

**FEDERAL REGISTER: 58 FR 3466 (January 8, 1993)**

DEPARTMENT OF THE INTERIOR

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

30 CFR Parts 701 and 785

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Definitions; Requirements for Permits and Permit Processing; Part XIII

ACTION: Final rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) is amending its permanent program regulations by revising the definition of "previously mined area" and by clarifying the requirements governing off-site coal preparation plants. OSM is taking this action in response to two U.S. District Court decisions affecting OSM's permanent program regulations. Specifically, OSM is revising the definition of "previously mined area" to include only those lands affected by surface coal mining operations prior to August 3, 1977, the date of enactment of the Surface Mining Control and Reclamation Act (SMCRA), that have not been reclaimed to the performance standards of 30 CFR chapter VII. OSM is also clarifying the extent to which geographic proximity to a mine is an appropriate factor in evaluating whether an off-site coal preparation plant operates in connection with a mine and is thus subject to regulation under SMCRA.

EFFECTIVE DATE: February 8, 1993.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

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

**I. BACKGROUND**

The Surface Mining Control and Reclamation Act of 1977, *30 U.S.C. 1201* et seq. (SMCRA or the Act), sets forth general regulatory requirements governing surface coal mining operations and the surface effects of underground coal mining. OSM has by regulation implemented or clarified many of the general requirements of the Act and set performance standards to be achieved by surface coal mine operations. See 30 CFR chapter VII.

**A. DEFINITION OF PREVIOUSLY MINED AREA**

On September 16, 1983, OSM promulgated performance standards at 30 CFR 816.106 and 817.106 (Backfilling and grading: Previously mined areas) for remining operations on previously mined areas, for surface and underground coal mining, respectively (*48 FR 41720*). These performance standards provide for partial highwall elimination in situations where the previous operator had not reclaimed the remined area to the standards of the Act. Under sections 816.106 and 817.106, such pre-existing highwalls must be eliminated to the maximum extent technically practical using all reasonably available spoil.

The September 1983 rulemaking defined "previously mined area" at 30 CFR 701.5 as "land disturbed or affected by earlier coal mining operations that was not reclaimed in accordance with the requirements of this chapter." This definition, which was challenged as being too broad and contrary to SMCRA, was remanded to the Secretary in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79-1144 Slip Op. at 122, (D.D.C. July 15, 1985).

On May 8, 1987, OSM promulgated a new definition which limited the scope of "previously mined area" to those lands on which there were no surface coal mining operations subject to the standards of the Act (*52 FR 17526*).

The National Wildlife Federation, Kentucky Resources Council, and other environmental organizations (collectively "NWF") challenged the 1987 definition on the grounds that it improperly expanded the scope of the definition to include lands mined subsequent to SMCRA's enactment (*NWF v. Lujan*, Civil Action Nos. 87-1051, 87-1814, and 88-2788 (D.D.C. 1990)). The court remanded the definition of "previously mined area" to the Secretary for revision, finding that a definition using a date other than the date of SMCRA's enactment (August 3, 1977) does not conform to the Act. The court also ruled that the definition must be rewritten to eliminate the possibility that it could be interpreted to allow a previously mined area that had been fully and satisfactorily reclaimed, to be remined and then reclaimed to the lesser standards applicable to remining operations.

On September 25, 1991, pursuant to the court's ruling in *NWF v. Lujan*, OSM proposed a new definition of "previously mined area" at 30 CFR 701.5 to include land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the performance standards of 30 CFR chapter VII (*56 FR 48714*). The Federal Register notice announced a 30 day comment period ending on October 25, 1991. On October 16, 1991, OSM published a notice in the Federal Register extending the comment period on the proposed rule through November 25, 1991 (*56 FR 51861*).

## **B. OFF-SITE COAL PREPARATION PLANTS: GEOGRAPHIC PROXIMITY; INFORMATION COLLECTION REQUIREMENTS FOR 30 CFR PART 785**

On March 13, 1979, OSM published regulations implementing the permanent regulatory program required by Title V of SMCRA (*44 FR 14902 et seq.*). Permitting requirements and permanent program performance standards for coal processing plants and support facilities not within the permit area for a mine, were codified at 30 CFR 785.21 and 30 CFR Part 827, respectively.

