



U· S · DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
DIRECTIVES SYSTEM

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Subject: Incidental Boundary Revisions

Approval: *Jed D. Christensen* Title: Director

1. PURPOSE. The purpose of this directive is to establish an agency-wide policy for use in determining when an extension of the area covered by a Federal permit constitutes an incidental boundary revision.

2. DEFINITIONS.

a. Federal permit. A permit issued by OSMRE in its capacity as the regulatory authority on Indian lands, Federal lands in States without a cooperative agreement for the regulation of mining on such lands, or, under a Federal program, on State and private lands. For the purposes of this directive, this term does not include Federal permits issued for Federal lands in States with cooperative agreements requiring both the State and OSMRE to issue a permit for the same operation.

b. Federal permitting entity (FPE). The OSMRE organizational unit with responsibility for receiving and processing applications and other materials related to Federal permits, i.e., the Western Field Operations office or the Division of Tennessee Permitting.

3. POLICY/PROCEDURES.

a. Policy. Section 511(a)(3) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the Federal regulations at 30 CFR 774.13(d) provide that any extensions of the area covered by a permit, except incidental boundary revisions, shall be made by application for a new permit. Therefore, when an operator proposes a boundary change, the FPE shall apply the criteria listed in paragraph 3.a.(1) below in determining whether the requested boundary revision is incidental or whether it must be submitted and processed as an application for a new permit. However, where an approved State program contains differing criteria, the FPE shall use the State program criteria when evaluating requests for boundary revisions of Federal permits on Federal lands in States with approved regulatory programs.

(1) Criteria for incidental boundary revisions. For a proposed boundary revision to be considered incidental, the proposed change should be one that:

(a) would facilitate the orderly and continuous conduct of mining and reclamation operations;

(b) would not increase the area of land available for coal removal unless the increase would be a secondary impact of and incidental to the primary purpose of the revision;

(c) would not cause any change in the approved post-mining land use or adversely impact the likelihood of its attainment;

(d) would not result in adverse environmental impacts of a larger scale or different nature than those anticipated and addressed in the approved permit;

(e) would only involve lands for which the analysis of probable hydrologic consequences is applicable;

(f) would not involve lands on which mining is prohibited or limited pursuant to section 522(e) of SMCRA (unless the appropriate waivers have been obtained), any lands designated as unsuitable for mining, or any properties eligible for listing on the National Register of Historic Places;

(g) would not involve any of the special categories of mining listed in 30 CFR Part 785 (e.g., prime farmland, alluvial valley floors, and coal preparation plants) unless the approved permit already includes the relevant category;

(h) would be contiguous with the permit area of a surface mine, but need not be contiguous with the permit area of an underground mine; and

(i) would not constitute a change in the method of mining.

(2) Examples.

(a) Modifications that may qualify as incidental boundary revisions, subject to compliance with the criteria listed in (1) above, include, but are not limited to, the addition of areas to:

1 improve the alignment of a road or diversion ditch or the placement of a soil stockpile area or a sedimentation control structure;

2 relocate or expand support facilities;

3 accommodate needed changes in the location of isolated long-term facilities associated with underground mining activities, such as belt lines and ventilation shafts;

4 incorporate incidental disturbances that extend beyond the permit area for which a reclamation obligation now exists; or

5 make minor adjustments in the area permitted for coal extraction so long as the total area permitted for extraction is not increased (unless the increase is justified under 3.a(1)(b) above).

(b) Proposed changes beyond the scope of incidental boundary revisions include, but are not limited to, the addition of areas:

1 solely or primarily to increase the size of the area from which coal may be removed or

2 to construct major new facilities such as preparation plants or coal mine waste disposal areas.

b. Procedures.

The FPE shall evaluate all applications for incidental boundary revisions to determine whether the area(s) to be added and the permittee's rationale for the addition are both reasonable and in accordance with the criteria specified in paragraph 3.a.(1) of this directive.

If the FPE determines that the application meets the criteria for incidental boundary revisions, it shall process the application in accordance with the requirements and procedures for nonsignificant permit revisions established pursuant to the applicable State or Federal program counterpart to 30 CFR 774.13. No such application shall be approved before the permittee posts an adequate performance bond for any additional area as determined by the FPE in accordance with the applicable State or Federal program.

If the FPE determines that the proposed revision does not meet the criteria for incidental boundary revisions, it shall return the application to the permittee with a written explanation of the decision and the permittee's alternatives.

c. Policy for oversight of State programs. When evaluating a State's implementation of its approved regulatory program, OSMRE personnel shall adhere to any requirements or policies contained within or adjunct to the approved program. Where a State program does not contain any specific guidance on IBRs, the State program shall be considered no less effective than Federal requirements if program provisions are applied in a manner that gives reasonable meaning to the word "incidental," such as the criteria outlined in section 3.a. of this directive.

4. REPORTING REQUIREMENTS. None.

5. REFERENCES. 30 CFR 774.13(d).

6. EFFECT ON OTHER DOCUMENTS. None.

7. EFFECTIVE DATE. Upon issuance.

8. CONTACT. Branch of Federal and Indian Programs, Division of Regulatory Programs; Telephone (202) 343-1864.