 percent of the width of the drain. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Minimum size of drain in feet	
		Width	Height
Less than 1,000,000 yd n3	Sandstone	10	4
Do	Shale	16	8
More than 1,000,000 yd n3	16	8	
Do	Shale	16	16

(3) Spoil shall be placed and compacted to designed densities in lifts that are less than 4 feet thick.

(4) Terraces shall be constructed to stabilize the face of the fill. The height of each terrace shall not exceed 50 feet and the width shall not be less than 20 feet.

(5) The tops of the fill and each terrace shall be graded no steeper than 1 v :20h (5 percent) to drain surface water to the sides of the fill where stabilized surface channels shall be established off the fill to carry drainage away from the fill. Drainage shall not be directed over the face of the fill unless approved by the regulatory authority.

(6) All surface drainage from the undisturbed area above the fill shall be diverted away from the fill area into protected channels.

(7) The outslope of the fill shall not exceed 1 v :2h (50 percent). The regulatory authority may require a flatter slope because of the physical, climatological, and other characteristics of the site.

(8) The fill shall be inspected for stability by a registered engineer or qualified professional specialist at least quarterly and during critical construction periods to assure removal of all organic material and topsoil, placement of underdrainage systems, and proper construction of terraces according to the approved plan. The registered engineer shall provide a certified report, after each inspection, that the fill has been constructed and maintained as specified by the design approved by the regulatory authority. [Page 44933]

SECTION 715.16 - TOPSOIL HANDLING.

To prevent topsoil from being contaminated by spoil and waste materials, the permittee or operator shall remove the topsoil as a separate operation from areas to be mined. Topsoil shall be immediately redistributed according to the requirements of paragraph (b) of this section on areas graded to the approved postmining configuration. If sufficient graded areas are not immediately available because of climatic conditions or size of the area on which topsoil can be distributed, the topsoil shall be segregated, stockpiled, and protected from wind and water erosion or contaminants which lessen its capability to support vegetation.

(a) *Topsoil removal.* (1) All topsoil to be salvaged shall be removed before drilling for blasting, blasting, or mining to prevent loss and contamination of the topsoil with undesirable materials. All topsoil shall be removed unless otherwise approved by the regulatory authority to provide for use of alternative soil horizon or to avoid retention of excessive B horizon material. Where the removal of topsoil results in erosion that may cause air or water pollution, the regulatory authority shall limit the size of the area from which topsoil may be removed at any one time and specify methods of treatment to control erosion of exposed overburden.

(2) Where the A horizon of the topsoil is identified by surveys and soil core (or equivalent) analyses to be of sufficient depth to permit separate removal and to be of high quality in terms of plant growth medium or native-seed source, the regulatory authority shall require that the entire A-horizon be removed separately and segregated from the other soil horizons and replaced as the surface soil layer.

(3) Overburden may be used instead of, or as a supplement to, topsoil only where the available topsoil is of inadequate quantity or quality to sustain vegetation, and if all the following requirements are met:

(i) The permittee demonstrates that the overburden is more suitable for vegetation by the results of chemical and physical analyses, which shall include determinations of pH, percent organic matter, nitrogen, phosphorous, potassium, texture class, water holding capacity, potential acidity or other analyses as required by the regulatory authority, and by the results of any field-site trials or greenhouse results required by the regulatory authority.

(ii) The chemical and physical analyses and the field-site trials are accompanied by a certification from a qualified soils scientist.

(iii) The alternative overburden is removed, segregated, stockpiled, and replaced in conformance with this section.

(b) *Topsoil redistribution.* (1) After final grading and before the topsoil is replaced, regarded land shall be scarified or otherwise treated to eliminate slippage surfaces.

(2) Topsoil shall be redistributed in a manner that -

(i) Achieves a uniform thickness throughout the regraded area.

(ii) Prevents excess compaction of the spoil and topsoil; and

(iii) Protects the topsoil from wind and water erosion before it is seeded or planted.

(3) Water erosion shall be minimized by spreading soil or finishing grading of soil along the contour, unless this action would be hazardous to equipment operators. Grading in a direction other than generally parallel to the contour shall be approved by the regulatory authority before final grading.

(c) *Topsoil storage.* If the permit allows storage of topsoil, the stockpiled topsoil shall be placed within the permit area where it will not be disturbed or be exposed to excessive water, wind erosion or contaminants which lessen its capability to support vegetation before it can be redistributed on terrain graded to final contour. If stockpiles are to be in place for more than 30 days, they shall be selectively placed and protected from wind and water erosion, unnecessary compaction, and contamination by undesirable materials either by a vegetation cover as defined in Section 715.20(g) or by other methods that have been demonstrated to provide equal protection such as snow fences, chemical binders, and mulching. The regulatory authority may require more stringent standards if a high potential exists for loss of topsoil through erosion, and shall prohibit moving the topsoil once it is placed in a storage area until it is moved to a regarded area for redistribution.

(d) *Nutrients and soil amendments.* Nutrients and soil amendments in the amounts and analyses as determined by soil tests shall be applied to the topsoil to produce soil that will support the reclamation requirements of Section 715.20.

SECTION 715.17 - PROTECTION OF THE HYDROLOGIC SYSTEM.

The permittee shall plan and conduct coal mining and reclamation operations to minimize disturbance of and to prevent long-term changes in the prevailing hydrologic balance, on or off site. Changes in water quality and quantity, in the depth to ground water, or in the location of surface-water drainage channels will be limited to changes that do not violate applicable Federal and State regulations and do not adversely affect the post-mining use of the disturbed lands. The permittee shall conduct all operations in such a way as to minimize water pollution and, where necessary, use treatment methods to control water pollution. Practices that will minimize pollution include but are limited to stabilizing disturbed areas through shaping and grading, diverting runoff, achieving quick growing stands of temporary vegetation, lining drainage channels with rock or vegetation, mulching topsoil, sealing of acid-forming and toxic-forming materials, and selectively placing waste materials in backfill areas. If pollution can be controlled only by treatment, the permittee shall operate and maintain the necessary water-treatment facilities. However, the permittee shall emphasize mining and reclamation practices that will prevent or minimize water pollution in preference to water treatment facilities.

(a) *Water-quality standards and effluent limitations.* All drainage from the disturbed area, including areas revegetated and not released from bond, shall be discharged through a setting pond, or a series of settling ponds. The regulatory authority may grant exemptions from this requirement only when the disturbed drainage area within the disturbed area is small and settling ponds are not necessary to meet water-quality standards and effluent limitations. Discharges from the entire permit area must meet all applicable Federal and State water-quality standards and the following numerical effluent limitations:

Effluent limitations, in milligrams per liter except for hydrogen-ion concentration

Effluent characteristic	Maximum allowable n1	Average of daily values for 30 consecutive discharge days n1
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
Total suspended solids n2	70.0	35.0
Hydrogen-ion concentration.	Within the range 6.0 to 9.0.	

n1 Based on a representative sampling schedule.

n2 In Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, and Wyoming, total

suspended solids limitations will be determined on a case-by-case basis, but they must not be greater than 45 mg/l (maximum allowable) and 30 mg/l (average of daily values for 30 consecutive discharge days) based on a representative sampling schedule.

(1) Any overflow or other discharge of surface water from the permit area that would result from an event larger than a 25-year 24-hour frequency event will not be subject to these effluent standards.

(2) The permittee shall install, operate, and maintain adequate facilities to treat any water discharge that violates the standards and limitations of this paragraph or other applicable standards. If the pH of discharged waters normally is less than 6.0, and the mine normally produces more than 500 tons of coal per operating day, an automatic lime feeder or other neutralization device approved by the regulatory authority shall be installed, operated, and maintained.

(b) *Surface-water monitoring.* (1) Equipment necessary to measure the quality and quantity of surface-water discharges from the permit area and to identify the effects of surface mining and reclamation operations on the surface water shall be installed, maintained, and operated, and shall be removed when no longer required. Total iron, total manganese, total suspended solids, pH, and flow must be measured on a daily basis whenever a discharge occurs unless it can be demonstrated to the satisfaction of the regulatory authority that different analyses are required. The regulatory authority may require additional analyses. [Page 44934]

(2) Daily samples shall, for all discharges that occur more than 1 hour (continuous or intermittent flow), be comprised of at least four samples representative of actual conditions, composited for a daily analysis. Chemical analysis must be performed as specified in 40 CFR 136. The results of these measurements shall be submitted to the regulatory authority on a monthly basis, but within 60 days of collection. However, if the discharge is subject to regulation by a Federal or State permit issued in compliance with section 301 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1311), a copy of the completed reporting form supplied to meet the permit requirements may be submitted to the regulatory authority to satisfy the monitoring and reporting requirements of this paragraph, if the reported data meets the requirements of this paragraph. Violations of permit conditions must be reported to the regulatory authority immediately after receipt of analytical results by the permittee.

(c) *Diversion and conveyance of overland flow from disturbed areas.* In order to prevent acid and other toxic mine drainage from polluting surface and ground water and to minimize erosion, overland flow shall be diverted away from disturbed areas by means of temporary or permanent diversion structures, and the following requirements shall be met:

(1) Temporary diversion structures are those used during mining and reclamation. When no longer needed to protect disturbed areas, the structures shall be removed and the area reclaimed. They shall be constructed to safely pass the peak runoff from a precipitation event with a 10-year recurrence interval, or a larger event as specified by the regulatory authority.

(2) Permanent diversion structures are those remaining after mining and reclamation and approved for retention by the regulatory authority and other appropriate State and Federal agencies. To protect fills and property and avoid danger to public health and safety, permanent diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a 100-year recurrence interval or a larger event as specified by the regulatory authority. Permanent diversions shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall not be used unless specifically required to prevent seepage or to provide stability and are approved by the regulatory authority.

(3) Diversions shall be designed, constructed, and maintained in a manner that does not increase the total suspended solids leaving the permit area on a seasonal basis above those levels that existed before mining and in excess of requirements set by applicable Federal and State law.

(4) Discharges from diversions that pass entirely through undisturbed areas shall meet applicable water-quality standards for the receiving streams. Discharges from diversions that pass through disturbed areas must comply with paragraph (a) of this section.

(5) Surface water shall not be diverted into underground mine workings unless it is demonstrated to the satisfaction of the regulatory authority that such diversion will abate water pollution or otherwise eliminate public hazards resulting from underground mining.

(d) *Stream channel diversions.* (1) Flow from perennial, intermittent, and ephemeral streams within the permit area may be diverted only when the diversions are approved by the regulatory authority and they are in compliance with local, State, and Federal law and approved regulations. When streamflow is allowed to be diverted, the new stream channel shall be designed and constructed to meet the following requirements:

(i) The average stream gradient shall be maintained and the channel designed to remain stable after mining and reclamation operations are completed.

(ii) Channel, bank, and flood-plain configurations shall be adequate to safely pass the peak runoff of a precipitation event with a 10-year recurrence interval for temporary diversions and a 100-year recurrence interval for permanent diversions; or larger events as specified by the regulatory authority.

(iii) Channel banks shall be protected from erosion by measures such as seeding, planting and applying riprap.

(iv) Fish and wildlife habitat and water and vegetation of significant value for wildlife food or shelter shall be protected in consultation with appropriate fish and wildlife management agencies.

(v) Diversions shall be designed, constructed, and maintained in a manner that does not increase the total suspended solids leaving the permit area on a seasonal basis above those levels that existed before mining. Applicable State and Federal water-quality standards shall be met.

(2) All temporary diversion structures shall be removed before release of applicable bonds unless the regulatory authority approves the retention of those structures.

(3) Buffer zone. No land shall be disturbed within 100 feet of an intermittent or perennial stream not approved for mining unless authorized by the regulatory authority. The area not to be disturbed shall be designated a buffer zone and marked with signs as specified in Section 715.12.

(e) *Settling ponds.* Settling ponds shall be constructed in appropriate locations in each drainage area prior to any mining in that drainage area in order to control sedimentation or otherwise treat water in accordance with paragraph (a) of this section. These ponds may be used individually or in a series, and they shall meet the following criteria:

(1) The minimum storage volume shall equal the sum of - (i) The volume of runoff to be controlled from the drainage area above the settling pond that results from a 10-year 24-hour precipitation event;

(ii) 0.2 acre-feet of storage for each of disturbed area within the upstream drainage area; and

(iii) additional storage as necessary to meet the effluent standards of paragraph (a) of this section.

(2) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the peak runoff from a precipitation event with a 25-year recurrence interval, or larger event as specified by the regulatory authority.

(3) All settling ponds shall be examined for structural weakness, erosion and other hazardous conditions in accordance with inspection requirements contained in Section 77.216-3 of this Title.

(4) All settling ponds shall be removed and the disturbed areas regarded, revegetated, and stabilized before release of applicable bonds unless the regulatory authority approves retention of the ponds.

(5) Sediment shall be removed from settling ponds when the volume of sediment accumulates to 50 percent of the sediment storage volume required in paragraph (e)(1) of this section. The sediment shall be disposed of in a way that prevents it from entering surface water, contaminating subsurface water, and causing adverse effects due to its chemical and physical characteristics on infiltration, vegetation, or water quality. Sediment that has been removed from settling ponds and that meets the requirements for topsoil may be redistributed over graded areas in accordance with Section 715.16.

(6) Discharges from settling ponds shall meet the water-quality and effluent requirements of paragraph (a) of this section.

(7) If a settling pond includes an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met:

(i) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff from the design storm as specified by the regulatory authority. This design storm shall not have a recurrence frequency of less than 50 years.

(ii) Ponds shall be designed and constructed with a safety factor of at least 1.5 for embankment slope stability.

(iii) The minimum top width of the embankment shall not be less than the quotient of $H+35/5$ where H is the height of the embankment as measured from the upstream toe to the top of the embankment.

(iv) Ponds shall have appropriate barriers to control seepage along conduits that extend through the embankment.

(3) All ponds shall be designed and constructed under the supervision of, and inspected and certified after construction for compliance with design requirements, by a registered professional engineer. [Page 44935]

(f) *Discharged structures.* Discharges from settling ponds and diversions shall be controlled using available technology, such as energy dissipators, surge ponds, and other devices to reduce erosion and prevent deepening and enlargement of stream channels.

(g) *Acid and toxic materials.* Drainage from acid forming and toxic forming mine materials into ground and surface water must be prevented by –

(1) Identifying and burying in the permit area spoil and waste materials that can be toxic or otherwise harmful to vegetation and can adversely affect water quality. The material shall be buried with a minimum of 5 feet of nontoxic material or using other procedures in accordance with Section 715.14. Material shall not be buried or stored within 100 feet of any perennial or intermittent stream, or used in construction of dams, embankments or roads or where they will pollute surface and ground water.

(2) Burying all material within 30 days, or less if specified by the regulatory authority. If necessary to store the material, piles shall be stored on impermeable material and protected from erosion and contact with surface water.

(3) Casing, sealing, or otherwise managing boreholes, shafts, wells, and auger or other horizontal holes to prevent pollution of surface or ground water, and to prevent mixing of ground waters of significantly different quality (unless mixing is approved by the regulatory authority). All boreholes that are within the permit area but are outside the surface coal mining area or which extend beneath the coal to be mined and into aquifers, shall be plugged permanently in a manner approved by the regulatory authority.

(4) Taking such other actions as required by the regulatory authority.

(h) *Recharge capacity of reclaimed lands.* The disturbed area shall be reclaimed to restore approximate premining infiltration rates and to restore the ability of the reclaimed area to transmit water to the ground-water system. All available measures shall be used to ensure that the recharge capacity of the reclaimed land will support the approved postmining use of the land.

(i) *Restoration of ground-water systems.* Backfilled materials shall be selectively placed to reestablish ground-water systems to approximate premining conditions.

(j) *Alluvial valley floors west of the 100th meridian west longitude.* (1) Essential elements of the hydrologic functions of alluvial valley floors shall be preserved throughout the mining and reclamation process by maintaining or establishing:

(i) The gradient of streams;

(ii) Aquifers, aquicludes, capillary zones, and perched water zones;

(iii) Quantity and quality of surface and ground water;

(iv) Depth to, and seasonal fluctuations of, ground water where ground water supports a subirrigated vegetation system;

(v) Configuration and stability of the land surface in the flood plain as they allow or facilitate irrigation with flood waters and maintain erosional equilibrium; and

(vi) Soil profiles, including physical and chemical characteristics of the substrate (or plant-growth medium) which provide moisture holding capacity and thereby provide for sustained vegetation growth through the dry months.

(2) Surface mining and reclamation operations conducted in or adjacent to alluvial valley floors located west of the 100th meridian west longitude shall not interrupt, discontinue, or preclude farming on these alluvial valley floors unless the premining land use of such alluvial valley floors has been undeveloped rangeland with no regular cropping of hay or unless the area of the affected alluvial valley floor is of small acreage and provides negligible support for one or more farmer's production. This paragraph (j)(2) does not apply to those surface coal mining operations that -

(i) Were in production in the year preceding August 3, 1977, were located in or adjacent to an alluvial valley floor, and produced coal in commercial quantities in the period identified in this paragraph; or

(ii) Had specific permit approval by the State regulatory authority before August 3, 1977, to conduct surface coal mining operations for an area within the affected alluvial valley floor.

(3) Before new surface mining and reclamation operations which may be authorized under paragraph (j)(2) of this section are commenced, the permittee shall submit and the regulatory authority shall approve detailed surveys and baseline data to establish standards against which the requirements of paragraph (1) of this section can be measured. The surveys and data shall include -

(i) A map at a scale determined by the regulatory authority showing the location of the alluvial valley floor.

