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DEPARTMENT OF THE INTERIOR

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

30 CFR Chapter VII: Subchapter A – General: Parts 700, 701, 707

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program

ACTION: Proposed rules.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement is seeking comments on these proposed rules which would implement a nationwide permanent program for the regulation of surface and underground mining operations by the States and the Federal Government as required by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). These proposed rules are intended to strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy.

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{Preamble: 43 FR 41665}

SUBCHAPTER A – GENERAL

PART 700 GENERAL

Part 700 introduces the regulations encompassed by Chapter VII of Title 30 of the Code of Federal Regulations. The proposed regulations in Chapter VII implement the Secretary of the Interior's responsibility under the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95 87, 91 Stat. 445, 30 U.S.C. Section 1201 et. seq.). The Secretary's general rulemaking authority for regulations in Chapter VII is found in Section 201(c)(2) of the Act. In addition, the following sections of the Act contain rulemaking authority for the regulations in Chapter VII: Sections 304, 412(a), 512, 515 (c) and (d), 516, 517(h), 527, 528, 529, 601(d), 708, 719.

SECTION 700.1 - SCOPE.

This Section would provide a brief summary of the thirteen Subchapters which compose Chapter VII of Title 30 of the Code of Federal Regulations. It serves as a guide to the reader interested in obtaining a summary of the regulations and contains no substantive provisions.

SECTION 700.2 - OBJECTIVES.

This section would set forth a simple statement concerning the objectives of the regulations. The regulations are intended to fulfill the purposes of Section 102 of the Act. The regulations implementing those purposes must be based, however, upon consideration of the language in the substantive provisions of the Act, the legislative history of those provisions, other applicable laws, particularly those recited in Section 702 of the Act, and judicial interpretations.

SECTION 700.3 - AUTHORITY.

This section would recite the Secretary's authority under the Act to implement its programs, except where programs and responsibilities are specifically assigned to other agencies by the Act or authority is retained by the States.

SECTION 700.4 - RESPONSIBILITIES UNDER THE ACT.

This section would identify the Secretary's authorities derived from the Act which have been delegated to the Director. The delegation is to the Director through the Assistant Secretary, Energy and Minerals, of the Department of the Interior, who is ultimately responsible to the Secretary for implementation of the programs in Chapter VII.

This section would also recognize that the Director has a responsibility to confer with Federal land managing agencies and Federal agencies with jurisdiction over natural resources on Federal lands prior to taking actions which could affect their responsibilities. Recognizing the multifaceted effects of regulating surface coal mining and reclamation operations on Federal lands, this Section recognizes that the Director cannot proceed without considering the effects of actions under these regulations upon responsibilities of other Federal agencies. For instance, land managing agencies such as the Bureau of Land Management and the Forest Service will be particularly concerned about questions of designating lands unsuitable for mining, whether a permit should be issued, or the proper postmining land use. The Department of Energy and the Geological Survey are concerned with conservation of the coal resource and diligent development. The Department of Labor is concerned with the health and safety of the miners. Other agencies specified in this section are concerned with fish and wildlife and related environmental values, air and water pollution and historic and cultural resources.

Section 700.4 would recognize that the States must assume primary responsibility under State programs for regulating coal exploration and surface coal mining and reclamation operations if the regulatory program established by the Act is to be successful. The proposed regulations which implement the Title V regulatory program in the Act are intended to provide the minimum requirements for State programs which will create the uniform level of enforcement throughout the country which is contemplated by the Act.

Consistent with the principle that the States should take the lead in regulating surface coal mining and reclamation operations within their borders, with respect to regulation on Federal lands, subsection (d) would recognize that the Secretary may delegate certain responsibilities and authority to the States pursuant to Section 523(c) of the Act. In response to comments, the word "limited" has been deleted from the pre-posed draft as unnecessary to describe the Federal-State relationship under a cooperative agreement.

Section 700.5 gives definitions for terms which are generally applicable throughout the Act and regulations. Some of the definitions would repeat statutory definitions. Comments on the preproposed draft rules suggested that definitions in this category be deleted. OSM has decided to retain such definitions here and in Part 701 on the theory that the regulations should be as complete as possible in order that persons using them will not have to turn constantly to the Act looking for terms defined there and not included in the regulations. Definitions repeating statutory definitions include: "Federal lands," "Federal lands program," "Fund," "Indian lands," "Indian tribe," and "Office," and "mining operations." {41666}

"Person." The definition of this term would expand upon the definition in Section 701(19) of the Act. The proposed definition includes Indian tribes in those situations in which an Indian tribe may be conducting surface coal mining and reclamation operations on non-Indian lands. In addition, the governmental agencies listed in Section 524 of the Act would be included because they are subject to regulation when engaged in surface coal mining and reclamation operations. A joint venture would also be added to the definition of "person" on the basis that it is a type of business organization which should be specifically identified in the definition.

"Public office." This definition would be included in the regulations to identify the kind of office in which records required by the Act to be made available to the public will be placed.

"Regulatory authority." The definition of this term in Section 701(22) would be expanded to include situations not covered by the statutory definition. Specifically, the Secretary is defined as the regulatory authority under a Federal lands program. The Federal lands program is a regulatory program in most respects comparable to a State program or a Federal program. For this reason and ease of reference in the regulations, the Secretary is defined as the regulatory authority for a Federal lands program.

"State regulatory authority." The State regulatory authority would be defined as the State agency which has primary responsibility at the State level for administering the regulatory programs. The use of the phrase "primary responsibility" signifies that one State agency is to be designated the regulatory authority for purposes of dealing with the Office under the regulations in this Chapter. The definition does not prevent States from assigning specified responsibilities under the State program to other agencies, provided memoranda of understanding or other working agreements have been established between the regulatory authority and the other State agency or agencies, in order that there will be a uniform, coordinated State program.

The definition of "surface coal mining operations" follows the statutory definition except that it would include reference to extraction of coal from coal refuse piles. Questions have arisen during the interim program as to whether coal extraction from coal refuse piles is regulated under the Act. Analysis of the statute and legislative history has convinced the Office that such extraction is an operation intended to be regulated under the Act. Therefore, it is proposed for explicit inclusion in the

definition of surface coal mining operations. (See letter from the Solicitor, Leo Krulitz, to Representative Gus Yatron, dated March 13, 1978.)

Changes have been made in the permit and performance standard provisions of the proposed rules to reflect the Office's interpretation that the phrase "at or near the mine site," used in the statutory definition of "surface coal mining operations," modifies only "loading of coal." The Office interprets the Act as setting no territorial limitation on its jurisdiction over other facilities identified in the definition preceding "loading of coal."

"Resulting from and incident to." Definition of this term in the context of "surface coal mining operations" would be added in order to clarify those operations which are subject to the permit and performance standard requirements of the Act and this Chapter.

SECTION 700.11 - APPLICABILITY.

This section proposes to repeat the exemption for those surface coal mining and reclamation operations which are exempted from regulation by the statute. Paragraphs (a) and (b) would repeat the language of the statutory exemptions in Section 528 of the Act. The concept of noncommercial use in (a) is limited based upon applicable legislative history. S. Rep. 95 128, 95th Cong., 1st Sess. 97 98 (1977). For the two-acre exemption in (b), language has been added in response to a comment to clarify that it is to be calculated based upon the expected life of the operation. This language is necessary to eliminate potential abuse of this exemption by persons conducting a series of two acre operations which are in actuality part of a larger mining operation. Paragraph (c) would reference Part 707 of Subchapter A for the regulations governing coal extraction which is an incidental part of Federal, State or local government-financed highway or other construction. Paragraph (d) proposes to include the exemption which appears in the definition of surface coal mining operations in Section 701(28) of the Act.

Section 201(g) of the Act provides a petitioning process for initiation of a proceeding to issue, amend or repeal rules issued under the Act. This process would be incorporated in Section 700.12 of the proposed regulations. The process proposed here is basically the same as that specified for the initial regulatory program.

A change from the initial regulation on petitions would be to place a burden upon the petitioner to present facts, technical justification and legal arguments which support the petition. If the petition concerns an existing rule, it would have to present justifications and arguments not considered in the previous rulemaking. The Director would have authority to reject a petition which did not provide this information and create a reasonable basis for further consideration of the need to issue, amend or repeal a rule. This proposal is also intended to eliminate the need for further consideration of petitions which are frivolous and do not provide a minimum threshold of information meriting the initiation of the administrative process. Without such a threshold, the day-to-day administration of these regulations could be jeopardized by the burden resulting from frivolous and unwarranted petitions.

In response to a comment, language has been added to the proposed rule indicating that the Director's decision on a petition is a final decision for the Department. This has the effect of leaving open the opportunity for a judicial appeal of the decision.

SECTION 700.13 - PRIOR NOTICE OF CITIZEN SUITS.

This proposed regulation is repeated from the initial program regulations with only minor changes intended for clarification.

SECTION 700.14 - REQUEST FOR RECORDS.

In response to public comment, subsection (a) has been revised to indicate that the records are to be available at the office geographically closest to the area to which the document pertains. OSM does not believe Congress intended new offices to be opened throughout the country in the vicinity of mines simply to make documents available.

SECTION 700.15 - COMPUTATION OF TIME.

These proposed regulations are repeated from the initial program regulations with only minor changes intended for clarification.

PART 701 – PERMANENT REGULATORY PROGRAM

General Introduction: This part serves as a general introduction to the permanent regulatory program which is being proposed in accordance with the requirements of Section 501(b) of the Act. The permanent regulatory program represents full implementation of the regulatory scheme created by Congress in Title V of the Act. When the permanent regulatory program is implemented through State or Federal programs, and the Federal lands program all the applicable regulatory requirements and performance standards of Title V will apply to coal exploration and to surface coal mining and reclamation operations throughout the country. {41667}

The initial regulatory program under the Act was implemented through regulations promulgated on December 13, 1977, and applies to surface coal mining and reclamation operations in a particular State until a State program is approved or a Federal program is implemented in that State under the permanent program. The initial program does not apply all the Act's performance standards to surface coal mining and reclamation operations, nor does it apply the Act's permit system to those operations.

Under Section 710 of the Act, an initial set of performance standards became applicable to surface coal mining and reclamation operations on Indian lands on December 16, 1977, when regulations were published in the Federal Register. However, Section 710 of the Act does not apply permit application and approval requirements, bonding requirements, and all the performance standards to these operations on Indian lands until 30 months following enactment of the Act. Therefore, regulations applying these requirements to Indian lands are not being proposed at this time.

Part 701 is intended to address matters which are of general applicability to the permanent regulatory program. It would describe the authority of the States and the Office during the permanent program. It proposes definitions of general applicability to all aspects of the permanent regulatory program. Finally, it would establish when the permanent regulations become applicable to coal exploration and to surface coal mining and reclamation operations.

Authority for regulations in this Part is found in the Secretary's general rulemaking authority in Sections 201(c)(2), and 501(b) of the Act. In addition to these sections, authority for Section 701.11 of the regulations in this Part is found in Sections 506, 512, 515 and 516 of the Act.

SECTION 701.3 - AUTHORITY.

This Section identifies the respective responsibilities of the Director and of a number of Federal officials whose concurrences must be obtained over portions of the regulations before their final promulgation.

