

FEDERAL REGISTER: 50 FR 16194 (April 24, 1985)

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 779, 780, 783, 784, 816 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program;
Preparation and Certification of Cross Sections, Maps and Plans by Land Surveyors;
Certification of the Design of Impoundments

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) is amending its rules governing: (1) Preparation and certification of cross sections, maps and plans required in permit applications for surface and underground coal mining; (2) preparation and certification of general and detailed design plans for sedimentation ponds, water impoundments, and coal processing waste banks, dams and embankments; and (3) certification of the design of impoundments.

This final rule implements a November 4, 1983, amendment to the Surface Mining Control and Reclamation Act of 1977, and authorizes qualified, registered, professional, land surveyors to prepare and certify the cross sections, maps and plans required in an application for a surface coal mining and reclamation permit in any State which authorizes land surveyors to prepare and certify such documents. In addition, it increases the qualifications a land surveyor must have to prepare and certify detailed design plans for small structures. It also eliminates an inconsistency in the previous rules regarding the authority of land surveyors to certify the design of small impoundments.

EFFECTIVE DATE: May 24, 1985.

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SUPPLEMENTARY INFORMATION:

- I. Background
- II. Final Rule and Responses to Public Comments on Proposed Rule
- III. Procedural Matters

I. BACKGROUND

A. AMENDMENT TO SECTION 507(b)(14) OF THE ACT

As originally enacted, section 507(b)(14) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1257(b)(14), required that certain cross sections, maps and plans in an application for a surface coal mining reclamation permit be

“prepared by or under the direction of and certified by a qualified registered professional engineer, or professional geologist with assistance from experts in related fields such as land surveying and landscape architecture

“This requirement was implemented in the previous OSM rules at 30 CFR 779.25, 780.14, 780.25, 783.25, 784.16 and 784.23.”

Prior to the Act, land surveyors in a number of States had been authorized by State law to prepare and certify the cross sections, maps and plans required in an application for a surface coal mining and reclamation permit. Under the Act, however, only an engineer or geologist could certify these documents.

To resolve this conflict with State law, the U.S. Congress on November 4, 1983, amended the Act to authorize land surveyors to prepare and certify cross sections, maps and plans (Section 115, Pub. L. 98-146, 97 Stat. 938 (1983)). The

amendment provides that

“[n]otwithstanding section 507(b)(14) of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87), cross-sections, maps or plans of land to be affected by an application for a surface mining and reclamation permit shall be prepared by or under the direction of a qualified registered professional engineer or geologist, or qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans.”

On October 2, 1984 (*49 FR 38958*), OSM proposed a rule to implement this statutory amendment, and give qualified, registered, professional, land surveyors authority to prepare and certify cross sections, maps and plans in any State which authorizes land surveyors to prepare and certify such documents. This final rule is based on that proposal.

B. INCONSISTENT RULES

The previous permanent program rules contained inconsistent provisions concerning the authority of land surveyors to certify the design of small impoundments. The rules at 30 CFR 816.49(a)(2) and 817.49(a)(2), which were adopted in 1983 (*48 FR 43994*), did not authorize land surveyors to certify the design of any impoundments. However, the rules at 30 CFR 780.25(a)(3) and 784.16(a)(3), which were adopted in March 1979 (*44 FR 15357*), authorized registered land surveyors to prepare and certify detailed design plans for small impoundments not meeting the size or other criteria of 30 CFR 77.216(a). (The rule at 30 CFR 77.216(a) specifies Mine Safety and Health Administration criteria concerning the elevation, storage volume, and hazard potential of an impounding structure.)

The rule proposed by OSM on October 2, 1984, resolved this inconsistency by revising Sections 816.49(a)(2) and 817.49(a)(2) to require certification of the design of impoundments in accordance with 30 CFR 780.25(a) and 784.16(a), respectively. These cross-references to Sections 780.25(a) and 784.16(a) were intended to preserve the authority for certifying small impoundments that already had been given to land surveyors in 1979 by the referenced sections. In addition, OSM proposed to increase the qualifications required of a land surveyor in Sections 780.25(a)(3) and 784.16(a)(3) by inserting the words "qualified" and "professional" before the term "land surveyor," to correspond with the qualifications required of an engineer in the same circumstances.