(ii) Baseline data covering a full water year for each of the hydrologic elements identified in paragraph (1) of this section.

(iii) Such other data as the regulatory authority may require.

(k) *Ground-water monitoring.* Ground-water levels and quality of the ground water shall be monitored as approved by the regulatory authority, to determine the effects of surface coal mining operations on ground water. When mining is done below the water table, the water levels shall be monitored in representative ground-water wells within the area which may be influenced by the mining or in such other wells that can adequately reflect changes in water levels. Where existing wells are inadequate to measure long-term changes, the permittee may be required by the regulatory authority to drill and complete wells to measure water quantity and quality in the permit area. When determined necessary by the regulatory authority, the

permittee also may be required to drill and complete wells to measure water levels on and off site subject to surface owner consent. These wells must monitor all aquifers that may be affected by mining.

(l) *Hydrologic impact of roads.* (1) *General.* Access and haul roads and associated bridges, culverts, ditches, and road rights-of-way shall be constructed, maintained and reclaimed so as to control diminution or degradation of water quantity or quality. The land over which roads are constructed for surface coal mining and reclamation operations shall be reclaimed in accordance with this part, unless retention of a road is approved under Section 715.13, as being an integral and contributing part of the post-mining use of the land.

(2) *Construction.* (i) All roads, insofar as possible, shall be located on benches, ridges, or flatter and more stable slopes to minimize erosion. Stream fords are prohibited unless they are specifically approved by the regulatory authority as temporary routes across dry streams unrelated to coal haulage. Roads shall not be located in stream beds; nor shall they be located within the 100-year flood plain of any stream unless it can be demonstrated that the roads will not restrict the flow of the base flood (a flood that has a 1 percent or greater chance of occurring in any year), nor increase erosion or cause significant sedimentation or flooding. However, nothing in this paragraph will be construed as prohibiting relocation of stream channels in accordance with paragraph (d) of this section.

(ii) In order to minimize erosion and subsequent hydrologic disturbances, roads shall be constructed in compliance with the following grade restrictions, or other grade determined by the regulatory authority to be necessary to control erosion:

(A) The overall sustained grade shall not exceed 1 v :10h (10 percent).

(B) The maximum grade greater than 10 percent shall not exceed 1 v :6.5 h (15 percent) for more than 300 feet.

(C) There shall not be more than 300 feet of maximum grade within each 1,000 feet.

(iii) All access and haul roads shall be adequately drained using structures such as, but not limited to, ditches, water carriers, cross drains, and ditch relief drains. For access and haul roads that are to be maintained for more than 1 year, water-control structures shall be designed with a discharge capacity capable of passing the peak flow from a 25-year 24-hour precipitation event. Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets. Drainage ditches shall be provided at the toe of all cut slopes formed by the construction of roads. Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of the structures. Ditch relief and cross drains shall be spaced according to grade. Drainage from access and haul roads shall meet the water-quality requirements of Section 715.17. [Page 44936]

(iv) Access and haul roads shall be surfaced with durable material. Toxic or acid-forming substances shall not be used in the surface material. Vegetation may be cleared only for the essential width necessary for road and associated ditch construction and to serve traffic needs.

(3) *Maintenance.* (i) Access and haul roads shall be routinely maintained by measures such as, but not limited to, wetting, scraping, or surfacing.

(ii) Ditches, culverts, drains, trash racks, debris basins and other structures serving to drain access and haul roads shall not be restricted or blocked in any manner that impedes drainage or adversely affects the intended purpose of the structure.

(m) *Hydrologic impacts of other transport facilities.* Railroad loops, spurs, siding or other transport facilities shall be constructed, maintained and reclaimed so as to control diminution or degradation of water quantity or quality.

SECTION 715.18 - DAMS CONSTRUCTED OF REFUSE MATERIALS, GENERAL.

(a) No mine or processing refuse materials shall be used in existing or new dams without the approval of the regulatory authority. The permittee or operator shall design, locate, construct, operate, maintain, modify, abandon, and remove all dams (used either temporarily or permanently) when constructed of mine refuse materials, tailings, coal processing wastes, or other liquid or solid wastes in accordance with the requirements of this section.

(b) *Definitions. - refuse materials.* Coal mine waste materials excavated or removed during surface coal mining and reclamation operations or separated from mined coal. The material may be a mixture of coal, slack coal, or waste coal; organic material; shale, claystone, sandstone, siltstone, or limestone, or related materials.

Safety factor. The ratio of the available shear strength to the developed shear stress on a potential surface of sliding determined by accepted engineering practice.

(c) *Dams constructed of refuse materials.* (1) Refuse shall not be used in the construction of dams unless demonstrated to have no adverse effect on stability.

(2) Plans for dams or impoundments shall be approved by the regulatory authority before construction and shall contain the minimum plan requirements established by the Mining Enforcement and Safety Administration pursuant to Section 77.216-2 of this title.

(3) Dams and impoundments subject to this paragraph shall meet the following requirements:

(i) Design of impoundments shall be based on the flood from the probable maximum precipitation event unless the permittee shows that the failure of the impounding structure would not cause loss of life or severe property or environmental damage, in which case a design based on a minimum flood event of 100-year frequency may be approved by the regulatory authority. An intermediate sized design flood may be required depending on site conditions.

(ii) The design freeboard distance between the lowest point on an impounding structure and the maximum water elevation shall be at least 3 feet to avoid overtopping by wind and wave action.

(iii) Impounding structures shall have minimum stability factors as follows:

	Case	Loading condition	Minimum safety factor
I		End of construction	1.3
II		Partial pool with steady seepage saturation	1.5
III		Steady seepage from spillway or decant crest	1.5
IV		Earthquake (cases II and III with seismic loading)	1.0

(iv) The dam, foundation, and abutments shall be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the factors of safety of the dam for all loading conditions in paragraph (c)(3)(iii) of this section and for all increments of construction.

(v) Seepage through the dam, foundation, and abutments shall be controlled to prevent excessive uplift pressures, internal erosion, sloughing, removal of material by solution, or erosion of material by loss into cracks, joints, and cavities. This may require the use of impervious blankets, previous drainage zones or blankets, toe drains, or relief wells.

(vi) Allowances shall be made for settlement of the dams and the foundation so that the required freeboard will not be diminished.

(vii) Impoundments created by dams of refuse materials shall be subject to a minimum drawdown criteria that allows the facility to be evacuated by spillways or decants of 90 percent of the volume of water stored during the design precipitation event within 10 days.

(viii) Closed-circuit coal waste shall not be used in dams constructed of refuse materials unless demonstrated to maintain or enhance dam stability.

(ix) During construction of dams subject to this paragraph, the structures shall be periodically inspected by a registered professional engineer to ensure construction according to appropriate designs and upon completion of construction, the structure shall be certified as having been designed in accordance with accepted professional policies by a registered professional engineer.

(x) A permanent identification marker, at least 6 feet high and showing the dam number assigned pursuant to Section 77.215-1 of this title, and the name of the person operating or controlling the dam shall be located on or immediately adjacent to each dam within 30 days of certification of design pursuant to this section.

(4) All dams shall be routinely inspected by a registered professional engineer in accordance with MESA regulations pursuant to Section 77-216-3 of this title.

(5) All dams shall be routinely maintained. Vegetative growth shall be cut where necessary to facilitate inspection and repairs, ditches and spillways cleaned, any combustible materials present on the surface removed, and any other appropriate maintenance procedures followed.

(6) All dams subject to this section shall be recertified annually as having been constructed and modified in accordance with current prevalent engineering practices to minimize the possibility of failures. Any changes in the geometry of the impounding structure shall be included in the annual recertification report. The certification will include a report on existing and required monitoring procedures and instrumentation, the average and maximum depths and elevations of any impounded waters over the past year, existing storage capacity of impounding structures, any fires occurring in the material over the past year, and any other aspects of the structures affecting their stability.

(7) Any enlargements, reductions in size, reconstruction or other modification of dams shall be approved by the regulatory authority.

(8) All refuse dams shall be removed and the disturbed areas regraded, revegetated, and stabilized prior to the release of bond unless the regulatory authority approves retention of such dams as being compatible with an approved postmining land use (Section 715.13).

SECTION 715.19 - USE OF EXPLOSIVES.

(a) *General.* (1) The permittee or operator shall comply with all applicable local, State and Federal law and regulations and the requirements of this section in the storage, handling, preparation, and use of explosives.

(2) Blasting operations that use more than the equivalent of 5 pounds of TNT shall be conducted according to a time schedule approved by the regulatory authority.

(3) All blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved. Persons working with explosive materials shall -

(i) Have demonstrated a knowledge of, and a willingness to comply with, safety and security requirements;

(ii) Be capable of using mature judgment in all situations;

(iii) Be in good physical condition and not addicted to intoxicants, narcotics, or other similar types of drugs;

(iv) Possess current knowledge of the local, State and Federal laws and regulations applicable to his work; and [Page 44937]

(v) Have obtained a certificate of completion of training and qualification as required by State law or the regulatory authority.

(b) *Preblasting survey.* (1) Upon the request of a resident or owner of a manmade dwelling or structure, including pipes, cables, transmission lines, wells or water systems, within one-half mile of any portion of the permitted area, the permittee or operator shall conduct a preblasting survey of such structures and submit the survey to the regulatory authority. The area and scope of the survey shall be decided by the regulatory authority.

(2) Personnel approved by the regulatory authority shall conduct the survey to determine the condition of the structures in terms of resistance to vibrations of structural and nonstructural elements, and to document any preblasting damage, weakness, and other physical factors that could reasonably be expected to be effected by the blasting. Special attention shall be given to the preblasting condition of wells and other water systems used for human, animal, or agricultural purposes and the quantity and quality of such water.

(3) A written report of the survey shall be prepared and signed by the person or persons who conducted the survey and prepared the written report. The report shall specify the recommended weights of individual charges that would prevent damage to the structures examined in the area and State, if applicable, the effects repeated blasting will have on structural fatigue. Copies of the report shall be provided to the person requesting the survey, and to the regulatory authority on request. Based upon this survey report, the regulatory authority shall require the permittee or operator to prevent damage to structures and water systems by measures such as reinforcing the structures (provided consent of the owner is received), redesign of the blasting plan, or prohibition of blasting in the vicinity of the structure.

(c) *Public notice of blasting schedule.* At least 10 days, but not more than 20 days before beginning a blasting program in which explosives that use more than the equivalent of 5 pounds of TNT are detonated, the permittee or operator shall publish a blasting schedule in a newspaper of general circulation in the locality of the proposed site. Copies of the schedule shall be distributed by certified mail to local governments and public utilities and to each residence within one-half mile of the blasting sites described in the schedule. The permittee or operator shall republish and redistribute the schedule by certified mail at least every 3 months. Blasting schedules shall not be so general as to cover all working hours but shall identify as accurately as possible the time periods and locations when blasting will occur. The blasting schedule shall contain at a minimum -

(1) Identification of the specific areas in which blasting will take place. The individual blasting areas shall not be larger than 300 acres with a generally contiguous border.

(2) Dates and times when explosives are to be detonated in not more than 4-hour increments.

(3) Proposed weight and type of the explosives to be detonated at one time;

(4) Anticipated effects of blasting on people, private and public property, land, and water within and adjacent to the permit area;

(5) Methods to be used to control access to the blasting area;

(6) Types of audible warning and all clear signals to be used before and after blasting; and

(7) A description of possible emergency situations (defined in paragraph (e)(1)(ii) of this section) which have been approved by the regulatory authority as reasonable, when it may be necessary to blast at times that are significantly different from those described in the schedule. This description shall identify the circumstances under which emergency situations may occur and the reasons that blasting cannot be conducted at the scheduled time.

(d) *Public notice of changes on blasting schedules.* A revised blasting schedule shall be prepared by the permittee or operator before blasting in areas not covered by a previous schedule or whenever the proposed frequency, size, and weight

of individual detonations are scheduled to be materially changed. If the change involves blasting in areas not covered by a previous schedule the procedures outlined in paragraph (c) of this section shall be followed. If the change involves only the size, weight, or frequency of blasts the permittee or operator shall notify, by the most appropriate means, the governmental bodies and individuals to whom the original schedule was sent.

(a) *Blasting procedures.* (1) *General.* (i) All blasting shall be conducted only during the daytime hours, defined as 1 hour after sunrise until 1 hour before sunset. Based on public requests or other considerations, including the proximity to residential areas, the regulatory authority may specify more restrictive time periods.

(ii) Blasting may not be conducted at times more than 1 hour different from those announced in the blasting schedule except in emergency situations where rain, lightning, other atmospheric conditions, or operator safety requires unscheduled detonation and the emergency conditions have been announced in accordance with paragraph (c)(7) of this section.

(iii) Audible warning and all-clear signals shall be given and shall be of different character and audible within a range of one-half mile from the point of the blast. All persons within the permit area shall be notified of the meaning of the signals through appropriate instructions and signs posted as required by Section 715.12.

(iv) Access to the blasting area shall be regulated to protect the public, livestock, and, where required by the regulatory authority, wildlife, from the effects of blasting. Access to the blasting area shall be controlled to prevent unauthorized entry at least 10 minutes before each blast and until the permittee's or operator's authorized representative has determined that no unusual circumstances such as imminent slides or undetonated charges exists and access to and travel in or through the area can safely resume.

(v) All primed blast holes shall be detonated within 24 hours.

(vi) To prevent damage from air blast 2.6 feet of stemming for every inch of borehole diameter shall be used.

(vii) Except where lesser distances are approved by the regulatory authority (based upon a preblasting survey and premining seismic studies, and with written consent of the owner) blasting shall not be conducted within -

(A) 1,000 feet of any building used as a residence, school, church, hospital, nursing facility, or power generating station:

(B) 500 feet of facilities including, but not limited to, disposal wells, petroleum or gas storage facilities, municipal water storage facilities, fluid transmission pipelines, or gas or oil collection lines, water and sewage lines; and

(C) 500 feet of an underground mine except with the concurrence of the Mining Enforcement and Safety Administration.

(2) *Blasting standards.* (i) In all blasting operations, except as otherwise stated, the maximum peak particle velocity of the ground motion in any direction shall not exceed 2 inches per second at the immediate location of any dwelling house, public building, school, church, or commercial or institutional building.

(ii) The maximum peak particle velocity of ground motion does not apply to property owned or leased by the permittee which is inside the permit area.

(iii) No two consecutive subcharges within any charge shall be separated by a delay time of less than 8 milliseconds. *Charge* means a quantity of explosive or equivalent that is to be detonated within a period of 5 seconds.

Subcharge means a quantity of explosive or equivalent that is to be detonated within a period of less than 8 milliseconds.

(iv) Tables for determining the maximum weight of explosives to be used per delay are given in paragraphs (e) (2) (vi) and (vii) of this section. If the blasting is done in accordance with these tables, the regulatory authority will consider the vibrations to be within the 2 inches per second limit.

(v) The weight of explosives to be used per delay period shall be determined by the formula.

$W = (D / 50)^2$ where W = the weight of explosives, in pounds, and D = the distance, in feet, to the nearest dwelling, school, church, or commercial or institutional building. [Page 44938]

(vi) For distances greater than 300 feet, the following table will be used:

Distance in feet:	Weight, in pounds
350	49
400	64
500	100
600	144
700	196
800	256
900	324
1,000	400
1,100	484

Distance in feet:	Weight, in pounds
1,200	576
1,300	676
1,400	784
1,500	900
1,600	1,024
1,700	1,156
1,800	1,296
1,900	1,444
2,000	1,600
2,500	2,500
3,000	3,600
3,500	4,900
4,000	6,400
4,500	8,100
5,000	10,000

For distances not in the table, the formula in paragraph (e)(2)(v) of this section shall be used.

(vii) If on a particular site the peak particle velocity continuously exceeds one-half inch per second after a period of 1 second following the maximum ground particle velocity, the regulatory authority shall require the total time delay of blasting operations to be less than 200 milliseconds or the charge per delay be reduced to comply with this limit.

(viii) For distances less than 300 feet the following table will be used:

Actual distance, in feet:	Pounds per delay interval of 8 milliseconds or greater
5-10	1/3
11-15	1/4
16-20	1/2
21-25	3/4
26-30	1.0
31-300	n(1)

n1 1 lb. + 1/3 lb. for each foot of distance above 30 feet.

(3) *Seismograph measurements.* (i) Where a seismograph is used to monitor the velocity of ground motion and the velocity of limit of 2 inches per second is not exceeded, the tables in paragraphs (e)(2)(vi) and (viii) of this section need not be used. However, if the tables are not being complied with, a seismograph shall be used for every shot.

(ii) The use of a modified table for blasting operations at a particular site may be approved by the regulatory authority on receipt of a petition accompanied by seismograph reports. However, in no case shall the regulatory authority approve the use of a modified table where the velocity limit of 2 inches per second would be exceeded.

(iii) The regulatory authority may require a seismograph recording of any or all blasts.

(4) *Records of blasting operations.* A record of each blast, including seismograph reports, shall be retained for at least 3 years and shall be available for inspection by the regulatory authority, and the public upon request. The record shall contain the following data:

(i) Name of permittee, operator, or other person conducting the blast;

(ii) Location, date, and time of blast;

(iii) Name, signature, and license number of blaster in charge;

(iv) Direction and distance, in feet, to nearest dwelling, school, church, or commercial or institutional building;

(v) Weather conditions;

(vi) Type of material blasted;

(vii) Number of holes, burden, and spacing;

(viii) Diameter and depth of holes;

(ix) Types of explosives used;

(x) Total weight of explosives used;

(xi) Maximum weight of explosives per delay period of 8 milliseconds or less;

(xii) Maximum number of holes per delay period of 8 milliseconds or less;

- (xiii) Method of firing and type of circuit;
- (xiv) Type and height of length of stemming;
- (xv) If mats or other protections were used;
- (xvi) Type of delay electric blasting caps used, and delay periods used;
- (xvii) Seismograph records, where required, including -
 - (A) Seismograph reading, including exact location of seismograph and its distance from the blast;
 - (B) Name of person taking the seismograph reading; and
 - (C) Name of person and firm analyzing the seismograph record.

