

FEDERAL REGISTER: 45 FR 10043 (February 14, 1980)

DEPARTMENT OF THE INTERIOR

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

National Environmental Policy Act Revised Implementing Procedures

ACTION: Notice of proposed revised instructions for the Bureau of Mines and Office of Surface Mining.

SUMMARY: This notice proposes appendices to the Department's NEPA procedures for the Bureau of Mines and the Office of Surface Mining. The proposed Departmental procedures were published in the Federal Register on July 10, 1979 (44 FR 40436).

DATES: Comments due March 17, 1980.

ADDRESSES: Larry E. Meierotto, Assistant Secretary - Policy, Budget and Administration, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Bruce Blanchard, Director, Office of Environmental Project Review, Office of the Secretary, Department of the Interior, Washington, D.C. 20240, Telephone: (202) 343-3891.

For Bureau of Mines contact Andy Corcoran, Telephone (202) 634-7239. For Office of Surface Mining contact Frank Anderson, Telephone (202) 343-5287.

SUPPLEMENTARY INFORMATION:

These proposed appendices to the Departmental Manual (516 DM 6) provide more specific NEPA compliance guidance to the Bureau of Mines (Appendix 7) and the Office of Surface Mining (Appendix 10). In particular they provide information about organizational responsibilities for NEPA compliance, advice to applicants, actions, normally requiring the preparation of an environmental statement, and categorical exclusions. The appendices should be taken in conjunction with the proposed Departmental procedures (516 DM 1-6) which were published in the Federal Register on July 10, 1979 (44 FR 40436). In addition, these bureaus will prepare handbooks or other technical guidance on how to apply these procedures to their principal programs.[Page 10044]

Previously published proposed appendices include:

Appendix 2 Fish and Wildlife Service (44 FR 65822)

Appendix 4 Heritage Conservation and Recreation Service (44 FR 49523)

Appendix 9 Water and Power Resources Service (formerly Bureau of Reclamation) (44 FR 47627)

Appendices for other bureaus will be published as notices during the next few weeks for 30-day public comment.

Comments on these proposed appendices (516 DM 6, Appendices 7 and 10) are invited. To be considered in the preparation of the final appendices, comments must be received by March 17, 1980.

Dated: February 8, 1980.

James H. Rathlesberger,

Special Assistant to Assistant Secretary of the Interior.

APPENDIX 7 (516 DM-6) - BUREAU OF MINES

7.1 NEPA RESPONSIBILITIES

A. *Assistant Director, Program Development and Evaluation* is operationally responsible to the Director for insuring, on a continuing basis, Bureau-wide compliance with the National Environmental Policy Act, Executive Order 11514, as amended, and the Council on Environmental Quality regulations as they pertain to Bureau of Mines activities.

B. *Deputy Director for Minerals Research* will insure that environmental concerns are identified early in the planning stages for all proposed research and development projects.

C. *Special Assistant - Environmental Assessment* will be responsible for:

- (1) coordinating the Bureau's activities required by the National Environmental Policy Act of 1969 and related legislation;
- (2) responding to inquiries from the public and all levels of government concerning the Bureau's NEPA-related activities;
- (3) providing information, guidance, training, advice, and coordination on NEPA matters as they relate to the Bureau's research and development programs;
- (4) reviewing Bureau-proposed legislation and programs for NEPA-related implications.

D. *Directors, Minerals Technology Programs* are responsible to the Deputy Director for Minerals Research for integrating the procedures mandated by NEPA and the CEQ regulations into all R&D programs.

3. *Director, Division of Research Center Operations* is responsible to the Deputy Director for Minerals Research for integrating the procedures mandated by NEPA and the CEQ regulations into all activities involving the research centers.

7.2 GUIDANCE TO APPLICANTS

The Bureau of Mines has no applicable programs.

7.3 MAJOR ACTIONS NORMALLY REQUIRING AN EIS

Construction of a major new Bureau research center or test facility normally will require an EIS.