C. PUBLIC COMMENT PERIOD

A thirty day public comment period was announced in the proposed rule, to close on November 1, 1984. Because the affected provisions of 30 CFR Chapter VII are referenced by Federal programs, on October 29, 1984 (*49 FR 43479*), the comment period was extended to December 3, 1984, to provide the 60 days public notice required by 30 CFR 736.12 for revision of a Federal program. Also in accordance with 30 CFR 736.12, public notice of the proposed rule was published in newspapers in the ten Federal program states of Tennessee, North Carolina, Georgia, Massachusetts, Rhode Island, Idaho, Oregon, Washington, South Dakota and Mississippi.

OSM received public comments on the proposed rule from a total of fourteen individuals and organizations. Public reaction to the proposed rule overall was favorable by a margin of approximately two-to-one. No request was received for a public hearing or meeting, and none was held.

II. FINAL RULE AND RESPONSES TO PUBLIC COMMENTS ON PROPOSED RULE

A. TECHNICAL REVISIONS

Throughout this final rule, minor technical revisions are made in spelling, punctuation and grammar. These revisions improve the clarity of the rule, but have no effect on its substantive requirements. Because of their limited effect, these technical revisions are not discussed in specific detail.

B. SECTION-BY-SECTION ANALYSIS

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

SECTION 779.25 - CROSS SECTIONS, MAPS AND PLANS -- Renumbering of Paragraphs. In Section 779.25, the previous numbering of the paragraphs was incorrect. The introductory language related to paragraphs (a) through (k), but not to paragraph (l). Therefore, this rule amends Section 779.25 by redesignating the introductory language as paragraph (a), redesignating paragraphs (a) through (k) as paragraphs (a)(1) through (a)(11), redesignating paragraphs (k)(1) through (k)(3) as paragraph (a)(11)(i) through (a)(11)(iii) and redesignating paragraph (1), the last paragraph, as paragraph (b).

INCREASED AUTHORITY OF LAND SURVEYORS. This rule revises new Section 779.25(b) to authorize qualified, registered, professional, land surveyors to prepare and certify the cross sections, maps and plans required in a permit application pursuant to this section. In any State which authorizes land surveyors to prepare and certify such cross sections, maps and plans, this rule authorizes qualified, registered, professional, land surveyors to prepare and certify these documents.

In any such State, this rule gives qualified, registered, professional, land surveyors the same authority to prepare and certify cross sections, maps and plans as they are given by State law. Although the preamble to the proposed rule stated that the rule would give land surveyors the same authority as previously had been granted to engineers and geologists, this is true only to the extent such authority is given to land surveyors by State law.

The State of West Virginia, in its comments on the proposed rule, stated that it has authorized licensed land surveyors to design and certify cross sections, maps and plans since 1971, with entirely satisfactory results. Another commenter pointed out that the State of Pennsylvania currently authorizes land surveyors to prepare and certify cross sections, maps and plans.

One commenter thought the proposed rule gave equal status to engineers, geologists, and landscape architects, and thus tended to degrade professional land surveyors. Another thought it discriminated against professional land surveyors, and that it considered an engineer, geologist or landscape architect to be more competent than a land surveyor.

OSM does not intend this rule to reflect adversely on the status of any of these professions to do the work for which they are authorized by State and Federal law. This rule does not affect the authority previously granted to professional geologists. Nor does it authorize landscape architects to prepare independently or to certify cross sections, maps and plans, but limits them to assisting engineers, geologists or land surveyors as authorized by the previous rule.

Another commenter thought OSM had construed the amendment to section 507(b)(14) of the Act too broadly in proposing to authorize land surveyors to prepare and certify all of the cross sections, maps and plans covered by that section of the Act, thereby posing a threat to the public health and safety, as well as to the safety of underground miners. This commenter thought that while the wording of the amendment to the Act ostensibly went further than merely allowing land surveyors to certify maps and plans of surface features, topography and land boundaries, the intent of the Congress was more limited than a literal reading of the amendment would indicate.

This commenter wanted OSM further to limit the rule to authorize land surveyors to engage in only those activities "properly within that professional field," rather than "merely recanting the statutory amendment and leaving the individual states without guidance in the area." Notwithstanding this commenter's concerns, however, there is nothing in either the amendment to the Act or its legislative history, and the commenter cited nothing, to support additional restrictions on land surveyors who meet the requirements of Section 779.25(b).