SECTION 715.20 - REVEGETATION.

(a) *General.* (1) The permittee shall establish on all land that has been disturbed, a diverse, effective, and permanent vegetative cover of species native to the area of disturbed land or species that will support the planned postmining uses of the land approved according to Section 715.13.

(2) Revegetation shall be carried out in a manner that encourages a prompt vegetation cover and recovery of productivity levels compatible with approved land uses. The vegetation cover shall be capable of stabilizing the soil surface with respect to erosion. All disturbed lands shall, regardless of the approved postmining land use, be seeded or planted to achieve a vegetation cover of the same seasonal variety native to the area of disturbed land. If both the pre-and postmining land use is intensive agriculture, planting of the crops normally grown will meet the requirement. Vegetation cover will be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the intended land use when compared with the utility of naturally occurring vegetation during each season of the year.

(3) On Federal lands, the surface management agency shall be consulted regarding when revegetation is satisfactorily accomplished, what species are selected, and when the area is ready for utilization and management.

(b) *Use of introduced species.* Introduced species may be substituted for native species only if appropriate field trials have demonstrated that the introduced species will be of equal or superior utility for the approved postmining land use, or is necessary to achieve a quick, temporary and stabilizing cover. Introduced species shall meet applicable State and Federal seed or introduced species statutes, and may not include poisonous or potentially toxic species incompatible with the approved postmining land use.

(c) *Timing of revegetation.* Seeding and planting of land that has been regraded and the topsoil replaced shall be conducted during the first normal period for favorable planting conditions after final grading. The normal period for favorable planting shall be that planting time generally accepted locally to meet specific site conditions and climate. Any disturbed areas, except water areas and surface areas of haul roads, which have been graded shall be planted with a temporary cover of small grains, grasses, or legumes at a commensurate level with that needed to establish adequate cover to control erosion. When rills or gullies, that would preclude the successful establishment of vegetation or the achievement of the postmining land use form in regraded topsoil and overburden materials as specified in Section 715.14, additional regrading or other stabilization practices will be required before seeding and planting.

(d) *Mulching.* Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing climate conditions suitable for germination and growth, and do not interfere with the postmining use of the land. Mulches shall be anchored to the soil surface where appropriate to ensure effective protection of the soil and vegetation. The minimum amounts of mulch to be applied per acre are: for straw or hay, 2,000 pounds; for wood fiber, 1,000 pounds; for bark materials, 30 cubic yards. If the permittee can demonstrate that other wood products, composted waste, or other materials are more suitable for achieving successful revegetation and erosion control, the regulatory authority may authorize substitution of such other materials. Mulch shall be used on all regraded and topsoiled areas to control erosion, to promote germination of seeds, and to increase the moisture retention of the soil. Annual grains such as oats, rye, and wheat may be used instead of mulch when it is shown to the satisfaction of the regulatory authority that the substituted grains will provide adequate stability and that they will later be replaced by species approved for the postmining land use.

(e) *Methods of revegetation.* (1) The permittee shall use technical publications or the results of laboratory and field tests approved by the regulatory authority to determine the varieties, species, seeding rates, and soil amendment practices essential for establishment and self-regeneration of vegetation. The revegetation procedures shall be designed to require only that degree of fertilization and maintenance procedures required to meet the standards of this section for the approved postmining use of the land. [Page 44939]

(2) Where hayland, pasture, or rangeland is to be the postmining land use, the land shall be revegetated to the satisfaction of the regulatory authority. The species of grasses, legumes, or forbs for seeding or planting shall be selected by the permittee to provide a diverse, effective, and permanent vegetation cover with the seasonal variety, succession, and regeneration capabilities native to the area. Livestock grazing will not be allowed on reclaimed land until the seedlings are established and can sustain managed grazing. The regulatory authority, in consultation with the surface owner and permittee, shall determine when the revegetated area is ready for livestock grazing. When hooved wildlife populations are large enough to cause damage, grazing by such wildlife must be controlled by appropriate methods until the seedlings are well established and can sustain normal grazing. The regulatory authority shall determine when the revegetated area is ready for wildlife grazing.

(3) Where an agricultural use that will require using tillage equipment such as plows, cultivators, and tractors is to be the postmining land use, the permittee shall use adequate erosion and sediment control practices approved by the regulatory authority.

(4) Where forest is to be the postmining land use, the permittee shall plant trees adapted for local site conditions and climate in combination with an herbaceous cover of grains, grasses, legumes, or forbs that provides a diverse, effective, and permanent vegetation cover with the seasonal variety, succession, and regeneration capabilities native to the area.

(5) Where wildlife habitat is to be included in the postmining land use, the permittee shall consult with appropriate State and Federal wildlife management agencies and, upon the approval of the regulatory authority, shall select species to be seeded or planted. The permittee shall select those species that will fulfill the needs of wildlife, including food, water, cover, and space, and shall space and distribute plant groupings and water resources to fulfill the requirements of wildlife.

(6) Where development of residential, recreational, industrial, or public service uses is to be the postmining land use, the lands must be revegetated initially according to paragraph (a) of this section. Final revegetation requirements must be approved by the regulatory authority.

(f) *Standards for measuring success of revegetation.* (1) The revegetation standards in the following table are minimum requirements for revegetation of disturbed areas.

Standards for revegetation [Herbaceous species = grass, legumes, and nonleguminous forbs; woody plants = woody shrubs, trees, and vines; ground cover = area covered by the combined aerial parts of plants and litter that are produced naturally on site, expressed as a percentage of the total area of measurement]

Average annual precipitation, in inches	1 yr	5 yr	10 yr			
A. Areas planted only in herbaceous species (percent ground cover of herbaceous species at the end of the growing season):						
Up to 10	6	8	10			
10.1 to 16	10	20	30			
16.1 to 26	20	30	40			
More than 26	50	70	NA			
Average annual precipitation, in inches	1 yr	5 yr	10 yr			
	Percent ground cover	Number of woody plants per acre	Percent ground cover	Number of woody plants per acre	Percent ground cover	Number of woody plants per acre
B. Areas planted to mixtures of herbaceous and woody species (percent ground cover of herbaceous species and						

Average annual precipitation, in inches	1 yr		5 yr		10 yr	
number of plants per acre of woody species at the end of the growing season):						
Up to 10	6	2,500	5	2,000	4	1,500
10.1 to 16	7	800	10	900	15	1,000
16.1 to 26	20	400	25	400	30	400
More than 26	40	600	50	n1 400	NA	NA

n1 On steep slopes, the minimum number of woody plants must be increased to 600 per acre.

(2) (i) When revegetation requirements are based on returning the permit lands to premining land uses of hayland, pasture, wildlife habitat, or rangeland, the regulatory authority may also require the permittee to set aside and fence enclosures of land not to be disturbed by mining activity or domestic livestock. These enclosures, which must be representative of geology, soils, slope, aspect and vegetation in the permit area, will be used to estimate normal vegetation productivity, plant cover, species, plant succession, and plant self-regeneration. The regulatory agency shall approve the estimating techniques used to judge the degree of success achieved in the revegetated areas. These enclosures and estimations may be required before revegetation procedures are approved.

(ii) When enclosures are required, the degree of progress and success in revegetating shall, at a minimum, meet the standards in the following table. More stringent standards may be established by the regulatory authority based on natural conditions in the area. The permittee and the regulatory authority shall use those standards as guides to indicate potentials for ultimate revegetation success and to determine whether remedial measures are necessary to improve chances for success.

Standards for revegetation when enclosures are required [Ground cover = area covered by the combined aerial parts of plants and litter that are produced naturally onsite, expressed as a percentage of the total area of measurement; biomass yield = the total yield of living plants above ground in an area at the end of the growing season]

Average annual precipitation, in inches	End of growing season		
	1 yr	5 yr	10 yr
A. Number of adapted species in revegetated areas:			
Up to 10	3	12	15
10.1 to 16	6	14	20
16.1 to 26	6	20	25
More than 26	8	25	30
B. Ground cover of perennial plants expressed as a percent of the ground cover in the enclosures:			
Up to 10	90	80	85
10.1 to 16	70	80	85
16.1 to 26	70	80	90
More than 26	80	90	NA
C. Biomass yield of perennial plants expressed as a percent of the biomass yield in the enclosures:			
Up to 10	90	80	80
10.1 to 16	70	80	85
16.1 to 26	70	80	90

Average annual precipitation, in inches	End of growing season		
	1 yr	5 yr	10 yr
More than 26	80	90	NA

[Page 44940]

(g) *Seeding of stockpiled topsoil.* Topsoil stockpiled in compliance with Section 715.16 must (if not to be redistributed within 30 days) be seeded or planted with an effective cover of nonnoxious, quick growing annual and/or perennial plants or protected by other approved measures as specified in Section 715.16.

PART 716 - SPECIAL PERFORMANCE STANDARD

Section

716.1	General obligations.
716.2	Steep-slope mining.
716.3	Mountaintop removal.
716.4	Special bituminous coal mines.
716.5	Anthracite coal mines.
716.6	Coal mines in Alaska.
716.7	Prime farmland.
716.8	Surface effects of underground mine.

AUTHORITY: Sections 201 and 501, Pub.L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SECTION 716.1 - GENERAL OBLIGATIONS.

- (a) This part establishes special initial performance standards that apply in the following special circumstances:
- (1) Section 716.2 applies to surface coal mining operations on steep slopes.
 - (2) Section 716.3 applies to surface coal mining operations involving mountaintop removal.
 - (3) Section 716.4 applies to special bituminous coal mines.
 - (4) Section 716.5 applies to anthracite surface coal mining operations.
 - (5) Section 716.6 applies to surface coal mining operations in Alaska.
 - (6) Section 716.7 applies to surface coal mining operations on prime farmlands.
 - (7) Section 716.8 applies to underground coal mining operations.

(b) All surface coal mining and reclamation operations subject to this Part shall comply with the applicable special performance standards in this part. Such operations shall also comply with all general performance standards in Part 715 of this chapter unless specifically exempted *in this Part* from the requirement of Part 715.

SECTION 716.2 - STEEP-SLOPE MINING.

(a) The permittee conducting surface coal mining and reclamation operations on natural slopes that exceed 20 degrees, or on lesser slopes that require measures to protect the area from disturbance, as determined by the regulatory authority after consideration of soils, climate, the method of operation, and other regional characteristics, shall meet the following performance standards. The standards of this section do not apply where mining is done on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area; or where the mining is governed by Section 716.3.

- (1) Overburden or waste materials or debris, including that from clearing and grubbing, and abandoned or disabled equipment, shall not be placed or permitted to remain on the downslope. Material in excess if that required to meet the provisions of Section 715.14 of this chapter must be disposed of in accordance with the requirements of Section 715.15 of this chapter.
- (2) First-cut overburden shall be stored within the permit area. The storage piles must be designed and constructed to minimize erosion and to maximize stability. Any material temporarily stored for more than 30 days must be protected by an effective cover of nonnoxious, quick-growing annual and/or perennial plants or other approved means as specified in

Section 715.20 of this chapter.

(3) Where the backfilled slope is 50 feet or more in length, terraces when approved by the regulatory authority, shall be sloped to safely and quickly discharge runoff water to stable drainage channels located off the fill area and must be constructed to meet the requirements of Sections 715.14(c) and 715.17 of this chapter.

(4) Woody materials that can cause instability must not be mixed into the backfill.

SECTION 716.3 - MOUNTAINTOP REMOVAL.

(a) Coal surface mining and reclamation operations that remove entire coal seams running through the upper fraction of a mountain, ridge, or hill by removing all of the overburden and creating a level plateau or gently rolling contour with no highwalls remaining are exempt from the requirements of Section 715.14 of this chapter for achieving approximate original contour, if the following requirements are met:

(1) An industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed for the affected land.

(2) The alternative land-use criteria in Section 715.13(d) of this chapter is met and the proposal is approved by the regulatory authority.

(3) All other applicable requirements of Part 715 of this chapter are met.

(b) Surface coal mining and reclamation operations conducted under this section shall comply with the following standards:

(1) An outcrop barrier at least 15 feet wide measured on the top of the coalbed perpendicular to the highwall be retained to prevent slides and erosion.

(2) The final graded top plateau slopes on the mined area shall be less than 1v:5h so as to create a level plateau or gently rolling configuration and the outcrops of the plateau shall not exceed 1v:2h, except where engineering data substantiates and the regulatory authority finds that a minimum static safety factor of 1.5 will be attained.

(3) The resulting level or gently rolling contour shall be graded to drain inward from the outslope except at specific points where it drains over the outslope in protected, stable channels.

(4) Damage to natural watercourses below the area to be mined shall be prevented.

(5) Spoil will be placed on the mountaintop bench as is necessary to achieve the postmining land use approved under Section 715.13 of this chapter. All excess spoil material not retained on the mountaintop shall be placed in accordance with the standards of Section 715.15 of this chapter.

(c) (1) The permit giving approval for mountaintop removal shall be reviewed not more than 3 years after the date of issuance and shall be renewable only upon demonstration by the permittee that all operations are proceeding in accordance with the terms of the applicable permit, time, schedule, and reclamation plan.

(2) The terms of a permit for mountain top removal may be modified by the regulatory authority if it is determined that more stringent measures are necessary to prevent or control slides and erosion, prevent damage to natural water courses, avoid water pollution, or to assure successful revegetation.

SECTION 716.4 - SPECIAL BITUMINOUS COAL MINES.

(a) *Definition.* Special bituminous coal surface mines as used in this section means those bituminous coal surface mines that are located in the State of Wyoming and that are being mined or will be mined according to the following criteria:

(1) Excavation of the mine pit takes place on a relatively limited site for an extended period of time. For the purposes of this section, mine pit means an open-pit mine in which the surface opening is at least the full size of the excavation and has a contiguous border. The pit generally is quite deep and is formed by the removal of relatively large

amounts of overburden to obtain lesser amounts of coal. The term as used in this section applies only to mining operations that extract coal from seams dipping 15 degrees or steeper from the horizontal.

(2) Excavation of the mine pit follows a coal seam that inclines 15 degrees or more from the horizontal, and as the excavation proceeds downward it expands laterally to maintain stability of the pitwall or as necessary to accommodate the orderly expansion of the total mining operations.

(3) (i) Surface and mining operations in the mine pit have taken place since January 1, 1972, and

(A) operations in the mine pit are removing more than one coal seam, and

(B) mining has begun on the deepest coal seam scheduled to be mined; or

(ii) Surface coal mining operations are begun after August 3, 1977, and the operations are conducted on lands immediately adjacent to operations meeting the criteria of paragraph (a)(3)(i) of this section.

- (4) The amount of material removed from the pit is large in proportion to the surface area disturbed.
- (5) There is no practicable alternative to the deep open-pit method of mining the coal.
- (6) There is no practicable way to entirely reclaim the land as required by Part 715 of this chapter.

(b) *Requirements for special bituminous coal mines operating prior to July 1, 1973.* Those portions of a special bituminous coal mine approved for operation prior to July 1, 1973, including the orderly expansion of such a mine pit to the extent authorized by State law, shall at a minimum meet the general performance standards of Part 715 of this chapter for all operations conducted on the permit area outside the mine pit and for those operations associated with spoil storage areas. The standards of Part 715 also apply to the mine pit with the exception of Section 715.14, which relates to backfilling and grading. Special requirements for backfilling and grading the mine pit area are as follows:[Page 44941]

(1) In the final mine area, highwalls may be allowed to remain, benches may be allowed and details of the benches shall be included in the mine plans submitted to the regulatory authority for approval.

(2) The exposed pit floors will be sloped and graded to provide access to the area, and topsoil shall be applied and the floor area seeded according to the requirements of Sections 715.16 and 715.20. Where water impoundments are included as part of the mine plan, riprap may be used if necessary to prevent erosion.

(3) Spoil piles will be graded and contoured with no more than an overall slope of 17 degrees allowed, and terraces may be used to break the slope when it can be shown that terraces will accomplish the required reclamation. For the postmining land use, steeper slopes may be permitted upon approval of the regulatory authority, provided it can be demonstrated that such method will provide the required results.

(c) *Requirements for other special bituminous coal mines.* Those portions of a special bituminous coal mine which do not meet the criteria of paragraph (b) of this section shall, at minimum, meet the general performance standards of Part 715 of this chapter for all operations conducted on the permit area outside the mine pit and for these operations associated with spoil storage areas. The standards of Part 715 also apply to the mine pit with the exception of Section 715.14, which relates to backfilling and grading. Special requirements for backfilling and grading the mine pit area are as follows:

(1) *Slope specifications.* Slope specifications for the postmining land use shall be based on an average of the natural slopes measured in the immediate area of the mine site, and the maximum inclination of the slope in the reclaimed area shall not be greater than this average slope. However, slopes steeper than the average of the natural slopes may be approved by the regulatory authority if it can be demonstrated that returning the mined area to a slope equal to or less than the average natural slope would greatly increase the amount of disturbed land. Measurements of individual slopes, locations at which measurements are made, and the average natural slope as determined from the individual slope measurements shall be submitted for approval for the regulatory authority. The regulatory authority may make an independent slope survey to verify the average natural slope.

