

FEDERAL REGISTER: 42 FR 60890 (November 29, 1977)

DEPARTMENT OF THE INTERIOR

AGENCY: Geological Survey

30 CFR Part 211

Mining on Federal Lands

ACTION: Proposed rulemaking.

SUMMARY: The purpose of the proposed rulemaking is to modify the Department's regulations to (1) require that surface and underground coal mining operations conducted on Federal lands conform to the initial environmental protection performance standards and requirements published pursuant to the Surface Mining Control and Reclamation Act of 1977; (2) establish procedures for modifying existing State-Federal cooperative agreements; (3) provide for inspections of coal mining operations on Federal lands by authorized representatives of the Office of Surface Mining Reclamation and Enforcement; and (4) provide for the assessment of civil penalties for violations of the Surface Mining Control and Reclamation Act.

DATE: Interested persons may submit written comments on the proposed regulations on or before December 29, 1977.

ADDRESS: Comments should be addressed to Director, U.S. Geological Survey, U.S. Department of the Interior, Reston, Va. 22092. Comments will be available for public review at the above address from 7:45 a.m. to 4:15 p.m. on regular working days.

FOR FURTHER INFORMATION CONTACT:

Mr. Tom Leshendok, Branch of Mining Operations, Conservation Division, U.S. Geological Survey, Reston, Va. 22092, 703-860-7506.

Mr. Carl Close, Regulatory Program Work Group, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4237.

SUPPLEMENTARY INFORMATION:

The purpose of this proposed rulemaking is to modify the existing Federal coal mining operating regulations of Part 211 of this title to comply with the initial requirements of the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87 (hereafter referred to as the Act). The initial requirements of the Act were published as proposed rules for the Office of Surface Mining Reclamation and Enforcement in the FEDERAL REGISTER (September 7, 1977, 42 FR 44920). Section 523 of the Act requires that the Secretary implement a permanent Federal lands program no later than August 3, 1978, by incorporating all the requirements of the Act into any Federal lease and by providing for cooperative agreements with the States. This proposed rulemaking is the initial segment of the Federal lands program.

1. SCOPE AND PURPOSE

The Department proposes to apply the initial regulations promulgated under the Act and contained in Parts 715 and 716 of this title, General and Special Performance Standards, to all coal mining operations on Federal lands in all States including Alaska.

This is accomplished by adding Section 211.1(g) and (h) to provide for the same compliance timetable applicable to coal mining operations regulated by a State. This will allow coal mining operations that have "checkerboarded" land ownership to comply essentially with one set of regulations during the initial regulatory period. Mining operations must continue to comply with the regulations in this part which are not modified.

The alternate to this proposed change - differing standards depending on the existence of a State cooperative agreement - was rejected by the Department as inequitable.

2. DEFINITIONS

The existing regulations in this part incorporate concepts of mining and reclamation plans and use the term "operator," while the Act adopts the permit concept and uses the term "permittee." By incorporating the Act's initial performance standards into these regulations, the Department proposes to redefine "operator" to include "permittee." Thus, the term "operator" and "permittee" will be used synonymously.

The regulations of the Act are administered by a regulatory authority, while the 30 CFR 211 regulations are administered by the Director of the Geological Survey, through the Division Chief, the Conservation Manager, and the Mining Supervisor. By incorporating the Act's performance standards into these regulations, the Department proposes to include in the 30 CFR 211 regulations for the initial regulatory program of the Act, a definition of the term "Regulatory Authority" which is used synonymously with "Director," "Conservation Manager," and "Mining Supervisor."

3. MINE PLANS

The Department proposes that all mine plans for coal mining operations on Federal lands which are approved on or after February 3, 1978, shall include the enumerated requirements of 30 CFR 715 and 716. Existing coal mining operations on Federal lands must comply with the initial 30 CFR 715 and 716 requirements on or after May 3, 1978. However, new mine plans will not be required for existing operations. The Mining Supervisor, in consultation with the Office of Surface Mining and any State with a cooperative agreement, will review all mine plans and may require additional material and data from the operator or if appropriate, the revision of a mining plan in order to assure compliance with 30 CFR 715 and 716 requirements.

Coal mining operations in States with cooperative agreements must conform to any State requirement to submit additional information to demonstrate compliance with the initial 30 CFR 715 and 716 requirements. At a later date, the Department will propose procedures for permit applications on Federal lands.