Moreover, although this commenter alluded to activities properly within the field of surveying, such activities may vary among the States. This rule authorizes surveyors only to perform those functions in a particular State for which they have authority under State law. For these reasons, OSM has declined to impose any further restrictions on properly authorized land surveyors.

One commenter noted that in many of the areas affected by this rule the hourly rate of a land surveyor is approximately fifty percent of that of an engineer, which may result in substantial savings to operators, and particularly

small operators, who employ surveyors. Such savings, the commenter believed, may lead to lower coal prices and stimulate competition in the market.

Although operators may derive economic benefits from this rule, such benefits would not justify the rule if adequate environmental protection were not also assured. Because only qualified professionals are authorized to certify cross sections, maps and plans, this rule will not decrease the environmental protection provided by the Act.

RULE AUTHORIZES BOTH PREPARATION AND CERTIFICATION. As was explained in the preamble to the proposed rule, while a literal reading of the amendment to section 507(b)(14) of the Act might appear to authorize land surveyors only to prepare cross sections, maps and plans, revised Section 779.25(b) also authorizes land surveyors to certify these documents. In view of the legislative history of the amendment to the Act, OSM has concluded that the Congress intended the term "prepared by" in the amendment to include authority for certification.

As discussed by Senator Byrd on the floor of the Senate, 129 Cong. Rec. S12411 (daily ed. Sept. 19, 1983) (emphasis added), the purpose of the amendment was to remedy

“conflicts with State laws [where the Act] preempts registered land surveyors from a lead role in the preparation and certification of maps, plans, and cross-sections”

* * * * *

The Surface Mining Control and Reclamation Act of 1977 authorizes registered professional engineers and geologists to perform design and planning work for mining projects. The act does not permit professional land surveyors to take the lead role in preparing and certifying mine maps and plans.

These and other references in the legislative history to both preparing and certifying strongly infer that the Congress intended to authorize qualified, registered, professional, land surveyors to perform both of these functions as lead professionals. If land surveyors were authorized merely to prepare, but not to certify, cross sections, maps and plans, their status as lead professionals would be seriously impaired, if not entirely negated. Thus, this rule authorizes qualified, registered, professional, land surveyors both to prepare and to certify these documents.

A number of commenters expressed agreement with this interpretation of the amendment to section 507(b)(14) of the Act. One pointed out that the rules in effect prior to the amendment had authorized land surveyors to prepare cross sections, maps and plans under the direction of professional engineers, but not to certify them. If the amendment and this rule did not authorize land surveyors to certify these documents, there would be no change from their previous status. OSM concurs with this observation, and concludes that in enacting the amendment the Congress intended to authorize land surveyors both to prepare and to certify cross sections, maps and plans.

Qualifications of Professional Geologist. The proposed rule would have added the words "qualified" and "registered" to modify the term "professional geologist" in Section 779.25(b), to correspond with the qualifications required of an engineer. A commenter pointed out that some States do not have a registration process for professional geologists, and thus the rule would be inconsistent with current procedures in those States. This commenter noted that in the State of Wyoming, for example, there is no registration process for geologists. To qualify as a "professional geologist" under Wyoming law a person need only have a certain level of education and experience.

This comment is consistent with the text of section 507(b)(14) of the Act, which speaks only in terms of a "professional geologist," without the added qualifications required of a professional engineer. Accordingly, in this final rule the less restrictive language of the Act is retained in Section 779.25(b), and the words "qualified" and "registered" have not been added to modify the term "professional geologist." In determining whether a person qualifies as a professional geologist under this provision, OSM will apply whatever standard is used in the State where the proposed surface coal mining operation would take place.

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

SECTION 780.14 - OPERATION PLAN: CROSS SECTIONS, MAPS AND PLANS. -- Increased Authority of Land Surveyors. Previous Section 780.14 required that each surface mining permit application contain specified maps and plans, some of which must be certified. This rule revises Section 780.14(c) to authorize qualified, registered, professional, land surveyors to prepare and certify these maps and plans in any State which grants land surveyors such authority. The effect of this revision is the same as discussed previously for Section 779.25(b).