(2) *Postmining land uses that do not include water impoundment.*

(i) The final mine area shall be backfilled, graded, and contoured to the extent necessary to return the land to the use approved by the regulatory authority.

(ii) All backfilling, grading, and contouring shall be done in a manner to preserve the original drainage system or to provide substitute drainage systems approved by the regulatory authority.

(iii) Terraces or benches may be used only if it can be demonstrated that contouring methods will not provide the required results. Detailed plans of dimensions and design of the terraces or benches, check dams, erosion

prevention techniques, and slopes of the terraces or benches and their intervals shall be submitted to the regulatory authority for approval before construction.

(iv) Depressions that will accumulate water shall not be allowed unless they are approved under paragraph (c)(3) of this section.

(3) *Postmining land uses that include permanent water impoundment.* (i) The exposed mine pit area shall be sloped, graded, and contoured to blend with the topography of the surrounding terrain and to provide for access to the area. Where necessary to prevent erosion, riprap shall be used.

(ii) Under certain conditions where it can be demonstrated by the permittee that the pitwall can be stabilized by terracing or other techniques, it may be permissible to leave one-half the proposed shoreline, as measured along the circumference, composed of the stabilized pitwall. The remaining part of the shoreline shall be graded and contoured to blend with the topography of the surrounding terrain and to provide access to the area. Detailed explanations of the techniques to be used to stabilize the pitwalls shall be submitted for approval by the regulatory authority. The regulatory authority may verify the effectiveness of the proposed stabilization techniques from a study made by an independent engineering company and based on this information and an onsite inspection, the regulatory authority will then determine the acceptability of the proposed stabilization techniques.

(d) In the event of an amendment or revision to the State of Wyoming's regulatory program, regulations, or decisions made thereunder governing such mines, the Secretary shall issue such additional regulations as necessary to meet the purpose of these regulations.

SECTION 716.5 - ANTHRACITE COAL MINES.

(a) Permittees of anthracite coal surface mines in those States where the mines are regulated by State environmental protection standards shall be subject to the environmental protection standards of the State regulatory program in existence on August 3, 1977, instead of the Part 715 of this chapter.

(b) The environmental protection provisions, of Title 25, Rules and Regulations, Part 1, Department of Environmental Resources, Commonwealth of Pennsylvania, shall apply to reclamation of anthracite surface mines operated in the Commonwealth of Pennsylvania instead of Part 715 of this chapter. In addition, the regulations of the Commonwealth of Pennsylvania pertaining to standards for air and water quality shall apply instead of the regulations of Part 715 of this chapter.

(c) If a State's regulatory program or regulations for anthracite coal mining and reclamation operations in force on August 3, 1977 are amended, the Secretary, upon receipt of a notice of amendment shall issue additional regulations as necessary to meet the purposes of this Act.

SECTION 716.6 - COAL MINES IN ALASKA.

(a) Permittees of surface coal mining operations in Alaska from which coal has been mined on or after August 3, 1976, shall conduct operations in a manner that, at a minimum, meets all the general performance standards of Part 715 of this chapter.

(b) The Secretary, after consultation with the Governor of Alaska, may modify the applicability of any environmental protection standard to any surface coal mining operation if he determines that it is necessary to ensure the continued operation of the mine.

(c) Any person may petition the Secretary to modify the applicability of a performance standard to a coal mine in Alaska. No particular form of petition is required. However, the petition shall be in writing and shall identify clearly -

- (1) The performance standard involved;
- (2) The alternative methods to be used to protect the environment and public health and safety;
- (3) The reasons why a modification is requested with full descriptions of the impacts continued requirements for compliance with the performance standard to be modified would have on mining and reclamation and of the impacts the proposed method would have on the environment and public health and safety; and
- (4) The location of the mine.

(d) If the Secretary determines that the petition presents reasonable justification for modifying the performance standard, he may grant a temporary suspension of enforcement of the performance standard, and he shall publish a notice of intention to modify the applicability of the performance standard in the FEDERAL REGISTER and in a newspaper of general circulation in the area of Alaska where the affected coal mine is located. A public hearing shall be held in Alaska and any person may testify for or against the proposed modification. The Secretary, after considering the public comment, and consulting with the Governor of Alaska, shall publish his decision in the FEDERAL REGISTER and in the same newspaper in which the original notice was published.

SECTION 716.7 - PRIME FARMLAND.

(a) (1) *Applicability.* Permittees of surface coal mining and reclamation operations conducted on prime farmland as defined in paragraph (b) of this section and identified in paragraph (c) of this section and that has been used for the production of cultivated crops, including nurseries, orchards, and other specialty crops, and small grains for a period of at least 5 years out of the 20 years preceding the date of the permit application, shall comply with the general performance standards of Part 715 of this chapter in addition to the special requirements of this section. [Page 44942]

(2) The requirements of this section are applicable to any permit issued on or after August 3, 1977. Permits issued before that date and revisions or renewals of those permits need not conform to the provisions of this section regarding

actions to be taken before a permit is issued. However, operations conducted under existing permits must be in accordance with the special requirements of paragraph (g) of this section. Permit renewals or revisions shall not include contiguous or noncontiguous expansions that were not in the original permit area or in a mining plan previously approved.

(b) *Definition.* Prime farmland means those lands that meet the criteria prescribed by the Secretary of Agriculture as published in the FEDERAL REGISTER on August 23, 1977. These criteria are included here for convenience. Terms used in this section are defined in U.S. Department of Agriculture publications: Soil Taxonomy, Agriculture Handbook 436; Soil Survey Manual, Agriculture Handbook 18; Rainfall-Erosion Losses from Cropland, Agriculture Handbook 282; and Saline and Alkali Soils, Agriculture Handbook 60. To be considered prime farmland the soils must meet all of the following criteria

- (1) The soils have -
 - (i) Aquic, udic, ustic, or xeric moisture regimes and sufficient available water capacity within a depth of 40 inches or in the root zone, if the root zone is less than 40 inches deep, to produce the commonly grown crops in 7 or more years out of 10; or
 - (ii) Xeric or ustic moisture regimes in which the available water capacity is limited but the area has a developed irrigation water supply that is dependable and of adequate quality (A dependable water supply is one in which enough water is available for irrigation in 8 out of 10 years for the crops commonly grown); or
 - (iii) Aridic or torric moisture regimes and the area has a developed irrigation water supply that is dependable and of adequate quality.
- (2) The soils have a soil temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes are excluded). These are soils that at a depth of 20 inches have a mean annual temperature higher than 32 degrees F. In addition, the mean summer temperature at this depth in soils with an O horizon is higher than 47 degrees F.; in soils that have no O horizon the mean summer temperature is higher than 59 degrees F.
- (3) The soils have a pH between 4.5 and 8.4 in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep.
- (4) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow food, feed, fiber, forage, and oilseed crops common to the area to be grown.
- (5) The soils can be managed so that, in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep, during part of each year the conductivity of saturation extract is less than 4 mmhos/cm and the exchangeable sodium percentage (ESP) is less than 15.
- (6) The soils are not flooded frequently during the growing season (less often than once in 2 years).
- (7) The soils have a product of K (erodability factor) \times percent slope of less than 2.0 and a product of I (soil erodability) \times C (climatic factor) not exceeding 60.
- (8) The soils have a permeability rate of at least 0.06 inch per hour in the upper 20 inches and the mean annual soil temperature at a depth of 20 inches is less than 59 degrees F.; the permeability rate is not a limiting factor if the mean annual soil temperature is 59 degrees F. or higher.
- (9) Less than 10 percent of the surface layer (upper 6 inches) in these soils consists of rock fragments coarser than 3 inches.

(c) *Identification of prime farmland.* Prime farmland shall be identified on the basis of soil surveys and, if required by the regulatory authority, data on irrigation drainage flood control, and subsurface water management submitted by the applicant. The requirement for submission of soil surveys may be waived by the regulatory authority if the applicant demonstrates that no prime farmlands are involved according to procedures in paragraph (d) of this section. Soil surveys shall be conducted according to standards of the National Cooperative Soil Survey which includes the procedures set forth in Soil Taxonomy, Agriculture Handbook 436; and Soil Survey Manual, Agriculture Handbook 18. The surveys shall include -

- (1) Data on moisture availability, temperature regime, flooding, water table, erosion characteristics, permeability, or other information that is needed to determine prime farmland in accordance with paragraph (b) of this section;
- (2) A map designating the exact location and extent of the prime farmland; and
- (3) A description of each soil mapping unit.

(d) *Negative determination of prime farmland.* Where the permittee can demonstrate one or more of the following situations, the land shall not be considered as prime farmland, and a soil survey and other information required by paragraph (c) of this section shall not be required for identification:

- (1) No lands within the proposed permit boundaries have been used for the production of cultivated crops for a period of at least 5 years out of 20 years preceding the date of the permit application.
- (2) The slope of all land within the permit area is 10 percent or greater.

(3) Land within the permit area is not irrigated or naturally subirrigated and, has no developed water supply that is dependable and of adequate quality, and the average annual precipitation is 14 inches or less.

(4) Other factors exist, such as a very rocky surface, or the land is frequently flooded, which clearly place all land within the area outside the purview of prime farmland.

(5) A written notification based on scientific findings and soil surveys that land within the proposed mining area does not meet the applicability requirements in paragraph (a) of this section is submitted to the regulatory authority by a qualified person other than the permittee, and is approved by the regulatory authority.

(e) *Plan for restoration of prime farmland.* The applicant shall submit to the regulatory authority a plan for the mining and restoration of any prime farmland within the proposed permit boundaries. This plan shall be used by the regulatory authority in judging the technological capability of the applicant to restore prime farmlands. The plan shall include -

(1) A description of the original undisturbed soil profile showing the thickness of each soil horizon that is to be removed, stored, and replaced.

(2) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil horizons in their natural occurring sequence;

(3) The location of areas to be used for stockpiling the soil horizons and plans for its stabilization before redistribution.

(4) If applicable documentation such as agricultural school studies or other data from comparable areas that supports the use of other suitable material instead of the B or C soil horizon to obtain on the restored area equivalent or higher levels of yield as non-mined prime farmlands in the surrounding area under equivalent levels of management; and

(5) Plans for seeding or cropping the restored mine land and conservation practices to control erosion and sedimentation during the first 12 months after regrading is completed. Proper adjustments for seasons must be made so that regraded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions.

(6) Agricultural school studies, company data, or other scientific data that prove that the permittee using his proposed method of reclamation will achieve the equivalent or higher levels of yield after mining as existed before mining.

(f) *Consultation with Secretary of Agriculture and issuance of permit.* (1) The regulatory authority may grant a permit which shall incorporate the plan submitted under paragraph (e) of this section if it finds in writing that the proposed plan -

(i) Demonstrates the technological capability to restore the prime farmland within the proposed permit area, within a reasonable time, to equivalent or higher levels of yield as nonmined prim farmland in the surrounding area under equivalent levels of management; and [Page 44943]

(ii) Is feasible and will achieve compliance with the standards of paragraph (g) of this section.

(2) Prior to the granting of any permit that includes prime farmlands, the regulatory authority shall consult with the Secretary of Agriculture. The Secretary of Agriculture will provide a review of the proposed method of soil reconstruction and comment on possible revisions that will result in a more complete and adequate restoration. The Secretary of Agriculture has assigned his responsibilities under this paragraph to the Administrator of the U.S. Soil Conservation Service and the U.S. Soil Conservation Service will carry out the consultation and review through their State Conservationist, located in each State.

(g) *Special requirements.* For all prime farmlands to be mined and reclaimed, the permittee shall meet the following special requirements:

(1) Determine from a soil survey the depth and thickness of the A and B horizons and any underlying C horizon that collectively constitute the root zone of the locally adapted crops. If other underlying material, below the root zone of the natural soil, is to be used in soil reconstruction instead of the B horizon, these strata must be shown to be texturally and chemically equal or better suited to plant growth and of equal or greater thickness than the B horizon.

(2) Remove all soil horizons to be used in the reconstruction of the soil before drilling, blasting, or mining to prevent contaminating the soil horizons with undesirable materials. Where removal of soil horizons result in erosion that may

cause air and water pollution, the regulatory authority shall specify methods of treatment to control erosion of exposed overburden.

(i) Remove separately the entire A horizon in a manner that prevents mixing or contamination with other material before replacement.

(ii) Remove separately the B horizon of the natural soil or, if determined by the regulatory authority to be of insufficient thickness for soil reconstruction, a combination of B horizon and underlying C horizon that will constitute the reconstructed root zone, in a manner that prevents mixing or contamination with other material.

(iii) Remove separately the underlying C horizons or other strata, or a combination of such horizons or other strata, to be used instead of the B horizon that are of equal or greater thickness and that can be shown to be equal or

more favorable for plant growth than the B horizon, and that when replaced will create in the reconstructed soil a final root zone of comparable depth and quality to that which existed in the natural soil. To use such material, the requirements of Section 715.16 of this chapter shall be met.

(3) If stockpiling of soil horizons is allowed by the regulatory authority, the A horizon and B horizon must be stored separately, the stockpiles must be placed within the permit area and where they will not be disturbed or exposed to excessive erosion by water or wind before the stockpiled horizons can be redistributed on terrain graded to final contour. Stockpiles in place for more than 30 days must meet the requirements of Section 715.16(c).

(4) Scarify the final graded land before the soil horizons are replaced to eliminate slippage surfaces.

(5) Replace the material from the B horizon, or other suitable material specified in paragraph (g)(2) of this section in such a manner as to avoid excessive compaction of overburden and to a thickness comparable to the root zone that existed in the soil before mining.

(6) Replace the A horizon as the final surface soil layer to the thickness of the original soil as determined in paragraph (g)(1) of this section in a manner that -

(i) Prevents excess compaction of both the A horizon and underlying material and reduction of permeability to less than 0.06 inch per hour in the upper 20 inches of the reconstructed soil profile; and

(ii) Protects the A horizon from wind and water erosion before it is seeded or planted, and

(iii) Apply nutrients and soil amendments as needed to establish quick vegetative growth.

SECTION 716.8 - SURFACE EFFECTS OF UNDERGROUND MINES.

All underground coal mining operations shall comply with the following standards and shall not be required to comply with those sections of Part 715 of this chapter that are not specifically listed in this section.

(a) The requirements of Section 715.11(b) of this chapter, authorization to operate.

(b) The requirement of Section 715.12(a) of this chapter, sign and marker specifications; Section 715.12(b), mine identification signs; Section 715.12(e) as regards blasting of surface areas.

(c) The requirements of Section 715.14 of this chapter, backfilling and grading, except the standards regarding mountaintop removal and thin and thick restored overburden. These requirements apply only to the surface areas disturbed to provide access to the mine and such other surface areas disturbed during the mining operation as are identified by the regulatory authority. The requirements apply at the conclusion of mining operations.

(d) The requirements of Section 715.15 of this chapter, disposal of spoil and waste materials.

(e) The requirements of Section 715.17 of this chapter, protection of the hydrologic system, in regard to surface discharges and surface areas that are disturbed, except that the requirements of Sections 715.17(h) and (j) shall not apply.

(f) The requirements of Section 715.18 of this chapter, dams constructed of refuse materials.

(g) The requirements of Section 715.19 of this chapter in regard to explosives used during surface operations.

(h) The requirements of Section 715.20 of this chapter in regard to revegetation of surface areas disturbed. The requirements apply at the conclusion of mining operations.

PART 717 - ADOPTION OF STATE STANDARDS

SECTION 717.1 - PROCEDURES FOR ADOPTION.

(a) Any State law or regulation which is determined by the Secretary under the procedures in this section to be a more stringent performance standard for regulation of surface coal mining and reclamation operations than that provided under a performance standard in Part 715 or Part 716 of this chapter shall be adopted by the Secretary and applied in that State in lieu of the requirements of the standards in Part 715 or 716.

(b) 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 Part 715 or 716 of this chapter.

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 Part 715 or Part 716 of this chapter, and an analysis of the reasons why the State law or regulation is a more stringent standard.

(c) If the Secretary determines that the requirements of State law or regulation may be more stringent than the comparable performance standard in Part 715 or Part 716 of the chapter, he shall initiate rulemaking under the procedures of section 501 of the Act for adoption of the standard.

(Sections 201 and 501, Pub.L. 95-87, 91 Stat. 445 (30 U.S.C. 1201))

PART 720 - STATE ENFORCEMENT ACTIVITIES

Section

720.11	Enforcement authority.
720.12	Enforcement responsibilities.
720.13	Permits.
720.14	Reporting obligations.

AUTHORITY: Sections 201, 501 and 502, Pub.L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SECTION 720.11 - ENFORCEMENT AUTHORITY.

Nothing in these regulations shall be interpreted to preclude a State from exercising its authority to enforce State law, regulations, and permit conditions unless -

(a) Compliance with the State law, regulation or permit condition will preclude compliance with these regulations.

(b) The Secretary has published in the FEDERAL REGISTER a list of state laws and regulations which have been preempted.

SECTION 720.12 - ENFORCEMENT RESPONSIBILITIES.

If a State regulates the conduct of surface coal mining operations, the Act contemplates that the State will enforce the performance standards of Parts 715 and 716 of this Chapter that are more stringent than the requirements of State law and the obligations of operators under Part 710 of this Chapter. [Page 44944]

SECTION 720.13 - PERMITS.

On or after February 4, 1978, if a State is enforcing the performance standards of Parts 715 and 716 of this Chapter that are more stringent than State law, that State shall develop and incorporate terms in initial, revised, or renewed permits that comply with those standards.