SECTION 701.4 - RESPONSIBILITY

The State and Federal relationship in the permanent regulatory program is summarized in Section 701.4. A State with an approved State program would have primary responsibility for regulating surface coal mining and reclamation operations within its borders. Under such circumstances, persons conducting coal exploration or surface coal mining and reclamation operations would be subject to regulation by the State regulatory authorities, rather than the Office.

The Federal role in States with an approved program is minimal. The Act does require the Office to evaluate the administration of the State program. (Section 517 of the Act.) To do this the Office would conduct periodic inspections of surface coal mining and reclamation operations in the State to establish whether they are in compliance with the State program. The Office would review permits, inspection reports and enforcement actions of the State regulatory authority to determine whether the State is fulfilling the responsibilities it assumed in its program.

In addition to the role of evaluating State programs, the Office would be required to respond affirmatively to information it receives which creates a reasonable belief that a person may be violating the Act, regulations or any permit condition. (Section 701.4(b)(3).) The process called for by Section 521(a) of the Act and proposed in Part 842 of the regulations would result in the State taking appropriate action when informed of this information by the Office, or the Office proceeding with an inspection and issuing a cessation order under appropriate circumstances.

In connection with its responsibilities for evaluating the administration of a State program, the Office would have the option, when necessary, of taking over enforcement of a State program or substituting a Federal program for the State program. These responsibilities are referred to in Section 701.4 and reference is made to the detailed procedures found in Part 733 which would be followed should such action become necessary.

Section 701.4 would identify the statutory alternative to a State program during the permanent regulatory program. That alternative is a Federal program which would be implemented in a State, if a State fails to have an approved program by June 3, 1980. When a Federal program is implemented in a State, the Office would become the exclusive regulatory authority for all coal exploration and surface coal mining and reclamation operations in that State.

SECTION 701.5 - DEFINITIONS.

1. Definitions which apply during the permanent program are found in Section 701.5. In response to comments on the preproposed draft rules, definitions for the permanent program which have the same meaning in more than one subchapter of Chapter VII have been moved to Section 701.5. Definitions generally applicable to all of Chapter VII remain in Part 700. The process of reorganizing the location of definitions will continue during the comment period on the proposed rules.

The Office believes that the words not defined in the regulations have generally accepted meanings that will not lead to ambiguity or misinterpretation. The Office invites suggestions for definitions of words used in the permanent program regulations which have not been defined in this section. In each case, the most helpful suggestions will be those accompanied by the rationale for the proposed definition and its source in technical literature or elsewhere.

2. The principal sources of technical definitions are American Geological Institute, Glossary of Geology, 1972; American Society of Civil Engineers, Nomenclature of Hydraulics, 1962; U.S. Bureau of Mines, Dictionary of Mining, Mineral, and Related Terms, 1968; Bituminous Coal Institute, Glossary of Current and Common Bituminous Coal Mining Terms, 1947; Soil Science Society of America, Glossary of Soil Science Terms, 1970; and Soil Conservation Society of America, Resource Conservation Glossary, 1976.

3. The definitions for the following words or phrases are essentially the same as those in the initial program regulations previously promulgated. (30 CFR 710.5, 42 F.R. 62678 et seq., December 13, 1977): "acid drainage," "acid-forming materials," "combustible material," "compaction," "diversion," "embankment," "ephemeral stream" (which is defined in the initial regulatory program regulations within the definition of "intermittent or perennial stream"), "ground water," "highwall," "hydrologic balance," "impoundment," "intermittent or perennial stream," "leachate," "noxious plants," "overburden," "outslope," "productivity," "recharge capacity," "recurrence interval," "roads," "runoff," "safety factor," "sediment," "sedimentation pond," "slope," "spoil horizons," "spoil," "stabilize," "surface water," "suspended solids," "toxic-forming materials," "toxic mine drainage," "valley fill and head-of-hollow fill," and "water table."

Aquifer is defined as it was in the initial program. Eight separate sources were consulted prior to adopting a definition of the term aquifer. The only substantive difference in the various definitions is the wording; all of the definitions consistently contain the concept that an aquifer is a body of earth materials that can store and transmit water in sufficient quantities for a specific use. The proposed definition involves the same concept and is consistent with the established definitions. The eight definitions are as follows:

(1) American Geological Institute, 1972, Glossary of Geology: A body of rock that contains sufficient saturated permeable material to conduct ground water and to yield economically significant quantities of ground water to wells and springs;

(2) U.S. Bureau of Mines, 1968, Dictionary of Mining, Mineral, and Related Terms: An underground stratum that will yield water in sufficient quantity to be of value as a source of supply;

(3) Soil Conservation Society of America, 1976, Resource Conservation Glossary: A geologic formation or structure that transmits water in sufficient quantity to supply the needs for a water development; usually saturated sands, gravel, fractures, and cavernous and vesicular rock; {41668}

(4) UNESCO, 1970, International Glossary of Hydrology: A porous water bearing bed or stratum of permeable rock, sand, or gravel capable of yielding significant quantities of water;

(5) CRC Press, 1973, Dictionary of Water and Water Engineering: A relatively permeable or fissured deposit which yields useful supplies of water when tapped by a well;

(6) American Public Health Society, American Society of Civil Engineers, American Water Works Association, and Water Pollution Control Federation, 1969, Glossary of Water and Waste Water Control Engineering: A porous water-bearing geologic formation. Generally restricted to materials capable of yielding an appreciable supply of water;

(7) American Society of Civil Engineers, 1962, Nomenclature for Hydraulics: A porous water bearing formation; and

(8) US GS Water-Supply Paper 1988, 1972, Definitions of Selected Ground Water Terms: A formation, group of formations, or part of a formation that contains sufficient saturated material to yield significant quantities of water to wells and springs.

The proposed definition is structured to apply to real and practical situations where a question of hydrological balance is involved. If there is a reasonable likelihood that such a strata has served in the past or will in the reasonable future serve to transmit sufficient quantities of water, then it will be considered an aquifer and treated accordingly. Any other interpretation of the Act and regulations would subvert Congress' clear intent to protect rigorously the water resources in areas of surface mining. Although the Act does not define aquifer, the term was defined in the 1974 House bill, H.R. 11500, as follows: ""The term 'aquifer' means a zone, stratum, or group of strata, that can store and transmit water in sufficiently recoverable quantities to be of economic or ecologic value as a source of water. Section 705(29)."" The Secretary's definition is thus also in accord with that once considered by the House of Representatives.

The terms ""head-of-hollow fill"" and ""valley fill"" are proposed to be redefined to (1) distinguish between fills that are placed at the uppermost reaches of a valley and those which are placed lower in the valley and which involve a substantial upstream drainage area and (2) clarify the distinction between head of hollow fills or valley fills and other fills on relatively flat areas. The differences between valley fills and head-of-hollow fills were implied in the initial regulatory program. The new and separate definitions in 701.5 are based on the location of the fill. Those portions of the definitions used in the initial regulatory program that provided performance standards rather than definition were removed. The minor drainage channel condition for fills in the initial regulatory program has been refined to reflect the need to accommodate placement of excess soil developed from the first cuts of an area mine as well as to accommodate placement of excess soils in relatively flat areas where the stream drainage area is small and wet areas do not exist in the gently sloping or flat fill area. The Office believes that areas with slopes of 20 degrees or more provide less stable conditions for fills and will concentrate surface water runoff to a higher degree than will gently sloping areas. Thus, fills in drainage areas with these steeper slopes are subject to the valley fill and head-of-hollow fill requirements. The Office considers the standards for valley fills and head-of-hollow fills mandatory if any part of the fill area contains seeps or ephemeral channels or if the fill may become partially saturated.

The Office recognizes that a dimensional definition of gullies as well as identification of lesser slopes and the identifications of annual vegetation amounts may facilitate determinations of situations in which valley fill or head-of-hollow fill requirements apply. Therefore, public comment recommending further criteria is solicited. The Office is considering the development of performance standards for fills in areas of low annual precipitation (e.g. less than 26) or geographical areas (e.g. west of the 100th meridian west longitude) or types of mining (e.g. area mining as occurs in parts of the interior western United States and mid western United States) in order to further clarify the requirements. Also, ""temporary diversions"" and ""permanent diversions"" have the same meanings given them in the body of the initial program regulations. See 30 CFR Sections 715.17(c) and 717.17(c), 42 F.R. 62685 and 62697, December 13, 1977.

The definition for ""underground mining activities"" comes from definitions given for underground mining terms in section 717.11 of the initial program regulations. 30 CFR Section 717.11, 42 FR 62695, December 13, 1977.

The definition of ""coal processing waste"" is intended to differentiate spoil, overburden and solid waste from the types of material subject to the standards which would be found primarily in Sections 816.81 816.88, 817.81 817.88 and other

sections as referenced in Section 812.12 of these regulations. The term appears in the Act in Subsections 515(b)(11) and (13) and 516(b)(4) and (5). This definition appears in the initial program regulations as the definition of "waste." 30 CFR Section 710.5, 42 F.R. 62679, December 13, 1977.

The definition of "mulch" is essentially the same as that in the initial program regulations previously promulgated 30 CFR 715.20(d); 42 F.R. 62691, December 13, 1977. The term "other suitable materials" is used to provide needed flexibility to take advantage of advances in reclamation practices and to overcome a long listing of applicable vegetation, organic wastes, or chemicals. Compost is one of many suitable mulching materials along with bark materials, chemical additives, hay, straw, organic wastes and wood fiber.

The definition of "underground development waste" is based largely on the definition of "refuse" in the regulations promulgated under the Mine Safety and Health Act of 1969, as amended. See 30 CFR Section 77.217(e). The definition of "hydrologic balance" is supported by discussion in the House Committee Report on H.R. 2, H. Rep. No. 95 218, 95th Cong., 1st Sess. 109 113 (1977). The definition remains the same as that used in the initial program.

Section 701.5 includes nine definitions that have special importance to alluvial valley floors. The defined phrases and the sources of the proposed definitions are as follows: I11(a) Alluvial valley floors _taken from Section 701(1) of the Act.

(b) Agricultural activities _developed from generally accepted usage but modified to exclude those agricultural practices that do not derive benefit from subirrigation or the use of flood irrigation.

(c) Flood irrigation _developed from generally accepted usage. {41669}

(d) Subirrigation _developed from standard definitions (see Glossary of Geology, American Geological Institute, 1972) and modified to include indicators of the presence of water based on technical input from reclamation staffs in Montana, Wyoming, Colorado, Utah, and North Dakota during development of the technical guidance paper on alluvial valley floors published at 43 F.R. 38055; on August 25, 1978.

(e) Arid and semiarid areas _generally defined in terms of areas of water deficit for normal plant requirements per standard agricultural usage.

(f) Upland areas _developed from standard geomorphic usage, Section 701(1) of the Act and field observations conducted for reconnaissance analysis of alluvial valley floors in the development of the aforementioned technical guidance paper.

(g) Unconsolidated stream-laid deposits holding streams_ developed from the Act, field inspections conducted by the Department and the development of the technical guidance paper.

(h) Essential hydrologic functions _developed from the Act, legislative history, and field inspections.

(i) Undeveloped rangelands – developed from consultation with technical representatives of State and Federal agencies during the development of the technical guidance paper.