7.4 CATEGORICAL EXCLUSIONS

In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which the Bureau also performs, the following Bureau of Mines actions are designated categorical exclusions when they meet the criteria outlined in 516 DM 2.3A:

- A. Bureau data collection activities and field surveys. Included are reconnaissance-type investigations, research studies to develop new information, stream gaging, well logging, and aquifer response testing.
- B. Research activities concerning the development or evaluation of either mining or metallurgical technologies.
- C. Research activities that take place in a laboratory where methods for proper disposal of laboratory wastes to prevent environmental pollution have been implemented.
- D. Development and demonstration of mining equipment.
- E. Field demonstrations and pilot plants when operated in conjunction with existing facilities of a cooperator or contractor when such facilities provide for effluent and/or emission controls and waste disposal practices that are in compliance with all existing Federal, State, and local standards or regulations.

APPENDIX 10 (510 DM-6) - OFFICE OF SURFACE MINING

10.1 NEPA RESPONSIBILITIES

A. *Director* is responsible for NEPA compliance for Office of Surface Mining activities.

B. *Assistant Directors* (1) are responsible to the Director for supervision and coordination of NEPA activities in their program areas of responsibility.

(2) are responsible, within their program areas, for OSM Headquarters review of EIS's for compliance with program area policy guidance.

(3) are responsible for assuring that environmental concerns are identified early in the planning stages and appropriate policy and program guidance is disseminated.

C. *Regional Directors* (1) are responsible to the Director for integrating the NEPA process into all Regional activities in their Regions.

(2) will designate, and notify the Director, which staff position will be responsible to the Regional Director for the consistency, adequacy, and quality of all NEPA documents prepared by the Region's staff. The position will also be responsible to the Regional Director for providing information, guidance, training, advice, and coordination on NEPA matters, and for oversight of the Region's NEPA process.

D. *Chief, Branch of Environmental Analysis* is the position designated by the Director to be responsible for overall policy guidance for NEPA compliance for the Office of Surface Mining. [Page 10045]

10.2 GUIDANCE TO APPLICANTS

OSM personnel are available to meet with all applicants for permits on Federal lands or under a Federal program for a State to provide guidance on the permitting process. Permit applications under approved State programs are excluded from NEPA compliance. In addition, OSM's regulations provide requirements for applicants submitting environmental information. The following parts of the regulations (30 CFR) describe the information requirements.

A. Parts 770 and 771 outline the content requirements of permit applications on Federal lands or under a Federal program for a State, including: the procedures for coal exploration operations required by 30 CFR 776; the permit application contents for surface coal mining activities required by 30 CFR 778, 779, and 780; the permit application contents for underground coal mining required by 30 CFR 782, 783, and 784; the requirements for special categories of surface coal mining required by 30 CFR 785; and the procedures for review, revision, and renewal of permits and for the transfer, sale, or assignment of rights granted under permits, as required by 30 CFR 788.

B. Part 776 identifies the minimum requirements for coal requirements for coal exploration activities outside the permit area. Part 776 is complemented by Part 815 of Subchapter K which provides environmental protection performance standards applicable to these operations.

C. Part 778 provides the minimum requirements for legal, financial, compliance, and general nontechnical information for surface mining activities applications. Information submitted in permit applications under Part 778 will be used primarily to enable the regulatory authority and interested members of the public to ascertain the particular nature of the entity which will mine the coal and those entities which have other financial interests and public record ownership interests in both the mining entity and the property which is to be mined.

D. Part 779 establishes the minimum standards for the Secretary's approval of permit application requirements under regulatory programs regarding information on existing environmental resources that may be impacted by the conduct and location of the proposed surface mining activities. With the information required under Part 779, the regulatory authority is to utilize information provided in mining and reclamation plans under Part 780, in order to determine what specific impacts the proposed surface mining activities will have on the environment.

E. Part 780 establishes the heart of the permit application: the mining operations and reclamation plan for surface mining activities. The regulatory authority will utilize this information, together with the description of the existing environmental resources obtained under Part 779 to predict whether the lands to be mined can be reclaimed as required by the Act.

F. Part 782 contains permit application requirements for underground mining activities. This corresponds to Part 778 for surface mining. As such, Part 782 sets forth the minimum requirements for approval of regulatory programs for general, legal, financial, and compliance information required to be contained in applications for permits.

G. Part 783 describes the minimum requirements for information on environmental resources required in the permit application for underground mining. Part 783 corresponds to Part 779 for surface mining activities, and establishes minimum standards under regulatory programs for the Secretary's approval of permit application requirements for information on the existing environmental resources that may be impacted by underground mining.