SECTION 720.14 - REPORTING OBLIGATIONS.

(a) During the initial regulatory program, each State regulatory authority shall submit to the district manager of the Office with jurisdiction over the inspected surface coal mining operation, or other office designed by the Director, within 5 days after its completion a copy of each State report which contains observations of the condition of the mine site and relates to the obligations imposed by these regulations.

(b) Any State issuing an initial, revised, or renewed permit on or after February 4, 1978, to conduct surface coal mining operations shall submit a copy of the application and the permit to the district manager of the Office with jurisdiction over the surface coal mining operation, or to such other office as the Director designates.

PART 721 - FEDERAL INSPECTIONS

Section

721.11	Extent.
721.12	Right of entry.
721.13	Inspections based on citizen requests.
721.14	Failure to give notice and lack of reasonable belief.

AUTHORITY: Sections 201, 501 and 502, Pub.L. 95-87, 91 Stat. 445 (30 U.S.C. 1201)

SECTION 721.11 - EXTENT.

The authorized representatives of the Secretary shall conduct inspections of surface coal mining operations subject to regulations under the Act -

- (a) On the basis of not less than two consecutive State inspection reports indicating a violation of the Act, regulations or permit conditions required by the Act;
- (b) On the basis of information provided by a State or any person which gives rise to a reasonable belief that the provisions of the Act, regulations or permit conditions required by the Act are being violated, or that a condition or practice exists which creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources; and
- (c) On a random basis of at least one complete inspection each 6 months. A complete inspection is an onsite review of the entire area disturbed or affected by mining.

SECTION 721.12 - RIGHT OF ENTRY.

- (a) Authorized representatives of the Secretary, without advance notice and upon presentation of appropriate credentials and without a search warrant, shall have the right of entry to, upon, or through any surface coal mining and reclamation operations or any premises in which any records to be maintained are located.
- (b) The authorized representatives may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under this Act, the regulations or the permit.

SECTION 721.13 - INSPECTIONS BASED ON CITIZEN REQUESTS.

(a) *Citizen reports* (1) Any person who suspects or knows of a violation of the Act, regulations or permit conditions required by the Act or of any imminent hazard may report this information in writing to the Office of Surface Mining Reclamation and Enforcement office nearest to the surface coal mining operation to which the information relates or to any other Office of Surface Mining Reclamation and Enforcement office. Written complaints must be signed and include a phone number where the complaining party can be contacted. The complaint or other information shall be considered as having a reasonable basis if it alleges facts which, if proven to be true, would be sufficient to show a violation of the Act, regulations or permit. Unless the Office has reason to believe that the information is incorrect, or determines that even if true it would not constitute a violation, the Office shall conduct an inspection.

(2) The identity of any person supplying information to the Office relating to possible violations or imminent hazards shall remain confidential within the Office unless the person supplying the information consents in writing to disclosure.

(b) *Right to accompany the authorized representative of the Secretary.* (1) If a Federal inspection is conducted as a result of information provided to the Office, the person who provided the information shall be notified when the inspection is to occur and the person will be allowed to accompany the authorized representative during the inspection.

(2) Any person accompanying an authorized representative of the Secretary has a right of entry to, upon and through the mining and reclamation operations about which he supplied information only if he is in the presence of and is

under the control, direction and supervision of the authorized representative while on the mine property.

(c) *Notification of results of investigation.* Within 10 days of the inspection or, if no inspection, within 10 days of the complaint, the Office shall notify the person in writing of the following -

(1) The results of the investigation, including a description of any inspection which occurred and any enforcement action taken; copies of Federal inspection reports, notices of violation, and cessation orders may be forwarded to the person in satisfaction of this requirement.

(2) If no inspection was conducted, an explanation of the reason for not inspecting;

(3) A statement as to the person's right to informal review of the sections or inactions of the Office.

(d) *Review of action of local offices.* A person who does not agree with the action taken by the Office on his report may request the Regional Director to review the complaint and actions taken. The Regional Director shall advise the person in writing of the results of the review.

SECTION 721.14 - FAILURE TO GIVE NOTICE AND LACK OF REASONABLE BELIEF.

No notice of violation or cessation order may be vacated by reason of failure to give notice required by the Act prior to the inspection or by reason of a subsequent determination that prior to the inspection the Office did not have information sufficient to create a reasonable belief that a violation had occurred.

PART 722 - ENFORCEMENT PROCEDURES

Section

722.1	Scope.
722.11	Imminent hazards.
722.12	Non-imminent hazard violations.
722.13	Failure to abate.
722.14	Service of notice.
722.15	Review at minesite of cessation orders.
722.16	Inability to comply.
722.17	Pattern of violation.

AUTHORITY: Sections 201, 501 and 502, Pub.L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SECTION 722.1 - SCOPE.

The regulations of this part set forth general procedures governing issuance of orders of cessation, notices of violation, and orders to show cause under section 521 of the Act.

SECTION 722.11 - IMMINENT HAZARDS.

(a) If an authorized representative of the Secretary finds conditions, or practices, or violations of applicable performance standards, which create an imminent danger to the health or safety of the public the authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation.

(b) If an authorized representative of the Secretary finds conditions or practices, or violations of applicable performances standards, which can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation.

(c) An authorized representative of the Secretary shall impose affirmative obligations on an operator which the authorized representative deems necessary to abate the condition, practice or violation if -

(1) A cessation order is issued under paragraph (a) or (b) of this section; and

(2) The cessation of mining or reclamation activities will not completely abate the imminent danger to public health or safety or the significant, imminent environmental harm or eliminate the practices or conditions that contributed to the imminent danger or significant, imminent environmental harm. [Page 44945]

(d) When imposing affirmative obligations under this section, the authorized representative shall require abatement of the danger or harm in the most expeditious manner physically possible. The affirmative obligation shall include a time by which abatement shall be accomplished and may include, among other things, the use of existing or additional personnel and equipment.

(e) An authorized representative of the Secretary may terminate a cessation order issued under paragraph (a) or (b) of this section by written order when the authorized representative of the Secretary determines that the conditions or practices or violations which caused the danger to life or the environment have been eliminated.

SECTION 722.12 - NON-IMMINENT HAZARD VIOLATIONS.

(a) If an authorized representative of the Secretary finds a violation which is not an imminent hazard, the authorized representative shall issue a notice of violation fixing a reasonable time for abatement.

(b) An authorized representative may extend the time to abate a violation by written notice if the failure to abate within the time set was not caused by the permittee's or operator's lack of diligence.

(c) The total time for abatement as originally fixed and subsequently extended shall not exceed 90 days.

SECTION 722.13 - FAILURE TO ABATE.

An authorized representative of the Secretary shall order cessation of surface coal mining and reclamation operations, or the portion relevant to the violation, when the authorized representative has issued a notice of violation under Section 722.12 and determines that the permittee or operator has failed to abate the violation within the time originally fixed or subsequently extended. In a cessation order issued under this section, the authorized representative shall impose affirmative obligations to abate the violation in the manner provided in Section 722.11.

SECTION 722.14 - SERVICE OF NOTICE.

Notices and orders issued under this part shall be given to the permittee or operator or his designated agent. If no designated agent is at the mine site, service will be made upon any person who appears to be in charge of the mining or reclamation operation. The person receiving service shall be responsible for any immediate compliance actions required by the notice or order. Service is complete on delivery at the mine. However, a copy of each notice or order shall be mailed to the permittee or operator within 5 days.

SECTION 722.15 - REVIEW AT MINESITE OF CESSATION ORDERS.

(a) Within 30 days after the permittee or operator has received any cessation order issued under this part, the District Manager or his delegate shall conduct an informal hearing at the minesite or within such reasonable proximity to the mine that it may be visited during the conduct of the hearing. No hearing will be required where the condition, practice or violation in question has been abated or the operator waives the hearing.

(b) Any request made to the Office of Surface Mining Reclamation and Enforcement for a substantial modification or vacation of a cessation order shall be deemed a request for an informal hearing under this section.

(c) Notice of the time, place and subject matter of the hearing shall be given to the operator or permittee, any citizen who filed a report which led to the cessation order to be reviewed and the state regulatory authority. Notice of the hearing also shall be posted at the appropriate district or field office and at the mine site and, to the extent possible, shall be given by newspaper in the area of the mine.

(d) The requirements of Section 554 of Title 5 of the United States Code shall not govern the conduct of the hearings required by this section. The District Manager or his delegate may accept oral or written arguments, presentations of evidence, or any other relevant information from any person attending.

(e) The District Manager or his delegate shall within 15 days of the close of the informal hearing affirm, modify, or vacate the order. The decision shall be in writing and shall be sent to the permittee or operator, any citizen who filed a report which led to the cessation order reviewed and the State regulatory authority.

(f) Informal review under this subsection shall not affect the rights of any person to request formal review under Section 525(a)(1) of the Act. A request for informal review under this section of the Act shall not affect the 30 day time period for filing a request for formal review under Section 525(a)(1) of the Act.

SECTION 722.16 - INABILITY TO COMPLY.

(a) Neither a notice of violation nor a cessation order issued under this part may be vacated because of inability to comply.

(b) A permittee or operator may not be deemed to have shown good cause for not suspending or revoking a permit by showing inability to comply.

(c) Unless caused by lack of diligence, inability to comply may be considered in mitigation of the amount of a Civil penalty under part 2033 of this Chapter and of the duration of the suspension or revocation of the permit under Section 722.17.

SECTION 722.17 - PATTERN OF VIOLATIONS.

(a) The regulations of this section set forth the procedures governing the suspension or revocation of State permits based on a pattern of violations arising during Federal inspections during the initial regulatory program.

(b) *Definitions* As used in this Section -

(1) "*Violations of the same or related requirements of the Act, regulations or permit conditions*" means noncompliance with any single section Parts 715, 716 or 717 of this chapter.

(2) "*Violations of different requirements of the Act, regulations or permit conditions*" means noncompliance with different sections of Part 715, 716 or 717 of this chapter.

(3) "*Unwarranted failure to comply*" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of the Act or these regulations due to indifference, lack of diligence, lack of reasonable care, or the failure to abate any violation of such permit, the Act or regulations due to indifference, lack of diligence or lack of reasonable care.

(4) "*Willful violation*" means an intentional action or omission which violates the Act, regulations or permit conditions required under the Act.

(c) *Order to show cause.* (1) If a Regional Director of the Office determines that a pattern of violations exists or has existed and that such violations are caused by the unwarranted failure of the permittee or were willfully caused, the Regional Director shall issue an order to the permittee to show cause why the permit should not be suspended or revoked.

(2) The Regional Director may determine that a pattern of violations exists or has existed, after considering the circumstances, including –

(i) The number of willful violations or violations caused by unwarranted failure to comply with the same or related requirements of the Act, regulations or permit conditions during 2 or more Federal inspections.

(ii) The number of willful violations or violations caused by unwarranted failure to comply with different requirements of the Act, regulations or permit conditions.

(iii) The extent to which the violations were isolated departures from lawful conduct.

(3) The Regional Director shall deem a pattern to exist if the number of willful violations or violations caused by unwarranted failure to comply with the Act, regulations or permit conditions is at a rate 50 percent above the national norm during two months of any four month period. The national norm will be determined by comparing the number of willful and unwarranted violations issued per inspection day to permittees in the initial regulatory period. The norm will be determined semi-annually and the norm for the proceeding half year will be utilized in determining whether a pattern exists. The national norm may be computed by a sampling or other statistically-valid method when the data exists for the computation.

(d) *Suspension or revocation of permit.* (1) The order to show cause shall be issued and a public hearing, if requested, shall be conducted under the procedures of 43 CFR Part 4.

(2) If the Secretary finds that a pattern of violations exists or has existed, the permit shall be either suspended or revoked and the permittee directed to complete necessary reclamation operations.

PART 723 - CIVIL PENALTIES

Section

723.1	Scope.
723.2	Objective.
723.11	When assessment made.
723.12	When to assess after a notice of violation.
723.13	Determination of amount of penalty.
723.14	Assessment of separate violation for each day.
723.15	Procedures for assessment of civil penalties.
723.16	Procedure for conference.
723.17	Request for hearing.
723.18	Availability of records.

AUTHORITY: Sections 201, 501 and 502, Pub.L. 95-87, 91 Stat. 445 (30 U.S.C. 1201)

SECTION 723.1 - SCOPE.

This part covers the assessment of civil penalties under Section 518 of the Act for violations of a permit condition, any provision of Title V of the Act, or any implementing regulations. This Part governs when a civil penalty is assessed and how the amount is determined and sets forth applicable procedures. This Part applies to cessation orders and notices of violation issued to permittees or operators under Part 722 of this chapter during a Federal inspection.

SECTION 723.2 - OBJECTIVE.

Civil penalties are assessed under Section 518 of the Act to deter violations of the Act and to insure the maximum compliance with the Act on the part of the coal mining industry.

SECTION 723.12 WHEN TO ASSESS AFTER A NOTICE OF VIOLATION.

(a) The Office will review each notice of violation and cessation order issued in accordance with the assessment procedures described in this section to determine whether a civil penalty will be assessed, the amount of the penalty and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

(b) The Office shall assess a civil penalty for each violation contained in a cessation order. If a cessation order is issued for a condition or practice which is not a violation, no civil penalty shall be assessed.

(c) In determining whether to assess a civil penalty the Office shall consider -

- (1) The permittee or operator's history of previous violations at the particular coal mining operation;
- (2) The seriousness of the violation;
- (3) Whether the permittee or operator is negligent; and
- (4) The demonstrated good faith of the permittee or operator is attempting to achieve rapid compliance after notification of the violation. The Office shall make this determination by use of a point system described in Section 723.12.

SECTION 723.12 - WHEN TO ASSESS AFTER A NOTICE OF VIOLATION.

(a) *General.* The Office determines whether to assess a penalty following the issuance of a notice of violation by a point system that takes into account the four criteria in Section 723.4(c). Points are assigned based on each of the four criteria. If the total is more than 30 points, a penalty is assessed.

(b) *History of previous violations.* The Office shall assign one point for each past violation and five points for each past cessation order issued as a result of a violation up to a maximum of 30 points. Each violation which underlies a cessation order shall be counted separately from the cessation order itself. Violations and cessation orders which shall be counted are those, resulting from a Federal inspection, that have not been vacated or dismissed at the time of the assessment being computed and that occurred or were issued within the year preceding the violation under consideration. The Office shall count each violation without regard to whether it led to a civil penalty assessment.

(c) *Seriousness.* The Office shall assign up to 30 points based on the seriousness of the violation according to the following schedules.

(1) *Probability of occurrence.* The probability of the occurrence of the event against which a standard is directed may account for a maximum of 15 penalty points. The Office shall use the following definitions and schedules -

(1) Probability of occurrence:		Points
None or insignificant	0- 5	
Unlikely	5-10	
Likely	10-15	
Occurred	15	

(2) *Extent of potential or actual damage.* The extent of the potential or actual damage in terms of area and impact on the public or environment may account for a maximum of 15 penalty points based on the following -

(i) If the damage or impact against which the standard violated is designed to protect would remain within the permit area (or in the case of a deep mine, the area of surface structures), the Office shall assign zero to seven points depending on the duration and extent of the damage or impact.

(ii) If the damage or impact, against which the standard violated is designed to protect, would extend outside the permit area (or in the case of a deep mine, the area of surface structures), the Office shall assign eight to fifteen points depending on the duration and extent of the damage or impact.

(3) The Office shall assign up to 15 points for seriousness for any failure to keep records, to give notice or to conduct any measuring or monitoring required by the regulations or a permit based upon the extent to which enforcement is obstructed. If the method of assigning points for seriousness under paragraph (c)(1) and (2) of this section produces more points, the higher points shall be assigned.

(d) *Negligence.* (1) The Office shall assign up to 25 points based on the negligence of the permittee or operator, either through act or omission, in causing or failing to correct the condition or practice which is a violation. A violation which occurs through no negligence shall not be assigned penalty points for negligence. A violation which is caused by negligence shall be assigned 12 points or less depending on the degree of negligence. A violation which occurs through a greater degree of fault than negligence shall be assigned 13 through 25 penalty points depending on the degree of fault.

(2) In determining the degree of negligence involved in a violation and the number of penalty points to be assigned, the following definitions apply -

(i) *No negligence* means an inadvertent violation of the Act, regulations or permit conditions which was unavoidable by the exercise of reasonable care.

(ii) *Negligence* means the failure of a permittee or operator to prevent the occurrence of any violation of his permit or any requirement of the Act or the regulations due to indifference, lack of diligence, or lack of reasonable care,

or the failure to correct any violation of such permit or the Act or the regulations due to indifference, lack of diligence or lack of reasonable care.

(iii) Examples of greater degree of fault than negligence are reckless, knowing or intentional conduct.

(3) In calculating points to be assigned for negligence, the actions of all persons working on the mine site shall be attributed to the permittee or operator.

(e) *Good faith in attempting to achieve compliance.* (1) The Office shall subtract or add points based on the degree of good faith of the permittee or operator in attempting to achieve rapid compliance after notification of the violation. The points shall be assigned according to the following schedule -

	Degree Of Good Faith:	Points
Rapid		-10
Normal		0
Lack of good faith		10

(2) In determining the permittee's or operator's degree of good faith in attempting to achieve rapid compliance, the following definitions apply -

(i) *Rapid Compliance* means that the permittee or operator took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved more rapidly than reasonably required.

(ii) *Normal Compliance* means the permittee or operator abated the violation within the time given for abatement.

(iii) *Lack of Good Faith* means the permittee or operator did not show diligence in attempting to abate the violation and the violation was not timely abated.