These definitions were developed from the technical guidance paper on alluvial valley floors published at 43 F.R. 38035; August 25, 1978, and

(1) Hardaway, J. E., Kimball, D. B., Lindsay, S. F., Schmidt, J., Erickson, L., March 1977. Subirrigated Alluvial Valley Floors; A Reconnaissance of Their Properties and Occurrence on Coal Resource Lands in the Interior Western United States (U.S. EPA, Region VIII, Denver, Colo.); Proceedings of National Coal Association and Bituminous Coal Research Symposium in Oct. 1977, pp. 61 135.

(2) Malde, H. E., and Boyles, J. M., 1976. Maps of Alluvial Valley Floors and Strippable Coal in 42 7 ½ -Minute Quadrangles, Big Horn, Rosebud, and Powder River Counties, Southeast Montana, US GS Open File Report 76 162.

(3) Schmidt, J., 1977. Alluvial Valley Floors in East-Central Montana and Their Relation to Strippable Coal Reserves; Reconnaissance Report, U.S. EPA, Region VIII in cooperation with State of Montana;

The following references were used to develop discussions of the characteristics of unconsolidated stream-laid deposits and subirrigation:

1. Leopold, Luna B., M. Gordon Wolman, and John P. Miller, 1964, "Fluvial Processes in Geomorphology:" San Francisco, W. H. Freeman and Company, 522 pp.
2. Robinson, T. W., 1958, Phreatophytes: U.S. Geological Survey Water-Supply Paper 1423, 84 pp.
3. Schumm, Stanley A., 1977, "The Fluvial System": New York, John Wiley & Sons, 338 pp.

The Department recognizes the possible existence of alluvial valley floors in arid and semiarid areas of Alaska. Not describing these areas in these regulations at this time does not represent a determination that there are no arid and semiarid areas in Alaska. At a later time, these determinations will be made.

No major alternatives to these definitions were considered with the exception of "arid and semiarid." Principal alternatives considered were (1) equating semiarid to 26 inches or less annual precipitation, (2) using precipitation-evaporation comparisons to show water deficits for vegetation, and (3) vegetation communities such as short grasses. Use of these alternatives would result in semiarid boundaries running through certain coal fields such as those in central Texas. Therefore, the Department has selected the 100th meridian west longitude as the eastern limit of alluvial valley floors. This results in eliminating the applicability of Section 515(b)(10)(F) of the Act to "alluvial valley floors" that might otherwise exist east of the 100th meridian. However, surface coal mining and reclamation operations, no matter where conducted, must meet all of the other provisions of Section 515(b)(10).

A definition of half-shrub has been proposed. It appears in Sections 816.117 and 817.117 in the context of revegetation, particularly in the West. It is not a commonly used term and, therefore, is proposed to assure uniform usage. The source for the definition is: American Society of Range Management, 1964, "Glossary of Terms Used in Range Management."

The term "coal exploration operation" is proposed to be specifically defined in these regulations, because it is not so defined in the Act, except for the indication in Section 701(28) of the Act that it is not within the category of activities constituting "surface coal mining operations." The basis for the proposed definition is the definition adopted for "exploration" under the Department's regulations covering coal mining on Federal lands, 30 CFR Section 211.2(m), with minor changes in wording to adjust that definition to activities subject to regulation under the Act.

The term "substantially disturb" is proposed to be defined because it is not specifically defined in the Act. The basis for the definition is the list of types of exploration activities, at the end of Section 512(a) of the Act, for which Congress instructed the Secretary to promulgate environmental protection performance standards. In addition to that list, the Office has added blasting and the disposal of earth or other debris. The disposal of earth or debris is proposed to be included within the term "substantially disturb" because of the potential adverse pollution of these activities, if not safely conducted. Compare: Sections 515(b)(4), (5), (10), (11), (13), (14) of the Act.

The Office has considered the question of whether the terms "coal exploration operation" and "substantially disturb" should be proposed to exclude specifically cases where persons enter upon lands underlain by coal deposits to conduct scientific research or where very small amounts of coal are removed by hand tools and access to the area is obtained by foot or by limited use of an existing road or other access route. After consideration, the Office has decided not to propose such exclusions, because it is believed that Congress authorized no categorical exemptions from activities otherwise covered by Section 512 of the Act.

Regarding scientific researchers, the Office notes, to the extent that a person conducts only scientific research which is not related to specific plans to locate and describe coal deposits, such research is not within the purview of the term "coal exploration operation," and therefore not subject to Part 776. Where a person conducts "coal exploration operations" which do not "substantially disturb" the land involved, that person will not be subject to the provisions of Part 776 or Part 815.

The Office emphasizes, however, that the definitions proposed for the terms "coal exploration operation" and "substantially disturb" are only tentative and specifically solicits comments about how to define these terms in the final regulations. In particular, the Office is interested in the receipt of comments regarding the duration and total number of coal exploration operations conducted on private lands, the nature of the entities that perform these operations, the magnitude of adverse environmental harm caused by these operations and the prior experience of the States in regulation of those operations.

A "'complete Federal program" is a program established under Section 504 of the Act. It may be established if a State does not submit an acceptable State program or upon the complete withdrawal of a State program under Part 733. This program is the way that the Director regulates all coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within a State. {41670}

A "'partial Federal program for a State" is a program established by the Director under Section 504 of the Act upon the partial withdrawal of a State program and by which the Director may regulate appropriate portions of coal exploration and surface coal and reclamation operations on non-Federal and non-Indian lands within a State. The complete and partial Federal programs are to be distinguished from the substituted Federal enforcement of a State program. The Federal programs require more specific procedures and opportunity for public input while the substituted Federal enforcement of a State program is a more expedited procedure with potentially more limited coverage.

The land-use categories defined in Section 701.5 denote the broad use or activity and to a lesser extent the intensity of use or management as it may effect the hydrologic cycle. A land-use change from one land-use category in the premining stage to a different category in the postmining stage constitutes an alternative land use and the permittee must meet the requirements for approval of an alternative post-mining land-use. The Office tentatively selected these categories primarily to insure that (1) the range of agricultural or other non-urban uses will be identified, and (2) the relationship of use intensity and coverage or degree of disturbance of the site will be reflected in the categories.

Recognizing that (1) these categories may be in direct conflict with State or local planning and zoning e.g. apartment housing and industry in same category, and (2) it is difficult to develop and document definitional criteria that link land-use categories with effect on hydrologic cycle, the Office did consider other alternative land-use categories. The two primary alternatives include:

1. Land-use categories that are compatible with those traditionally used in State and local planning and zoning documents, including industrial, commercial, residential, agriculture, recreation, forestry, historic preservation, public activities, and grazing; the principle advantage of these categories is that they are the same as those used on approved zoning plans; and
2. Categories that combine both land use and land cover; this alternative could emphasize the agricultural variation in greater detail, such as: cropland, cultivated crops, rangeland, forestland, hayland, pastureland, heavy industry, light industry, public services, residential, impoundments of water, and fish and wildlife habitat and recreation lands; the principle advantage with these categories is that they more closely follow the categories used by Federal agencies who gather land-use and land cover data.

In view of the variation between alternative land-use categories and the importance of these definitions, the Office solicits comments regarding the proposed land-use categories in Section 701.5.

The definition of "'performance bond" was developed to meet several goals. The first is to refer to the instrument itself as an indemnity agreement. An indemnity agreement is a legal term of art relating to the guarantee by a party of its promise to do some obligation and, if it fails to do so, to pay a sum of money that is equivalent to the performance of the obligation. In addition, it is always desirable to improve that indemnity agreement with additional guarantees, which leads directly into the various kinds of bonding that might be acceptable under a bonding program. The first acceptable kind of bond would be a bond supported by a surety company's guarantee or agreement to pay the money that is viewed as the equivalent to the performance of the obligation. The second kind of bond is a pledge of collateral or property. In this case, acceptable collateral is either cash negotiable certificates of deposits or public bonds where the regulatory authority will have actual possession and control of such collateral in order to guarantee either the performance by the permittee or that source of money will be available for the regulatory authority itself to complete the obligation. The third kind of potential indemnity agreement contemplated under the Act is the self-bond provision which relates within the definition to the language for other acceptable contractual guarantees. This self-bond concept is discussed in greater detail in the preamble to Subchapter J, but essentially it is an indemnity instrument directly from the permittee pledging to pay a certain sum of money if he fails to comply with the obligations imposed upon the bond instrument. The self-bond agreement is by its nature not supported by a separate surety's guarantee or a pledge of collateral.

This definition also acknowledges that the proposed requirements of this chapter relating to performance bonds for coal mine operations is applicable not only to the Federal regulatory authority should the Federal government have to directly

enforce the provisions of the Act, but it is also applicable through an approved State regulatory program which is supported by State law and State regulations. It is necessary that these proposed minimum criteria for bonding of coal mine operations be applicable to both the Federal government in its status as a regulatory authority and to States in their status as regulatory authorities pursuant to approved State programs.

The language in the definition of performance bond relating to faithful performance of the Act, the regulations of this chapter, approved State programs, rules and regulations promulgated thereunder, and the provisions of a permit is intended to recognize the different sources of legal authority that allow full implementation of the regulations of this Subchapter. This phrase will appear throughout these regulations.

The definition of "prime farmland" in Section 701.5 makes reference to the criteria as prescribed by the Secretary of Agriculture as published in the Federal Register on January 31, 1978. Technical literature relied on for the prime farmland definition is:

1. Schmude, K. O., 1977, A perspective on prime farmland. J. Soil and Water Cons. Vol. 32, No. 5, pp. 240-242.
2. United States Department of Agriculture 1978. Soil Conservation Service. Prime and unique farmlands. 7 CFR, Part 657, 43 F.R. No. 21, January 31, 1978.

The definition of prime farmland relates to Sections 507(b)(16), 515(b)(7) and 701(20) of the Act. The prime farmland definition, as required by the Act, is to be used along with the historical use clause in identifying prime farmland relative to these regulations. The intent of the Act is to consider the prime farmlands that have been used for intensive agricultural purposes. The term "cultivated crops" encompasses the definition of intensive agricultural purposes.

The term "historically used for the production of cultivated crops" would be defined as cultivated crop production in 5 or more of the 20 years preceding the surface mining permit application. The 20-year period corresponds to farm mortgage financing. The Office proposes a 5-in-20-year criterion to include land used for cultivation in a long-term crop rotation. For example, lands used as part of a crop cycle for 1 year of row crop out of every 4 years would be covered if that were the practice for the previous 20 years. This is a common practice in Midwestern States, in particular, where lands have been historically used for intensive agricultural purposes but, due to crop rotation, land sometimes lies fallow for several growing seasons. Moreover, land which otherwise would be prime farmland should not be excluded from coverage of the Act merely because of sound agricultural use of the land which requires crop rotation to allow the land to regain its prior productivity.