On November 22, 1988, OSM promulgated a final rule amending the language in 30 CFR 785.21 and 827.1 concerning the permit requirements and the scope of the performance standards for off-site coal preparation plants, to clarify that those sections apply only to such facilities that operate "in connection with" a coal mine (*53 FR 47384*). The preamble to the final rule explained that "the element of geographic proximity, along with the element of functional relationship described in this preamble, are proper factors to consider in evaluating whether an off-site coal preparation plan is subject to regulation under SMCRA."

NWF challenged the regulation, particularly the use of proximity as a factor in determining which off-site coal preparation plants would be subject to SMCRA regulation. The District Court did not object to the language of the regulation, noting that "in connection with" is, "after all, the language of the statute." The court did, however, object to "the Secretary's explanation of his rule" on the grounds that it appeared to make proximity to a mine "the decisive factor in determining whether to regulate an off-site processing plant" and that this appeared "to mean that the Secretary would not regulate off-site plants, except in comparatively rare instances." The court reaffirmed its earlier rulings that: "(1) the Secretary must regulate off-site processing plants; and, (2) the language of the Act clearly indicates that crushing, screening, and sizing coal are covered by SMCRA as processing activities \* \* \*" noting that "(t)he Court of Appeals has upheld the former ruling, and the latter is now settled law" and that "(t)o that extent, the regulation conflicts with the law." The court remanded the regulation to the Secretary to clarify that proximity may not be the decisive factor in deciding to regulate an off-site processing plant. The court instructed the Secretary to "tailor his action to this Court's and the Court of Appeals' consistent statements that the Act requires regulation of off-site processing and preparation plants." *NWF v. Lujan*, 31 E.R.C. 2034 (D.D.C. August 30, 1990), hereafter, "NWF, Round III ." The Secretary chose not to prosecute his appeal of that decision.

On March 22, 1991, the U.S. Court of Appeals considered the issue of the effective date of regulation of off-site physical processing facilities, specifically the appeal of an August 1990 district court ruling in *NWF v. Lujan*, 733 F.Supp 419 (D.D.C. 1990). In that decision, the district court had ruled that the Secretary may not decline to regulate any off-site crushing, screening, and sizing facilities from the effective date of the Act because the Act requires the Secretary to regulate all of those facilities. The appellate court disagreed stating that "the Act permits, but does not require the Secretary to regulate off-site facilities that crush, screen, and size coal." Thus, the district court "erroneously held that the Secretary violated the Act by declining to regulate all off-site physical processing plants that operated subsequent to enactment of the Act." The appeals court noted that "the fact that the Secretary may regulate these facilities does not mean that he must regulate them" and that "(a)s long as the Secretary gives valid reasons for declining to regulate these facilities, his decision must be upheld." *NWF v. Lujan*, 928 F.2d 453 (D.C. Cir. 1991).

On September 25, 1991, OSM proposed to clarify that geographic proximity should not be the decisive factor in determining whether or not an off-site coal preparation plant operates in connection with a mine, and that absent considerations of proximity, such determinations would rely instead on other considerations offered by OSM in earlier preamble discussions. The reader is referred to the September 25, 1991, Federal Register notice at *56 FR 48716* for a non-exhaustive listing of applicable preamble citations. The proposed clarification concerned the 1988 final rule preamble language only, and involved no changes to regulatory text. OSM also requested public comment on the effect that the appeals court decision in *NWF v. Lujan* had upon the basis of the District Court remand in *NWF*, Round III and the appropriateness of removing geographic proximity as a factor in determining whether or not an offsite coal preparation plant operates in connection with a mine.

OSM also proposed in the September 25, 1991, Federal Register notice, to update and amend the information collection requirements pertaining to 30 CFR Part 785 -- Requirements for Permits for Special Categories of Mining, codified at 30 CFR 785.10.

The comment period on the proposed preamble clarification concerning proximity and the proposed amendment to 30 CFR 785.10 closed on November 25, 1991.

## **II. DISCUSSION OF FINAL RULE AND RESPONSE TO PUBLIC COMMENTS ON PROPOSED RULE**

During the comment period, OSM received comments on the proposed rule and clarification from two coal industry trade associations, one environmental group, and one State agency. OSM has reviewed each comment carefully and has considered the commenters' suggestions and remarks in preparing the final rule.