(3) If the consideration of this criteria is impractical because the length of the abatement period, the assessment may be made without considering this criteria. Any such assessment may be reconsidered upon the permittee or operator's request after abatement is completed. [Page 44947]

SECTION 723.13 - DETERMINATION OF AMOUNT OF PENALTY.

The Office shall determine the amount of any civil penalty by converting the total number of points assigned under Section 723.12 to a dollar amount according to the following schedule:

25 and below	500
26	600
27	700
28	800
29	900
30	1,000
31	1,100
32	1,200
33	1,300
34	1,400
35	1,500
36	1,600
37	1,700
38	1,800
39	1,900
40	2,000
41	2,100
42	2,200
43	2,300
44	2,400
45	2,500
46	2,600
47	2,700
48	2,800
49	2,900
50	3,000
51	3,100
52	3,200
53	3,300
54	3,400
55	3,500
56	3,600
57	3,700
58	3,800

59	3,900
60	4,000
61	4,100
62	4,200
63	4,300
64	4,400
65	4,500
66	4,600
67	4,700
68	4,800
69	4,900
70 and above	5,000

SECTION 723.14 - ASSESSMENT OF SEPARATE VIOLATIONS FOR EACH DAY.

(a) If a cessation order is issued for failure to abate a violation within the time set in a prior notice of violation or cessation order, the Office shall assess separately each day the violation underlying the cessation order remains unabated. The daily penalty shall be the amount assessed for the violation or \$750.00, whichever is greater. The daily assessment of a penalty shall not be made for any period that the obligation to abate is suspended.

(b) The Office may assess separately each day of any continuing violation. In making this determination, the Office shall consider the factors listed in \$750.00, whichever is greater. The daily permittee or operator which resulted from a failure to comply.

(c) The Office shall separately assess a minimum of two days for any continuing violation which is assigned more than 70 points under Section 723.12.

SEC 723.15 - PROCEDURES FOR ASSESSMENT OF CIVIL PENALTIES.

(a) With 10 days of service of a notice or order, the permittee or operator may submit information in writing pertaining to the violation involved to the District Office with jurisdiction over the mine and to the inspector who issued the notice or order. The Office shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) The Office shall serve the permittee or operator, by certified mail return receipt requested, with 30 days of the issuance of the notice or order, with a copy of the proposed assessment and of the worksheets showing the computation.

SECTION 723.16 - PROCEDURE FOR CONFERENCE.

(a) If a written request from the permittee or operator is received within 15 days from receipt of a proposed assessment, the Office shall arrange for a conference to review the assessment. The permittee or operator may submit additional material for consideration during the conference. The Office may contact the permittee or operator to discuss the assessment prior to the conference if necessary to expedite the review.

(b) The Office shall consider all relevant information on the violation in question presented by the permittee or operator and may recalculate either up or down or vacate the proposed penalty. No information as to which the permittee or operator claims confidentiality shall be considered as a basis for reduction of a proposed assessment. When new facts warrant the imposition of a higher penalty, it shall be proposed in the manner provided in Section 723.15. Every change in a proposed assessment shall be fully documented in the file including a written explanation of the reason the penalty has changed.

(c) Notice of the time and place of the conference shall be posted at the Office Surfacing Mining Reclamation and Enforcement field office with jurisdiction over the mine at least five days prior to the conference. Any person shall have a right to attend the conference.

(d) If the issues are resolved, the agreement shall be in writing and signed by both parties. If payment is not received within 10 days, the Office may -

- (1) Enter the agreed upon amount as a final order of the Secretary; or
- (2) Rescind the agreement and reinstate the original proposed assessment.

(e) A reduction of a proposed civil penalty assessment of more than 25 percent and more than \$500 agreed to during a conference shall be approved by the Regional Director or his designee before it is final and binding on the Secretary.

SECTION 723.17 - REQUEST FOR HEARING.

(a) Within 30 days from receipt of the proposed assessment, the permittee or operator may request a hearing before the Office of Hearings and Appeals by filing a petition and tendering full payment of the proposed assessment to be held in escrow.

(b) The timely filing of a request for a conference under Section 723.16 suspends the running of the 30-day period for requesting a hearing. The suspension shall continue until the completion of the conference, which shall be held within 60 days from the date of the request for the conference. The permittee or operator shall have 15 days after completion of the conference to request a public hearing.

(c) The Office of Hearings and Appeals conducts the hearings and issues orders or otherwise terminates the petition pursuant to its procedures in 43 CFR Part 4. The Office of Hearings and Appeals may determine whether a violation occurred. When determining the amount of the penalty the Office of Hearings and Appeals shall use the point system and conversion table contained in this part.

SECTION 723.18 - AVAILABILITY OF RECORDS.

All records and files created or used in the assessment process under this part shall be available for public inspection.

PART 725 - REIMBURSEMENTS TO STATES

Section	
725.1	Scope.
725.2	Objectives.
725.3	Authority.
725.4	Responsibility.
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AUTHORITY: Sections 201, 501 and 502, Pub.L. 95-87; 91 Stat. 445 (30 U.S.C. Section 1201)

SECTION 725.1 - SCOPE.

This part sets forth policies and procedures for reimbursements to States for costs of enforcing performance standards set forth in Parts 715 and 716 of this chapter during the initial regulatory program.

SECTION 725.2 - OBJECTIVES.

The objectives of assistance under this part are:

- (a) To assist the States in meeting the increased costs of administering the initial performance standards.
- (b) To encourage the States to build strong reclamation and enforcement programs.

SECTION 725.3 - AUTHORITY.

Section 502(e)(4) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201) authorizes the Secretary to reimburse States for costs of enforcing the performance standards of the initial regulatory program.

SECTION 725.4 - RESPONSIBILITY.

- (a) The Director shall administer the grant program for reimbursements to States for costs of enforcing performance standards during the initial regulatory program
- (b) The Regional Director of each of the Office regions shall receive, review, and approve grants applications under this part.

SECTION 725.5 - DEFINITIONS.

As used in this part, the following terms have the specified meanings:

Agency means the State agency designated by the Governor to receive and administer grants under this part.

Base program means the State program to regulate surface coal mining prior to August 3, 1977.

SECTION 725.11 - ELIGIBILITY.

- (a) *Assumption of responsibility.* To be eligible for a grant for reimbursements for the cost of enforcing performance standards during the initial regulatory program, the State shall assume responsibility for enforcement of the initial regulatory program including the specific responsibilities identified under Part 2030 of this chapter. [Page 44948]
- (b) *Designation of State agency.* In order to receive a grant for reimbursements for costs of enforcing performance standards during the initial regulatory program, the Governor of a State shall designate in writing one agency to submit grant applications, receive and administer grants under this part.
- (c) *Periods covered by reimbursement grants.* An agency may apply for a reimbursement grant for any period during the initial regulatory program and for a reasonable start-up period beginning no earlier than August 3, 1977.

SECTION 725.12 - COVERAGE OF GRANTS.

An agency may use grant money under this part to cover costs in excess of the base program for administering and enforcing the initial regulatory program. The Regional Director shall determine the base program from the State fiscal year budget in effect on August 3, 1977. Costs of the following activities are eligible for reimbursement -

- (a) Incorporation of the initial performance standards of Parts 715 and 716 of this chapter in new permits issued by the State.
- (b) Modification of existing permits to include the initial performance standards of Parts 715 and 716 of this chapter.
- (c) Additional inspections required to enforce the initial performance standards of Parts 715 and 716 of this chapter.
- (d) Inspections which are more detailed than inspections before the initial regulatory program.
- (e) Responses to complaints related to the initial performance standards of Parts 715 and 716 of this chapter.
- (f) Enforcement actions required to secure compliance with the initial performance standards of Parts 715 and 716 of this chapter.
- (g) Additional administrative activities related to hiring additional inspectors, revising permits, conducting inspections, preparing, copying and submitting reports required by Part 720, and submitting applications for reimbursement grants under this part.

SECTION 725.13 - AMOUNT OF GRANTS.

The Office shall pay 100 percent of the incremental costs to the agency of enforcing the performance standards during the initial regulatory program.

SECTION 725.14 - GRANT PERIODS.

The Regional Director shall approve a grant for a period of 1 year or less. The Regional Director shall fund a program that extends over more than 1 year by consecutive annual grants.

SECTION 725.15 - GRANT APPLICATION PROCEDURES.

- (a) The agency may submit its application for a grant to the Regional Director no later than December 15, 1977, for the first year and no later than October 31 of each year thereafter.
- (b) The agency shall use the short form application for nonconstruction programs and other procedures specified by Federal Management Circular 74-7, "Uniform administrative requirements for grants-in-aid to State and local governments" (34 CFR 256). No preapplication is required.
- (c) Agencies shall include in Part III of the standard application sufficient information to enable the Regional Director to determine the Agencies' base programs and increases over the base programs eligible for reimbursement grants. Agencies shall include the following information, plus any other relevant data:
 - (1) A summary of the State permit, inspection and enforcement program, prior to the addition of the requirements of the Act of 1977, including -
 - (i) Permit requirements and the system for issuing permits;
 - (ii) Mining and reclamation plan requirements;
 - (iii) Coverage and frequency of inspections;
 - (iv) Actions required to enforce mining and reclamation requirements;
 - (v) The number and nature of responses to complaints; and
 - (vi) Other regulatory activities and related administrative functions affected by the performance standards of the initial regulatory program specified in Parts 715 and 716 of this chapter.
 - (2) A statement of the number of employees and annual budget required to carry out functions described in paragraph (c)(1) of this section.
 - (3) A copy of all State constitutional, statutory and regulatory provisions applicable to the enforcement and administration of the initial regulatory program.
 - (4) An opinion of the State's chief legal officer as to whether and to what extent the State is authorized to enforce and administer the initial regulatory program.
 - (5) A statement of the additional work required to enforce the initial regulatory program for each of the agency

activities described in paragraph (c)(1) of this section.

(6) The additional staff and funds required for the increased workload described in paragraph (c)(5) of this section.

(d) The Regional Director may waive the resubmission of information required by paragraphs (c)(1), (c)(2), (c)(3) and (c)(4) of this section in applications for a second or third reimbursement grant.

SECTION 725.16 - GRANT AGREEMENT.

(a) If a Regional Director approves of an agency grant application, the Regional Director shall prepare a grant agreement which includes -

- (1) The approved scope of the program to be covered by the grant.
- (2) The base program budget and estimated costs in excess of the base program.
- (3) The amount of the grant.
- (4) Commencement and completion for the segment of the program covered by this grant and for major phases of the program to be completed during the grant period.
- (5) Permissible transfers of funds to other State agencies.

(b) The Regional Director shall limit grants under this part to the additional costs to an agency for enforcing the initial regulatory program.

(c) The Regional Director may not permit an agency to delegate or transfer its responsibility for the use of grant funds.

(d) Except as may be provided by the grant agreement, costs may not be incurred prior to the executive of the agreement.

(e) The Regional Director shall transmit four copies of the grant agreement, by certified mail, return receipt requested, to the agency for signature. The agency shall execute the grant agreement and return all copies within 3 calendar weeks after receipt, or within an extension of such time that may be granted by the Regional Director.

(f) The Regional Director shall sign the grant agreement upon its return from the agency and return one copy to the agency. The grant is effective and constitutes an obligation of Federal funds in the amount and for the purposes stated in the grant agreement at the time the Regional Director signs the agreement.

(g) Neither the approval of a program nor the award of any grant will commit or obligate the United States to award any continuation grant or to enter into any grant amendment, including grant increases to cover cost overruns.

SECTION 725.17 - GRANT AMENDMENTS.

(a) A grant amendment is a written alteration in the grant amount, grant terms or conditions, budget or period, or other administrative, technical, or financial agreement whether accomplished on the initiative of the agency or the Regional Director or by mutual action of the agency and the Regional Director.

(b) The agency shall promptly notify the Regional Director in writing by certified mail, return receipt requested, of events or proposed changes which may require a grant amendment, such as -

- (1) Rebudgeting;
- (2) Changes which may affect the approved scope or objective of a program; or
- (3) Changes which may increase or substantially decrease the total cost of a program.

(c) The Regional Director shall promptly approve or disapprove each proposed amendment, and shall notify the agency in writing of the approval or disapproval of the amendment.

(d) The grant amendment establishes the effective date of the action. If no date is specified in the grant amendment then the date the Regional Director signs the amendment will be the effective date of the action.

SECTION 725.18 - GRANT REDUCTION AND TERMINATION.

(a) *Conditions for reduction or termination.* (1) If an agency fails to carry out its responsibilities pursuant to Part 720 of this chapter the Regional Director shall reduce or terminate the grant.

(2) If any agency violates the terms of a grant agreement, the Regional Director may reduce or terminate the grant.

(3) If an agency fails to enforce the initial performance standards of Parts 715 and 716 of this chapter the Regional Director may reduce or terminate the grant. [Page 44949]

(4) If an agency fails to enforce the conflict of interest provisions of Part 705 of this chapter the Director shall terminate the grant.

(5) If an agency fails to submit reports required by this part or Parts 720 and 705 of this chapter the Director may reduce or terminate the grant.

(b) *Grant reduction and termination procedures.* (1) The Regional Director shall give at least ten days' written notice to the agency by certified mail, return receipt requested, of intent to reduce or terminate a grant. The Regional Director shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) The Regional Director shall afford the agency opportunity for consultation prior to reducing or terminating a grant.

(3) The Regional Director shall notify the agency of the termination or reduction of the grant in writing by certified mail, return receipt requested.

(4) Upon termination the agency shall refund or credit to the United States that portion of the grant money paid or owed to the agency and allocated to the terminated portion of the grant. However, any portion of the grant that is required to meet commitments made prior to the effective date of termination shall be retained by the agency.

(5) The agency shall reduce the amount of outstanding commitments insofar as possible and report to the Regional Director the uncommitted balance of funds awarded under the grant.

(6) Upon notification of intent to terminate, the agency shall not make any new commitments without the approval of the Regional Director.

(7) The Regional Director may allow termination costs as determined by applicable Federal cost principles listed in Federal Management Circular 74-7.

(c) *Appeals.* (1) Agencies may appeal the Regional Director's decision to reduce or terminate a grant to the Director within 30 days of the Regional Director's decision.

(2) Agencies shall include in an appeal -

(i) The decision being appealed, and

(ii) The facts which the Agencies believe justify a reversal or modification of the decision.

(3) The Director shall act on appeals within 30 days of their receipt.

SECTION 725.19 -AUDIT.

The agency shall conduct a final audit following the end of each grant pursuant to the procedures in Federal Management Circular 74-7.

SECTION 725.20 - ADMINISTRATIVE PROCEDURES.

Administrative procedures governing accounting, payment, property, and related requirements are contained in Federal Management Circular 74-7.

SECTION 725.21 - ALLOWABLE COSTS.

(a) The Regional Director shall determine costs which may be reimbursed according to Federal Management Circular 74-4, "Cost principles applicable to grants and contracts with State and local governments" (34 CFR 255).

(b) Costs must be in conformity with any limitations, conditions, or exclusions set forth in the grant agreement or this part.

- (c) Costs must be allocated to the grant to the extent of benefit properly attributable to the period covered by the grant.
- (d) Costs must not be allocated to or included as a cost of any other Federally assisted program.

SECTION 725.22 - FINANCIAL MANAGEMENT.

- (a) Agency accounting for grant funds shall be in accordance with the requirements of Federal Management Circular 74-7. Agencies shall use generally accepted accounting principles and practices, consistently applied. Accounting for grant funds must be accurate and current.
- (b) The agency shall adequately safeguard all funds, property, and other assets and shall assure that they are used solely for authorized purposes.
- (c) The agency shall provide a comparison of actual amounts spent with budgeted amounts for each grant.
- (d) When advances are made by a letter-of-credit method, the agency shall make drawdowns from the U.S. Treasury through its commercial bank as closely as possible to the time of making the disbursements.
- (e) The agency accounting records shall be supported by source documentation.
- (f) The agency shall schedule audits to determine the fiscal integrity of financial transactions and reports, and compliance with the terms of the grant agreement.
- (g) The agency shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

SECTION 725.23 - REPORTS.

- (a) The agency shall, for each grant made under this part submit annually to the Regional Director a Financial Status Report in accordance with Federal Management Circular (FMC) 74-7, Attachment H. This report shall be accompanied by a performance report prepared according to Attachment I of FMC 74-7.
- (b) The Regional Director shall require through the grant agreement that annual reports also provide the relation of financial information to performance and productivity data, including unit cost information.

SECTION 725.24 - RECORDS.

- (a) The agency shall maintain complete records in accordance with Federal Management Circular 74-7. This includes books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly -
 - (1) The amount, receipt, and disposition by the agency of all assistance received for the program.
 - (2) The total costs of the program, including all direct and indirect costs of whatever nature incurred for the performance of the program for which the grant has been awarded.
- (b) Contractors, including contractors for professional services, shall maintain books, documents, papers, and records which are pertinent to a specific grant award.
- (c) The agency's records and the records of its contractors, including professional services contracts, shall be subject at all reasonable times to inspection reproduction, copying, and audit by the Office, the Department of the Interior, the Comptroller General of the United States, the Department of Labor, or any authorized representative.
- (d) For completed or terminated grants, the agency and contractors shall preserve and make their records available to the Office, the Department of the Interior, the Comptroller General of the United States, Department of Labor, or any authorized representative pursuant to FMC 74-7.

SECTION 725.25 - DISCLOSURE OF INFORMATION.