REFERENCES TO EXCEPTIONS AND PERTINENT PARAGRAPHS. For increased specificity, the exceptions previously described verbally in Section 780.14 (c)(1) and (c)(2) now are referenced by section number at the beginning of paragraph (c). The referenced provisions, 30 CFR 780.25(a)(2), 780.25(a)(3), 780.35(a), 816.71(b), 816.73(c) and 816.81(c), restrict land surveyors from preparing and certifying cross sections, maps and plans in certain situations. Although referenced Section 780.35(a) does not itself contain an independent certification requirement, it does incorporate by reference the requirements of 30 CFR 816.71(b) and 816.73(c). The explicit reference to Section 816.73(c) in the final rule inadvertently was omitted from the proposed rule. However, Section 816.73(c) was referenced indirectly in the proposed rule through the reference to Section 780.35(a).

To correct an omission from the references to paragraph (b) in the previous rule, a reference to paragraph (b)(6) is added to the previous references to paragraphs (b) (4), (5), (10) and (11). As noted in the preamble to the proposed rule, the water diversion, collection, conveyance, treatment, storage and discharge facilities covered by paragraph (b)(6) clearly are within the purview of "any settling or water treatment facility . . . constructed or natural drainways and the location of any discharges to any surface body of water," as recited in section 507(b)(14) of the Act, and thus are within the purview of Section 780.14(c).

SECTION 780.25 - RECLAMATION PLAN: IMPOUNDMENTS AND COAL PROCESSING WASTE IMPOUNDING STRUCTURES. -- Increased Authority of Land Surveyors. Previous Section 780.25 required that each application for a surface coal mining and reclamation permit include a general plan for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam or embankment within the proposed permit area. This rule revises Section 780.25(a)(1)(i) to authorize qualified, registered, professional, land surveyors to prepare and certify this general plan in any State which authorizes land surveyors to prepare and certify such plans. The effect of this revision is the same as discussed previously for Section 779.25(b).

Proposed Section 780.25(a)(1)(i) incorrectly specified cross sections and maps as documents which a State must authorize a land surveyor covered by this section to prepare. This reference to cross sections and maps has been deleted from the final rule, which requires only that a State authorize land surveyors to prepare and certify general plans.

ADDITIONAL QUALIFICATIONS FOR LAND SURVEYORS. Previous Section 780.25(a)(3)(i) authorized a registered land surveyor to prepare and certify a detailed design plan for a structure that does not meet the size or other criteria of 30 CFR 77.216(a). This rule revises Section 780.25(a)(3)(i) to increase the qualifications a land surveyor must have to prepare such plans. To correspond with what is required of an engineer, the words "qualified" and "professional" are added to modify the term "land surveyor." As stated in the preamble to the proposed rule, these increased qualifications are in keeping with the intent of the Congress in the amendment to section 507(b)(14) of the Act.

While the discussion of Section 780.25 in the preamble to the proposed rule inadvertently stated only that additional qualifications would be added to the term "professional geologist," but failed to include the term "land surveyor," it is clear from the context of that discussion and from the text of the proposed rule that similar modifications of the term "land surveyor" also was intended. The preamble not only cited Section 780.25(a)(3), which concerns land surveyors and not geologists, as subject to the proposed revision, but also the proposed rule itself included the increased qualifications for land surveyors.

While proposed Section 780.25(a)(3)(i) conditioned the authority granted to land surveyors on a requirement that a State grant to land surveyors corresponding authority to prepare detailed design plans, it inadvertently omitted a similar condition that a State grant to land surveyors authority to certify these plans. This rule corrects this omission and requires State authorization of land surveyors both to prepare and to certify such plans. This additional condition is in keeping with similar requirements elsewhere in this rule.

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

SECTION 783.25 - CROSS SECTIONS, MAPS AND PLANS. -- Section 783.25 is revised in the same way and for the same reasons as discussed previously for Section 779.25. The editorial note following Section 783.25 is revised to reflect the renumbering of previous paragraphs (c), (h) and (i) as new paragraphs (a)(3), (a)(8) and (a)(9), respectively.

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

SECTION 784.16 - RECLAMATION PLAN: PONDS, IMPOUNDMENTS, BANKS, DAMS AND EMBANKMENTS. -- Except for substituting references to the corresponding rules for underground mining activities in 30 CFR 817.81 and 817.84, Section 784.16 is revised in the same way and for the same reasons as discussed previously for Section 780.25.