The Office notes that the coal industry commenters on the initial program agreed that historic intensive agricultural use of the lands must be considered but recommended a time-frame for defining such intensive use within the range of 10 to 20 years to 16 to 20 years preceding the date of the permit application. These proposals fail to consider land which would clearly be prime farmland except for crop rotation to allow land to regain its prior productivity. Commenters are invited to propose an alternative scheme which would address this aspect of prime farmland historic use. {41671}

The terms "applicant," "permit," "permittee," "reclamation," and "surface mining activities" would be defined consistent with the generally accepted meaning as used in Federal regulations. The terms "auger mining," "topsoil," and "hydrologic region or cycle" are as defined in A Dictionary of Mining, Mineral, and Related Terms published by the U.S. Bureau of Mines in 1968. The terms "coal processing plant," "in situ processing," "precipitation event," "rangeland," and "steep slope" are defined consistent with the generally accepted usage. "Anthracite" would be defined as listed in the Annual Book of ASTM Standards.

The following terms were defined to reflect the intent and conditions of the Act: Approximate original contour, downslope, imminent damage to the health and safety of the public, macro-invertebrate biological community, materially damage water quality or quantity, reference areas, and significant imminent environmental harm to land, air or water resources.

"Special bituminous coal surface mines" would be defined to reflect the language of Section 527 of the Act and its legislative history. H. Rep. No. 95-218, 95th Cong., 1st Sess. 70, 127, 177 (1977); H. Rep. No. 94-45, 94th Cong., 1st Sess. 117 (1975); S. Rep. No. 94-28, 94th Cong., 1st Sess. 222-223 (1975); H. Rep. No. 93-1522, 93rd Cong., 2nd Sess. 86 (1974).

The term ""best technology currently available" is utilized in two contexts in the Act. First, under Sections 515(b)(10)(B)(i) and 516(b)(9)(B), surface and underground coal mining operations are to be conducted to the extent possible using the ""best technology currently available" to prevent additional contributions of suspended solids in excess of requirements set by applicable State or Federal law. To the extent that applicable State or Federal laws (effluent limitations for example) are more stringent than currently available technology, the technology must improve equivalently to allow such surface coal mining operations. In this sense, Sections 515(b)(10)(B)(i) and 515(b)(9)(B) are technology forcing.

Second, under Sections 515(b)(24) and 516(b)(11), surface and underground coal mining operations are to be conducted using the ""best technology currently available" (BTCA) to minimize disturbances and adverse impacts of the operation on fish, wildlife and related environmental values and achieve enhancement of such resources when practicable.

The proposed definition of ""best technology currently available" incorporates the technology forcing aspect of the term. It also defines technology to include more than hardware. For example, techniques and procedures have been included to authorize phasing of mining and reclamation operations. The definition also divides responsibility for determining BTCA between the Office and the state regulatory authority.

The terms ""affected area" ""permit area," ""mine plan area" and ""adjacent area" would be defined in connection with each other and should be read together. They are important for purposes of the area coverage of plans and data to be submitted with permit applications, bonding, application of the performance standards and enforcement. The ""affected area" would represent a dynamic area, expanding from the lands first disturbed by operations within a permit area to include ultimately all areas disturbed within a permit area or series of permit areas, prior to bond release, covering the life of the mine. Affected area would never include a greater area than covered by a permit or series of permits for the life of the operation.

""Permit area" would be that area specified by a person in his application for a permit. It would include the lands subject to mining operations during the life of the permit. The term of the permit would have a bearing on the size of the permit area. Shorter permit terms generally would mean smaller permit areas.

""Mine plan area" is proposed as the area which a person expects to mine during the life of the operation. The mine plan area could coincide with the initial permit area for a small operation when the life of the mining operation would coincide with the term of the initial permit. For larger operations expected to continue for many years, the mine plan area would be considerably larger than an individual permit area. In such circumstances, the mine plan area concept is important in terms of plans and data to be submitted with the permit application. The regulatory authority would need the plans and data for the lands to be mined during the life of the operation in order to make an informed decision on the permit application.

Generally speaking, ""adjacent area" in the context of mining operations would mean the variable size area surrounding the affected area which could be impacted by operations on the affected area. The adjacent area would extend for varying distances from the affected area depending upon whether impacts to air, surface water, ground water, wildlife or other elements are being considered. In terms of plans and data to be submitted with permit applications, adjacent area would be the variable size area surrounding the mine plan area. The size of the adjacent area would depend upon whether plans and data relate to effects of mining on air, surface or underground water quality or quantity, wildlife, cultural resources or other elements.

SECTION 701.11 - APPLICABILITY.

For surface coal mining and reclamation operations during the permanent program, the permit provides the triggering device for application of the performance standards. Subsection (a) of this section would repeat the requirements of Section 506(a) of the Act for obtaining permits.

Subsection 701.11(b) would require the performance standards in Subchapter K of Chapter VII to apply to surface coal mining and reclamation operations on the earliest date on which such operations should have a permit. This would be eight months after approval of a State program or implementation of a Federal program, except as provided in Subsection 701.11(a) when a permit application has not been acted upon by the regulatory authority. Subsection (b) proposes that the performance standards would apply to surface coal mining and reclamation operations on the date on which a person should have obtained a permit under these regulations, whether or not that permit had been obtained. Thus, a person attempting to conduct a wild-cat operation without obtaining a permit would nevertheless be subject to the performance standards in

Subchapter K. Failure to comply with them would constitute a violation of the regulations, just as failing to obtain a permit would constitute a violation.

Subsection 701.11(c) would provide that the notice or approval requirements for coal exploration operations proposed under Part 776 of Subchapter G go into effect upon approval of a State program or implementation of a Federal program. Because both Section 512 of the Act and the legislative history are silent on the effective date for its requirements, the Office has decided to adopt the applicability and time requirements established by the Act for permits. This provides reasonable time for persons with ongoing coal exploration operations to file the necessary notice or application for approval. {41672}

The Act provides no guidance concerning when applicable performance standards should begin to apply to coal exploration. Because most coal exploration operations are considerably smaller than a typical surface coal mining operation, the Office believes a reasonable approach would be to apply the applicable performance standards to existing operations two months following approval of a state program or implementation of a Federal program. This approach is within the general rulemaking authority to carry out the purposes of the Act and consistent with these purposes as found in Section 102 of the Act.

PART 707 – EXEMPTION FOR COAL EXTRACTION INCIDENTAL TO GOVERNMENT FINANCED HIGHWAY OR OTHER CONSTRUCTION

This Part would establish the minimum criteria and procedures for notifying the regulatory authorities of those operations extracting coal as an incidental part of Federal, State or local Government-financed highway or other construction which are exempt from the requirements of the Act. The regulations limit the scope of the exemption in a manner believed to be consistent with the congressional intent of Section 528 of the Act, and consistent with the overall philosophy of the Act to minimize the environmental impacts and the risks to the public health and safety of surface coal mining operations.

The regulations would insure that only those operations extracting coal incidental to Government-financed construction would be exempt from reclamation requirements of the Act. Section 528(3) of the Act provides the authority for these regulations. That Section specifically requires that the exemption for coal extraction which is an incidental part of Federal, State or local Government-financed highway or other construction be covered by regulations issued by the regulatory authority. The regulations in Part 707 establish the minimum criteria and procedures.

Relevant legislative history supporting these regulations includes:

- (1) H.R. 5988, 93d Cong. Section 203;
- (2) 119 Cong. Rec. 1368 (January 18, 1973, discussing Section 203 of H.R. 5988);
- (3) S. Rep. No. 93 402, 93d Cong., 1st Sess. 50 (1973);
- (4) S. Rep. No. 94 28, 94th Cong., 1st Sess. 223 (1975);
- (5) S. 7, 95th Cong., 1st Sess., Section 428(3) (1977);
- (6) S. Rep. No. 95 128, 95th Cong., 1st Sess. 98 (1977);
- (7) S. Rep. No. 95 493, 95th Cong., 1st Sess. 112 (1977);

(8) A May 11, 1971, memorandum from David C. Simms, P.E. Deputy Chief Highway Engineer, Department of Transportation, Commonwealth of Pennsylvania, to Central Office, Engineering Districts, Engineering Consultants, on the subject of drainage from acid producing bituminous coal seams-policy and procedures (with attachments).

SECTION 707.1 - SCOPE and SECTION 707.2 - OBJECTIVES

Sections 707.1, Scope, and 707.2, Objectives, set forth what this part is intended to achieve. The conditions under which extraction of coal may be exempted from all requirements of the Act are stated.

The conditions are:

- (a) The value of the coal recovered must be less than 50 percent of the cost of the project;
- (b) The boundaries must be precisely defined and must not be larger than necessary to accomplish the project;
- (c) The financing must involve over 50 percent government funds;
- (d) The contractor for the project must follow the rules, regulations and guidelines of the government financing body or agency with regard to environmental protection; and
- (e) The financing government agency will notify the regulatory authority of each construction project and include the following specific information:
 - (i) Amount of government financing,
 - (ii) The project boundaries,
 - (iii) The value of the coal to be removed, and
 - (iv) The agency requirements being followed by the contractor to protect health, safety, and the environment.

Under these conditions, the Congressional intent of this exemption would be satisfied. Significant environmental or social costs of coal extraction would be internalized through reclamation requirements applicable to the government-financed construction.

The legislative history is clear that Congress intended the Section 528(3) exemption to be a narrow one, as established by regulations. The third exemption was not added to Section 528 until the 95th Congressional Committee reports from earlier Congresses stated that exemptions one and two in Section 528 were provided because those classes of surface mining in those exemptions caused very little environmental damage and regulation of them would be burdensome for the regulator and the industry (3) (4). When the third exemption was added in the Senate during the 95th Congress, the Committee continued to use the same language for all three exemptions (6). However, the third exemption added by the Senate was not limited to incidental coal extraction (5). The Conference modified the Senate language to "limit(s) the exemption to extraction of coal as an incidental part of government-funded construction only, rather than all construction as originally provided in the Senate language." (7)

The origins of Congressional thinking on this subject can be found in H.R. 5988 (1)(2). The exemption was noted as being patterned in some ways after Pennsylvania law. Excavations and right-of-way cuts were exempted where Federal, State or local government requires reclamation of the affected area. The Congressional Record summary of the exemptions stated: "The Secretary may identify other activities not subject to the Act and issue regulations further defining the exempted activities taking into consideration their magnitude (in tons and acres) their potential environmental impact, and whether the class, type, or types of activity are already subject to existing Federal, State or local regulatory systems. In identifying and defining other exempted activities, the Secretary is expected to follow a rule of common sense. The purpose of the Act is to insure that social and environmental costs of surface mining are internalized by reclamation. Any activity which inflicts significant costs and which should be accompanied by reclamation should, of course, not be exempted."

"The extraction of coal incidental to certain government-financed construction can be a major project with potential for significant public health and safety and environmental impacts. For this reason, all such extraction cannot be exempted from the Act and these regulations, unless it will be subject to reclamation requirements imposed by the government financing agency. This has been recognized in Pennsylvania."

"The proper handling of situations resulting from the construction of highways through bituminous coal areas will contribute to the elimination of pollution produced in the highway cut section and discharged to the streams of the Commonwealth. This discharge enters local streams through the highway drainage system, disturbs the existing environmental conditions, and produces detrimental effects which must be considered a major problem."