All grant applications received by the Regional Director constitute agency records. As such, their release may be requested by any member of the public under the Freedom of Information Act, 5 U.S.C. 552, and shall be disclosed unless exempt from disclosure under 5 U.S.C. 522(b).

PART 740 - GRANTS FOR PROGRAM DEVELOPMENT AND ADMINISTRATION AND ENFORCEMENT

Section

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AUTHORITY: Sections 201, 501, and 502, Pub.L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SECTION 740.1 - SCOPE.

This part sets forth policies and procedures for grants to States to -

- (a) Develop state programs for the regulation and control of surface coal mining and reclamation operations;
- (b) Administer and enforce state programs for the regulation and control of surface coal mining and reclamation operations; and [Page 44950]
- (c) Administer cooperative agreements for State regulation of surface coal mining and reclamation operations on Federal lands.

SECTION 740.2 - OBJECTIVES.

The objectives of assistance under this part are -

- (a) To assist the States in meeting the costs of administering reclamation and enforcement programs consistent with the Act;
- (b) To encourage the States to build strong reclamation and enforcement programs; and

(c) To encourage the States to assume jurisdiction over surface coal mining regulation and reclamation operations.

SECTION 740.3 - AUTHORITY.

Section 705 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201) authorizes the Secretary to make grants to States for developing, administering and enforcing State regulatory programs.

SECTION 740.4 - RESPONSIBILITY.

(a) The Director shall administer the State grant program for the development, administration, and enforcement of State programs under this part.

(b) The Regional Director of each of the Office regions shall receive, review, and approve grant applications under this part.

SECTION 740.5 - DEFINITIONS.

As used in this part, *Agency* means the State agency designated by the Governor to receive and administer grants under this part.

SECTION 740.11 - ELIGIBILITY FOR PROGRAM DEVELOPMENT GRANTS.

(a) *Designation of State agency.* In order to receive a program development grant the Governor of a State shall designate in writing to the Director one agency to submit the grant applications, and to receive and administer the grants.

(b) *Periods covered by program development grants.* (1) An agency may apply for a program development grant for any period for which it does not have an approved State program. This is limited to periods during -

(i) The initial development of a State program;

(ii) The revision of a State program which has been disapproved by the Secretary; and

(iii) The revision of a State program from which the Secretary has withdrawn his approval.

(2) The Director shall limit grants for (b)(1)(ii) and (iii) of this paragraph to the costs of making revisions necessary to secure approval of the State programs.

(3) The Director shall not approve grants for costs incurred prior to August 3, 1977.

(c) *Limits on duration of grants.* (1) The Regional Director shall limit a State's program development grants to a maximum period of 18 months unless at least one of the following conditions exists -

(1) The 18-month period is insufficient because new legislation is required.

(ii) The State requests extension of the grant period for a reason found appropriate by the Regional

Director.

(2) If one of the two conditions in this paragraph exists, the Director may extend the grant period to a maximum of 24 months.

SECTION 740.12 - ELIGIBILITY FOR ADMINISTRATION AND ENFORCEMENT GRANTS.

(a) *Approved program required.* In order to receive a grant to administer and enforce a State program, the State must have an approved State regulatory program.

(b) *Designation of a State agency.* In order to receive a grant to administer and enforce a State program, the Governor must designate a single agency to receive and administer administration and enforcement grants, including cooperative agreement grants described in Section 740.16.

(c) *Nondiscrimination.* The agency shall monitor the compliance activity of its subrecipients with respect to the nondiscrimination provisions in Section 740.19.

(d) *When an agency may apply.* An agency may apply for an administration and enforcement grant so long as the State program is approved by the Secretary.

SECTION 740.13 - SUBMISSION OF ESTIMATED ANNUAL BUDGETS AND ALLOCATION OF FUNDS.

(a) *Program Development Grants.* As early as possible prior to the Federal fiscal year in which the program development grant will be requested an agency shall submit to the Regional Director a summary of its program development budget. The Director will use these budget summaries in preparing the Federal budget estimates which he is required to submit.

(b) *Administration and Enforcement Grants.* (1) For the fiscal years beginning on and after October 1, 1979, the agency shall submit to the Regional Director an initial estimate of its coal regulatory program budget, including the costs of administering State-Federal cooperative agreements pursuant to Section 211.75 of this title, 18 months prior to the Federal fiscal year in which the grant will be requested. Agencies may include those activities required to administer and enforce the regulatory program in their regulatory program budget. The Director will use these budget summaries in preparing the Federal budget estimates which he is required to submit.

(2) For the fiscal year beginning October 1, 1979, and each year thereafter, the agency shall submit to the Regional Director a current regulatory program budget 3 months prior to the beginning of the Federal fiscal year for which a grant will be requested.

(c) *Allocation of funds.* (1) The Director shall allocate to the agencies the full amount requested and approved in the revised or actual budgets provided that the amount available in the Federal budget is sufficient.

(2) If the funds available to the Director for grants are insufficient to cover the total grant needs, including cooperative agreement grants, the Director shall allocate the funds available according to the proportion of each agency's budget to the total of all agencies' budgets.

(3) Allocation of a specific amount of funds to an agency does not assure that grants for that amount will be approved. Each agency must apply for and secure approval of grants in accordance with the requirements of this part.

(4) On July 1 of each year the Director shall reallocate any funds which are not requested by agencies as of June 1 of that year. Such funds shall be allocated only to those agencies which have received less than the allowable percentage of their eligible costs. Allocation shall be based on the proportion of each agency's mutually agreed upon costs to total mutually agreed upon costs in all agencies' regulatory program budgets for the current Federal fiscal year.

(5) Agencies which are allocated additional funds on July 1 may have until August 15 to submit new or revised grant applications for the additional amounts.

SECTION 740.14 - COVERAGE OF GRANTS.

(a) *Program development grants.* An agency may use grant money under this part to develop -

(1) New or revised State laws, regulations, and procedures;

(2) Revised or expanded inspection systems;

(3) Training programs for inspectors and other personnel;

(4) New or revised organizational structures;

(5) Information and communications systems, including data processing systems;

(6) A planning process including a data base and information system to receive and act upon petitions to designate lands unsuitable for mining;

(7) An application for the initial administration and enforcement grant to the extent not covered by indirect costs or other cost items;

(8) Other components necessary to obtain an approved State program, as mutually agreed upon by the Regional Director and the agency receiving a grant.

(b) *Administration and enforcement grants.* An agency may use grant money under this part to administer an approved State regulatory program.

SECTION 740.15 - AMOUNT OF GRANTS.

(a) *Amount of program development grants.* (1) For the first year of a program development grant the Regional Director shall approve grants for not more than 80 percent of the total of agreed upon costs pursuant to Section 740.14(a).

(2) For the second year of a program development grant the Regional Director shall approve grants for not more than 60 percent of the total agreed upon costs pursuant to Section 740.14(a).

(b) *Amount of administration and enforcement grants.* (1) If no program development grant has been awarded, the Regional Director may approve the first administration and enforcement grant for 80 percent of the agreed upon costs for administration and enforcement of the program. [Page 44951]

(2) If a program development grant has been awarded for only 1 year, the Regional Director may approve an administration and enforcement grant for 60 percent of the agreed upon costs for administration and enforcement of the program.

(3) If a program development grant has been awarded for more than 1 year but less than 2 years, the Regional Director may approve the first administration and enforcement grant for 60 percent for that proportion remaining in the second year and for 50 percent for the proportion allocated to the third year.

(4) For the third and following years, the Regional Director may approve administration and enforcement grants for 50 percent of the agreed upon costs for administration and enforcement of the program.

SECTION 740.16 - SPECIAL PROVISIONS FOR STATES WITH COOPERATIVE AGREEMENTS.

(a) *Eligibility.* The Director may approve additional grants to States which have cooperative agreements pursuant to Section 211.75 of this Title, for State regulation of surface coal mining and reclamation operations on Federal lands. This includes -

(1) States which had cooperative agreements on August 3, 1977, which have been modified to comply with the initial regulatory program.

(2) States which enter into cooperative agreements following approval of the State's regulatory program.

(b) *Coverage of grants.* An agency may use cooperative agreement grants to carry out the functions assigned to the State under the agreement.

(c) *Amount of grants.* The Regional Director may approve grants for the approximate amount which he determines the Federal Government would have expended for regulation of coal mining on the Federal lands being regulated by the State, except that no grant may exceed the actual costs to the State.

(d) *Grant periods.* The Regional Director shall approve a grant for a period of 1 year or less. The Regional Director shall fund a program that extends over more than 1 year by consecutive annual grants.

(e) *Application procedures.* (1) States with cooperative agreements in effect on August 3, 1977, may apply for cooperative agreement grants using the procedures set forth in Section 740.18 (a), (b), (d), and (e).

(2) States with cooperative agreements established in conjunction with approved State regulatory programs may apply for cooperative agreements grants by including a supplement to an annual administration and enforcement grant application submitted according to Section 740.18. The State shall include in the supplemental section:

(i) A separate Part II for the costs of the cooperative agreement; and

(ii) A separate Part III describing the specific activities required by the cooperative agreement for the period for which the grant is requested.

(f) *Other requirements.* The procedures and requirements set forth in Sections 740.17 through 740.26 are applicable to cooperative agreement grants.

SECTION 740.17 - GRANT PERIODS.

The Regional Director shall approve a grant for a period of 1 year or less. The Regional Director shall fund a program that extends over more than 1 year by consecutive annual grants.

SECTION 740.18 - GRANT APPLICATION PROCEDURES.

- (a) The agency may submit its application to the Regional Director for a grant as soon as it is notified by the Regional Director that funds are available, but not later than May 31 of each calendar year.
- (b) The agency shall use the short form application for nonconstruction programs and other procedures specified by Federal Management Circular 74-7, "Uniform administrative requirements for grants-in-aid to State and local governments," (34 CFR 256). No preapplication is required.
- (c) For program development grant applications, agencies shall include in Part III of the standard application -
- (1) An analysis and evaluation of the current State laws and changes required therein to conform to the requirements of the Surface Mining Control and Reclamation Act of 1977; unless previously submitted under Part 725 of this chapter;
 - (2) A description of the changes expected to be required in State regulations, organization, staffing, training and other policies and operations in order to develop a State program which can be approved; and
 - (3) A program to develop the legislation, regulations, procedures, organization, staffing, training materials and procedures, etc., necessary to obtain program approval.
- (d) For administration and enforcement grants and cooperative agreement grants, agencies shall include in Part III of the standard application a description of the specific operations in the approved program which will be implemented during the period for which the grant is requested.

SECTION 740.19 – GRANT AGREEMENT.

- (a) If the Regional Director approves an agency's grant application, the Regional Director shall prepare a grant agreement which includes -
- (1) The approved scope of the program to be covered by the grant;
 - (2) The approved budget, including the Federal share;
 - (3) Commencement and completion dates for the segment of the program covered by the grant and for major phases of the program to be completed during the grant period.
 - (4) Permissible transfers of funds to other State agencies.
- (b) The Regional Director may not permit an agency to delegate or transfer its responsibility for the use of grant funds.
- (c) Pre-agreement costs for program development grants shall be allowed only as specified in the grant agreement.
- (d) The Regional Director shall transmit four copies of the grant agreement by certified mail, return receipt requested, to the agency for signature. The agency shall execute the grant agreement and return all copies of it within 3 calendar weeks after receipt, or within an extension of such time that may be granted by the Regional Director.
- (e) The Regional Director shall sign the grant agreement upon its return from the agency and return one copy to the agency. The grant is effective and constitutes an obligation of Federal funds in the amount and for the purposes stated in the grant agreement at the time the Regional Director signs the agreement.
- (f) Neither the approval of a program nor the award of any grant will commit or obligate the United States to award any continuation grant or enter into any grant amendment, including grant increases to cover cost overruns.

SECTION 740.20 - GRANT AMENDMENTS.

- (a) A grant amendment is a written alteration in the grant amount, grant terms or conditions, budget or period, or other administrative, technical, or financial agreement whether accomplished on the initiative of the agency or the Regional Director, or by mutual action of the agency and the Regional Director.
- (b) The agency shall promptly notify the Regional Director in writing by certified mail, return receipt requested, of events or proposed changes which may require a grant amendment, such as -
- (1) Rebudgeting;

- (2) Changes which may affect the approved scope or objective of a program; or
- (3) Changes which may increase or substantially decrease the total cost of a program.

(c) The Regional Director shall promptly approve or disapprove each proposed amendment, and shall notify the agency in writing of the approval or disapproval of the amendment.

(d) The grant amendment establishes the effective date of the action. If no date is specified in the grant amendment then the date the Regional Director signs the amendment will be the effective date of the action.

SECTION 740.21 - GRANT REDUCTION AND TERMINATION.

(a) *Conditions for reduction or termination.* (1) If an agency violates the terms of a grant agreement, the Regional Director may reduce or terminate the grant.

(2) If an agency fails to implement, enforce or maintain an approved program, the Regional Director shall terminate the administration and enforcement grant.

(3) If an agency fails to implement, enforce or maintain only a part of the program, the Regional Director shall reduce the grant to the amount of the program being operated by the agency. [Page 44952]

(4) If an agency is not in compliance with the following nondiscrimination provisions, the Regional Director may reduce or terminate the grant -

(i) Title VI of the Civil Rights Act of 1964 (78 Stat. 252), Nondiscrimination in Federally Assisted Programs, which provides that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits or, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations at 43 CFR 17.

(ii) Executive Order 11246, as amended by Executive Order 11375, Equal Employment Opportunity, requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex, or national origin, and the implementing regulations at 41 CFR 60.

(iii) Section 504 of the Rehabilitation Act of 1973, as amended by Executive Order 11914, Nondiscrimination With Respect to the Handicapped in Federally Assisted Programs.

(b) *Grant reduction and termination procedures.* (1) The Regional Director shall give at least 10 days written notice to the agency by certified mail, return receipt requested, of intent to reduce or terminate a grant. The Regional Director shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) The Regional Director shall afford the agency opportunity for consultation prior to reducing or terminating a grant.

(3) The Regional Director shall notify the agency of the termination or reduction of the grant in writing by certified mail, return receipt requested.

(4) Upon termination the agency shall refund or credit to the United States that portion of the grant money paid or owed to the agency and allocated to the terminated portion of the grant that is required any portion of the grant that is required to meet commitments made prior to the effective date of termination shall be retained by the agency.

(5) The agency shall reduce the amount of outstanding commitments insofar as possible and report to the Regional Director the uncommitted balance of funds awarded under the grant.

(6) Upon notification of intent to terminate the agency shall not make any new commitments without the approval of the Regional Director.

(7) The Regional Director may allow termination costs as determined by applicable Federal cost principles listed in Federal Management Circular 74-4.

(c) *Appeals.* (1) Agencies may appeal the Regional Director's decision to reduce or terminate a grant to the Director within 30 days of the Regional Director's decision.

(2) Agencies shall include in an appeal -

(i) the decision being appealed, and

(ii) the facts which the agency believes justify a reversal or modification of the decision.

(3) The Director shall act upon appeals within 30 days of their receipt.

SECTION 740.22 - AUDIT.

The agency shall conduct a final audit following the end of each grant pursuant to the procedures in Federal Management Circular 74-7.

SECTION 740.23 - ADMINISTRATIVE PROCEDURES.

Administrative procedures governing accounting, payment, property and related requirements are contained in Federal Management Circular 74-7.

SECTION 740.24 - ALLOWABLE COSTS.

- (a) The Regional Director shall determine costs which may be reimbursed according to Federal Management Circular 74-4, "Cost principles applicable to grants and contracts with State and local governments" (34 CFR 255).
- (b) Costs must be in conformity with any limitations, conditions, or exclusions set forth in the grant agreement or this part.
- (c) Costs must be allocated to the grant to the extent of benefit properly attributable to the period covered by the grant.
- (d) Costs must not be allocated to or included as a cost of any other federally assisted program.

SECTION 740.25 - FINANCIAL MANAGEMENT.

- (a) Agency accounting for grant funds shall be in accordance with the requirements of Federal Management Circular 74-7. Agencies shall use generally accepted accounting principles and practices, consistently applied. Accounting for grant funds must be accurate and current.
- (b) The agency shall adequately safeguard all funds, property, and other assets and shall assure that they are used solely for authorized purposes.
- (c) The agency shall provide a comparison of actual amounts spent with budgeted amounts for each grant.
- (d) When advances are made of a letter-of-credit method, the agency shall make drawdowns from the U.S. Treasury through its commercial bank as closely as possible to the time of making the disbursements.
- (e) The agency accounting records shall be supported by source documentation.
- (f) The agency shall schedule audits to determine the fiscal integrity of financial transactions and reports, and compliance with the terms of the grant agreement.
- (g) The agency shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

SECTION 740.26 - REPORTS.

- (a) The agency shall, for each grant made under this part, submit annually to the Regional Director a Financial Status Report in accordance with Federal Management Circular (FMC) 74-7, Attachment H. This report shall be accompanied by a performance report prepared according to Attachment I of FMC 74-7.
- (b) The Regional Director shall require through the grant agreement that annual reports provide the relation of financial information to performance and productivity data, including unit cost information.

SECTION 740.27 - RECORDS.

(a) The agency shall maintain complete records in accordance with Federal Management Circular 74-7. This includes books, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly -

(1) The amount, receipt, and disposition by the agency of all assistance received for the program.

(2) The total costs of the program, including all direct and indirect costs of whatever nature incurred for the performance of the program for which the grant has been awarded.

(b) Contractors, including contractors for professional services, shall maintain books, documents, papers, and records which are pertinent to a specific grant award.