4. PERFORMANCE STANDARDS

The Department proposes to delete certain of the performance standards in Section 211.40 during the initial regulatory program to substitute the more stringent general and special initial performance standards of 30 CFR 715 and 716, with the exception where Section 211.40 contains requirements not included in 30 CFR 715 and 716. An example is the requirement in Section 211.40(a)(1) that operators reclaim affected lands as contemporaneously as practicable. This standard would not otherwise be applicable during the initial regulatory program. Failure to continue required compliance with this and other similar standards on Federal lands during the initial Federal regulatory program would result in a diminution of the environmental protection now afforded under existing regulations.

The Department is considering modification of the expression "minimize, control or prevent" to conform more fully with the provisions of the Act. Comments on this alternative are invited.

5. UNDERGROUND COAL MINING OPERATIONS

The Department proposes to amend the existing regulations in 30 CFR 211.40 to require compliance with the requirements in 30 CFR 716 which relate to the surface effects of underground coal mining.

6. INSPECTIONS

To implement the Federal inspection provisions of Section 517 of the Act, the Department proposes to amend section 211.70 to require that operators provide access to operations for authorized representatives of the Office of Surface Mining Reclamation and Enforcement for inspections and investigations to determine whether operations are in compliance with the Surface Mining Control and Reclamation Act. The Mining Supervisor will continue to inspect under the provisions of Section 211.70 during the initial Federal lands program.

7. ENFORCEMENT

The Department proposes to amend Section 211.72, Enforcement of Orders, to provide that an authorized representative of the Office of Surface Mining Reclamation and Enforcement shall have the authority to order a cessation of mining or reclamation operations if in the course of an inspection or investigation he finds conditions, practices, or violations of the initial performance standards in Parts 715 and 716 of this title which create an imminent danger to the public health or safety, or conditions or practices which can be expected to cause significant environmental harm. The Mining Supervisor will continue to exercise exiting authority under the provisions of Section 211.72 during the initial Federal lands program. {Page 60891}

8. CIVIL PENALTIES

The Department proposes to implement the civil penalty provisions of Section 518 of the Act by amending Part 211 to provide that all operators on Federal lands subject to the provisions of Part 211 may be assessed civil penalties by the Office of Surface Mining Reclamation and Enforcement pursuant to the procedures in Part 273 of Title 30.

9. COOPERATIVE AGREEMENTS

Section 211.75(a) contains a procedure for the adoption by the Secretary of more stringent State reclamation standards. Previously, pursuant to this provision, the Secretary adopted certain standards of the State of Montana (42 FR 30175) and of the State of Wyoming (42 FR 53793).

Section 211.75(b) contains a procedure whereby States may enter into cooperative agreements with the Department to provide for State administration and enforcement of reclamation standards on Federal surface coal mining operations in the State. Pursuant to this provision, cooperative agreements with six States were approved: Colorado (June 28, 1977, 42 FR 3277), Montana (June 13, 1977, 42 FR 30175), New Mexico (April 5, 1977, 42 FR 18065), North Dakota (April 5, 1977, 42 FR 18071), Utah (April 5, 1977, 42 FR 18068), and Wyoming (January 19, 1977, 42 FR 3642).

Section 523(c) of the Act provides that existing cooperative agreements, to have continuing effect, must assure that mining operations on Federal land will be in compliance with the performance standards of Parts 715 and 716 of this title. Existing agreements not amended by February 3, 1978, will terminate, in which event the Department will resume sole enforcement responsibility during the initial period.

The Department proposes to amend Section 211.75 of this part to require that any State which desires to continue an existing cooperative agreement in effect notify the Department of its willingness to modify the agreement so as to comply with the requirements of the Federal lands program.

10. OTHER INFORMATION

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

References are made throughout this proposed rulemaking to 30 CFR 715 and 716. Those regulations were published in proposed form on September 7, 1977, and have not yet been published as final rules. Such publication is expected in the near future. These proposed amendments to 30 CFR Part 211 will be revised prior to final rules to incorporate substantive and organizational changes adopted in the final rulemaking for the initial regulatory program.

Pursuant to section 702(d) of the Act publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The principal authors of this proposed rulemaking are Mr. C. L. Martin and Mr. William Gershuny, Office of the Solicitor, U.S. Department of the Interior, (202) 343-5207, and Mr. Tom Leshendok, Branch of Mining Operations, U.S. Geological Survey, (703) 860-7506.

Under the authority delegated to the Secretary of the Interior by the Mineral Leasing Act of 1920, as amended, it is proposed to amend Part 211, Chapter II, Title 30 of the Code of Federal Regulations as set forth below:

1. Section 211.1 is amended by adding new paragraphs (g) and (h) to read as follows:

SECTION 211.1 - SCOPE AND PURPOSE.