SECTION 784.23 - OPERATION PLAN: CROSS SECTIONS, MAPS AND PLANS. -- Except for substituting references to the corresponding rules for underground mining activities in 30 CFR 784.16(a)(2), 784.16(a)(3), 784.19, 817.71(b), 817.73(c) and 817.81(c), Section 784.23 is revised in the same way and for the same reasons as discussed previously for Section 780.14.

PART 816 -- PERMANENT PROGRAM PERFORMANCE STANDARDS -- SURFACE MINING ACTIVITIES

SECTION 816.49 - IMPOUNDMENTS. -- Certification of Small Impoundments by Land Surveyors. This rule revises Section 816.49(a)(2) to require the certification of impoundment designs in accordance with 30 CFR 780.25(a). Previous Section 816.49(a)(2) was inconsistent with Section 780.25(a)(3)(i), which authorizes land surveyors to prepare and certify the design of small impoundments that do not meet the size or other criteria of 30 CFR 77.216(a). The revision eliminates this inconsistency and preserves the certification authority previously granted to land surveyors by Section 780.25(a)(3)(i), subject however to the increased qualifications for land surveyors added to Section 780.25(a)(3)(i) elsewhere in this rule.

The added reference to Section 780.25(a) in Section 816.49(a)(2) will promote consistent interpretation and enforcement of these two related provisions. As provided in Section 780.25(a)(2), only a qualified, registered, professional, engineer is authorized to certify the design of impoundments that meet or exceed the size or other criteria of 30 CFR 77.216(a). For impoundments that do not meet the size or other criteria of Section 77.216(a), a qualified, registered, professional, land surveyor is authorized to certify the design in any State where land surveyors are authorized by State law to certify such designs.

One commenter maintained that registered professional engineers should be required to design and certify all impoundments and retention ponds. Another characterized "OSM's proposal to allow land surveyors to design small impoundments [as] dangerous and reckless," citing the collapse on an impoundment in Ages Creek, Kentucky in December 1981 as evidence for this concern. Another commenter cited the Ages Creek structure as the type of impoundment the proposed rule would authorize land surveyors to design and certify, and concluded that land surveyors lack the technical training and experience necessary to do such work.

OSM disagrees with these comments for several reasons. One, this rule does not increase the authority of land surveyors with respect to small impoundment design, but only with respect to certification. Two, the Ages Creek structure was a coal waste refuse dam, and significant factors other than its design contributed to the failure and resulting damage. Finally, 30 CFR 816.71(b) and 816.81(c) continue to require certification by an engineer for all excess spoil fills and mine waste disposal facilities, respectively, regardless of size.

Furthermore, the Act provides many levels of protection, of which design certification is only one. Section 816.49(a)(2) itself requires that the certifying land surveyor have previous experience in impoundment design and construction. Any design which is certified by a land surveyor must conform to the performance standards of the regulatory program and be submitted to the regulatory authority for review as part of a permit application package.

Under 30 CFR 816.46(b)(3) an engineer must certify all siltation structures during construction as conforming to the approved design and to the requirements of Part 816. Under Section 816.49(a)(10) impoundments are given frequent inspections. And under Section 816.49(a)(11) all small impoundments are examined for structural weakness and hazardous conditions at least annually.

Thus, OSM concludes that qualified, registered, professional, land surveyors properly may be given responsibility for certifying the design of small impoundments.

POST-CONSTRUCTION CERTIFICATION AND INSPECTION OF IMPOUNDMENTS. As was noted in the preamble to the proposed rule, this final rule does not affect 30 CFR 816.46(b)(3), which requires that "[s]iltation structures . . . upon construction, shall be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan." It also does not affect 30 CFR 816.49(a)(10), which requires the inspection of impoundments by a qualified, registered, professional engineer or other qualified professional specialist.

A number of commenters disagreed with OSM's interpretation that the November 4, 1983, amendment to the Act did not authorize land surveyors to certify the construction of siltation structures or to inspect impoundments, and thus did not affect the requirements of 30 CFR 816.46(b)(3) and 816.49(a)(10). They believed that the Congress intended the amendment to cover the post-construction certification and inspection of small impoundments, and found it anomalous that land surveyors were authorized to certify the designs of these structures, but not to do post-construction certification and inspection.

One commenter stated that OSM's interpretation of the amendment to the Act was "an arbitrary determination based solely upon the awkward division of SMCRA and the regulations issued thereunder into application-related sections and performance standard sections." This commenter also maintained that from the standpoint of environmental protection it is safer to allow the person who designs a small impoundment to inspect it during and after construction to determine whether it complies with the original design, than to rely on another person who is unfamiliar with the original design.