""In order to comply with the intent of existing laws and regulations regarding pollution from bituminous coal seams, this Department has obtained a Bituminous License, a Bituminous Strip Mine Permit and a Mine Drainage Permit on a state-wide basis. Since it is impossible in highway construction to follow the requirements intended solely for the strip mine operator set forth in the laws, it has become necessary to formulate policy and procedures to cope with the problems resulting when encountering bituminous coal seams both in the early phase of design and in the early phase of highway construction. This policy and procedure has been developed in cooperation with the Pennsylvania Department of Environmental Resources, and strict compliance with these procedures will be the responsibility of the contractors during construction." {41673}

Contractors conducting government financed construction would be required to have a copy of the government financing agency notification at the site of the coal extraction. This is needed so that regulatory authority inspectors will know that a particular operation is exempt from the regulations of the regulatory authority.

SECTION 707.5 - DEFINITIONS

Section 707.5 contains the definitions unique to the terms as used in this Part. They are intended to fulfill the Congressional intent to limit carefully the scope of this exemption.

""Government-financed construction" would be defined in such a way as to exclude from the meaning of that term any government financial contributions to a construction project which are relatively insignificant when compared to the overall construction costs. The government financing agency contribution has been set at greater than 50 percent in order to exempt only those projects in which the government agency has a significant interest. Other indirect means of assistance for construction projects that, do not give the government financing agency a direct and significant interest in the ultimate success and utilization of the construction project, are also excluded from the definition. This definition would minimize the opportunity for abusing this statutory exemption by preventing a person from qualifying for the exemption when the government agency's financial contribution or interest in the project is insignificant.

SECTION 707.11 - APPLICABILITY

Section 707.11 specifies the information which would have to be included in the notice of the government financing agency's to the regulatory authority for each construction project. The information is necessary for the regulatory authority to know the scope of the construction project and whether it qualifies for exemption from the Act and the regulations in this Chapter.

The notification requirements are intended to be the minimum information necessary for the regulatory authority to know that the construction qualifies for the exemption. The notification is not intended to be lengthy or burdensome.

Alternative approaches to that now proposed in this part were considered. One alternative approach would require persons conducting coal extraction as an incidental part of government-financed construction to apply to the regulatory authority for an exemption. The person would be required to show that the coal extraction qualified for the exemption because the impacts on public health and safety and the environment were minimal or internalized by requirements imposed by the government financing agency. Another alternative considered was to require the government financing agency to obtain an exemption agreement from the regulatory authority covering all construction projects it financed. The exemption agreement would apply existing agency requirements on terms and conditions negotiated with the regulatory authority to construction, in order to accomplish the purposes of the Act. These approaches were rejected for the proposed rules because the Office believes the purpose of the Act and Congressional intent are better served by a project-by-project notification system which does not require approvals or agreements with the regulatory authority.

Most comments received on the preproposed draft of Part 707 took the position that the Office lacked authority to issue the part, that it went beyond the Act or that it was too burdensome given the nature of the exemption in Section 528(3) of the Act. The Office has carefully considered these comments. The requirements in Part 707 as proposed differ significantly from the draft upon which the comments were based. Because Section 528(3) specifically provides for regulations to implement that exemption, the Office believes that it has ample authority to issue regulations as proposed in Part 707. The regulations now proposed for Part 707 do not extend beyond the authority of the Office, given the purposes of the Act expressed in Section 201 and the Congressional intent behind Section 528(3). In response to the expressed concern about the burden imposed, this proposed rule has tried to reduce the burdens to a minimum, consistent with the need to insure that exempted operations internalize the environmental and public health and safety costs.

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{Regulations: 43 FR 41800}

SUBCHAPTER A – GENERAL

PART 700 – GENERAL

Section

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| 700.1 | Scope. |
| 700.2 | Objective. |
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| 700.5 | Definitions. |
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| 700.14 | Availability of records. |
| 700.15 | Computation of time. |

Authority : Sections 102, 201, 501(b), 517, 520, 701, Pub. L. 95-87, 91 Stat. 448, 449, 468, 498, 503, 516 (30 U.S.C. 1202, 1211, 1251, 1267, 1270, 1291).

SECTION 700.1 - SCOPE.

The following regulations in Chapter VII of 30 CFR, consisting of Parts 700 899, establish the procedures through which the Secretary of the Interior will implement the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. section 1201 et. seq.)). Chapter VII is divided into 13 Subchapters.

- (a) Subchapter A contains introductory information intended to serve as a guide to the rest of the Chapter and to the regulatory requirements and definitions generally applicable to all programs and persons covered by the Act.
- (b) Subchapter B contains regulations covering the interim regulatory program which apply, prior to the applicability of permanent program regulations, to surface coal mining and reclamation operations and persons.
- (c) Subchapter C sets forth regulations covering applications for and decisions on permanent State programs, the process to be followed for substituting a Federal program for an approved State program if necessary, the process for assuming temporary Federal enforcement of an approved State program, and the process for implementation of a Federal program in a State when called for by the Act.
- (d) Subchapter D identifies the procedures that apply to surface coal mining and reclamation operations conducted on Federal lands rather than State or private lands and incorporates the performance standards in Subchapter K.
- (e) (1) Subchapter F implements the requirements of the Act for:
 - (i) Designating lands which are unsuitable for all or certain types of surface coal mining operations;
 - (ii) Terminating designations no longer found to be appropriate; and
 - (iii) Those lands or areas where the Act states that surface coal mining operations should not be permitted or should be permitted only after specified determinations are made.
- (2) This Subchapter does not include regulations governing designation of areas unsuitable for non-coal mining under the terms of section 601 of the Act or the designation of Federal lands under the Federal lands review provisions of subsection 522(b). The Bureau of Land Management is responsible for these regulations, which will be found in Title 43 of the Code of Federal Regulations.

(f) Subchapter G governs applications for and decisions on permits for surface coal mining and reclamation operations on non-Indian and non-Federal lands under a State or Federal program. It also governs coal exploration notification and approval requirements. Additional permit application requirements and decision criteria for special categories of mining are also in this Subchapter. Regulations implementing the experimental practices provision of the Act are also included in Subchapter G.

(g) Subchapter J sets forth requirements for performance bonds and public liability insurance for both surface mining and underground mining activities on non-Federal lands.

(h) Subchapter K sets forth the environmental and other performance standards which apply to coal exploration and to surface coal mining and reclamation operations during the permanent regulatory program. The regulations establish the minimum requirements for operations under State and Federal programs. Performance standards applicable to special mining situations such as anthracite mines, mining in Alaska, alluvial valley floors and prime farmlands are covered.

(i) Subchapter L sets forth the inspection, enforcement, and civil penalty provisions that apply to a State, Federal, or Federal lands program.

(j) Subchapter M sets forth the requirements for the training, examination, and certification of blasters.

(k) Subchapter P sets forth the provisions for protection of employees who initiate proceedings under the Act or testify in any proceedings resulting from the administration or enforcement of the Act.

(l) Subchapter R sets forth the regulations for the abandoned mine land reclamation program. These regulations include the fee collection requirements and the mechanisms for implementing the State and Federal portions of the abandoned mine land reclamation program.

(m) Subchapter S sets forth the regulations that apply to grants for mining and mineral research institutes and grants for mineral research projects.

SECTION 700.2 - OBJECTIVE.

The objective of Chapter VII is to fulfill the purposes of the Act found in section 102 in a manner which is consistent with the language of the Act, its legislative history, other applicable laws, and judicial interpretations.

SECTION 700.3 - AUTHORITY.

The Secretary is authorized to administer each program required by the Act, except for the following requirements:

(a) Provisions of the Act that authorize 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;

(b) Provisions of the Act for which responsibility is specifically assigned to other Federal agencies, including the Department of Labor, the Environmental Protection Agency, the Corps of Engineers, the Council on Environmental Quality and the Department of Energy; and

(c) Authority retained by the States to enforce State law or regulations which are not inconsistent with the Act and regulations in this Chapter, including the authority to enforce more stringent land use and environmental controls and regulations.

SECTION 700.4 - RESPONSIBILITY.

(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 the following:

(1) Approval or disapproval of an initial State program. This exception does not include amendments, modification, withdrawals or suspensions in whole or in part of State programs;

(2) Designation of lands as unsuitable for all or certain types of surface coal mining operations under section 522 of the Act and as unsuitable for non-coal mining under section 601 of the Act.

(b) The Director is responsible for consulting with Federal land-managing agencies and Federal agencies with responsibility for natural resources on Federal lands on actions which may have an effect on their responsibilities.

(c) The States are responsible for the regulation of surface coal mining and reclamation operations under a State program and the reclamation of abandoned mine lands under an approved State Reclamation Plan on non-Federal and non-Indian lands in accordance with procedures in this Chapter.

(d) The Secretary may delegate to a State through a cooperative agreement certain authority relating to the regulation of coal mining on Federal lands. {41801}

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).

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

DEPARTMENT means the United States Department of the Interior.

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 lands and without regard to the agency having responsibility for management thereof, except Indian lands: provided that for the purposes of the 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 are not 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.

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

INDIAN LANDS means all lands, including mineral interests and rights-of-way, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, 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.

REGIONAL DIRECTOR means the Regional Director of the Office or his representative.

PERSON means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint stock company, firm, company, corporation, or other business organization and, for purposes of regulations implementing Title V of the Act, all governmental entities listed in section 524 of the Act.

Person whose interests are or may be adversely affected or person with a valid legal interest shall include any person:

(a) Who uses and enjoys any resource of economic, esthetic, or environmental value that may be affected by surface coal mining and reclamation operations or any related action of the Secretary or the State regulatory authority; or

(b) Whose property is or may be affected by surface coal mining and reclamation operations or any related action of the Secretary or the State regulatory authority.

PUBLIC OFFICE means a facility under the direction and control of a governmental entity, which is open to public access on a regular basis during reasonable business hours.

REGULATORY AUTHORITY means the department or agency in each State which has primary responsibility at the State level for administering the Act in the initial program, or the State regulatory authority where the State is administering the Act under an approved State program, or the Secretary in the initial or permanent program where the Secretary is administering the Act, or the Secretary when administering the Federal lands program.

SECRETARY means the Secretary of the Interior or his representative.

STATE REGULATORY AUTHORITY means the department or agency in each State which has primary responsibility at the State level for administering the initial or permanent State program.

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 of the Act, 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 extraction of coal from coal refuse piles and 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 per centum 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 excavation, 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 material on the surface, resulting from or incident to such activities.

RESULTING FROM OR INCIDENT TO means a relation between two events such that when one event occurs the other event will, in the natural sequence of events, also occur.

SURFACE COAL MINING AND RECLAMATION OPERATIONS means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term "surface coal mining operations." 111 Ton means 2000 pounds avoirdupois (.90718 metric ton).

SECTION 700.11 - APPLICABILITY.

This Chapter applies to all coal exploration and 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, provided that noncommercial use does not include the extraction of coal by one unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;

(b) The extraction of coal for commercial purposes where the surface mining and reclamation operation affects two acres or less. Any person who affects or intends to affect more than two acres by surface coal mining and reclamation operations is not exempt from the requirements of this Chapter;

(c) The extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction

under Part 707;

- (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;
- (e) The extraction of coal on Indian lands under 25 CFR 177, Subpart B; and
- (f) Coal exploration on Federal lands outside the permit area.

SECTION 700.12 - PETITIONS TO INITIATE RULEMAKING.