(c) The agency's records and the records of its contractors, including professional services contracts, shall be subject at all reasonable times to inspection, reproduction, copying, and audit by the Office, the Department of the Interior, the Comptroller General of the United States, the Department of Labor or any authorized representative.

(d) For completed or terminated grants the agency and contractors shall preserve and make their records available to the Office, the Department of the Interior, the Comptroller General of the United States, Department of Labor, or any authorized representative pursuant to FMC 74-7.

SECTION 740.28 - DISCLOSURE OF INFORMATION.

All grant applications received by the Regional Director constitute agency records. As such, their release may be requested by any member of the public under the Freedom of Information Act, 5 U.S.C. 552, and shall be disclosed unless exempt from disclosure under 5 U.S.C. 552(b)9

PART 795 - SMALL OPERATOR ASSISTANCE

Section

795.1	Scope.
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795.19	Applicant liability.

AUTHORITY: Sections 201, 501 and 502, Pub L. 95-87, 91 Stat. 445 (30 U.S.C. 1201). [Page 44953]

SECTION 795.1 - SCOPE.

This part comprises the small operator assistance program. (Program) and governs the procedures for providing assistance to qualified small mine operators who request assistance under Section 507(c) of the Act, for -

(a) The determination of the probable hydrologic consequences of mining and reclamation, under Section 507(b)(11) of the Act; and

(b) The statement of physical and chemical analysis of core samples, under Section 507(b)(15) of the Act.

SECTION 795.2 - OBJECTIVE.

The objective of this section is to meet the intent of section 507(c) of the Act by -

- (a) Providing financial and other necessary assistance to the qualified small operator; and
- (b) Assuring that the regulatory authority shall have sufficient information to make a reasonable assessment of the probable cumulative impacts of all anticipated mining upon the hydrology of the area and particularly upon water availability.

SECTION 795.3 - AUTHORITY.

The Secretary shall provide financial and other assistance under Section 507(c) of the Act to the extent funds are appropriated by Congress specifically for this Program.

SECTION 795.4 - RESPONSIBILITIES.

- (a) *General.* Once the regulatory authority initiates the Program, it shall -
 - (1) Review requests for assistance and determine qualified operators;
 - (2) Develop and maintain a list of qualified laboratories and authorize reimbursement for appropriate laboratory contracts;
 - (3) Conduct periodic on-site evaluations of the Program activities with the appropriate small operator; and
 - (4) Participate with the Office in data coordination activities with the U.S. Geological Survey, U.S. Environmental Protection Agency and other appropriate agencies or institutions.
- (b) *State.* A State shall include a Program within its proposed State regulatory program for approval by the Secretary.
- (c) *Office.* The Office shall develop oversight policies and procedures to implement the Program. These shall include policies and procedures for -
 - (1) Data acquisition, analysis and interpretation;
 - (2) Interstate coordination and exchange of data;
 - (3) Model contract stipulations; and
 - (4) National certification of labs.
- (d) The Office and the regulatory authority shall insure that equal opportunity in employment provisions are included within any contract or other procurement documents applicable under 41 CFR 1-12.8.

SECTION 795.5 - DEFINITIONS.

As used in this part -

Monitoring means the collection of environmental data by either continuous or periodic sampling methods.

Probable cumulative impacts means the expected total qualitative and quantitative, direct and indirect effects of mining and reclamation activities on the hydrologic regime.

Probable hydrologic consequence means the projected result of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water; the surface or ground water flow, timing and pattern; the stream channel conditions; and the aquatic habitat on the permit area and other affected areas.

SECTION 795.11 - PROGRAM INITIATION PROCEDURES.

(a) The State shall notify the Office six (6) months prior to submission of its State program for approval under section 503 of the Act. The notification shall include -

- (1) A statement of the intent to submit a proposed State regulatory program;
- (2) A description of actions taken to develop a State regulatory program for approval and a summary schedule of actions to be taken; and
- (3) A declaration of whether -
 - (i) The State elects to receive funding and commence the administration of the Program, or
 - (ii) The State elects to have the Office administer the Program on behalf of the State through a cooperative arrangement until such time as the proposed State regulatory program is approved.

(b) If the State elects to administer the Program, it may submit a grant application for funding of the program under the procedures of Part 740 of this chapter. The Office shall review the State's grant application and information provided under paragraph (a) of this section and approve or disapprove the State's request.

(c) If the State elects to have the Office administer the Program, the Office shall implement the Program within the State.

SECTION 795.12 - PROGRAM SERVICES.

To the extent possible with appropriate funds, the regulatory authority shall for qualified small operators who request assistance -

(a) Select and pay a qualified laboratory to -

- (1) Determine for the operator, the probable hydrologic consequences of the mining and reclamation operations both on and off the proposed permit area in accordance with Section 295.16.
- (2) Prepare a statement of the results of test borings or core samplings in accordance with Section 795.16.

(b) Collect and provide general hydrologic information on the basin or subbasin areas within which the anticipated mining will occur. The information provided shall be limited to that required to relate the basin or subbasin hydrology to the hydrology of the proposed permit area.

SECTION 795.13 - ELIGIBILITY FOR ASSISTANCE.

An applicant is eligible for assistance if he -

(a) Intends to apply for a permit pursuant to the Act; and

(b) Establishes that the probable total actual and attributed production of the applicant for each year of the permit will not exceed 100,000 tons. Production from the following operations shall be attributed to the permittee -

- (1) All coal produced by operations beneficially owned entirely by the permittee;
- (2) The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the permittee owns more than a 5 percent interest.
- (3) All coal produced by persons who directly or indirectly control the permittee by reason of stock ownership, direction of the management or in any other manner whatsoever.
- (4) The pro rata share of coal produced by operations so controlled by the person who controls the permittee.

SECTION 795.14 - FILING FOR ASSISTANCE.

Each applicant shall submit the following information:

(a) A statement of intent to file a permit application;

(b) The names and addresses of -

- (1) The potential permit applicant;

(2) The potential operator if different from the applicant.

(c) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under Section 795.13. The schedule shall include for each location -

- (1) The name under which coal is or will be mined;
- (2) The permit number and Mining Enforcement and Safety Administration identification number;
- (3) The actual coal production for the year preceding the application for assistance and that portion of the production attributed to the applicant; and
- (4) The estimated coal production for each year of the proposed permit and that portion attributed to the applicant.

(d) A description of -

- (1) The method of surface coal mining operation proposed;
- (2) The anticipated starting and termination dates of each mining and reclamation phase;
- (3) The number of acres of land to be affected by the proposed mining; and
- (4) A general statement on the probable depth and thickness of the coal resource.

(e) A U.S. Geological Survey topographic map of 1:24,000 scale or larger or other topographic map of equivalent detail which clearly shows - [Page 44954]

- (1) The area of land to be affected and the natural drainage above and below the affected area;
- (2) The names of property owners within the area to be affected and of adjacent lands;
- (3) The location of existing structures and developed water sources within the area to be affected and on adjacent lands;
- (4) The location of existing and proposed test borings or core samplings; and
- (5) The location and extent of known working of any underground mines.

(f) Copies of documents which show that -

- (1) The applicant has a legal right to enter and commence mining within the permit area; and
- (2) A legal right of entry has been obtained for the Office, regulatory authority and laboratory personnel to inspect the lands to be mined and adjacent lands which may be affected to collect environmental data or install necessary instruments.

SECTION 795.15 - APPLICATION APPROVAL, NOTICE AND REIMBURSEMENT.

(a) If the regulatory authority finds the applicant eligible, it shall:

- (1) Determine the minimum data requirements necessary to meet the provisions of Section 795.16.
- (2) Procure the services of one or more qualified laboratories. A copy of the contract and the final approved report shall be provided to the applicant.

(b) The regulatory authority shall inform the applicant in writing if the application is denied and of the reasons for denial.

SECTION 795.16 - DATA REQUIREMENTS.

(a) *General.* This section describes the minimum requirements for the collection of data to meet the objective of the Program. The regulatory authority shall determine the data collection requirements for each applicant or group of applicants. The data requirements will be based on -

- (1) The extent of currently available hydrologic and core analysis data for the applicable basin or subbasin area provided by the regulatory authority; and
- (2) The data collection and analysis guidelines developed and provided by the Office.

(b) *Specific provisions.* (1) A determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off-site shall be made by a qualified laboratory. The data for this determination shall include -

- (i) The existing and projected surface and ground water seasonal flow regime, including water level and water table evaluations. The regulatory authority shall specify duration and return frequencies to be used in the determination.

(ii) The existing and projected seasonal quality of the surface and ground water regime. This shall include measurements and estimates of dissolved and suspended solids, pH, iron, manganese, surface and channel erosion and other water quality parameters specified by the regulatory authority.

(2) A statement of the result of test borings or core samplings from the proposed permit area, and including -

(i) Logs from any drill holes, including identification of each stratum and water level penetrated;

(ii) The coal seam thickness and its chemical analysis including sulfur content;

(iii) The chemical analysis of potentially acid or toxic forming sections of the overburden, and the chemical analysis of the stratum lying immediately underneath the coal to be mined.

(c) *Exemptions.* The statement by a qualified laboratory under paragraph (b)(2) of this section may be waived by the regulatory authority by a written determination that data available for the permit area is adequate to make the required determinations of the consequences of mining.

(d) *Data availability.* Data collected under this Program shall be made available to all interested persons, except information related to the chemical and physical properties of coal. Information regarding the mineral or elemental content of the coal which is potentially toxic in the environment shall be made available.

SECTION 795.17 - QUALIFIED LABORATORIES.

(a) *General.* (1) As used in this section, *qualified laboratory* means a designated qualified public agency, private consulting firm, institution, or analytical laboratory which can provide the required determination or statement under this Program.

(2) The Office shall establish and periodically publish in the FEDERAL REGISTER a list of qualified laboratories which may be used by regulatory authorities under the procedures of this section. A State regulatory authority may designate qualified laboratories under procedures included in an approved State regulatory program.

(3) Persons who desire to be included in the list of qualified laboratories established by the Office shall apply to the Office and provide such information as is necessary to establish the qualifications required by paragraph (b) of this section.

(b) *Basic qualifications.* (1) To qualify for designation, the laboratory shall demonstrate that it -

(i) Is staffed in the fields of hydrology, mining engineering, aquatic biology, geology or chemistry with experienced professional personnel.

(ii) Is capable of collecting necessary field data and samples.

(iii) Has adequate space for material preparation, cleaning and sterilizing necessary equipment, stationary equipment, storage, and space to accommodate periods of peak work loads.

(iv) Meets the Occupational Safety and Health Act or the equivalent State safety and health program.

(v) Has the financial capability and business organization necessary to perform the work.

(vi) Has analytical, monitoring and measuring equipment capable of meeting the standards and methods contained in -

(A) *Standard Methods for the Examination of Water and Waste Water, 14th Edition, 1976.* This publication is available from the American Public Health Association, 1015 18th Street, N.W., Washington, D.C. 20036.

(B) *Methods for Chemical Analysis of Water and Waste, 1974.* This publication is available from the Office of Technology Transfer, U.S. Environmental Protection Agency, Industrial Environmental Research Laboratory, Cincinnati, Ohio 45268.

(vii) Has the capability of making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic engineering or analytical methods, or by those appropriate recommended methods or guidelines for data acquisition of the Office or other Federal or State agencies.

(2) The qualified laboratory shall be capable of performing either the determination or statement under paragraphs Section 795.16(b)(1) or (b)(2). Subcontractors may be used to provide the services required provided their use is defined in the application for designation and approved by the Office.

SECTION 795.18 - ASSISTANCE FUNDING.

(a) *Use of Funds.* Funds authorized for this Program shall not be used to cover State administrative costs or the costs of test boring or core sampling.

(b) *Allocation of funds.* The regulatory authority shall to the extent practicable establish a formula for allocating funds among qualified small operators if available funds are less than those required to provide the services pursuant to this Part.

This formula shall include such factors as the applicant's -

- (1) Anticipated date of filing a permit application;
- (2) Anticipated date for commencing mining; and
- (3) Performance history.

SECTION 795.19 - APPLICANT LIABILITY.

(a) The applicant shall reimburse the regulatory authority for the cost of the laboratory services performed pursuant to this Part if the applicant -

- (1) Submits false information;
- (2) Fails to submit a permit application within 1 year from the date of receipt of the approved laboratory report; or
- (3) If the regulatory authority finds that the applicant's actual and attributed annual production of coal exceeds 100,000 tons for the first year of mining under the permit for which the assistance is provided. [Page 44955]

(b) The regulatory authority may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith.

PART 830 - PROTECTION OF EMPLOYEES

Section

830. 1	Scope.
830. 11	Protected activity.
830. 12	Procedures for filing an application for review of discrimination.
830. 13	Investigation and conference.
830. 14	Filing of complaints.
830. 15	Formal adjudicatory proceedings.

AUTHORITY: Sections 201, 501, and 502, Pub.L. 95-87, 91 Stat 445 (30 U.S.C. 1201)

SECTION 830.1 - SCOPE.

This part establishes procedures regarding -

- (a) The reporting of acts of discriminatory discharge or other acts of discrimination under the Act caused by any person.
- (b) The investigation of applications for review and holding of informal conferences about the alleged discrimination; and
- (c) The filing of formal complaints of discrimination with the Office of Hearings and Appeals.

SECTION 830.11 - PROTECTED ACTIVITY.

No person may discharge or in any other way discriminate or cause to be discharged or discriminated against any employee or any representative of employees because that employee or representative has -

- (a) Filed, instituted or caused to be filed or instituted any proceedings under the Act by -
 - (1) Reporting violations to the State regulatory authority, the Secretary, or any employer's representative;
 - (2) Requesting an inspection; or
 - (3) Any other action
- (b) Made statements or has testified -
 - (1) In any informal or formal adjudicatory proceeding;
 - (2) In any informal conference proceeding;
 - (3) In any rulemaking proceeding;
 - (4) In any investigation or other proceeding under the Act.

(c) Has exercised on his own behalf or on behalf of others any right granted by the Act.

SECTION 830.12 - PROCEDURES FOR FILING AN APPLICATION FOR REVIEW OF DISCRIMINATION.

(a) *Who may file.* Any employee, or his authorized representative, who believes that he has been discriminated against by any person in violation of Section 830.11 may file an application for review. For the purpose of these regulations, an application for review means the presentation of a written report of discrimination.

(b) *Where to file.* The employee or representative may file the application for review at any location of the Office and each office shall maintain a log of all filings.

(c) *Time for filing.* The employee or representative may file an application for review within 30 days after the alleged discrimination occurs. An application is considered filed -

- (1) On the date delivered if delivered in person to the Office, or
- (2) On the date mailed to the Office,

(d) *Running of the time for filing.* The time for filing begins when the employee knows or has reason to know of the alleged discriminatory activity.

SECTION 830.13 - INVESTIGATION AND CONFERENCE PROCEDURES.

(a) Within 15 days after receipt of any application for review, the Office shall mail a copy of the application for review to the person alleged to have caused the discrimination and shall notify the employee and the alleged discriminating person that the Office will investigate the complaint. The employer may file a response to the application for review within 10 days after he receives the copy of the application for review. The response shall specifically admit, deny or explain each of the facts alleged in the application unless the employer is without knowledge in which case he shall so state.

(b) The Office shall initiate an investigation of the alleged discrimination within 30 days after receipt of the application for review. The Office shall complete the investigation with 60 days from the date it was initiated. If circumstances surrounding the investigation prevent completion within the 60-day period, the Office shall notify the person who filed the application for review and the alleged discriminating person of the delay, the reason for the delay, and the expected completion date for the investigation.

(c) Within 10 days after completion of the investigation the Office shall hold an informal conference with the parties to discuss the findings and preliminary conclusions of the investigation. The purpose of this informal conference is to attempt to conciliate the matter. If a complaint is resolved at an informal conference, the terms of the agreement will be recorded in a written document that will be signed by the employer, the employee and the representative of the Office. If the Office concludes on the basis of a subsequent investigation that the employer has failed in any material respect to comply with the terms of any agreement reached during an informal conference, the Office shall take appropriate action to obtain compliance with the agreement.

(d) Following the investigation and informal conference, the Office shall complete a report of investigation which shall include a summary of the conference. Copies of this report shall be available to the parties in the case.

SECTION 830.14 - FILING OF COMPLAINTS.

(a) If the Office concludes that a violation has probably occurred which was not resolved at the informal conference, the Director shall file a complaint with the Office of Hearing and Appeals within 20 days from the completion of the informal conference.

(b) The employee may file a complaint of discrimination with the Office of Hearings and Appeals -

- (1) After 90 days has elapsed from the filing of his application; or
- (2) Within 20 days following notification by the Director that no formal proceedings will be initiated.

SECTION 830.15 - FORMAL ADJUDICATORY PROCEEDINGS.

(a) Formal adjudication of a complaint filed under this part shall be conducted in the Office of Hearings and Appeals under 43 CFR Part 4.

(b) After filing an application for review under this part, an employee may seek temporary relief in the Office of Hearings and Appeals under 43 CFR Part 4. NOTE. - The proposed regulations submitted by the Office of Surface Mining Reclamation and Enforcement, Department of the Interior, for publication in the FEDERAL REGISTER have been redesignated to conform to CFR codification practices. For the convenience of the user, the following table shows the relationship between the part numbers on the original document and the corrected part numbers as published in the FEDERAL REGISTER.

	Old Part No.		New Part No.
1000		700	
2000		710	
2020		715	
2021		716	
2022		717	
2030		720	
2031		721	
2032		722	
2033		723	
2040		725	
2160		740	
2480		795	
2900		830	
4100		837	