H. Part 784 contains a discussion of the minimum requirements for reclamation and operation plans related to underground mining permit applications. Part 784 corresponds to Part 780 for surface mining activities. It establishes minimum standards for Secretarial approval of permit application requirements under regulatory programs for underground mining activities, operations, and reclamation plans.

I. Part 785 contains requirements for permits for special categories of mining including anthracite, special bituminous, experimental practices, mountaintop removal, steep slope, variances from approximate original contour restoration requirements, prime farmlands, alluvial valley floors, augering operations, and in-situ activities. The provisions of Part 785 are interrelated to the performance standards applicable to the special categories covered in Subchapter K and must be reviewed together with the preamble and text for Parts 818 through 828 of Subchapter K.

J. Part 788 specifies the responsibilities of persons conducting surface coal mining and reclamation operations with respect to changes, modifications, renewals, and revisions of permits after they are originally granted, and of persons who attempt to succeed to rights granted under permits by transfer, sale, or assignment of rights.

10.3 MAJOR ACTIONS NORMALLY REQUIRING AN EIS

An environmental impact statement will normally be prepared for the following major OSM actions:

- A. Approval of the Abandoned Mine Lands Reclamation Program (Surface Mining Control and Reclamation Act of 1977, Title IV).
- B. Promulgation of the permanent regulatory program for surface coal mining and reclamation operations (Surface Mining Control and Reclamation Act of 1977, Title V).
- C. Approval of mining permits for new surface mines of 640 or more acres on Federal lands or under a Federal program for a State.

10.4 CATEGORICAL EXCLUSIONS

A. Certain OSM actions are excluded from NEPA compliance by Sections 501(a) or 702(d) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). These actions are:

- (1) promulgation of interim regulations;
- (2) approval of State programs;
- (3) promulgation of Federal programs where a State fails to submit, implement, enforce, or maintain an acceptable State program;
- (4) promulgation and implementation of the Federal lands program.

B. In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which OSM also performs, the following OSM actions are designated categorical exclusions when they meet the criteria outlined in 516 DM 2.3A (SMCRA sections are in parentheses):

- (1) monetary allotments to States for mining and mineral resources institutes (301).
- (2) allocation of research funds to institutes (302).
- (3) any research effort associated with an ongoing abandoned mine land reclamation project where the research is coincidental to the reclamation (401(c) (6)).
- (4) COLLECTION OF RECLAMATION FEES from operators (402(a)).
- (5) RIGHT TO ENTER LAND adversely affected by past coal mining (407(a)).
- (6) acquisition of particular parcels of abandoned mine lands for reclamation (407(c)).
- (7) filing liens against property adversely affected by past coal mining (408).

- (8) emergency abandoned mine reclamation projects (410).
- (9) interim regulatory grants (502(e) (4)).
- (10) disapproval of a proposed State program (503(c)).
- (11) review of permits issued under a previously approved State program (504(d)).
- (12) five-year permit renewal on life-of-mine plans under the Federal lands program or a Federal program for a State with respect to areas within the boundaries of the existing permit, unless there are changes in the proposed method of operation which would produce significant effects on the quality of the human environment (506(d)).
- (13) small operator assistance program (507(c)).
- (14) ISSUANCE OF PUBLIC NOTICES and holding public hearings on permit applications involving Federal lands or under a Federal program for a State (513).
- (15) routine inspection and enforcement activities (517).
- (16) conflict of interest regulations (517(g)).
- (17) ASSESSMENT OF civil penalties (518).
- (18) releases of performance bonds or deposits for mining on Federal lands or under a Federal program for a State (519).
- (19) issuance of cessation orders for coal mining and reclamation operations (521(a) (2) and (3)).
- (20) SUSPENSION OR REVOCATION OF permits (521(a) (4)).
- (21) Federal oversight and enforcement of ineffective State programs (521(b)).
- (22) Cooperative agreements between a State and the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal land (523(c)).
- (23) DEVELOPMENT OF A PROGRAM TO assure no unreasonable denial of grants, permits, leases, or contracts for Federally owned coal (523(d)).
- (24) annual grants programs to States for program development, administration, and enforcement (705(a)).
- (25) ASSISTANCE TO States in the development, administration, and enforcement of State programs (705(b)).
- (26) INCREASING THE amount of annual grants to States (705(c)).
- (27) submission of the Secretary's annual report to the Congress (706).