- (a) Any person, State or local government 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. {41802}
- (b) The petition shall set forth a concise statement of the facts, technical justification, 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 determine if the petition sets forth facts, technical justification and law which may provide a reasonable basis for issuance, amendment or repeal of a regulation. Facts, technical justification or law previously considered in a petition or rulemaking on the same issue shall not be found to provide a reasonable basis. If the Director determines that the petition has a reasonable basis, a notice shall be published in the Federal Register seeking comments from the public on the proposed change. The Director may hold a public hearing and may conduct an investigation or take other action to determine whether 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, which shall constitute the final decision for the Department.
 - (1) If the petition is granted, the Director shall initiate a rulemaking proceeding.
 - (2) If the petition is denied, the Director shall notify the petitioner in writing, setting forth the reasons for denial.

SECTION 700.13 - NOTICE OF CITIZEN SUITS.

- (a) A person who intends to initiate 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.
- (b) Notice 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 a complaint involves or relates to a specific State. A copy of the notice shall be sent by first class mail to the Regional Director if the complaint involves or relates to surface coal mining and reclamation operations in a specific region.
- (c) Notice shall be given by certified mail to the alleged violator if the complaint alleges a violation of the Act or any regulation, order, or permit issued under the Act.
- (d) Service of notice under this section is complete upon mailing to the last known address of the person being notified.
- (e) 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, regulation, order, or permit allegedly violated;
 - (2) The act or omission alleged to constitute a violation;
 - (3) The person or persons responsible for the alleged violation;
 - (4) The date, time, and location 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 of the person giving notice.
- (f) A person giving notice of an alleged failure by the Secretary or a State regulatory authority to perform a mandatory act or

duty under the Act shall state, to the extent known:

- (1) The provision 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, of the person giving notice.

SECTION 700.14 - AVAILABILITY OF RECORDS.

- (a) Records required by the Act to be made available locally to the public shall be retained at the geographically closest office of the appropriate State or Federal regulatory authority having jurisdiction over the area involved.
- (b) Other records or documents in the possession of the Office or other Federal agencies may be requested under 43 CFR Part 2, which implements the Freedom of Information Act and the Privacy Act.

SECTION 700.15 - COMPUTATION OF TIME.

- (a) Except as otherwise provided, computation of time under this Chapter is based on calendar days.
- (b) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday on which the regulatory authority is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.
- (c) Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of prescribed time is seven days or less. {41802}

PART 701 – PERMANENT REGULATORY PROGRAM

Section

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| 701.1 | Scope. |
| 701.2 | Objective. |
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| 701.4 | Responsibility. |
| 701.5 | Definitions. |
| 701.11 | Applicability. |

Authority : sections 201, 501, 701, Pub. L. 95-87, 91 Stat. 449, 467, 516 (30 U.S.C. 1211, 1251, 1291).

SECTION 701.1 - SCOPE.

- (a) This Part provides general introductory material for the permanent regulatory program required by the Act.
- (b) The following regulations apply to the permanent regulatory program:
 - (1) Subchapter C on State program application, approval, withdrawal, grants and Federal program implementation;
 - (2) Subchapter D on surface coal mining and reclamation operations on Federal lands;
 - (3) Subchapter F on criteria for designating lands unsuitable for surface coal mining operations and the process for designating these lands or withdrawing the designation by the regulatory authority;
 - (4) Subchapter G on the process for application, approval, denial, revision, and renewal of permits for surface coal mining and reclamation operations, requirements for special categories of these operations, and requirements for coal exploration;
 - (5) Subchapter J on public liability insurance and performance bonds or other assurances of performance for surface coal mining and reclamation operations;

- (6) Subchapter K on performance standards which apply to coal exploration operations, surface coal mining and reclamation operations, and special categories of these operations;
- (7) Subchapter L on inspection and enforcement responsibilities and civil penalties; and
- (8) Subchapter M on criteria for training, examination, and certification of blasters.

SECTION 701.2 - OBJECTIVE.

The regulations in this Part give the reader:

- (a) A general overview of the regulatory program to be implemented by the State or Federal regulatory authority;
- (b) The applicability of that program to coal exploration operations and surface coal mining and reclamation operations; and {41803}
- (c) The definitions that apply to those operations.

SECTION 701.3 - AUTHORITY.

- (a) The Secretary is required by section 501(b) of the Act to promulgate regulations which establish the permanent regulatory program created by the Act. The Secretary delegates this rulemaking authority to the Director.

SECTION 701.4 - RESPONSIBILITY.

- (a) A State regulatory authority may assume primary responsibility for regulation of coal exploration and surface coal mining and reclamation operations during the permanent regulatory program upon submission and approval of a State program meeting all applicable requirements of the Act and the regulations of Chapter VII of this Title. After approval of the State program, the State regulatory authority has responsibility for review of and decisions on permits for surface coal mining and reclamation operations, approval of coal exploration which removes from the earth more than 250 tons of coal, inspection of surface coal mining and reclamation operations and coal exploration operations for compliance with the performance standards and enforcement of the State program.
- (b) While a State regulatory program is in effect, the Office's responsibility includes, but is not limited to:
 - (1) Evaluating the administration of the State program through such means as periodic inspections of coal exploration operations and surface coal mining and reclamation operations in the State and review of permits, inspection reports and other reports required to be made available to the Office;
 - (2) Referring to the State regulatory authority information creating a reasonable belief that any person is in violation of the Act, regulations, or any permit condition or coal exploration approval condition, and initiating an inspection when called for by the Act; and
 - (3) Issuing cessation orders when a condition, practice or violation exists which creates an imminent danger to the health or safety of the public, or is causing or could reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.
- (c) The Office shall implement a Federal program in a State if that State does not have an approved State program by June 3, 1980. The Office shall not implement a Federal program in a State for a period of one year if the State's failure to have an approved program by June 3, 1980, is due to an injunction imposed by a court of competent jurisdiction.
- (d) Under a Federal program, the Office is the regulatory authority for all coal exploration and surface coal mining and reclamation operations in that State and performs the functions that a State regulatory authority would perform under an approved State program.
- (e) During the period in which a State program is in effect, the Office shall take over responsibility for enforcing permit conditions and issuing new or revised permits and shall issue necessary notices and orders, when required by regulations in Part 733.
- (f) The Office shall substitute a Federal program for an approved State program when required by the regulations in Part 733.

SECTION 701.5 - DEFINITIONS.

As used in the regulation of coal exploration and surface coal mining and reclamation operations under a State program, Federal program or Federal lands 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 minerals or other materials which, if exposed to air, water, or weathering processes, will cause acids that may create acid drainage.

ADJACENT area means, for the purpose of permit application, renewal, revision, review and approval, those natural and human resources contiguous to or near a mine plan area which may be impacted by surface coal mining and reclamation operations conducted within a permit area during the life of a mine. ""Adjacent area" means, for the purpose of conducting surface coal mining and reclamation operations, those natural and human resources contiguous to or near the affected area which may be impacted by surface coal mining and reclamation operations conducted within a permit area during the life of a mine.

AFFECTED AREA means, when used in the context of surface mining activities, all natural and human resources within the permit area which are disturbed or utilized during the term of the permit in the course of surface mining activities. When used in the context of underground mining activities, ""affected area" means natural and human resources affected during the term of the permit (a) by surface operations or facilities incident to underground mining activities or (b) by underground operations.

AGRICULTURAL ACTIVITIES means, with respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life where the use is enhanced or facilitated by sub-irrigation or flood irrigation associated with alluvial valley floors. These uses include, but are not limited to, pasturing, grazing, and watering of livestock, and the cropping, cultivation, or harvesting of plants whose production is enhanced or facilitated by the availability of water from subirrigation or flood irrigation, but do not include agricultural practices which do not derive benefit from the availability of water from sub-irrigation or flood irrigation.

AGRICULTURAL USE means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, pasturing, grazing, and watering of livestock and the cropping, cultivation or harvesting of plants.

ALLUVIAL VALLEY FLOORS means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for sub-irrigation 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 formed by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and wind-blown deposits.

ANTHRACITE means coal as listed in D 388 (reapproved 1972), Part 26, 1976 Annual Book of ASTM Standards.

APPLICANT means any person, company, corporation or other legal entity seeking a permit from a regulatory authority to conduct surface coal mining activities or underground mining activities pursuant to a State program, a Federal program or a Federal lands program.

APPROXIMATE ORIGINAL CONTOUR means that surface configuration achieved by backfilling and grading of the mined areas 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, spoil piles and coal refuse piles eliminated. Water impoundments may be permitted where the regulatory authority determines that they are in compliance with 30 CFR 816.49.

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

ARID AND SEMIARID AREA means, for the purpose of alluvial valley floors, an area of the interior western United States, west of the one hundredth meridian west longitude, experiencing water deficits, where water use by native vegetation equals or exceeds that supplied by precipitation. All coal fields located in North Dakota west of the one hundredth meridian west longitude, all coal fields in Montana, Wyoming, Utah, Colorado, New Mexico, Idaho, Nevada, and Arizona, the Eagle Ross field in Texas, and the Stone Canyon and the Ione fields in California are in arid and semiarid areas. {41804}

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.

BEST TECHNOLOGY CURRENTLY AVAILABLE means equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event shall such technology result in contributions of suspended solids in excess of requirements set by applicable State or Federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts of the operation on fish, wildlife and related environmental values, and achieve enhancement of such resources where practicable. ""Best technology currently available" shall include equipment, devices, methods, or techniques which are currently available anywhere even if such equipment, devices, methods, or techniques are not in routine use. ""Best technology currently available" shall include, but not be limited to, sedimentation ponds designed in accordance with Parts 816 and 817 of this Chapter. Within the constraints of the interim and permanent program regulations, the regulatory authority shall have the discretion to determine the best technology currently available on a case-by-case basis.

COAL EXPLORATION means the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical or other techniques necessary to determine the quality and quantity of overburden and coal of an area and the gathering of environmental data to establish the conditions of the area beginning before surface coal mining and reclamation operations under the requirements of this Subchapter.

COAL PROCESSING PLANT means a collection of facilities where run-of-the-mine coal is prepared for market by chemical or physical processing, separated from its impurities, and loaded for shipment. The processing plant may consist of, but not be limited to, the following support facilities: storage and stockpile facilities; sheds, shops and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas; roads, railroads and other transport facilities; and utilities.

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

COMBUSTIBLE MATERIAL means organic material that is capable of burning either by fire or through oxidation accompanied by the evolution of heat and a significant temperature rise.

COMPACTION means to increase the density of a material by the reduction of void spaces between the particles generally accomplished by controlled placement and mechanical effort such as repeated application of wheel or roller loads from heavy equipment.

CULTIVATED CROPS means those crops that are planted and usually tilled, including small grains, nurseries, orchards, soil crops and other specialty crops, except that cultivated crops shall not include rangeland.

DISTURBED AREA means an area where vegetation, topsoil, or overburden has been removed by surface coal mining operations and until reclamation of those areas is complete and the bond released.

DIVERSION means a channel, embankment, or other manmade structure constructed for the purpose of diverting water from one area to another. See also ""permanent diversion" and ""temporary diversion."

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

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

EPHEMERAL STREAM means a stream or the headwater part of a stream that flows for less than 30 consecutive days, which flows only in direct response to precipitation in the immediate watershed, and which has a channel bottom that is always above the local water table.