Comments on the previously mined area definition and on the clarification of requirements governing off-site coal preparation plants are analyzed separately in the two sections that follow.

### **A. DEFINITION OF PREVIOUSLY MINED AREA AND COMMENTS**

The September 25, 1991, rulemaking proposal contained a revised definition of "previously mined area" as "land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 30 CFR chapter VII." OSM is adopting the revised definition in this final rule.

OSM received two comments on the proposed definition. One commenter objected to the proposed definition on the grounds that it would discourage initiatives by the public and private sectors to promote remining and reclamation of unbonded or underbonded areas that were inadequately reclaimed and/or abandoned between August 3, 1977, and the date(s) of State primacy. The commenter recommended that OSM withdraw the proposed definition and issue a revised definition that defines previously mined areas as abandoned mine lands, regardless of when abandonment occurred, and that any area subject to bond for forfeiture due to inadequate reclamation or abandonment should also be "excluded" from the definition.

OSM recognizes that the definition excludes those areas abandoned after August 3, 1977, from qualifying for the less stringent remining provisions of 30 CFR 816.106 and 817.106 which allow for partial elimination of pre-existing highwalls under certain circumstances. However, the August 3, 1977, cut-off date is consistent with the district court decision in *NWF v. Lujan*, which held that using a date other than SMCRA's enactment date to define previously mined areas is contrary to SMCRA.

Another commenter supported the proposed definition insofar as it establishes August 3, 1977, as the cut-off date for defining previously mined areas, but maintained that the proposed definition is otherwise ambiguous in that it could be construed to include areas mined both before and after August 3, 1977. The commenter requested that OSM issue a revised definition to include only those areas where mining occurred and terminated prior to August 3, 1977, and which were left in an unreclaimed status.

OSM disagrees that the definition is ambiguous, and does not accept the commenter's recommended changes. The definition clearly states that only those lands affected by mining prior to August 3, 1977, qualify as previously mined areas, and only when those lands have not been reclaimed to the standards of OSM's regulations at 30 CFR chapter VII.

It is thus readily inferred from the definition that a parcel of land reaffected by mining after August 3, 1977, would not qualify as a previously mined area.

The definition achieves its intended effect in that it limits the applicability of 30 CFR 816.106 and 817.106 to those areas mined prior to August 3, 1977, that are either unreclaimed or reclaimed to lesser standards than those prescribed by SMCRA, while also ensuring that areas mined prior to that date that have been fully and satisfactorily reclaimed pursuant to SMCRA's standards will not be redisturbed and then reclaimed under the less stringent requirements of 30 CFR 816.106 and 817.106. Under the definition, unreclaimed or partially reclaimed areas mined prior to August 3, 1977, would continue to qualify for the partial highwall elimination exemption of 30 CFR 816.106 and 817.106, but would be otherwise held to full compliance with the reclamation standards of 30 CFR chapter VII. In such instances, operators would be required to eliminate the highwall to the maximum extent technically practical, and to demonstrate the stability of the remaining highwall remnant. Reclaiming of such areas is consistent with SMCRA's stated goal at section 102(h) of promoting the reclamation of mined areas left without adequate reclamation prior to SMCRA's enactment and is dually beneficial that it results both in generally improved environmental conditions and enhanced coal recovery.

## **B. AMENDMENT TO INFORMATION COLLECTION REQUIREMENTS AT 30 CFR 785.10**

### **SECTION 785.10 - INFORMATION COLLECTION**

Section 785.10 contains a list of the information collection requirements included in 30 CFR Part 785 -- Requirements for Permits for Special Categories of Mining, and the Office of Management and Budget (OMB) clearance number indicating OMB approval of the requirements. The rule adopted today updates the data contained in section 785.10 by listing the estimated reporting burden per respondent for complying with the information collection requirements contained in part 785 and the addresses for OSM and OMB where comments on the information collection requirements of part 785 may be sent.

No comments were received on the proposed revisions to section 785.10.