Another commenter concluded that certification of such structures during and after construction is only a matter of reading plans, performing measurements, ensuring correct construction procedures and certifying the results, and that these functions are well within the scope of professionalism of a registered professional land surveyor.

A land surveyor licensed in the State of West Virginia noted that during the past eight years he has designed numerous siltation structures, and had directly supervised and then certified their construction. This land surveyor felt that the person who designs and supervises the construction of a structure is the most qualified individual to certify its construction, and that the intent of the amendment to the Act was to reinstate the land surveyor in this capacity.

Several commenters pointed out that in the State of West Virginia licensed land surveyors have had post-construction certification authority for these structures for the past fourteen years. One of these commenters reasoned that by denying land surveyors the authority for post-construction certification and inspection of small impoundments, OSM has, in effect, declared land surveyors incompetent to design such structures. This commenter believed that OSM's interpretation of the amendment to the Act was contrary to all recognized construction policies, and evidence of obvious resistance to recognizing the abilities of land surveyors.

While OSM acknowledges that these comments have some technical merit, OSM disagrees with them as they relate to Section 816.49(b)(3) because the post-construction certification requirements in Section 816.46(b)(3) derive from section 515(b)(10)(B)(ii) of the Act. None of these commenters provided any evidence that the Congress in amending section 507(b)(14) of the Act also intended to amend section 515(b)(10)(B)(ii). Absent such evidence, OSM is constrained by the explicit language of section 515(b)(10)(B)(ii) to keep the existing certification requirements of Section 816.46(b)(3). OSM does not intend this interpretation to reflect in any way upon the competence of qualified, registered, professional, land surveyors to prepare and certify the designs of small impoundments.

OSM agrees in principle with these comments as they relate to Section 816.49(a)(10). Contrary to an incorrect statement in the proposed rule (*49 FR 38959*; October 2, 1984), this section is not based on section 515(b)(10)(B)(ii) of the Act. And while section 816.49(a)(10) is not governed by the amendment to section 507(b)(14), there is nothing in the Act to preclude OSM from amending section 816.49(a)(10) to authorize qualified, registered, professional, land surveyors to inspect small impoundments. This authority for small impoundments was given to land surveyors in previous

section 816.49(h) (*44 FR 15395*; March 13, 1979). Based on these comments OSM is considering whether to propose an amendment to section 816.49(a)(10) to restore this authority to land surveyors. With respect to amending section 816.49(a)(10) in this final rule, OSM has concluded that the proposed rule did not provide sufficient notice for such an amendment.

PART 817 -- PERMANENT PROGRAM PERFORMANCE STANDARDS -- UNDERGROUND MINING ACTIVITIES

SECTION 817.49 - IMPOUNDMENTS. -- Except for substituting a reference to the corresponding rule for underground mining activities in 30 CFR 784.16(a), section 817.49 is revised in the same way and for the same reasons as discussed previously for section 816.49.

A commenter pointed out that proposed section 817.49(a)(2) incorrectly referenced section 784.25(a). The final rule includes the correct reference to section 784.16(a).

III. PROCEDURAL MATTERS

Federal Paperwork Reduction Act

This rule contains no new information collection requirements. The information collection requirements in the affected sections of the previous rules were submitted to the Office of Management and Budget under *44 U.S.C. 3507* and assigned clearance numbers 1029-0035 (Section 779.25), 1029-0036 (Sections 780.14 and 780.25), 1029-0038 (Section 783.25), 1029-0039 (Sections 784.16 and 784.23).

Executive Order 12291

The DOI has examined this rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. Any negative economic impact on professional engineers or geologists will be offset by a corresponding positive impact on land surveyors. The estimated number of directly affected surveyors is 500, with a potential shift in income of \$700,000 to \$3.5 million annually. OSM disagrees with the commenter on the proposed rule who, without providing any evidence, suggested that this estimated number of surveyors was too low.

Regulatory Flexibility Act

The DOI also has determined, pursuant to the Regulatory Flexibility Act, *5 U.S.C. 601* et seq., that this rule will not have a significant economic impact on a substantial number of small entities. While under the rule some registered professional engineers or geologists who work in small business or are self-employed may lose work to professional land surveyors, any negative economic impact on engineers or geologists should be offset by a corresponding positive impact on surveyors who are similarly employed.