(g) All surface and underground coal mining operations on Federal lands which are approved by the Mining Supervisor on or after February 3, 1978, shall comply with the General Performance Standards of 30 CFR 715 and the Special Performance Standards of 30 CFR 716 which apply to the operation. All surface and underground coal mining operations on Federal lands, from which overburden and coal seam have not been removed prior to May 3, 1978, shall on or after May 3, 1978, comply with the General Performance Standards of 30 CFR 715 and the Special Performance Standards of 30 CFR 716 which apply to the operations.

(h) All surface coal mining operations on Federal lands in Alaska from which coal has been mined on or after August 3, 1976, shall, after May 3, 1978, comply with all performance standards in 30 CFR 715 and 716 subject to the procedures in Section 716.6.

SECTION 211.2 [AMENDED]

2. Section 211.2 is amended as follows:

(A) Remove all paragraph designations from the existing definitions which are retained.

(B) The following definitions are removed:

Acid or toxic producing materials

Approximate original contour

Compaction

Impoundment

Overburden

Road

Significant vegetation

Spoil

Surface Owner

Topsoil

Valley Floors

Waste

(C) The following definitions are added alphabetically to read as follows:

Acid drainage. See Section 710.5 of this title.

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

Act. See Section 700.5 of this title.

Alluvial valley floors means unconsolidated streamlaid deposits holding streams where water availability is sufficient for subirrigation or 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 715.17 of this chapter.

Aquifer. See Section 710.5 of this title.

Auger mining. See Section 710.5 of this title.

Coal. See Section 700.5 of this title.

Combustible material. See Section 710.5 of this title.

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. See Section 710.5 of this title.

Diversion. See Section 710.5 of this title.

Downslope. See Section 710.5 of this title.

Embankment. See Section 710.5 of this title.

Federal lands. See Section 700.5 of this title.

Groundwater. See Section 710.5 of this title.

Highwall. See Section 710.5 of this title.

Hydrologic balance. See Section 710.5 of this title.

Hydrologic regime. See Section 710.5 of this title.

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

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

Leachate. See Section 710.5 of this title.

Monitoring. See Section 700.5 of this title.

Noxious plants. See Section 710.5 of this title.

Office. See Section 700.5 of this title.

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

Outslope. See Section 710.5 of this title.

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

Permit. See Section 700.5 of this title.

Person. See Section 700.5 of this title.

Premining land use. See Section 710.5 of this title.

Productivity. See Section 710.05 of this title.

Recharged capacity. See Section 710.5 of this title.

Recurrence interval. See Section 710.5 of this title.

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 under a Federal Program. All references to the term "Regulatory Authority" in the initial performance standards in parts 715 and 716 shall be construed to include the term Director, Geological Survey, Conservation Manager, or Mining Supervisor. [

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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.

Runoff water. See Section 710.5 of this title.

Sediment. See Section 710.5 of this title.

Settling pond. See Section 710.5 of this title.

Slope. See Section 710.5 of this title.

Soil horizons. See Section 710.5 of this title.

Spoil means overburden that has been removed during surface mining.

Stabilize. See Section 710.5 of this title.

Surface mining operations. See Section 700.5 of this title.

Surface water. See Section 710.5 of this title.

Suspended solids. See Section 710.5 of this title.

Topsoil means the A soil horizon and underlying unconsolidated materials including those portions of the B and C soil horizons that have properties favorable for producing 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. See Section 710.5 of this title

Watercourse. See Section 710.5 of this title.

Water tables. See Section 710.5 of this title.

3. Section 211.10 is amended by the addition of the following paragraphs (e) and (f) to read as follows:

SECTION 211.10 - EXPLORATION AND MINING PLANS.

(e) Mine plans for surface and underground coal mining operations that are approved on or after February 3, 1978, shall include a description of methods of operations and measures by which the operator intends to comply with the obligations and requirements of the General Environmental Protection Performance Standards of 30 CFR 715 and applicable Special Performance Standards of 30 CFR 716.

(f) Mining plans covering operations existing on or after May 3, 1978, shall be reviewed by the Mining Supervisor to determine compliance with the initial performance standards found in 30 CFR 715 and 716. If the Mining Supervisor so determines, the operator shall prepare an analysis and, if necessary, a revision of the approved plan showing how the operator will achieve compliance with 30 CFR 715 and 716.