## **C. CLARIFICATION OF PREAMBLE TO REGULATIONS GOVERNING OFF-SITE COAL PREPARATION PLANTS AND COMMENTS**

The September 25, 1991, proposed rule included a clarification that geographic proximity should not be the decisive factor in determining whether or not an off-site coal preparation plant operates in connection with a mine and is thus subject to regulation under SMCRA. The proposed clarification was intended to supersede 1988 final rule preamble language, without changing regulatory text. It was required pursuant to the district court's August 30, 1990, ruling in NWF, Round III discussed earlier in this preamble. OSM solicited public comment on the proximity issue, specifically on the appropriateness of removing proximity as a factor in regulatory determinations of whether or not a coal preparation plant operates in connection with a mine.

OSM's position on the proximity issue, as clarified today in this final rule, is that surface mining regulatory authorities may consider geographic proximity as a factor in determining whether off-site coal processing facilities operate in connection with a mine as long as proximity is not the decisive factor. To allow proximity to be the decisive factor would render "in connection with" equivalent to "at or near". That is not the Secretary's intent. Instead, the Secretary's intent is to provide regulatory authorities appropriate guidance and discretion in deciding which off-site coal processing plants to regulate. Thus, this clarification supplements the interpretative regulatory guidance contained in the preamble to the November 22, 1988, final rule on off-site coal preparation plants (*53 FR 47384*) and provides that guidance while preserving discretion.

OSM received three comments on the proposed clarification, one of which included a petition for rulemaking requesting OSM to promulgate rule changes to codify proximity language into OSM's regulations governing off-site coal preparation plants. Although OSM has considered the petition in developing this final rule, OSM is separately publishing its notice of decision on the petition.

One commenter objected to the proposed deletion of proximity as a factor in determining the applicability of SMCRA to off-site coal preparation plants, as exceeding the district court's holding in NWF, Round III that proximity could not "serve as the decisive factor" in such decisions. The commenter argued that the ruling thus merely required OSM to

clarify that geographic proximity to a mine is one of several factors to be weighed by the regulatory authority in determining whether a processing facility operates in connection with a mine. The commenter further maintained that the district court ruling was inconsistent with the 1988 appellate court ruling in *NWF v. Hodel*, which the commenter viewed as an endorsement of the use of proximity as a consideration in regulating processing facilities, and was also incorrect in its premise that "the Secretary must regulate off-site processing plants." The commenter cited both the 1988 *NWF v. Hodel* decision, and the March 1991 ruling in *NWF v. Lujan*, to support the view that the Secretary has broad discretion in matters concerning the regulation of off-site coal preparation plants.

OSM has examined the various court decisions cited by the commenter in relation to the proposed clarification on proximity contained in the September 25, 1991, rulemaking proposal. OSM agrees that the 1988 appeals court decision in *NWF v. Hodel* can reasonably be construed as an implicit endorsement of the Secretary's discretion in regulating off-site coal preparation plants, and that discretion was made explicit in *NWF v. Lujan* wherein the appellate court said that "the Act permits, but does not require the Secretary to regulate off-site facilities that crush, screen, and size coal." Implicit in that discretion is the power to use proximity as a jurisdictional factor in determining whether off-site processing facilities are subject to regulation under SMCRA and provided "the Secretary gives valid reasons for declining to regulate these facilities." (*NWF v. Lujan*, No. 90-5118 (D.C. Cir. 1991)). OSM notes that the court in *NWF v. Hodel* acknowledged that, "the legislative history suggests that Congress was specifically concerned about coal processing facilities and stored coal materials, and not necessarily only those within the immediate proximity of an operating surface coal mine." *Id.* at 744. OSM believes that it is not appropriate for proximity to be the decisive jurisdictional factor, but it can be a contributing factor when regulatory authorities exercise their discretion over whether to regulate an off-site plant.

Finally, OSM notes that in rendering its decision in *NWF*, Round III, the court stated that the appellate court in *NWF v. Hodel* endorsed the use of proximity only in the context of support facilities such as office buildings, and held that it does not necessarily follow that proximity is an appropriate defining factor for processing plants. The court remanded the matter to the Secretary for clarification "that proximity may not be the decisive factor in deciding to regulate an off-site processing plant." The court based its decision on its earlier rulings that "the Secretary must regulate off-site processing plants" noting that the "Court of Appeals has upheld the former ruling." *NWF, Round III, 31 E.R.C. 2034, 2050* (D.D.C. August 30, 1990). However, as noted earlier, the appeals court subsequently stated in *NWF v. Lujan* that this position was partially rejected in *NWF v. Hodel* "in which we held that the Act does not require the Secretary to regulate all coal processing or preparation facilities" and that the District court's holding to the contrary was erroneous. *928 F.2d at 462*. The appeals court further held that SMCRA permits but does not require the Secretary to regulate off-site coal processing plants provided the Secretary gives valid reasons for declining to regulate such facilities. This statement demonstrates the Secretary's considerable discretion in this area.