National Environmental Policy Act

OSM has prepared an environmental assessment (EA) on this rule, and has made a finding that it would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, *42 U.S.C. 4332(2)(C)*. The EA and finding of no significant impact are on file in the administrative record for this rule in the OSM Administrative Record Room at 1100 L Street, NW., Washington, D.C.

LIST OF SUBJECTS

30 CFR Part 779

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 780

Coal mining, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 783

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 784

Coal mining, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 816

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, 30 CFR Parts 779, 780, 783, 784, 816 and 817 are amended as follows:

Dated: March 28, 1985.

J. Steven Griles, Deputy Assistant Secretary for Land and Minerals Management.

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

1. The authority citation for Part 779 is revised to read as follows:

Authority: Pub. L. 95-87, 91 Stat. 445 (*30 U.S.C. 1201* et seq.) and Section 115, Pub. L. 98-146, 97 Stat. 938 (*30 U.S.C. 1257*), unless otherwise noted.

2. Section 779.25 is amended by redesignating the introductory language as paragraph (a), redesignating paragraphs (a) through (k) as paragraphs (a)(1) through (a)(11), redesignating paragraphs (k)(1) through (k)(3) as paragraphs (a)(11)(i) through (a)(11)(iii), and redesignating paragraph (l), the last paragraph, as paragraph (b).

3. In Section 779.25, new paragraph (b) is revised to read as follows:

SECTION 779.25 - CROSS SECTIONS, MAPS AND PLANS.

* * * * *

(b) Cross sections, maps and plans included in a permit application as required by this section shall be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, a professional geologist, or in any State which authorizes land surveyors to prepare and certify such cross sections, maps and plans, a qualified, registered, professional, land surveyor, with assistance from experts in related fields such as landscape architecture, and shall be updated as required by the regulatory authority.

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

4. The authority citation for Part 780 is revised to read as follows:

Authority: Pub. L. 95-87, 91 Stat. 445 (*30 U.S.C. 1201* et seq.) and Section 115, Pub. L. 98-146, 97 Stat. 938 (*30 U.S.C. 1257*), unless otherwise noted.

5. In Section 708.14, paragraph (c) is revised to read as follows:

SECTION 780.14 - OPERATION PLAN: CROSS SECTIONS, MAPS AND PLANS.

* * * * *

(c) Except as provided in Sections 780.25(a)(2), 780.25(a)(3), 780.35(a), 816.71(b), 816.73(c) and 816.81(c) of this chapter, cross sections, maps and plans required under paragraphs (b)(4), (5), (6), (10) and (11) of this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, a professional geologist, or in any State which authorizes land surveyors to prepare and certify such cross sections, maps and plans, a qualified, registered, professional, land surveyor, with assistance from experts in related fields such as landscape architecture.

6. In Section 780.25, paragraphs (a)(1)(i) and (a)(3)(i) are revised to read as follows:

SECTION 780.25 - RECLAMATION PLAN: PONDS, IMPOUNDMENTS, BANKS, DAMS AND EMBANKMENTS.

(a) General. Each application shall include a general plan for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam or embankment within the proposed permit area.

(1) Each general plan shall --

(i) Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, a professional geologist, or in any State which authorizes land surveyors to prepare and certify such plans, a qualified, registered, professional, land surveyor, with assistance from experts in related fields such as landscape architecture;

* * * * *

(3) Each detailed design plan for a structure that does not meet the size or other criteria of Section 77.216(a) of this title shall --

(i) Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, or in any State which authorizes land surveyors to prepare and certify such plans, a qualified, registered, professional, land surveyor, except that all coal processing waste dams and embankments covered by Sections 816.81-816.84 of this chapter shall be certified by a qualified, registered, professional engineer;

* * * * *

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

7. The authority citation of Part 783 is revised to read as follows:

Authority: Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 et seq.) and Section 115, Pub. L. 98-146, 97 Stat. 938 (30 U.S.C. 1257), unless otherwise noted.

8. Section 783.25 is amended by redesignating the introductory language as paragraph (a), redesignating paragraphs (a) through (k) as paragraphs (a)(1) through (a)(11), redesignating paragraphs (k)(1) through (k)(3) as paragraphs (a)(11)(i) through (a)(11)(iii), and redesignating paragraph (l), the last paragraph, as paragraph (b).