ESSENTIAL HYDROLOGIC FUNCTIONS means, with respect to alluvial valley floors, the role of the valley floor in collecting, storing, regulating, and making usefully available the natural flow of surface water or ground water or both, for agricultural activities, by reason of its position in the landscape and the physical properties of its underlying materials. Some combination of these functions provides a water supply during extended periods of low precipitation. The role of collecting water includes accumulating runoff and discharge from aquifers such that the amount of water available at the alluvial valley floor is greater than the amount available from direct precipitation. The role of storing water involves limiting the rate of discharge of surface water, holding moisture in soils, and holding ground water in porous materials. The role of regulating the natural flow of surface water results from the characteristic configuration of the channel and the flood plain and adjacent low terraces, and the role of regulating the natural flow of ground water results from the properties of aquifers which control inflow and outflow. The role of making water usefully available for agricultural activities results from the existence of flood plains and terraces where surface and ground water can be provided in sufficient quantities to support the growth of agriculturally useful plants, from the presence of earth materials suitable for the growth of agriculturally useful plants, from the temporal and physical distribution of water rendering it accessible to plants throughout the critical phases of the growth cycle either by flood irrigation or by subirrigation, from the natural control of alluvial valley floors in limiting destructive extremes of stream discharge, and from the erosional stability of earth materials suitable for the growth of agriculturally useful plants. The hydrologic and geologic characteristics that support these essential hydrologic functions are discussed in section 785.19.

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.

(a) Complete Federal program means a program established by the Director, pursuant to section 504 of the Act prior to June 3, 1980, or upon the complete withdrawal of a State program after June 3, 1980, by which the Director regulates all coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within a State, in accordance with the Act and this Chapter.

(b) Partial Federal program means a program established by the Director pursuant to sections 102, 201 and 504 of the Act upon the partial withdrawal of a State program by which the Director may regulate appropriate portions of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within a State, in accordance with the Act and this Chapter.

FLOOD IRRIGATION means, with respect to alluvial valley floors, supplying water to plants by natural overflow or the diversion of flows, in which the irrigated surface is largely covered by a sheet of water. {41805}

GROUND WATER means sub-surface water that fills available openings in rock or soil materials such that they may be considered water-saturated.

HALF-SHRUB means a perennial plant with a woody base whose annually produced stems die back each year.

HEAD-OF-HOLLOW FILL means a fill structure consisting of any materials other than waste placed in the uppermost reaches of a watershed so as to encroach upon or obstruct to any degree any natural stream channel, other than fills on high land areas with slopes of less than 20 degrees where surface drainage is conducted in minor channels such as rills and gullies which contain flow only in direct response to precipitation events and which rills and gullies are the only form of stream channels throughout the entire fill area. The top surface of the fill, when completed, will be at approximately the same elevation as the adjacent ridge line and no significant area of natural drainage will occur above the fill draining into the fill area.

HIGHWALL means the face of exposed overburden and coal in an open cut of a surface or for entry to an underground coal mine.

HISTORICALLY USED FOR THE PRODUCTION OF CULTIVATED CROPS means lands that have been used for the purpose of cultivated crops for any five years or more out of the 20 years immediately preceding the date of a permit application filed under Subchapter G or Subchapter D of this Chapter.

HYDROLOGIC BALANCE means the relationship between 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 quantity and quality relationships between precipitation, runoff, evaporation, and the change in ground and surface water storage.

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

IMMINENT DANGER TO THE HEALTH AND SAFETY TO THE PUBLIC means the existence of any condition or practice, or any violation of a permit or other requirements 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 condition, 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 condition or practice giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

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

IN SITU PROCESSES means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal, to include, but not be limited to, in situ gasification, in situ leaching, slurry mining, solution mining, bore hole mining and fluid recovery mining.

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."

LAND USE CATEGORIES means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. When combined uses are designated, one land use shall be identified as primary and one or more others designated as secondary land uses. For purposes of alternative post-mining land uses, land uses shall include only the following categories as defined below:

- (a) Cropland. Land used primarily for the production of cultivated and close-grown crops for harvest, alone or in association with sod crops. Land used for facilities in support of cropland farming operations is included.
- (b) Hayland or pasture. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or cut and cured for livestock feed.
- (c) Grazingland. Includes both grass lands and forest lands where the indigenous vegetation is actively managed for grazing, browsing or hay production. Land used for facilities in support of ranching operations is included.
- (d) Forestry. Land used or managed for the long-term production of wood, wood fiber or wood derivative products. Land used for facilities in support of forest harvest and management is included.
- (e) Residential. Includes single and multiple family housing, mobile home parks, hotels, motels and other residential lodgings. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.
- (f) Manufacturing. Includes all heavy and light industrial uses such as textile, lumber and wood processing, chemical manufacture, petroleum refining, and fabricated metal products manufacture.
- (g) Transportation, communication, and utilities. Includes all rail, aircraft, marine, and automobile transportation facilities (e.g., railroad tracks, highways, airports), and communications and utilities facilities and supporting rights-of-way.
- (h) Trade. All wholesale and retail trade, including warehouses, stores, restaurants, and other commercial establishments.
- (i) Services. Includes all financial, personal, repair, and professional services, and educational, religious, and governmental service facilities.
- (j) Recreation. Land used for public or private leisure-time recreational use. Includes developed recreation facilities such as parks, camps, and amusements, as well as less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.
- (k) Fish and wildlife management. Land used for production, protection, and population control (i.e., fishing and hunting) of game species of fish and wildlife.
- (l) Mining and extraction. Includes all metal ore, coal, crude petroleum, and natural gas mining and extraction and the quarrying of non-metallic minerals. Also includes facilities specifically related to the mining and extraction of these materials.
- (m) Developed water resources. Includes land used for storing water for beneficial uses such as stockponds,

irrigation, fire protection, flood control, or water supply.

(n) Natural areas. Land used to protect and maintain specific features or species or to maintain ecological diversity in identified fragile areas. Includes areas designated as sanctuaries or under special management which limits or excludes access (e.g., areas under specific protection as threatened or endangered species habitats).

(o) Undeveloped land or no current use or land management. Includes land areas that are undeveloped or if previously developed, not presently used or managed, such as cropland that is no longer in production and is currently idle land.

MACRO-INVERTEBRATE BIOLOGICAL COMMUNITY means an assemblage of 2 or more species of arthropod or molluscan animals adapted to flowing waters for all or part of their life cycles, the life cycles of which are dependent upon a flowing water habitat, and which are reproducing or can reasonably be expected to reproduce in the water body where they are found. The mature animals must be longer than 2 millimeters at some stage of the part of their life cycle spent in flowing water habitat.

MATERIALLY DAMAGE WATER QUALITY OR QUANTITY means with respect to alluvial valley floors, changes in the quality or quantity of surface or ground water which provide some or all of the water that subirrigates or is or may be used for flood irrigation in an alluvial valley floor located in or adjacent to a surface coal mining and reclamation operation.

MINE PLAN AREA means those areas, including all natural and human resources, which would be within the cumulative areas permitted during the estimated life of the mine. Other terms defined in this section which relate closely to "mine plan area" include the "permit area," which will always be within or the same as the mine plan area; the "affected area," which will always be within or the same as the permit area; and the "adjacent area," which may surround or extend beyond the "mine plan area," "permit area," or "affected area." {41806}

NOXIOUS PLANTS means species that have been included on official State lists of noxious plants for the State in which the surface coal mining and reclamation operation occurs.

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

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.

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

PERENNIAL STREAM. See intermittent or perennial stream.

PERFORMANCE BOND means the indemnity instrument in a sum certain, supported by a surety's guarantee, pledge of collateral or other acceptable contractual guarantee, by which the permit applicant assures faithful performance of all the requirements of the Act, the regulations of this Chapter, or a State or Federal program, the rules and regulations promulgated thereunder and the provisions of its permit.

PERMANENT DIVERSION means a diversion remaining after mining and reclamation which is approved for retention by the regulatory authority and other appropriate State and Federal agencies.

PERMIT 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. For purposes of the Federal lands program, permit means the document issued for surface coal mining and reclamation operations on Federal lands after approval of a mining plan by the Director and, where a cooperative agreement pursuant to section 523 of the act has been executed, the State regulatory authority.

PERMIT AREA means the area, including all natural and human resources, included within the boundaries specified in a permit, whether or not the areas will be impacted by surface coal mining and reclamation operations, which are designated on the approved maps submitted by the applicant with his permit application and covered by the performance bond required by Subchapter J.

PERMITTEE means a person holding a "permit" to conduct surface coal mining and reclamation operations issued by a State regulatory authority pursuant to a State program or by the Director pursuant to a Federal program or the Secretary pursuant to a Federal lands program.

PRECIPITATION EVENT means a quantity of water resulting from precipitation in a limited period of time. It may be expressed in terms of recurrence intervals, that is the frequency of recurrence of such events within specific probability limits (usually 97% probability that a greater event will not occur). As used in these regulations, "precipitation event" also includes water released at the same rate and volume from snowmelt.

PRIME FARMLANDS means lands that have been historically used for the production of cultivated crops and are defined as prime farmland by the Secretary of Agriculture in 7 CFR part 657.

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

RANGELAND means, for purposes of prime farmlands, land on which the natural potential (climax) plant cover is composed principally of native grasses, forbes, and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs as brush lands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

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

RECLAMATION means all actions necessary to comply with the requirements of the Act and regulations in Subchapter K of this Chapter.

RECURRENCE INTERVAL means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in 10 years. The magnitude of such events is as defined by the Department of Commerce, National Oceanographic and Atmospheric Administration, in Technical Paper No. 40, National Weather Service 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. DOC-NOAA Technical Paper No. 40, mentioned in the previous sentence, is hereby incorporated by reference. This work is incorporated as it exists on the date of adoption of this Part, and notices of changes made in these materials will periodically be published in the Federal Register. DOC-NOAA Technical Paper No. 40 is available for inspection at the Office in the Department of the Interior, 18th and C Streets NW., Washington, D.C. 20240.

REFERENCE AREAS means land units of varying size and shape identified and maintained under appropriate management for the purpose of measuring ground cover, productivity and species diversity that are produced naturally. Reference areas must be representative of geology, soils, slope, aspect and vegetation in the permit area.

ROADS means all roads, including access and haul roads, constructed, used, reconstructed, improved, or maintained for use in coal exploration or 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, county, or local roads are excluded.

RUNOFF means precipitation that flows overland before entering a defined stream channel and becoming streamflow.

SAFETY FACTOR means the ratio of the available shear strength to the developed shear stress or the ratio of the sum of the resisting forces to the sum of loading or driving forces, as determined by accepted engineering practices. I 11
Sedimentation pond means any natural or artificial structure or depression used to remove sediment from water and store sediment or other debris. {41807}

SIGNIFICANT, IMMINENT ENVIRONMENTAL HARM TO LAND, AIR OR WATER RESOURCES is determined as follows:

- (a) An environmental harm is any adverse impact on land, air, or water resources, including but not limited to plant and animal life.
- (b) An environmental harm is imminent if a condition, practice or violation exists which_

- (1) Is causing such harm or
 - (2) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under section 521(a)(3) of the Act.
- (c) An environmental harm is significant if that harm is appreciable and not immediately reparable.