OSM does not believe that the district court's ruling in *NWF*, Round III, compels the Secretary to eliminate geographic proximity to a mine as a factor in regulatory determinations of whether an off-site processing facility operates in connection with a mine, but merely suggests that course of action to the Secretary as an option for consideration. The court was, however, clearly concerned that proximity should not be decisive or overriding factor in such decisions. Accordingly, OSM reiterates that surface mining regulatory authorities are not precluded from considering the element of geographic proximity in deciding whether an off-site processing or preparation facility operates in connection with a mine provided that proximity is not the decisive factor and that due consideration is also given to other relevant factors such as the processing plant's functional relationship to a mine.

Two commenters objected to OSM's request for public comment on the appropriate use of proximity as a limiting factor in deciding whether a coal preparation plant operates in connection with a mine, maintaining that the March 1991 appeals court decision in *NWF v. Lujan* provided no basis for failure to comply with the district court's August 1990 ruling on proximity in *NWF*, Round III. The commenters asserted that the Secretary, having failed to prosecute the proximity issue on appeal, is bound by the district court's decision and that OSM cannot now reimpose proximity as a limiting factor in defining "in connection with."

OSM disagrees with these commenters. The Secretary's obligations with regard to the district court's decision are satisfied by this rulemaking clarifying that proximity cannot be the decisive factor in determining jurisdiction over off-site preparation plants. OSM's failure to appeal the district court's decision does not preclude the Secretary from considering in this rulemaking subsequent statements of the D.C. Circuit Court of Appeals concerning the Secretary's discretion in this area.

One commenter further maintained that OSM had merely solicited public comment on, but not actually proposed proximity, and was thus barred from incorporating such a consideration into this final rule, but must instead reintroduce proximity through a separate rulemaking. The commenter also asserted that sound legal and policy reasons to reject the concept of proximity as a regulatory factor could be found in legal briefs filed by the plaintiffs in *NMF v. Lujan*, and in public comments submitted to OSM on the 1988 rulemaking concerning the regulation of off-site coal preparation plants, and incorporated by reference those documents.

OSM has reviewed all relevant material and agrees to some extent with the commenter that, often, sound policy reasons do exist for exercising regulatory jurisdiction, regardless of proximity, over off-site coal preparation plants. However, OSM disagrees that these reasons require OSM to reject proximity entirely as a factor, so long as other factors weigh in factor of declining jurisdiction. The Secretary has discretion to consider all factors, including proximity.

OSM also disagrees with the commenters' objections to OSM's request for public comment concerning the effect of the March 1991 appellate court ruling in *NWF v. Lujan*, on the August 1990 district court decision in *NWF*, Round III. In so doing, OSM was not seeking to avoid compliance with the district court's ruling on proximity, but merely to invite meaningful comment on the issue. Nor does OSM agree that a separate rulemaking on proximity is required as the proposed clarification and accompanying preamble discussion contained in the September 25, 1991, rulemaking proposal provided ample opportunity for public comment on the proximity issue.

### **III PROCEDURAL MATTERS**

#### **Effect of the Rule on State Programs**

Following promulgation of the final rule, OSM will evaluate permanent State regulatory programs approved under section 503 of SMCRA to determine whether any changes in these programs will be necessary. If OSM determines that certain State program provisions should be amended in order to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

#### **Effect of the Rule in Federal Program States and on Indian Lands**

The rules under 30 CFR parts 701 and 785 apply through cross-referencing in the following States with Federal programs: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947, respectively. The rules also apply through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR part 750.

#### **Federal Paperwork Reduction Act**

This final rule does not contain any new information collection requirements which require approval by the Office of Management and Budget (OMB) under *44 U.S.C. 3501* et seq.

The existing information collection requirements contained in part 785 were previously approved by OMB and assigned clearance number 1029-0040.