9. In 783.25, new paragraph (b) is revised to read as follows:

SECTION 783.25 - CROSS SECTIONS, MAPS AND PLANS.

* * * * *

(b) Cross-sections, maps and plans included in a permit application as required by this section shall be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, a professional geologist, or in any State which authorizes land surveyors to prepare and certify such cross sections, maps and plans, a qualified, registered, professional, land surveyor, with assistance from experts in related fields such as landscape architecture, and shall be updated as required by the regulatory authority.

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

10. The authority citation for Part 784 is revised to read as follows:

Authority: Pub. L. 95-87, 91 Stat. 445 (*30 U.S.C. 1201 et seq.*) and Section 115, Pub. L. 98-146, 97 Stat. 938 (*30 U.S.C. 1257*), unless otherwise noted.

11. Section 784.16 is revised to read as follows:

SECTION 784.16 - RECLAMATION PLAN: PONDS, IMPOUNDMENTS, BANKS, DAMS AND EMBANKMENTS.

(a) General. Each application shall include a general plan for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam or embankment within the proposed permit area.

(1) Each general plan shall --

(i) Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, a professional geologist, or in any State which authorizes land surveyors to prepare and certify such plans, a qualified, registered, professional, land surveyor with assistance from experts in related fields such as landscape architecture;

* * * * *

(3) Each detailed design plan for a structure that does not meet the size or other criteria of Section 77.216(a) of this title shall --

(i) Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, or in any State which authorizes land surveyors to prepare and certify such plans, a qualified, registered, professional, land surveyor, except that all coal processing waste dams and embankments covered by Sections 817.81-817.84 of this chapter shall be certified by a qualified, registered, professional engineer;

* * * * *

12. In Section 784.23, paragraph (c) is revised to read as follows:

SECTION 784.23 - OPERATION PLAN: CROSS SECTIONS, MAPS AND PLANS.

* * * * *

(c) Except as provided in Sections 784.16(a)(2), 784.16(a)(3), 784.19, 817.71(b), 817.73(c) and 817.81(c) of this chapter, cross sections, maps and plans required under paragraphs (b)(4), (5), (6), (10) and (11) of this section shall be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, a professional

geologist, or in any State which authorizes land surveyors to prepare and certify such cross sections, maps and plans, a qualified, registered, professional, land surveyor, with assistance from experts in related fields such as landscape architecture.

PART 816 -- PERMANENT PROGRAM PERFORMANCE STANDARDS -- SURFACE MINING ACTIVITIES

13. The authority citation for Part 816 is revised to read as follows:

Authority: Pub. L. 95-87, 91 Stat. 445 (*30 U.S.C. 1201 et seq.*) and Section 115, Pub. L. 98-146, 97 Stat. 938 (*30 U.S.C. 1257*), unless otherwise noted.

14. In Section 816.49, paragraph (a)(2) is revised to read as follows:

SECTION 816.49 - IMPOUNDMENTS.

(a) * * *

(2) Design certification. The design of impoundments shall be certified in accordance with Section 780.25(a) of this chapter as designed to meet the requirements of this part using current, prudent, engineering practices and any design criteria established by the regulatory authority. The qualified, registered, professional engineer or qualified, registered, professional, land surveyor shall be experienced in the design and construction of impoundments.

* * * * *

PART 817 -- PERMANENT PROGRAM PERFORMANCE STANDARDS -- UNDERGROUND MINING ACTIVITIES

15. The authority citation for Part 817 is revised to read as follows:

Authority: Pub. L. 95-87, 91 Stat. 445 (*30 U.S.C. 1201 et seq.*) and Section 115, Pub. L. 98-146, 97 Stat. 938 (*30 U.S.C. 1257*), unless otherwise noted.

16. In Section 817.49, paragraph (a)(2) is revised to read as follows:

SECTION 817.49 - IMPOUNDMENTS.

(a) * * *

(2) Design certification. The design of impoundments shall be certified in accordance with Section 784.16(a) of this chapter as designed to meet the requirements of this part using current, prudent, engineering practices and any design criteria established by the regulatory authority. The qualified, registered, professional engineer or qualified, registered, professional, land surveyor shall be experienced in the design and construction or impoundments.

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