SLOPE means average inclination of a surface, measured from the horizontal and normally expressed as a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v to 5h=20 percent=11.3 degrees).

SOIL HORIZONS means contrasting layers of soil lying one below the other, parallel or nearly parallel to the land surface. Soil horizons 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.

SPECIAL BITUMINOUS COAL SURFACE MINES means those bituminous coal surface mines in existence on January 1, 1972, or mines adjoining or having a common boundary with those mines for which development began after August 3, 1977, that are located in the State of Wyoming and that are being mined or will be mined according to the following criteria:

- (a) Surface mining takes place on a relatively limited site for an extended period of time. The surface opening of the excavation is at least the full size of the excavation and has a continuous border.
- (b) 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 operation.
- (c) The amount of material removed from the pit is large in proportion to the surface area disturbed.
- (d) There is no practicable alternative to the deep open-pit method of mining the coal.
- (e) There is no practicable way to entirely reclaim the land as required in Subchapter K.

SPOIL means overburden that has been removed during surface mining.

STABILIZE means any method used to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, modifying physical or chemical properties or otherwise providing a protective surface coating.

STATE PROGRAM means a program established by a State and approved by the Secretary pursuant to section 503 of the Act to regulate surface coal mining and reclamation operations on non-Indian and non-Federal lands within such State according to the requirements of the Act and regulations issued by the Secretary under the Act: Provided that, If a cooperative agreement under Part 745 has been entered into, a State program may apply to Federal lands in accordance with the terms of the cooperative agreement.

STEEP SLOPE means any slope above 20 or such lesser slope as may be designated by the regulatory authority after consideration of soil, climate, and other characteristics of a region or State.

SUB-IRRIGATION means, with respect to alluvial valley floors, the supplying of water to plants from below or the existence of a semi-saturated or saturated sub-surface whose water is available for use by vegetation. Sub-irrigation may be identified by:

- (a) Diurnal fluctuation of the water table, due to the difference in night and daytime evapotranspiration rates;
- (b) Increasing soil moisture from a portion of the rooting zone down to a saturated zone, due to capillary action;
- (c) Mottling of the soils in the root zones;
- (d) Existence of an important part of the root zone within the capillary fringe or water table of an alluvial aquifer; or
- (e) An increase in stream flow or a rise in ground water level indicating an increase in available water shortly after the first killing frost on the valley floor.

SUBSTANTIALLY DISTURB means, for purposes of coal exploration, to significantly impact upon land, air or water resources by such activities as blasting, mechanical excavation of land, drilling or altering coal or water exploratory holes or wells, construction or creation of roads and other access routes, and the placement of structures, excavated earth or other debris upon the surface of land.

SURFACE MINING ACTIVITIES means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over the coal seam before recovering the coal and the recovery of coal from a deposit that is not in its original geologic location.

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.

TEMPORARY DIVERSIONS means those diversions of streams and overland flow used during mining and reclamation and not approved by the regulatory authority to remain after reclamation as part of the approved post-mining land use.

TOPSOIL means the A soil horizon, which is the uppermost layer of the three major soil horizons.

TOXIC-FORMING MATERIALS means toxic earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to 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 or other areas affected by coal exploration or coal mining and reclamation operations which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

UNDERGROUND DEVELOPMENT WASTE means waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed during development and preparation of areas incident to underground mining activities.

UNDERGROUND MINING ACTIVITIES means a combination of:

(a) Surface operations such as construction, use, and reclamation of new and existing roads, as defined in this section, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, and underground mining, hauling, storage, and blasting.

UNDEVELOPED RANGELANDS means, for purposes of alluvial valley floors, lands where the use is not specifically controlled and managed. {41808}

UNCONSOLIDATED STREAM-LAID DEPOSITS HOLDING STREAMS means, with regard to alluvial valley floors, all floodplains and terraces, including terraces covered by non-alluvial materials, found in the lower parts of topographic valleys, in which are found perennial streams with stream channels wider than 3 feet in bank-full width or 0.5 foot in bank-full depth, or stream channels shown on a standard USGS 1:24,000 scale topographic quadrangle. In plan view, these terraces, with the active floodplain and channel, form one contiguous unit separated only by minor deposits of non-alluvial materials. Isolated higher terraces, not associated with the valley floor, such as those found along drainage divides, are not included under this definition and are considered upland areas.

UPLAND AREAS means, with respect to alluvial valley floors, alluvial fans, pediment surfaces, landslide deposits, and residuum, as well as highland areas, underlain by bedrock, and covered by residual weathered material and debris deposited by sheetwash or rillwash.

VALLEY FILL means a fill-structure consisting of any materials other than waste placed so as to encroach upon or obstruct any natural stream channel, other than fills on highland areas with slopes of less than 20 degrees where surface drainage is conducted in minor channels such as rills and gullies which contain flow only in direct response to precipitation events and which rills and gullies are the only form of stream channels throughout the entire fill area.

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

SECTION 701.11 - APPLICABILITY.

(a) Any person who conducts surface coal mining and reclamation operations on non-Indian and non-Federal lands 8 months after the date upon which a State program is approved or a Federal program is implemented in a State, or who conducts surface coal mining and reclamation operations on Federal lands 8 months after the effective date of Subchapter D of this Chapter, shall have a permit issued pursuant to the State, Federal or Federal lands program. However, if an initial administrative decision has not been made on a permit application timely filed under a State or Federal program or a Federal lands program, and a person has a valid permit issued pursuant to section 502 of the Act during the initial regulatory program or an approved mining plan pursuant to 30 CFR 211, that person may continue surface coal mining and reclamation operations as provided for in Part 771 or 741 under the terms of that permit or mining plan pending an initial administrative decision on the permit application.

(b) The performance standards in Subchapter K of this Chapter shall be effective, according to their terms, for any surface coal mining and reclamation operation required to obtain a permit under the Act on the earliest date upon which the Act and the regulations in this Chapter require that a permit be obtained for such operations.

(c) Any person conducting a coal exploration operation which substantially disturbs the natural land surface, on or after the date on which a State program is approved or a Federal program implemented, shall either file a notice of coal exploration or obtain approval as required by 30 CFR 776.

(d) Coal exploration performance standards in 30 CFR 815 apply in accordance with their terms to coal exploration 2 months after approval of a State program or implementation of a Federal program. {41808}

PART 707 – EXEMPTION FOR COAL EXTRACTION INCIDENTAL TO GOVERNMENT FINANCED HIGHWAY OR OTHER CONSTRUCTION

Section

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| 707.14 | Conduct of exempt operations. |

Authority : Section 102, 201, 501, and 528, Pub. L. 95-87, 91 Stat. 448, 449, 467, and 514 (30 U.S.C. 1202, 1211, 1251, 1278).

SECTION 707.1 - SCOPE.

This Part establishes the procedures for notifying the regulatory authority of those surface coal mining and reclamation operations which are exempt from the Act and the regulations in this Chapter because the extraction of coal is an incidental part of Federal, State or local government-financed highway or other construction.

SECTION 707.2 - OBJECTIVE.

(a) The regulations in this Part exempt from the requirements of the Act and the regulations in this Chapter, the extraction of coal which is incidental to government financed construction, provided the coal extraction meets specified criteria intended to ensure that the construction is government financed and that the coal extraction is incidental to it.

(b) Through regulations adopted by the regulatory authority consistent with the Part, coal extraction operations which meet the criteria are exempt from the Act and the regulations in this Chapter.

SECTION 707.4 - RESPONSIBILITY.

- (a) The regulatory authority is responsible for maintaining a public file of all notifications received from a government financing agency of coal extraction which is an incidental part of governmental financed construction.
- (b) Persons undertaking extraction of coal which is not exempted from the Act and this Chapter are responsible for obtaining a permit under Subchapter G before beginning the extraction of coal.
- (c) Government financing agencies are responsible for notifying the regulatory authority of all coal extraction operations which are an incidental part of government financed construction and including in the notification the information specified in this Part.
- (d) Any person carrying on the extraction of coal as an incidental part of government financed construction is responsible for possessing on the site of the coal extraction operation a copy of the notification sent to the regulatory authority by the government financing agency.

SECTION 707.5 - DEFINITIONS.

As used in this Part the following terms have the specified meaning unless otherwise indicated:

EXTRACTION OF COAL , OR COAL EXTRACTION MEANS surface coal mining and reclamation operations, including removal of coal from coal refuse piles.

EXTRACTION OF COAL AS AN INCIDENTAL PART means extraction of coal the market value of which is less than 50 percent of the cost of the government-financed construction. For purposes of this definition, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area affected by other types of government-financed construction, shall be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the affected area of the construction shall be subject to the requirements of the Act and this Chapter.

CONSTRUCTION means activities resulting in a man-made structure or alteration of the landscape, such as earth work, blasting, building, erecting or performing other related work.

EARTH WORK means activities directly affecting the configuration of the land, such as site preparation and clearance, foundation preparation, excavation, grading, reclamation and related work.

GOVERNMENT FINANCING AGENCY means a Federal, State, county, municipal, or local unit of government, or a department, bureau, agency or office of the unit which directly, or through another unit of government, finances construction. {41809}

GOVERNMENT FINANCED CONSTRUCTION means construction funded in excess of 50 percent by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in kind payments.

SECTION 707.11 - APPLICABILITY.

- (a) Coal extraction which is an incidental part of government-financed construction is exempt from the Act and the regulations in this Chapter only if:
- (1) The market value of the coal extracted is less than 50 percent of the total cost of the construction,
 - (2) The government financing represents more than 50 percent of the total construction costs, and
 - (3) The coal extracted is removed from within the right-of-way or boundary of the area directly affected by the construction.
- (b) Coal extraction which does not satisfy the criteria in paragraph (a) of this section shall not proceed until a permit has been obtained from the regulatory authority pursuant to Subchapter G of this Chapter.

SECTION 707.12 - GOVERNMENT FINANCING AGENCY NOTIFICATION.

(a) A government financing agency which funds construction where extraction of coal is an incidental part of that government-financed construction, shall notify the regulatory authority in advance of any coal extraction operation. Extraction of coal as an incidental part of the government-financed construction which removes less than 250 tons of coal or affects less than two acres during the course of the operation is exempt from the Act and the regulations in this Chapter and may proceed without regard to this Part.

(b) The notification filed with the regulatory authority shall contain:

- (1) A description of the construction project;
- (2) The exact location of the construction right-of-way or the boundaries of the area which will be directly affected by the construction;
- (3) The kind and amount of the government financing including the percentage of the entire construction costs represented by the government financing;
- (4) The market value of the coal to be extracted as an incidental part of the government-financed construction;
- (5) The name of the person conducting the government-financed construction and the person's business address or that of his local registered agent; and
- (6) A copy of the environmental and public health and safety requirements with which the person will be required to comply.

SECTION 707.13 - PUBLIC NOTICE.

The regulatory authority shall maintain a copy of the notification on public file, available during all business hours, at its office geographically closest to the site of the construction.

SECTION 707.14 - CONDUCT OF EXEMPT OPERATIONS.

Persons conducting extraction of coal as an incidental part of government-financed construction which is exempt from the Act and regulations in this Chapter shall possess a copy of the government financing agency notification at the site of the coal extraction.

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