4. Section 211.40 is revised by substituting for certain of the specific performance standards of this Part the initial environmental protection performance standards of 30 CFR 715 and 716. Title 30 CFR 211.40 is revised to read as follows:

SECTION 211.40 - OPERATING AND RECLAMATION STANDARDS.

(a) *Performance standards for surface mines.* The following performance standards shall be applicable to all coal exploration, development, mining, preparation, handling, and reclamation operations on the surface of land subject to this Part: (1) The operator shall:

(i) Reclaim affected lands pursuant to his approved plan, as contemporaneously as practicable with operations.

(ii) Comply with the requirements of Section 715.13 of this title for reclaiming the land to an approved land use.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Dispose of all waste resulting from the mining and preparation of coal in a manner designed to minimize, control, or prevent air and water pollution and hazards of ignition and combustion. Where surface disposal of solid

wastes in areas other than the mine workings or other excavations has been authorized in the approved plan, stabilize such waste including, where necessary, constructing waste piles in compacted layers with the use of noncombustible and impervious materials, shape waste piles to be compatible with the requirements of the Act, cover with topsoil or other suitable material in accordance with paragraph (a)(4) of this section, and revegetate in accordance with paragraph (a)(13) of this section. All impoundments of liquid wastes shall comply with the requirements of paragraph (a)(5) of this section. Waste containing coal in such quantity that it may be later separated from the waste by washing or other means shall be stored separately.

(iii) Comply with all other requirements of Sections 715.14 and 715.15 of this title.

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

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

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

(12)(i) The operator shall comply with the requirements of Section 715.17(1)(2) of this article for surfacing and constructing roads. (ii) No access roads will be constructed unless:

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

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

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

(ii) The operator's responsibility and liability under his performance bond for revegetation of each planting area shall extend until such time as the appropriate authorized officer, in consultation with the Mining Supervisor and the surface owner if other than the United States, determines that successful revegetation in compliance with paragraph (a)(13)(i) of this section has occurred; provided, however, that this period shall extend for a minimum of 5 full years after the first planting and for a total period of liability not to exceed 10 years from the first planting; and further provided, that,

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

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

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

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

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

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

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

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

(16) Upon the completion of temporary or permanent abandonment of mining operations in all or any part of a strip pit, the face of the coal shall be covered with 5 feet of nontoxic and noncombustible material that will effectively protect the coalbed from becoming ignited.

(17) The driving of any underground openings by auger or other methods from any strip pit shall not be undertaken except as specifically approved by the Mining Supervisor in an approved plan.

(18) The operator shall comply with provisions of Sections 715.11 and 715.12 of this title for availability of authorizations to operate and location of markers and signs.

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

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

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

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

(23) Operators of surface coal mining operations conducted on land that is considered to be prime farmland pursuant to Section 716.7(b) shall comply with the special requirements of Section 716.7 of this title. The Mining Supervisor, in consultation with the surface management agency and the Office of Surface Mining, shall obtain a determination of prime farmlands pursuant to Section 716.7 of this title for operations on Federal lands prior to the appropriate date in Section 211.1(g) of this Part.

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

(b) *Performance standards for underground mines.* The following performance standards shall be applicable to all coal exploration, development, mining, preparation, handling and reclamation operations for the surface effects of underground mines on land subject to this part. These standards, in addition to Sections 211.30, 211.31, 211.32, 211.33, and 211.35, shall apply to underground mining operations on Federal lands.

(1) Operators shall comply with the requirements of Section 715.11(b) of this title, Authorization to Operate.

(2) Operators shall comply with the requirements of Section 715.12(a) of this title, Sign and Marker Specifications; Section 715.12(b), Mine and Permit Identification Signs; and Section 715.12(e), Blasting Signs.

(3) Operators shall comply with the requirements of Section 715.14 of this title, Backfilling and Grading, except the standards regarding mountaintop removal and thin and thick restored overburden. These requirements apply

only to the surface area 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.

(4) Operators shall comply with the requirements of Section 715.15 of this title, Disposal of Spoil and Waste Materials.

(5) Operators shall comply with the requirements of Section 715.17 of this title, Protection of the Hydrologic System, in regard to surface discharges and surface areas that are disturbed except that requirements of Section 715.17(h) and (j) shall not apply.

(6) Operators shall comply with the requirements of Section 715.18 of this title, Dams Constructed of Refuse Materials.

(7) Operators shall comply with the requirements of Section 715.19 of this title, Use of Explosives, in regard to the use of explosives used during surface operations.