OSM is amending the information collection statement located in section 785.10 by listing the estimated reporting burden per respondent for complying with the information collection requirements and also by listing the addresses for OSM and OMB where comments on the information collection requirements contained in part 785 may be sent. The listed burden hours are for existing requirements and should not be mistaken for new requirements.

#### **Executive Order 12291 and Regulatory Flexibility Act**

The U.S. Department of the Interior (DOI) has determined that this rule is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, *5 U.S.C. 601* et seq. The economic effects of this rule are not estimated to be significant because of the limited number of previously mined sites that will be affected and because the cost of obtaining permits for offsite coal preparation plants will be minor compared to the overall cost of operating such plants. The rule does not distinguish between small and large entities.

## National Environmental Policy Act

OSM has prepared an environmental assessment (EA), and has made a finding that this rule will 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 environmental assessment and finding of no significant impact are on file in the OSM Administrative Record, Room 660, 800 North Capitol Street, NW., Washington, DC.

## Executive Order 12778 on Civil Justice Reform

This rule has been reviewed under the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

The rule will have the same preemptive effect as other standards adopted pursuant to SMCRA. To retain primacy, States have to adopt and apply standards for their regulatory programs that are no less effective than those set forth in OSM's rules. Any State law that is inconsistent with or that would preclude implementation of this rule would be subject to preemption under SMCRA section 505 and implementing regulations at 30 CFR 730.11. To the extent that the rule would result in preemption of State law, the provisions of SMCRA are intended to preclude inconsistent State laws and regulations. This approach is established in SMCRA, and has been judicially affirmed. See *Hodel v. Virginia Surface Mining and Reclamation Ass'n*, 452, U.S. 264 (1981).

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified?

This rule modifies the implementation of SMCRA as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule is not intended to have retroactive effect.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under section 526(a) of SMCRA, 30 U.S.C. 1276(a).

Prior to any judicial challenge to the application of the rule, however, administrative procedures must be exhausted. In situations involving OSM application of the rule, applicable administrative procedures may be found at 43 CFR part 4. In situations involving State regulatory authority application of provisions equivalent to those contained in this rule, applicable administrative procedures are set forth in the particular State programs.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items.

Terms which are important to the understanding of this rule are set forth in 30 CFR 700.5 and 701.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

As of January 8, 1993 the Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

**Author**

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**LIST OF SUBJECTS**

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Part 785

Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, 30 CFR parts 701 and 785 are amended as set forth below:

Dated: November 5, 1992.

Richard Roldan, Deputy Assistant Secretary, Land and Minerals Management.

**PART 701 -- PERMANENT REGULATORY PROGRAM**

1. The authority citation for part 701 is revised to read as follows:

Authority: *30 U.S.C. 1201* et seq., as amended; and Pub. L. 100-34.

2. Section 701.5 is amended by revising the definition of "previously mined area" to read as follows:

**SECTION 701.5 - DEFINITIONS.**

\* \* \* \* \*

PREVIOUSLY MINED AREA means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 30 CFR chapter VII.

\* \* \* \* \*

**PART 785 -- REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING**

3. The authority citation for part 785 is revised to read as follows:

Authority: *30 U.S.C. 1201* et seq., as amended; and Pub. L. 100-34.

4. Section 785.10 is revised to read as follows:

**SECTION 785.10 - INFORMATION COLLECTION.**

The collections of information contained in 30 CFR 785.13(e), (f), (g), and (h) 785.14, 785.15, 785.16, 785.17(b), 785.18(c), 785.19, 785.20, 785.21 and 785.22 have been approved by the Office of Management and Budget under *44 U.S.C. 3507* and assigned clearance number 1029-0040. The information is being collected to meet the requirements of sections 711 and 515 of Pub. L. 95-87, which require applicants for special types of mining activities to provide

descriptions, maps, plans and data of the proposed activity. This information will be used by the regulatory authority in determining if the applicant can meet the applicable performance standards for the special type of mining activities. The obligation to respond is required to obtain a benefit in accordance with Pub. L. 95-87.

Public reporting burden for this information is estimated to average 29 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to: Information Collection Clearance Officer, Office of Surface Mining, 1951 Constitution Avenue, NW., rm. 640NC, Washington, DC 20240; and to the Office of Management and Budget, Paperwork Reduction Project 1029-0040, Washington, DC 20503.

[FR Doc. 93-388 Filed 1-7-93; 8:45 am]  
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