(8) Operators shall comply with the requirements of Section 715.20 of this title, Revegetation, of surface areas disturbed. The requirements apply at the conclusion of mining operations.

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

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

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

(12) The operator shall ensure that water impoundments, water retention facilities, dams, or settling ponds have been set forth in an approved plan, and ensure that:

(i) Such facilities are adequate for their intended purposes, and the quality and quantity of impounded water will be suitable for its intended use.[Page 60894]

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

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

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

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

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

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

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

(14) The driving of any underground openings by auger or other methods from any strip pit shall not be undertaken except as specifically approved by the Mining Supervisor in an approved plan.

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

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

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

(ii) No access roads will be constructed unless:

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

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

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

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

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

(ii) During the relevant period of liability, the Mining Supervisor and the appropriate authorized officer shall jointly inspect and evaluate the revegetated areas.

5. Section 211.70 is revised to read as follows:

SECTION 211.70 - INSPECTIONS.

(a) The operator shall provide access and means for the Mining Supervisor to inspect or investigate the operation to determine whether it is in compliance with all applicable laws, regulations, and orders; the terms and conditions of the lease, permit or license; and the requirements of any approved plan.

(b) The operator shall provide access and means at all reasonable times for any authorized representative of the Office of Surface Mining Reclamation and Enforcement to inspect or investigate the operation pursuant to Part 721 of this Title to determine whether it is in compliance with the Act.

6. Section 211.72 is amended by adding a new paragraph (d) to read as follows:

SECTION 211.72 - ENFORCEMENT OF ORDERS.

(d) In addition to the procedures set forth in paragraphs (a), (b), and (c) of this section, all mining operations subject to the regulations in this part shall be subject to the enforcement procedures set forth in Part 722 of this title.

7. A new Section 211.78 is added to read as follows:

SECTION 211.78 - CIVIL PENALTIES.

The operator of any coal mining operation subject to the provisions of this part may be assessed civil penalties for violations of the Surface Mining Control and Reclamation Act pursuant to the procedures in section 723 of this title.

SECTION 211.74 [REMOVED]

8. Section 211.74 is deleted.

9. Section 211.75 is revised to read as follows:

SECTION 211.75 - APPLICABILITY OF STATE LAW.

(a) On the effective date of this part, and from time to time thereafter, the Secretary may direct a prompt review of State laws and regulations in effect or adopted and due to come into effect, relating to reclamation of lands disturbed by surface mining of coal and the surface effects of underground mining of coal in each State in which Federal coal has been leased, permitted, or licensed. If, after such review, the Secretary determines that the requirements of the laws and regulations of any such State afford general protection of environmental quality and values at least as stringent as would occur under exclusive application of this part, he shall, by rulemaking under the provisions of section 501 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. Section 1201), direct that the requirements of such State laws and regulations thereafter be applied as conditions upon the approval of any proposed exploration or mining plan, unless (i) the Secretary determines that such application of the requirements of such laws and regulations would unreasonably and substantially prevent the mining of Federal coal in such State, or (ii) the Secretary determines that such laws and regulations are inconsistent with the Act. In any such determination, the Secretary will consult in advance with the Governor of the State involved. [Page 60895]

(b) On the effective date of this Part, the Secretary will direct representatives of the Department to consult with appropriate representatives of each State or a number of States for the purpose of formulating and entering into agreements to provide for a joint Federal-State program with respect to surface coal mining reclamation operations for administrative and enforcement purposes. Such agreements shall, wherever possible, provide for State administration and enforcement of such programs, provided that Federal interests are protected. Any such agreement shall be entered into by rulemaking and shall have as its principal purpose the avoiding of duality of administration and enforcement of reclamation laws governing surface coal mine reclamation operations.

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

(2) The Governor of any State that wishes to continue the cooperative agreement shall notify the Secretary in writing of the State's intent to modify the cooperative agreements. The notice of intent to modify the cooperative agreements should be sent prior to December 31, 1977, and the modification to the existing cooperative agreements agreed to prior to February 3, 1978.

(3) Upon receipt of the State's notice of intent, the Secretary will direct representatives of the Department to consult with appropriate representatives of each State for the purpose of modifying the cooperative agreements. The modified cooperative agreements must take into account the existing agreements and, at a minimum, require compliance with the initial environmental performance standards of this part, 30 CFR 211.40 and 30 CFR 715 and 716, conflict of interest regulations, 30 CFR 705, and mining plan requirements, 30 CFR 211.10.

Dated: November 23, 1977.

JOAN M. DAVENPORT, *Assistant Secretary, Energy and Minerals.*

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